



CITY OF
**PALO
ALTO**

CITY COUNCIL STAFF REPORT

From: City Manager

Report Type: **ACTION-ITEM CONSENT CALENDAR**

Lead Department: Planning and Development Services

Meeting Date: May 22, 2023

Report #: 2211-0385

TITLE

Adoption of a Permanent Ordinance Amending Titles 18 and 21 to Implement State Housing Legislation from the 2021 Legislative Session, Including SB 9. Environmental Analysis: Exempt from Environmental Analysis under CEQA Guidelines Section 15061(b)(3) and Government Code Sections 66411.7(n) and 65852.21(j). The Planning and Transportation Commission (PTC) has recommended Council adopt the ordinance.

RECOMMENDATION

Staff recommends Council:

1. Adopt the attached ordinance (Attachment A) to codify the integration of Senate Bill 9 required components into the Palo Alto Municipal Code and, by reference, the previously adopted objective design standards for qualifying Senate Bill 9 projects, and provisions of Senate Bill 478.

EXECUTIVE SUMMARY

This report transmits an ordinance that replaces the interim ordinance¹ Council adopted on January 10, 2022; the new ordinance is required to comply with state laws enacted in 2021 (SB9 and SB478). The ordinance enables Palo Alto to retain local control of planning and development decisions while complying with these state laws. Along with the ordinance, Council adopted objective standards for SB 9 lot splits² and SB 9 developments³; these are published on the City's webpage regarding SB 9 projects. The City's SB 9 projects webpage includes a document of

¹ Link to interim ordinance: [Urgency Ordinance December 6, 2021\(PDF, 300KB\)](#)

² SB9 lot split standards link: [SB 9 Urban Lot Split Objective Design Standards](#)

³ SB9 development standards link: [SB 9 Objective Design Standards\(PDF, 144KB\)](#)

frequently asked questions,⁴ guidance on the preliminary review process,⁵ two checklists (one for lot splits,⁶ one for development),⁷ and the affidavit regarding owner occupancy.⁸

Since January 10, 2022, the City has processed only one SB 9 lot split application and is in pre-application discussions with five additional owners regarding potential SB 9 lot splits. Additionally, three SB 9 projects which did not include lot splits are in building permit review.

Staff has been connecting with the applicants and potential applicants regarding the SB 9 standards Council previously adopted, to learn whether modifications to the adopted standards would be beneficial to the production of SB 9 housing units and lot splits.

Staff met twice with the Architectural Review Board (ARB) on March 16 and April 20, 2023, in study sessions to review the adopted standards and discuss potential amendments to the standards. The ARB continued its discussion to May 18, 2023 to consider potential changes to the standards.

BACKGROUND

Council adopted the urgency ordinance on December 6, 2021. The December 6th CMR⁹ presentation¹⁰, minutes¹¹ and video¹² are available online. The Council considered an interim ordinance on December 6, 2021, and continued its review to January 10, 2022.

Section 23 of the interim ordinance Council adopted on consent on January 10, 2022 reflected Council direction as well as language previously recommended by staff for urban lot splits. The January 10, 2022 CMR¹³ and meeting minutes¹⁴ are available online. On March 21, 2022, Council adopted the interim ordinance establishing standards for urban lot splits.

⁴ FAQs regarding SB9 [Frequently Asked Questions about SB 9\(PDF, 202KB\)](#)

⁵ Preliminary planning process link [SB 9 Preliminary Planning Process\(PDF, 132KB\)](#)

⁶ Checklist links: [SB 9 Two Dwelling Unit Project Checklist\(PDF, 203KB\)](#)
[SB 9 Two Lot Subdivision \(Parcel Map\) Project Checklist\(PDF, 217KB\)](#)

⁷ SB9 two dwelling unit development checklist link: [SB 9 Two Dwelling Unit Project Checklist\(PDF, 203KB\)](#)

⁸ Owner occupancy affidavit link: [Affidavit of Intent to Owner-Occupy Per SB 9\(PDF, 137KB\)](#)

⁹ December 6, 2021 CMR link: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2021/12-december/20211206/20211206pccsm-amended-linked.pdf#page=198>

¹⁰ Link to presentation to Council: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/item-presentations/2021/20211206/item-9-sb-9-presentation-12-06-21-final.pdf>

¹¹ Link to minutes of December 6: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2021/12-december/20211206/20211206amccs.pdf>

¹² Link to video: <https://www.youtube.com/watch?v=caR9FCHKob8>

¹³ Link to 1-10-22 CMR: <https://www.cityofpaloalto.org/City-Hall/City-Council/Council-Agendas-Minutes>

¹⁴ Meeting minutes: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2022/20220110/20220110amccs.pdf>

In general, the interim ordinances are largely restatements of SB 9's basic requirements, while the detailed standards represent Palo Alto's exercise of local regulatory authority. Council's March 2022 action also included further refinements to the SB 9 development standards.

Council adopted interim ordinance no. 5546 on March 21, 2022¹⁵, with a second reading on April 11, 2022. Ordinance 5546 clarified some items in ordinance no. 5542 and authorized the Department of Public Works to adopt additional standards for off-site improvements. Council simultaneously adopted standards relating to lot design for lot splits under SB 9 (see Attachments B and C).

PTC

In February 2023, the PTC reviewed and recommended the attached ordinance that would replace the interim ordinances, adding to Titles 18 and 21 of the Palo Alto Municipal Code. The PTC received the Council-adopted objective standards in the packet with the draft ordinance. However, the meeting was focused on the ordinance as a separate effort to move it expeditiously to Council, with the intent to follow up with another session with the PTC regarding the standards. The PTC report¹⁶ and minutes¹⁷ are available online.

ARB

Staff presented the adopted objective standards to the ARB on March 16, 2023 and April 20, 2023 and the discussion was continued to May 18, 2023. Following the ARB and PTC meetings regarding the standards, staff will separately forward to Council any recommendations generated from these discussions.

ANALYSIS

Objective Standards

Staff has separated the ordinance adoption from the consideration of refinements to the previously adopted SB 9 objective development standards. This is because the interim ordinance must be replaced by a permanent ordinance, to allow continued use of the prior approved standards. The process is longer to collect local case studies, prepare refinements to development standards with input, and consider other changes to implement 2023 state legislation that may be adopted in the fall.

¹⁵ March 21, 2022 Ordinance No. 5546: <https://www.cityofpaloalto.org/files/assets/public/city-clerk/ordinances/ordinances-1909-to-present/2022/ord-5546.pdf>

¹⁶ PTC Report link: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-2.08-sb9-ordinance.pdf>

¹⁷ PTC summary minutes: <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-3.8-approved-verbatim-minutes-2.8.23.pdf> and <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-2.22.2023-summary-minutes.pdf>

Council had approved, for qualifying SB9 projects, objective standards to preserve Palo Alto's neighborhood character and local zoning control, and urban lot split objective standards. The adopted standards are compliant with state law and the City's use of the standards helps to minimize impacts on adjacent properties, such as privacy impacts. Potential refinements to these standards may enable the City to facilitate more compatible SB 9 dwelling units, to advance the City's Housing Element programs to meet the City's Regional Housing Needs Assessment (RHNA) objectives.

The ARB is working through its discussions of the adopted standards, and noting potential refinements. Staff will be reviewing actual SB 9 projects to study how these adopted objective design standards have worked or may be more restrictive than necessary.

SB 9 Affordability

The City Council, with Item B of Motion 3 on December 6, 2021, requested an *"analysis of the feasibility of requiring a 25% or one unit inclusionary housing requirement for SB 9 projects."*

Staff performed a limited amount of research regarding the City's ability to impose affordability requirements on SB 9 projects. Generally, state law requires affordability requirements of greater than 15% to be supported by financial feasibility analysis. Staff explored an approach where the applicant could pay a fee in-lieu of providing the unit. Currently, one- and two-unit developments (and ADUs and JADUs) are exempt from the City's affordable housing requirements.

Related to this discussion is the affordability related to ADUs. The PTC started a discussion in September 2022, initially recommending Council adopt a pilot program for deed restricted, affordable Accessory Dwelling Units (ADUs). On May 15, 2023, the Council is scheduled to conduct a hearing regarding proposed modifications to the ADU ordinance. The May 15 staff report¹⁸ contains background information on the topic of ADU affordability.

FISCAL/RESOURCE IMPACT

There are no significant fiscal impacts associated with this action; work preparing the ordinance and community meetings has been accomplished using existing department resources.

STAKEHOLDER ENGAGEMENT

Staff is working with the ARB to discuss potential refinements. Staff will continue the discussion and evaluation of the standards with a local group of stakeholders following the ARB's initial discussions. Staff will return to the ARB with any proposed refinements and will meet with the PTC prior to presenting changes to the City Council. The process of refining standards is likely to extend through 2024.

¹⁸ May 15 ADU staff report: <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=11318>

ENVIRONMENTAL REVIEW

The City Council finds that this Ordinance is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons. Under Government Code Sections 66411.7(n) and 65852.21(j), an ordinance adopted to implement the requirements of SB 9 shall not be considered a project under CEQA. Additional sections of this ordinance implementing SB 478 are exempt pursuant to Section 15061 of the State CEQA Guidelines because they simply reflect pre-emptive state law that became effective January 1, 2022. This ordinance continues the 'status quo' and it therefore can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

ATTACHMENTS

Attachment A: Permanent Ordinance to Implement SB 9 and SB 478

APPROVED BY:

Jonathan Lait, Planning and Development Services Director