



Agenda Item

Planning Commission

Item #: 4.1.

9/7/2023

File #: 23-0510

TO: Chair and Members of the Planning Commission

THRU: Anna Pehoushek, Assistant Community Development Director

FROM: Chad Ortlieb, Principal Planner

1. SUBJECT

Public Hearing: An ordinance 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 allowed 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 and constructing two single-family residences on each single-family zoned lot. The proposed permanent Ordinance implements development standards, to the extent allowed under SB 9, regulating lot splits and second unit development in R1 zones.

3. RECOMMENDED ACTION

Adopt Planning Commission Resolution No. 13-23 entitled:

A Resolution of the Planning Commission recommending that the City Council of the City of Orange adopt an ordinance amending Title 16 and Title 17 of the Orange Municipal Code 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, and revising definitions to clarify said development standards.

4. AUTHORIZING GUIDELINES

Orange Municipal Code (OMC) Table 17.08.020, Section 17.08.020B.2.b.i., and Section 17.10.020B. authorizes the Planning Commission to review and make recommendations to the City Council on amendments to the Zoning Ordinance.

5. PROJECT BACKGROUND

<i>Applicant:</i>	City of Orange
<i>Property Owner</i>	Citywide
<i>Property Location</i>	Citywide
<i>Existing General Plan Land Use Element Designation</i>	Applies to Estate low Density Residential 1-2 du/ac (ESTR) and Low Density Residential 2-6 du/ac (LDR)

<i>Existing Zoning Classification</i>	Applies to Single-Family Residential (R-1)
<i>Old Towne</i>	SB 9 does not apply to Historic Overlay Districts
<i>Specific Plan/PC</i>	Not Applicable
<i>Previous Applications/Entitlements</i>	Interim Ordinance No. 18-21 was adopted by the City Council on December 14, 2021, and extended on November 15, 2022, under Interim Ordinance No. 18-21B. The urgency ordinance will expire December 13, 2023 and may not be extended again.

6. PROJECT DESCRIPTION

The proposed ordinance has been prepared in an effort to reflect the requirements of State law under Senate Bill 9 (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 single-family residential (R1) zones, and certain applications to add a second dwelling unit on a single-family lot and, to the extent permissible, protect the character of single-family neighborhoods given the development scenarios possible. Based on an evaluation of the legislation, staff concluded that, because there was potential for the resulting development to create conditions detrimental to the public health safety and welfare related to site access, infrastructure, parking/traffic, and emergency services, an ordinance to address those conditions, to the extent allowed, was necessary.

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 twice extended (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. The interim ordinance softens the negative impacts that could arise from the unregulated splitting of R1 single-family lots and addition of a second dwelling unit on a single-family lot. SB9 could quadruple the density of single-family zones, creating incompatibility with the City's current single-family neighborhood development standards for those zones, among other City resource concerns. If unregulated, the increase in density and development of additional dwellings on single-family lots would cause numerous deleterious effects on the City's infrastructure as well as the families residing therein, including exacerbating parking and traffic problems, overuse of existing utility systems, loss of privacy, application of development standards not designed for higher density housing, fire, police and other public safety concerns. Any of the potential effects could constitute a public nuisance to the community.

Fortunately, the City has had sufficient time to evaluate the effectiveness of the enforceable standards of the interim ordinances. No applications have been received for either lot splits or second dwelling units on single family lots during the effective span of the interim ordinance. Therefore, staff is recommending that the interim ordinance become a permanent ordinance with only minor changes including the addition of definitions for the terms:

- Bedroom

- Floor area ratio
- Lot line, front
- Story, half
- Story, habitable

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 SB9 developments. The City does not have to permit ADUs and JADUs when a lot is both created by an SB 9 lot split and developed with an SB 9 two-unit development. However, the City may have to allow ADUs and JADUs when SB 9 units result from non-lot split scenarios. Under either scenario, no more than 4 units total could result on single family lots.

It is staff's opinion that the effectiveness of the ordinance stems from the City's ability to regulate size and height of any additional units that could be created out of SB9. Unit size is limited to 800 square feet for most lots in the City and height is limited to one story and 16 feet pursuant to Table 17.14.060 and the associated notes that follow. Unit sizes could be up to 1,200 square feet if the existing or resulting lot is 40,000 square feet. Given that properties may have both an Accessory and Junior Accessory Dwelling Unit (ADU/JADU), and impact fees are proportionally reduced for such accessory units, the ordinance effectively encourages property owners/developers to take advantage of ADU allowances rather than utilize SB 9 allowances.

Both the interim, and proposed permanent ordinance, contains the following provisions consistent with the SB 9 Statute:

- 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

Regulations created by the ordinance are described in more detail in the December 14, 2021 City Council staff report, in the Zoning Code Text Amendment Revisions, and the SB 9 Ordinance (Attachments 2-4). A Summary Chart of SB 9 Provisions and SB 9 State Law are provided in

Attachments 10 and 11.

7. ANALYSIS AND STATEMENT OF THE ISSUES

Given that this proposed ordinance is City-initiated in response to SB9, there are no issues.

8. PUBLIC NOTICE

A notice was published in the Orange City News/Anaheim Bulletin newspaper on August 24.

9. 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.

10. ADVISORY BOARD ACTION

No advisory board action was conducted or required.

11. ATTACHMENTS

- Attachment 1 - Planning Commission Resolution No. 13-23
- Attachment 2 - SB 9 Ordinance (Number to Be Assigned)
- Attachment 3 - Zoning Code Text Amendment Revisions
- Attachment 4 - December 14, 2021 City Council Staff Report
- Attachment 5 - Interim Ordinance No. 18-21
- Attachment 6 - December 14, 2021 City Council Minutes
- Attachment 7 - November 15, 2022 City Council Staff Report
- Attachment 8 - Interim Ordinance No. 18-21-B
- Attachment 9 - November 15, 2022 City Council Minutes
- Attachment 10 - Summary Chart of SB 9 Provisions
- Attachment 11 - SB 9 State Law
- Attachment 12 - ½ Mile Buffer of Bus Stops Map