



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/1/2022

ITEM NO: 5

DATE: January 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Extension of an Urgency Ordinance for a Period of 10 Months and 15 Days to Implement Senate Bill 9 to Allow for Two-Unit Housing Developments and Urban Lot Splits in All Single-Family Residential Zoning Districts

RECOMMENDATION:

Adopt an extension of an Urgency Ordinance (Attachment 1) by title only for a period of 10 months and 15 days to implement Senate Bill 9 to allow for two-unit housing developments and urban lot splits in all single-family residential zoning districts.

BACKGROUND:

California Senate Bill 9 (SB 9) requires ministerial (staff-level) approval of certain housing development projects and lot splits on a single-family zoned parcel. SB 9 was passed by the California Legislature on September 1, 2021, signed into law by Governor Newsom on September 16, 2021, and took effect January 1, 2022.

On December 21, 2021, Town Council adopted an Urgency Ordinance to implement SB 9 with local objective standards. This Ordinance is in effect for 45 days. The extension of the Urgency Ordinance is coming to Town Council prior to the expiration (February 4, 2022) for consideration and possible minor modifications. More extensive changes would require staff to return with a revised Urgency Ordinance for Council consideration. Consistent with State law, the proposed extension has been noticed and published.

If the Urgency Ordinance is not extended, then the Town will be implementing State law without local considerations or objective standards included in the Urgency Ordinance (Attachment 1).

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Assistant Town Manager, Town Attorney, and Public Works Director

BACKGROUND (continued):

In December, the Council requested additional information for this next discussion. This report includes options related to the specific topics identified by the Council. The information may be useful for consideration in the Urgency Ordinance extension if the modifications are minor in nature, for a new Urgency Ordinance if the Council directs more extensive changes, and/or for a future permanent Ordinance.

DISCUSSION:

The following information is provided in response to the Town Council's request for additional information. Sections A through G are in direct response to information requests at the December 21, 2021 Town Council meeting. Sections H through K are in response to public comments that a Council Member specifically asked staff to address.

A. Affordable Housing Restrictions

The Town's Below Market Price (BMP) program applies to residential or mixed-use projects that include five or more residential units, and would therefore not apply to projects developed under SB 9. The Urgency Ordinance was developed based on the Town's current BMP regulations and interpretation of SB 9. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with additional language restricting new units to certain levels of affordability.

The Town of Los Altos Hills included the following language in their Ordinance:

A note on the parcel map and a recorded deed restriction in a form approved by the City Attorney's Office shall be applied to all newly created parcels indicating that the parcel Ordinance 598 - Exhibit A Page 5 was split using the provision of this article and that no further subdivision of the parcels is permitted. In addition, the deed restriction shall stipulate that all new units developed on the new parcels shall be income restricted to low and very low-income households based on the most recent Santa Clara County Area Median Income (AMI) levels.

The City of Sonoma included the following language in their Ordinance:

Affordable Housing.

- a. A complete application for a Two Unit Residential Permit shall include a separate statement, signed by the applicant or owner of the parcel for which the two-unit residential project is proposed stating whether each new dwelling unit will be an ownership or rental unit.*

DISCUSSION (continued):

- b. The owner of each newly created unit in a two-unit residential project shall enter into an Affordable Housing Agreement (AHA), in a form approved by the Planning Director and City Attorney, assuring the continued affordability of each unit in perpetuity.*

Affordable rental units shall include a management and maintenance plan (addressing issues including but not limited to tenant screening; warning and eviction procedures; use and maintenance of patios, decks and other outdoor areas; quiet time; and the long-term maintenance of buildings and landscaping). The AHA must be executed and recorded prior to the issuance of any building permits pertinent to the two-unit residential project.

- i. Units held out for rent shall be affordable to households in the low-income category based upon the Sonoma County area median income levels.*
- ii. Units that are proposed to be owned shall be affordable to households in the moderate-income category based upon the Sonoma County area median income levels.*

The City of Santa Barbara included the following language in their ordinance:

AFFORDABLE HOUSING. Allowable residential densities must conform to the underlying land use density for the lot, and may only be increased for specific affordable housing projects as outlined in the policies of the City's Coastal Land Use Plan. Therefore, at least one of the units in a two-residential unit development must include an affordability restriction consistent with the City's density bonus program.

...

Affordability Requirement. At least one of the units in each two-unit residential development, or at least one unit on any lot created pursuant to an Urban Lot Split, must be constructed and offered for sale or for rent as a moderate, low, or very low-income unit, restricted for occupancy by a moderate, low or very low-income household, as defined in and pursuant to the procedures in the City's Affordable Housing Policies and Procedures.

The Town Council can include additional language into the Ordinance (Attachment 1); however, staff is concerned that requiring deed restricted affordable housing could lead to a legal challenge.

B. Single-Family Residential Downtown (R-1D)

Of the 799 properties currently within the R-1D zoning designation, an estimated 626

DISCUSSION (continued):

properties are located within a historic district and/or constructed prior to 1941, leaving approximately 173 properties that could potentially qualify for an SB 9 project. These parcels are predominately along Los Gatos Boulevard between Loma Alta Avenue and Pine Avenue, and in the residential neighborhoods between Los Gatos-Saratoga Road and Mariposa Avenue.

SB 9 includes language which specifically allows the exclusion of development located “within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.”

Town Code defines Historic structures as:

- (1) Any structure that is located within an historic district; or
- (2) Any structure that is historically designated; or
- (3) Any primary structure constructed prior to 1941, unless the deciding body has determined that the structure has no historic significance and should not be included in the Town Historic Resources Inventory.

The Urgency Ordinance was developed using this definition to implement the portion of SB 9 quoted above which allows the Town to exclude historic properties designated by the Town’s Ordinance. As described above, many of the R-1D parcels are either within one of the Town’s historic districts or defined as historic due to construction prior to 1941.

The Town Council can include additional language in the Ordinance (Attachment 1); however, staff is concerned that a modification to not allow SB 9 to be used in all R-1D parcels would go beyond the definition in our Town Code and adopted by Ordinance, and therefore could lead to a legal challenge.

C. Occupancy Affidavit

SB 9 includes specific language that states, “A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.” Because of the specificity of this language in State law the Urgency Ordinance was developed with the same requirement. The Ordinance was modified prior to adoption to add that the three years would begin at the approval of the urban lot split, or at the Certificate of Occupancy, whichever was later. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with more restrictive language requiring a covenant to run with the parcel to confirm that the

DISCUSSION (continued):

owner will reside in one of the dwellings.

The Town of Los Altos Hills included the following language in their Ordinance:

The owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner will reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

...

If the proposed dwelling units are developed subsequent to a subdivision completed pursuant to this Article, the owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner intends to reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

D. Fire Hazard Mitigation

SB 9 includes specific language that states that an SB 9 project cannot be located within "high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection"; however, this does not apply to, "sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development." Because of the specificity of this language in State law, the Urgency Ordinance was developed with the same language. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with more restrictive language.

The City of Monte Sereno included the following language in their Ordinance for new lots proposed within an application for an urban lot split with reference to California Fire Code section 503 pertaining to fire apparatus access roads:

Has at least 10 percent of the lot frontage of the original parcel, unless the applicant can demonstrate that this would have the effect of physically precluding the construction of two units on either of the resulting parcels or would necessarily result in a unit size of less than 800 square feet, in which case the applicant shall demonstrate the parcel has sufficient frontage to comply with any property access road requirements under the California Fire Code section 503.

DISCUSSION (continued):

The City of Santa Barbara included the following language in their Ordinance to prohibit two-unit residential development in their High Fire Hazard Areas:

HIGH FIRE HAZARD AREA. Two-residential unit development shall not be permitted within High Fire Hazard Zones, unless the existing and proposed buildings are designed to meet the high fire construction standards adopted through Title 8 and Title 22 of the Municipal Code, and the proposed development is not located in the Foothill or Extreme Foothill High Fire Hazard Zones identified in Figure 14 of the City's Community Wildfire Protection Plan dated February 2021. No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.

The Town Council can include additional language into the Draft Ordinance (Attachment 1); however, staff is concerned that these modifications could lead to a legal challenge because it is a more restrictive requirement than allowed by State law.

E. Building Heights

The Urgency Ordinance adopted by Town Council on December 21, 2021, states that "Maximum building height shall be as specified by the applicable zoning district for the main structure. Buildings located within the required side or rear setbacks of the applicable zoning district shall not exceed 16 feet in height." There are a variety of different techniques being used by different agencies for addressing the height of new structures. For example, height has been limited only when a new structure is within the underlying setbacks, while other agencies apply it to any dwelling unit, or just the second dwelling unit developed under the provisions of SB 9.

In Los Altos Hills, the requirement is:

The maximum height of the SB 9 dwelling unit shall be 16 feet.

In Monte Sereno, the requirement is:

Building Height at Side and Rear Yard Setbacks. Where a new building is constructed where the side yard and rear yard setbacks do not meet the zoning district standards (the State statute allows side yard and rear yard setbacks to be no more than four feet), the maximum building height shall be 16 feet.

DISCUSSION (continued):

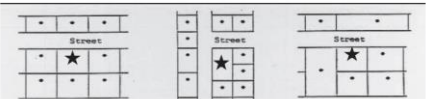
In Sonoma, the requirement is:

Each unit of a two-unit residential development shall have only one story. The maximum height of the one-story unit shall be 18 feet above finished grade, measured from finished grade to the highest point of the roof. If application of an objective standard would have the effect of physically precluding a unit from being built on the parcel as a one-story structure, a two-story unit shall be allowed. The height of that two-story structure shall not exceed 25 feet measured from the finished grade to the highest point of the roof. Additionally, the plate height on any new second story shall not exceed 8 feet.

The Town Council can include additional language into the Ordinance (Attachment 1); however, staff is concerned that these modifications could lead to liability because it is a more restrictive requirement than allowed by State law. It is also possible that once there is further direction from the State, it may be determined that these restrictions cannot be enforced.

F. Neighbor Notification

While some agencies have chosen to include notification to neighbors of a proposed SB 9 project, the Town’s Urgency Ordinance was developed without this provision because it would be inconsistent with other ministerial processes within Town Code, for example Accessory Dwelling Unit Permits and Building Permits. Because these are ministerial permits there is no ability to require changes to the proposed project based on neighbor input. Current noticing requirements for discretionary permits include:

Minor Residential Development	Neighboring residents and property owners.	Sec. 29.20.480(c)
Large protected tree removal		Sec. 29.10.0994(4)
Hillside Areas	500 feet or 30 properties (whichever is greater)	Staff Policy
All other Town Areas	300 feet	Sec. 29.20.565(a)

The Town Council can include additional language in the Ordinance (Attachment 1); however, staff is concerned that implementing a neighbor notification requirement would not be beneficial as neighborhood input cannot be considered when reviewing ministerial permits, and would result in significantly increased staff time to respond to neighbor comments.

DISCUSSION (continued):

G. Minimum Unit Size

At the December 21, 2021 Town Council meeting, the Council adopted the Urgency Ordinance with a requirement of a Minimum Living Area of 150 square feet, based on sample Ordinance language from another agency. Upon further evaluation, staff recommends removal of this requirement currently listed as item 9 under Zoning Standards in Section V of the Urgency Ordinance because the minimum unit size would be guided by Building Code requirements.

H. Floor Area

The Urgency Ordinance relies on the Town's existing Floor Area Ratio (FAR) regulations with an additional provision added by Town Council on December 21, 2021, to restrict the size of any new dwelling unit developed under SB 9 to 1,200 square feet. Public comments included as Attachment 3 include discussion of specific projects within Town and how this regulation would affect their property.

If the Town Council is interested in considering modifications to this aspect of the Urgency Ordinance, the following are examples that could be considered:

1. Apply the 1,200-square foot limit to only the second dwelling unit in instances where two dwelling units are proposed on the same lot;
2. Apply a 1,200-square foot limitation to new homes developed under the two-unit residential development application process, and maintain the Architecture and Site application review process with the standard FAR limitations based on lot size as an option for proposals that include only a single home on each parcel when proposed to exceed 1,200 square feet; or
3. Apply the process described in option 2, and require that the maximum allowed FAR on that lot be reduced by 800 square feet to ensure that a future second home could be developed without exceeding the maximum FAR.

The Town Council can include modified language in the Ordinance (Attachment 1) to provide additional options including those interested in choosing a discretionary process for a new home on a lot created through the urban lot split process, as is allowed on other single-family residential parcels in Town.

DISCUSSION (continued):

I. Grading

The Urgency Ordinance adopted by Town Council on December 21, 2021 included requirements that both the two-unit housing development and urban lot split applications not result in grading of more than 50 cubic yards, or other activities requiring a grading permit. Standard practice is to require a grading plan to verify compliance with this recommendation. In consideration of comments received expressing concerns about this requirement (Attachment 3), the Town Council could propose adding the following clarification to the Ordinance: “for sites with an average slope of less than 10 percent, a signed statement from the applicant confirming that a grading permit will not be required.”

J. Hillside Residential

The Urgency Ordinance adopted by Town Council on December 21, 2021 included only “Single Family Residential (R-1)” and “Single-Family Residential Downtown (R-1D)” zoned properties in the definition of Single-Family Residential Zone. SB 9 states that these new processes must be allowed on a parcel “located within a single-family residential zone.” It does not require this new process be permitted in all zones that allow single-family residential uses by right, which in the Town of Los Gatos would include Resource Conversation, Hillside Residential, Single-Family Residential, Residential Duplex, Multiple-Family Residential, Single-Family Residential Downtown, Residential Mobile Home, and Central Business District (when in conjunction with other permitted use).

If Town Council were considering including the Hillside Residential zones as part of the Single-Family Residential zones included within this Ordinance, then staff would recommend additional language to ensure that new subdivisions only occur where adequate emergency access exists. Possible language might be, “For subdivisions in the Wildland Urban Interface (WUI), development will only be allowed where existing roads provide adequate emergency ingress and egress. For subdivisions under consideration where roads only provide one-way in/one-way out access, subdivisions will only be considered if the roadway clearance meets the current legal standard of 20 feet of clear horizontal width and 13 feet of vertical clearance.”

Public comments included as Attachment 3 include discussion of specific projects within Town and how this regulation would affect their property.

DISCUSSION (continued):

K. Accessory Dwelling Units

The Urgency Ordinance adopted by Town Council on December 21, 2021, prohibits new Accessory Dwelling Units (ADU) on any site with a two-unit housing development or created by an urban lot split. Other agencies have allowed ADUs in their implementation of SB 9 in various ways, but in most cases limit the number so that the final result is no more than four units on any existing single-family residential property. Some options include:

1. Allow new ADUs on properties with two homes developed through the two-unit housing development process, but not on lots created by urban lot splits, and limit the total number of dwelling units to either three or four, including ADUs and Junior ADUs;
2. Allow new ADUs on parcels created by an urban lot split, but limit the number of units (including ADUs) on each new parcel to no more than two; and
3. Allow new ADUs along with either type of SB 9 application, but combine the two options above to set limits that new urban lot split parcels can only have two units each, and that the overall number of units cannot be more than four.

The Town Council can include additional language into the Ordinance (Attachment 1), staff does not have any concerns about these changes conflicting with State law.

PUBLIC COMMENT:

Attachment 3 includes additional public comment received between 11:01 a.m., Tuesday, December 21, 2021, and 11:00 a.m., Friday, January 28, 2022.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Town Council adopt the extension of Urgency Ordinance 2326 (Attachment 1) as it provides a process and regulatory framework that includes local objective standards and process guidelines.

As a next step, the Town would develop a permanent ordinance for future Council consideration to implement SB 9, consistent with any future direction received from the State. The Council is welcome to identify items from this report for consideration in the permanent Ordinance.

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SUBJECT: Senate Bill 9 Implementation Urgency Ordinance Extension

DATE: January 27, 2022

ALTERNATIVES:

Alternatively, the Town Council may:

1. Adopt an Urgency Ordinance Extension (Attachment 1) with minor, specific modifications; or
2. Direct more extensive modifications and return to the Council with a new Urgency Ordinance for consideration; or
3. Not adopt the Urgency Ordinance Extension, resulting in the expiration of Urgency Ordinance 2326 on February 4, 2022 and staff implementing SB 9 without local standards.

Attachments:

Received with this Staff Report:

1. Draft Urgency Ordinance Extension with Exhibit A Urgency Ordinance Number 2326
2. Senate Bill 9
3. Public Comments received between 11:01 a.m., Tuesday, December 21, 2021 and 11:00 a.m., Friday, January 28, 2022

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