



January 3, 2022

Mayor and City Councilmembers
City of Alameda
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 City Council's January 4, 2022 agenda.

Dear Mayor Ashcraft and City Councilmembers:

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

1. **Adopt the original staff recommendation to limit the maximum number of units to four as permitted by SB 9 rather than the ten units recommended by the Planning Board.** As noted in the staff report, the Planning Board at its December 13, 2021 meeting recommended that SB 9 projects up to 10 units be allowed on each existing R-1 lot following an SB 9 lot split. This recommendation went far beyond the four unit maximum mandated by SB 9 which staff recommended. The 10 units could be approved simply by planning and building staff if the proposal meets planning and zoning standards that are not preempted by SB 9.

The 10 units would be possible by combining:

- (a) SB 9's mandatory allowance of a lot split and mandatory allowance of two regular dwelling units of at least 800 sq. ft. on each post-split R-1 lot (resulting in four regular units on the original lot); with
- (b) Up to three accessory dwelling units (ADUs) for each of the two lots, as per the City's current ADU rules.

Allowing up to ten units per R-1 lot is reckless and highly irresponsible. The lack of public notice, public review and appeal (all mandated by SB 9, but only for four units) makes ten units even more problematic. **This will result in R-1, which is supposed to be Alameda's lowest density zone, having a higher density than any of the other zones under current zoning rules,** arbitrarily turning the whole residential density structure upside down. Although the densities for the other residential zones (R-2 through R-6) could increase as part of the Housing Element process, any such increase (which still seems unnecessary as per AAPS's previous comments on the Housing Element) should be considered holistically as part of the overall

Housing Element process rather than piecemeal and preemptively as the Planning Board has done with its SB 9 recommendation.

2. **Adopt the staff recommendation for a 1200 ft.² maximum unit size for SB 9 units rather than the Planning Board’s 1600 ft.² recommendation. Consider adopting a maximum 800 ft.² unit size as permitted by SB 9.** The Planning Board also recommended that the minimum size of SB 9 units be increased from the 1200 ft.² recommended by staff to 1600 ft.². This is inconsistent with the 1200 ft.² maximum size for ADUs and is **double** the 800 ft.² minimum size mandated by SB 9. It is also inconsistent with the City’s desire to promote smaller and more affordable units. The Council should seriously consider limiting SB 9 units to 800 ft.² as authorized by SB 9. Even 1200 ft.² is larger than many existing houses and can easily accommodate three bedrooms.
3. **Require that an informational notice for an SB 9 project be sent to all property owners within 100 feet and posted on the project site and on the City’s website immediately after an SB 9 application has been filed.** This noticing distribution would be the same as the existing noticing procedures. Unlike current noticing, the SB 9 notice would not be able to invite public comment, but would at least allow neighbors to become aware of SB 9 projects before construction actually starts and help minimize angry exchanges between neighbors and staff and/or the project sponsor after construction starts.
4. **Do not apply the ordinance to R-1 lots with the Planned Development (PD) overlay,** since the PD overlay allows by right up to two units per lot, in effect converting the R-1 zone to a duplex zone, rather than a single-family zone and is therefore not subject to SB 9. We believe that staff is investigating whether our interpretation of the PD overlay relative to SB 9 is correct.
5. **Revise the SB 9 amendments to follow the SB 9 text as closely as possible.** There are significant deviations from the SB 9 text, which should be corrected as shown in the attached marked-up copy of the draft amendments. Notably, draft ordinance Subsections 30-4.1 b.2(c) and 30-4.1 d.2(d), intended to parallel SB 9 Sections 65852.21(a)(6) and 66411.7 (a)(3)(E), are not consistent with the corresponding SB 9 sections.

SB 9 Section 65852.21(a)(6) reads as follows:

(6) The development **is not located** (emphasis added) within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated **or listed** (emphasis added) as a city or county landmark or historic property or district pursuant to a city or county ordinance.

SB 9 Section 66411.7 (a)(3)(E) is the same as Section 65852.21(a)(6) except 66411.7(a)(3)(E) changes “development” to “parcel”.

To make the draft ordinance consistent with SB9, draft ordinance Subsection 30-4.1 b.2.(c) should be changed to read as follows:

(c) The proposed housing development ~~is will not require the demolition of a structure~~ located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site

designated or listed as a City Historical Monument, historic property, or ~~historic~~ historic district pursuant to a City ordinance. Notwithstanding the above, any demolition that is subject to the demolition controls of AMC Section 13-21 shall require approval of a Certificate of Approval prior to issuance of a demolition permit.

Draft ordinance Subsection 30–4.1 d.2(d) should be similarly changed.

6. **Limit the reductions of existing side and rear yard setbacks to 4 feet to just where greater setbacks would preclude the construction of up to two units on each lot with at least 800 ft.² in floor area per unit as mandated by SB 9.** As written, Subsections 30-4.1d.7 and 9 of the draft ordinance appear to allow these very minimal setbacks for **all** SB 9 projects (not just where 4 foot rear and interior side yard setbacks are needed to allow construction of up to two units on each lot with at least 800 ft.² in floor area per unit), going well beyond the SB 9 mandate.

Related to this, ordinance Subsection 30-4.1d.12(b) allowing waiving zoning standards that would preclude development of a new SB 9 one-family dwelling of up to 1200 ft.² should be changed to 800 ft.² to maintain consistency with SB 9.

7. **Retain for non-SB 9 projects the existing requirement that minimum interior side yards total not less than 20% of the lot width and be no less than 5 feet nor more than 10 feet.** Ordinance Subsection 30–4.1d.7 changes this to just 5 feet, except for SB 9 projects where 4 feet is permitted as discussed in Comment 6 above. This reduction in side yard requirements for non-SB 9 projects has nothing to do with SB 9 and should therefore not be included in the ordinance. If the City believes that reductions in side yard requirements should be considered for non-SB 9 projects, such consideration should be part of a separate set of zoning amendments.
8. **Other considerations:**
 - (a) Should separate utility meters be required for SB 9 units? Doing so would provide an incentive for residents to conserve water and electricity.
 - (b) There has been concern that SB 9 units could later be combined to reduce the total number of units on a lot. **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 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?
 - (d) 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? This would allow up to five units on the lot (two regular units plus 3 ADUs), but for the two regular units, public comment would be preserved along with the City’s existing design review procedures and criteria.
9. **Adopt the urgency ordinance as well as introduce the regular ordinance, both reflecting the above changes.** The urgency ordinance would become effective immediately, allowing the current draft ordinance to be given more careful consideration, including addressing the issues discussed

above. At least several other California communities are considering urgency ordinances and may have adopted them.

See attached marked-up pages from the draft ordinance that reflect some of the above comments and provide minor additional comments.

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

Sincerely,

Christopher Buckley, Chair
Preservation Action Committee
Alameda Architectural Preservation Society

Attachment: Marked-up pages from the draft ordinance.

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