

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** April 5, 2022

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
By: Fred Ramirez, Assistant Community Development Director – Planning  
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**SUBJECT:** Consideration and Adoption of an Urgency Ordinance and Fee Resolution in Order to Establish Interim Development Controls and Fees for Two-Unit Residential Developments and Urban Lot Splits in All Single-Family Residential Zones and to Allow the City Council Time to Study and Consider Enactment of Zoning Measures In Response to Senate Bill 9.

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### **RECOMMENDATION**

Adopt AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ESTABLISHING INTERIM DEVELOPMENT CONTROLS FOR TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES, TO ALLOW THE CITY COUNCIL TIME TO STUDY AND CONSIDER ENACTMENT OF PERMANENT ZONING MEASURES IN RESPONSE TO SENATE BILL (SB) 9 (Attachment 1). (Requires 4/5th vote for adoption)

Adopt A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK AMENDING ARTICLE III, SECTION 1 AND 3, OF THE FISCAL YEAR 2021-2022 CITYWIDE FEE SCHEDULE TO ESTABLISH FEES TO DEFRAY THE CITY COSTS TO REVIEW AND PROCESS PROJECT APPLICATIONS SUBMITTED UNDER SB 9 – CALIFORNIA HOUSING OPPORTUNITY AND MORE EFFICIENCY (HOME) ACT (Government Code Section 66452.6, 65852.21, and 66411.7) (Attachment 2).

### **BACKGROUND**

On September 16, 2021, the Governor signed SB 9 California Housing Opportunity and More Efficiency (HOME) Act into law, codified as California Government Code Sections 66452.6, 6852.21 and 66411.7 (Attachment 3). Amongst other provisions, this legislative

bill requires local jurisdictions to ministerially review up to two primary residential units on a single family residential zoned lot (two-unit housing developments), and subdivisions of one single-family residential zoned lot into two single family residential zoned lots (urban lot splits). SB 9 specifies that local jurisdictions must ministerially approve two-unit housing developments and urban lot splits (SB 9 Projects) when the proposed development and/or subdivision meets explicit requirements listed in Government Code Sections 65852.21 and 66411.7; and a local jurisdictions objective development, design, and subdivision standards. SB 9 took effect on January 1, 2022 and is now applicable to the City of Burbank.

Unmitigated development of these new multi-family housing developments could rapidly overwhelm the City's aging sewer, electrical distribution and solid waste collection systems. Fortunately, SB 9 also allows local jurisdictions to adopt certain objective development, design, and subdivision standards that can be applied to SB 9 Projects, to the extent that they do not conflict with State law. Adopting such standards quickly will reduce the potential for sewer overflows, disruption of electrical services and overwhelming weekly refuse collection. This also creates an opportunity for cities to adopt more tailored objective standards that address local concerns related to the potential maximum buildout of primary units and accessory dwelling units in combination with lot splits that would be possible under the current State Law without any local refinements.

The adoption of an urgency interim ordinance would ensure that the City has put in place interim objective standards regulating SB 9 Projects that may be submitted for City review in the near future, while the City undertakes a comprehensive Zone Text Amendment (ZTA). Furthermore, it would facilitate the Community Development Department's further study of appropriate and permanent objective standards that would be vetted through the community and the Planning Board, with a recommendation made to the City Council for future consideration of a ZTA at a separate public hearing.

## **DISCUSSION**

The State has identified the housing shortage as an issue of statewide significance. SB 9 is one of multiple approaches the State has taken to increase the housing stock statewide. A summary of the key components in SB 9 are noted below:

### **Two-Unit Housing Developments (Government Code Section 65852.21)**

SB 9 would allow the creation of two-unit housing developments – up two primary residential units on one single family zoned lot that are each at least 800 square feet in size. Additionally, SB 9 would override any City development standards that physically preclude the development of up to two primary dwelling units. It also, establishes minimum setback requirements, minimum parking standards, and prohibits two-unit housing developments in high or very high fire hazard severity zones as established by

the California Department of Forestry and Fire Protection. These requests would have to be reviewed and approved ministerially if they meet all the applicable objective development standards. The ministerial review would result in a plan check review similar to the process currently required for the review of proposed Accessory Dwelling Units (ADUs) – these building permit requests cannot be appealed.

The two primary residential units permitted as part of a two-unit housing development would be in addition to the one ADU and one Junior Accessory Dwelling Unit (JADU) permitted on single-family zoned lots. Through SB 9 up to four residential units could be developed on a single-family residential zoned property if someone pursues a two-unit housing development in conjunction with the construction of an ADU and JADU.

Noted below are important standards local jurisdictions need to consider when reviewing two-unit housing developments:

- Local jurisdictions shall allow two-unit housing developments on property zoned for Single-Family Residential Zones, unless a property is explicitly deemed ineligible based on objective criteria established in SB 9.
- Local jurisdictions shall process requests for a two-unit housing development through a ministerial process.
- Local jurisdictions are limited to only applying objective development and design standards when reviewing proposed projects.
- Objective development or design standards cannot prohibit the construction of two units that are at least 800 square feet each.
- Setbacks for the new structures must be four (4) feet from the side and rear property lines. Existing structures can retain the current setbacks if the structure is re-built in the same location and to the same dimensions.
- Local jurisdictions can only require one parking space per unit. However, parking cannot be required in those cases that the project site is within a ½ mile walking distance of a high-quality transit corridor, ½ mile walking distance of a major transit stop, or there is a car share vehicle located within one block of the project site.
- Property owners cannot demolish or alter existing units on a property if they are deed restricted affordable units, subject to rent control, or have been occupied by a tenant in the last three (3) years of application submittal.
- Local jurisdictions shall require that rent terms on these units be for 30 days or more.

Attachment 4 provides an expanded list of items included in SB 9.

#### Urban Lot Splits (Government Code Section 66411.7)

Urban lot splits would facilitate the subdivision of one single family residential zoned lot into two new single family residential zoned lots, provided that each new lot is 1,200 square feet or more in area and contains 40% or more of the original lot area. Each of the

new lots could then be developed individually with a total of four residential units – a two-unit housing development, one ADU and one JADU. Based on the potential development scenario, up to a total of 8 residential units (4 per each split lot) can be created from one existing single-family zoned property that is subdivided through an urban lot split. Per SB 9, local jurisdictions have the option of limiting the total number of residential units allowed on a lot that has been created through an urban lot split – to a maximum of two residential units per lot. However, the local jurisdiction would explicitly impose this requirement through the adoption of objective standards. Furthermore, urban lot splits are prohibited within high or very high fire hazard severity zones as established by the Department of Forestry and Fire Protection. Urban Lot Splits must also be approved ministerially by City staff if they meet applicable development standards and cannot be appealed.

Noted below are additional standards local jurisdictions need to consider when reviewing Urban Lot Split applications:

- Local jurisdictions shall allow urban lot splits on property zoned for Single-Family Residential Zones, unless a property is explicitly deemed ineligible based on objective criteria established in SB 9.
- Local jurisdictions shall allow one parcel to be subdivided to create no more than two (2) parcels,
- Local jurisdictions shall process requests for an urban lot split through a ministerial process.
- Local jurisdictions are limited to only applying objective subdivision standards in review of proposed projects.
- Objective subdivision standards cannot prohibit the construction of two units that are at least 800 square feet each.
- Parcels created through an urban lot split shall be no smaller than 40% of the original parcel, and the minimum parcel size created shall be at least 1,200 square feet.
- The subdivision cannot result in the demolition or alteration of existing units on a property if they are deed restricted affordable units, subject to rent control, or have been occupied by a tenant in the last three (3) years.
- The owner of the parcel being subdivided, or any person acting in concert with the owner, could not have previously subdivided an adjacent parcel using the urban lot split provisions.
- Existing structures can retain the current setbacks if the structure is re-built in the same location and to the same dimensions.
- Local jurisdictions can only require one parking space per unit. However, parking cannot be required in those cases that the project site is within a ½ mile walking distance of a high-quality transit corridor, ½ mile walking distance of a major transit stop, or there is a car share vehicle located within one block of the project site.

- The owner must sign an affidavit stating that they intend to live in one of the new units for at least three (3) years from the date of lot split approval.
- Local jurisdictions shall require that rent terms on these units be for 30 days or more.

Attachment 4 provides an expanded list of items included in SB 9.

#### Necessity for Urgency Interim Ordinance

As previously referenced, State law allows local jurisdictions to adopt objective development, design, and subdivision standards (“objective standards”) that can be applied to SB 9 projects. This creates an opportunity for the City to adopt objective standards that are tailored to meet local concerns, subject to the limits established under State law. In addition, the City must approve an SB 9 project that meets all objective development standards. The State law went into effect January 1<sup>st</sup>, 2022, so it is necessary for the City to adopt local regulations and development standards regulating these types of projects as soon as possible. City Council approval of an urgency ordinance will ensure that the City has interim objective standards overseeing SB 9 projects, facilitating responsible development that protects existing neighborhoods to the extent permitted under State law.

Without the adoption of objective standards, the City would be limited to applying the State law in combination with the broader single-family residential zone development regulations – regulations that were previously enacted without SB 9 projects in mind. Staff has determined that the impacts of unmitigated development of SB 9 projects would allow for the potential development of 4 to 8 residential dwelling units on one existing residential zoned lot where the City’s Burbank2035 projected growth envisioned one single family residential dwelling and accessory dwelling units including one Accessory Dwelling Unit (ADU) and a potential Junior ADU pursuant to applicable State housing laws. In addition, the City has received general inquiries since January 1, 2022 at approximately 2 to 3 per week regarding the process for applying and review of SB 9 project and even though the City has not yet received an SB 9 project submittal, the City Council is concerned that an influx of applications in a particular residential block and neighborhood may overburden the City’s sewer and electrical infrastructure conveyance and capacity as well as create issues with trash collection services within an affected single family residential neighborhood. Furthermore, these results may create ambiguity, confusion, and inconsistency with the City’s current regulations for single-family residential zones. If implemented as written, a housing development project could yield eight (8) total residential units through an urban lot split (2 lots, each with 2 primary units, one ADU and one JADU). The potential for 8 units generated from one single family residential zoned property is well above the number of units that could have been attainable under the current General Plan land use designation of Low Density Residential, which anticipated a single-family residential dwelling unit and the potential of a combination of ADUs and

JADUs. The potential outcome of this type of development over time could adversely impact City utility infrastructure as well as adversely impact the character of the City's single family residential zoned neighborhoods.

An urgency ordinance would provide the City with the opportunity to establish objective standards that could immediately be applied to SB 9 projects. The proposed ordinance would let the City explicitly limit the number of residential units generated from single-family zoned properties that undergo an urban lot split to a maximum of four residential units with no more than two units per lot. Furthermore, while the urgency ordinance is in effect, the City would have additional time to study the potential impacts of SB 9 projects in order to: (1) tailor the objective standards to create controls and standards that fit the character of the existing single-family neighborhoods; and (2) better understand the impacts on the existing utility infrastructure (e.g. impact trash collection services, exceeding energy capacity at a residential block level, and resulting in inadequate wastewater conveyance and system capacity issues) in order to protect the public health, safety and general welfare of the community by providing safe and reliable utility infrastructure for the use of existing and future residents.

#### Proposed Urgency Ordinance that Would Regulate SB 9 Projects

Staff has prepared an urgency ordinance, which complies with SB 9 (Attachment 1), for City Council consideration that would establish local regulations that ensure local objective standards are applied to SB 9 projects. The attached urgency ordinance is structured to provide regulations that address the new law while at the same time providing safeguards and balance to the process. Because the process is to be ministerial, the objective standards in the urgency ordinance are very clear. If adopted through a 4/5's vote of the City Council it would be in effect for 45 days from the date of adoption, but it can be extended for 10.5 months and subsequently for another year, if needed, through subsequent City Council consideration and approval.

The regulations in the urgency ordinance are divided into two sections, one specifically dealing with Two-Unit Housing Developments and another specifically dealing with Urban Lot Splits. Below are brief summaries of the objective standards in each section of the urgency ordinance.

**Two-Unit Housing Developments** – The following section provides a summary of the proposed objective development standards that would regulate Two-Unit Housing Developments:

- *Definition of Two-Unit Housing Development:* The development of two (2) primary dwelling units (the *Primary Dwelling Unit* and the *Second Primary Dwelling Unit*) on a single-family zoned lot in accordance with California Government Code Section 65852.21.

- *Permitted Zones:* Allowed within the single-family residential zones R-1 and R-1-H. Not allowed in the areas classified high or very high fire hazard severity zones as established by the California Department of Forestry and Fire Protection. Attachment 5 includes a map identifying those parcels within areas classified high or very high fire hazard severity zones.
- *Parking:* One (1) space per primary dwelling unit. No parking is required if the parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of California Public Resources Code Section 21155 or a major transit stop, as defined in the California Public Resources Code Section 21064.3, or if there is a car share vehicle located within one block of the parcel. Attachment 6 includes a map identifying those parcels within the City located within ½ mile of a high-quality transit corridor and a major transit stop.
- *Setbacks:* The minimum front yard setbacks for both primary dwelling units are as established in the underlying zone. The interior side and street facing side yard setbacks for both primary dwelling units are four (4) feet. The rear yard setback is 15 feet for the Primary Dwelling Unit, and 4 feet for the Second Primary Dwelling Unit.
- *Floor Area Ratio (FAR)/Lot Coverage Requirements:* The FAR and Lot Coverage requirement as established in the underlying Single Family Residential Zone apply. Notwithstanding these requirements, both primary dwelling units can be a minimum size of 800 square feet each.
- *Height:* The Primary Dwelling Unit would be required to comply with the requirements as established in underlying zone – two (2) stories. The Second Primary Dwelling Unit will also be required to comply with the requirements as established in the underlying zone, when attached to the Primary Dwelling Unit. However, detached Second Primary Dwelling Units would be limited to a height of one (1) story – maximum height of 12 feet to the top of the plate and 17 feet to the top of the roof.
- *Demolition or Alterations:* If units on site have been occupied by a tenant in the last three (3) years, from the date of the application submittal, the proposed housing development cannot demolish or alter any of the tenant occupied units.
- *Design Standards:* The exterior design of the Primary Dwelling Unit shall comply with the requirements as established in the underlying zone. The exterior design of the Second Primary Dwelling Unit shall match that of the Primary Dwelling Unit

in terms of building forms, materials, colors, exterior finishes, roof forms and style of doors and windows.

- *Short Term Rentals:* Short Term Rentals are prohibited. Rental of any unit that is a part of a Two-Unit Housing Development shall be for a term longer than 30 days.

**Urban Lot Splits** – The following section provides a summary of the proposed objective standards that would regulate Urban Lot Splits:

- *Definition of Urban Lot Split:* Subdivision of one existing single family residential zoned parcel into no more than two new parcels in accordance with California Government Code Section 66411.7.
- *Permitted Zones:* Allowed within the single-family residential zones R-1 and R-1-H. Not allowed in the areas classified high or very high fire hazard severity zones as established by the California Department of Forestry and Fire Protection. Attachment 5 includes a map identifying those parcels within areas classified high or very high fire hazard severity zones.
- *Minimum Lot Area of Existing Parcel to Qualify:* The minimum lot area that qualifies a property for an Urban Lot split is 2,400 square feet. Only two (2) parcels can be created from an existing lot.
- *Total Number of Units allowed on Created Lots:* Only two (2) units are allowed on each newly created parcel. When a two-unit housing development is proposed on a newly created lot, Accessory Dwelling Units and Junior Accessory Dwelling Units are prohibited.
- *Minimum Lot Area and Width:* The minimum parcel size would be at least 1,200 square feet. No less than 40% of the original parcel or a minimum width of 25-feet, whichever is greater.
- *Minimum Public Right-of-Way Frontage:* No less than 40% of the frontage of the original parcel or a minimum width of 25-feet, whichever is greater. Properties subdivided through an Urban Lot Split for which the original property does not have existing secondary access to a public right-of-way from a rear or side property line shall only be subdivided via a new lot line that starts at the front property line and runs straight to the rear property line. There shall be no curve or angles on the new lot line creating the subdivision. The creation of Flag Lots is prohibited (Attachment 5). Parcels must provide a minimum 10-foot driveway for vehicle access.



- *Owner Occupied Affidavit:* The owner of record of the original property shall occupy one of the lots as their principal residence for a minimum of three years from the date of approval of the Urban Lot Split.
- *Utility Connection:* Each lot created through an Urban Lot Split shall have independent utility connections. The Burbank Water and Power and Public Works departments will determine the utility connection process and fees.
- *Easement Requirement:* When applicable, an easement may be required for each newly created parcel that is created through an Urban Lot Split to accommodate for vehicle and pedestrian access onto the site, and/or utility service. When applicable, easements shall be reflected in the recorded parcel map.
- *Short Term Rentals:* Short Term Rentals are prohibited. Rental of any unit that is a part of an Urban Lot Split shall be for a term longer than 30 days.

#### Environmental Assessment

The proposed urgency ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA). Under California Government Code Sections 65852.21(j), and 66411.7(n), the adoption of an ordinance by a city or county implementing the provisions of Government Code Sections 66411.7 and 65852.21 and regulating two-unit housing developments and urban lot splits is statutorily exempt from the requirements of CEQA. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed adoption of a local ordinance implementing Senate Bill 9 is not considered a project under CEQA.

#### Application Fees

The City's existing Fiscal Year 2021-2022 Adopted Citywide Fee Schedule does not include fees for SB 9 Project Applications. Staff has prepared proposed fees for City Council consideration. The proposed fees include a \$1,200 fee for review of applications proposing new dwelling units pursuant to SB 9 and a \$2,000 fee for review of Urban Lot Split applications (Attachment 2). These fees would be assessed by City Staff at the time a completed application has been submitted.

#### **FISCAL IMPACT**

Adoption of the urgency ordinance does not have a significant impact to the City's General Fund. Future units constructed pursuant to Senate Bill 9, Government Code Sections 65852.21 and 66411.7, would be processed through the City's planning and building plan check and permitting process, which includes the payment of associated City building and development fees. Newly created parcels and new primary units would be reassessed by the County, which may result in a higher valuation and/or property taxes.

Future development would be required to pay the associated development impact fees as well as any required infrastructure connection and maintenance fees.

## **CONCLUSION**

Charter Section 500 authorizes the City Council to adopt an urgency ordinance necessary as an emergency measure for preserving the public health, safety, and general welfare. Without the proposed urgency ordinance, City staff would be required to ministerially approve housing development and urban lot splits containing no more than two (2) residential units within a single-family residential and possible accessory dwelling units without creating City specific development and design standards. The proposed urgency ordinance will allow the City to establish local regulations on an interim basis that include the required components of SB 9 9 while further specifying certain requirements that will allow for regulations that are appropriate locally. As a part of City Council consideration of the urgency ordinance, Staff is proposing the establishment of new fees for applications proposing new dwelling units pursuant to SB 9 and Urban Lot Splits.

Adoption of the urgency ordinance and later consideration of a Zone Text Amendment will facilitate ongoing responsible development of new housing units, which create new housing opportunities and building types, while putting in place development standards as allowed by State law that help preserve and protect the character of existing residential neighborhoods.

## **ATTACHMENTS**

Attachment 1 – Draft Urgency Ordinance

Attachment 2 – SB 9 Fee Resolution

Attachment 3 – Senate Bill No. 9

Attachment 4 – Summary of Senate Bill No. 9

Attachment 5 – Diagram of Lots in Residential Zones

Attachment 6 – Map of Mountain Fire Zones in the City

Attachment 7 – Map of Properties in the City located one-half mile of a High-Quality  
Transit Corridor or a Major Transit Stop

Correspondences