



City Council Agenda Report

Meeting Date: June 11, 2024
Prepared By: Stephanie Williams
Reviewed By: Nick Zornes
Approved By: Gabriel Engeland

Subject: SB9 Regulations – Housing Element Implementing Ordinance

COUNCIL PRIORITY AREA

- ☐ Business Communities
- ☐ Circulation Safety and Efficiency
- ☐ Environmental Sustainability
- ☒ Housing
- ☐ Neighborhood Safety Infrastructure
- ☐ General Government

RECOMMENDATION

Adopt an Ordinance of the City Council of the City of Los Altos adding Chapter 14.64 to Title 14 (Zoning) of the Los Altos Municipal Code enacting regulations for dual opportunity developments (SB9) and find the Ordinance exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act (CEQA).

INITIATED BY

City of Los Altos adopted 6th Cycle Housing Element, Program 1.M: SB9 Implementation

FISCAL IMPACT

No fiscal impacts are associated with the adoption of these implementing regulations.

ENVIRONMENTAL REVIEW

The proposed amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment.

PREVIOUS COUNCIL CONSIDERATION

May 14, 2024 and May 28, 2024.

BACKGROUND

California Senate Bill 9 Overview

California Senate Bill 9 (SB 9) requires ministerial approval of certain housing development projects and lot splits on an R1 (Single-Family Residential) zoned property. SB 9 was passed by the California Legislature in 2021 and took effect January 1, 2022.

SB 9 requires approval of the following:

- Two primary units. Two units on an eligible R1 lot (whether the proposal adds two new units or adds one unit and keeps an existing unit).
- Urban lot split. A one-time subdivision of an eligible R1 lot into two lots. This would allow up to four units (two units on each lot).

SB 9 also requires that jurisdictions review and approve all SB 9 projects ministerially without discretionary review or public hearing; may only apply objective zoning, subdivision, and design standards; and these standards may not preclude the construction of up to two units of at least 800 square feet each on each lot with minimum 4' side and rear setbacks. This law is similar to State ADU legislation in that it allows jurisdictions to apply local objective standards, as long as they do not prevent the development of new residential development to provide for increased housing opportunities which comply with SB9's regulations.

Although SB 9 allows cities to create objective development standards, SB 330, as amended by SB 8 in 2021 (Housing Crisis Act of 2019), limits the ability for cities to add new standards. Specifically, the Housing Crisis Act prohibits cities from reducing the intensity of land use within an existing residential zoning district below what was allowed and in effect on January 1, 2018. Reducing intensity includes, but is not limited to reductions to height, density, floor area ratio (FAR); new or increased open space or lot size requirements; new or increased setback requirements; or any standard that would lessen the intensity of housing.

Existing City SB9 Regulations

The City previously considered and adopted an SB9 Implementation Resolution on December 14, 2021, in anticipation of SB9 going into effect on January 1, 2022 (see Attachment 3). These regulations were intended to assist staff and the public with reviewing SB9 applications consistent with State Law and establish objective design standards for residential units developed under the regulations. Council also directed staff to return to them by May 2022 to report on SB9 implementation and any recommendations on amendments that may be prudent after the review of applications. Due to staff shortages, turnover and other priorities, especially the Housing Element Update, efforts to return to Council by May 2022 were delayed.

Staff proposes to largely maintain existing SB9 development standards and objective design standards and adjust standards where they do not align with the implementation of minimum SB 9 requirements or were found to be problematic through implementation over the last approximately two years.

6th Cycle Housing Element 2023-2031

On January 24, 2023, the City adopted the 6th Cycle Housing Element 2023-2031 which included *Program I.M: SB 9 Implementation*; which requires the City to ensure that its local SB9 ordinance remains consistent with State law. Additionally, the City is to monitor and report on the effectiveness of the City's SB9 standards and report its findings and any recommendations on amendments which are appropriate to facilitate SB9 applications.

The Draft Ordinance is an implementing Ordinance of the City's adopted Housing Element. Should the City of Los Altos not proceed with the implementing actions discussed in this report, the City will be vulnerable to penalties and consequences of Housing Element noncompliance. HCD is authorized to review any action or failure to act by a local government that determines is inconsistent with an adopted Housing Element or housing element law. This includes failure to implement program actions included in the Housing Element. HCD may revoke Housing Element compliance if the local government's actions do not comply with State Law. Examples of penalties and consequence of Housing Element noncompliance include:

- **General Plan Inadequacy:** the Housing Element is a mandatory element of the General Plan. When a jurisdiction's housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.
- **Legal Action and Attorney Fees:** local governments with noncompliant housing elements are vulnerable to litigation from housing rights' organization, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.
- **Loss of Permitting Authority:** courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction's General Plan and housing element into substantial compliance with State law. The court may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.
- **Financial Penalties:** court-issued judgement directing the jurisdiction to bring its housing element into substantial compliance with state housing element law. If a jurisdiction's housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.
- **Court Receivership:** courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction's housing element into substantial compliance with Housing Element law.

SB9 Project Review Update

The proposed codification of SB9 regulations in the Zoning Ordinance and analysis contained in this report reflect staff's utilization of the existing regulations over the past approximately two

years and include recommendations on amendments. Since the law took effect on January 1, 2022 until the writing of this report, the City has received nine (9) urban lot split applications and eighteen (18) SB9 residential development applications. Minor changes are recommended to the existing regulations to improve implementation consistent with State law, clarify language, or align with modified City practices or laws.

Two changes reflected in the proposed Ordinance which align with the recent City ADU regulation changes include the removal of a daylight plane requirement and language regarding voluntary setbacks. Because the side and rear setbacks for developments are reduced from standard R1 zoning setbacks, the daylight plane requirement is removed as it is unenforceable and impossible to “protect” a daylight plane with a structure that is allowed four feet from a property line. The voluntary additional setback is intended to reduce the privacy impacts to abutting property owners, and applicants are encouraged to voluntarily increase the setbacks. Although this language is not in conflict with any State laws, the inclusion of such language within the ordinance creates a false sense of certainty for unenforceable setbacks between opposing parties, and results in City staff playing mediator of residents.

Planning Commission Recommendation

On April 18, 2024, the Planning Commission received a staff report, presentation, asked clarifying questions of staff, considered the proposed Ordinance, and conducted an in-depth discussion regarding the item. No one from the public spoke on the item and one letter of support was received. The Commission recommended modifications to the proposed regulations which include minor non-substantive language clarifications as well as an amendment to Section 14.64.090 – Objective Development Standards – to increase the Floor Area Ratio (FAR) for lots not exceeding 10,000 square feet to 40 percent where the previous language, which mirrored the existing regulations, had a maximum FAR of 35 percent for lots not exceeding 11,000 square feet. The commission voted unanimously to recommend approval of the Ordinance with the amended language.

City Council Public Hearing – May 14, 2024

On May 14, 2024, the Council considered the Planning Commission’s recommendation and Draft Ordinance and directed staff to make the following modifications and return for consideration.

- Section 14.64.020.F (Eligibility) – Include trusts in the list of entities for which SB9 cannot be utilized.
- Section 14.64.040 (Lot Frontage Width and Design) – Remove reference to minimizing site disturbance and tree removal.
- Section 14.64.070 (Rental Term) – Include the definition of short-term rental.
- Section 14.64.080 (Maximum Number of Units) – Allow two junior accessory dwelling units per development which are not counted towards the 4 unit maximum.
- Section 14.64.090 (Objective Development Standards) – Remove a Floor Area Ratio (FAR) standard.

City Council Public Hearing – May 28, 2024

On May 28, 2024, the Council introduced the amended Draft Ordinance with the requested modifications and moved to approve the Ordinance by a 4-1 vote.

ATTACHMENTS

1. Draft Ordinance and Appendix A (Chapter 14.74)