



Agenda Item

City Council

Item #: 9.1.

10/24/2023

File #: 23-0674

TO: Honorable Mayor and Members of the City Council

THRU: Tom Kisela, City Manager

FROM: Russell Bunim, Community Development Director

1. SUBJECT

Public hearing to consider Introduction and First Reading of Ordinance No. 15-23 amending Titles 16 and 17 of the Orange Municipal Code to enact definitions and development standards applicable to lot splits and second dwelling units in single-family residential zones as a result of Senate Bill 9 and finding of CEQA exemption.

2. SUMMARY

Senate Bill 9 (SB 9), effective January 1, 2022, regulates development of single-family zoned (R1) property by allowing both the splitting of single-family (R1) zoned property into two lots (often referred to as “urban lot split”) and two single-family residences on each single-family zoned lot (“often referred to as “second unit development”). The proposed Ordinance provides appropriate regulation and standards consistent with SB 9.

3. RECOMMENDED ACTION

Introduce and conduct First Reading of Ordinance No. 15-23. An Ordinance of the City Council of the City of Orange amending Title 16 (Subdivisions) and Title 17 (Zoning) of the Orange Municipal Code by enacting ministerial standards applicable to lot splits in single-family residential zones allowed as a result of SB 9, enacting ministerial standards applicable to the location, access, size and setback of second dwelling units in single-family residential zones allowed as a result of SB 9, and adding and revising definitions to clarify said development standards.

4. FISCAL IMPACT

None.

5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

d: Assure the development of the City occurs in a fashion that maximizes public safety.

Goal 3: Enhance and promote quality of life in the community

c: Support and enhance attractive, diverse living environments.

6. DISCUSSION AND BACKGROUND

The proposed Ordinance has been prepared in an effort to implement SB 9 which became effective on January 1, 2022, and requires cities to approve, as a ministerial action and without discretionary

review, certain lot splits in R1 zones, and certain applications to add a second dwelling unit on a single-family lot. In summary, SB 9 only applies in single-family residential zones and allows urban lot splits and second unit development ministerially. The law also contains certain limitations on the creation of units under SB 9, such as prohibiting the use of SB 9 on historic sites or in historic districts, short-term rentals, and alteration or demolition of rent-controlled housing (for example). It also provides that only objective zoning standards, subdivision standards and design standards can be applied, and such standards cannot preclude development of two units of eight hundred (800) square feet.

As background, on December 14, 2021, the City Council adopted interim Ordinance No. 18-21, which addressed the immediate threat to the public health, safety and welfare caused by the ability to split R1 lots and add second units to R1 lots. The interim ordinance provided procedures for evaluating applications for lot splits and additional residential units, established objective development standards for lot splits and additional residential units, and revised definitions relating thereto. The Ordinance was extended by the City Council on November 15, 2022, (under Interim Ordinance 18-21B) and now expires on December 13, 2023. The Ordinance is not eligible for additional extensions. Hence, a permanent ordinance is necessary.

Interim Ordinance No. 18-21 and 18-21B set into place allowable development standards permitted by SB 9 with the goal to establish preliminary standards for any SB 9 development applications that would follow. Both the interim and proposed permanent ordinance reiterate important components of SB 9 and, where appropriate, provide standards and/or regulations in areas not addressed and not prohibited by SB 9. Detailed information about the interim Ordinance and permanent Ordinance is contained in Attachments 6, 8, and 11.

In addition, it should be noted that staff will adhere to the State Department of Housing and Community Development ADU guidance on the ADU and SB 9 statutes in assessing ADUs and JADUs associated with SB 9 developments. SB9 provides that a city is not required to permit ADUs and JADUs when a lot is both created by an SB 9 lot split and developed with a SB 9 two-unit development. Otherwise, ADUs, as a “unit” are allowed. Generally, no more than 4 units total could be constructed on single-family lots.

Both the interim, and proposed Ordinance, contain the following provisions consistent with SB 9:

- Establishes Community Development Director approval authority;
- Establishes ministerial approval criteria in the Subdivision Ordinance;
- Clarifies existing definitions and adds definitions;
- Clarifies ministerial approval for SB 9 projects in the specific administrative procedures section of the Zoning Code;
- Adds SB 9 units as a permitted use to the Land Use Matrix (Table 17.13.030)
- Establishes denial and condition criteria pursuant to SB 9 in the Zoning Code;, including prohibiting SB 9 development in the Old Towne and Eichler districts
- Establishes objective design standards for SB 9 units;
- Facilitates allowance for the minimum 800 square feet unit size;

- Establishes development standards consistent with SB 9;
- Establishes parking standards consistent with SB 9;
- Addresses nonconformities for SB 9 lot splits

The proposed Ordinance also contains some additional clarifications and additions, consistent with SB 9:

- Deletes references to accessory dwelling units (ADUs) and Junior Accessory Dwelling Units (JADUs) specifically and provides references to units more generally.
- Adds language that certain SB 9 units may not be conveyed separately, including via condominium maps, for development within a lot resulting from an urban lot split and for second unit developments.
- Text clarifies that 4 units is generally the maximum number that may occur pursuant to SB 9.

A greater summary of ordinance regulations is provided in the attached December 14, 2021 City Council staff report (Attachment 8) but is superseded by the changes specified within this staff report. The full extent of Orange Municipal Code changes can be viewed in Redlined Ordinance 15-23 (Attachment 2) and the SB 9 Ordinance (Attachment 1). A Summary Chart of SB 9 Provisions and SB 9 State Law are provided in Attachments 14 and 15.

At their October 2, 2023, Planning Commission meeting, the Planning Commission voted 6:0, with one member absent, to recommend that the City Council approve Ordinance No. 15-23.

7. ENVIRONMENTAL REVIEW

Statutory Exemption: As stated in the California Department of Housing and Community Development SB 9 Fact Sheet: "...the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA." The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15060(c)(2), 15060(c)(3) and 15061(b)(3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility it will have a significant effect on the environment, and it is not a "project", as defined in Section 15378 of the State CEQA Guidelines. In the unlikely event the Ordinance would constitute a project under CEQA, it is exempt from the provisions of CEQA per State CEQA Guideline 15321 (Class 21, Enforcement Actions by Regulatory Agencies) because it is an action taken by the City as a regulatory agency, as authorized by local ordinance, to regulate as authorized by SB 9, the processing of lot splits and applications for construction of second dwelling units in single-family residential zones in order to prevent a public nuisance. As such, no further analysis is warranted or required.

8. ATTACHMENTS

- Attachment 1 - Ordinance No. 15-23
- Attachment 2 - Ordinance No. 15-23 Redline Version
- Attachment 3 - Planning Commission Resolution No. 13-23 (unsigned)
- Attachment 4 - October 2, 2023 Planning Commission Staff Report
- Attachment 5 - October 2, 2023 Planning Commission Draft Meeting Minutes
- Attachment 6 - September 7, 2023 Planning Commission Staff Report
- Attachment 7 - September 7, 2023 Planning Commission Minutes
- Attachment 8 - December 14, 2021 City Council Staff Report
- Attachment 9 - Interim Ordinance No. 18-21
- Attachment 10 - December 14, 2021 City Council Minutes
- Attachment 11 - November 15, 2022 City Council Staff Report
- Attachment 12 - Interim Ordinance No. 18-21-B
- Attachment 13 - November 15, 2022 City Council Minutes
- Attachment 14 - Summary Chart of SB 9 Provisions
- Attachment 15 - SB 9 State Law
- Attachment 16 - ½ Mile Buffer of Bus Stops Map