



**MEMORANDUM**

**TO: Planning Commission**  
**FROM: Immanuel Bereket, Principal Planner**  
**DATE: February 22, 2024**  
**RE: 2024 Development Code Amendments**

At the February 5, 2024 Planning Commission Workshop, Commissioners directed staff to (1) investigate whether the County can regulate the number and size of managerial units in multi-family housing development projects; (2) to bring forth an alternative SB 9 unit that is greater than the current 1,200 square feet but less than the 1,800 square feet; (3) review the code language that prohibits urban lot splits for those properties that do not adjoin a public right-of-way; and (4) re-consider the maximum allowable development are on steeply slopped sites under the form based code.

1. Limitation in managerial units

California law mandates that every apartment building with more than 16 units must have an on-site property manager. An on-site property manager is a person who lives in a residential unit, such as an apartment unit in an apartment building. (Cal. Code Regs. tit. 25 § 42). Similarly, the California Tax Credit Allocation Committee (CTCAC) regulations require projects with 16 or more dwelling units to provide an on-site manager’s unit, and projects with at least 161 units must provide a second on-site manager’s unit plus an additional on-site manager’s unit for each 80 beyond 161 units, up to a maximum of four on-site manager’s units. (CTCAC Regulation § 10325(f)(7)(J)). Similarly, the State Density Bonus Law allows for more than one manager’s unit. (Cal. Govt. Code § 65915.c.3.a).

Additionally, the California Tax Credit Allocation Committee (CTCAC) regulations provide that when a project or an owner proposes to utilize a low-income unit to meet California and CTCAC manager unit requirements, the unit is considered a low-income restricted unit and must comply with all local requirements associated with low-income restricted units and the tenant cannot be evicted upon employment termination.

Since the State laws are the controlling authority for the minimum and maximum permissible number of managerial units, staff recommends that the Planning Commission does not adopt a local control and make changes to the proposed amendments, as it may conflict with State law and or other funding source requirements.

## 2. SB 9 Alternatives

### Increase the maximum size of an SB 9 house to 1,800 square feet.

At the direction of the Commission to establish a reasonable unit size, staff reviewed SB 9 ordinances adopted by the Counties of Alameda, Contra Costa, Napa, San Mateo, Santa Clara, Solano, Sonoma, and the City and County of San Francisco. Additionally, staff reviewed ordinances adopted by or spoke with planning staff from the following cities: Berkeley, Fremont, Pleasanton, Santa Rosa, and Sonoma.

Staff has found that most jurisdictions apply the underlying zoning development standards related to objective design standards, height, and either lot coverage or floor area ratio (FAR) standards to regulate two-unit developments. For example, San Mateo County uses cumulative development lot coverage to limit SB 9-unit size, with a cumulative maximum development of 6,000 square feet of floor area, while the City and County of San Francisco has adopted an SB 9 specific objective designed standards without maximum floor area limitations. The Counties of Alameda, Contra Costa, and Napa apply the underlying zoning districts without an absolute maximum, while the County of Santa Clara applies a maximum of 1,600 square feet for a second unit, which can be increased on a case-by-case basis if the lot size exceeds the minimum required by underlying zoning district. Similarly, while most of the cities mentioned above apply the underlying zoning district without an absolute maximum, only the City of Sonoma imposes an absolute maximum of 1,600 square feet of cumulative development on an SB 9 duplex. Since Marin County has many areas with Planned zoning districts, which do not have minimum lot sizes or maximum floor area ratio or lot coverage standards, staff continues to recommend that the County establish a specific floor area standard rather than relying on other zoning regulations.

Staff recommends that the Planning Commission increase the size of the SB 9 development from 1,200 square feet to 1,600 square feet. When considering single-family lots can be developed with a primary residence, an 800 square feet attached ADU, and a 1,200 square detached ADU, allowing 1,600 square feet of a second primary dwelling unit while simultaneously prohibiting an ADU on the same lot is a reasonable proposal. Further, unlike ADUs, SB 9 offers the opportunity to increase the supply of starter, modestly priced homes by encouraging the building of smaller houses on small lots. This would help achieve the County's equity goals by increasing the diversity of housing stock.

The proposed amendments have been modified to include this revised floor area standard in section 22.32.184(l). ( see Attachment No. 3 ).

### Alternative 2: Allow Urban Lot Splits on Private Streets

Based on research on other Bay Area counties, most jurisdictions have not adopted a separate regulation to limit urban lot split potential based on access to a public right of way and default to State law. Of the jurisdictions staff reviewed, only Napa and Sonoma counties and the City of Sonoma require that newly created lots provide access to a public right-of-way, which may also be provided through private roadways.

SB 9 legislation allows the County to impose a "requirement that the parcels have access to, provide access to, or adjoin the public right-of-way." (Cal. Govt. Code §66411.7(e)(2).

Staff recommends the Planning Commission approve revised text that copies State law verbatim. This would ensure that properties which take access through a private driveway within an easement over a neighboring property must meet the allowances of that easement but would allow urban lot splits on properties that take access from a right of way that is dedicated to the subdivision rather than being dedicated to the public.

The proposed amendments have been modified to include this revised text in section 22.00.064.F.2. (Attachment No. 3).

### 3. Form Base Code

Your commission expressed a desire to allow more areas that may be developed in sloped lots, but not to the amount originally recommended by staff. In response, staff recommends the following modifications to the slope standards, as shown in the table below. (new text is underlined while old text appears in ~~striketrough~~).

<b>Table 04.050.A: Maximum Amount of Sloped Areas Allowed to be Developed</b>				
<b>Portions of Design Site with Existing Slope</b>	<b>Development Site<sup>1,2</sup></b>			<b>Previously Developed</b>
	<b>Greenfield</b>			
	<b>Up to 1 acre</b>	<b>1 to 3 acres</b>	<b>&gt;3 acres</b>	<b>&gt;1 acre</b>
0–5.99%	100% max.	100% max.	100% max.	Not to exceed previously developed footprint <u>or</u> percentage indicated for <u>greenfield sites, whichever is greater</u>
6–9.99%	100% max.	70% max.	70% max.	
10–14.99%	100% max.	50% max.	<del>25</del> <u>30</u> % max.	
15–25%	75% max.	<del>25</del> <u>30</u> % max.	<del>10</del> <u>20</u> % max.	
> 25%	<del>10</del> <u>20</u> % max.	<del>10</del> <u>20</u> % max.	<del>10</del> <u>20</u> % max.	

The modified maximum development areas proposed above are significantly lower than previously recommended. For example, for lots with slope of 25 percent or greater, staff previously recommended the percentage should be increased from 10 to 35 percent. The revised modifications would be an increase from 10 percent to 20 percent maximum. There are no other revisions to the proposed amendments to the FBC.

A draft Resolution recommending that the Board of Supervisors adopt the amendments is attached along with the proposed text amendments.

Attachments:

1. Recommended Resolution
2. Revised Development Code Amendments
3. Proposed SB 9 Amendments
4. Revised Form Base Code Amendments
5. Public comments

**MARIN COUNTY PLANNING COMMISSION  
RESOLUTION NO. PC24-002  
A RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS  
ADOPT AMENDMENTS TO TITLE 22 OF THE MARIN COUNTY CODE**

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**SECTION I: FINDINGS**

**WHEREAS**, the Planning Commission is recommending that the Board of Supervisors adopt amendments to the Marin County Development Code, which establishes zoning and subdivision regulations in the unincorporated areas of Marin County. The amendments address various topics, including: (1) clarifications and corrections; (2) implement Housing Element Update policies and programs; (3) internal consistency between the Development Code and the Countywide Plan; (4) alignment with State law; (5) amendment to SB 9 provisions; and (6) amendments to Form Based Code. The amendments would apply to the Development Code only and no amendments are proposed to the Coastal Zoning Code.

The proposed 2024 Development Code amendments are listed below by Section. All amendments are in Marin County Code Title 22.

**Article I- Sections:**

- 02.020.C.2 – Residential density
- 02.020.C.3 – Floor Area Ratio
- 02.020.C.3 – All other calculations
- 02.020.F.1 – Other County Code provisions
- 02.020.F.1 – State and Federal Law

**Article II- Sections:**

- 08.040, Table 2-2 Agricultural District Development Standards
- 08.040, Table 2-2, Footnote No. 3
- 08.040, Table 2-2, Footnote No. 6
- 08.040, Table 2-2, Footnote No. 7
- 10.040, Table 2-5 Residential District Development Standards
- 10.040, Table 2-5 – footnote No. 2
- 10.040, Table 2-5 – footnote No. 5
- 10.040, Table 2-5 - footnote No. 6
- 12.030.3 – Reference No. 5.
- 12.030, Table 2-6
- 12.030, Table 2-7
- 12.030, Table 2-6, footnote No. 5
- 12.030, Table 2-7, footnote No. 5
- 12.030, Table 2-8
- 12.040, Table 2-8, Footnote No. 2
- 12.040, Table 2-8, Footnote No. 6
- 12.040, Table 2-8, Footnote No. 7
- 14.050.B – Development Standards
- 14.050, Table 2-11 – Footnote No. 5
- 14.090 – Ministerial Review
- 14.090 Table 2-12
- 14.090 Table 2-12 – Footnote No. 2

- 14.100(B) – Application of combining district
- 16.030.I.1.a – Height limits for structures

**Article III- Sections:**

- Chapter 22.24 – Affordable Housing Incentives
- 32.150 – Residential Requirements in Commercial/Mixed Use Districts
- 32.184 – Senate Bill 9 Housing Development
- 32.188 – Residential Development under Assembly Bill 2011

**Article IV- Sections:**

- 64.020.C Type 3
- 64.060 – Application Review for Type 3 Projects (SB 35)
- 64.060.A.8.a – Preliminary Application Filing
- 64.060.A.8.c – Preliminary Application Filing
- 64.060.A.8.d – Preliminary Application Filing

**Article VI- Sections:**

- 80.064.F.2 - Senate Bill 9 Urban Lot Split
- 82.025 – Density Range

**Article VIII- Definitions:**

- 130.030.B – Building, primary detached
- 130.030.D – Development Standards
- 130.030.M – Maximum Allowable Residential Density
- 130.030.T – Total Units
- 130.030.U – Urban Uses

**Form Based Code**

- 040.050.D – Slope Standards
- 040.050, Table 04.050.A – Maximum Amount of Sloped Areas Allowed to be Developed
- 040.080.5 – Environmental Protection Standards
- 070.050.9 - Windows

While all the sections with substantive amendments are listed above, there are instances where there are cross-indexing, typographical, and formatting errors and changes that will be addressed in the final draft to be presented to the Board.

2. **WHEREAS**, on February 5, 2024, and February 22, 2024, the Marin County Planning Commission held duly noticed public hearings to take public testimony and consider the code amendments.
3. **WHEREAS**, pursuant to Public Resources Code Section 2116 and California Environmental Quality Act (CEQA) Guidelines Section 15162 and 15168, no additional environmental review is required to approve the 2023 Development Code amendments for the following reasons:

- A. Portions of the amendments are within the scope of the Supplemental CWP EIR prepared for the 2023 Housing Element.
  - B. Portions of the amendments codify the mandates of State law, which are already in effect and must be implemented regardless of the amendments.
  - C. Portions of the amendments are exempt from CEQA pursuant to CEQA Guidelines sections 15307 and 15308 because the approved amendments would strengthen and ensure consistent application of standards for the maintenance, restoration, enhancement, and protection of natural resources and the environment.
4. **WHEREAS**, provided below is a list of those policies and programs in the Countywide Plan that directly or indirectly support the proposed amendments.

AG-2.c Review Existing Development Code Criteria and Standards  
 HE-1.1 Land Use  
 HE-1.4 Development Certainty  
 HE-Program 8 Development Code Amendments

**SECTION II: ACTION**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission recommends that the Marin County Board of Supervisors adopt the proposed 2024 amendments to the Development Code, Title 22 of the Marin County Code.

**SECTION III: VOTE**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the County of Marin held on this 22<sup>nd</sup> day of February 2024 by the following vote:

AYES: COMMISSIONERS  
 NOES:  
 ABSENT:

*Rebecca Lind*

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REBECCA LIND, CHAIR  
 MARIN COUNTY PLANNING COMMISSION

Attest:

*Sindy Palencia*  
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 Sindy Palencia  
 Planning Commission Recording Secretary