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MEMORANDUM

TO:	Mayor Bozajian and City Council City of Calabasas	FILE NO:	33004.0001
FROM:	Matthew T. Summers, City Attorney Ephraim S. Margolin, Deputy City Attorney	DATE:	September 1, 2021
CC:	Kindon Meik, City Manager Maureen Tamuri, Community Development Director		
RE:	**Public Memo re Proposed Housing Legislation: SB 9, SB 10**		

INTRODUCTION

We write to update the City Council and community on SB 9 and SB 10, two pieces of proposed housing legislation, which have advanced out of the Legislature and are now awaiting Governor Newsom's signature to become law or be vetoed. While uncertain given the realities of his pending recall election, Newsom is more likely than not to approve both bills.

SB 9 requires the City to approve lot splits for certain single-family residential lots, effectively allowing an owner to split their lot and then use existing law to build an accessory dwelling unit (ADU) on each of the two new lots, build up to a total of four units.[1] The City cannot prohibit the legislation from applying in the City. HOAs can prohibit these splits, if they do so via their CC&Rs. The City Manager will be sending a letter to HOAs re their options – including both their CC&Rs and, potentially, historic districts.

SB 10 is an optional program, by which the Council could upzone certain areas.

[1] Gov't. Code, § 65852.2, subd. (a)(1)(D)(xii)(3) (requires the City to ministerially approve ADUs which meet the State's standards, but SB 9 imposes a one ADU/JADU limit on each lot).

BACKGROUND

Both SB 9 and SB 10 are part of the "Building Opportunities for All" Senate Housing Package from Senators Toni Atkins (D-San Diego), Anna Caballero (D-Salinas), Nancy Skinner (D-Berkeley), and Scott Wiener (D-San Francisco):

- SB 9 would require the City to ministerially approve a housing development containing two residential units in single-family residential zones;
- SB 10: would allow cities to upzone *transit-rich* and *urban-infill* areas for up to 10 residential units. Cites are barred from using this law to rezone land designated as Open Space by voter initiative – including all open spaces lands protected by Measures D and O.

SENATE BILL 9: DUPLEXES AND URBAN LOT SPLITS BY RIGHT

On August 30, 2021, SB 9 advanced out of the Assembly and proceeded to the Governor for his signature.

SB 9 would require cities to approve by right through ministerial action any housing project containing two residential units in a single-family residential zone. This effectively would require the City to allow duplexes in all single-family residential zones. Local agencies would be limited to imposing objective zoning and design standards, unless those standards would physically preclude the construction of duplexes.

SB 9 would also require local agencies to process urban lot splits ministerially. An urban lot is defined as being "located within a city the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau." Part of the City is within an urbanized area or urban cluster.[2] Under SB 9 property owners could split an urban lot into two lots and build four units, consisting of two single-family residences and two accessory or junior accessory dwelling units, where previously one lot existed. State law requires the City to ministerially approve ADUs that meet the State's

[2] This is according to the 2010 Census figures and maps. City staff will confirm when the 2020 Census results are released.

standards, but SB 9 imposes a one ADU/JADU limit on each of the two new lots created by the lot split.[3] The minimum size for lot splitting would be set at 1,200 square feet.[4]

SB 9 also has additional constraints to stop rampant subdivisions of lots. For instance, SB 9 bans any development which will require the demolition of housing occupied by tenants within the last three years or will require the demolition of over 25 percent of the exterior walls of a structure.

SB 9 does NOT apply to condominium or townhome developments.

SENATE BILL 9: ASSEMBLY AMENDMENTS

The Assembly amended SB 9 to allow cities to deny a proposed housing development project if the building official "makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact."

This is a very high standard. If SB 9 becomes law, the City may deny specific lot splits or duplexes under this standard, but it will likely face litigation if it does so. The City will open itself to legal liability if it denies an SB 9 protected project without a strong case that the proposed development would impose a public health and safety impact or impact on the physical environment which cannot be mitigated. This showing could potentially be made in certain areas given the inability to maintain safe fire department access to fight fires and to evacuate, but would need to be a strong showing to prevail. The City Attorney and staff will further assess the new exemption and where it may defensibly be applied.

Another amendment of SB 9 in the Assembly allow cities to require applicants for lot splits to sign an affidavit stating that they intend to occupy one of the housing units

[3] Gov't. Code, § 65852.2, subd. (a)(1)(D)(xii)(3).
[4] In order to protect the existing stock of affordable housing, SB 9 would not allow lot splits or the building of duplexes which would require the demolition or alteration of housing that is restricted to very low-, low-, or moderate-income housing.

as their principal residence for a minimum of three years. Cities cannot impose any additional owner occupancy requirements on lot splits.

SENATE BILL 9 AND HOAS

SB 9 does not address mandatory homeowners' associations ("HOAs"). Since SB 9 only limits the power of cities to impose "objective zoning standards" - its purposeful omission of private groups like HOAs still allows HOAs to enforce their covenants, conditions, and restrictions — including any prohibitions on lot splits or duplexes. This is akin to the old rule for ADUs, until AB 670 became law, which explicitly subjected HOAs to the State's ADU laws.[5] In other words, because the legislation is framed as limiting the power of cities, it needs to also expressly limit the power of HOAs and SB 9 does not do so. Mandatory HOAs can exempt themselves from SB 9 – either through their current CC&Rs, or, if needed, by amending their current CC&Rs.

HOAs will need to, individually and through their own boards of directors and counsel, determine whether their existing CC&Rs prohibit lot splits, and if not, then determine whether and how to lawfully adopt a rule or bylaw prohibiting lot splits. As an example, if the CC&Rs contain a provision that no lot may be further subdivided, that should be sufficient, under SB 9 as it reads now, to prohibit SB 9-protected lot splits. CC&R Language that added that any new residential dwelling units are prohibited would also be sufficient to prohibit SB 9-protected duplexes. Both HOAs with existing language to that effect and for those with no similar protections could also act to amend their CC&Rs, through the required procedures, to adopt an express prohibition on any lot splits or duplexes protected by SB 9, and even also SB 10, as a belt-and-suspenders there too.

Once confirmed as currently extent, or newly adopted, it would then be up to each HOA, not the City, to enforce that contractual prohibition on lot splits. The City is, at the direction of Council, providing notice to each HOA of this exception to SB 9 and their power to prohibit lot splits, so each HOA can be informed on their options and powers.

SENATE BILL 9 EXEMPTIONS: HIGH FIRE SEVERITY ZONE EXEMPTION AND HISTORIC DISTRICTS

SB 9 exempts environmentally sensitive areas as specified in Government Code Section 65913.4(a)(6)(B)-(K), such as coastal zones, wetlands, a high or high fire severity

[5] Stats. 2019, ch. 178; Assembly Bill No. 670 (Reg. Sess. 2019-2020) ("AB 670").

zones, unless the site had adopted fire hazard mitigation measures required by existing building standards. Although Calabasas is located inside a very high fire severity zone, the City will not be completely exempt from SB 9 as every new structure in Calabasas must meet California State Building Standards and State fire mitigation measures.

SB 9 also exempts historic zones and properties from development. The City currently has no historic districts. The City is, at the direction of Council, providing notice to each HOA of this exception to SB 9.

SENATE BILL 10: THE LIGHT TOUCH DENSITY ACT

On August 30, 2021, SB 10 advanced out of the Assembly and is now in front of the Governor.

SB 10 would allow cities to pass an ordinance allowing for the zoning of any parcel for up to 10 units of residential density per parcel in urban infill or transit-rich sites.[6] An ordinance adopted under SB 10 would not be subject to CEQA.

SB 10 would prohibit a City from adopting an ordinance that would supersede a voter initiative that designates publicly owned land as open-space. The bill also would require a two-thirds vote of a City Council to supersede any zoning restriction imposed by local voter initiative.

SB 10 would not apply to sites within "a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection . . . [t]his paragraph does

[6] An "urban infill site" means a site within an urbanized area as defined by the United States Census Bureau; at least 75 percent of the perimeter of the site adjoins parcels developed for urban use; and is zoned for residential or mixed-use.

A "transit-rich area" is defined as being "within one-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code, or a parcel on a high-quality bus corridor." "High quality bus corridor" means a fixed route that has average service intervals of no over 15 minutes during weekday peak hours between 6 a.m. to 10 a.m. and between 3 p.m. and 7 p.m.; has average service intervals of no over 20 minutes during the rest of the week; and average intervals of no over 30 minutes during the weekend.

not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development."[7]

Passage of SB 10 would not require the City to take any action. And the City's Open Space initiatives, Measure D and Measure O, offer additional protections against Open Space land being rezoned for higher density.

NEXT STEPS

A public workshop exploring how SB 9 might be applied in our community will be held with the Calabasas Planning Commission on Thursday, October 7th at 6pm. Details on how to attend will be posted as part of the agenda on the City's Calendar; we encourage you to participate in this Zoom meeting. The workshop will cover possible code modifications and exemptions contained within the bill, including the historic district and HOA exemptions. SB 9 would not take effect until January 1, 2022 if approved by the Governor, so there's some time for HOAs and potential historic district areas to evaluate their options.

[7] Gov't. Code, § 65913.5, subd. (a)(4).