

**STAFF REPORT**



**COMMUNITY  
DEVELOPMENT**

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**DATE:** May 3, 2022

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
By: Fred Ramirez, Assistant Community Development Director – Planning  
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**SUBJECT:** Update on the California Government Code Section 65858(d) Pertaining to the Adopted Interim Urgency Ordinance Establishing Development Controls for Two-Unit Residential Developments and Urban Lot Splits in All Single-Family Residential Zones in Response to Senate Bill 9

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**RECOMMENDATION**

Note and file.

**BACKGROUND**

On September 16, 2021, the Governor signed Senate Bill 9 (SB 9) California Housing Opportunity and More Efficiency (HOME) Act into law, codified as California Government Code Sections 66452.6, 6852.21 and 66411.7 (Attachment 1). SB 9 took effect on January 1, 2022 and specifies that local jurisdictions must ministerially approve two-unit residential housing developments and subdivisions (urban lot splits) on a single-family residential zoned lot when the proposed development and/or subdivision meets explicit requirements listed in California Government Code Sections 65852.21 and 66411.7; and a local jurisdictions' objective development, design review, and subdivision standards.

On April 5, 2022, the City Council adopted an Interim Urgency Ordinance (Attachment 2) and application fees (Attachment 3) that would ensure the City has in place interim objective design review and development standards regulating SB 9 projects that may be submitted for City review while the City undertakes a comprehensive Zone Text Amendment (ZTA). The purpose of the Urgency Ordinance was to mitigate the potential outcome of implementing SB 9 development regulations that could have potential adverse impacts to both the City's utility infrastructure and the character of the City's single-family residential zoned neighborhoods. In addition, the adopted Urgency Ordinance

established more tailored objective design and development standards that address concerns related to the potential maximum buildout of primary units and accessory dwelling units in combination with lot splits that would be possible under SB 9 without any local refinement.

Furthermore, while the Urgency Ordinance is in effect, the City will have additional time to study the potential impacts of SB 9 projects in order to: (1) tailor the objective standards to create controls and standards that fit the character of the existing single-family neighborhoods; and (2) better understand the impacts on the existing utility infrastructure (e.g., electrical, wastewater, and trash service and landfill capacity impacts) to protect the public health, safety and general welfare of the community by providing safe and reliable utility infrastructure for the use of existing and future residents.

At the April 5<sup>th</sup> meeting, City Council directed staff to consider the following items:

- Additional development, design review and subdivision standards or controls that can be applied to two-unit residential developments and Urban Lot Splits (SB 9 projects), including additional standards that can be applied in the equestrian zoned single-family residential (R-1-H) neighborhood.
- Assessing the feasibility of establishing a development standard that requires all new two-unit residential developments to be deed restricted affordable units.
- Assessing the establishment of fines and/or other penalties on homeowners who violate the signed Urban Lot Split owner-occupancy affidavit.

Staff is currently analyzing all these items and will bring back possible solutions for the Council's consideration as part of a future request for a Zone Text Amendment (ZTA). Staff has received several inquiries regarding the submittal procedures and requirements for SB 9 projects. However, as of the time of this report, no applications have been submitted.

## **DISCUSSION**

The California Government Code Section 65858(d) requires that 10 days prior to the expiration of the Urgency Ordinance or any extension thereof, the City Council shall issue a written report describing the measures taken to alleviate the condition, which led to the adoption of the interim ordinance. This section constitutes the required report.

Since the adoption of the Interim Urgency Ordinance, the following steps have been taken to alleviate the conditions leading to the Urgency Ordinance:

1. Based on City Council's direction to assist in mitigating the potential impacts of future SB 9 projects, Planning Division staff contacted the California Department of Housing and Community Development (HCD) regarding additional development standards and controls, consistent with the provisions of SB 9, that could be added.

2. Staff created new procedures for accepting, reviewing, and approving two-unit housing development applications and urban lot split applications submitted under SB 9.
3. Burbank Water and Power is in the process of creating new procedures and determining what new fees may be necessary to review and approve SB 9 projects.
4. Public Works Department is in the process of creating new procedures and determining what new fees may be necessary to review and approve SB 9 projects.
5. Planning Division staff held an interdepartmental meeting with other City Departments to discuss the policy directions that would address the impacts to the City's infrastructure and utilities.
6. Planning Division and Code Enforcement staff is considering potential new enforcement mechanisms for verifying and tracking the new owner-occupancy affidavit requirement under SB 9.
7. Planning Division and Transportation Division staff is examining potential on-street parking impacts that could result from SB 9 projects.

Due to the ongoing work that staff is conducting prior to the creation of permanent zoning development standards in response to SB 9 and City Council's direction, staff will be requesting that the City Council extend the adopted Interim Urgency Ordinance for an additional ten (10) months and fifteen (15) days at the May 17, 2022, City Council meeting. If approved by the City Council, the extension request will give staff time to further study appropriate and permanent objective standards that would assist in mitigating the potential impacts of SB 9 projects in our single-family residential zoned neighborhoods, while vetting the proposed standards through the community as part of future community meetings and public hearings, and to also work with other City Departments to ensure that the resulting standards address potential impacts to City utilities to the extent permitted under state law. The extension request would provide the time necessary to undertake all this work and prepare a ZTA for consideration by the Planning Board and the City Council at separate public hearings. This work is expected to be completed during the requested 10 month and 15-day extension period.

#### Environmental Assessment

The issuance of this report in accordance with Government Code Section 65858 (d) is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) and 15306. The proposed extension of the Interim Urgency Ordinance has been reviewed for compliance with CEQA. Under California Government Code Sections 65852.21(j), and 66411.7(n), the adoption of an ordinance by a city or county implementing the provisions of California Government Code Sections 66411.7 and 65852.21 and regulating two-unit housing developments and urban lot splits is statutorily exempt from the requirements of CEQA. Therefore, the adoption of an

extension to the Interim Urgency Ordinance is statutorily exempt from CEQA in that the proposed adoption of a local ordinance implementing SB 9 is not considered a project under CEQA.

### **FISCAL IMPACT**

Adoption of the extension request for the current Interim Urgency Ordinance does not have a significant impact to the City's General Fund. Future units constructed pursuant to SB 9, CA Government Code Sections 65852.21 and 66411.7, would be processed through the City's planning and building plan check and permitting process, which includes the payment of associated City building and development fees. Newly created parcels and new primary units would be reassessed by the County, which may result in a higher valuation and/or property taxes. Future developments would be required to pay the associated development impact fees as well as any required infrastructure connection and maintenance fees.

### **CONCLUSION**

City staff continue to study the potential impacts of SB 9 projects as the adopted Interim Urgency Ordinance is in effect. During the interim period, staff have worked with other City Departments to create new procedures, and potential new fees, that could be added to the review and approval of SB 9 projects. Pursuant to Government Code Section 65858(d), the City Council is required to note and file this report, which describes the measures taken to alleviate the conditions that led to the adoption of the initial Urgency Ordinance. To further study and create additional objective development, design review, and subdivision standards, along with any additional regulations sought by the City Council, staff will be requesting that the adopted Interim Urgency Ordinance be extended for an additional ten months and fifteen days on May 17<sup>th</sup>, 2022. The extension request would provide Staff the time necessary to prepare a ZTA with objective development and design review standards for future consideration by the City Council.

### **ATTACHMENTS**

Attachment 1 – SB 9 California Housing Opportunity and More Efficiency (HOME) Act

Attachment 2 – Interim Urgency Ordinance No. 22-3,972 adopted April 5, 2022

Attachment 3 – SB 9 Application Fees and Updated Fee Schedule adopted April 5, 2022