

Overview of Senate Bills 9 & 10 and Implications to Planning Policy & Zoning Regulations

City Council Study Session

October 28, 2021

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*Planning, Building and
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Agenda

- SB 9 Overview
- Comparison of SB 9 and Opportunity Housing
- Implementing SB 9 in San Jose
- SB 10 Overview
- Implementing SB 10 in San Jose
- Public Comment & Council Discussion

Senate Bill 9 - Overview

- Applies to all cities and charter cities
- Applies to properties zoned single-family
 - R-1 & Planned Development Zoning Districts
 - Exempts properties that meet certain criteria
- Allows subdivision of one lot into two lots
- Allows construction of two units on each lot
- Includes mandatory development standards
- Allows cities to adopt their own standards, with limitations
- Effective January 1, 2022

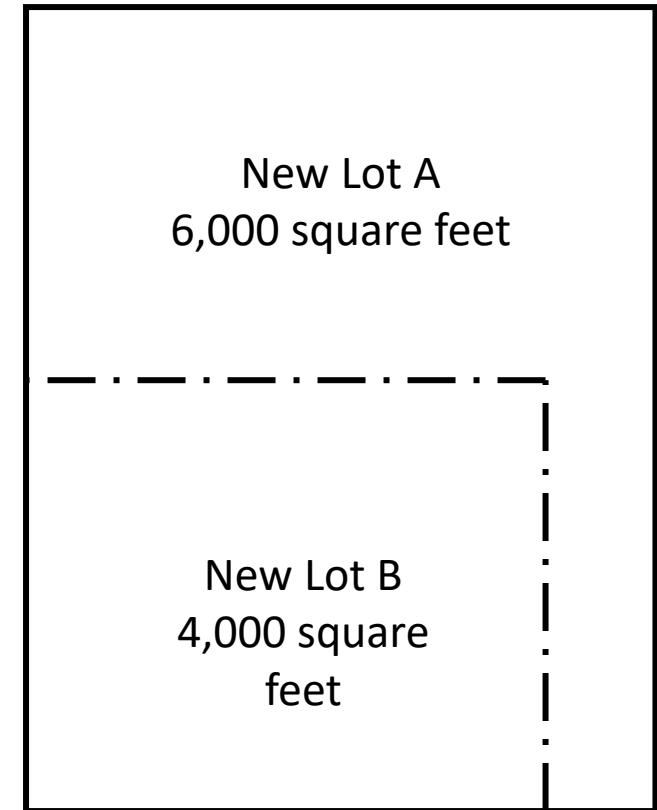


SB 9 “Urban Lot Splits”

Allows lot to be subdivided into 2 “roughly proportional” lots.

- One lot may be no less than 40% of the size of the other lot
- No lot may be less than 1,200 square feet, unless city adopts a lower lot size standard
- City is not required to permit more than 2 units per lot, including ADUs and JADUs

Existing 10,000 square foot lot



Elm Street

SB 9 “Urban Lot Splits” - continued

- Owner-occupancy requirement: Applicant must attest they plan to live on one of the lots for at least 3 years
- Same applicant cannot subdivide adjoining lots
- Lot can only be subdivided once
- Ministerial approval – no CEQA review
- Access and Utility Requirements:
 - May require property has access to a public right-of-way
 - May require easements for public services (e.g. utilities)
 - May not require right-of-way dedication or construction of off-site improvements

SB 9 – Excluded Lands

1. Protected farmlands
2. Wetlands
3. Within a very high fire hazard severity zone
4. A hazardous waste site
5. Within delineated earthquake fault zone, unless the project design meets building codes for such a zone
6. Within special flood hazard area or regulatory floodway, unless certain requirements are met
7. Lands protected for conservation
8. Habitat for protected species
9. Within a historic district or on a site that is designated as historic

SB 9 – Protection for Existing Housing

- Units created by SB 9 cannot be rented for terms of 30 days or less.
- Projects cannot alter or demolish the following:
 - Rent controlled units
 - Deed restricted affordable units
 - Units where the Ellis Act has been exercised to remove the unit from the rental market
 - Units that have been occupied by a tenant in the last three years

SB 9 – Development Standards

- Cannot require more than 4-foot side and rear setbacks
- Cannot require any setback for existing structures
- Must allow construction of attached units
 - Attached units must be designed to standards required for selling individually
- Cities may adopt *objective* development standards
 - Cannot conflict with mandatory standards
 - Must allow construction of at least 800 square foot units
 - *Objective*: 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

SB 9 - Parking

- No more than 1 parking space per unit is required
- ADUs can use current parking exceptions
- No parking required for projects within ½ mile of “high quality transit corridor” or “major transit stop”, or if there is a car share vehicle on the block.
 - “High quality transit corridor” is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.
 - “Major transit stop” is a rail or bus rapid transit stop, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

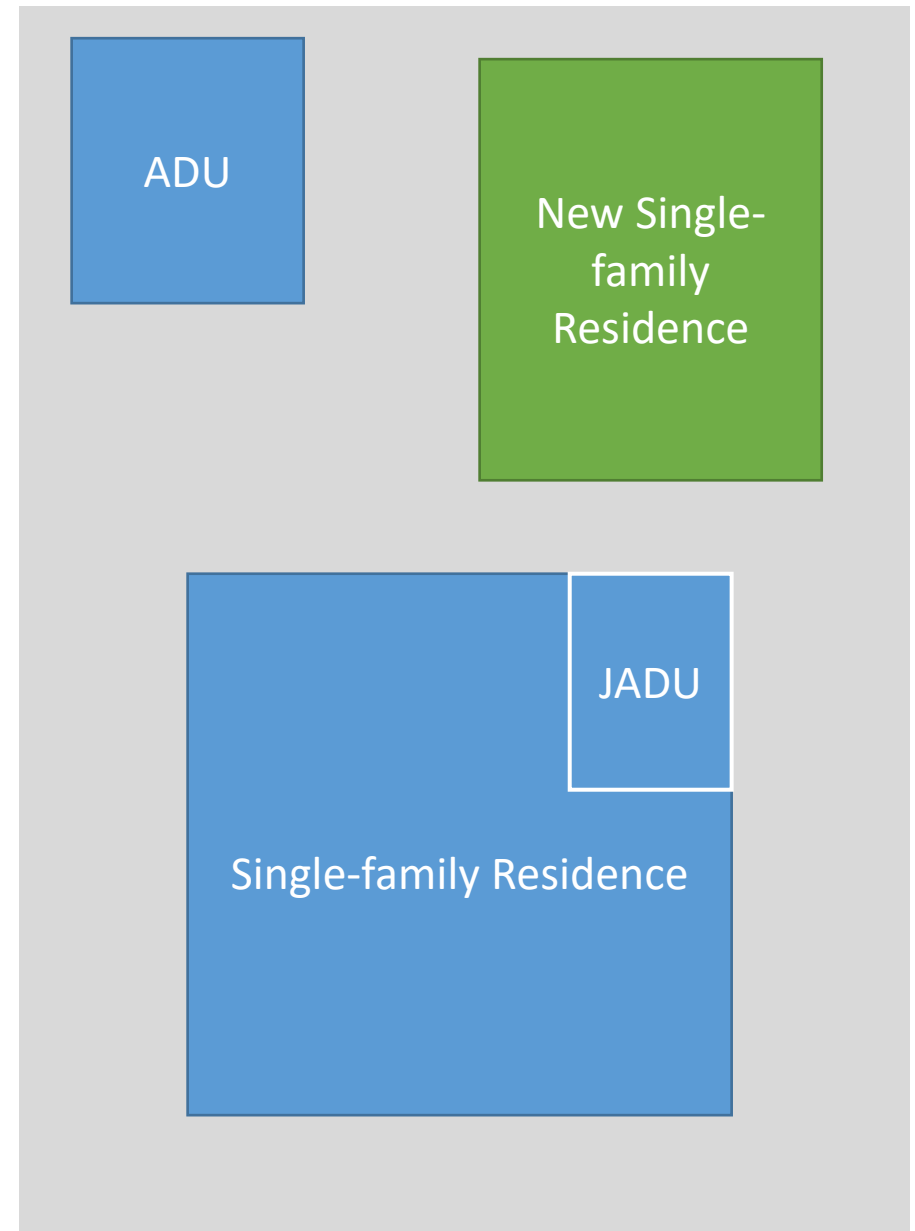
SB 9 – Number of Units Allowed

- May combine single-family unit, duplexes, ADUs, or JADUs
- Potential for up to **5 units per lot** when combined with San Jose's ADU ordinance or **10 units across a subdivided lot**.
- Does not require a city to permit more than 2 units on a property created by SB 9 subdivision, however, using this provision would require a Zoning Ordinance update.
- Alternate interpretation: Cities must allow 2 new units to be constructed on a property that *already* contains a single-family dwelling, even with ADUs. Staff does not concur with this interpretation and is seeking clarification.

* ADU = accessory dwelling unit; JADU = junior accessory dwelling unit

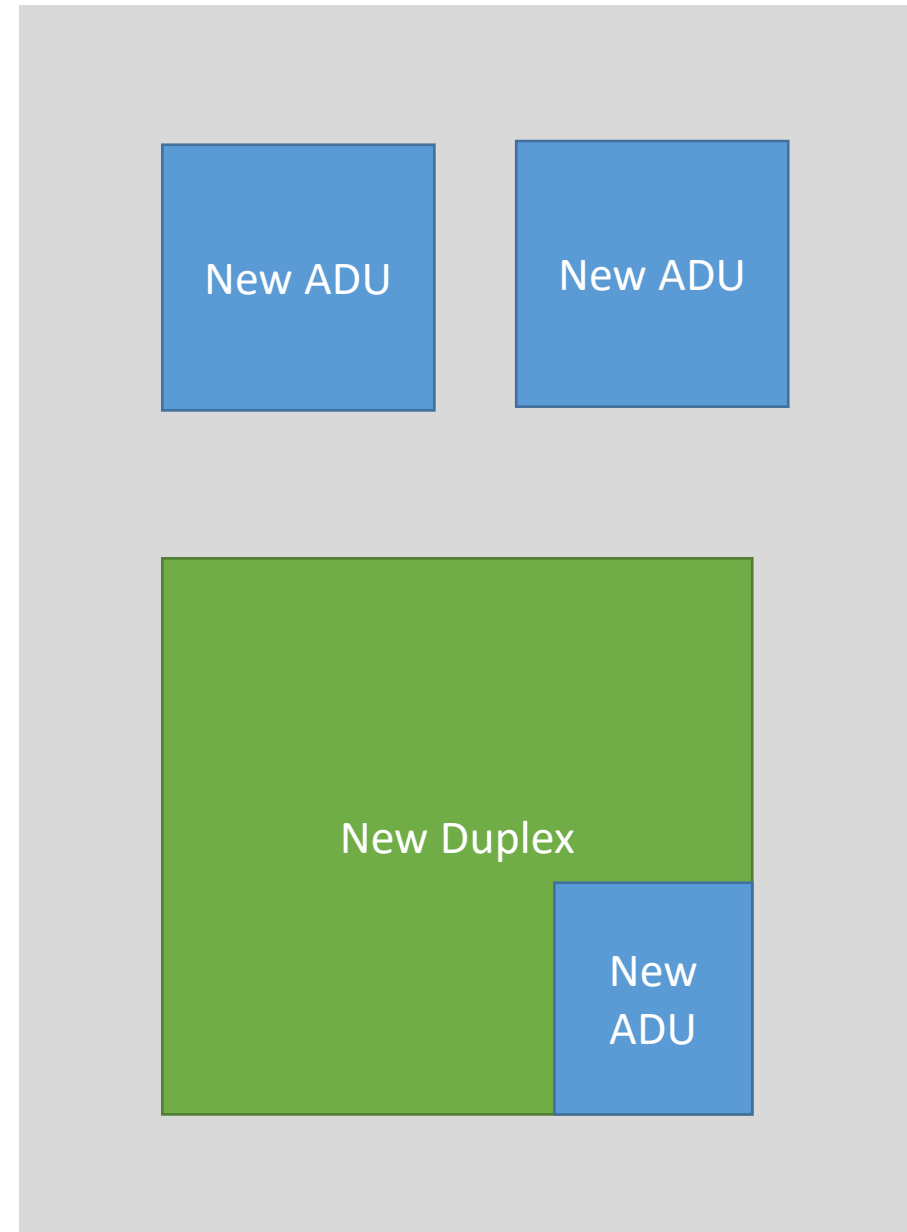
SB 9 – Example 1

- *Existing:* 1 single-family residence
- *Proposed under SB 9, without subdivision:*
 - 1 new single-family residence (allowed by SB9)
 - 1 ADU
 - 1 JADU (allowed by existing zoning + state law)
 - Total: 4 Units



SB 9 – Example 2

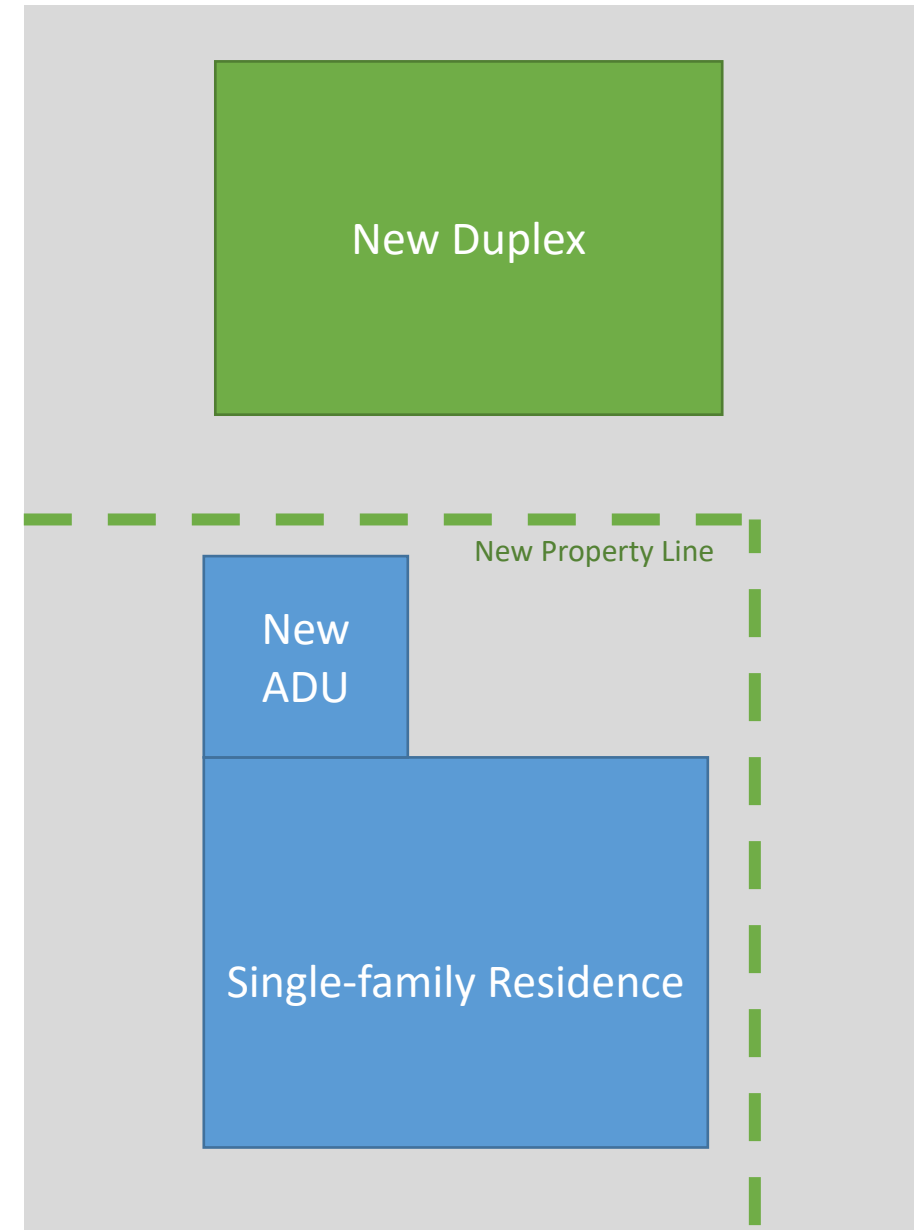
- *Existing:* Vacant Lot
- *Proposed under SB 9, without subdivision:*
 - Construct duplex (allowed by SB 9)
 - Later: Construct 2 detached ADUs (allowed by state law and ADU Ordinance)
 - Convert duplex garage to ADU (allowed by state law and ADU ordinance)
 - Total: 5 units



SB 9 – Example 3

Assumes update to the Zoning Ordinance

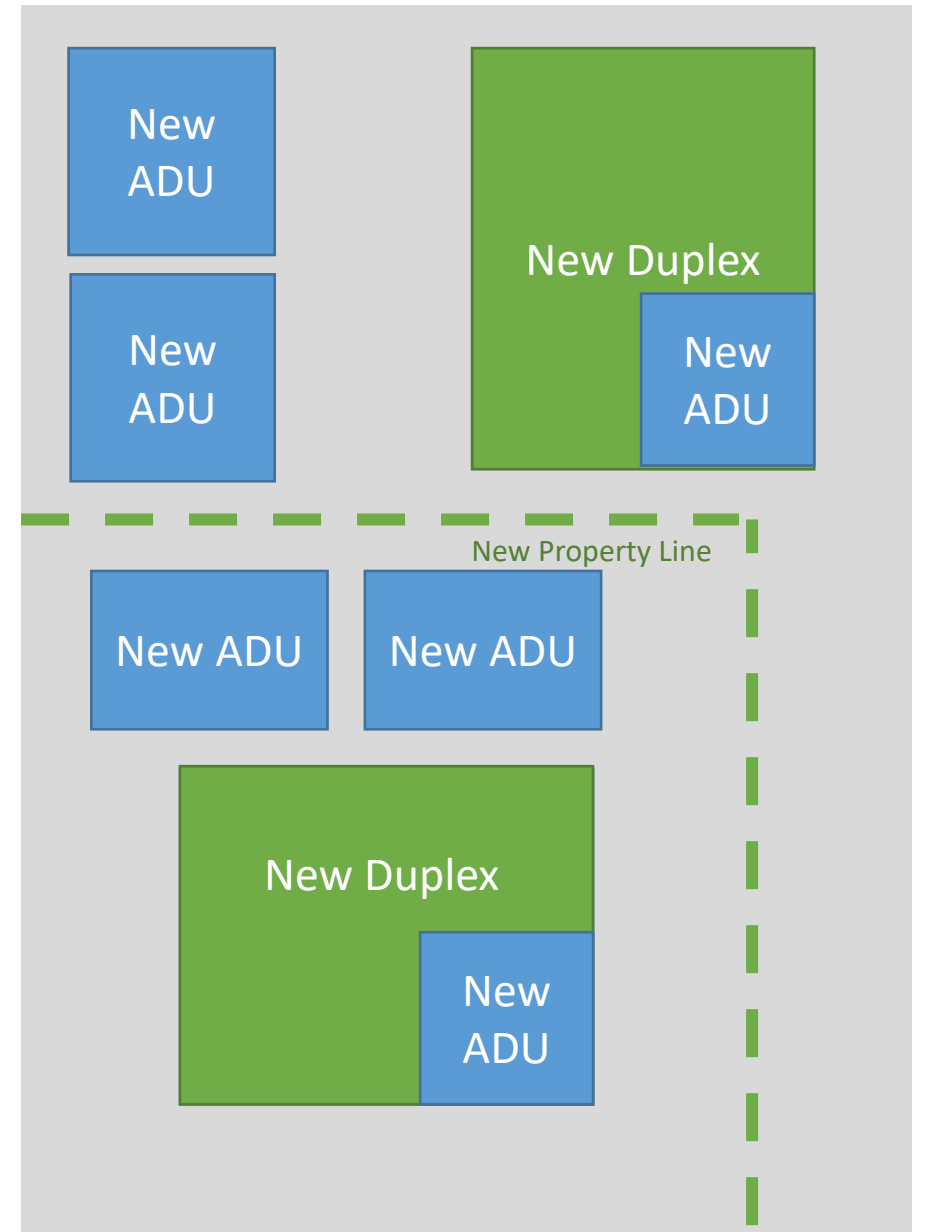
- *Existing:* 1 Single-family residence
- *Proposed under SB 9, with subdivision:*
 - Build new duplex (allowed by SB 9)
 - Build 1 new ADU (allowed by state law and ADU Ordinance)
 - Total: 4 units



SB 9 – Example 4

Assuming no change to the Zoning Ordinance and sufficient lot size

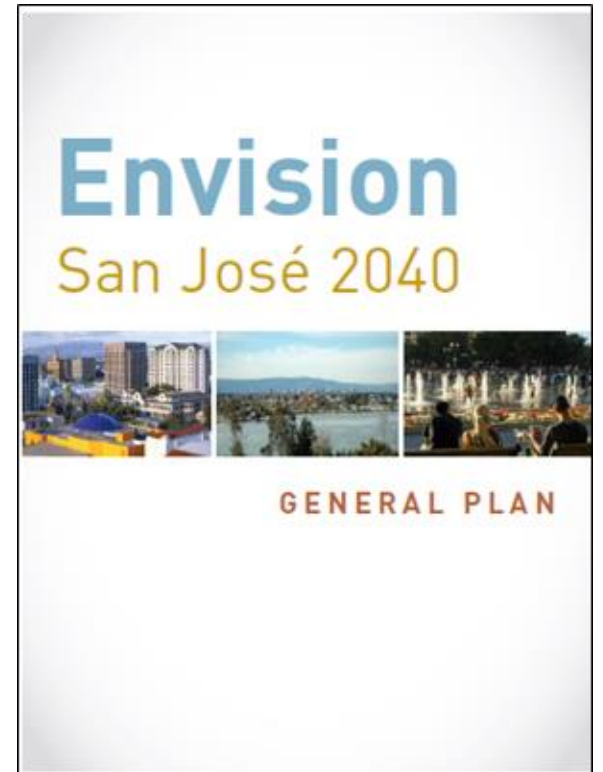
- *Existing:* 1 single-family residence
- *Proposed under SB 9, with subdivision:*
 - Convert existing house to duplex, build 1 new duplex (allowed by SB 9)
 - Later: Build 4 detached ADUs and convert duplex garages to ADUs (allowed by state law and ADU ordinance)
 - Total: 10 units



Comparing SB 9 and Opportunity Housing

Opportunity Housing as part of General Plan Four-Year Review Task Force Process

- General Plan is reviewed every 4 years to evaluate progress and enable mid-course adjustments
- As a one strategy to the housing shortage, City Council directed staff to explore Opportunity Housing as a transition area between Urban Village boundaries and surrounding residential neighborhoods



Task Force Outcome

Opportunity Housing discussed at Feb., July, and August 2020 Task Force meetings

Staff Recommendation	Allow Opportunity Housing within approximately half-mile around transit-oriented urban villages and/or on parcels that share a property line with lands that allow multifamily development. Staff also outlined potential Next Steps for continuing the exploration.
Task Force Recommendation <i>Voted in August 2020</i>	Explore Opportunity Housing citywide for properties with a Residential Neighborhood land use designation. Also recommended that staff proceed with the Opportunity Housing work plan and prioritize urban village planning.

SB 9 & Opportunity Housing - Comparison

	SB 9	Opportunity Housing
# Units Allowed	<p><u>Without Zoning Ordinance Change:</u> Up to 2 parcels with 5 units per parcel (a duplex + 3 ADUs per City ADU Ordinance and State Law) Maximum units: 10</p> <p><u>With Zoning Ordinance Change:</u> Up to 2 parcels with up to 2 units per parcel (either duplex, two single-family homes, or a single-family home + ADU). Or 1 parcel with up to 5 units (duplex + 3 ADUs)</p>	<p>Up to 4 units on a parcel + 3 ADUs per City ADU Ordinance and State Law (two detached, one attached) Maximum units: 7</p>
Type of Units Allowed	Duplexes, Single-family homes, ADUs	Duplexes, Triplexes, and Fourplexes

Comparison - continued

	SB 9	Opportunity Housing
Geographic Bounds	<p>Citywide in any single-family zone.</p> <p>Certain hazard zones are excluded (e.g., areas with high wildfire risk, geologic hazard zones).</p>	<p><u>Council Direction:</u> On properties with a Residential Neighborhood land use designation near transit-oriented Urban Villages or adjacent to properties that allow multi-family uses.</p> <p><u>Staff Recommendation:</u> On properties with a Residential Neighborhood land use designation within a half-mile of Transit Urban Villages or adjacent to properties with existing multifamily housing types or properties designated for multifamily housing.</p> <p><u>Task Force Recommendation:</u> Citywide on any properties designated Residential Neighborhood</p>
Can lots be subdivided?	Yes, allows subdivision into two lots.	TBD. Depends on Council direction to develop Opportunity Housing policy/ordinance.

Comparison - continued

	SB 9	Opportunity Housing
Allows demolition of existing structure?	Yes, with exceptions. Prohibits demolition of rent-controlled units, restricted affordable units, units where the Ellis Act has been used, and units that have been rented in the past three years.	TBD. Restrictions on rent-controlled or restricted units are proposed to be evaluated if Council provides direction to develop Opportunity Housing policy/ ordinance.
Parking	Cannot require more than 1 space/unit, none if near transit	TBD, if Council provides direction to develop Opportunity Housing policy/ ordinance.
Excludes historic properties?	Yes	As presently proposed, would consider adaptive re-use of designated or eligible properties/structures
Ministerial project approval?	Yes	Yes

Opportunity Housing – Next Steps

Next steps for Opportunity Housing:

- Present staff and Task Force recommendations:
 - December 1, 2021 – Planning Commission hearing
 - December 14, 2021 – City Council Hearing
- Staff will provide a cost feasibility analysis prepared by consultant, Strategic Economics, that analyzes where and what type of Opportunity Housing could be anticipated to be built in current market conditions

Implementing SB 9 in San Jose

SB 9 - Practical Implications

- Current expectation that most eligible properties will not use SB 9
- Findings - Turner Center for Housing Innovation, UC Berkeley:
 - SB 9 will have limited impacts; most parcels cannot feasibly build new homes
 - ~ 97% of existing single-family homes would be retained
 - Most parcels are too small to feasibly subdivide
 - Of 331,000 single-family parcels in Santa Clara County, Turner Center estimates 30,500 are market-feasible for new units.
 - Most financially advantageous model is a duplex out of existing structures

SB 9 - Implementation

Before January 1, 2022, staff must:

1. Clarify how SB 9 intersects with Permit Streamlining Act, Housing Accountability Act, Housing Crisis Act of 2019, and ADU legislation
2. Determine how SB 9 mandatory development standards integrate with existing zoning standards
3. Develop process/forms for SB 9 project applications
4. Develop process to enforce compliance with owner-occupancy provision.
5. Determine staffing needs to implement SB 9

SB 9 – Implementation - continued

Additional action items:

- Consider adopting ordinance prior to January 1, 2022 to apply the intent of SB 9 provisions of 4 units total (2 units per subdivided lot)
- Develop design standards and draft ordinance to fully implement SB 9
 - Ordinance would be limited by SB 330 provisions that disallow “downzoning”
 - Ordinance would require extensive outreach
 - An ordinance to implement SB 9 is exempt from CEQA

Implementing SB 9 - Considerations

Additional Considerations and Challenges:

1. Many single-family residences in San Jose are zoned R-2 Two Family. Should SB 9 allowances be extended to cover R-2 zoned property?
 - Could impact approximately 9,000 properties
2. Should SB 9 be applied to historic properties if resource not impacted?
3. Staff estimate that implementing SB 9 will require at least one full-time Planner position.
4. Additional staff resources to process SB 9 applications and inquiries not fully known – uncertainties about demand

About Senate Bill 10

Senate Bill 10 - Overview

- **SB 10 is voluntary, not required**
- Streamlines work for cities who proactively plan for infill projects that meet certain criteria
- If a city adopts a General Plan update, ordinance update, or other regulation to zone any parcel for up to ten units, at heights specified by the city in the ordinance, if it is within a transit rich or urban infill area, adoption of that ordinance, update, or policy is exempt from review under CEQA

SB 10 – Overview Continued

- A project of 10 units or less on a property zoned per SB 10 would be eligible to use streamlined ministerial approval legislation (i.e., SB 35 and AB 2162)
- A project of over 10 units on a property zoned per SB 10 would not be eligible for streamlined ministerial approval processes.
- Depending on Council direction for Opportunity Housing, that policy work may be able to use the SB 10 CEQA exemption

Conclusion

- There are some unanswered questions about SB 9 and SB 10 provisions
- Staff is coordinating with other cities and state Department of Housing & Community Development on SB 9 interpretations and implementation strategies
- SB 9 & 10 overview can be found on City's Opportunity Housing webpage: www.bit.ly/SJOpportunityHousing
- SB 9 & 10 will be incorporated into staff's recommendation for Opportunity Housing

Questions and Discussion