



PUBLIC CORRESPONDENCE

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To send correspondence to the City Council, on matters listed on the agenda please email PublicComment@losaltosca.gov



LOS ALTOS RESIDENTS

November 7, 2021

Dear Mayor Fligor, Vice Mayor Enander, Councilmembers Lee Eng, Meadows, and Weinberg:

The State Legislature recently passed a housing bill, SB9, which allows a single-family home lot to be split into two lots. SB9 allows two housing units to be built on each of the lots created by the split for a total of four (4) housing units where one single-family home stood. Notably SB9, which will go into effect January 1, 2022, does not mandate any affordable housing.

In addition to the increase in density, SB9 does not require developers to pay for the impact the increase in density will have on neighborhood schools, roads, sewers, public safety resources and other infrastructure. Neighbors are not entitled to notification and have no say in the matter. But there are measures that each local government can choose to enact to mitigate the negative impacts of SB9. **We are asking the City Council to enact a resolution prior to December 31, 2021, to address the negative impacts of SB9 on Los Altos.** The resolution must be enacted by the end of this year to have effect.

First and foremost, let us address the issue of affordable housing. Many organizations in Los Altos have expressed support for SB9 because they are in favor of any legislation that would increase the supply of affordable housing. The members of Los Altos Residents support measures that will actually produce affordable housing.

Los Altos faces a real challenge with respect to its RHNA housing allotment. If you act prior to December 31, Council has a rare opportunity to enact measures to increase the number of affordable housing units in Los Altos and these housing units will count towards fulfilling our mandated RHNA housing allotment. **Council can enact a resolution that will ensure that a portion of the SB9 housing units created as a result of a lot split is deed restricted for low-income to moderate-income levels for a specified period of time.**

We have provided a list below of the measures that we urge you to include in such a resolution enacted no later than December 31, 2021, to mitigate SB9's negative impacts on the residents of Los Altos. These measures address affordable housing, privacy, density, parking, infrastructure, schools, parks, public safety, and transparency/notification of neighbors.

Affordable Covenant. There is at present an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require that a thirty-year affordable covenant for at least moderate-income level must be applied to two of the units and listed on the HCID registry of affordable units. [Emphasis added]

Maximum of Four Units and Two Lots. SB 9 obligates the City to allow two units per lot, and one lot split, for a total of four units and a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits, on any parcel that has been split once and on which four units have been approved. [Emphasis added]

Parking. The Bill allows the City to choose to require parking consistent with the terms of the Bill. Accordingly, the City shall require off-street parking of one space per unit, unless 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 or there is a car share vehicle located within one block of the parcel. [Emphasis added]

Impact/Development Fees. The City shall require the payment of impact or development fees related to the specific impact that will be imposed on a community by the creation of a SB 9 second lot and additional units. Impact fees can be related to a variety of impacts including but not limited to infrastructure, construction impacts, recreation, libraries, and public art. [Emphasis added]

Notification Requirements. Every SB 9 filing shall require the City to notify those property owners and tenants within a 1000-foot radius from the proposed project site that a parcel map has been filed with the City.

Objective Zoning/Subdivision/Design Standards. The Bill authorizes the City to impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to structures and parcels created by an urban lot split that do not conflict (with SB 9) or preclude the construction of two 800 square foot minimum housing units. Accordingly, all such existing objective City standards shall apply to SB 9 projects, in addition to any additional objective standards that the City may adopt. [Emphasis added]

Setbacks. SB 9 allows the City to choose to require setbacks consistent with the terms of the Bill. Accordingly, the City shall require setbacks of up to four feet from the side and rear lot lines in all SB 9 projects and circumstances that are not expressly exempted from such a requirement by the Bill. [Emphasis added]

Applicant Residency. The Bill requires every SB 9 applicant to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. To fulfill this obligation, the City shall require the applicant to sign and record an affidavit placing a covenant that will run with the land to confirm that the applicant will reside in one of the SB 9 units for three years from the City's grant of the application where a unit already exists, or, if no unit then exists, for three years from the City's issuance of the unit's Certificate of Occupancy. [Emphasis added]

Special District Exemptions. SB 9 exempts historic districts and structures from its terms, and also retains the protections of the California Coastal Act. Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts shall be exempt and protected from SB 9 development. [Emphasis added]

Unavoidable Adverse Impacts. The Bill authorizes the City to deny an SB 9 project upon written findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid. The City shall assess every SB 9 application for such unavoidable adverse impacts, shall provide its written assessment to the applicable City Council Office, and shall deny a project if an unavoidable adverse impact is identified. [Emphasis added]

Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts as identified above and others as appropriate shall be exempt and protected from SB 9 development.

Councilmembers this is an urgent matter that requires your immediate attention. We request that you take up this matter and pass a resolution to enact these measures prior to December 31, 2021. We are providing you with a draft resolution based on a resolution proposed for Los Angeles with the hope that it will provide a basis for you to act quickly.

Sincerely,

Freddie Wheeler
Steering Committee
Los Altos Residents
www.LosAltosResidents.org

Draft Resolution attached below

RESOLUTION

WHEREAS, Senate Bill 9 (Atkins) (the “Bill” or “SB 9”), entitled the California Home Act, was signed into law by the Governor on September 19, 2021, and becomes effective on January 1, 2022; and

WHEREAS, the Bill amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

WHEREAS, the Bill will require cities and counties, including charter cities, to provide for the ministerial (or “by right”) approval of a housing development containing two residential units of at least 800 square feet in floor area (“duplex”) and a parcel map dividing one existing lot into two equal parts (“lot split”) within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of this proposed subdivision of one lot into two parcels by removing public notice and hearings by the Planning Department, by requiring only administrative review of the project, and by providing ministerial approval of a lot split, and also offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map; and

WHEREAS, the Bill exempts SB 9 projects from environmental review as required by the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing, thereby undermining community participation and appropriate environmental impact vetting by local legislative bodies; and

WHEREAS, SB 9 further stipulates that a city or county cannot require a duplex project to comply with any standard that would prevent two units from being built on each resultant lot, and would prohibit a local agency from imposing regulations that require dedications of rights-of way or the construction of offsite and onsite improvements for parcels created through a lot split; and

WHEREAS, in addition to various constraints on SB 9 developments as set forth in SB 9, the Bill also authorizes cities and counties to enact local SB 9 implementation ordinances and guidelines that are objective and that are not inconsistent with its mandatory provisions; and

WHEREAS, it is important that the City of Los Altos begin immediately developing a local SB 9 implementation ordinance with associated guidelines; and

WHEREAS, due to the Bill’s enactment on September 12, 2021 and its effective date of January 1, 2022, there is not sufficient time for a publicly-considered implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022; however, in the short-term, the City can and must develop a memorandum of understanding to obligate all City Departments and agencies to abide by interim rules and requirements to implement SB 9 locally until such time as the permanent ordinance is adopted; and

WHEREAS, the City must also establish a minimum threshold by which certain SB 9 projects cannot be ministerial and must be subject to greater scrutiny in terms of a public hearing process and heightened environmental review; and

WHEREAS, there remains significant unanswered questions about legal, ownership, county- city, and interdepartmental responsibility pursuant to SB 9 implementation that need to be resolved; and

WHEREAS, it is important that both the short-term memorandum and long-term ordinance establish basic precepts applicable to all SB 9 projects, including, but not limited to:

1) **Objective Zoning/Subdivision/Design Standards.** The Bill authorizes the City to impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to structures and parcels created by an urban lot split that do not conflict with this section; or preclude the construction of two 800 square foot minimum housing units. Accordingly, all such existing objective City standards shall apply to SB 9 projects, in addition to any additional objective standards that the City may adopt.

2) **Maximum of Four Units and Two Lots.** SB 9 obligates the City to allow two units per lot, and one lot split, for a total of four units and a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits, on any parcel that has been split once and on which four units have been approved.

3) **Parking.** The Bill allows the City to choose to require parking consistent with the terms of the Bill. Accordingly, the City shall require off-street parking of one space per unit, unless 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 or there is a car share vehicle located within one block of the parcel.

4) **Setbacks.** SB 9 allows the City to choose to require setbacks consistent with the terms of the Bill. Accordingly, the City shall require setbacks of up to four feet from the side and rear lot lines in all SB 9 projects and circumstances that are not expressly exempted from such a requirement by the Bill.

5) **Applicant Residency.** The Bill requires every SB 9 applicant to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. To fulfill this obligation, the City shall require the applicant to sign and record an affidavit placing a covenant that will run with the land to confirm that the applicant will reside in one of the SB 9 units for three years from the City's grant of the application where a unit already exists, or, if no unit then exists, for three years from the City's issuance of the unit's Certificate of Occupancy.

6) **Affordable Covenant.** There is at present an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require that a thirty-year affordable covenant for at least moderate-income level must be applied to two of the units and listed on the HCID registry of affordable units.

7) **Impact/Development Fees.** The City shall require the payment of impact or development fees related to the specific impact that will be imposed on a community by the creation of a SB 9 second lot and additional units. Impact fees can be related to a variety of impacts including but not limited to infrastructure, construction impacts, recreation, libraries, and public art.

8) **Unavoidable Adverse Impacts.** The Bill authorizes the City to deny an SB 9 project upon written findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid. The City shall assess every SB 9 application for such unavoidable adverse impacts, shall provide its written assessment to the applicable City Council Office, and shall deny a project if an unavoidable adverse impact is identified.

Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts as identified above and others as appropriate shall be exempt and protected from SB 9 development.

9) **Notification Requirements.** Every SB 9 filing shall require the City to notify those property owners and tenants within a 1000-foot radius from the proposed project site that a parcel map has been filed with the City.

I THEREFORE MOVE that the Planning Department, with the assistance of the City Attorney, prepare a memorandum of understanding prior to December 31, 2021, that is consistent with this Resolution and that shall be used by all Departments until such time as a local implementation ordinance is adopted.

I FURTHER MOVE that the City Planning Department, with the assistance of the City Attorney, begin developing a work program for the preparation of the permanent ordinance for the implementation of SB 9.