

CITY COUNCIL AGENDA ITEM NO. 1

Meeting Date: December 14, 2021

Subject/Title: SB 9 Urgency Ordinance, a Resolution Adopting Appendix A to the City of Brentwood Residential Design Guidelines to Implement Senate Bill 9, and Recommendation of No Further Action on SB 10

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PURPOSE AND RECOMMENDATION

Senate Bill 9 (SB 9) and Senate Bill 10 (SB 10) were approved in the Assembly and Senate by an overwhelming majority and were signed into law by Governor Newsom on September 16, 2021. Both bills become effective on January 1, 2022.

SB 9 requires that housing developments with no more than two units on a parcel in a single family residential zone ("two-unit housing development") and parcel maps subdividing a parcel within a single-family residential zone into two parcels ("urban lot split") be considered ministerially, without discretionary review or hearing, if the project meets certain objective standards. The law allows, but does not require, local jurisdictions to create objective standards to review two-unit housing development projects and urban lot splits. Adopting local objective standards will help ensure that new SB 9 units and lots fit as well as possible into the city's existing single-family neighborhoods. Accordingly, staff recommends that the City Council consider and adopt the proposed urgency ordinance and resolution in order for the objective standards to be in effect by January 1, 2022.

As discussed below, SB 10 authorizes a local government to voluntarily adopt a zoning ordinance to allow up to ten dwelling units on any parcel within a transit-rich area or urban infill site at the height specified in the ordinance. Because implementation of SB 10 is not required and because the city has very few sites that would qualify for an upzone under the law, staff does not recommend that the City Council consider and adopt a zoning ordinance implementing SB 10.

The complete text of both bills is attached to this staff report.

CITY COUNCIL STRATEGIC INITIATIVE

Not applicable.

PREVIOUS ACTION

Not applicable.

BACKGROUND

Senate Bill 9

SB 9, signed into law by Governor Newsom on September 16, 2021, adds Sections 65852.21 and 66411.7 to the California Government Code and amends Government Code Section 66452.6. SB 9 and was adopted by the State as a way to minimize the restrictions and limitations of traditional single-family zoning on housing development. Specifically, SB 9 has

two main components that result in increased housing density in single-family residential zones. First, it eliminates local discretion over approving qualifying urban lot splits. Second, it requires local jurisdictions in California to ministerially approve qualifying two-unit housing developments. Ministerial approval means that the city cannot conduct a public hearing or discretionary review. These components can be used together, so an applicant could subdivide one single-family parcel into two and build two units on each new parcel. Each component is described in more detail below.

SB 9 also limits some of the requirements imposed with new subdivisions, such as: prohibiting dedications of right-of-way or installation of off-site improvements; restricting the amount of parking that can be required; only allowing easements required for public services and facilities; and only requiring that parcels have access to, provide access to, or adjoin the public right-of-way.

Although SB 9 prohibits discretionary review of proposed two unit housing developments and urban lot splits, the law does allow objective design, development and subdivision standards to be applied by local jurisdictions, only to the extent that they would not preclude two units of at least 800 square feet each, or urban lot splits as prescribed by law. Because the law contains relatively few design and development standards, staff recommends that local regulations be adopted to ensure that the new SB 9 units and lots fit as well as possible into the city's existing single-family neighborhoods, within the parameters defined by the law.

By Right Urban Lot Splits

Under SB 9, local agencies must ministerially approve certain subdivisions of one lot into two without discretionary review or a public hearing.

Qualifying Criteria:

1. Each new lot is at least 1,200 square feet, (though the local agency may set a lower minimum).
2. The split results in two new lots of approximately equal size (60/40 split at most).
3. The split does not involve the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from rent within the last 15 years or housing occupied by a tenant (market-rate or affordable) in the past 3 years.
4. The lot to be split is zoned single-family residential (including single-family subareas of Planned Development Districts).
5. The lot is not a historic landmark or within a designated historic district.
6. The lot is within an urbanized area or urban cluster, or within a city that has an urbanized area or urban cluster, as identified by the U.S. Census Bureau. (This is most every urban and suburban city in California).
7. The original lot was not established through a prior SB 9 urban lot split.
8. Neither the owner nor anyone acting in concert with the owner previously subdivided an adjacent parcel through an SB 9 lot split.
9. The parcel meets the requirements of Government Code Section 65913.4(a)(6) (the text of this Section is attached to this staff report). These provisions prohibit urban lot splits on prime agricultural land, wetlands, and other natural sites but allow urban lot splits in very high fire hazard areas, floodplains, and earthquake zones and on contaminated sites if certain standards are met.

Allowed Standards:

- *Objective only.* Under SB 9, local agencies may only impose objective zoning standards, objective subdivision standards, and objective design standards on an eligible project—and even then, only to the extent that the standards do not physically preclude the construction of two units of at least 800 square feet each. Objective standards are standards that involve no exercise in judgement to apply, such as numeric setback requirements, height, lot coverage, etc.
- *Limited parking.* Local agencies may require only one off-street parking space per unit—none if the site is close to transit or a car share vehicle location.
- *Setbacks of four feet or less.* Side and rear setbacks are limited to four feet or less generally, but none at all may be imposed on an existing structure or one that is constructed in the same location and to the same dimensions as an existing structure.
- *Residential only.* The lots created must be limited to residential use only.
- *Attached units.* Must allow construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually.
- *No dedications or off-site improvements.* No right-of-way dedications or construction of off-site improvements may be required.
- *Public right of way access.* Local agencies may require that the parcel have access to, provide access to, or adjoin the public right of way.
- *No corrections of nonconformities.* Local agencies may not require the correction of nonconforming zoning conditions.
- *Three-year applicant occupancy by affidavit.* The applicant must sign an affidavit stating that the applicant intends to occupy one of the housing units as the applicant's principal residence for at least 3 years following approval of the lot split. Community land trusts and qualified nonprofit corporations are exempt. No other owner-occupancy requirement is allowed.
- *Report to State Department of Housing and Community Development.* Local agencies must include the number of SB 9 lot split applications in annual housing element reports.
- *Limited grounds to deny.* A local agency may only deny a qualifying SB 9 lot split if the building official finds that the resulting housing development project would have a specific, adverse impact on public health and safety or the physical environment and there is no feasible, satisfactory mitigation.
- *Short term rental prohibition.* A local agency must prohibit short-term rentals (less than 30 days) in any dwelling created under SB 9 (whether through the urban lot split or two-unit housing development approval, or both).

By-Right Two-Unit Residential Development

In addition to the urban lot splits described above, SB 9 requires a local agency to ministerially approve a proposed two-unit housing development project on a qualifying lot in a single-family residential zone without discretionary review or a public hearing. This applies to building two new units or adding a second unit to a property with an existing unit.

Qualifying Criteria: To qualify for a ministerial two-unit housing development approval, criteria are similar to those for a lot split.

1. The site is in a single-family residential zone (including single-family subareas of Planned Development Districts).
2. The lot is located within an urbanized area or urban cluster, or within a city that has an urbanized area or urban cluster.

3. The project does not involve demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from rent within the last 15 years or housing occupied by a tenant (market-rate or affordable) in the past 3 years.
4. The project does not involve demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless a) the local agency chooses to allow otherwise or b) the site has not been occupied by a tenant in the last 3 years.
5. The site is not a historic landmark or within a designated historic district.
6. The parcel meets the requirements of Government Code Section 65913.4(a)(6) (described above).

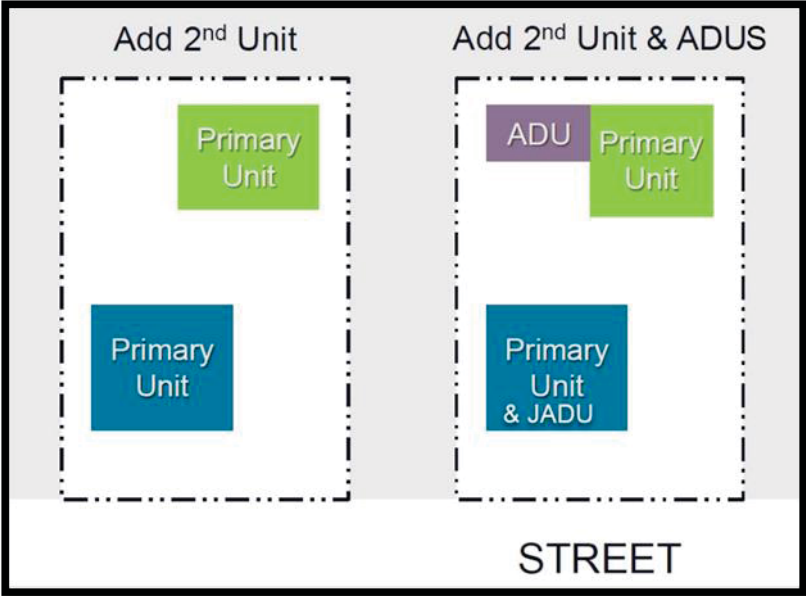
Allowed Standards:

- As with by-right urban lot splits, local agencies may only impose objective zoning standards, objective subdivision standards and objective design standards on an eligible two-unit housing development project. Even then, it can only be to the extent that the standards do not physically preclude the construction of two units of at least 800 square feet. Local agencies may not require off-street parking if the site is near transit or a car share vehicle location.

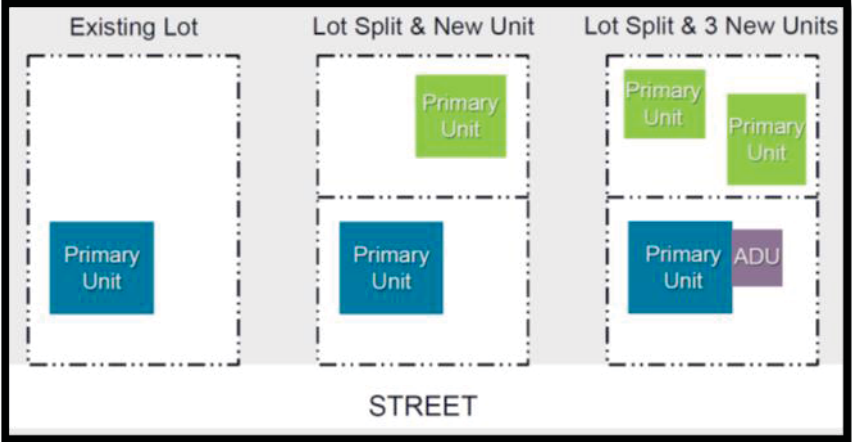
Number of Permitted Units

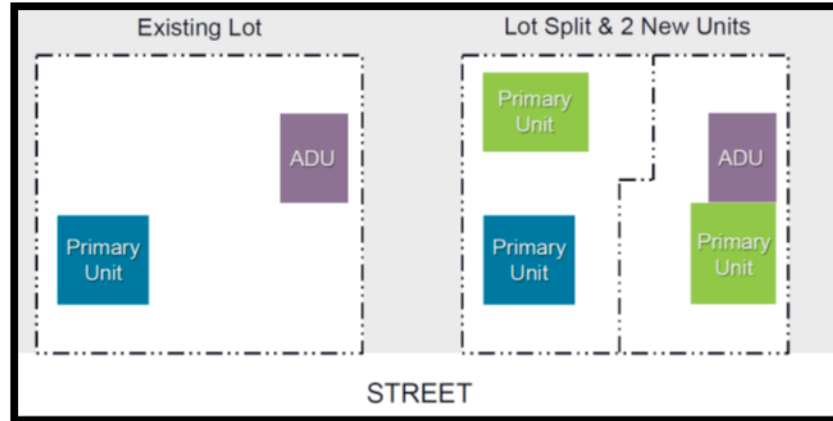
SB 9 allows for a parcel to be split and for more than one unit to be constructed on a new lot resulting from a split, or on an existing lot. A lot that has been split under the provisions of SB 9 cannot be split again using SB 9, nor may an adjacent property under the same ownership (or owned by a person “acting in concert with” the owner) be split using SB 9 (although these lots may be split using normal subdivision procedures). The number of permitted units that can be created under SB 9 are as follows:

- *Without urban lot split:* Where a lot is not split, a total of up to two housing units may be allowed on a single-family zoned parcel; and each of those units may have an Accessory Dwelling Unit (ADU) or a Junior Accessory Dwelling Unit (JADU), for a total of four units on one parcel. The below diagrams provide a general illustration, not to scale, of how units could be developed without a lot split.



- *With urban lot split:* When a single-family lot is split, SB 9 allows a local jurisdiction to limit the total number of units on each parcel to two, with a “unit” defined in this situation to include either an SB 9 unit, an ADU, or a JADU. Therefore, only two units per parcel, or a total of four units is permitted on the two parcels and those four units include any ADUs or JADUs. The below diagrams provide a general illustration, not to scale, of how units could be developed with an urban lot split.





Denial of Proposed Developments

Local agencies have limited grounds to deny a SB 9 project under the new law. The local agency may only deny a qualifying two-unit housing development or urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project (1) would have a specific, adverse impact upon public health and safety or the physical environment; and, (2) there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

Properties Subject to CC & Rs

SB 9 does not prohibit a Homeowners Association (HOA) from imposing restrictions or limitations on lot splits or housing developments through its Covenants, Conditions and Restrictions (CC&Rs). Therefore, an individual HOA could choose to enforce or adopt restrictions in this regard. The city does not take any role in enforcement of CC&Rs that may be more restrictive than city codes, nor require an HOA to authorize or “pre-approve” an application for development to the city. Thus, it would be a matter between individual homeowners and their HOAs whether to enforce limits on SB 9 developments within a subdivision.

Objective Design Standards

Local agencies may only impose objective zoning standards, objective subdivision standards, and objective design standards on an urban lot split or two-unit housing development project. These objective standards can only be applied to the extent that the standards do not physically preclude the construction of two units of at least 800 square feet. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300), also known as SB 330, does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site’s residential development capacity below that existing on January 1, 2018.

The Zoning Ordinance currently contains objective zoning standards related to building height, setbacks, etc. that apply to single-family residential zones in the city. As discussed above, the new law overrides some of these standards, such as minimum lot size, side and rear setbacks, and parking. The Zoning Ordinance also contains several objective standards related to the design of structures in single-family residential zones in the city (17.100.004 Design criteria – Single family residence). However, these existing objective design standards are minimal and do not provide detailed guidance for new residential units built pursuant to the new law. Therefore, additional, more detailed objective design standards are proposed in order to ensure

new SB 9 developments fit as well as possible into the city's existing single-family neighborhoods and fulfill the applicable goals and policies of the Brentwood General Plan.

Proposed Urgency Ordinance and Resolution

As discussed above, the law allows local jurisdictions to adopt objective standards for these mandatory, ministerial lot splits and two-unit housing development projects that are consistent with the law and do not preclude the construction of two units of at least 800 square feet. Because of the short turnaround time between the signing of SB 9 by Governor Newsom and its effective date of January 1, 2022, staff is recommending that the City Council adopt these standards as an urgency ordinance so that the standards take effect before January 1, 2022.

The attached urgency ordinance incorporates the above requirements for urban lot splits and two-unit residential developments into existing sections of the Municipal Code and creates new sections where necessary. The ordinance also requires all housing developments and urban lot splits to meet new objective design standards contained in a new appendix to the City of Brentwood Residential Design Guidelines.

This urgency ordinance will be followed by a regular ordinance as part of a two-track approval process. The urgency ordinance would take effect immediately upon adoption. The urgency ordinance will remain in effect for 45 days, after which time the City Council must vote to extend the urgency ordinance, let it expire, or adopt a regular ordinance recommended by the Planning Commission to repeal and replace it. Staff proposes this last option. The regular ordinance would be subject to review by both the Planning Commission and City Council. The regular ordinance would take effect 30 days after adoption and would repeal and replace the urgency ordinance.

The attached resolution creates Appendix A to the city's Residential Design Guidelines, which contains objective design standards that apply specifically to SB 9 projects. Staff anticipates that SB 9 will be updated by the Legislature in future sessions and there will be court cases that affect the implementation of the law. Therefore, adopting these objective design standards by resolution allows the city to more quickly update or modify the standards should it be necessary in the future.

Senate Bill 10

Similar to SB 9, SB 10 was approved in the Assembly and Senate with an overwhelming majority and was signed into law by Governor Newsom on September 16, 2021. SB 10 becomes effective on January 1, 2022.

The bill authorizes a local government to voluntarily adopt a zoning ordinance to allow up to ten dwelling units on any parcel within a transit-rich area or urban infill site at the height specified in the ordinance. The bill defines a "transit-rich area" as an area within a one-half mile radius of a "major transit stop," or a parcel on a "high-quality bus corridor," with average service intervals of no more than 15 minutes during peak hours. Under SB 10, zoning ordinances that comply with SB 10 are exempt from CEQA review. SB 10 sunsets at the end of 2028.

SB 10 is voluntary and is not a mandate of local agencies. The bill does not directly change any land use regulations or allowances, nor does it require a local agency to adopt any new regulations or allowances. Any zoning ordinance update, General Plan update, or other policy

update that allows up to ten units per property on properties that meet SB 10 criteria are exempt from CEQA review.

Brentwood does not have any sites that meet the definition of a “major transit stop” and only has one bus line that meets the definition of a “high-quality bus corridor.” Because implementation of SB 10 is not required and because the city has very few sites that would qualify for an upzone under the law, staff does not recommend that the city adopt a zoning ordinance implementing SB 10.

FISCAL IMPACT

There is no direct fiscal impact with adoption of this ordinance.

ENVIRONMENTAL REVIEW

An ordinance to implementing the provisions of SB 9 shall not be considered a project under the California Environmental Quality Act pursuant to Government Code Sections 66411.7(n) and 65852.21(j). However, SB 9 does not take effect until January 1, 2022. Nonetheless, the proposed ordinance is also exempt from environmental review pursuant to State CEQA Guidelines Sections 15378 (not a project), 15301 (existing facilities), and 15303 (new construction/conversion of small structures). Section 15378 defines what constitutes a “project” under CEQA. The State Legislature intended that ordinances such as the one proposed here, adopted in order to implement state law, would not constitute a “project”.

Further, Section 15301 exempts from environmental review the addition of up to 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the city’s General Plan. All of Brentwood’s single-family residential areas eligible for SB 9 approval meet these two criteria, and it is anticipated that each project undertaken pursuant to SB 9 will not add more than 10,000 square feet of new development.

Finally, Section 15303 (new construction/conversion) exempts from review the construction of up to six new residential structures in urbanized areas. Under the proposed ordinance, the maximum number of new residential structures that could be constructed pursuant to a lot split combined with new construction is less than six. Therefore, staff recommends that the City Council finds that the proposed Zoning Code amendment is not subject to further environmental review.

Attachments:

Resolution and Exhibit

Text of SB 9

Text of SB10

Government Code Section 65913.4(a)(6)

SB 9 Urgency Ordinance