



DATE: March 22, 2022

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **California Senate Bill 9—Text Amendments to Chapter 28 (Subdivisions) and Chapter 36 (Zoning) of the City Code and Other Minor Text Amendments**

RECOMMENDATION

1. Find the proposed ordinances implementing Senate Bill 9 to be statutorily exempt under the California Environmental Quality Act pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and the minor text amendments to be exempt under CEQA Guidelines Section 15061(b)(3) as clarifications to existing code requirements and procedures.
2. Introduce an Ordinance of the City Council of the City of Mountain View Amending Chapter 36 (Zoning) of the City Code to Establish Procedures and Standards Related to Dual Urban Opportunity (DUO) Developments and Urban Lot Splits in Compliance with Senate Bill 9 and to Make Other Minor Amendments Related to Inactive Permit Applications, to be read in title only, further reading waived, and set a second reading for April 12, 2022 (Attachment 1 to the Council report).
3. Introduce an Ordinance of the City of Mountain View Repealing Mountain View City Code Chapter 28, Subdivisions, in its Entirety and Replacing it with a New Chapter 28 of the Mountain View City Code to Reorganize and Renumber the Chapter and to Include Procedures and Standards Related to Urban Lot Splits in Compliance with Senate Bill 9, to be read in title only, further reading waived, and set a second reading for April 12, 2022 (Attachment 2 to the Council report).
4. Adopt a Resolution of the City Council of the City of Mountain View Amending the City of Mountain View Master Fee Schedule to Establish a Permit Fee for Preliminary Parcel Maps for Urban Lot Splits, to be read in title only, further reading waived (Attachment 3 to the Council report).

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 on September 1, 2021, signed into law by Governor Newsom on September 16, 2021, and took effect January 1, 2022.

SB 9 requires approval of the following:

- **Two-unit housing development.** Two homes on an eligible R1 lot (whether the proposal adds two new housing units or adds one new unit to one 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).

These provisions must be used in concert with existing Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) regulations, which is discussed in detail later in this report. SB 9 also outlines how jurisdictions must review and approve SB 9 projects: jurisdictions must review SB 9 projects 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.

This law is similar to recent State ADU legislation in that it allows jurisdictions to apply local objective standards, as long as they do not prevent the development of new small homes. Preliminary market analysis, prepared by the Turner Center for Housing Innovation, predicts SB 9's primary impact will result from the splitting and sale of lots by homeowners and lead to modest increases in additional units because homeowners already have similar development potential under ADU law. Their analysis concluded that of Mountain View's approximately 9,100 parcels that are zoned single-family residential, it would be economically viable to add new units under SB 9 to a total of approximately 700 parcels. To date, the City has received two applications for urban lot splits possible under SB 9.

Environmental Planning Commission Public Hearing

On February 16, 2022, the Environmental Planning Commission (EPC) held a public hearing to review and provide a recommendation to the City Council on the proposed code amendments (see Attachment 4—Environmental Planning Commission Staff Report—February 16, 2022). The EPC voted unanimously to recommend adoption of the proposed code amendments to the City Council.

Five people spoke at the hearing and four written comments were received (Attachment 5—Written Comments to the EPC). The EPC discussed and a majority of the EPC requested the following topics be forwarded to Council:

- **Second-Story Decks**—The proposed amendments would prohibit the construction of second-story decks on newly constructed units of dual urban opportunity (DUO) developments. The proposed prohibition aims to account for privacy concerns resulting from the State-mandated 4’ side and rear setbacks for this development type. The EPC expressed interest in exploring ways to potentially allow for second-story decks in a manner that would not raise new privacy impacts to adjacent properties. Staff has evaluated this request, and an alternative is provided later in this report.
- **Payment of Below-Market-Rate (BMR) In-Lieu Fees**—The City’s existing BMR Ordinance and guidelines require payment of BMR in-lieu fees for the net new dwelling units in the R1 District and only exempts accessory dwelling units from the requirement. Staff is not proposing amendments to the existing BMR Ordinance or guidelines as part of the SB 9 implementing code amendments, which are focused on implementing state law that is already in effect. Some members of the EPC expressed concern that the in-lieu fee may contribute to the infeasibility of SB 9 projects, while others believed that the BMR in-lieu fee would account for only a small portion of the overall budget of an SB 9 project, and it was premature to assume this may be a prohibitive factor before implementation. Ultimately, the EPC requested that staff relay this information to the City Council for consideration with a future BMR Ordinance amendment.

ANALYSIS

The following is a summary of the proposed City Code amendments to align Mountain View’s regulations with what is required under State law. Staff is recommending to align the requirements with the minimum requirements of SB 9, but the City could be more permissive than what State law requires.

Urban Lot Splits

The R1 Zoning District currently allows for a two-lot subdivision through discretionary approval of a preliminary parcel map by the City’s Subdivision Committee and subsequent recordation of a parcel map. Pursuant to SB 9, eligible R1-zoned lots may be subdivided into two lots through a ministerial process or a process which does not require discretionary review or public hearing. This type of subdivision is defined in the proposed City Code amendments as an “urban lot split.”

Staff is proposing amendments to Chapters 36 (Zoning) and 28 (Subdivisions) to establish standards and procedures for urban lot splits as follows.

Urban Lot Split Eligibility Criteria

SB 9 and the City-proposed regulations have the following eligibility criteria for lots which seek to do an urban lot split:

- a. **Size.** The lot to be split shall contain a minimum of 2,400 square feet. The resulting lots shall each contain a minimum of 1,200 square feet. Each of the resulting lots shall be between 60% and 40% of the original lot area.
- b. **Historic.** The lot to be subdivided shall not contain a historic resource or be located within a historic district;
- c. **Withdrawal from rental market.** At no time in the past 15 years may the lot to be subdivided have contained a dwelling unit that was withdrawn from the market for rental or lease under the Ellis Act.
- d. **Demolition or alteration of protected units.** The urban lot split shall not result in the demolition or structural modification of any portion of an existing dwelling unit that:
 1. Is protected by a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low-, or very-low income;
 2. Is protected under the City of Mountain View Community Stabilization and Fair Rent Act (CSFRA); or
 3. Has been occupied by a tenant within the three years prior to the submittal of an application for an urban lot split.
- e. **Lot location.** The lot to be subdivided shall not be located on a site that is any of the following:
 1. Prime farmland, farmland of Statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters;
 2. Wetland;
 3. Within a very-high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards;

4. A hazardous waste site that has not been cleared for residential use;
 5. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection Building Code standards;
 6. Within a 100-year flood hazard area, unless the site has either been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency (FEMA) and issued to the local jurisdiction, or meets FEMA requirements necessary to meet minimum floodplain management criteria of the National Flood Insurance Program;
 7. Within a regulatory floodway, unless all development on the site has received a no-rise certification;
 8. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan;
 9. Habitat for protected species; or
 10. Land under a conservation easement.
- f. **No prior lot split.** The lot to be subdivided shall not be a lot that was established through a prior urban lot split.
- g. **Subdivision of adjacent parcels.** The lot to be subdivided shall not abut any lot that was previously subdivided through an urban lot split by the owner of the lot proposed to be subdivided or any party acting in concert with the owner. For the purpose of this section, any party acting in concert with the owner shall include any individual with a familial relation to the property owner (including, but not limited to, parents, children, siblings, and spouses) or any business entity in which the property owner has more than 10% ownership.

Urban Lot Split Requirements

An eligible R1-zoned property can only be subdivided into two roughly proportional lots. To ensure rough proportionality, SB 9 specifies one lot cannot be less than 40% the size of the original lot to be subdivided and a minimum lot size of 1,200 square feet. Additionally, the following restrictions and requirements apply to urban lot split applications:

- Cannot require dedication of right-of-way or construction of off-site improvements (such as installation of new street improvements);

- May require that lots have direct access to a public right-of-way;
- May require easements for public services and facilities (e.g., utilities); and
- Must require the applicant to sign an affidavit acknowledging the applicant intends to reside in one of the properties as their primary residence for at least three years after the date of the subdivision.

Although SB 9 requires applicants to sign an affidavit indicating their intent to occupy one of the units following an urban lot split, the statute only requires that applicants intend to occupy one of the units, not that they will. For this reason, the affidavit will be largely unenforceable for the City, unless the City is able to prove that an applicant knowingly submitted an urban lot split application without intending to reside in one of the resulting units.

Staff is utilizing the affidavit as a tool to transparently state the requirements of SB 9 to ensure applicants' understanding. Staff will retain the affidavit as an official City document that will be available for members of the public to view, including potential future buyers of the property.

Urban Lot Split Configurations

Table 1, below, compares the existing and new minimum urban lot split subdivision standards.

Table 1: Lot Standards

Lot Standards	Existing R1	New Urban Lot Splits
Minimum Size	6,000 square feet (7,000 square feet for corner lots)	40% of the size of the lot being subdivided, but no less than 1,200 square feet
Minimum Width	60' (70' for corner lots)	30'
Minimum Frontage	35'	16'

When subdividing a lot, the street frontage requirement largely dictates the subdivision configuration. Figure 1 demonstrates two possible ways to subdivide a typical single-family lot into two roughly proportional lots with the minimum lot standards.

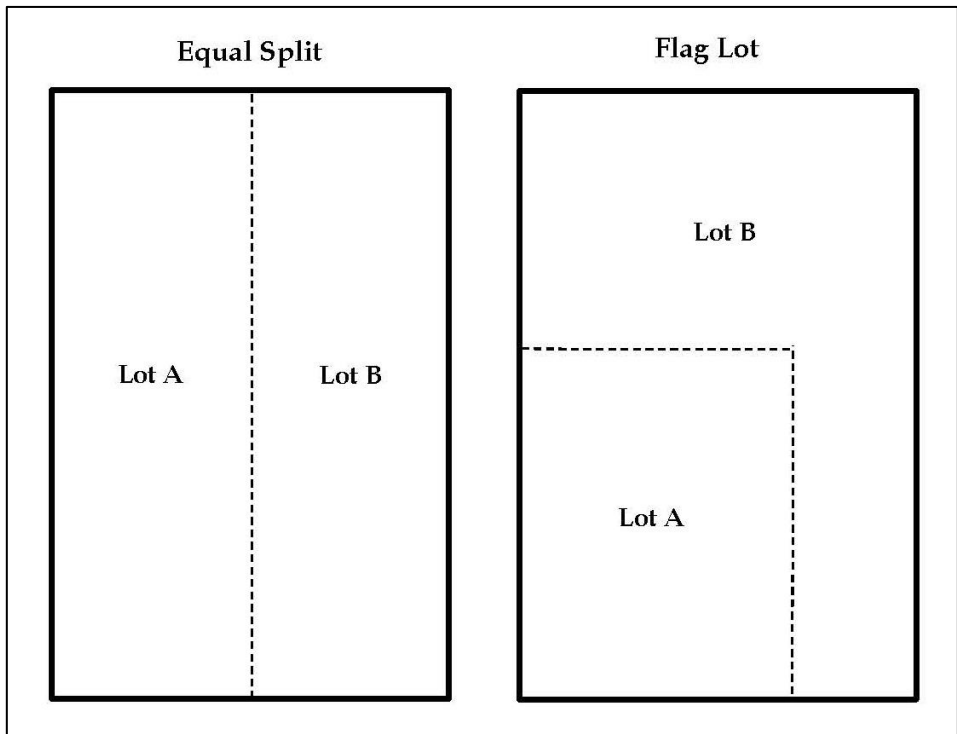


Figure 1: Example Urban Lot Split Configurations

Staff recommends any lot created by a lot split shall maintain a minimum frontage with direct access to the public right-of-way of 16'. This recommendation stems from existing City regulations for flag lots in the R1 Zone. The intent of the minimum frontage standard is to ensure that a flag lot will have permanent access to the street and to prevent maintenance issues or disputes that could arise if the access was provided by way of an easement across the property fronting the street.

In order to prevent the creation of irregularly shaped lots, staff recommends a minimum width of 30' for lots created through an urban lot split. Lastly, to ensure adequate public services and facilities to lots created by urban lot splits, staff recommends requiring utility and public facility easements on an as-needed basis.

City Procedures for Urban Lot Splits

Urban lot split applications must be approved through a ministerial process. Staff proposes to amend Chapter 28 (Subdivisions) of the City Code to establish procedures and submittal requirements for urban lot splits which align with this requirement, including a ministerial Preliminary Parcel Map and subsequent Parcel Map.

Renumbering of Chapter 28 (Subdivisions)

The amendments to Chapter 28 required to implement SB 9 necessitate renumbering of the chapter. Staff is proposing to repeal the chapter in its entirety and replace it with a new Chapter 28 to transition to a numbering convention that will allow for greater flexibility for future City Code amendments. Chapter 28 is shown in its entirety as Exhibit 2. Because Chapter 28 is proposed to be repealed and replaced in its entirety, the entire chapter is shown in tracked changes. For clarity, staff has shown substantive changes and renumbering as red text, while the remainder of the chapter is shown as grey text.

Permit Fee for Urban Lot Splits

The [Fiscal Year 2021-22 Master Fee Schedule](#) includes a permit fee of \$1,947 for a preliminary parcel map. This fee, which is based on cost-recovery, accounts for costs associated with a public hearing that would be required for a standard preliminary parcel map.

Because a preliminary parcel map for an urban lot split will be reviewed without a public hearing, staff proposes a reduced fee of \$736 for this type of preliminary parcel map. The amended Planning Fee Schedule is included as Exhibit A to Attachment 3 of this Council report.

Dual Urban Opportunity (DUO) Developments

In addition to urban lot split provisions, SB 9 requires local agencies to allow the development of two dwelling units on eligible R1-zoned lots. In order to allow this development type, staff proposes to create a new land use type, “Dual Urban Opportunity (DUO) development,” as a permitted use in the R1 District, which will appear in the Residential Land Use Table. The DUO development provisions could be used in concert with the urban lot split standards, resulting in a maximum potential of four primary-dwelling units on a qualifying R1 lot. In other words, if a lot is subdivided by an urban lot split, each resulting lot may contain two primary-dwelling units.

Mandatory Development Standards for DUO Developments

SB 9 includes the following mandatory development standards that all local jurisdictions must implement:

- No more than 4’ side and rear setbacks for new structures; no minimum setbacks for retention of existing structures;
- Minimum unit size of 800 square feet;

- No more than one parking space per unit; however, properties within a one-half-mile walking distance of high-quality transit or major transit stops, as defined by State law, or within one block of a car-share vehicle location, do not need to provide parking; and
- Cannot require the correction of existing nonconforming zoning conditions or deny a development due to existing nonconforming conditions.

Aside from these mandatory standards, SB 9 provides some discretion for jurisdictions to adopt objective development standards for the development of units, as long as the standards do not preclude the development of two units meeting the minimum size and maximum setbacks.

Proposed Additional Development Standards for DUO Developments

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, or floor area ratio (FAR); new or increased open space or lot size requirements; new or increased setback requirements, minimum frontage requirements, or maximum lot coverage; or any standard that would lessen the intensity of housing. For this reason, staff proposes to largely maintain existing R1 development standards for DUO Developments and only adjust those standards where SB 9 establishes either more restrictive standards (e.g., occupancy acknowledgements) or less restrictive standards (e.g., setbacks).

Table 2 compares existing R1 District development standards for new single-family homes with the proposed standards for DUO Developments, identifying differing standards.

Table 2: R1 District Development Standards

Standard	Single-Family (One-Unit) Standards		DUO Development (Two-Unit) Standards
Floor Area Ratio	Ranges from 0.4 to 0.45 based on lot size		Same
Front Setback	20' minimum		Same
Side Setback	First Story	Ranges from 5' to 7', based on lot size	4' minimum
	Second Story	Ranges from 5' to 12', based on lot size	4' minimum
	Street Side	15' minimum	4' minimum

Standard	Single-Family (One-Unit) Standards		DUO Development (Two-Unit) Standards
Rear Setback	First Story	20% of lot depth, but at least 15' and no more than 40'	4' minimum
	Second Story	25% of lot depth, but at least 20' and no more than 40'	4' minimum
Height	28' maximum		Same
Required Landscaping	50% of the required front setback area shall be permanently landscaped		25% of the required front setback area shall be permanently landscaped
Second-Story Decks	Permitted along front, rear, and street-side facades up to 150 square feet in aggregate area		Not permitted on newly-constructed DUO development units
Parking	Two (2) parking spaces, one of which must be covered		One (1) covered parking space, unless certain exceptions are met

The draft ordinance includes language to specify that if a development standard precludes the construction of an otherwise compliant DUO development consisting of two 800 square foot units with 4' side and rear setbacks, the development standard will be waived.

Because the side and rear setbacks for DUO developments will be reduced, staff proposes to prohibit the construction of second-story decks, in association with newly constructed units, associated with a DUO development proposal. This prohibition on second-story decks is consistent with SB 330 requirements as it would not lessen the potential for additional housing units (intensity) on any lot. However, prohibiting second-story decks will reduce potential privacy concerns resulting from the reduced setback requirements for DUO developments.

The EPC expressed interest in exploring ways to potentially allow for second-story decks, which would not raise new privacy impacts to adjacent properties. Staff has evaluated this request and recommends if Council would like to include a provision that allows second-story decks for DUO developments, Council could consider allowing second-story decks along the front facades of units facing the public street and along the street side facades of units on corner lots, up to an aggregate of 150 square feet. Staff recommends that second story decks be subject to the setback requirements of the units. Roof decks and similar features are not recommended by staff due to potential privacy impacts on neighboring properties.

Since SB 9 will allow for smaller lots than what the existing code allows and/or two primary dwellings on one lot, staff proposes to reduce the minimum landscape coverage requirement

within the front setback area from 50% to 25%. This standard will allow for the provision of on-site parking and paved pedestrian access to the units on smaller lots, while ensuring that a portion of the front yard be permanently landscaped.

Similar to recent ADU law, SB 9 also allows cities to require no more than one parking space per unit. No parking shall be required if:

- a. The parcel is located within one-half mile walking distance of a high-quality transit corridor, as defined in the California Public Resources Code;
- b. The parcel is located within one-half mile walking distance of a major transit stop, as defined in the California Public Resources Code; or
- c. There is a car-share vehicle parking space located within one block of the lot.

The proposed ordinance includes amendments to the required parking by land use table to establish parking requirements for DUO developments, as well as the parking exemption described above.

DUO Development Eligibility

SB 9 establishes the following eligibility requirements for any DUO development proposal. Similar to the urban lot split requirements, the intent is to protect historic resources and existing rental housing stock by prohibiting or restricting the following:

- a. A historic property may not be developed with a DUO development;
- b. A DUO development may not result in the demolition or alteration of any existing residential unit that:
 - Is protected by a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low-, or very-low income; or
 - Has been occupied by a tenant within three years prior to the application submittal to the City for the DUO development (e.g., building permit).

City Procedures for DUO Developments

DUO developments must be approved through a ministerial process. Staff proposes the review and permitting of DUO developments through issuance of a building permit, similar to the existing review procedures for single-family homes in the R1 District, duplexes in the R2 District, and ADUs/JADUs in all residential zoning districts.

SB 9 and Accessory Dwelling Units

Current City regulations allow for three units—one primary unit, one ADU, and one JADU—on each single-family (R1) property. The ADU can be attached or detached and can be up to 1,000 square feet. The JADU must be within the walls of the primary unit and cannot exceed 500 square feet. Neither the ADU nor the JADU can be sold as a separate unit.

The provisions of SB 9 are utilized in concert with existing ADU and JADU regulations but do not require local agencies to allow any R1 lot to be developed with more than four units, inclusive of ADUs and JADUs. Based on staff’s recommendation to strictly comply with SB 9, the following development scenarios will be possible when the existing ADU and JADU provisions are applied with the provisions of SB 9:

- a. *Primary units*—No more than two primary-dwelling units will be permitted on a single existing R1 lot or newly created lot through an urban lot split.
- b. *Primary/ADU/JADU combinations on R1 lots that are not established through an urban lot split*—For existing R1 lots that are not established through an urban lot split, a second primary unit will be allowed. Additionally, accessory-dwelling units will be allowed as follows:
 - Two accessory-dwelling units; or
 - Two junior accessory-dwelling units; or
 - One accessory-dwelling unit and one junior accessory-dwelling unit.

This will bring the total number of allowed units to a maximum of four (inclusive of primary units, accessory-dwelling units, and junior accessory dwelling units).

- *Primary/ADU/JADU combination on lots created through an urban lot split*—For lots that are established through an urban lot split, in addition to a primary-dwelling unit, a second primary unit, or an accessory-dwelling unit or junior accessory-dwelling unit may also be allowed for a maximum of two units per resulting lot (inclusive of primary units, accessory-dwelling unit, and junior accessory-dwelling unit).

The following graphic demonstrates different ways in which the four units allowed under SB 9 can be achieved.

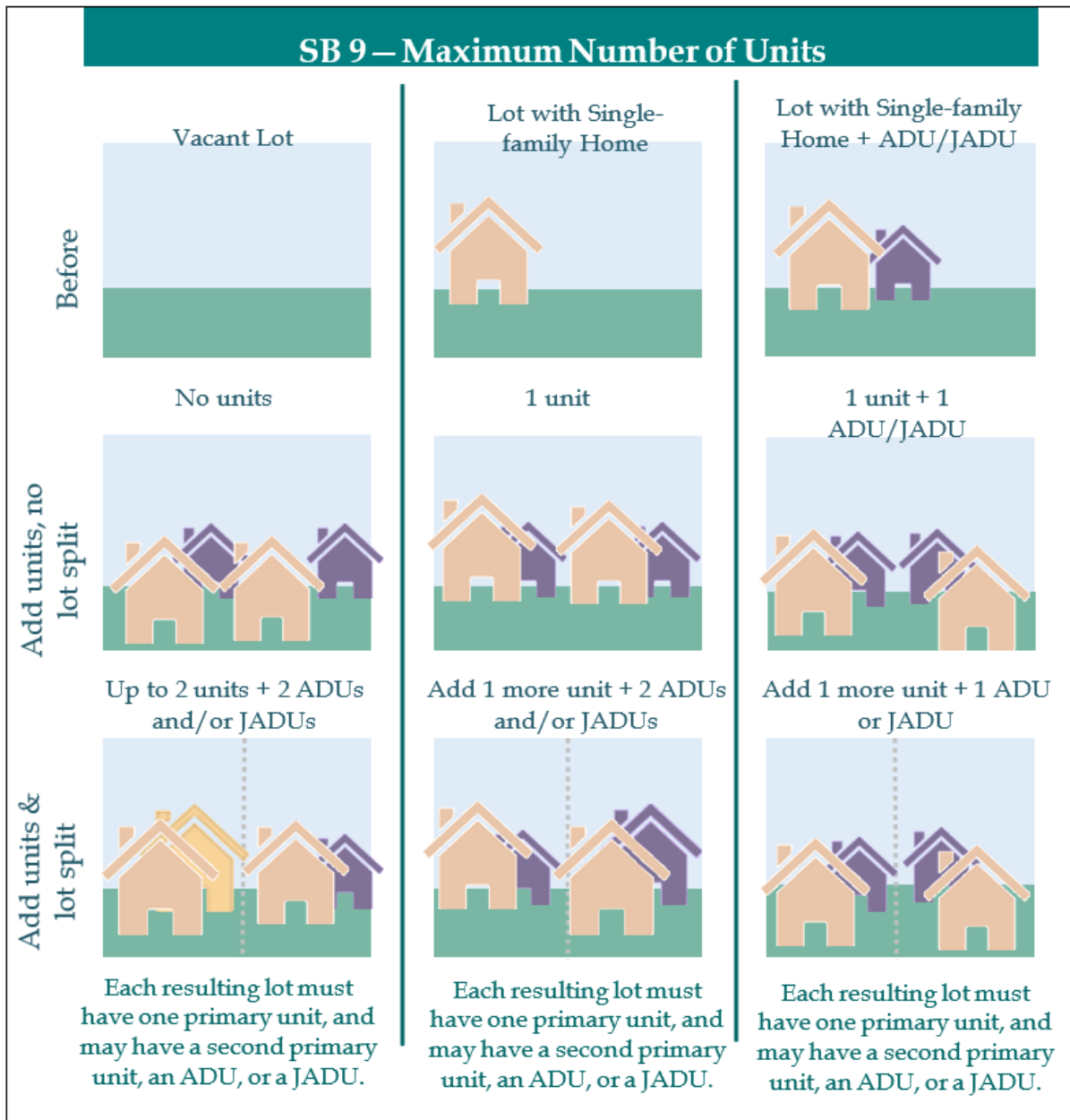


Figure 2: SB 9 Maximum Number of Units

Neighboring Cities

In preparing these draft amendments, staff conferred with neighboring cities and reviewed their SB 9 implementation ordinances. Most of the ordinances staff was able to review were urgency ordinances adopted prior to SB 9 taking effect at the beginning of this year and not their final City Code revisions, which are anticipated to occur this quarter.

In general, our neighboring cities, including San Jose, Sunnyvale, Saratoga, Campbell, and Palo Alto, are limiting the number of units to a maximum of four units per lot (including primary units and ADUs/JADUs), consistent with the minimum requirements of State law and our proposed draft ordinance amendments.

The following table summarizes the maximum numbers of ADUs and JADUs our neighboring cities have permitted within their ordinances. The information in this table could change as cities adopt final code amendments:

Table 3: Neighboring Cities—Maximum Number of Units

Jurisdiction	Maximum Number of Units Allowed		
	Two-unit development (no Urban lot split).	Urban lot split with one primary-dwelling unit per lot.	Urban lot split with 2-unit development proposed on each resulting lot.
San Jose	1 attached ADU or 2 detached ADUs. No JADUs.	1 ADU or 1 JADU per lot.	No ADU or JADU.
Sunnyvale	2 ADUs.	1 ADU or 1 JADU per lot.	No ADU or JADU.
Saratoga	1 ADU and 1 JADU.	1 ADU or 1 JADU per lot.	No ADU or JADU.
Campbell	If primary units are attached: Two ADUs. If primary units are detached: One ADU or one JADU for each primary unit.	1 ADU or 1 JADU per lot.	No ADU or JADU.
Palo Alto	2 detached ADUs.	1 ADU or 1 JADU per lot.	No ADU or JADU.

Other Minor Zoning Code Amendments

Inactive Permit Applications

In addition to amendments to comply with SB 9, staff is proposing a minor amendment within the administration section of the Zoning Code related to the closure of inactive planning permit applications. This section would establish that any formal permit application which has been inactive for three (3) months shall be deemed withdrawn and allow staff to close the application. The amendment clarifies an application is considered inactive when a formal resubmittal, that is substantially responsive to the City’s completeness/comment letter, has not been submitted. Once an application is deemed withdrawn, the applicant would be required to submit a new application and fees, in compliance with the City’s application submittal requirements. Staff is

proposing this amendment in order to ensure the timely processing of planning permits and to ensure projects are designed in compliance with the most recent applicable standards and requirements.

FISCAL IMPACT

In order to implement SB 9, staff is proposing to establish a new Planning permit type, a preliminary parcel map for an urban lot split, with an associated application fee of \$736. This fee would be collected for each urban lot split application received by the City. The provision of additional dwelling units and subdivisions under the proposed text amendments to align with SB 9 could result in higher assessed property values and marginal increases in property tax revenue to the City. Additionally, applicants proposing to create net new primary-dwelling units pursuant to the proposed amendments will be required to pay park land dedication in-lieu fees, transportation impact fees, sewer and water capacity fees, and below market-rate housing in-lieu fees on the net new units.

NEXT STEPS

A City webpage pertaining to the City's implementation of SB 9 is currently available. Following adoption of the proposed amendments, staff will create informational guides related to urban lot splits and DUO developments for the public, similar to what has been prepared for ADU regulations.

Over the next year, staff will be tracking permits submitted under the provisions of SB 9 and evaluating if any minor modifications to the regulations may be prudent to clarify the requirements. Staff will also be tracking any potential referendum that may arise pertaining to SB 9 and would bring recommendations regarding potential City Code revisions or policy changes, as a result of a referendum, to the Council for discussion and recommendation.

CONCLUSION

The EPC recommends that the City Council approve the proposed text amendments to Chapter 28 (Subdivisions) and Chapter 36 (Zoning) of the City Code to establish procedures and standards related to urban lot splits and dual urban opportunity (DUO) developments in compliance with California Senate Bill 9 and other minor text amendments to Chapter 36 related to inactive permit applications.

ALTERNATIVES

1. Approve the proposed text amendments to the City Code with modifications.
2. Refer the proposed text amendments back to the EPC for further analysis and reconsideration.
3. Disapprove the proposed text amendments to the City Code.

PUBLIC NOTICING

The City Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's internet website and were posted in accordance with the Brown Act. A notice for the item was also published in the newspaper.

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- Attachments:
1. Draft Ordinance Amending Chapter 36 (Zoning)
 2. Draft Ordinance Amending Chapter 28 (Subdivisions)
 3. Resolution Amending the Planning Fee Schedule
 4. Environmental Planning Commission Staff Report—[February 16, 2022](#)
 5. Written Comments to the EPC
 6. Summary Table of Amendments to Chapter 36 (Zoning)
 7. Summary Table of Amendments to Chapter 28 (Subdivisions)