



Published October 13th, 2021

## Orinda city council gets update on effects of SB 9 housing bill

By Sora O'Doherty

The city council has been briefed on what it will mean to Orinda when California Senate Bill 9, signed by the governor last month, becomes law on Jan. 1. Drummond Buckley, director of planning, presented the staff report to the council at its Oct. 5 meeting. Included was a PowerPoint presentation prepared by Goldfarb & Lipman, an Oakland law firm.

SB 9 does not require a local implementation ordinance. The new law is applicable to lots zoned for single-family use, which represents the vast majority of Orinda's privately-held land. It allows for duplexes to be built on single family lots, subject only to objective standards, and makes splitting of existing single-family lots a ministerial approval process, which means that the lot split is automatically approved if it meets the conditions specified in the new law.

When the law specifies that only objective standards apply, it means that the city cannot enforce any discretionary standards, but must rely on the adopted objective standards. For example, objective standards in Orinda govern the height of buildings in each zone and establish minimum setbacks. No design review permits will be required.

The law requires that an existing lot can be split in half, with up to a 20% difference, so, for example, a lot can be split 40/60. The minimum lot size must be 1,250 square feet. However, most residential lots in Orinda are over 20,000 square feet and only a handful are under 6,000 square feet. The requirement for two parking spaces for a single family home would be change to require only one parking space for each unit, none within a half mile of BART or a qualifying County Connection bus stop, and none within a block of a carshare vehicle location.

The new law contains provisions dealing with building in very high fire severity zones, which affects Orinda, but the law itself is unclear on the effects. Much of the rest of Orinda is within the MOFD-designated Wildland Urban Interface.

The new law automatically allows two living units on each lot, or one on each half of a split lot. However, according to staff, current law provides for a single-family house, an ADU and a junior ADU, with SB9 allowing the addition of another unit. Thus there is a potential for four units total on some lots, but the city may add restrictions that limit the ability to build ADUs on split lots. Property owners must sign an affidavit stating that they intend to remain on the property for the next three years, although they are not actually required to stay on the property for that time. The new units created under SB 9 cannot be used as short-term rentals.

The Goldfarb & Lipman presentation pointed out that local authorities must comply not only with SB 9 but also with SB 330, The Housing Crisis Act, recently extended, which disallows local ordinances that would reduce the intensity of land use on housing sites, including reductions in height, lot coverage, increased setbacks or more open space.

Council Member Darlene Gee wanted to know how SB 9 affects Orinda's regional housing needs allocation (RHNA). City manager David Biggs said that the city may seek guidance from the California Department of Housing after the law goes into effect, and Buckley thought that the new law, which in effect makes each residential lot a prospective building site for another unit, could automatically double the city's available sites for housing to meet the RHNA.

Gee also wanted to know if homes can be purchased by developers and immediately subdivided. Biggs said there is confusion about that in terms of the lot split process, and Gee concluded that there is probably a lot of opportunity for people to buy houses for development. Gee also asked if Orinda could benefit from contact with other cities that have limited the ability to build accessory dwelling units (ADUs). The council member also wanted to know if objective design standards had to be in place by Jan. 1 when SB 9 takes effect.

Buckley said that Orinda does have some objective standards, but might be able to come up with something that would provide more coverage than currently. He didn't know if the city could do an urgency ordinance, but said objective standards are really detailed and will take a lot of time. Biggs suggested that interim measures might be required.

Gee also spoke about fire safety and the El Toyonal hill: "Can we just say no because of fire danger?" City attorney Osa Wolff said that SB 9 contains a couple of ways for addressing problems such as El Toyonal, but the language is "squishy." She predicted that the city will get more guidance, and that large portions of Orinda might be excluded from SB 9 owing to the high fire risk.

Gee wondered too about things like views and privacy. Buckley said that both are covered in the design review process, which would be disallowed to SB 9 projects. Gee concluded that "There is going to be an enormous impact. What's coming will be very challenging to explain to the community," and Buckley agreed that "it will be challenging for us at the counter talking to applicants."

Mayor Amy Worth focused on a ray of good news: the creek setback is an objective standard. In public comment, Dan DeBucchere pointed out that while SB 9 takes away local control of land use, it does not take away control of streets. He suggested that restricting on-street parking might limit the number of units that can be approved with insufficient parking.

In council discussion, Vice Mayor Dennis Fay suggested that the city might need a traffic evacuation study to determine which areas might not be able to handle any additional traffic during an evacuation. Fay also mused, "If we are forced to allow more housing in a very high fire danger zone, and a fire does occur and

people die, it will be the city that is sued, not the state of California." He wondered if the state was willing to indemnify the cities.

Reach the reporter at: [sora@lamorindaweekly.com](mailto:sora@lamorindaweekly.com)

[back](#)

Copyright © Lamorinda Weekly, Moraga CA