



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** December 9, 2021

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**SUBJECT: SENATE BILL 9 IMPLEMENTATION ORDINANCE**

## **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission voted unanimously (11-0) to recommend that the City Council take the following actions recommended by Planning staff:

- (a) Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.
- (b) Approve an ordinance amending Title 20 of the San José Municipal Code to add provisions to implement Senate Bill 9.

## **BACKGROUND**

The Planning Commission held a public hearing on December 8, 2021, to consider the above recommendation to adopt an ordinance to facilitate the implementation of Senate Bill 9 (SB 9), which becomes effective on January 1, 2022. The bill requires cities to allow subdivision of a single-family zoned property into two roughly proportional lots and allow construction of two units on any single-family zoned lot.

A presentation was given by Martina Davis, Interim Division Manager for the Citywide Planning group within the Department of Planning, Building and Code Enforcement. Staff's presentation gave a comprehensive overview of the requirements of Senate Bill 9, existing zoning standards that are applicable to SB 9 projects, and new or modified standards proposed by this implementation ordinance.

No members of the public spoke on the item. Planning Commission comments and questions are summarized within the “Planning Commission Discussion” section below.

## **OUTCOME**

If the City Council approves the Planning Commission recommendation, the Zoning Ordinance will be updated to add a new part to the residential zoning chapter to provide implementation provisions for Senate Bill 9. The ordinance is being brought to Council as both a traditional ordinance and an Urgency Ordinance. The Urgency Ordinance will become effective immediately to facilitate implementation of the bill when City Hall reopens on January 3, 2022, while the other ordinance will take effect 30 days following final adoption by the Council.

### **Planning Commission Discussion**

Commissioners asked staff a number of clarifying questions regarding lot sizes, requirements for easements for public services, how SB 9 and this ordinance apply to historic properties, technical issues regarding splitting an existing house, garage door frontage standards, ensuring a replacement home is built where a home is demolished to accommodate a SB 9 subdivision, procedures to verify whether a home has been occupied by a renter within the last three years, the definition for “acting in concert”, the Floor Area Ratio calculation, and the Parcel Map subdivision process.

Commissioner Montanez asked staff if it was possible to propose an additional setback for a garage on the front of a home to address concerns around homes that are dominated by garage door frontage. Staff explained that could be possible but introducing a greater setback would be considered a “downzoning” under Senate Bill 330 so the ordinance would need to provide a lesser setback elsewhere on the lot so that the development intensity of the lot is maintained. Staff had previously considered including an additional setback requirement for garages and concluded that it warranted more study than was possible in the timeframe of this ordinance.

Commissioner Montanez commented that the previous week the Commission recommended that staff evaluate provisions to ensure affordable units through SB 9 and asked if it was possible to include in this ordinance a density bonus type approach that would allow additional development opportunities in exchange for affordable housing. Staff responded that establishing a density bonus approach is complex and therefore not possible to figure out a feasible approach within the expedited timeframe of this ordinance. However, a density bonus approach will be studied should Council adopt the Planning Commission’s recommendation to move away from Opportunity Housing and focus on SB 9 implementation, which included the recommendation to evaluate opportunities for affordable housing.

Chair Bonilla asked staff to affirm that SB 9 is a requirement from the State that cities must implement, and failure to adopt this ordinance would not relieve the City from the obligation to implement SB 9 starting in January 2022. Staff affirmed this and noted that staff will continue to

monitor changing interpretations of SB 9 and implementation challenges, and may bring forth modifications to this ordinance in the future if necessary.

Commissioner Caballero made a motion to recommend that the Council approve staff's recommendation. Commissioner Oliverio seconded the motion. The motion was approved unanimously (11-0).

### **ANALYSIS**

For a complete analysis please see the Planning Commission staff report dated November 29, 2021 (attached).

### **EVALUATION AND FOLLOW UP**

If the recommendation from the Planning Commission is approved, staff will begin to evaluate project applications using the provisions of this ordinance when the bill becomes effective on January 1, 2022. Staff will continue to monitor and coordinate with other jurisdictions and the state Department of Housing and Community Development (HCD) regarding interpretations of the bill and implementation challenges and may propose modifications in the future.

### **CONCLUSION**

Senate Bill 9 takes effect on January 1, 2022. The Planning Commission voted to recommend that the City Council approve the staff's recommendation to adopt an implementation ordinance to provide clarity and consistency for implementing this bill as required in January.

### **CLIMATE SMART SAN JOSÉ**

Senate Bill 9 allows duplexes on a single lot or two lot subdivisions with a duplex on each lot, for a total of four units, on properties citywide that have a single-family zoning district. Some of the housing built under this law could be proximate to transit, near employment, and therefore generate relatively little Vehicle Miles Traveled (VMT); however, the law would also allow new housing in single-family areas that are far from transit and jobs, that are high VMT. Given this, housing built under SB 9 could both further and detract from the Climate Smart San José goal to reduce greenhouse gas emissions (GHG) by lowering VMT by focusing new residential development into low VMT infill areas of the city. Under state law, however, the City cannot deny housing projects consistent with the provisions of SB 9 and staff is required to implement its provisions.

## **PUBLIC OUTREACH**

The Planning Commission agenda was posted on the City of San José website, which included a copy of the staff report, and staff was available to discuss the project with members of the public.

## **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

## **CEQA**

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto (SCH#2009072096). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA.

/s/  
CHRISTOPHER BURTON, Secretary  
Planning Commission

For questions, please contact Martina Davis, Interim Division Manager, at 408-535-7888 or [martina.davis@sanjoseca.gov](mailto:martina.davis@sanjoseca.gov)

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Christopher Burton

**SUBJECT:** Senate Bill 9 Implementation Ordinance

**DATE:** November 29, 2021

**COUNCIL DISTRICT:** Citywide

<b>Type of Permit</b>	Zoning Ordinance Update
<b>Project Planner</b>	Martina Davis
<b>CEQA Clearance</b>	Determination of Consistency
<b>CEQA Planner</b>	Cassandra Van Der Zweep

## RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take the following actions:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs; and
2. Adopt an ordinance to amend Title 20 of the San Jose Municipal Code to add provisions to implement Senate Bill 9.

## PROJECT BACKGROUND

### Senate Bill 9

Building off the success of accessory dwelling units (ADUs) as a means to provide housing that is affordable by design, this year the California Legislature passed Senate Bill 9 (SB 9) which requires that jurisdictions allow additional density in single-family neighborhoods through subdivisions and construction of additional units. It was approved in the Assembly and Senate with an overwhelming majority and was signed into law by Governor Newsom on September 16, 2021. The bill becomes effective on January 1, 2022.

SB 9 is broken into two primary components: 1) provisions that allow subdivisions of a single-family zoned lot into two lots (referred to in the bill as Urban Lot Splits); and 2) provisions that allow construction of two units on a single-family zoned property. These provisions can be used in concert, so an applicant could subdivide and build two units on each parcel. Both two-unit projects and subdivisions authorized under SB

9 must be processed ministerially, meaning no public hearing and no review under the California Environmental Quality Act (CEQA). These projects can be combined with Accessory Dwelling Units, potentially resulting in up to 5 units per lot based on the current zoning ordinance standards that allows construction of two detached and one attached ADUs on a property containing a two-family residence. However, SB 9 allows cities to prohibit construction of more than two units per lot on a lot that was created by a SB 9 subdivision.

### *Development Standards*

SB 9 includes the following mandatory development standards that override a local jurisdiction's zoning and subdivision ordinances:

- Cannot require more than four-foot side and rear setbacks for SB 9 developments;
- Cannot require more than one parking space per unit. Cannot require any parking for projects; within a half-mile walking distance of high-quality transit or major transit stops, as defined by state law, or if there is a car share vehicle located within one block;
- Must allow construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually; and
- No setback can be required for existing structures nor can the City require the correction of non-conforming zoning conditions on a property as a condition of approval of a project or deny a project due to existing non-conforming conditions.

The City may apply objective development standards, but those standards cannot preclude construction of at least two units of 800 square feet in size each. Objective standards are standards that involve no exercise in judgment to apply, such as numeric setback requirements, height, lot coverage, etc.

Under the Urban Lot Split provisions of SB 9, the City must also allow a single-family zoned property to be subdivided into two roughly proportional lots. To ensure rough proportionality, SB 9 specifies that one lot cannot be less than 40 percent the size of the other. No lot can be less than 1,200 square feet, but cities may adopt a lower minimum lot size. SB 9 includes the following allowances and restrictions on subdivisions:

- Cannot require dedication of right-of-way or construction of off-site improvements (such as installation of sidewalk where there is none);
- May require that parcels have access to a public right-of-way;
- May require easements for the provision of public services and facilities; and
- Must require the applicant to sign an affidavit stating that the applicant intends to live on one of the properties as their primary residence for at least three years after the date of the subdivision. This requirement does not apply to an urban land trust or qualified non-profit.

Cities may deny an SB 9 two-unit project or subdivision that otherwise meets the requirements of SB 9 only if the Building Official determines it will result in a specific, adverse impact on health and safety and there is no feasible way to mitigate the impact.

### *Qualifying Properties*

SB 9 applies to any single-family zoned property within the city. In San José, this means the R-1 zoning districts and Planned Development districts that allow single-family residences. SB 9 does not override Conditions Covenants and Restrictions (CC&R's) that are enforced by a Homeowner's Association and Staff's experience with ADUs indicates that many single-family properties in Planned Development districts will have Homeowner's Association restrictions that will preclude SB 9 projects. Regardless of

zoning, properties are excluded from using SB 9 for two-unit projects and/or subdivisions if they are located in any of the following areas:

- Prime farmlands or farmlands of statewide importance, or farmlands protected by a local ordinance
- Wetlands, as defined in the United States Fish and Wildlife Service Manual
- Within a very high fire hazard severity zone, unless certain requirements are met
- A hazardous waste site
- Within a delineated earthquake fault zone, unless the project is designed to meet building code requirements for building within such zone
- Within a special flood hazard area or regulatory floodway, unless certain requirements are met
- Lands identified for conservation in an adopted conservation plan or under a conservation easement
- Habitat for protected species
- Within a historic district or on a site that is designated as historic

A property can only be subdivided according to SB 9 once. SB 9 also precludes the same applicant, or someone working in concert with the applicant, from subdividing adjacent properties. This, along with the owner-occupancy provisions, appears to be an attempt to prevent absentee investors from using the subdivision provisions. Jurisdictions may not impose any additional owner-occupancy requirements.

#### *Protection of Existing Rental Housing Stock*

SB 9 includes several protections for existing affordable and rental housing stock and provisions to ensure that the units created by SB 9 add to a jurisdiction's housing stock. Specifically:

- Units created by SB 9 cannot be rented for terms of 30 days or less. This applies to both two-unit projects under SB 9 and to properties that are subdivided according to SB 9.
- SB 9 projects cannot alter or demolish rent-controlled units, deed-restricted units, units where the Ellis Act has been exercised to remove the unit from the rental market, or units that have been occupied by a tenant within the prior three years.
- SB 9 projects cannot result in the demolition of more than 25 percent of existing exterior walls of a unit unless it has not had a tenant in the prior three years, or the City adopts an ordinance allowing such demolition.

The City of San José's rent control and Ellis Act ordinances apply to properties of three or more units. Because SB 9 applies only to single-family zoning districts where properties typically contain only one home, it is not expected that rent control or Ellis Act will be a frequent constraint for those seeking to pursue an SB 9 project. The SB 9 provision above prohibiting demolition or alteration of a home that has been rented will likely be more of a constraint for SB 9 projects but will protect the existing rental housing stock and renters.

#### *Project Fees*

SB 9 does not include any waivers or special considerations for project review fees, taxes, or impact fees. This means subdivisions and/or units constructed under SB 9 would be subject to all existing fees for projects of this type, which include but are not limited to permit review fees, construction taxes, school impact fees (paid directly to the school district prior to issuance of Building Permits), and Parkland Impact Fees.

## **Senate Bill 330**

Although SB 9 allows the City to apply objective development standards as long as those standards do not preclude construction of two units of at least 800 square feet each, Senate Bill 330 somewhat limits any new standards a city can adopt. Specifically, Senate Bill 330 prohibits cities from “downzoning”, which means the City cannot reduce the intensity of land use within an existing zoning district below what was allowed under the zoning ordinance in effect on January 1, 2018. Reducing the intensity includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

After consultation with the City Attorney’s Office, planning staff from neighboring cities, and publicly available guidance and informational presentations, staff has concluded that this “downzoning” provision of SB 330 limits the potential SB 9 project development standards the City may adopt as follows:

- The City *cannot* adopt standards such as greater setbacks, a lower height limit, lower Floor Area Ratio, or greater open space requirements for units built under SB 9 than apply to single-family residences constructed within the same zoning district.
- The City *can* continue to impose existing objective development standards (setbacks, height, parking space size requirements, etc.) as long as those standards don’t conflict with the mandatory SB 9 standards or preclude the construction of SB 9 units.
- The City *can* adopt new development standards as long as those standards don’t reduce the setbacks, height, floor area ratio, or other standards that would reduce the building envelope per parcel from below what was allowed in the R-1 Zoning Districts as of January 1, 2018.

## **Proposed SB 9 Implementation Ordinance**

While it is not required that cities need to adopt an ordinance to enable SB 9, staff is proposing this ordinance to provide clarity on SB 9 implementation in San Jose. The ordinance has the following primary purposes:

1. Limit SB 9 projects to no more than four units total, as provided for in SB 9.
2. Provide alternate standards for lot frontage, depth, and access where the standards contained in the Subdivision Ordinance (Title 19 of the Municipal Code) do not adequately address, or conflict with SB 9.
3. Clarify how existing zoning standards apply to SB 9 two-unit development projects.
4. Clarify SB 9 definitions and implementation measures.

The text of this ordinance only includes new standards that are specific to SB 9 projects. All other existing zoning, subdivision, or design guidelines standards that are objective and do not conflict with SB 9 will apply to SB 9 projects without needing to be included in this ordinance. Further, this ordinance does not incorporate SB 9 allowances within the text of the ordinance itself, as these automatically apply by virtue of them being state law. Staff is in the process of preparing comprehensive informational materials for the public that would incorporate standards in this ordinance with other existing city standards and SB 9 standards to create a single place for the public and staff to reference all SB 9 allowances and requirements.

As part of the Opportunity Housing policy proposal staff is recommending that the City pivot from Opportunity Housing to work on adopting comprehensive SB 9 standards and guidelines, and potentially expand these standards to cover properties that would not qualify under SB 9, such as R-2 Two Family zoned property. Should Council adopt this recommendation, the standards in this ordinance would function as interim standards that would apply while the City works on a comprehensive update.



***Number of Units***

The Zoning Ordinance prohibits construction of more than one single-family detached home per lot within the R-1 zoning districts. This means that the two primary units constructed under SB 9 must be in the form of a duplex (referred to in the Zoning Ordinance as a two-family dwelling). SB 9 only restricts jurisdictions from prohibiting construction of attached units so this existing standard that prohibits construction of detached units is consistent with SB 9 therefore is not proposed to be modified. It could be modified in the future should Council direct staff to implement a more robust SB 9 ordinance.

This ordinance would restrict the number of units on lots created by an Urban Lot Split to no more than two units per lot, as allowed by SB 9. This includes ADUs and JADUs, which means that each subdivided lot could have either a two-family dwelling without any ADUs or a single-family dwelling with an ADU or JADU. This would result in a total of up to four units for an SB 9 project that involves a subdivision. Should this standard not be adopted an SB 9 project involving a subdivision may result in up to 10 units – one two-family dwelling and three ADUs on each lot.

This ordinance would also specify a maximum of two ADUs is permitted on a lot containing an SB 9 two-family dwelling that is not subdivided under SB 9. San Jose's ADU ordinance allows construction of both one attached and two detached ADUs on a lot containing a two-family dwelling, but state law only requires cities to allow construction of one attached *or* two detached ADUs per multi-family lot. Including this limit is in keeping with the intent of SB 9 to allow no more than four units total through an SB 9 project and is not a "downzoning" under SB 330 because ADUs were not allowed on two-family lots as of the SB 330 baseline of January 1, 2018.

***Subdivision Design Standards***

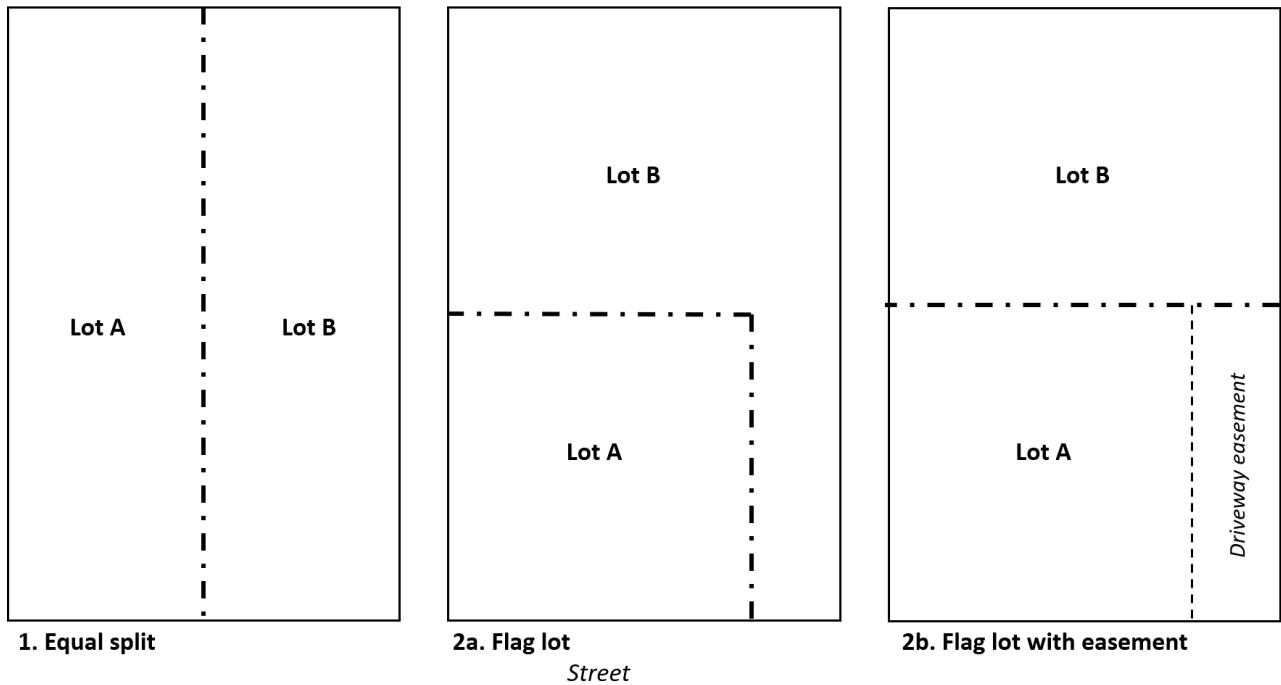
San Jose's subdivision design standards are governed by Title 19 of the San Jose Municipal Code, known as the Subdivision Ordinance. These design standards have remained unchanged since at least 1968 so they are reflective of a mid-century development pattern characterized by large lots with ample street frontage that is not consistent with the small lot sizes permitted by SB 9. Specific standards that are impacted by SB 9 are:

- Section 19.36.170 requires every lot have a minimum lot size of 6,000 square feet with an average width of no less than 55 feet.
- Section 19.36.200 requires every lot provide 55 feet of frontage on a public street.
- Section 19.36.230 prohibits any lot from having an average depth that is more than two and a half times its width.

The minimum lot size is automatically invalidated by the SB 9 lot size minimum of 1,200 square feet. Staff's analysis found that the existing street frontage, average width, and width to depth standards would preclude SB 9 subdivisions in nearly every case. As such, staff is proposing that this ordinance provide alternate standards for lot frontage and access, and to waive the average lot width and the lot width to depth standards.

When subdividing a lot, the street frontage requirement can largely dictate the way subdivision is designed. There are two standard ways to subdivide a typical singly family lot into two roughly proportional lots – a traditional subdivision and a flag lot as shown in Figure 1 below.

**Figure 1 – Potential Lot Configurations**



Example one shows subdividing near the center of the lot where each lot has roughly the same frontage on the street. Examples 2a and 2b show a flag lot configuration where a property is subdivided into a front lot that retains most of the frontage on the street and a back lot that is accessed through a driveway, which could be an easement through the front lot. Each of these subdivision designs have benefits and drawbacks.

The first concern with the “equal split” subdivision is that in most cases, if there is an existing home on the lot, the home must be demolished before the subdivision can be approved, as it would violate Building and Fire Codes for a property line to go through an existing home. Flag lot subdivisions better facilitate preservation of some or all of the existing home with a subdivision, which would help the City’s goal of preservation of existing housing stock and allow an applicant to pursue a subdivision that wouldn’t by definition require demolition of the existing home. Furthermore, subdividing a vacant lot is de-facto prohibited by the SB 9 owner occupancy provision which requires that an applicant attest that they intend to live in one of the dwelling units on the property as their primary dwelling for three years *from the date of the subdivision*. One cannot live on a property at the time the subdivision is recorded if there is no dwelling unit on the property in which to live.

The second concern with the “equal split” subdivision is that these lots are significantly narrower than the prevailing pattern of single-family lots in the City which would result in narrower than usual homes that could be dominated by garage door frontages. To address this concern, staff is proposing a minimum 30 feet of frontage and average width for “equal split” subdivisions and is proposing a design standard regarding garage frontage that is discussed later in this report.

Flag lot subdivisions better keep the existing lotting patterns of a neighborhood as visible from the street because the front lot maintains a street frontage that is closer in size to other lots fronting the street. The drawback of flag lots is that the small sizes of lots that are allowed by SB 9 plus the mandatory four-foot rear setback result in the buildable area for the rear lot being in close proximity to the rear yards of neighboring properties. The long narrow nature of the “equal split” subdivision makes it easier for an applicant to leave a back yard because both lots have buildable area closer to the street.

This ordinance proposes to allow both subdivision types to allow flexibility for applicants to elect the subdivision type that makes the most sense based on the existing lot dimensions, location of the existing home, the type of project that they are proposing.

## ***Setbacks***

SB 9 overrides the existing interior side, side corner, and rear setbacks in the Zoning Ordinance. In the R-1-8 Zoning District this means that the interior side setback is reduced from five feet to four feet, the side corner setback line is reduced from 12.5 feet to four feet, and the rear setback is reduced from 20 feet to four feet. The existing front setback would remain. SB 9 also prohibits a city from requiring any setback for an existing structure. This would allow an applicant to subdivide a property to create a zero lot line situation to an existing house, as long as they remodel the house to meet building code standards. Furthermore, for lots subdivided by SB 9 the City must allow construction of new units that are attached to each other at the new property line.

This ordinance does not propose to modify the existing front setback requirement and cannot override the mandatory 4-foot side and rear setbacks. This ordinance is limited to clarifying the definitions and applications of setbacks on the two proposed flag lot configurations, as the current definition of front, side and rear property lines and setbacks are either not applicable or do not translate well to a flag lot configuration (See Figure 2). This ordinance also specifies that the “flag pole” portion of a flag lot must be kept free and clear of structures, as to maintain its purpose of providing adequate access for vehicles, emergency services, or regular activities such moving furniture or other large objects to the dwelling unit on the back lot.

This ordinance also clarifies how the existing provisions for encroachments such as eaves, tankless water heaters, chimneys, and bay windows apply to the reduced SB 9 four-foot side and rear setback. Currently most encroachments are allowed up to two feet into required setbacks, resulting in a minimum three-foot setback on side yards. This ordinance would reduce encroachment into the four-foot side yard setback to one foot so that three feet clear from the property line is maintained. This ordinance does not propose to allow encroachments into the rear setback other than eaves, nor would it modify or preclude encroachments that are currently allowed within the front setback, such as stairs and porches.

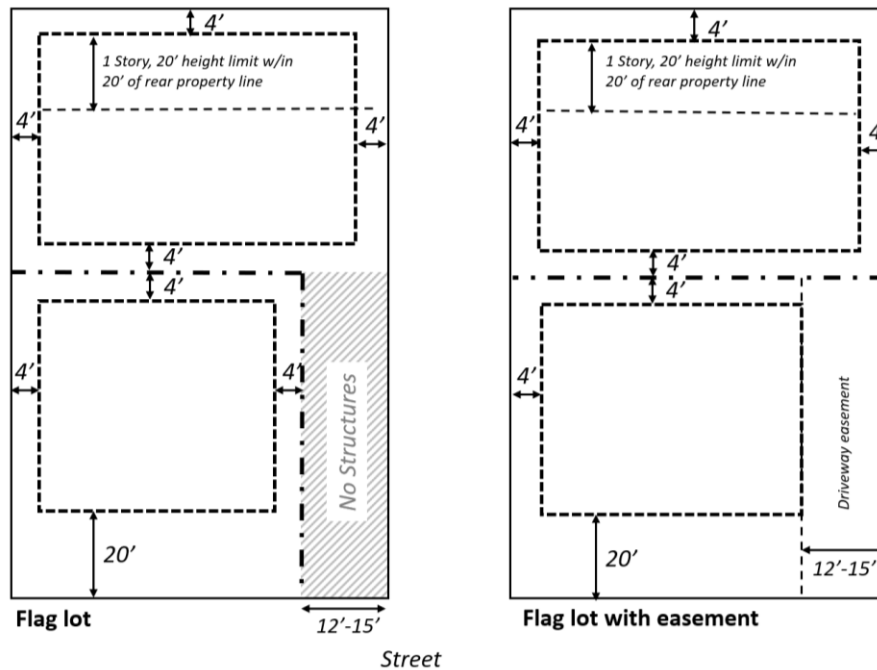
## ***Height and Floor Area Ratio***

Currently, single-family homes are limited to a 0.45 Floor Area Ratio<sup>1</sup>, two stories, and 30 feet in height. Homes may exceed this limit only if they obtain a discretionary Single-family House Permit that includes design review and a public hearing with public notification. Because SB 9 prohibits projects from being subject to a discretionary permit process staff is proposing to clarify that the 0.45 FAR, two story, and thirty-foot height limits apply to SB 9 developments. If a two-family dwelling is constructed under SB 9 the .45 FAR would apply cumulatively to that structure, maintaining the same building intensity as is currently allowed in the R-1 zoning districts. This ordinance would also clarify that the height limit of 20 feet and one story that currently exists for construction of single-family additions and attached ADUs in a rear setback applies to the portion of SB 9 units constructed in the rear 20 feet of a property. The ordinance provides a provision that the 0.45 FAR shall be waived where it would limit each dwelling unit to less than 800 square feet, as required by SB 9. Imposing these standards are consistent with SB 330 in that it is maintaining and not reducing the developable area within the existing single-family zoning districts.

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<sup>1</sup> FAR is defined in Section 20.100.1020 as “the gross floor area of the single-family house divided by the total lot area. Garages, basements and accessory structures are not included in the gross floor area for the purposes of this part. The floor area includes the sum of all the floors in the main structure measured to the outside surface of the exterior walls. It includes the stairwells at all floors and all areas that are greater than fifty percent enclosed with walls and covered.”

Figure 2 – Setbacks on Flag Lots

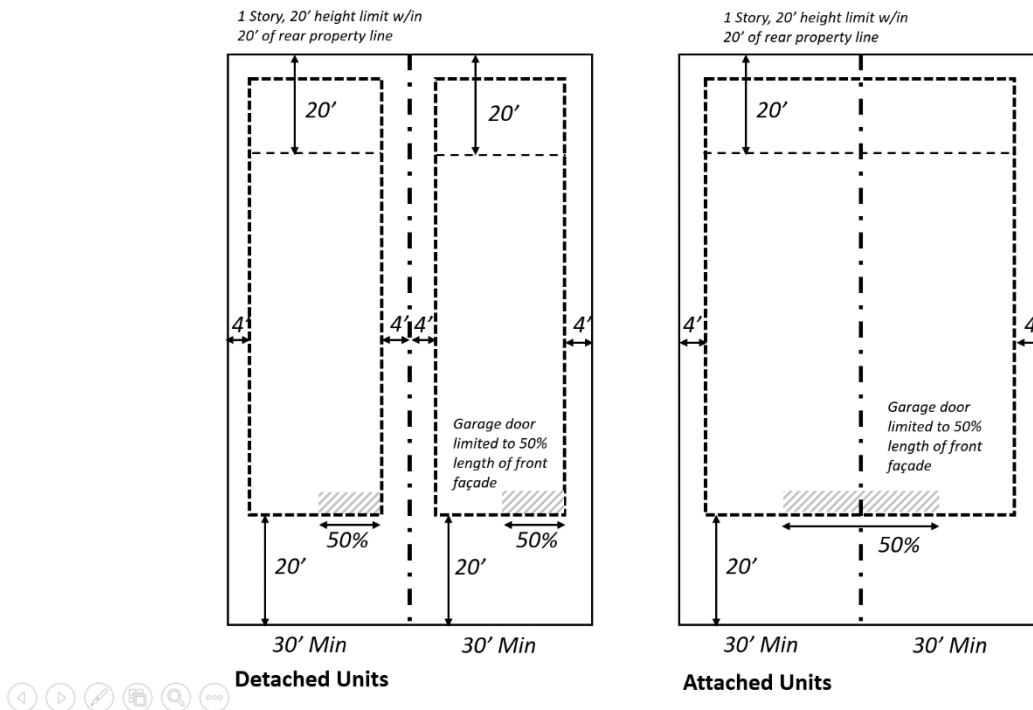


### Street Frontage Design Standards and Parking

The relatively narrow nature of lots created by an SB 9 subdivision could lead to homes where the garage door dominates the street frontage, which reduces “eyes on the street” and would not be consistent with neighborhood character. To address this staff is proposing to limit the garage door length to no more than 50% the length of the façade facing a street. This is consistent with the front yard paving limitations contained in Section 20.30.440, which limits the paving on a lot less than 40 feet wide to no more than 10 feet or 50% of the width of the lot, unless a greater amount of paving is necessary to access a required two car garage or carport.

Pursuant to Senate Bill 9, the City cannot require more than one parking space per unit, and no parking where the lot is near qualifying transit or there is a car share vehicle on the block. The Zoning Ordinance requires that parking for a single-family home be provided in a garage or carport. Parking for two-family dwellings may be uncovered but must be placed outside of the front and side setback areas. Staff is not proposing to change either of these standards with this ordinance. The proposed garage door frontage limitation will accommodate a one car garage on lots that are at least 30’ wide. Should an applicant want a two-car garage it could be accommodated in a tandem configuration, or potentially toward the rear of the lot. Figure 3 below show the setbacks and garage frontage limit for a lot split with two detached buildings proposed and a lot split with one attached building containing multiple units is proposed.

**Figure 3 – Setbacks and Garage Frontage Requirements**



### Other standards

This ordinance includes additional items proposed for clarity and implementation purposes:

- For subdivided lots, specify that utilities lines (e.g. sewer, water) must be placed within an easement where the utility line that serves one of the lots must cross through the other lot.
- To provide clarity and ensure consistency with the owner occupancy requirement, this ordinance specifies that a dwelling unit must exist on a lot at time of recordation of an Urban Lot Split subdivision.
- SB 9 does not allow a person to subdivide adjoining lots or “act in concert” with others to subdivide adjoining lots. The bill does not specify what “act in concert” means so this ordinance provides a definition that was derived in consultation with the City Attorney’s Office.
- SB 9 does not allow units created by the bill or units on properties created by an Urban Lot Split to be rented for a period of 30 days or less. In order to ensure that future owners of property are aware of this restriction staff proposes that this ordinance include a provision that the applicant record a deed restriction regarding the 30-day rental limit.
- As part of implementing the SB 9 restriction from alteration of a dwelling unit that has been occupied by a renter in the last three years, staff proposes that this ordinance include a requirement that an applicant for a project that would alter a dwelling submit a statement under penalty of perjury that to their knowledge there have been no tenants in the building in the last three years. Staff is currently looking into other means of verifying there have been no recent renters, which may be included in application materials and instructions for staff processing SB 9 projects.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15,

2015, and Addenda thereto (SCH#2009072096). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

## **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City’s website and published in the San José Post-Record and emailed to a list of interested groups and individuals. This staff report and attachments were posted on the City’s website. Staff has been available to respond to questions from the public.

Due to the short timeline to prepare this ordinance, staff relied on feedback received on other related work items such as the previous ADU ordinance and Opportunity Housing policy proposal to inform the creation of the new development standards included in this ordinance. Should the Council direct staff to work on a comprehensive set of SB 9 standards, significant outreach would occur as part of that work.

**Project Manager:** Martina Davis

**Approved by:** /s/ Michael Brilliot, Deputy Director for Christopher Burton, Planning Director

<b>ATTACHMENTS</b>
Exhibit A: Draft Ordinance
Exhibit B: Determination of Consistency

# PP21-013

## Links to Attachments A-B

Click on the title to view document

Exhibit A: Draft Ordinance
Exhibit B: Determination of Consistency

Correspondence received after December 1, 2021