



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Andrew Perez, Planning Manager

SUBJECT: Discuss and Consider Introduction of an Ordinance Amending Title 16 of the Arroyo Grande Municipal Code to Implement Senate Bill 9; Development Code Amendment 21-002; Location – Citywide

DATE: May 24, 2022

SUMMARY OF ACTION:

Introduction of the proposed Ordinance amending Title 16 of the Arroyo Grande Municipal Code to implement Senate Bill 9 locally (Attachment 1) will allow for adoption of the ordinance at a future City Council meeting.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No financial impact is projected.

RECOMMENDATION:

Introduce an Ordinance establishing regulations for projects proposed under the provisions of SB 9.

BACKGROUND:

SB 9 was signed by Governor Newsom on September 16, 2021, and became effective January 1, 2022 (Attachment 2). This bill is intended to streamline housing development by requiring a proposed housing development containing no more than two residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements. SB 9 also requires a local agency to ministerially approve a parcel map for an urban lot split in a single-family residential zone if it meets certain requirements, including minimum lot size requirements and certain objective standards. Cities may deny an SB 9 project or subdivision that otherwise meets the requirements of SB 9 only if the Building Official determines it will result in a specific, adverse impact on health and safety and there is no feasible way to mitigate the impact.

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City Council Study Session

A study session was held with the City Council on March 22, 2022, to provide a forum for community comments and to discuss implications of SB 9 to aid staff in refining the draft Ordinance (Attachment 3). Council expressed concerns with the effects of the unplanned density associated with potential SB 9 development and also discussed impacts to the water supply, how SB 9 affects developments with homeowner's association, and the proposed objective design standards, including height limits and parking design. These concerns and direction are noted in more detail in the corresponding sections of this report. Additionally, Council directed staff to present draft objective design standards to the Architectural Review Committee (ARC) for review and recommendation prior to the Planning Commission's consideration of the draft ordinance.

Architectural Review Committee

Staff presented the draft objective design standards to the ARC on April 18, 2022 for comments and a recommendation to Planning Commission. In general, the ARC recommended revisions to the design standards that allowed for more flexibility. For example, one recommendation was that the maximum size of units should be tied to lot size rather than the one-size fits all approach of a 1,200 square foot limit. The ARC also recommended that additional flexibility should be incorporated into the standards for building materials and colors. Recommendations from the ARC were included in the draft Ordinance brought to the Planning Commission.

Planning Commission Review

On May 3, 2022, staff presented the draft ordinance to the Planning Commission for a recommendation hearing (Attachment 4). The Planning Commission adopted a Resolution recommending adoption of the draft ordinance with substantial revisions from the direction provided by the City Council (Attachment 5). These changes proposed by the Commission include allowances for more units and larger units, more permissive height allowances, an elimination of parking, and allowance for ADUs on lots created through SB 9. These changes will be explained in more detail in the corresponding sections of this report.

ANALYSIS OF ISSUES:

SB 9 can be broken into two primary components: 1) provisions that allow subdivisions of a single-family zoned lot into two lots ("subdivisions"); and 2) provisions that allow construction of two units on a single-family zoned property ("two-unit projects"). These provisions can be used in concert, so that an applicant could subdivide an existing parcel and build two units on each parcel.

Qualifying Properties

Parcels located in any zoning district allowing single family residential uses are eligible for SB 9 development. This includes the Residential Estate, Residential Hillside,

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Residential Rural, Residential Suburban, Village Residential, Single Family zones, and the Planned Development districts, which all permit single-family residences as an allowed use. In the draft ordinance presented to Council at the study session, only parcels in the Single Family zone would have been eligible for development under the draft SB 9 ordinance. This was based on staff's interpretation and guidance from the City Attorney regarding the terms of SB 9. Subsequent to the study session, the California Department of Housing and Community Development released an SB 9 Fact Sheet with information about the legislation (Attachment 6). Based on the information in that document, the zoning districts eligible for SB 9 development has been broadened to include all zones that permit single family residential as an allowed use.

Regardless of zoning, properties are excluded from using SB 9 for two-unit projects and/or subdivisions if they are located in any of the following areas:

- Prime farmlands or farmlands of statewide importance, or farmlands protected by a local ordinance
- Wetlands, as defined in the United States Fish and Wildlife Service Manual
- A hazardous waste site
- Lands identified for conservation in an adopted conservation plan or under a conservation easement
- Habitat for protected species
- Within a historic district or on a site that is designated as historic

As indicated above, SB 9 does not apply to parcels located “within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code.” Under Public Resources Code Section 5020.1, “Historic district” means “a definable unified geographic entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.” Studies were conducted by the City that confirm the Historic Character Overlay District (D-2.4) possesses a high concentration of historically relevant sites and structures which supported creation of the district. Therefore, parcels in the overlay district would be ineligible for purposes of SB 9.

Prime farmland and farmlands of statewide importance are present within the City, most of which is found near Fair Oaks Avenue between Woodland Drive and Highway 101 and in the areas near Branch Mill Road (Attachment 7). These areas would not be eligible for SB 9 projects.

Three other areas are identified as conditionally excluded from SB 9. These areas include:

- Within a very high fire hazard severity zone
- Within a delineated earthquake fault zone, unless the project is designed to meet building code requirements for building within such zone

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- Within a special flood hazard area or regulatory floodway, unless certain requirements are met

SB 9 development is allowed in the three areas listed above, but only when applicable building code and measures for hazard mitigation are met. For example, a property in the flood zone is required to provide a no-rise certification, prepared in accordance with Federal Emergency Management Agency guidelines, to indicate that the construction of a building will not increase flood hazards downstream. Certain building techniques and materials measures are required for SB 9 developments on properties in an earthquake or high fire zone.

A property can only be subdivided pursuant to SB 9 once. SB 9 also precludes the same applicant, or someone working in concert with the applicant, from subdividing adjacent properties. SB 9 does not override covenants, conditions, and restrictions (CC&Rs) or other private governing documents for homeowner's associations (HOA) or common-interest developments, meaning these developments may impose further restrictions on subdivision of parcels and two-unit developments. The City would process an SB 9 application where CC&Rs or other documents might otherwise restrict SB 9 projects, and because the City is not a party to private governing documents, enforcement of such documents is left to the HOA or affected property owners. The application for SB 9 projects will include a disclaimer for the applicant to acknowledge notification of their HOA when applicable.

Urban Lot Splits

Lot splits proposed under the provisions of SB 9 are referred to as Urban Lot Splits (ULS). The legislation requires that a parcel map for an ULS shall be approved ministerially, without discretionary review. Parcels developed with affordable housing or residential units that have been occupied by a tenant within three (3) years of the ULS application may not be split if the application proposes to alter or demolish the residential units.

Under the subdivision provisions of SB 9, the City must also allow a single-family zoned property to be subdivided into two roughly proportional lots. To ensure rough proportionality, SB 9 specifies that one lot cannot be less than 40 percent of the size of the other. The bill also establishes a minimum lot size of 1,200 square feet for lots created through an urban lot split. Provisions of SB 9 include the following allowances and restrictions on subdivisions:

- Cannot require dedication of right-of-way or construction of off-site improvements (such as installation of a sidewalk where there is none);
- May require that parcels have access to a public right-of-way;
- May require easements for the provision of public services and facilities; and
- Must require the applicant to sign an affidavit stating that the applicant intends to live on one of the properties as their primary residence for at least three years after

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the date of the subdivision. This requirement does not apply to an urban land trust or qualified non-profit.

Units built on lots created through an ULS are reserved for residential uses, may not be permitted for short term rentals, and require owner occupancy for at least three years from the date of the approval of the ULS. An owner affidavit will be required with the application for a ULS and, in addition to the owner occupancy statement, must include a clause stating that a unit located on a lot created through an ULS will not be used as a short term rental.

Two-unit Development

A housing development consisting of two residential units within a single-family residential zone shall also be considered ministerially, without discretionary review or hearing, if developed pursuant to the provisions in SB 9. A two-unit development may include the construction of two new units, or the addition of a new unit to a property already developed with a single-family dwelling. A two-unit development would be subject to the following requirements, among others:

- The proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
- The proposed housing development would not require demolition or alteration of housing that has been occupied by a tenant in the last three years;
- The proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls of an existing residential unit on the property unless the site has not been occupied by a tenant in the last three years; and
- The development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

When an application for a two-unit development is submitted that proposes the demolition of an existing unit, staff will confirm the subject parcel complies with the State mandated requirements listed above. Staff maintains a database of deed-restricted affordable housing units that will be referenced to verify an affordable unit is not proposed for demolition. Furthermore, staff can obtain water billing information to verify whether a unit has been rented in the previous three years.

The Planning Commission recommendation includes allowances for either an ADU or JADU in addition to a two-unit development on lots created through an ULS. This would increase the maximum number of units allowed between the two lots from four (4) units, the minimum required by SB 9, to six (6) units. The motivation behind the Commission's recommendation was a desire to provide flexibility and feasibility for larger lots to

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construct housing that would result in progress towards the meeting the demand in the community. To construct six units on the vast majority of the residential parcels within the City, while remaining within the FAR limits, will require smaller units, which are likely to be more affordable for future tenants. An increase in the number of units, and especially units that would sell or rent at affordable levels, would also help accomplish goals established in the Housing Element.

Accessory Dwelling Units

ADUs are allowed with SB 9 projects; however, SB 9 states that an agency shall not be required to permit more than two units on a parcel created by an ULS. In addition, SB 9 states that the City is not required to permit an ADU on parcels that propose both a two-unit residential development and an ULS. The draft ordinance presented to the Planning Commission prohibited ADUs on parcels created through an ULS, as supported by the City Council during the March 22, 2022 study session. After discussing the prohibition, the Planning Commission decided to recommend allowing either an ADU or JADU on lots created through a ULS, in addition to a two-unit development to achieve the six (6) unit maximum (three units total on each ULS lot). Up to two ADUs or JADUs would be allowed on lots not created through a ULS, in accordance with SB 9. Objective design standards would apply to ADUs as well as two-unit developments.

Objective Design Standards

The City may adopt objective development standards for SB 9 projects, but those standards cannot preclude construction of at least two units of 800 square feet in size each. Objective standards are those standards that involve no exercise in judgement to apply, such as numeric setback requirements. These design standards can regulate specific standards such as unit size, height limits, aesthetics, and function.

SB 9 already includes the following mandatory development standards:

- Cannot require more than four-foot side and rear setbacks for SB 9 developments;
- Cannot require more than one parking space per unit. Cannot require any parking for projects within a half-mile walking distance of high-quality transit or major transit stops, as defined by state law, or if there is a car share vehicle located within one block;
- Must allow construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually;
- No setback can be required for existing structures, and
- The City shall not require the correction of non-conforming zoning conditions on a property as a condition of approval of a project or deny a project due to existing non-conformities.

A high-quality transit stop is defined as a stop on a fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Every bus route serving

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Arroyo Grande has service intervals exceeding 15 minutes, therefore the parking exemption described above is not available for SB 9 projects in the City unless bus service changes to meet the State definitions. Beyond the mandatory development standards, the City may incorporate standards for floor-area ratios, height, lot coverage, and building separation, among others. Just as with units that are constructed on parcels created through a ULS, two-unit developments may not be short term rentals.

On April 18, 2022, the ARC reviewed the proposed objective design standards that were refined after the study session with Council (Attachment 8). As a result of that meeting, standards for maximum unit size, height, rooftop decks, color, and materials were revised based on the feedback from ARC. For example, the ARC found the unit size maximum of 1,200 square feet would be overly restrictive for the larger single family lots and would discourage SB 9 development in areas where it is most appropriate. Using the floor-area ratios (FAR) already established in the Municipal Code was determined to be a solution that is both equitable and maintains neighborhood character. The floor-area ratios found in AGMC 16.32.050 are summarized in Table 1.

Table 1: Floor-Area Ratio Maximums

Lot Size	Floor Area Ratio Maximum
0-4,000 sq. ft.	0.35
4,001-7,199 sq. ft.	0.40
7,200-11,999 sq. ft.	0.50
12,000-39,999 sq. ft.	0.45
Greater than 40,000 sq. ft.	None

The Planning Commission was in favor of a hybrid approach in regards to maximum size, by using FAR to regulate the size of SB 9 development, with the caveat that the FAR cannot preclude at least two (2) 1,200 square foot units developed pursuant to SB 9 in order to spur housing creation.

At the study session, Council was undecided about whether a 16-foot height limit would be appropriate. To provide flexibility, the height standard that was presented to Planning Commission limited building height to 16-feet within the setbacks of the underlying zone, and buildings, or portions thereof, that comply with the setbacks of the underlying district would be subject to the height limit of that district. Planning Commission found that height standard overly restrictive, and therefore, amended the proposed height limit to 30 feet, consistent with the height limit of all single-family zones.

The building separation standard is proposed to maximize privacy and outdoor space for inhabitants of SB 9 units. Initially, staff proposed a prohibition of rooftop decks, but the ARC felt that rooftop decks provide an opportunity for outdoor living space and recommended removal of this standard.

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Standards for colors and materials are intended to ensure a minimal amount of aesthetic quality. The cladding materials are commonly found throughout the City, and prevent the use of less durable materials that would deteriorate over time and become unsightly. Multiple colors are required to ensure more visual appeal than a simple, single color.

SB 9 establishes a maximum parking requirement of one parking space per unit. The draft Ordinance reviewed by Planning Commission required one covered parking space per unit and included standards for parking locations and configurations. Arroyo Grande Municipal Code Section 16.56.030 already prohibits parking in a front setback, but makes an exception for parking spaces on a lawfully established driveway. The standard requiring a landscape buffer is intended to prevent parking from dominating the most publicly visible area of a property. Shared driveways are a way to minimize the amount of paving on a property for both aesthetic and stormwater management purposes. The Planning Commission discussed the issue of parking and initially was in favor of eliminating the covered parking requirement for SB 9 units because of the additional costs and land associated with a garage or carport. Upon further discussion, the PC recommendation to Council includes removing parking requirements from the draft Ordinance as another way to incentivize SB 9 development. Design standards for parking and on-site circulation remain in the draft Ordinance, but would only apply when parking is voluntarily proposed by an applicant.

Requiring connection to City utilities (water and sewer) will ensure that units developed under SB 9 will remain livable without relying on private water wells or septic systems, which have a finite lifespan. The screening standards applicable to service areas and mechanical equipment are intended to hide areas for storage of trash receptacles, air conditioning units, and utility meters to maintain neighborhood character.

Public Improvements

SB 9 does not allow the City to require dedication of rights-of-way or the construction of off-site improvements as a condition of approval for an ULS. The City may impose Arroyo Grande Municipal Code Chapter 16.68 requiring the undergrounding of utilities at the time of building permit issuance. Development impact fees, such as those for fire protection, police facilities, park improvements, and traffic signalization, and connection fees for water and wastewater may be collected with building permit fees for new residential units proposed with the provisions of SB 9.

Planning Commission and ARC Recommendations

Because there were significant differences between the City Council direction and the recommendations from the ARC and Planning Commission, staff has summarized the evolution of the recommendations below in Table 2 that are reflected in the draft Ordinance as it relates to the number of units, maximum size, height, and parking.

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	CC Study Session	ARC Recommendation	PC Recommendation
Number of Units	Four (4) units max.	No Change	Six (6) unit maximum on a lot divided through an urban lot split by means of an additional ADU/JADU.
Max. Unit Size	1,200 sq. ft.	Use FAR maximums from Municipal Code to regulate size.	Use FAR as maximum, but with the caveat that FAR shall not preclude the construction of two 1,200 sf units on any lot.
ADUs	Up to two allowed in addition to two-unit developments. None on lots created through an ULS.	No Change	Up to two allowed in addition to two-unit developments. One ADU/JADU allowed in addition to two-unit developments on lots create through an ULS
Max Height	16 feet	Structures, or portions thereof, located within the setback of an underlying zone are limited to 16 feet, otherwise the height limit of the underlying zone district applies.	Height limit of 30' for all SB 9 units regardless of setback
Parking	One (1) covered parking space per unit	No change	Waive parking requirements for all SB 9 units

Next Steps

Introduction of the Ordinance will begin the final steps in the process to establish regulations for SB 9 projects. Adoption of the Ordinance is proposed to occur at the next Council meeting on June 14, 2022, unless Council directs staff to make substantial revisions to the Ordinance, in which case a revised ordinance will be prepared and presented for consideration and introduction at a future City Council meeting.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

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1. Introduce the attached Ordinance approving Development Code Amendment 21-002;
2. Modify as appropriate and introduce the attached Ordinance approving Development Code Amendment 21-002;
3. Continue the introduction of the Ordinance, and provide direction to staff on specific revisions to the Ordinance; or
4. Provide other direction to staff.

ADVANTAGES:

Adoption of the Ordinance would regulate development in a manner that is appropriate for Arroyo Grande. The proposed objective design standards would allow significant development under SB 9 and progress towards housing goals established in the Housing Element.

DISADVANTAGES:

The reduced setbacks allowed by SB 9 would increase density in a manner not anticipated by the Municipal Code and may change the character of residential neighborhoods.

ENVIRONMENTAL REVIEW:

In compliance with the California Environmental Quality Act (CEQA), the Community Development Department has determined that the adoption of an ordinance to implement Senate Bill 9 creates a ministerial review process and therefore is exempt from the requirements of CEQA pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

PUBLIC NOTIFICATION AND COMMENTS:

A notice of public hearing was published in the Tribune and posted at City Hall and on the City's website on May 13, 2022. The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Ordinance
2. Senate Bill 9
3. Staff Report and Minutes from March 22, 2022 City Council Study Session
4. Staff Report and Draft Minutes from May 3, 2022 Planning Commission meeting
5. Planning Commission Resolution 22-2361
6. HCD SB 9 Fact Sheet
7. Farmland Map
8. Minutes from the April 18, 2022 ARC Meeting