



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: September 20, 2022

#### **Subject**

Study Session to consider potential Municipal Code Amendments to allow properties in Single-Family Residential Districts to subdivide properties into two lots and/or develop properties with up to two units ministerially pursuant to California Senate Bill 9. (Application No.: MCA-2022-001; Applicant: City of Cupertino; Location: Citywide in all single-family residential zones)

#### **Recommended Action**

That the City Council receive this report and provide direction to staff on next steps related to finalizing a regular ordinance to implement Senate Bill 9.

#### **Discussion**

##### ***Background***

Senate Bill 9 (“SB 9”) was signed into law on September 16, 2021 with an effective date of January 1, 2022 (Attachment A). As a matter of urgency and pursuant to Government Code §65858, on December 21, 2021<sup>1</sup> City of Cupertino (“City”) staff brought Interim Ordinance 21-2235 (Attachment B) before City Council to adopt objective standards for ministerial approval of up to two dwelling units on a parcel and two lot subdivisions pursuant to SB 9. The Interim Ordinance was again brought before Council on February 1, 2022<sup>2</sup> to extend the expiration date of the interim ordinance to December 19, 2022.

Pursuant to the City Council’s policy which allows two councilmembers to request items for future meeting agendas, at the December 21, 2021 meeting, Councilmember Moore and Mayor Paul directed staff to conduct a study session regarding potential amendments to Interim Ordinance 21-2235. This study session responds to that request.

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<sup>1</sup> Staff report and attachments available online at:

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

<sup>2</sup> Staff report and attachments available online at:

<https://cupertino.legistar.com/MeetingDetail.aspx?ID=916228&GUID=2DF752C6-C534-4A29-9F8E-FDC0DCA10815&Options=info|&Search=>

This staff report provides a brief overview of the provisions of SB 9, a list of items that may be addressed through a regular ordinance, and a timeline for adoption of a regular ordinance.

## *Analysis*

### **State Law Overview**

SB 9 requires ministerial approval of 1) up to two units in single-family residential zones, subject to certain conditions, and 2) two lot subdivisions (“Urban Lot Splits”) in single family residential districts, subject to similar conditions, with no public hearing. If the conditions are met for both an Urban Lot Split and duplex development, their approval can result in the development of up to four units on one existing single-family residential lot. The state mandated requirements for approval are discussed in further detail in the Staff Report for the December 21, 2021 meeting agenda packet.<sup>3</sup>

### **Preparation of Ordinance**

Staff is preparing an ordinance to implement the provisions for Urban Lot Splits and multiple unit development which consists of new objective subdivision standards, revised development standards, and objective design standards. These regulations aim 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.

### **Updates to Ordinance**

A regular ordinance to implement SB 9 is being prepared for presentation to the Planning Commission in October with City Council hearings in November of this year. 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. While minor clarifying edits are proposed to make ordinance language more objective, no major changes are being considered to the adopted interim regulations. However, after reviewing the preliminary proposals, receiving questions and comments from the public, and considering prior Council discussions, staff requests direction from Council on the following matters:

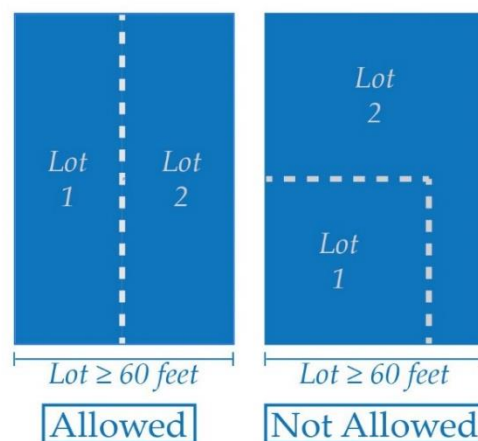
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<sup>3</sup> [See](#) footnote 1.

a. Lot Configuration

Interim Ordinance 21-2235 includes language in Municipal Code Section 19.28.060 that requires proposed Urban Lot Splits to follow a specified lot configuration based on the existing lot shape. Staff seeks Council direction on whether to retain or modify this provision in a regular ordinance.

While existing flag lots and lots with street frontage of less than 60 feet may result in flag lots, the adopted 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 below.

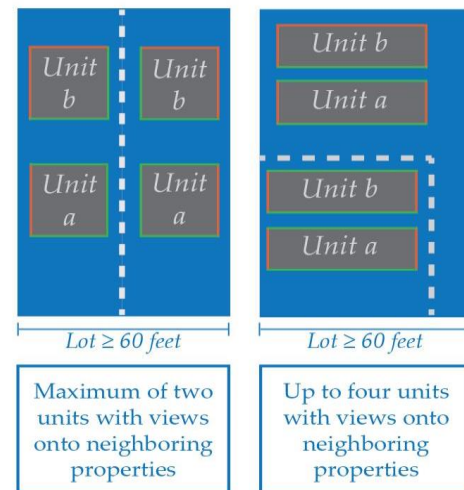


**Figure 1: Interior Lot Urban Lot**

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.

The interim ordinance standards are consistent with General Plan Policy LU-27.7 which states: *“Compatibility of Lots. Ensure that zoning, subdivision, and lot-line adjustment requests related to lot size or lot design **consider the need to preserve neighborhood lot patterns**”* (emphasis added) and General Plan Strategy 27.7.2 which states: *“Allow flag lots only in cases where they are the sole alternative to integrate subdivisions with the surrounding neighborhood.”* These standards are also consistent with the City’s current lot configuration pattern, where flag lots are not the predominant pattern of development. This is evidenced by the fact that, per the City’s GIS, there are fewer than 180 flag lots in R1 zoned areas in the City, which amounts to roughly 1.7% of the R1 zoned lots.

If lots with street frontages greater than or equal to 60 feet are allowed to result in flag lots, SB 9 would allow the development of up to two units on the new flag lot. When compared to privacy impacts of a side-by-side subdivision, development of the flag lot could result in increased privacy impacts as existing, neighboring properties could be subject to overlapping viewsheds of up to four units. By contrast, side-by-side subdivisions would result in, at most, privacy impacts from two units (see Figure 2). It should be noted that, once adopted, the City would have no discretion in application of these regulations and would therefore be unable to provide any additional consideration to cases where privacy concerns are raised.



**Figure 2: Potential views due to subdivision**

Planning staff and the City Council have received comments from four individuals regarding the limitation of flag lots on properties with a street frontage of 60 feet or more. Comments have noted that this standard limits development, does not reflect the pattern of lot configuration in the City, and creates lots that are too narrow to accommodate development. As previously indicated, flag lots are not a common nor predominant pattern of lot configuration in Cupertino and only 1.7% of R1 lots in the City are flag lots. The interim regulations also attempt to address these concerns by allowing for a zero-foot setback for development at a new, shared property line, which ameliorates the potential design impacts of development on narrower lots created under SB 9 by encouraging greater separation from the existing, adjacent neighbors. However, it is within Council's discretion to allow for greater flexibility to create flag lots under the City's Urban Lot Split objective standards.

**Staff seeks Council's direction on whether to:**

1. **Retain the existing lot configuration standards which do not allow resulting flag lots on interior and pie shaped lots with a street frontage of more than 60 feet; or**
  2. **Modify the regulations to allow flag lot configuration on lots of all widths.**
- b. 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. However, the interim regulations disallowing balconies/decks currently apply only to R1 zoned properties and not to RHS properties. Since Urban Lot Splits would result in smaller lots, there would certainly be more consternation from existing residents regarding

their privacy. Project applications for SB 9 development are reviewed ministerially; therefore, should the regulations allow second-story decks or balconies, the City would have no discretion to identify or address potential privacy impacts not addressed through adopted objective standards. However, under current regulations and subsequent to ministerial approval of a development project under SB 9, property owners could apply for a discretionary Minor Residential Permit for a second story deck or balcony addition.

Staff is considering minor edits to the existing regulations for clarity and to implement Council's prior direction to disallow second-story decks and balconies in R1 zones for development proposed pursuant to SB 9.

**However, Staff seeks Council's direction on whether to:**

- 1. Retain existing second story deck and balcony regulations which prohibit these features only in R1 zones; or**
- 2. Modify regulations to disallow them**
  - i. In RHS zones; or**
  - ii. For all future lots and homes developed using SB 9.**

c. Grade Change Limitation

In consideration of privacy protection and potential environmental impacts, a change in grade of not more than six inches for improvements related to an Urban Lot Split is currently allowed (Municipal Code Section 18.20.170F). It should be noted that this standard is limited to Urban Lot Splits and is currently not applicable to requests for development of homes under the provisions of SB 9.

Per the Municipal Code, the height of 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, at the time of subdivision, 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 are 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.

The existing 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 existing standard may be restrictive to development of lots even with minor slopes. For example, a proposed 20-foot in length cut to accommodate a building pad on 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. As such, staff is considering minor changes to the ordinance to accommodate limited grading on such lots.

While draft language for this modification is still being developed for Cupertino, the following standards have been implemented in surrounding areas to address grade change concerns related to Urban Lot Splits and SB 9 development.

**City of Campbell:** A change in elevation (AMSL) from natural grade shall be limited to the minimum extent necessary to ensure adequate drainage as demonstrated by a grading and drainage plan prepared by a registered civil engineer.

**City of Los Gatos:** Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit.

**City of Los Altos:** First floor finished elevation shall be no more than twenty-two (22) inches above existing natural grade on a non-hillside lot. In a flood zone or flood way, the first-floor level may be set at the minimum allowed above grade to meet code requirements.  
For a hillside property, a stepped foundation is required where the average slope beneath the proposed structure  $\geq 10\%$ .

In addition to the modifications outlined above, Staff is considering extending the grade change limitation to home development under SB 9.

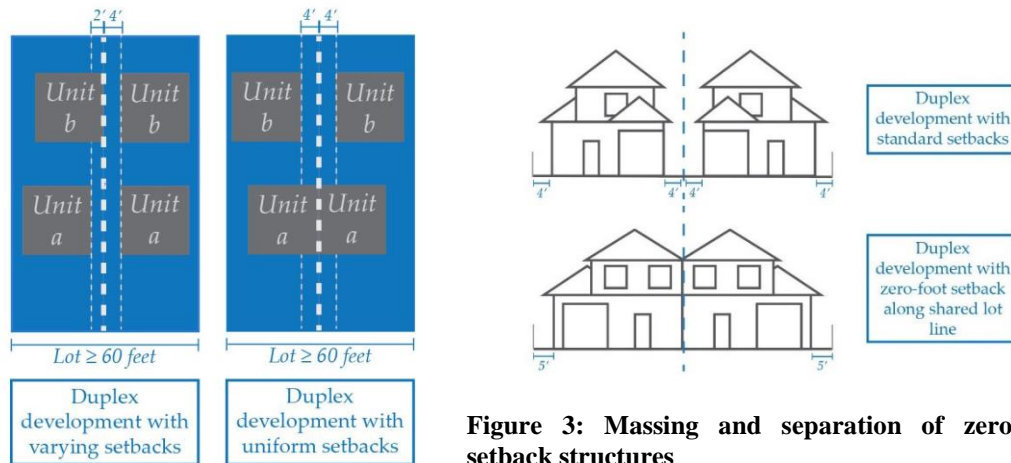
One member of the public requesting preliminary review has noted that this standard has limited their ability to pursue an Urban Lot Split of their RHS property. However, due to the ministerial nature of development under SB 9 and limitations on discretion, to eliminate the need for extensive and expensive grading on slopes and hillsides, and to ensure environmental protection, staff continues to recommend incorporating reasonable grading standards.

**Staff seeks Council's direction on whether to:**

- 1. Retain existing grade change limitations; or**
- 2. Modify regulations and apply revised limitations to both Urban Lot Splits and SB 9 development.**

d. Zero-Foot Setback Allowance

Under direction of City Council, a provision for eliminating setback requirements from new shared lot lines was added for development proposing more than one primary dwelling unit when approved concurrently with an Urban Lot Split.



**Figure 3: Massing and separation of zero-foot setback structures**

The existing standard does not explicitly outline the extent of allowance for variation in setback (i.e., whether a two-foot setback would be allowed) or whether one unit could be at a zero-foot setback while the other, on the adjacent lot could be at the state mandated four-foot setback. The intent of this provision was to create potential for an increased setback from property lines on the opposing sides which abut existing residences and to mitigate the perceived massing of development by allowing one standard house sized structure located more centrally across the lots.

To clarify the intent of this regulation, Staff is considering modifications to this standard to allow a zero-foot setback along a new shared property line only under certain circumstances and as an alternative to State mandated setbacks. Staff is considering allowing zero-foot setbacks only if: a) the opposing side yard setback is a minimum of five feet on the first floor and ten feet on the second floor; b) the units on the two side-by-side lots are developed at the same time; and c) the entirety of wall faces of both units on the shared lot line with a zero-foot setback are structurally attached. It is anticipated that the regulations would clarify that one unit cannot have a zero-foot setback while the other has a four-foot setback and that one cannot propose a setback between zero and four feet.

**Staff seeks Council's direction on whether to:**

1. **Retain the existing zero-foot setback allowance; or**
2. **Modify the regulations for zero-foot setbacks to either:**
  - i. **Clarify the objective design standards; or**
  - ii. **Remove the zero-foot setback allowance and require a four-foot setback, consistent with State law.**

e. Second Story Building Envelope Requirements

The interim regulations include a requirement for a second story building envelope. This was adopted to mitigate the mass of and privacy impacts from the second story by increasing its distance from adjacent neighbors.

One member of the public requesting preliminary review has noted that standards related to second story building envelopes do not allow for more modern designs with stacked first and second stories, and limit development potential. The current requirements promote a tiered design for two-story development that is generally consistent with the design requirements of all other non-SB 9, two-story homes in Cupertino. Additionally, it should be noted that proposals which utilize the City's allowance for a zero-foot setback from shared lot lines created through an Urban Lot Split are not subject to this second story building envelope requirement and may therefore, achieve a variation in the design of development. At this time, staff is not recommending making any changes to these requirements.

**However, staff seeks Council's direction on whether to:**

- 1. Retain existing second story building envelope regulations; or**
- 2. Modify regulations to eliminate the requirement.**

**Summary of Requests for Direction from Council**

As discussed above, staff seeks Council's direction on whether to:

- a. Flag Lot Configuration
  1. Retain the existing lot configuration standards which do not allow resulting flag lots on interior and pie shaped lots with a street frontage of more than 60 feet; or
  2. Modify the regulations to allow flag lot configuration on lots of all widths.
- b. Second-Story Decks and Balconies
  1. Retain existing second story deck and balcony regulations which prohibit these features only in the R1 zone; or
  2. Modify regulations to disallow them
    - i. In RHS zones; or
    - ii. For all future lots and homes developed using SB 9.
- c. Grading Change Limitation
  1. Retain existing grade change limitations; or
  2. Modify regulations and apply revised limitations to both Urban Lot Splits and SB 9 development.
- d. Zero-Foot Setback
  1. Retain the existing zero-foot setback allowance; or
  2. Modify the regulations for zero-foot setbacks to either:



- i. Clarify the objective design standards; or
  - ii. Remove the zero-foot setback allowance and require a four-foot setback, consistent with State law.
- e. Second Story Building Envelope
1. Retain existing second story building envelope regulations; or
  2. Modify regulations to eliminate the requirement.

### **Sustainability Impact**

The adoption of standards to implement SB 9 may potentially positively impact sustainability through the allowance of additional infill opportunities and further housing opportunities, while avoiding adverse impacts arising from underregulated SB 9 development. The additional housing created under these provisions may assist in addressing the City's current jobs-housing imbalance which may in turn influence vehicle miles traveled, also referred to as VMT, and greenhouse gas emissions in the City.

### **Fiscal Impact**

No fiscal impact. Council approved a permit fee for the new Miscellaneous Ministerial Permit through adoption of Resolution 22-049 while Urban Lot Split proposals will continue to be reviewed under the standard Parcel Map fee.

Application of these fees allow the City to recoup the costs of processing such permits.

### **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 statutorily 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 accommodate adequate time for preparation of materials and deliberation before the Interim Ordinance expires.

Wednesday, September 28, 2022: Community Meeting to review input from members of the public on proposed ordinance amendments.

Tuesday, October 11, 2022: Planning Commission hearing to review and make recommendations on draft municipal code amendments.

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.

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Christopher Jensen, City Attorney

Approved for Submission: Pamela Wu, City Manager

Attachments:

A – Senate Bill 9

B – Interim Ordinance No: 21-2235