



December 12, 2021

City of Alameda Planning Board  
2263 Santa Clara Avenue, Room 190  
Alameda, CA 94501

**Subject: Proposed Alameda Municipal Code amendments to bring the R-1 zoning district regulations into compliance with Senate Bill 9 (SB 9) - -Item 7-A on the Planning Board's December 13, 2021 agenda.**

Dear Planning Board members:

The Alameda Architectural Preservation Society (AAPS) has the following comments on the proposed amendments:

1. **The proposed amendments should be limited to just the SB 9-related provisions and not include the additional proposals, such as the changes to the lists of permitted users and uses requiring use permits, except for those specifically related to SB 9.** Given the time urgency for adopting the SB 9 amendments and the complexity of the amendments, the non-SB 9 related amendments should not be subject to the somewhat hasty review process needed to adopt the SB 9 amendments by the City Council either before January 1, 2022, or as soon thereafter as possible. If staff desires Planning Board and City Council consideration of the non-SB 9 provisions, those provisions should be presented in a separate set of amendments, especially since staff has advised that additional amendments concerning the R-2 through R-6 zones will be presented in the future.
2. **The SB 9 amendments should follow the SB 9 text as closely as possible.** However, there are the following significant deviations from the SB 9 text, which should be corrected as follows:
  - a. Add "or alteration" after "demolition" in line 2 of item 2a on page 3, since "or alteration" is used in SB 9's corresponding sections 65852.21(a)(3) and 66411.7 (a)(3)(D). "Or alteration" may have been deleted because of concern that not allowing alterations would excessively impair the ability of rental buildings to use SB 9. But it may be that the authors of SB 9 were concerned that alterations could be very extensive and so disruptive that the building would be virtually unlivable during construction and owners could use an SB 9 project to force tenants to move out. Also, Sections 65852.21 (a)(3) and 66411.7 (a)(3)(D) precede the "demolition or alteration" language with the clause "notwithstanding any provision of this section or **any local law**"(emphasis added), which suggests that even if the city wanted to allow at least minor alterations to the listed types of rental housing for SB 9 projects, SB 9 prohibits it.

b. See attached marked-up copy of Subsections 30-4.1.b.2(b) and 30-4.1.d.2(c) of the draft amendments for additional changes needed to conform with the SB 9 text.

3. **Define “demolition.”** It should be in terms of percentage of exterior wall surfaces and probably roof structure as has been previously discussed as part of the historic preservation ordinance revisions, rather than the current approach using the percentage of building value. Here is one of the previously presented proposals:

*Demolition shall mean any one of the following:*

1. *Removal of more than twenty-five percent of the surface of a street-facing exterior wall and more than fifty percent of the surface of any non-street-facing exterior walls of any building, except for replacement in kind.*
2. *Enclosure or visual obstruction of more than twenty-five percent of a street-facing wall and more than 50% of the surface of a non-street-facing wall of any building so that the wall no longer functions as an exterior wall.*
3. *Removal of more than fifty percent of the roof surface area as measured in plain view, except for the replacement of roof surfaces in kind or replacement to match original roof surfaces.*
4. *Any alteration that, in combination with other alterations within the preceding five years, will represent a change as defined in one or more subsections above.*

4. **Any changes to the lists of permitted uses and uses requiring a use permit in R-1 should be reflected in ALL of the residential zones and possibly other zones.** The proposed amendments to the use lists should be expanded to do this.
5. **Permitted uses** (enumerations refer to those in Subsections 30-4.1.b. of the draft zoning amendments):

7. Should not include substations, generating plants, and gas holders, which can be extremely intrusive facilities. They should still be subject to Planning Board approval. Why is allowing them by right now the current practice? Are local regulations preempted by state law?

8. Why is “included in the General Plan” deleted from public parks, schools, playgrounds, etc. under permitted uses? If such uses are not in the General Plan, they should require a use permit like in R-2. Although, as noted in the staff commentary, some of these uses are listed in the recently adopted General Plan’s Low and Medium Density Land-Use Classifications, our understanding of which uses are actually “permitted by the General Plan“ within each residential zoning classification for a particular location is based on where such uses are shown on the Land Use Diagram. It is not the intent of the General Plan to allow such uses by right **anywhere** within the Low Density Land-Use Classification (which corresponds to the R-1 zone) - -only where such uses are shown on the Land Use Diagram.

15. Shared living serving more than a specified number of residents should probably require a use permit at least in R-1.

16. Incidental shelters should probably require a use permit. Clarify the definition of incidental shelters as per Comment 10 below.

17. Domestic violence shelters should also probably require a use permit, at least in R-1. Staff has advised that a use permit would compromise the confidentiality of clients, but we don't understand why such compromise would occur, since the use permit would apply to the facility itself and have no reference to who the clients would be. If confidentiality concerns truly demand that use permits not be required, maybe domestic violence shelters could be provided by-right in R-1 if, as recommended above for shared living, the maximum number of residents is specified and the facility does not include high-profile administrative offices or other significant non-residential activities. Further description of the physical and operating characteristics of these facilities would be helpful. The Housing Element should also address this.

6. c. 6. (Page 6). At one time the front yard averaging provision was applied to all new residential development, not just projects involving a full block frontage. The Guide to Residential Design has a statement reflecting this. The averaging option is a good strategy and should be retained and modified to individual lots in all residential zoning districts.
7. c. 7. (Page 6). Why are the reductions of existing side and rear yard setbacks to 4 feet allowed in **all** cases rather than just where greater setbacks would preclude the construction of two units on each lot with at least 800 ft.<sup>2</sup> in floor area per unit? This provision should cite Government Code Section 66411.7 as well as 65852.21.
8. c. 10. (Page 7). Why are “minimum lot width, maximum building coverage, minimum setback or other bulk and space requirements” called out specifically while SB 9 simply refers to “objective zoning standards”? Although subsection c. 10 is intended to reflect Government Code Section 66411.7 exemptions, we can't find the reference to “or a one family dwelling with at least one thousand two hundred (1200) square feet of floor area” in Section 66411.7 or anywhere else in SB 9. Are we missing something? Assuming there is no SB 9 requirement that new SB 9 one family dwellings over 800 ft.<sup>2</sup> be allowed exemptions from normal zoning standards, the 1200 ft.<sup>2</sup> should be changed to 800 ft.<sup>2</sup> to reduce the likelihood of projects entitled to exemption from these standards, especially reductions of rear yard setbacks to as little as 4'.
9. **Definitions.**

**Page 8. Incidental Shelters.** Staff has advised us that incidental shelters will be accessory uses to primary uses, such as churches. This should be reflected in the definition. Since incidental shelters will be accessory, should the definition provide that such shelters occupy less than 50% of the usable square footage of the building like San Jose's definition does? Percentage limitations like this should probably be considered for other accessory uses. Has Alameda adopted an incidental shelter program? If not, such a program should be outlined in the Housing Element.

**10. Other considerations:**

- a. Should separate utility meters be required for SB 9 units?
- b. There has been concern that SB 9 units could later be combined to reduce the total number of units. Should there be a deed restriction to prevent this, especially since SB 9 units in many cases will receive exceptions to normal zoning standards such as rear and side yard setbacks?
- c. Should floor areas greater than 1200 ft.<sup>2</sup> be allowed for new units if normally required side and rear yard setbacks and possibly other normal zoning requirements are maintained?
- d. Should there be a requirement that at least some SB 9 units be affordable, perhaps in the case of the third and or fourth units on a pre-split lot?
- e. Are revisions to the City's subdivision ordinance needed to address lot splits?
- f. Provide an informational notice to neighboring property owners of SB 9 projects prior to issuance of the building permit. Also, post the notice on the City's website as is currently done for Minor Cases.
- g. Consider addressing SB 9 in an urgency ordinance as at least several other California communities are doing. This would expedite the effective date, since only one City Council meeting (rather than the usual two meetings for ordinances) and the emergency ordinance would become effective immediately. This would allow the current draft ordinance to be given more careful consideration, including addressing the issues discussed above.
- h. It might be simpler to just upzone R-1 to R-2 so that R-1 areas are not subject to SB 9. Should this be considered?

See attached marked-up pages for specific and relatively minor additional comments.

Thank you for the opportunity to comment. Please contact me at (510) 523-0411 or [cbuckleyAICP@att.net](mailto:cbuckleyAICP@att.net) if you would like to discuss these comments.

Sincerely,

Christopher Buckley, Chair  
Preservation Action Committee  
Alameda Architectural Preservation Society

Attachments:

- 1. Marked-up pages from the draft standards

cc: Mayor and City Councilmembers (by electronic transmission)  
Historical Advisory Board

Andrew Thomas and Allen Tai, Planning, Building, and Transportation Department (by electronic transmission)  
AAPS Board and Preservation Action Committee (by electronic transmission)