



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

PLANNING COMMISSION STAFF REPORT

Meeting: October 11, 2022

Subject

Consider an ordinance to implement new state legislation (Senate Bill 9), that provides for ministerial approval of up to two units and/or a lot split in a residential single-family zone (Application No.: MCA-2022-001; Applicant: City of Cupertino; Location: Citywide in all residential single-family zones)

Recommended Action

That the Planning Commission adopt the Draft Resolution (Attachment 1) recommending that the City Council find the actions exempt from CEQA and adopt the proposed Municipal Code Amendments.

Discussion

Background

Senate Bill 9 (“SB 9”) was signed into law on September 16, 2021 with an effective date of January 1, 2022 (Attachment 2). The bill uses a two-pronged approach to encourage increased housing density in single-family residential zones throughout the State. First, the statute conditionally requires cities to ministerially approve up to two, attached or detached, units in single-family residential zones. Second, the statute requires cities to ministerially approve two-lot subdivisions in single-family residential zones, subject to similar conditions, and with no public hearing. These ministerial subdivisions are referred to as Urban Lot Splits. If the conditions are met for both of these approvals, the approvals can result in four units on what was formally one single-family residential lot. The requirements for approval based on State law are discussed in detail below.

Ministerial approval of up to two residential units on properties that are zoned single-family residential, are subject to the following criteria:

- a. Meets certain requirements for streamlining in SB 35;¹

¹ The applicable SB 35 streamlining requirements exclude any parcel located within:
(A) [Not applicable to SB 9 projects.]

- b. Does not result in the demolition of Below Market Rate or rent controlled units;
- c. Is not on a property occupied by tenants in the past three years;
- d. Is not on a property that has been withdrawn from the rental market under the Ellis Act for the past 15 years;
- e. Is not on a property located in a historic district or included on the State Historic Resources Inventory, or a site that is designated or listed as a city or county landmark, historic property or district pursuant to a city or county ordinance; and
- f. Will not be used as a short-term rental following construction.

In addition to the eligibility criteria for ministerial approval of up to two units, Urban Lot Splits are subject to the following criteria:

- a. The lot split creates two new parcels, each at least 40 percent of the area of the original parcel;
- b. Each new lot is at least 1,200 square feet;
- c. The parcel was not created through prior exercise of an Urban Lot Split;
- d. The resulting lots will be limited to residential use;
- e. The map complies with applicable objective requirements of the Subdivision Map Act;
- f. The owner must occupy one of the housing units as their principal residence for at least three years from the date of the approval of the Urban Lot Split; and
- g. Neither the owner of the lot being subdivided nor any person acting in concert has previously subdivided an adjacent lot through an Urban Lot Split.

If the project meets the criteria outlined above, a local agency may only deny a proposed housing development project or Urban Lot Split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed project (1) would have a specific, adverse impact upon public health and safety or the physical

-
- (B) Prime farmland or farmland of statewide importance.
 - (C) Wetlands.
 - (D) A very high fire hazard severity zone, subject to certain limitations.
 - (E) A hazardous waste site that is listed pursuant to Section 65962.5, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
 - (F) A delineated earthquake fault zone as determined by the State Geologist, unless the development complies with applicable seismic protection building code standards.
 - (G) A 100-year flood zone special flood hazard area, subject to certain exceptions.
 - (H) A regulatory floodway as determined by the Federal Emergency Management Agency, subject to certain exceptions.
 - (I) Lands identified as part of a conservation or natural resource protection plan.
 - (J) Habitat for species protected under state or federal law.
 - (K) Lands under conservation easement.
- (Gov. Code, § 65913.4(a)(6).)

environment; and (2) there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

For projects that meet the requirements outlined above, the law also provides for certain development allowances and reduced restrictions for developers, including the following:

- a. Setbacks:
 - i. Existing structures or replacement structures: No setbacks are required for an existing structure or for new construction in the same location and having the same dimensions as an existing structure.
 - ii. New structures: Maximum setbacks of up to four feet from the side and rear lot lines may be required.
- b. The local agency may require up to one parking space per unit but may not require any spaces if the project is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or there is a car share vehicle located within one block of the parcel.
- c. A local agency may not require dedication of land or off-site improvements such as sidewalk, curb, and gutter improvements as a condition of approval of the Urban Lot Split.
- d. A local agency may not require the correction of existing, nonconforming zoning conditions as a condition of approving a lot split.

While SB 9 precludes discretionary review of qualifying projects on single-family zoned property, the statute expressly authorizes the City to impose objective zoning, subdivision, and design review standards to the extent they do not preclude an Urban Lot Split or the development of two units that are at least 800 square feet in floor area.

The State defines objective standards as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”

Analysis

Development of Objective Standards

As a matter of urgency and pursuant to Government Code § 65858, on December 21, 2021² City of Cupertino (“City”) staff brought Interim Ordinance 21-2235 (Attachment 3) before City Council to adopt objective standards for ministerial approval of up to two dwelling

² Staff report and attachments available online at:

<https://cupertino.legistar.com/LegislationDetail.aspx?ID=5362273&GUID=CB9F500E-8E12-41FA-8E97-2B33CCED758F&Options=&Search=>

units on a parcel and two lot subdivisions pursuant to SB 9. The Interim Ordinance was again brought before Council on February 1, 2022³ to extend the expiration date of the interim ordinance to December 19, 2022.

The key guiding principles in development of the Interim Urgency ordinance were to:

1. Preserve neighborhood character while accommodating increased density;
2. Maintain privacy protection for existing residents;
3. Minimize pedestrian, motor vehicle, and bicyclist conflicts from changes to sidewalk and roadway infrastructure necessary to accommodate increased density; and
4. Protect environmental resources while maintaining the ministerial level of review required by State law.

As the interim ordinance is set to expire at the end of the year, staff has prepared a regular ordinance that generally reflects the changes to the Municipal Code that were proposed and adopted through Interim Ordinance 21-2235. Since adoption of Interim Ordinance 21-2235, staff has received some requests for preliminary review of proposals for both Urban Lot Splits and duplex development under the provisions of SB 9, but no formal applications have been submitted. The key objectives of the regular ordinance remain consistent with the objectives of the interim ordinance and, while minor clarifying edits are proposed to make ordinance language more objective, only a few major changes are being considered to the adopted interim regulations based on feedback from the public and from City Council at their September 20, 2022⁴ study session of the ordinance.

On September 28, 2022, Planning Staff hosted a community meeting to offer general information related to SB 9 to the public and to receive feedback related to the proposed regular ordinance. Of the 101 attendees, 86 attended via Zoom while 15 attended in person. Polls were conducted on the attendees' thoughts on proposed standards.

A summary of significant provisions of the proposed ordinance is provided below. Please note that the discussion of provisions below do not reflect the full scope of regulations proposed through the regular ordinance (Attachment 1). The differences between the Interim Ordinance adopted in December 2021 and the proposed regular ordinance are indicated in Attachment 4 in redlines.

³ Staff report and attachments available online at:
<https://cupertino.legistar.com/MeetingDetail.aspx?ID=916228&GUID=2DF752C6-C534-4A29-9F8E-FDC0DCA10815&Options=info|&Search=>

⁴ Staff report and attachments available online at:
<https://cupertino.legistar.com/MeetingDetail.aspx?ID=916885&GUID=D781CA4C-BAB1-4CFE-B642-E8A14BC1CBE9&Search=>

1. Urban Lot Splits Pursuant to SB 9

Presently, typical lot shapes in the City include the following:

- Interior Lots - A rectangular or close to rectangular shaped lot with street frontage on one street;
- Corner Lots - A lot that fronts two different streets;
- Cul-de-Sac or Pie-Shaped Lots - Lots that have a significantly smaller front lot line than its rear lot line or lots with more than four lot lines where the front lot line is smaller than the other lot lines; and
- Flag Lots - A lot that has a quadrilateral shaped (mostly rectilinear) buildable lot but with access either through another lot or a portion of its lot that is designed solely for access.

SB 9 does not speak to lot configuration requirements, but the statute allows local jurisdictions to develop objective standards to implement its ministerial lot split provisions. Urban Lot Splits cannot be reviewed under typical discretionary standards, and as such the interim ordinance included objective standards for lot configuration to better ensure neighborhood compatibility and orderly subdivision, minimize conflicts with pedestrians and bicyclists, and minimize hardscape associated with proposed Urban Lot Splits.

Objective subdivision standards for Urban Lot Splits incorporated into Interim Ordinance 21-2235, and now the proposed ordinance, reflect design strategies and General Plan policies while taking into account these different lot shapes. In all cases, Urban Lot Splits will be subject to the State's requirements that the two resulting lots be roughly equal in size (no more than 60% or less than 40% of the original lot size) and that the resulting lots be no less than 1,200 square feet.

a. *R1 Zoned Lots*

The City's General Plan Strategy LU-27.7.2 notes that flag lots should be allowed "...in cases where they are the sole alternative to integrate subdivisions with the surrounding neighborhood" — meaning that flag lots should be permitted *only* if there are others in the immediate neighborhood.⁵ This policy seeks to create engaging, inviting street frontages by maximizing opportunities for interaction between neighbors and the frontage. Additionally, consistent with the City's long term implementation of this General Plan strategy, only 1.7% of the R1 zoned lots in the City are flag lots. Further allowing flag lot subdivisions could increase privacy impacts from more units that are allowed under SB 9 developments.

Thus, Interim Ordinance 21-2235 incorporated objective standards that limit flag lot subdivisions in R1 zones to the extent such limitations are consistent with SB 9.

⁵ For example, there are no flag lots in the Rancho Rinconada/Blaney neighborhoods.

Based on these standards, lots of up to 30 feet in width may be developed consistent with the proposed regulations related to garage façade, etc.⁶ Subdivision is allowed under the Interim Ordinance standards as follows:

- i. No more than two new property lines may be added to create a new lot.
- ii. Existing interior lots or pie shaped lots with 60 feet or more street frontage: resulting lots shall have a street frontage that is between 40-60% of the lot width of the lot being subdivided.
- iii. Existing interior lots or pie shaped lots with less than 60 feet of street frontage: one of the resulting lots shall be a flag lot with access to the street.
- iv. Existing flag lot subdivision: resulting lots must be subdivided in the same orientation as the existing lot (i.e., the existing front lot line must be the front lot line of the future lots and the existing rear lot line shall be the rear lot line of the future lots) and shall be between 40-60% of the lot width of the lot being subdivided.
- v. Corner lots: Shall be subdivided in a manner that the existing street side property line shall be split to create at least one front lot line on that frontage.

Comments were received from at least three persons regarding specifically the regulations of lots with a street width greater than or equal to 60 feet. As outlined above, the adopted interim regulations require existing interior and pie shaped lots with 60 feet or more of street frontage to result in two side-by-side interior lots, rather than as one interior lot and one flag lot as indicated in Figure 1. No comments on other lot split configuration requirements introduced through the interim ordinance have been received.

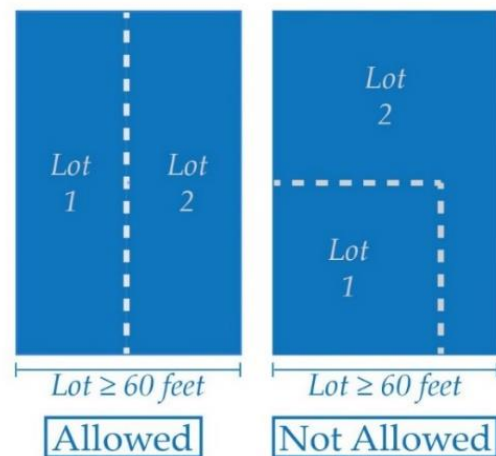


Figure 1: Interior Lot Urban Lot Split

At their September 20, 2022 study session, Council discussed potential modifications to the current subdivision standards that would allow greater flexibility in allowing for flag lots but noted that there remained a general concern for privacy protection of adjacent neighbors. Councilmembers also noted that they would await Planning Commission’s recommendation on the standard.

⁶ Lots with a 30-foot frontage, would allow the development of a home façade of 22 feet, which allows for a one car garage space and living space adjacent to it; no more than 50% of the frontage would be occupied by a garage façade. This could be further enhanced by utilizing the zero-setback provisions.

Additionally, at the September 28th community meeting, about 77% of respondents indicated that they think that the City should allow for the creation of flag lots from existing lots that are larger than a typical lot.

Staff has conducted additional research and found that, with the subdivision standards in the interim ordinance, a flag lot would be allowed on approximately 27.4% of interior, non-flag, R1 zoned lots. Modifying this standard to allow for lots with street frontages of 75 feet would allow approximately 47.6% of interior, non-flag, R1 zoned lots to be subdivided as flag lots⁷ - approximately half the lots in the City. Since it appeared that there might be an appetite to allow the creation of flag lots within the City, in the proposed regular ordinance, Staff recommends modified regulations in some situations where there are wider but deeper lots.

Under the modified regulations, flag lots would be permitted, as an option, on interior or pie shaped lots with a street frontage of more than 75 feet that also have a lot depth (after all future dedications) of 145 feet or more. Lots with a street frontage between 60 and 75 feet, and lots with a street frontage of more than 75 feet but a depth of less than 145 feet, would be required to result in lots with a street frontage that is at least 40% of the existing street frontage of the lot being subdivided and be in a side-by-side orientation.

The added standard for a minimum lot depth of 145 feet ensures that building pads of reasonable size may be obtained through the subdivision process and encourage the development of units in a manner which would allow properties to have rear yard space larger than four feet to reduce impacts to neighbors. It should be noted that added application of the lot depth standard would reduce the number of properties that could subdivide as flag lots. Staff has tried to research how many lots this would apply to; however, the City's does not have lot depth data readily available.

Should the Planning Commission wish to retain the interim regulations, the language to continue allowing only side by side lot splits for lots with a street frontage of more than 60 feet, has been provided for Planning Commission's consideration in Attachment 5. Retaining the standards adopted through Interim Ordinance 21-2235 would continue consistency with adopted General Plan strategies, consistency with the existing patterns of lot configuration in Cupertino and mitigate the potential for increased privacy impacts that may occur through the allowance of flag lots.

⁷ Estimates are derived from the City's GIS data.

b. *RHS Zoned Lots*

Hillside properties zoned for single-family residential are also subject to SB 9. Of particular concern on these properties are building sites that are accessible only via long driveways and are not close to a public street. On these sites, shared common access is required to minimize points of conflict with pedestrians due to the lack of pedestrian amenities in the hillside zoning district and to minimize grading in the hills.

With that in mind, staff has included an objective design standard for Urban Lot Splits and development proposed pursuant to SB 9 that requires each resulting lot of an Urban Lot Split in the RHS zoning district to share one common driveway. Where an existing driveway or curb cut exists, a new driveway or curb cut location will not be approved under this standard. Additionally, for SB 9 projects, graded areas are limited to within 50 feet of the building pad area. These standards are consistent with those that were adopted through Interim Ordinance 21-2235.

Additionally, an objective design standard was adopted through Interim Ordinance 21-2235 that required that, in the RHS zone, building pads must be identified on the flattest portion of the resulting lots closest to an existing or proposed new driveway. In the proposed regular ordinance, staff has expanded this standard to read as follows:

Building pads shall be identified on the flattest portion of a lot, closest to an existing or proposed new driveway. Where no driveway exists, building pads shall be identified on the flattest portion of the lot, closest to the access road unless doing so would result in a combined grading total greater than that required for siting elsewhere on the lot. In those cases, building pads shall be sited so as to result in the minimum required grading to develop two units of up to 800 square feet each.

These changes have been included to ensure that, on lots where no urban lot split has been approved, siting of structures and driveways would result in the minimum amount of grading required to establish the minimum allowable use.

In those cases that require more significant change in grade, requirements for retaining wall design have been included to address potential aesthetic impacts of development in the hillside area. This standard requires the screening of retaining walls with landscaping in all cases and, where a retaining wall exceeds five feet in height, requires that the retaining wall not be visible from the public right of way, prominent intersections listed in Section 19.40.050(F)(1), nor face an adjacent property.

c. Grade Change Limitations

A limitation to change in grade of not more than six inches for improvements related to an Urban Lot Split was adopted through the interim ordinance. This standard was established to mitigate:

- i. Potential privacy impacts from smaller lots;
- ii. Aesthetic impacts resulting from varying cuts and heights of development of ministerially subdivided lots, and
- iii. Potential environmental impacts resulting from a ministerially reviewed Parcel Map.

By way of background, per the Municipal Code, the height of a proposed development is measured from the natural grade, defined as the contour of the land prior to improvements or development, unless otherwise established by a City-approved grading plan that is part of a subdivision map approval. As Urban Lot Splits would be accompanied by a City-approved grading plan, a significant change in grade elevation approved as part of an Urban Lot Split may result in increases to building height and finished floor elevations, unless specific objective standards are adopted.

With regards to privacy protection, this limitation to grade change ensures that the grade elevation will not be increased to an extent which would lead to additional potential for privacy impacts. As previously noted, projects proposed under the provisions of SB 9 must be reviewed ministerially and, therefore, additional considerations for privacy impacts may not be made on a case-by-case basis. Additionally, this standard limits the potential for proposals to significantly alter natural contours on the site to accommodate an Urban Lot Split or development proposed pursuant to SB 9.

It should be noted that this grade change limitation, when adopted through the interim ordinance, was applied exclusively to the grading associated with subdivision improvements with Urban Lot Splits and was not applicable to requests for development of homes under the provisions of SB 9. Additionally, the objective grading standards which limit total grading through a maximum allowance of grading measured through cubic yards also apply to projects with slopes exceeding 20% in R1 zones and to all projects in RHS zones.

The six-inch limitation was put in place to avoid substantial changes in grade that may affect allowable heights and/or result in exorbitant cuts and/or fill that lead to significant environmental impacts. However, the interim standard could be too restrictive to development of lots even with minor slopes. For example, a proposed 20-foot in length cut to accommodate a building pad on a lot with a consistent upward slope of about five percent (5%) would result in an elevation change of approximately one foot (1 foot) and would not meet this standard.

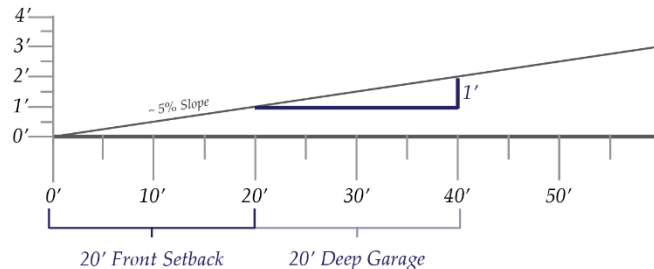


Figure 2: Grading on ~5% Slope

At the September 20, 2022 study session, staff brought the issue before Council for direction as to whether the standard adopted through Interim Ordinance 21-2235 should be included in the regular ordinance or whether the ordinance should be modified to (1) allow for additional flexibility on modestly sloped properties and (2) apply the standard to grading associated with residences developed under SB 9 provisions in addition to Urban Lot Splits. Councilmembers generally advised that staff modify the language to make the standard reasonable based on the expected development under SB 9. As such, staff recommends revising this standard. As revised, the standard would be applicable to both Urban Lot Splits and residential development proposed pursuant to SB 9 and would be scalable based on the overall slope of the lot to thoughtfully implement on lots with outlying conditions while meeting the requirements for objective standards. The standard allows less grading on flatter lots and allows additional grading, in modest amounts to steeper lots. These standards are incorporated in the draft ordinance and allow a 12" grade change on lots with slopes between 0 – 5%, 24" grade change on lots with slopes between 6 – 10% and require a peer reviewed grading and drainage plan to confirm that grading on all slopes exceeding 10% is limited to the minimum extent necessary to accommodate on-site parking and living space.

d. *Driveways*

The General Plan also has a policy (Policy M-3.5) to “[m]inimize the number and width of driveway openings” in the interest of pedestrian and bicycle safety. Interim Ordinance 21-2235 included measures that required shared access over the flag lot access area in R1 zones to minimize the number of conflicts with pedestrian and bicyclists and the number of curb cuts. Additionally, the interim ordinance required that, in R1 zoning designations, a one car curb cut be used in cases where

at least one parallel, on-street parking spot could not be accommodated between the proposed and existing curb cuts.

Similar to those standards adopted through the interim ordinance, in the regular ordinance staff has proposed standards that require shared access on flag lots and limits driveways to a single-car curb cut unless space for at least one parallel, on-street parking between the two driveways can be accommodated. Minor modifications to the language adopted through the interim ordinance have been proposed to add clarity and ensure that the standards will be consistently applied. The standards remain applicable only to R1 zoned properties. Driveway requirements for RHS zoned properties are outlined in subsection b, above.

e. *Condominium, Community Apartment or Stock Cooperative Project*

At its December 21, 2021 meeting, Council discussed and opted to disallow condominium conversion of units developed under the allowances of SB 9. This standard was incorporated into the Interim Ordinance and has been carried over to the proposed regular ordinance.

Discussion of condominium conversion was reintroduced at the Council's September 20th study session. Councilmembers brought forward opposing ideas with some stating that conversion should be allowed, indicating that it would allow for more development opportunities and for ownership of smaller and potentially more affordable units than previously available. Others noted that they continued to support disallowing condominium conversion in SB 9 development. Additionally, at the September 28th community meeting, about 62% of respondents indicated that they think that the City should continue to not allow for condominium conversion of units created under SB 9.

While discretion ultimately lies with the decision-making bodies, staff recommends disallowing condominium conversion to avoid potential conflicts with neighborhood and lot patterns, and shared areas and maintenance.

f. *Process*

Urban Lot Splits will continue to be processed similar to a Parcel Map. However, no public hearing will be required due to limitations of state law. Standards adopted through the interim ordinance and carried over to the proposed regular ordinance require notices to be sent to adjacent property owners as a courtesy prior to action on a project, to inform them of upcoming potential development. However, no appeals are allowed of ministerial decisions pursuant to state law.

2. Ministerial approval of up to two units (i.e. either one single family home or a duplex)

SB 9 allows the City to impose objective standards on qualifying housing development projects so long as they do not conflict with the requirements of the statute, including minimum unit size and maximum rear and side setback requirements.

a. *Unit Size and Floor Area Ratio*

SB 9 allows for two units of 800 square feet each to be developed on a single-family residential lot. As such, any proposed ordinance or regulations may not limit the size of a unit to below 800 square feet. The ordinance is structured in a manner where an applicant may either comply with state law requirements and build two 800 sq. ft. units; or propose a project that would meet all the other objective standards required pursuant to the ordinance, in which case the project would be allowed a Floor Area Ratio equal to current discretionary approval standards. In both the adopted interim ordinance and the proposed regular ordinance, the Floor Area Ratio in the R1 zoning district is 45% of the net lot area and, in the Residential Hillside (“RHS”) zoning district, the Floor Area Ratio is based on the average slope of the lot, up to a maximum of 6,500 square feet. Should the other adopted standards conflict with the projects ability to construct 800 square foot units, the project would be allowed to at least construct the state mandated 800 square foot units.

In the R1 zoning district, the larger unit in a duplex development may be no more than 200 square feet larger than the smaller unit. This standard has not been applied to development in the RHS zoning district and is consistent with the standards that were previously adopted through the interim ordinance. Additionally, second-story floor area in units exceeding 800 square feet in size in the R1 zoning district is limited to 50% of the floor area of the first story. Alternatively, a project may have a second-story floor area of up to a maximum of 66% if the first story of a combined first-story side setback of 15 feet (with no first-story setback of five feet), second-story setbacks of at least 15 feet each, a first-story rear setback of 20 feet, and a second-story rear setback of 25 feet are provided. Separate standards for second to first-story floor area ratio are provided for properties within the R1-a zoning district.

As part of their approval of Interim Ordinance 21-2235, City Council included a standard that no units developed under the provisions of SB 9 shall exceed 2,000 square feet of living space⁸. At their September 20th study session some

⁸ Cupertino Municipal Code Section 19.08.030 defines living space, for the purposes of Chapter 19.112, as the same as that set forth for “living area” in California Government Code Section 65852.2(j)(4). This

Councilmembers noted that this limitation may need to be revisited and at the September 28th community meeting, approximately 61% of respondents indicated that they thought the city should either increase the maximum allowable square footage or remove the limit entirely.

Staff has found that this limitation only impacts approximately 100 of the close to 17,000 lots in Cupertino and was adopted by Council in a bid to ensure that those homes remain affordable. It should be noted that properties that may be impacted by the unit size limitation, may continue to develop homes under the City's other development pathways (e.g. Two-Story Permit). As such, this limitation has been carried over to the proposed regular ordinance and continues to be applied to development in both R1 and RHS zoning districts.

b. *Setbacks*

Current front yard setback requirements for properties will remain applicable to SB 9 development. Pursuant to SB 9, the City can require a maximum setback of four feet on the side and rear. Additionally, per State law, no setbacks are required for an existing structure or for new construction in the same location and having the same dimensions as an existing structure.

The City's ordinance incorporates objective standards to address potential privacy impacts from the reduced required side and rear setbacks. If a four-foot setback from the side and rear property lines is proposed for development in the R1 zoning district, windows on the second floor must be opaque, unopenable, or be located above a 5-foot sill height. However, as an incentive for increased second story setbacks, if a setback of at least 10 feet on the side yards and 25 feet on the rear yard is proposed, second story windows, without limitations, may be proposed with incorporation of privacy protection plantings. These privacy protection plantings are similar to the City's existing standards for second story windows. Objective standards for landscaping and privacy protection are included.

Interim Ordinance 21-2235 included an allowance for a zero-foot side and rear setback from other lots developed pursuant to SB 9 (but not from surrounding properties). The purpose of this allowance is to encourage applicants to concentrate the massing of SB 9 projects close to the center of existing lots in order to limit impacts on adjacent properties. Following additional guidance at Council's September 20th study session⁹, staff has incorporated into the regular ordinance a similar allowance for a zero-foot side setback along the shared side yard lot line

definition has been expanded through the proposed ordinance to apply to Municipal Code Sections 19.40.090 and 19.28.150.

⁹ See footnote 4.

created through an Urban Lot Split in an R1 zoning district subject to the following criteria:

- i. More than one primary dwelling unit is proposed and approved concurrently with the Urban Lot Split;
 - ii. All units along zero-foot setback will be developed at same time;
 - iii. All other side yard setbacks are a minimum of five feet on first floor and 10 feet on second floor;
 - iv. The entirety of wall faces along the shared property line are structurally attached; and
 - v. Structures along the new shared property line shall be no more than zero feet or less than four feet.
- c. *Second Story Decks and Balconies*

At its December 21, 2021 meeting, Council discussed and opted to disallow second-story decks and balconies from developments proposed pursuant to SB 9. This standard was incorporated into the interim ordinance. However, under interim regulations and subsequent to ministerial approval of a development project under SB 9, an addition of a second story deck or balcony could be subsequently pursued through a discretionary Minor Residential Permit in R1 zones or through a non-discretionary Building Permit approval for properties in the RHS zoning district.

Following discussions at the September 20th study session, a majority of Councilmembers agreed that second story decks should be permitted in R1 zoning districts with the processing of a discretionary Minor Residential Permit (but not through the ministerial SB 9 process). In addition, they directed staff to create a standard that would allow for the expansion of *discretionary* approval of decks and balconies following development of SB 9 units in the RHS zone or to require additional flexibility in the objective standards by requiring a larger setback for these features. At the September 28th community meeting, approximately 64% of respondents indicated that they thought the City should allow balconies on development proposed pursuant to SB 9 with the majority of indicating that these features should be allowed without further restriction.

While discretion ultimately lies with the decision-making bodies, staff recommends disallowing second story decks and balconies unless subsequently approved through a discretionary permit in both R1 and RHS zones to avoid potential privacy impacts resulting from development on potentially narrower lots. Staff has prepared alternatives to the recommended standard for Planning Commission's consideration (Attachment 5).

d. *Parking*

SB 9 does not allow the City to require more than one parking space per unit¹⁰. The proposed ordinance requires that the parking space be in an enclosed garage space of at least 10 feet by 20 feet, unobstructed (i.e., by walls, appliances, etc.) between six inches from finished floor up to six feet from finished floor. Should the applicant propose additional parking spaces, they must meet the City's requirements related to parking stall size and configuration. In addition, to ensure that the City continues to forward its mobility goals of the General Plan, driveway curb cuts are limited in size per the City's existing Public Works standards. The proposed standards are consistent with those that were adopted through Interim Ordinance 21-2235.

e. *Basements*

SB 9 was adopted by the State to encourage the development of affordable units. The construction of basements, including the removal and off-haul of large amounts of soil to accommodate a basement, can add significantly to the cost of these units. At its December 21, 2021 meeting, Council discussed and opted to disallow basements from developments proposed pursuant to SB 9 in both R1 and RHS zones. This standard was incorporated into the Interim Ordinance and has been carried over to the proposed regular ordinance.

At the September 28th community meeting, approximately 73% of respondents indicated that they thought the City should allow basements in development proposed pursuant to SB 9 with the majority of indicating that the basement should be allowed without further restriction.

While discretion ultimately lies with the decision-making bodies, staff recommends disallowing basements in both R1 and RHS zones to ensure that unit development remains affordable and to remain consistent with the proposed grading limitations. Staff has prepared alternatives to the recommended standard for Planning Commission's consideration (Attachment 5). These alternatives have objective standards to ensure that impacts of basements are minimized and moved away from neighboring properties.

¹⁰ Under Government Code Section 65852.21, a local agency cannot impose parking requirements in either of the following instances:

- (A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.
- (B) There is a car share vehicle located within one block of the parcel.

f. *Design Standards*

Objective design standards have been incorporated into the R1 and RHS zoning districts for projects proposed pursuant to SB 9. In the R1 zoning district, these standards have been incorporated to ensure that entry features resulting from duplex developments do not overwhelm the development, while advancing the General Plan goals of ensuring porches and stoops are located close to the right of way.

In both R1 and RHS zoning designations, several existing design standards have been incorporated into the proposed ordinance, including:

- i. No more than 50% of the front face shall be occupied by the garage and the garage shall be setback a minimum of two feet from the face of living space.
- ii. Garage doors for no more than two car spaces shall be visible from the public right of way.
- iii. Additional parking spaces must be proposed in tandem or at the rear of the property.
- iv. Entry features shall be limited to 14 feet in height from the natural grade to the top of wall plate.

Other design standards are proposed to ensure that blank facades are not proposed by requiring minimum architectural features or interest on facades facing the street. Window trim is required around windows or as an alternative, windows are required to be setback to allow shading and interest to the building. Finally, exposed or uncovered staircases to the second floor are disallowed to preserve privacy.

It should be noted that the proposed ordinance has also attempted to ensure that existing regulations in specific zoning areas – such as R1-a or R1-i – are incorporated, to the extent feasible, in ministerial developments. The R1-a zoning regulations were crafted with significant input from the residents of this zoning district to retain a rural feel by incorporating traditional design features into development such as requiring porch features, increased setbacks, and traditional design features. The R1-i zoning district is a single-story overlay zoning district.

g. *Second Story Building Envelope*

Additionally, at their September 20, 2022 study session, Council discussed the City's requirement for a second story building envelope that was codified through the approval of Interim Ordinance 21-2235. This standard requires that second story development in R1 zones proposed pursuant to SB 9 have a maximum exterior wall height and building height on two-story sections of two-story structures that fits into the building envelope defined by:

- i. A 15-foot-high vertical line from natural grade measured at the property line; and
- ii. A 25-degree roof line angle projected inward at the 15-foot-high line referenced above.

Per Council's direction, Staff has retained the standard and has incorporated a clarification to the zero-foot setback standards to ensure that the building envelope requirement does not impede the implementation of a zero-foot setback. Aside from minor modifications made to ensure clarity and consistency in application of the regulations, the proposed objective design standards are consistent with those that were adopted through the interim ordinance.

h. *Private Open Space*

In both R1 and RHS zoning districts, each unit would be required to have a minimum of 15% of the unit's floor area as private open space on the ground floor with no dimension less than 10 feet. This requirement was adopted through the interim ordinance and has been carried over to the proposed regular ordinance. This has been further clarified to mean that the area shall not be provided within the required front setback.

i. *Refuse, Outdoor Lighting, and Other*

Space must be provided for all refuse and recycling containers on the site. All outdoor lighting and fencing must comply with the City's existing standards. Yard encroachments continue to be allowed for architectural features that do not incorporate useable floor area – these include bay windows, chimneys etc. This requirement was adopted through the interim ordinance and has been carried over to the proposed regular ordinance.

j. *Definitions*

Definitions for "Bay Window" (required to determine floor area), "Gable End" (required for design standards), "Pie-shaped lots" (required for subdivision and access standards) and "Substantially Enclosed" (required to determine floor area) have been carried over from the Interim Ordinance 21-2235 into the regular ordinance. The definition of "Bay Window" and "Substantially Enclosed" is in keeping with the way these terms would be interpreted for discretionary projects even though they are not currently defined in the Municipal Code. The definition for "Duplex" has been refined to include attached and detached units on a lot. Following approval of Interim Ordinance 21-2235, staff has incorporated these definitions into the regular ordinance:

- "Street Frontage" to further clarify added standards for Urban Lot Splits.

- “Living Space” to expand the definition to also apply to the ministerial approval of up to two units.
- “Flag Lot” to provide further clarity regarding what is considered a flag lot.
- “Lot Depth” to implement the lot configuration standards proposed through this ordinance.
- “Private Open Space” for the purposes of providing useable recreational space in SB 9 developments.
- “Flat Yard Area” for the purpose of establishing a limit on the amount of graded area associated with private recreation on slopes steeper than 10%.

k. *Additional Regulations in the RHS Zoning District*

There are several large lots on steep slopes in the RHS zoning district which are the subject of SB 9 projects. In order to ensure that the impacts from development in the hills are minimized, existing limitations on grading and size of units are proposed to be retained.

Consistent with the General Plan policies and currently permitted densities, development in the hillsides would be allowed only if driveways are shared (*to minimize grading*) and new building pads are either located close to existing building pads or flat areas close to existing driveway locations (*to encourage clustering of development*). The existing Hillside Ordinance already implements much of the intent of the General Plan related to massing, following contours, disallowing much development on a ridgeline. The objective requirements of the Hillside Ordinance would continue to apply to SB 9 projects. Some minor clarifications have been made to existing language to clarify the language in Subsection 19.40.060(E) and 19.40.060(I). Additionally, objective standards have been added related to the following:

- i. Disallowing garages from being the predominant feature on units pursuant to SB 9.
- ii. Entry feature regulations
- iii. Screening structures from prominent intersections (listed in the ordinance). Views of the hills from these intersections have historically been used to evaluate the visibility of hillside homes when Hillside Exceptions have been sought.
- iv. Requiring privacy protection for second story windows and requiring windows to be opaque, unopenable, with fixed louvers or a minimum sill height of 5’1” unless setback a certain distance.

These standards are consistent with the standards that were adopted through Interim Ordinance 21-2235.

1. *Frontage Improvements and Dedication*

SB 9 disallows the City to require dedications or frontage improvements with an Urban Lot Split. However, it does not disallow the City from requiring these items when the lot is developed after subdivision. In the interests of furthering the City's mobility and safety goals, frontage improvements and dedication will be required at time of development of the lot. This standard is consistent with the regulations adopted through Interim Ordinance 21-2235.

m. *Process*

A new permit type, Miscellaneous Ministerial Permit, had been created to process projects pursuant to SB 9. As a result, amendments are included in Chapter 19.12, Administration, to ensure that the permit can be processed in compliance with State law. The ordinance language authorizes the City Council to set a fee by resolution to recoup reasonable costs associated with processing such applications. Council approved a new fee for Miscellaneous Ministerial Permits through Ordinance 22-049 at their February 1, 2022 meeting.

Additionally, the ordinance requires that notice be sent to adjacent neighbors as a courtesy, fourteen days before a decision is made on the project. It should be noted that the ministerial approval process does not involve any appeal process. It is expected that this will be made clear in the notice.

These standards are consistent with the standards that were adopted through Interim Ordinance 21-2235.

3. Limitations on construction of accessory dwelling units

Under SB 9, a local agency is not required to permit the construction of an accessory dwelling unit ("ADU") or a junior accessory dwelling unit ("JADU") on the resulting parcels of an urban lot split, where one or more units have also been approved for construction under SB 9. Interim Ordinance 21-2235 included a standard that limited the construction of ADUs and JADUs on lots resulting from an urban lot split where the construction of one or more units has been ministerially approved. This restriction does not apply to lots resulting from an urban lot split where a residence, not utilizing the provisions of SB 9, is proposed. In such a case, an ADU would be allowed. Additionally, this restriction does not apply to properties where no subdivision through an urban lot split has occurred.

The proposed ordinance carries over the restriction on ADUs and JADUs, however, comments received from the public have indicated that a less restrictive standard may be desired. While Staff is not recommending a change from the standards adopted with the interim ordinance, Staff has prepared an alternative to the recommended standard for Planning Commission's consideration (Attachment 5). The alternative language would

allow for the construction of ADUs and JADUs on lots resulting from an urban lot split when only one residential unit utilizing the provisions of SB 9 is developed and would disallow ADUs and JADUs when two SB 9 units are developed.

California Environmental Quality Act (CEQA)

The project is statutorily exempt as, pursuant to Government Code § 65852.21(j) and § 66411.7(n), the adoption of an ordinance by a city or county implementing the provisions of Government Code §§ 65852.21 and 66411.7 and regulating Urban Lot Splits and two-unit projects is exempt from the requirements of CEQA.

Next Steps

As noted above, pursuant to Government Code § 65858, the City adopted an interim ordinance to implement objective standards for review of projects under the provisions of SB 9. Interim Ordinance 21-2235 is set to expire on December 19, 2022, prompting the need to adopt a regular ordinance. The following meeting dates have been tentatively identified by staff to bring the ordinance, along with the Commission’s recommendation, to City Council while accommodating adequate time for preparation of materials and deliberation before the Interim Ordinance expires.

Tuesday, November 1, 2022: City Council hearing to conduct first reading of the draft municipal code amendments.

Tuesday, November 15, 2022: City Council hearing to conduct second reading of the draft municipal code amendments.

Prepared by: Emi Sugiyama, Assistant Planner
Reviewed by: Piu Ghosh, Planning Manager
Approved for Submission by: Benjamin Fu, Director of Community Development

Attachments:

- 1 – Draft Resolution
- 2 – Senate Bill 9 (2019, Atkins)
- 3 – Interim Ordinance No: 21-2235
- 4 – Changes proposed since adoption of Interim Ordinance No 21-2235 (redlines)
- 5 – Alternative Standards