CITY OF GLENDALE, CALIFORNIA
REPORT TO THE CITY COUNCIL

AGENDA ITEM

Report: Update on Recently-Enacted State Planning, Zoning and Housing Legislation Effective January 1, 2022, Including Senate Bill 9, and Consideration of Interim Urgency Ordinance Option

1. Motion to initiate preparation of Interim Urgency Ordinance effective January 1, 2022 regarding Senate Bill 9 project objective zoning, subdivision and design standards;
2. Motion to initiate amendments to Titles 16 and 30 related to SB 9 and SB 478 project standards.

COUNCIL ACTION

Item Type: Action Item

Approved for October 26, 2021 **calendar**

EXECUTIVE SUMMARY

Several important planning/zoning and housing laws will go into effect on January 1, 2022. Most significantly among these laws, Senate Bill (SB) 9 will afford property owners in single-family zones the ability to obtain ministerial approval to split one lot into two lots and/or build two residential units on a lot. Although SB 9 contains qualifying criteria, the majority of single-family lots in the City of Glendale will be eligible to use SB 9. The law allows the City to enact an implementing ordinance containing objective zoning, subdivision, and design guidelines, with some explicit limitations such as a prohibition on precluding either of the two units from being at least 800 square feet in floor area and setback regulation limitations similar to those applicable to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs).

Additional new laws discussed in this report are SB 8, which primarily extends and strengthens the Housing Crisis Act of 2019 (SB 330, related to accelerating approval process for housing projects, curtailing the city's ability to downzone, limiting fee increases on housing applications, etc.), SB 10, which establishes a streamlined process for a city to voluntarily upzone a parcel for new multi-unit housing near transit or in urban infill areas (up to 10 units per parcel), and SB 478, which prohibits the City from requiring a floor area ratio (FAR) of less than 1.0 for a housing development project consisting of 3 to 7 units and a FAR of less than 1.25 for housing development project consisting of 8 to 10 units.

This report is not only an information item, but also requests Council to initiate preparation

of an Interim Urgency Ordinance, to be brought for introduction and adoption in December of 2021 (effective January 1, 2022 concurrently with the effective date of the new laws) to enact objective zoning, subdivision and design standards and other regulations permitted to be regulated by the City related to SB 9 projects, as well as revised FAR standards required by SB 478.

COUNCIL PRIORITIES

Safe and Healthy Community: Adoption of an interim urgency ordinance containing objective zoning, subdivision and design standards for SB 9 projects will ensure the orderly development of housing in the City and contribute to the Council's goal of ensuring houses are safe, free from blight, and conform to the City's design and development standards.

Balanced, Quality Housing: The development of high quality housing is an important goal, especially with respect to providing housing opportunities to all segments of the population. An interim urgency ordinance setting forth objective zoning, subdivision and design standards for SB 9 projects will promote housing development consistent with the Council's goal of providing a balanced mix of housing opportunities.

RECOMMENDATION

That the City Council hear and review this report regarding recently-enacted state planning and housing laws, SB 9 in particular, and provide direction to initiate the preparation of an Interim Urgency Ordinance to be brought for introduction and adoption in December of 2021, and effective January 1, 2022, related to objective zoning, subdivision and design standards applicable to SB 9 projects, and floor area ratio amendments necessitated by SB 478.

BACKGROUND

In September of 2021 Governor Newsom signed into law several planning/zoning and housing-related bills. This report will focus on SB 9, but will also briefly cover SB 8, SB 10 and SB 478. All of these Senate Bills will go into effect on January 1, 2022. No immediate action is necessary with respect to SB 8 and SB 10, but staff is requesting Council direction with respect to preparation of an interim urgency ordinance, to be presented for introduction and adoption in December of 2021 (effective January 1, 2022), adopting objective zoning and subdivision standards and objective design guidelines for SB 9 projects, as well as complying with SB 478 requirements.

Senate Bill 9

SB 9, known as the California Housing Opportunity and More Efficiency (HOME) Act, has been dubbed by many commentators as the law that will "end single family zoning in California." SB 9 allows a property owner to build two units and/or subdivide an existing single-family-zoned parcel into two parcels. SB 9 adds sections 65852.21 and 66411.7 to the Government Code, and requires cities and counties to ministerially approve a housing development containing no more than two residential units (duplex) on a single parcel in single-family zones ("two-on-a-lot" projects). The bill also requires a city to

ministerially approve an urban lot split, creating two independent lots that may be sold separately. A property owner able to meet SB 9's requirements could potentially combine the two provisions of SB 9 to split one existing lot into two and then build two residential units on each new lot, resulting in four residential units where only one was allowed before. To be eligible for an SB 9 project, a parcel must meet a specific list of qualifications, discussed below.

Moreover, SB 9 states: "[a] proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, . . ." Cal. Gov't Code § 65852.21(a) (emphasis added). If taken literally (*e.g.*, the plain language of the law) SB 9 would no longer allow a city to require discretionary design review approval, i.e. Design Review Board approval, of either a single residential unit (e.g. *one* new single family home) *or* two residential units, although some legal experts surmise that it was not the Legislature's intent to disallow discretionary design review on single homes. Instead, it appears it was the Legislature's primary intent to only require ministerial approval of projects consisting of two-on-a-lot homes (with or without a lot split) in order to encourage the development of more housing units on existing single family lots. Accordingly, it is unclear whether the City can continue to require design review board discretionary review approval for one residential unit. That said, Council should consider whether requiring discretionary design review on single family homes (even if permitted) but not for two homes on a lot will incentivize construction of two homes on a lot.

SB 9 "Two-On-A-Lot" Qualifying Projects

SB 9 would allow housing development projects containing no more than two dwelling units on a single-family zoned parcel to be permitted on a ministerial basis, upon satisfaction of qualifying criteria that include the following:

- The project site is in a city or urbanized portion of an unincorporated county (the City of Glendale is such a city);
- The project site is not:
    - Within a Coastal Zone;
    - Prime farmland, or farmland of statewide importance;
    - Wetlands;
    - Within a very high fire severity zone with exceptions (see explanation applicable to the City below);
    - A hazardous waste or hazardous list site;
    - Within a delineated earthquake fault zone with exceptions;
    - Within a 100-year flood zone;
    - Within a floodway;
    - Identified for conservation in an adopted natural community conservation plan;
    - Habitat for protected species; or
    - Lands under conservation easement;
- The project site cannot require demolition or alteration of any housing if:
    - Housing is restricted affordable housing;

    - Subject to rent control; or
    - Contains tenant occupied housing in the last three years;
- The project site cannot be withdrawn from the rental market (i.e., under the Ellis Act) within the past 15 years;
- The project does not propose demolition of more than 25 percent of the existing exterior walls unless either:
    - The local ordinance allows more demolition; or
    - The site has not been occupied by a tenant in the past three years;
- The project site is not within a historic district or property included on the California Historical Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

A local agency may enact objective zoning, subdivision and design review standards, provided such objective standards do not preclude the construction of either of the two units being at least 800 square feet in floor area. Similar to state ADU/JADU legislation, no setbacks are required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. In other circumstances, the local agency may require four-foot interior (side and rear) yard setbacks. Parking of no more than one space per dwelling unit is allowed, except no parking required for projects:

- Within a half-mile walking distance of a high-quality transit corridor or a major transit stop; or
- Within one block of car share.

A local agency may deny such a housing development project if the building official makes written findings that the project would create a “specific adverse impact” upon public health and safety or the physical environment that there is no way to mitigate, a very high standard to meet. A “specific adverse impact” means a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

Additional local agency-applicable regulations include:

- The rental of any unit created must be for a term longer than 30 days;
- The California Coastal Act still applies, except that no public hearing is required for Coastal Development Permits for housing developments pursuant to SB 9;
- A local agency is not required to permit an ADU or JADU in addition to the second unit if the project takes advantage of both the lot split and “two-on-a-lot” provisions of SB 9;
- A local agency may not reject housing solely on the basis that a project proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

If these criteria are satisfied, the city must approve the project ministerially (i.e., without discretionary review or hearings). Projects approved ministerially are not subject to the

California Environmental Quality Act (CEQA) and cannot be required to obtain any discretionary approvals such as design review.

SB 9 Lot Split Projects

In addition to permitting two units on a single family lot, the proposed legislation would allow qualifying lot splits to be approved ministerially pursuant to a parcel map, upon meeting a number of criteria, including many of the same criteria for the two units described above. Additional criteria include the following:

- Each parcel must be at least 40 percent of the original parcel's size;
- Each parcel must be at least 1,200 square feet in lot size unless the local agency permits smaller lot size per ordinance;
- There cannot be a sequential lot split on the same parcel, nor can there be a lot split if the owner of the parcel being subdivided (or someone working in concert with that owner) has subdivided an adjacent parcel pursuant to this lot split legislation;
- No right-of-way dedication or off-site improvement may be required;
- The parcel must be limited to residential use;
- An affidavit that the applicant intends to use one of the housing units as a principal residence for at least three years from the date of approval is required;
- The local agency shall not require a condition that requires correction of nonconforming zoning conditions;
- For each parcel created through this legislation, a local agency is not required to permit more than two dwelling units on a parcel.

A local agency may require, as conditions of approval:

- Easements for public services and facilities;
- Access to the public right-of-way.

Senate Bill 8

SB 8 amends sections 65905 and 66300 of the Government Code, extending the provisions of the Housing Crisis Act (HCA) of 2019 through 2030 (the HCA was originally scheduled to sunset in 2025). The HCA was enacted to jumpstart more housing production by accelerating the approval process for housing projects, curtailing the city's ability to downzone, limiting fee increases on housing applications and implementing accountability provisions. SB 8 also provides some additional clarifications of the HCA. For instance, the HCA now includes a definition of "affordable housing project" to clarify it applies to those developments that are subject to a recorded affordability restriction for at least 55 years that applies to all units, except for managers' units. SB 8 also clarifies how the HCA's "no net loss in residential capacity" requirement functions. SB 8 clarifies that reducing the intensity of land use includes any action by a city or county that would "individually or cumulatively" reduce a site's residential development capacity.

Furthermore, SB 8 defines what it means for changes in land use or zoning to recoup any loss in residential capacity to be accomplished concurrently. SB 8 clarifies the definition of "concurrently" in SB 330's no net loss provision (i.e., SB 330's requirement that a city or county may reduce the intensity of land use only if it concurrently allows at least an equivalent increase in land use elsewhere in the city or county). Under SB 8, "concurrently" generally means the action is approved at the same meeting of the legislative body.

Additionally, SB 8 clarifies that an appeal hearing "counts" as one hearing toward the five-hearing limitation created by SB 330. A hearing still excludes legislative approval hearings, including appeals, such as general plan or zoning changes.

Senate Bill 10

SB 10 adds a new section 65913.5 to the Government Code establishing a voluntary process that allows the city to streamline the upzoning of parcels for new multi-unit housing near transit or in urban infill areas, with up to 10 units per parcel. If the city elects to upzone a parcel(s) under the provisions of SB 10, the zoning ordinance and corresponding General Plan amendment would not be considered a project under CEQA. The city is not obligated to upzone any parcel of land under the provisions of SB 10.

Senate Bill 478

SB 478 prohibits the City from imposing a floor area ratio (FAR) of less than 1.0 for a housing development project (comprised solely of residential units, a mixed-use development with at least two-thirds of the square footage attributed to residential uses or transitional or supportive housing as defined in the Housing Accountability Act) consisting of three to seven units and a FAR of less than 1.25 for a housing development project consisting of 8 to 10 units. Additionally, the City may not deny a housing development project located on an existing legal parcel solely on the basis that the lot area does not meet the requirement for minimum lot size. To qualify, a project must consist of 3 to 10 units in a multifamily residential zone or mixed-use zone in an urbanized area and cannot be within a single-family zone or within a historic district. SB 478 also makes any private development CC&R void and unenforceable if it effectively prohibits or unreasonably restricts an eligible FAR, as authorized under the new FAR standards as summarized above (and now found in Government Code Section 65913.11).

ANALYSIS

SB 9 requires ministerial approval, without condition, discretion or a hearing, of a housing development containing no more than two residential units on an individual parcel in single-family zones. It also requires local governments to ministerially approve an urban lot split, creating two independent lots that may be sold separately.

The intent of the law is two-fold: break down barriers to additional housing and to increase housing supply. One of the solutions to the existing housing crisis that has been popular among legislators is to increase the housing supply by increasing density. While this has shown up in bills (like SB 50, which failed to pass) as high-density housing near transit stops, such housing is both expensive to build, limited in geographic scope and has been

politically very difficult to pass through the legislature, largely because of opposition from local governments and homeowner groups. After the defeat of SB 50, housing advocates looked to a "gentler" version of density, the addition of duplexes, four-plexes and townhomes in existing residential neighborhoods, which emerged in SB 1120, the predecessor to SB 9. The idea of both SB 1120 and SB 9 is to incrementally add new housing where housing already exists in single family neighborhoods by allowing up to 4 units to go where 1 stands today.

The potential impact of SB 9 on cities has been analyzed by the University of California Berkeley Terner Center for Housing Innovation. According to this analysis (full article attached to this report as Exhibit 1), the new law has the potential to "enable the creation of over 700,000 new homes that would otherwise not be market feasible." *Potential* may be the key word, as in the near term, not much is likely to come from SB 9. The bill does not apply to parcels that are in historic districts, high fire hazard zones (with exceptions, making SB 9 applicable to the City, discussed below), and certain other narrow categories. But like SB 35, over time there may be more significant change to existing single-family zoned neighborhoods, especially areas with larger lots that are more attractive to developers looking to add additional units under SB 9.

The Terner Center article (Exhibit 1) notes that a lot depends on the local context: "[L]ocal market prices and development costs play a large role in determining where the financial viability for the addition of new homes. Moreover, physical constraints, such as small lot sizes and other local regulations, can limit the number of new homes built as a result of SB 9". In areas with higher land values, development under SB 9 may increase the density of a neighborhood, and thereby additional units, but wouldn't likely produce new affordable units. More likely, impacts in the near term are expected to come from additional ADU's being built or larger development that meets the approval guidelines laid out in SB 35.

With respect to the inapplicability of SB 9 in areas within a high or very high fire hazard severity zone (shown on certain Department of Forestry and Fire Protection maps), there is an exception to this in the legislation for sites that "have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development." Cal. Gov't Code § 65913.4(a)(6)(D). The City has adopted fire hazard mitigation measures per existing building standards and also imposes fire mitigation measures for specific sites, and thus, even parts of the City that are identified on the Department of Forestry and Fire Prevention maps as high or very high fire hazard severity zones are eligible for an SB 9 development project. Similarly, the inapplicability of SB 9 in areas within a delineated earthquake fault zone (as determined by the State Geologist) does not apply to developments that comply with applicable seismic protections adopted by state building code standards and by local building departments, which the City requires for all developments within earthquake fault zones. Accordingly, a property owner would be eligible to build an SB 9 development project in the City even if the site were located in an earthquake fault zone because the City routinely requires such sites to comply with state and local seismic standards.

Although SB 9 requires the City to ministerially approve certain qualifying projects to build

two units on a single family-zoned lot, it does allow a city to enact certain objective standards for "two-on-a-lot" projects. SB 9 allows a city to "impose objective zoning standards, objective subdivision standards, and objective design review standards", as long as these standards do not conflict with other requirements in the legislation. SB 9 defines the terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances." Gov't Code § 65852.21(i)(2) (emphasis added). Examples of non-objective (subjective) standards are those that require general compatibility with the architectural style of the home or with the architectural style or pattern of the neighborhood.

A city's objective standards cannot "have the effect of physically precluding the construction of up to two units or . . . physically preclude either of the two units from being at least 800 square feet in floor area." Gov't Code § 65852.21(b)(2)(A). Also, a city cannot require a setback for "existing structures or structures constructed in the same location and to the same dimensions as an existing structure." Id. at § 65852.21(b)(2)(B)(i). In all other circumstances, a city may require a four-foot interior setback. Id. at § 65852.21(b)(2)(B)(ii). With respect to parking, a city may require one off-street space per unit, except in cases where the lot is located within one-half mile walking distance of either a high-quality transit corridor, or a major transit stop (as defined in other laws), or in cases where there is a car share vehicle located within one block of the parcel. Id. at § 65852.21(c)(1)(A-B).

If Council directs staff to prepare an Interim Urgency Ordinance regulating SB 9 projects, staff suggests the following general objective standards:

- First unit allowed to be as large as floor area permits but second unit must be no more than 800 square feet if existing or proposed first unit is 1,600 square feet or less (otherwise may be no more than 50% of existing or proposed first unit);
    - Option to limit one or both units (in the case of vacant land without an existing unit) to 800 square feet.
- Standards related to building a second unit on a lot with an existing ADU or JADU;
- Objective design standards such as height/stories, setbacks (to the extent allowed to be regulated), roof form, location (e.g. outside front/street-side setback), and others.

With respect to urban lot splits, SB 9 has similar requirements and allowances for local regulations. The Interim Urgency Ordinance would regulate urban lot splits similarly to "two-on-a-lot" projects, with additional suggested standards as follows:

- Standards for shared driveways;
- Lot design standards that conform to neighborhood patterns;
- Cross-lot drainage requirements/standards;

- Clarity regarding total number of units allowed, especially with respect to existing and future ADUs/JADUs; and
- Reciprocal access/easement requirements.

In addition to the above SB 9 standards, the Interim Urgency Ordinance would also modify floor area ratios for certain qualifying projects under SB 478.

STAKEHOLDERS/OUTREACH

Not applicable.

FISCAL IMPACT

There is no fiscal impact associated with this report.

ENVIRONMENTAL REVIEW

The required environmental review will be determined and completed prior to presentation of the interim urgency ordinance for introduction and adoption by the Council. SB 9 provides that an ordinance adopted to implement its provisions shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

CAMPAIGN DISCLOSURE

This item is exempt from campaign disclosure requirements.

ALTERNATIVES

Alternative 1: Initiate preparation of an Interim Urgency Ordinance effective January 1, 2022 regarding objective zoning, subdivision and design standards for SB 9 projects, as well as revised floor area ratio standards for certain SB 478 projects.

Alternative 2: Not initiate preparation of an Interim Urgency Ordinance, but initiate amendments to Titles 16 and 30 related to SB 9 and SB 478 project standards. This option may leave the City without objective standards for several months, as a non-urgency zoning ordinance requires a noticed public hearing prior to adoption, and goes into effect 30 days after adoption.

Alternative 3: Any other alternative not proposed by staff.

ADMINISTRATIVE ACTION

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EXHIBITS / ATTACHMENTS

Exhibit 1: University of California, Berkeley Terner Center for Housing Innovation: *Will Allowing Duplexes and Lot Splits on Parcels Zones for Single Family Create New Homes*? (July 2021);
Exhibit 2: Text of SB 9 and Government Code Section 65913.4.