

# Agenda Report

December 6, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Planning & Community Development Department

**SUBJECT: CONSIDERATION OF AN INTERIM URGENCY ORDINANCE OF THE CITY OF PASADENA PERTAINING TO CONSTRUCTION OF MULTIPLE DWELLINGS ON SINGLE-FAMILY ZONED PARCELS PURSUANT TO SENATE BILL 9**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. **Find** that the Municipal Code Amendments are exempt from environmental review pursuant to provisions in Senate Bill 9 which explicitly state that an ordinance adopted by a local agency to implement provisions of SB 9 shall not be considered a project under Division 13 of the Public Resources Code (PRC) and State CEQA Guidelines Sections 15378 (not a project), 15301 (existing facilities) and 15303 (new construction/conversion of small structures); and
2. **Adopt** the Findings of Consistency with the General Plan (Attachment A); and
3. **Adopt** an interim urgency ordinance for single-family (RS) zoned properties pertaining to development standards for the construction of multiple primary dwellings (duplexes) pursuant to Senate Bill 9.

## **ADVISORY COMMISSION/BOARD/CITY COUNCIL COMMITTEE RECOMMENDATION:**

The Legislative Policy Committee received an overview of Senate Bill 9 on September 28, 2021. Committee members expressed concern related to the potential impacts to the City's single-family neighborhood character and support for developing local regulations that comply with Senate Bill 9 in order to minimize possible impacts to affected neighborhoods.

The Urban Forestry Advisory Commission (UFAC) and Planning Commission both held study sessions on November 10, 2021. UFAC members discussed concerns over the bill and impacts to the City's urban forest as a result. They suggested strengthening existing provisions of the Tree Protection Ordinance to ensure that preservation of

existing trees remains a priority. The Planning Commission members discussed the issues at length and also expressed concern over the possible impacts to single-family neighborhoods and the context/character of the development patterns that exist. The Commission suggested that the following regulations be included:

- Retention of protected trees and mature trees to the maximum extent possible and supported the required planting of new trees;
- Consideration of requiring affordability requirements for the new units - this ranged from requiring all the new units to be affordable to applying the City's 20% inclusionary to SB 9 units;
- Consideration of an updated citywide historic survey and exemptions to the regulations for historic districts;
- Investigation into a citywide historic overlay;
- Consideration of requiring open space to be calculated as a percentage of lot area, not including front yard requirements;
- Consideration of exempting parcels located within Specific Plan Areas; and
- Consideration of stronger owner-occupancy requirements

### **BACKGROUND:**

Current zoning regulations permit up to three units on a single-family zoned parcel: one primary dwelling, one Accessory Dwelling Unit (ADU) and one Junior Accessory Dwelling Unit (JADU).

Senate Bill 9 (SB 9) requires that a local jurisdiction allow ministerial approval of two units in single-family zones (duplexes), and/or the subdivision of a residentially-zoned parcel into two approximately-equal sized parcels (an "urban lot split"), each of which may contain two units. In conjunction with ADUs and JADUs, this could have the effect of increasing the number of potential units on a typical parcel from three units to eight units. SB 9 allows jurisdictions to adopt local ordinances to establish regulations that do not conflict with the Bill, including regulations that prohibit ADUs in conjunction with projects that propose lot splits with duplexes on each lot, reducing the potential number of units on a typical parcel to four. If a local jurisdiction does not adopt their own regulations, the provisions of SB 9 as adopted by the State will apply effective January 1, 2022.

### **Existing Regulations**

The most common housing type in Pasadena consists of single-family houses, with or without garages and often with other smaller accessory structures.

ADUs may either be detached from the primary dwelling or attached through an addition to the primary dwelling or partial conversion of the primary dwelling's existing floor area. ADUs must provide living, sleeping, cooking, and sanitation facilities independent of the primary dwelling.

JADUs may only be created via conversion of existing floor area of the primary dwelling and are limited to 500 square feet in size. JADUs must include an efficiency kitchen and separate entrance, but may share a bathroom with the primary dwelling. Development of a JADU additionally requires that the property owner be an owner-occupant that lives in either the primary dwelling or the JADU. Governmental agencies, land trusts, and housing organizations are exempt from the owner occupancy requirement.

### **SB 9 (Atkins)**

Introduced by Senator Toni Atkins on December 7, 2020 and approved by Governor Gavin Newsom on September 16, 2021, this bill will require (as of January 1, 2022) local agencies to ministerially approve up to two residential units on properties currently zoned for single-family residential uses, and/or the subdivision of a parcel zoned for residential use into two parcels of approximately equal size, each of which may contain two residential units. ADUs and JADUs would additionally be permitted under SB 9, resulting in the potential for up to eight total units occupying space currently zoned for one single-family residence. However, SB 9 allows local agencies to pass ordinances with objective development standards prior to January 1, including a prohibition on ADUs/JADUs in conjunction with an urban lot split that proposes duplex development on each lot, as long as such standards do not physically preclude the ability of a property owner to develop two residential units of at least 800 square feet in size on each lot. If the lot is not subdivided, two detached ADUs are permitted in conjunction with a duplex, again resulting in a maximum of four units on the lot.

### **DISCUSSION:**

Pursuant to SB 9, local agencies may impose objective zoning, subdivision, and design review standards as long as such standards do not physically preclude the ability of a property owner to develop two residential units of at least 800 square feet in size. Examples of standards that may be imposed include height limits and setbacks (no more than four feet for side and rear setbacks), so long as those standards do not reduce the amount of permitted development to less than that currently permitted. Agencies cannot require new setbacks for an existing structure, or a structure built in the same location and same dimensions as an existing structure. Agencies may require owner-occupancy of a site that is not subdivided. If a lot split is proposed, an owner-occupancy affidavit is required stating that the applicant intends to live in one of the units for three years from the date of approval. Additionally, agencies may prohibit the construction of ADUs and JADUs in conjunction with the provisions of SB 9 if the proposal includes both an urban lot split and a duplex development.

Local agencies may require a maximum of one parking space per unit, unless units are within one half-mile walking distance of a transit stop, or if there is a car share vehicle located within one block of the parcel. Units created through SB 9 provisions may not be used for short-term rentals of less than 30 days.

The bill prohibits demolition or alteration of existing rent-restricted housing units, housing that has been the subject of an Ellis Act eviction within the past 15 years, or housing that has been occupied by a tenant within the last three years. Additionally, the bill prohibits demolition of more than 25% of exterior walls unless local ordinances allow greater demolition, or if the site has not been occupied by a tenant in the last three years. Certain sites, such as designated historic landmarks and properties within designated state and local historic or landmark districts, are exempt from the provisions of SB 9.

SB 9 allows local Building Officials to deny a duplex project or urban lot split only by making a written finding, based on a preponderance of evidence, that the project would have a specific adverse impact on public health and safety or the physical environment, and that there is no feasible method to mitigate or avoid such an impact. A “specific adverse impact” must be significant, quantifiable, and direct, based on an objective written public health or safety standard that existed at the time the project application was deemed complete. Inconsistency with a city's General Plan or zoning ordinance does not constitute a specific adverse impact. Staff will be reviewing these projects on a case-by-case basis to determine whether or not a specific adverse impact finding can be made.

Staff has prepared an urgency ordinance to establish interim development standards for projects involving more than one unit on RS-zoned properties, in advance of developing permanent development standards. Interim development standards recommended for approval include:

- A prohibition on ADUs and JADUs in conjunction with projects seeking to incorporate both an urban lot split and development of duplexes;
- A requirement to limit the size of new units to 800 square feet for projects that cannot comply with existing single-family development standards;
- A one-story height limitation for projects that cannot comply with existing single-family development standards;
- A requirement of one parking space per new unit created for projects that cannot comply with existing single-family development standards, with exemptions as required under SB 9;
- Requirement of an owner-occupancy affidavit for lot split applications, consistent with SB 9;
- Landscaping requirements to ensure sufficient open space including the retention of existing trees on-site or planting of new trees; and
- A prohibition on short-term rental of duplex units developed under the provisions of SB 9.

The subsequent ordinance to establish permanent regulations will evaluate whether or revised objective design standards should be added in addition to evaluating an affordability requirement.

## **CONCLUSION AND RECOMMENDATION:**

Staff recommends adopting an urgency ordinance to amend the Zoning Code, allowing the development of attached and detached duplexes in RS zones with objective development standards, consistent with State law. Staff additionally seeks feedback from the City Council on development standards to be established in a subsequent ordinance for permanent regulations.

## **ENVIRONMENTAL ANALYSIS:**

Senate Bill 9 includes a provision explicitly stating that an ordinance adopted by a local agency to implement provisions of SB 9 shall not be considered a project under Division 13 of the Public Resources Code (PRC). However, SB 9 does not take effect until January 1, 2022. Nonetheless, the proposed ordinance is also exempt from environmental review pursuant to State CEQA Guidelines Sections 15378 (not a project), 15301 (existing facilities), and 15303 (new construction/conversion of small structures). Section 15378 defines what constitutes a “project” under CEQA. The State Legislature intended that ordinances such as the one proposed here, adopted in order to implement state law, would not constitute a “project”. Further, Section 15301 exempts from environmental review the addition of up to 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the City’s General Plan and the area in which the project is located is not environmentally sensitive. All of Pasadena’s single-family residential areas meet these two criteria, and it is anticipated that each project undertaken pursuant to SB 9 will not add more than 10,000 square feet of new development. Finally, Section 15303 (new construction/conversion) exempts from review the construction of up to six new residential structures in urbanized areas. Under the proposed ordinance, the maximum number of new residential structures that could be constructed pursuant to a lot split combined with new construction is less than six. Therefore, staff recommends that the City Council finds that the proposed Zoning Code amendment is not subject to further environmental review.

**FISCAL IMPACT:**

This action will not have a direct fiscal impact. However, indirect fiscal impacts may occur resulting from increased permit applications for additions to residences that could otherwise not be feasible without this zoning code amendment. Longer-term indirect fiscal impacts may include increased property tax revenue due to more residential units being constructed. There is no anticipated impact to other operational programs or capital projects at this time.

Respectfully submitted,



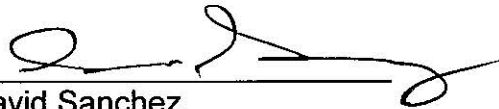
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Attachments: (1)

Attachment A – Draft Zoning Code Amendment Language