



CITY COUNCIL STAFF REPORT

MEETING DATE: November 28, 2022

ITEM TITLE: Consideration of Adopting an Ordinance Extending Urgency Ordinance 1578 Pursuant to Government Code Section 65858(a) that Imposes Interim Regulations and Objective Standards for the Subdivision and Development of Qualified Senate Bill 9 Properties for a Period of One Year.

RECOMMENDATION:

Staff recommends that the City Council adopt an Ordinance to extend interim Urgency Ordinance 1578 for a period of one year from the date of the original expiration of the Urgency Ordinance.

FISCAL IMPLICATIONS:

There are no direct fiscal impacts associated with the City Council extending Urgency Ordinance 1578, which establishes interim regulations and objective standards for the subdivision and development of qualified Senate Bill 9 properties.

BACKGROUND:

On September 6, 2021, Governor Newsom signed Senate Bill 9 (SB 9), entitled the "California Home Act," into law. This bill applies to all single-family zones and requires jurisdictions to approve¹ of:

- (1) a one-time, two-lot subdivision and subsequent development of up to two (2) units per resulting lot; or
- (2) development of up to four (4) units on a lot that is not subdivided. However, the proposed subdivision or development project is required to meet certain qualifying location and development criteria.

SB 9 provisions supersede San Carlos' local zoning regulations and became effective on January 1, 2022. While jurisdictions may choose to allow larger size residential units, SB 9 grants allowance of at least 800 square feet for a SB 9 residential unit on each SB 9 lot, whether the lot has been subdivided or not. SB 9 also allows local jurisdictions to extend approval of tentative maps for land divisions or subdivisions from 12 months to 24 months. The allowance for the extension of approved tentative maps is optional and is not directly related to parcel maps

¹ A ministerial approval means property owners have the ability (granted by the State of California under SB 9) to subdivide and develop their property in accordance with the provisions under SB 9, and without discretionary approval by a municipality as long as the subdivision and/or development complies with established regulations that do not conflict with state law.

approved for SB 9 lot splits. All development pursuant to SB 9 can be regulated further by local agencies through Objective Design and Development Standards.

SB 9 became effective on January 1, 2022 for all local jurisdictions. Therefore, adopting an Urgency Ordinance and new Objective Design and Development Standards became a high priority in response to this new legislation. SB 9 regulations are only applicable to single-family zones which are designated as RS-3 and RS-6 zoning districts in San Carlos.

On Monday January 10, 2022, the San Carlos City Council adopted Urgency Ordinance 1576 (see attachment 3) with a 5-0 vote to impose interim regulations and objective standards for the subdivision and development of qualified SB 9 properties for a period of 45 days. On Monday February 14, 2022, City Council approved the extension of the SB 9 Urgency Ordinance 1578 (see attachment 4) with a 5-0 vote for a period of 10 months and 15 days from the day of adoption. The Ordinance is set to expire on December 29, 2022.

Since the adoption of the interim SB 9 Urgency Ordinance 1578 on February 14, 2022, staff has received only one SB 9 application, which was a conversion unit. The low amount of SB 9 applications was a common trend throughout the Bay Area. According to an article from the SF Chronicle from July 2022, there was not one example of a SB 9 project that has broken ground in the Bay area. According to the article, 14 property owners applied in SF, seven in San Jose, three in Santa Rose, two in Concord, and one in Hayward.

Extension Discussion

Staff recommends that the City Council extend adopted Urgency Ordinance 1578 for a period of one year from the date of expiration to December 29, 2023. Extending the Urgency Ordinance will allow the City to complete the Objective Design Standards (ODS) project concurrently with the permanent SB 9 Ordinance. The goal of the ODS project is to establish objective design guidelines for future residential developments, including SB 9 projects. Thus, completing the ODS project in conjunction with the permanent SB 9 ordinance will help ensure that the new standards are also applicable to SB 9 projects, rather than creating a second set of standards specific to SB 9 projects. Therefore, staff anticipates there will be no need to develop separate objective standards, as required by the State Law, only for SB 9 projects.

Extension of the Urgency Ordinance will also help to consistently apply future objective design standards for all residential developments, including SB 9 projects, while meeting State law requirements. Although staff anticipates returning to the Council with the permanent SB 9 ordinance earlier than the one year extension period, staff requests an extension to the interim SB 9 Urgency Ordinance to accommodate for any unforeseen challenges.

Objective Design Standards and SB 9

The State of California has adopted legislation requiring cities to approve certain housing proposals (separate from SB 9 applications) through ministerial, or "over-the-counter," processes based on objective standards. State law defines objective standards as those that "involve no personal or subjective judgement 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 and public official prior to submittal." The result of these laws is to encourage cities to create quicker, more accessible pathways for housing to be built. Since the permanent SB 9 Ordinance also has to include objective design standards, it would be efficient to streamline both efforts and adopt the Citywide ODS first, anticipated for October 2023, and then incorporate them

into the permanent SB 9 ordinance to ensure consistency. To clarify, the citywide ODS would apply to all residential projects, including SB 9 developments.

Staff met with the Housing Subcommittee on September 21, 2022 to discuss the option of extending the SB 9 Urgency Ordinance for a period of one year and adopt the permanent SB 9 Ordinance concurrently with the citywide ODS project. The Housing Subcommittee supported the recommendation to extend the SB 9 Urgency Ordinance for a one year period and adopt the permanent SB 9 Ordinance in conjunction with the citywide ODS project. One of the major benefits of this approach is it will result in a clear set of objective design standards that are consistent both within the citywide ODS and the permanent SB 9 ordinance. Meanwhile, the current SB 9 Urgency Ordinance that is being proposed for an extension has robust standards and will help the City regulate any SB 9 project applications in the meantime.

Neighboring cities such as Burlingame and Los Altos, are taking a similar approach of adopting their citywide objective design guidelines as phase 1, and incorporating them into the future permanent SB 9 Ordinance as phase 2. Redwood City has not adopted an SB 9 Urgency Ordinance and plans to adopt a standard SB 9 Ordinance as part of its Housing Element adoption. This demonstrates that it will serve San Carlos well to take more time in developing a permanent SB 9 ordinance and learn from the best practices of other cities since the trends indicate a low influx of SB 9 applications.

Meanwhile, staff has been working on the following tasks per Council's direction towards preparation of the permanent SB 9 ordinance in conjunction with the citywide ODS project:

Public Education and Outreach

- Discussed Objective Design Standards for future residential projects in San Carlos, including SB 9 developments, at one community workshop on May 4, 2022 and one joint Residential Design Review Committee (RDRC) and Planning and Transportation Commission (PTC) on June 6, 2022.
- Updated the City's SB 9 Webpage with links to informational resources, notices about upcoming meetings, and a contact information button for the community to get involved; Staff has made every effort to keep the information language easy to understand for the general public.
- Disseminated social media posts and E-notify email blasts to keep the community informed about any upcoming meetings and/or updates related to the SB 9 Urgency Ordinance.
- Designated a staff person to respond to SB 9 inquiries.

Documents

- A comprehensive SB 9 handout and application that provides an overview of submittal requirements and checklists to ensure potential applicants understand how to properly submit an SB 9 project is complete.
- Two SB 9 forms including Affidavit of Intent to Owner-Occupy and Affidavit of Tenant Disclosure and Acknowledgement Form as required by State Law are complete.

Apart from the above efforts, staff will be working to ensure that the citywide ODS project helps develop robust objective design standards that apply to SB 9 projects. This will include continued research and monitoring of SB 9 related best practices from neighboring jurisdictions. Extending the SB 9 Urgency Ordinance would allow staff time to receive community input for the citywide ODS project and meet with the Housing Subcommittee and Planning and Transportation Commission for further guidance.

Staff is preparing for the third ODS Community Workshop in early 2023 and anticipates the completion of the ODS project in the fall of 2023. Once the citywide ODS are completed, they will be incorporated into the future permanent SB 9 Ordinance that will be brought for the Council's consideration in October 2023.

Public Notice

A public notice (Attachment 2) was placed in the local newspaper and posted at City Hall at least 10 days prior to the meeting.

CEQA

The extension of the Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to the general rule described in Section 15303 (a) and (b) of the CEQA Guidelines, as the ordinance does not have the potential to cause a significant effect on the environment.

FINDINGS AND CONCLUSION:

The extension of the SB 9 Urgency Ordinance would ensure that any incoming SB 9 applications are regulated by the City. If the Urgency Ordinance expires, San Carlos' existing zoning regulations are insufficient for regulating SB 9 subdivisions and/or developments and do not thoroughly address community concerns regarding parking, scale, and development intensity. In addition, under the SB 9 state law, the City does not have the discretion to review and impose reasonable conditions on such SB 9 subdivisions and/or developments. Accordingly, the Urgency Ordinance would continue to provide the City with clear and measured regulations for how such development can occur, while maintaining consistency with state law. It would also allow time for staff to prepare a permanent SB 9 ordinance concurrently with the Citywide Objective Design Standards, engage the public, and prepare information and recommendations for review by the Planning Commission and City Council. Without an extension to the SB 9 Urgency Ordinance, staff will not have enough time to complete the Citywide ODS project which is a critical piece of the future permanent SB 9 Ordinance.

Staff recommends the City Council extend the Urgency Ordinance 1578 imposing interim regulations and objective standards for the subdivision and development of qualified Senate Bill 9 properties. A 4/5 vote of the City Council is required to extend this Urgency Ordinance, which would be in effect for a period of one year. See Attachment 1 for the proposed Ordinance.

ALTERNATIVES:

The alternatives available to the City Council include:

1. Adopt the Urgency Ordinance extending Urgency Ordinance 1578 Imposing Interim Regulations and Objective Standards Pursuant to Government Code Section 65858(a) for the Subdivision and Development of Qualified Senate Bill 9 Properties for a Period of One Year; or
2. Do not extend Ordinance 1578; or
3. Provide staff with alternate direction.

Respectfully submitted by:

Al Savay, Community Development Director

Approved for submission by:



Jeff Maltbie, City Manager

ATTACHMENT(S):

1. Proposed SB 9 Urgency Ordinance
2. Legal Notice
3. SB 9 Urgency Ordinance 1576
4. SB 9 Urgency Ordinance 1578

Resources:

- [Full SB 9 State Legislation](#)
- [SB 9 City Webpage](#)
- [City Council Staff Report February 14, 2022](#)
- [Resources from 21 Elements](#)