

Cities Move Quickly to Regulate SB 9 Housing Units

Josh Stephens on Jan 10, 2022

[Cupertino](#), [Housing](#), [Los Altos Hills](#), [Pasadena](#), [SB 9](#)

Compared to, say, a wildfire or a landslide, the prospect of developing two- or four-unit dwellings in residential neighborhoods might not seem super-urgent. But, with the January 1 implementation of Senate Bill 9, the hotly contested bill that essentially allows lot-splitting or conversion of all single-family homes in the state into duplexes, cities across the state adopted urgency ordinances in December that, in various ways, place restrictions on potential SB 9 redevelopments.

To SB 9's supporters, the ordinances, especially if they become permanent, threaten to undermine the law's potential to help ease the state's housing crisis by providing "missing middle" housing, especially in upscale areas that currently offer few options for middle-income residents. The cities, however, charge that SB 9 is a blunt instrument and that they are well within their rights to regulate for aesthetics and safety so long as they do not make it impossible to build SB 9 units.

All of this is taking place against the backdrop of a potential ballot measure that would not only negate SB 9 but also more broadly curtail the state's power to regulate local land use.

Jurisdictions that adopted SB 9 emergency ordinances range from small, semirural towns like Los Altos Hills and Rancho Palos Verdes, to quasi-suburbs like Cupertino, Redondo Beach, to enclaves like Beverly Hills. Including a degree of local control was considered crucial for the passage of SB 9. Even so, over 150 cities expressed opposition to the law while it was moving through the legislature, and the League of California Cities opposed it on the grounds that it subverts local control.

Some cities are trying to exert that control to the greatest extent possible within the bounds of the new law.

"I expect many, many cities to enact some sort of local implementing ordinance," said Dylan Casey, executive director of the California Renters Advocacy and Education Fund. "I think there are some areas of SB 9 where it's a bit unclear how the local zoning requirements would or wouldn't apply."

Los Altos Hills attracted derision for implementing regulations with seemingly little purpose other than the discouragement of SB 9 units. They include requirements for generous setbacks, covered parking spaces, guidelines for exterior lighting, and even the planting of hedges to maintain privacy barriers between properties (in a town where many lots exceed one acre). Additional units are limited to one story and 800 square feet—as mandated by SB 9—and they may not include balconies.

City officials contend that these regulations are all in keeping with the town's character and, in some cases, are crucial for maintaining safety in a highly flammable area with narrow roads and limited means of escape in emergencies.

"The idea behind this urgency ordinance was to ensure that the town is able to address public safety concerns associated with potential increased residential density in high fire hazard areas and geological and seismic hazard areas within this interim period," said Los Altos Hills Planning and Building Director Sofia Mangalam.

Los Altos Hills City Manager Peter Pirnejad added that the urgency ordinance is intended to precede, and pave the way for, a more deliberative process to develop a permanent ordinance.

"We're just trying to give ourselves the appropriate time to really think through and understand what this new bill is going to mean," he said.

As well, cities are waiting for the state to publish implementation guidelines from the Department of Housing and Community Development.

"We're trying to comply but we're trying to fully understand what compliance looks like in a way that maintains the character and ensures the safety and continuity of our neighborhood," added Pirnejad.

In the meantime, Casey said that what the urgency ordinance really amounts to is a de facto ban on SB 9 units.

"Their restrictions... would make it very difficult and basically impossible for anyone to develop a lot-split duplex development."

The City of Cupertino—one of several South Bay cities to take action regarding SB 9—passed an urgency ordinance limiting new SB 9 structures to a maximum of 2,000 square feet (for multiple units), forbidding basements and balconies, and requiring new structures to avoid casting shadows on solar panels on adjacent properties. No such restrictions apply to development of single-unit homes in the city.

Cupertino Communications Officer Brian Babcock said that the regulations are mainly concerned with aesthetics, and with asserting whatever amount of control the law allows.

"The goal of these standards is to ensure that the massing, scale, and design of duplex structures is similar to those of neighboring homes while still accommodating the additional units allowed under SB 9 and complying with other requirements of the law," said Babcock. While the City continues to comply with the requirements of state law, Cupertino—like most cities in the region—generally does not support state mandates on issues of local control."

The City of Milbrae exempted the development of accessory dwelling units on lots that have been split. Its more extreme measure—which echoes regulations adopted by other cities—requires that at least one unit per SB 9 development be deed-restricted affordable for at least 55 years. Unlike inclusionary housing regulations that typically require a small percentage of affordable units, Milbrae's requirement is likely to make most, if not all, SB 9 redevelopments financially infeasible. Rancho Palos Verdes implemented a similar restriction.

"Based on the pro-forma review, you cannot make inclusionary requirements on a project at that scale," said David Garcia, policy director at the UC Berkeley Turner Center for Housing Innovation. "That is a de facto ban... While some officials may say they want affordability to come out of this policy change, you're not going to see any deed-restricted units built if they are required by cities."

Other tactics that cities have adopted include restrictions on short-term rentals; owner occupancy in at least one unit; on-site parking; and minimum sizes and setbacks for lot splits, among others.

Casey said his group may sue cities that appear to violate SB 9 or other housing laws. He also noted that the Department of Housing and Community Development will likely be scrutinizing ordinances related to SB 9.

“As long as those standards are compatible with the intent of SB 9... I don’t have a big problem with it,” said Casey. “I think some cities are genuinely trying to accommodate lot-split and duplex developments with local design standards. I think other cities are essentially trying to put up barriers.”

Not all cities have gone to these lengths.

The City of Pasadena opted to take a more inclusive approach. At one point, the City Council considered declaring the entire city a historic preservation zone—which would have automatically restricted the use of SB 9—but eventually backed off in recognition that such a move, even if legally defensible, would violate the spirit of SB 9 and contract what city officials describe as a generally pro-housing stance.

“I had heard a lot of rumors that we were doing something that was to thwart SB 9, and that’s not what we did,” said Reyes.

“Mostly for us, it was about the planning efforts that the city undertakes to build both affordable housing and market-rate housing. We felt like we got this. We don’t need a one-size bill,” said Reyes. “We recognize that at the state level, there are some cities that ‘don’t got this’—that don’t make the efforts we do.”

On the other end of the spectrum, the City of San Jose is affirmatively welcoming SB 9. The city council recently passed an ordinance affirming that, generally, SB 9 may be developed in historic districts. The city had been considering its own pro-plex policy even before SB 9 passed.

Whether in San Jose or Rancho Palos Verdes, a pertinent question is whether any of this regulatory maneuvering even matters. A report by the Turner Center found that, when accounting for both zoning and economics, lot splits and duplex conversions are likely to take place on no more than 1% of eligible lots statewide for a total of 700,000 additional units (mostly duplex conversions rather than lot splits). They are likely to be weighted slightly toward suburban cities that currently have relatively little multiunit housing.

“In a lot of the conversations leading up to the vote on SB 9, there was concern that the bill would cause widespread changes concentrated in certain neighborhoods, and we just don’t see any evidence in the data,” said Garcia, a coauthor of the report. “SB 9 is not going to be the game-changer that people had hoped or feared.”

This research contradicts claims by many opponents of SB 9 contending that the law simply creates a market for real estate developers to speculate, by buying up single-family homes and converting them en masse. Cupertino’s Babcock, for instance, said, “The absence of any meaningful protections against speculation in SB 9 is extremely concerning to the city.”

Rammy Cortez, an infill developer based in San Diego, said those concerns are misplaced.

“I have investors. Every time the state passes a new bill, the investors think it’s the magic bullet and say we need to go buy every property and build duplexes on every property,” said Cortez. “Once you dig in and look at all the layers you know what, everything that glitters isn’t gold, this isn’t the magic bullet. It’s good in certain circumstances, but my forecast is that developers are probably going to sit on the sideline.”

Cortez said that SB 9 conversions are complex, risky developments for any but seasoned development professionals. And he said that the small scale of SB 9 projects means that those professionals are unlikely to find them financially attractive. He said that accessory dwelling units are vastly more pragmatic options for cities that want to add housing and homeowners who want to get the most out of their properties.

Citing the complexities of cities’ development bureaucracies and expenses such as off-site improvements that developers often have to bear, “the duplex model of SB 9 is somewhat more burdensome than the fast-track approach to building an ADU. SB 9 is going to be an a la carte.... used specially in certain instances, but what you’re going to see used exponentially more are the ADU regulations.”

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