

MEMORANDUM

Building Safety and Housing Department



DATE: July 30, 2021

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager *Steve McHarris*

FROM: Sharon Goei, Building Safety and Housing Director
Ned Thomas, Planning Director

SUBJECT: SB 9 – The California Housing Opportunity and More Efficiency (HOME) Act

The purpose of this memorandum is to provide information about pending legislation (Senate Bill 9, Atkins) that seeks to create more opportunities for market rate and affordable housing by streamlining the process, through reduced local control, for a homeowner to create a duplex or subdivide an existing single-family lot.

Overview

In California, much of the available land has already been developed with housing or is unsuitable for housing because it is too far from job centers or transit, is not served by adequate infrastructure, is environmentally sensitive, or is located in areas with high wildfire danger. Accommodating California's housing needs can be accomplished by accommodating multifamily housing at higher densities throughout the state as well as promoting small scale "missing middle" housing such as townhomes, accessory dwelling units (ADUs), Junior ADUs (JADUs), duplexes, etc. in areas that have historically allowed only single-family residences.

SB 9 would create the potential for *up to* four units on an existing single-family lot. The parcel must be in an urbanized area, as defined by the U.S. Census, and may not be in an area subject to natural hazards such as wildfires, earthquake fault zones, flooding, etc. SB 9 also excludes prime agricultural land and historic and landmark districts.

SB 9 would allow a single lot to be split into two lots of equal size (the "lot-split provision"). The bill would also allow two dwelling units to be located on a single parcel in a single-family residential zone (the "two residential units provision"). Each of these actions would be subject to a ministerial permit process, which means that required permits would be reviewed by staff and approved "by-right" with no local discretion. New units created under the proposed bill would be exempt from environmental review under the California Environmental Quality Act (CEQA).

The bill contains guardrails such as the fact that property owners cannot split adjacent lots; cities can impose certain objective zoning, subdivision, and objective design standards so long as it doesn't preclude development of two 800 square foot units; cities can prohibit demolition of more than 25% of the existing exterior structural walls of the home; cities can require that the homeowner live in one of the split lots for a year; and homeowners cannot demolish units that were occupied within the last 3 years or that are deed restricted or rent stabilized. Units created under this bill cannot be used for short-term rentals and cities can require four-foot side and rear setbacks.

The proposed bill was approved by the California State Senate on May 26, 2021 and is now being considered by the State Assembly.

Two Scenarios under Proposed SB 9

Scenario 1: The “two residential units provision” of SB 9 (not limited to “duplexes”) is invoked but not the “lot-split provision.”

In this case, the single lot could have two free-standing houses, two townhouses, or a duplex. There is no requirement that the two residential units be attached (a “duplex”) or free-standing. Under current state and local ADU regulations, one ADU and one JADU would also be allowed “by right” on the parcel.

Up to 4 units: Two residential units on the single lot plus the possibility of an ADU and a JADU on the same lot.

Scenario 2: Both the “lot-split provision” and the “two residential units provision” allowed on each of the two new lots.

One lot becomes two lots that are no smaller than 1,200 square feet each. Each lot can have two residential units. As currently written, the bill does not require a City to approve ADUs or JADUs on lots that have been divided under SB 9.

Total of 4 units: Two residential units on each of the new lots created from the single lot.

Arguments For and Against SB 9

Proponents suggest the bill would build upon recent ADU legislation by allowing for small-scale rental and ownership opportunities in high resource neighborhoods. Such changes could create new opportunities to own small homes and build generational wealth. A study published on July 21, 2021 by the UC Berkeley Turner Center for Housing Innovation concluded that SB 9 would provide a modest boost in housing construction and would be financially feasible for only about 1.5% of the state’s single family parcels.¹ The report predicts that the new capacity created by SB 9 would only be a fraction of what is needed to meet current housing demand.

In a letter dated April 27, 2021, the League of California Cities opposed SB 9 because, “...it will not spur much needed housing construction in a manner that supports local flexibility, decision making, and community input. State-driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by the California Department of Housing and Community Development (HCD).” In addition to concerns over local control, opponents criticize the bill for adding too much density; for pitting investors and developers against homebuyers in the market; for not requiring affordability restrictions; for its potential to increase gentrification in lower income neighborhoods; for not allowing larger setbacks; and for not requiring yard space or garages.²

¹ <https://turnercenter.berkeley.edu/blog/duplexes-lot-split-sb-9/>

² <https://www.livablecalifornia.org/sb-9-is-one-of-the-7-bad-bills-of-2021-lets-end-homeownership-by-toni-atkins-and-scott-wiener/>

Legislative Advocacy Framework

On April 20, 2021, the Milpitas City Council directed staff to move forward with a Legislative Advocacy Policy and Legislative Guideline Principles. On May 18, 2021, the Council approved the Legislative Advocacy Policy and Legislative Guideline Principles.³ For the City to provide input on bills or regulatory proceedings in a very short turnaround time, Council approved nine Legislative Guiding Principles which included 1) protect local control and 3) support efforts to create affordable housing and addresses homelessness.

As is sometimes the case with legislation, SB 9 both conflicts and furthers the City's current Legislative Guiding Principles. Specifically, the bill would support Principle No. 3 by allowing small-scale infill housing where it is currently prohibited, apart from ADUs. However, the bill conflicts with Principle No. 1 by making the above provisions ministerial with no local discretion. Taking away local control would be a major concern for the City. The bill would limit the City's ability to enforce its parking requirements, which could result in spillover parking and burden the City's on-street parking supply. The bill would also limit the City's ability to engage the community through the development review process.

This memorandum provides information about SB 9 as currently proposed. The City Council may provide direction to staff as desired.

³ Agenda item C9: <https://www.ci.milpitas.ca.gov/pdfs/council/2021/051821/attachments.pdf>
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