

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: March 14, 2023

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director

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SUBJECT: Adoption of an Extension of an Urgency Ordinance (Ordinance No. 22-3,972) Establishing Interim Development Controls in Response to Senate Bill 9 to Allow the City Time to Study and Consider Enactment of Permanent Development Standards Through a Zone Text Amendment

RECOMMENDATION

Adopt AN EXTENSION OF AN ADOPTED URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ESTABLISHING INTERIM DEVELOPMENT CONTROLS FOR TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES, TO ALLOW THE CITY TIME TO STUDY AND CONSIDER ENACTMENT OF ZONING MEASURES IN RESPONSE TO SENATE BILL (SB) 9 (Attachment 1). (Requires 4/5th vote for adoption)

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, 65852.21 and 66411.7 (Attachment 6). 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 requirements listed in California Government Code Sections 65852.21 and 66411.7, and a local jurisdiction's objective development, design, and subdivision standards.

On April 5, 2022, the City Council adopted an urgency ordinance (Attachment 2) and application fees (Attachment 3) that established interim objective design 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 potentially adverse impacts to the City's utility infrastructure as well as adverse impacts to 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.

On May 3, 2022, pursuant to California Government Code Section 65858 (d), City Staff provided the City Council a report of the status of the work that has been undertaken since the adoption of the urgency ordinance (Attachment 4). The necessary work to address the issues of concern outlined in the urgency ordinance could not be completed within 45 days. Taking into consideration the continued implementing of procedures for SB 9 projects and the requests by City Council to provide additional regulations in the form of objective development standards, staff requested an extension of the urgency ordinance.

On May 17, 2022, the City Council adopted an extension to an amended urgency ordinance (Attached 5) to allow City staff time to further analyze potential City-specific objective standards that would be permanently codified into the Burbank Municipal Code through an eventual ZTA. The adopted extension allowed City staff to continue to work with multiple City Departments and Divisions to establish permanent objective standards that regulate and limit the development impacts of two-unit residential housing developments and urban lot splits (SB 9 Projects) on existing single-family residential neighborhoods, while also ensuring that the City maintains reliable and uninterrupted City services citywide.

DISCUSSION

Pursuant to State law, the most recent amended urgency ordinance was valid for an additional 10 months and 15 days and is set to expire on April 4, 2023, unless extended by the City Council. After holding a public hearing, the City Council can adopt an extension of the urgency ordinance for up to one full year (California Government Code Section 65858(a); Burbank Municipal Code 10-1-1996). As with the initial adoption of the urgency ordinance, a four-fifths (4/5) vote is required to extend the urgency ordinance. The City Council has the option of extending the urgency ordinance using the same amended interim development standards adopted on May 17, 2022 or allowing the urgency ordinance to expire on April 4, 2023.

Staff recommends extending the urgency ordinance for one full year, until April 4, 2024, to allow Staff time to:

1. Continue evaluating the impacts of the existing SB 9 urgency ordinance and identify areas of improvement and clarification prior to creating permanent objective development and design standards.
2. Further tailor the objective standards and application procedures to create controls and standards that fit the character of the existing single-family neighborhoods.
3. Continue to work with the consultants aiding City staff on the objective standards (Dudek Consultants), to evaluate previously provided City Council direction for SB 9 projects; identify best practices and conduct comparative research on other local jurisdictions with adopted SB 9 ordinances and development standards; formulate standards that avoid pitfalls that other local jurisdictions have fallen into when adopting permanent objective standards.
4. Hold a community meeting to garner public input on the potential objective development and design standards for future SB 9 projects.
5. Present potential objective development and design standards to the Planning Commission as part of a ZTA to receive input and insight on additional regulatory items that need to be considered or addressed by City staff and the City Council as part of a recommendation on the proposed ZTA.
6. Present comprehensive zoning measures via a proposed ZTA for City Council consideration at a noticed public hearing.

Necessity for Urgency Ordinance Extension and Report on Actions Taken to Alleviate Urgency Conditions

As previously discussed, State law allows local jurisdictions to adopt objective development, design, and subdivision standards (“objective standards”) that can be applied to SB 9 projects. This creates an opportunity for the City to adopt objective standards that are tailored to meet local concerns, subject to the limits established under State law. The adopted urgency ordinance provided the City with the opportunity to establish objective standards that were immediately applied to SB 9 projects. To address previously provided City Council direction through objective development standards and to have more comprehensive zoning measures reflective of best practices, Staff is bringing forward an additional extension of the adopted urgency ordinance for City Council’s consideration. 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. From the time of the extension adoption on May 17, 2023, to date, Staff has taken the following steps to alleviate the conditions leading to the Urgency Ordinance:

1. Secured the services of Dudek Consultants to collaborate with City staff in the research and preparation of state-compliant and city-tailored objective standards to bring forth for community and Council's consideration as part of a future ZTA.
2. Met routinely with the City Attorney Office to review the State law and the adopted urgency ordinance to identify and clarify areas of ambiguity.
3. Contacted the California Department of Housing and Community Development (HCD) regarding review and compliance of the existing urgency ordinance to ensure it meets all State requirements.
4. Prepared a supplemental application for Urban Lot Split requests, created an Urban Lot Split affidavit form and Frequently Asked Question (FAQ) handouts that can be viewed by the public.
5. Conducted background research on and analyzed the implementation challenges that other local jurisdictions have experienced while adopting their SB 9 ordinances.
6. Reviewed twelve (12) SB 9 project submittals as of March 2023 for both Two-Unit Housing Developments and Urban Lot Splits and identified patterns in the types of developments that are being proposed when the State law is invoked.

Staff is requesting additional time while the urgency ordinance is in effect to complete its study of the potential impacts of SB 9 projects in order to: (1) further tailor the objective standards and application procedures to create controls and standards that fit the character of the existing single-family neighborhoods; (2) avoid the difficulties that other California cities have come across while attempting to adopt city-specific development and design standards in response to SB 9; (3) better understand the potential impacts on the existing utility infrastructure (e.g., electrical, water, wastewater, and landfill capacity impacts) in order to protect the public health, safety and general welfare of the community by providing safe and reliable utility infrastructure.

If the urgency ordinance is not extended, it will expire on April 4, 2023. Should it expire, the City will be limited to reviewing SB 9 projects strictly under the provisions listed in SB 9, and the existing objective development standards in City's Single-Family Residential Zone which did not anticipate and were not enacted with SB 9 projects in mind. Additionally, there would exist ambiguity as to whether the development of an SB 9 project on an existing single family zoned property could yield up to eight residential "units" when a property is subdivided through an urban lot split – a total of 4 units per created lot. In the urgency ordinance the City explicitly limits the number of residential units on a subdivided lot to a maximum of 2 residential units per created lot.

ENVIRONMENTAL REVIEW

The proposed extension of the urgency ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA). Under Government Code Sections 65852.21(j) and 66411.7(n), the adoption of an ordinance by a city or county implementing the provisions of Government Code Sections 66411.7 and 65852.21 and

regulating two-unit housing developments and urban lot splits is not a “project” subject to the requirements of CEQA.

FISCAL IMPACT

Adoption of the urgency ordinance does not have a significant impact to the City’s General Fund. Future units constructed pursuant to Senate Bill 9, 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 development would be required to pay the associated development impact fees as well as any required infrastructure connection and maintenance fees.

CONCLUSION

The requested extension to the adopted urgency ordinance will provide City Staff adequate time to complete its study of additional development controls and standards that could be applied to SB 9 projects. Additionally, the extension will give City Staff and Dudek Consultants the necessary time to further specify permanent submittal and procedural requirements for Applicants that submit SB 9 projects. Furthermore, the urgency ordinance would not prohibit the continued intake and review of SB 9 projects submitted during the duration of the urgency ordinance.

Adoption of the urgency ordinance extension and later consideration of a ZTA will facilitate ongoing responsible development of new housing units, which create new housing opportunities and building types, while putting in place development standards that help preserve local control and protect the character of existing residential neighborhoods to the greatest extent allowed under State law.

ATTACHMENTS

Attachment 1 – Ordinance

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

Attachment 3 – SB 9 Fee Resolution No. 22-29,307 adopted April 5, 2022

Attachment 4 – May 3, 2022, Staff Report on Urgency Ordinance

Attachment 5 – Urgency Ordinance Extension No. 22-3,975 adopted May 17, 2022

Attachment 6 – Senate Bill No. 9

Attachment 7 – Matrix of Outside Cities

Correspondences