



## COMMUNITY DEVELOPMENT AGENCY

Thomas K. Lai  
DIRECTOR

Marin County Civic Center  
3501 Civic Center Drive  
Suite 308  
San Rafael, CA 94903  
415 473 6269 T  
415 473 7880 F  
415 473 2255 TTY

Building and Safety  
Environmental Health Services  
Planning  
Environmental Review  
Housing  
Sustainability  
Code Enforcement  
GIS  
Federal Grants

[www.marincounty.org/cdo](http://www.marincounty.org/cdo)

May 10, 2022

Honorable Board of Supervisors  
Marin County Civic Center  
San Rafael, CA 94903

**SUBJECT:** Interim Ordinances implementing Senate Bill 35 and Senate Bill 9

Dear Members of the Board:

**RECOMMENDATION:** On behalf of the Planning Commission, staff recommends adopting three separate interim Ordinances, one to implement Senate Bill 35 and two to implement Senate Bill 9. Both statutes were adopted by the State Legislature in order to streamline the review of housing development projects and to expand access to more rental and ownership options for working families.

**SUMMARY:** This is a County-initiated program to develop three interim Ordinances to implement Senate Bill 35 and Senate Bill 9, which mandate that local government streamline the review of certain housing projects. Senate Bill 35 (SB 35) mandates a ministerial planning process for multifamily housing projects that meet certain criteria. Senate Bill 9 (SB 9) is divided into two related parts, one which mandates a ministerial planning process for residential development and another which mandates a ministerial planning process for urban lot splits. All projects eligible for consideration under SB 9 must meet strict criteria for both subdivision and development. Both SB 35 and SB 9 affect only urbanized areas, and therefore neither SB 35 nor SB 9 is applicable in the Coastal Zone in Marin County or in much of the rest of West Marin.

The interim Ordinances are intended to be temporary in nature. Permanent amendments to the Development Code (Marin County Code Title 22) will be proposed with the Housing and Safety Element updates to the Countywide Plan and presented for consideration to the Planning Commission and Board of Supervisors later this year.

**DISCUSSION:** The provisions of the three recommended Ordinances are discussed below.

### **SENATE BILL 35**

Senate Bill 35 is a statute streamlining housing construction in jurisdictions that fail to build enough housing to meet their Regional Housing Needs Allocation (RHNA). Senate Bill 35 first went into effect in 2018 but was substantially amended by SB 168, which went into effect in 2020. Senate Bill 35 is intended to streamline the review of applications for multi-family developments (two or more units) that would provide a substantial amount of affordable housing. There are benefits to applicants from SB 35 because no discretionary review is allowable as long as the applications

meet the mandates of the law. However, the criteria to meet those mandates are strict, including requirements for 50 percent of the housing to be affordable to lower income households in jurisdictions not meeting their RHNA for lower income units (10 percent for jurisdictions not meeting their RHNA for moderate income units), requirements limiting the applicability of the statute to urbanized areas, requirements to pay workers a prevailing wage (for projects with 10 or more units), and prohibitions on development in wetlands and habitats for special status species of plants and animals.

In addition to the criteria stipulated in the law, SB 35 also allows the County to establish ministerial requirements related to the siting and design of development proposed under SB 35 that must be objective. The Community Development Agency (CDA) staff has been working with consultants from Opticos Design Inc. on a comprehensive form based code, which will provide detailed design standards for ministerial review of multifamily housing development. This form based code is still under development, and will be included with the aforementioned Development Code amendments that will be brought forward along with the Housing and Safety Element updates.

On an interim basis, the Planning Commission recommends applying the following standards to SB 35 applications:

- Floor Area Ratio – 30 percent
- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet
- Minimum Setbacks
  - Front – 30 feet
  - Sides – 15 feet
  - Rear – 20 percent of the average lot depth to a maximum of 25 feet

These standards are currently established in the R1:B3 (Single-family Residential, B3 Combining) zoning district, representing minimum lot sizes and setbacks that are within the mid-range of combining zoning districts with quantified development standards. In addition, the Planning Commission recommends imposing ministerial standards preventing development in Stream Conservation Areas (SCAs) or Wetland Conservation Areas (WCAs) and preventing the removal of protected and heritage trees. Although application of these restrictions is intended to promote well-designed projects, it is important to note that the State Density Bonus law allows applicants for projects with more than four units to receive waivers of development standards if they can demonstrate that those standards would make the development infeasible, so these standards may be functionally restricted with application of the density bonus law. For example, although the proposed standards would prohibit development in SCAs and WCAs, there are circumstances where an applicant could request a waiver of these standards under the density bonus law and the County would be required to approve the request.

The statutes and the State Housing and Community Development Department's (HCD) implementation guidelines set forth specific requirements for processing SB 35 applications, which include both procedural steps and informational requirements to which the County must adhere. Those procedural steps include a preliminary application, which must undergo tribal review and consultation, and a formal

application, which must undergo ministerial review before a decision is issued on the project's compliance with SB 35 and local objective standards.

As allowed by SB 35, the review authority for these applications may be the Planning Commission. The Planning Commission recommends that they review the applications on a ministerial basis and issue decisions based on the applicable objective criteria, and that there be no appeal to the Board of Supervisors of the Planning Commission's decisions. This recommendation is intended to strike a balance between providing a public venue for discussion of the proposed project (recognizing that the review authority's role is limited to verification that the application meets objective standards) with the intent of the legislation to streamline review of SB 35 applications (by not allowing for appeals of the Planning Commission's decision.)

### **SENATE BILL 9**

Senate Bill 9 (SB 9) is intended to address patterns of segregation and is designed to allow people of color to move to existing high-opportunity neighborhoods (i.e. neighborhoods with a high percentage of households that attain positive economic, educational, and health outcomes) by making them more affordable and accessible and to enable new generations to stay in existing neighborhoods by creating more affordable new homeownership opportunities. Senate Bill 9 went into effect at the beginning of 2022. Senate Bill 9 streamlines the review of duplexes and lot splits to encourage what is often called "missing middle" housing, meaning housing that is in the mid-range of density between detached single-family homes and larger apartment buildings often found in more urban settings, and further provides an opportunity to apply this strategy of streamlined review to units larger than the Accessory Dwellings Units (ADUs) currently enabled under State law.

Similar to other State legislation to address the housing crisis, such as SB 35 and the laws around ADUs, SB 9 promotes housing development by removing a local jurisdiction's authority to require discretionary review. Senate Bill 9 contains two related sets of provisions, one applicable to residential development of up to two units on a lot, and the other applicable to urban lot splits, as further discussed below.

### **Residential Development**

SB 9 allows for duplexes on lots in single family zoning districts, and also applies to single family homes. Properties that may be eligible for SB 9 development must meet a variety of criteria specified in the law, including being in an urbanized area, as mapped by the US Census, in a single-family residential zoning district, as well as not being located in a historic district, conservation easement, wetland, or habitat for special status species of plants or animals. Senate Bill 9 prohibits units developed under its provisions from being used as short term rentals. In most circumstances, each SB 9 residence must have one off-street parking space.

Senate Bill 9 mandates that residential development with no lot split allow ADUs in addition to the new primary residences. However, if an SB 9 development is on a lot that was created by an SB 9 urban lot split, then SB 9 does not require a jurisdiction to allow more than two homes (including an ADU or JADU) on that lot. A jurisdiction may disallow an ADU on that lot, while a lot created through the SB 9 urban lot split may have two homes (a primary home and a SB 9 second home). The Planning Commission recommended that the County's interim Ordinance does not permit development of an additional ADU on lots created through the SB 9 urban lot split

provisions. This differs from the staff recommendation to allow ADUs on such lots in order to create opportunities for housing, particularly ADUs which tend to be more affordable.

Development Standards

Senate Bill 9 allows the County some limited ability to establish development standards, with different approaches for residences depending on whether they are over or under 800 square feet in size. For SB 9 residences that exceed 800 square feet in size, the County may define floor area, height and setback requirements. The Planning Commission recommends using the standards from the R2 (Two-family Residential) zoning district to such SB 9 applications. The standards include:

- Floor Area Ratio – 30 percent
- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet
- Minimum Setbacks
  - Front – 25 feet
  - Sides – 6 feet
  - Rear – 20 percent of the average lot depth to a maximum of 25 feet

The Planning Commission recommends prohibiting development under SB 9 in SCAs or WCAs and prohibiting the removal of protected and heritage trees.

For proposals for up to two homes with a maximum size of 800 square feet each, SB 9 limits the standards that the County can apply. In these instances, the development would be required to be subject to the following standards:

- Maximum Heights
  - Main Buildings – 30 feet
  - Accessory Buildings – 16 feet
- Minimum Setbacks
  - Front – 25 feet
  - Sides – 4 feet
  - Rear – 4 feet

If the proposal is only for 800 square foot homes, the County is not allowed to prevent the development of two units even if they exceed a floor area ratio of 30 percent, would be built in SCAs or WCAs, or would result in the removal of protected or heritage trees.

Home Size

Senate Bill 9 does not preclude the County from limiting the size of homes that may receive approval under SB 9. This can help ensure that SB 9 is not used in a way that enables redevelopment of single family properties with excessively large single family homes. The Planning Commission recommends imposing ministerial standards limiting the floor area of new residences developed under the provisions of SB 9 to 1,000 square feet. The staff recommendation to the Planning Commission was that homes receiving ministerial approval under SB 9 be limited to 1,800 square feet to provide opportunities for family-sized housing meaningfully different than ADUs.

**Urban Lot Splits**

Under Senate Bill 9, urban lot splits would be subject to many of the same requirements as residential development, but each lot must be at least 1,200 square feet in area and the two lots are required to be approximately the same size. Lots created under SB 9 provisions cannot be further subdivided using those provisions. Further, an affidavit of owner occupancy is required for a period of three years for one of the lots created by the urban lot split.

Senate Bill 9 also allows the County to require lots created under an urban lot split to have direct access to a public right of way, which represents a basic means of protecting public safety by ensuring that adequate emergency access and evacuation routes are provided to the new lots. The Planning Commission recommends that this requirement would be imposed on all new vacant lots that are created by the urban lot split.

Senate Bill 9 prohibits units on lots subdivided under its provisions from being used as short term rentals.

**EQUITY IMPACT:** Both SB 35 and SB 9 require the streamlined review of housing development projects and SB 9 increases the possible number of primary dwellings on each lot zoned for single family residential units from one unit to four units. Further, SB 9 will increase the number of moderately sized homes being built, which tend to be more affordable. Increasing the efficiency of the application process and providing housing developers more certainty with respect to planning requirements will have the effect of promoting housing development. Therefore, implementing SB 35 and SB 9 will have a beneficial equity impact by increasing the amount of housing and the diversity of housing types available in Marin County.

**FISCAL IMPACT:** None.

<b>REVIEWED BY:</b>	<input type="checkbox"/> County Administrator	<input type="checkbox"/> N/A
	<input type="checkbox"/> Department of Finance	<input type="checkbox"/> N/A
	<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
	<input type="checkbox"/> Human Resources	<input type="checkbox"/> N/A

**SIGNATURE:**



**Jeremy Tejirian**  
Acting Deputy Director  
Planning Services

**Approved:**



**Tom Lai**  
Director

Attachments:

1. Draft Implementing Ordinance for SB 35
2. Draft Implementing Ordinance for Development Under SB 9
3. Draft Implementing Ordinance for Lot Splits Under SB 9
4. Public Comments to the Board of Supervisors
5. Planning Commission Approved Resolution Regarding SB 35
6. Planning Commission Approved Resolution Regarding Development Under SB 9
7. Planning Commission Approved Resolution Regarding Lot Splits Under SB 9
8. Planning Commission Staff Report with Attachments
9. Planning Commission Supplemental Memorandum with Attachment
10. Public Comments to the Planning Commission