

ORDINANCE NO. 792

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

**AN URGENCY ORDINANCE OF THE CITY OF MILLBRAE ESTABLISHING
OBJECTIVE STANDARDS FOR TWO-UNIT RESIDENTIAL DEVELOPMENTS AND
URBAN LOT SPLITS, AND AFFORDABILITY REQUIREMENTS FOR URBAN LOT
SPLITS THAT RESULT IN MORE THAN TWO DWELLING UNITS, IN SINGLE
FAMILY RESIDENTIAL ZONES PURSUANT TO SENATE BILL 9**

WHEREAS, in September 2021, the Governor Newsom signed into law Senate Bill 9, "The California Housing Opportunity and More Efficiency Act" which will take effect on January 1, 2022 (SB 9); and

WHEREAS, SB 9 requires all California cities and counties to ministerially approve a parcel map for an urban split lot and/or a proposed housing development containing a maximum of two (2) residential units within a single-family residential zone, if they meet certain statutory requirements (SB 9 Project); and

WHEREAS, a SB 9 Project must be located within an urbanized area or cluster, and cannot be located on any of the following: prime farmland; wetlands; land within the very high fire hazard severity zone; a hazardous waste site; an earthquake fault zone; within the 100-year floodplain or floodway; land identified for conservation under a natural community conservation plan, or lands under conservation easement; habitat for protected species; or a site located within a historic or landmark district, or a site that has a historic property or landmark under state or local law; and

WHEREAS, SB 9 authorizes the City of Millbrae (City) to impose objective zoning, subdivision, and design standards, consistent with the enumerated requirements of SB 9. The City is prohibited from establishing standards that would have the effect of physically precluding dwelling units from being at least 800 square feet in floor area, and from requiring a setback from an existing structure, or a structure constructed in the same location and in the same dimension as the existing structure; and

WHEREAS, SB 9's lack of specific regulations pertaining to new affordable housing has the very real potential to exacerbate the current affordable housing crisis within the City. SB 9 lacks requirements to ensure that an adequate number of new affordable housing units will be created within the City, and only protects existing units of rent-restricted housing, housing that has been the subject of an Ellis Act eviction within the past 15 years, or housing that has been occupied by a tenant in the last 3 years; and

WHEREAS, SB 9's default standards do not include objective zoning, subdivision, or design standards, and without adequate regulation, there is an imminent possibility that unregulated residential development would have irreversible detrimental impacts to neighborhood safety and livability characteristics the City's residents currently enjoy; and

WHEREAS, the State of California in its Final Statewide Housing Assessment 2025 noted that the lack of affordable housing and rising costs are compounding growing inequality and limiting advancement opportunities for younger Californians, and that without intervention, the affordable housing crisis in the state will intensify, disproportionately impacting disadvantaged communities and those with lower household income; and

WHEREAS, areas of the City are within landslide or liquefaction zones, either of which are susceptible to the effects of earthquake-induced landslides. The City also contains residential areas that are in high risk flood zones. Most of the single-family residential areas in the City are built on steep coastal hills. The City also has open space and canyon areas that surround single-family residential zones, creating unique topography and physical site conditions that require additional development considerations and reinforcing the City's substantial interests in ensuring reasonable regulation and orderly development of single-family residential construction and subdivision projects as permitted by SB 9; and

WHEREAS, the City's boundaries cover roughly 3.3 square miles in total, with minimal undeveloped residential areas. The City's clear geographical constraints emanating from its small physical size heighten the need to preserve and facilitate opportunities for the creation of new housing units for its residents designated for very low, low, and moderate income households with the implementation of SB 9 because: (a) The City is currently not meeting its Regional Housing Needs Allocation (“RHNA”) targets for very low, low, and moderate income households, as documented in the 2020 Housing Element Annual Progress Report; (b) Between 2015 and 2020, the City issued permits for only 7 very low income units, 6 low income units, and 26 moderate income units; and (c) The City's General Plan Housing Element Policy H3.5 “Affordable Housing” calls for improving the balance of housing type, tenure and affordability by encouraging development of housing at appropriate sites/locations to serve various income levels, and utilize available programs to achieve affordable housing; and

WHEREAS, under Government Code section 65858, the City is expressly authorized to adopt by a four-fifths vote, an interim ordinance prohibiting any uses that might be in conflict with, contemplated general plan, specific plan, or zoning proposal that the City Council intends to study within a reasonable time; and

WHEREAS, the City Council adopted Resolution No. 21-73 which appropriated \$60,000 to fund the preparation of a comprehensive zoning ordinance to implement SB 9 and the City executed an agreement with the planning consulting firm PlaceWorks, to assist the City in preparing the comprehensive SB 9 zoning ordinance, a process that is planned for completion no later than summer 2022; and

WHEREAS, while the City develops and adopts its comprehensive SB 9 zoning ordinance, the City believes that immediate action pursuant to this Urgency Ordinance is necessary to protect the health, safety and welfare of its residents for the reasons recited above.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MILLBRAE, CALIFORNIA ORDAINS THAT:

SECTION 1: URGENCY FINDINGS

The above stated recitals, accompanying staff report, and the entirety of the record before the City Council, including any comments made at the December 16, 2021 City Council special meeting, are adopted and incorporated herein as urgency findings and the justification for same (Urgency Findings). This Urgency Ordinance is adopted pursuant to the Urgency Findings, and declared by the City Council to be necessary to address the current and immediate threat to public health, safety and welfare.

SECTION 2: AUTHORITY

This Urgency Ordinance is enacted in accordance with the authority granted by Government Code Section 65858.

SECTION 3: OBJECTIVE STANDARDS AND AFFORDABILITY REQUIREMENTS FOR TWO-UNIT RESIDENTIAL DEVELOPMENT AND URBAN LOT SPLITS IN SINGLE FAMILY RESIDENTIAL ZONES PURSUANT TO SENATE BILL 9

A. Purpose and Intent.

The City has started the process to develop a permanent and comprehensive SB 9 zoning ordinance. The purpose of these temporary objective standards, regulations, and affordability requirements to govern Two-unit residential development and Urban lot splits pursuant to SB 9, while the City. The enactment of these standards, regulations, and affordability requirements will ensure the orderly subdivision and development of SB 9 projects in single family residential zones of the City, and the creation of affordable housing throughout the City, while the City develops and adopts its comprehensive SB 9 zoning ordinance.

B. Definitions.

"Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary dwelling. It will include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel that the single-family or multifamily dwelling is or will be situated. "Accessory dwelling unit" includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code, or a manufactured home, as defined in Section 18007 of the California Health and Safety Code. An accessory dwelling unit is not an accessory structure, as defined in this section, nor is it subject to the requirements of MMC Chapter 10.05, Article XX.

"Affordable SB 9 dwelling unit" means a Dwelling unit, that if rented, must be rented to a Low income household.

"Dwelling unit" means an Affordable SB 9 dwelling unit, Primary dwelling unit, and SB 9 dwelling unit.

"Junior accessory dwelling unit" or "JADU" means a unit that is no more than five hundred square feet in size and contained entirely within a single-family dwelling or attached garage. A junior accessory dwelling unit shall contain at least an efficiency kitchen that includes a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. A junior accessory dwelling unit is not an accessory structure, as defined in MMC section 10.05.0200, nor is it subject to the requirements of MMC Chapter 10.05, Article XX.

"Low income household" means a household with income(s) no greater than the maximum income for low income households applicable to San Mateo County as defined in California Health and Safety Section 50079.5 and published annually for each household size, by the California Department of Housing and Community Development (HCD) in California Code of Regulations Title 25, Section 6932 (or its successor provision).

"MMC" means the Millbrae Municipal Code.

"Primary dwelling unit" means a single-family dwelling on a parcel. If there are two single-family dwelling units on a parcel, the Primary dwelling unit is the larger of the two dwelling units.

"SB 9 dwelling unit" means a dwelling unit that is developed pursuant to the requirements of this Ordinance, applicable MMC provisions, and Government Code Sections 65852.21 and 66411.7.

"SB 9 Project" means a project application submitted to the City in accordance with this Ordinance, SB 9, and applicable MMC provisions, to do one or more of the following: (i) split a single-family residential parcel into two lots; (ii) develop no more than two new SB 9 dwelling units; and/or (iii) add one new SB 9 dwelling unit to a Primary dwelling unit.

"Senate Bill 9" or "SB 9" means that state law signed by the Governor into law on September 16, 2021, and amended Government Code Sections 65852.21 and 66411.7.

"Two-unit residential development" means a development that proposes no more than two new SB 9 dwelling units or proposes to add one new SB 9 dwelling unit to a Primary dwelling unit.

"Urban lot split" means a subdivision of an existing parcel into no more than two separate parcels that meets all the criteria and standards set forth in this Ordinance, MMC Chapter 10.05, and Government Code Sections 65852.21 and 66411.7, as amended.

C. Applicability.

Notwithstanding any other provision of the MMC, the provisions of this Ordinance will apply to Urban lot splits and Two-unit residential developments proposed pursuant to SB 9. Except as expressly provided in SB 9 or this Ordinance, all other state laws and regulations, and the MMC, pertaining to the underlying zone of a property developed pursuant to SB 9, apply. If there is a conflict between the standards and regulations contained in this Ordinance and those set forth in the MMC, the provisions of this Ordinance will prevail until this Ordinance is amended or superseded.

D. Covenant Required.

All Urban lot splits and Two-unit residential developments require a recorded covenant against each parcel.

1. Urban lot splits require a covenant containing the following, prior to the approval and recordation of the parcel map:
 - a. A prohibition against further subdivision of the parcel using the Urban lot split procedures in this Ordinance;
 - b. A prohibition on non-residential uses of any SB 9 Dwelling unit(s) developed or constructed on either resulting parcel;
 - c. A requirement that a rental or lease of any SB 9 Dwelling unit(s) developed or constructed on either resulting parcel must be for a period of at least 30 consecutive days; and
 - d. Affordability requirements set forth in Section G of this Ordinance, if applicable.
2. Two-unit residential developments require a covenant containing the following, prior to the issuance of any required building permit(s):
 - a. A prohibition on non-residential uses of any SB 9 Dwelling unit(s) developed or constructed;
 - b. A requirement that a rental or lease of any SB 9 Dwelling unit(s) developed or constructed must be for a period of at least 30 consecutive days; and
 - c. Affordability requirements set forth in Section G of this Ordinance, if applicable.

E. Urban Lot Splits.

In addition to the requirements set forth in SB 9, Urban lot splits must comply with the following requirements:

1. No more than two (2) Primary dwelling units may be located on any lot created by an Urban lot split.
2. ADUs and JADUs are not permitted.
3. Affordability requirements set forth in Section G of this Ordinance.

F. Two-unit Residential Developments.

In addition to the requirements set forth in SB 9, Two-unit residential developments must comply with the following:

1. All objective zoning, subdivision, and design review standards set forth in MMC Title 10, to the extent that the standards do not conflict with SB 9.
2. Affordability requirements set forth in Section G of this Ordinance.
3. Only two (2) Primary dwelling units may be located on a lot created through an Urban lot split that utilizes the Two-unit residential development provisions set forth in this section and in SB 9. Accessory dwelling units and Junior accessory dwelling units are not permitted on these lots.

G. Affordability

For an approved SB 9 Project that results in more than two SB 9 dwelling units, at least one SB 9 dwelling unit among all the units to be developed in the SB 9 Project will be an Affordable SB 9 dwelling unit, and will remain an Affordable SB 9 dwelling unit for a 55-year period from the covenant execution date.

H. Setbacks

Any SB 9 dwelling unit constructed shall have a minimum four (4) foot setback from all rear and side lot lines. This requirement does not apply to a SB 9 dwelling unit constructed in the same location and to the same dimensions as an existing legal dwelling.

SECTION 4: CEQA FINDINGS

This Ordinance is not a project within the meaning of Section 15378 of California Environmental Quality Act (CEQA) Guidelines, because it has no potential to result in direct physical change in the environment, nor a reasonably indirect physical change in the environment. Additionally, under Government Code Sections 66411.7(n) and 6585.21(j), an ordinance adopted to implement the requirements of SB 9 is not considered project for purposes of CEQA. Further, under state law, projects that would be contemplated under this Ordinance must be treated ministerially, and any such projects would be statutorily exempt from the environmental review requirements of the CEQA pursuant to Sections 15061(b)(3) and 15268 of Title 14 of the California Code of Regulations, as separate and independent bases for exemption.

SECTION 4: EFFECTIVE DATE; TERM

Upon adoption by four-fifths of the City Council, this Urgency Ordinance will be effective immediately, and will continue for a period of forty-five (45) days. This Urgency Ordinance may be extended no more than two times in accordance with Government Code section 65858.

SECTION 5: PUBLICATION

At least fifteen days after its adoption, a summary of this Ordinance shall be published once in a newspaper of general circulation in the County of San Mateo and City of Millbrae.

INTRODUCED, PASSED AND ADOPTED at a special meeting of the City Council of the City of Millbrae held on December 16, 2021.

Mayor

ATTEST:

City Clerk