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Council updated on recent housing legislation, SB 9 and SB 10

By Jennifer Wake

In an effort to gain a better understanding of how Senate Bill 9 and Senate Bill 10 – which allow additional units to be added to existing residential lots – will affect housing in the city of Lafayette, city attorney Mala Subramanian outlined key factors from both bills at the Oct. 25 council meeting.

SB 9 and SB 10 will go into effect Jan. 1, 2022. SB 9 allows a residential lot of a minimum 1,200 square feet to be split, resulting in two lots of approximately the same size with the potential to add two 800-square-foot ADUs on each lot. SB 10 allows a city to voluntarily adopt an ordinance to upzone any parcel up to 10 residential dwelling units, but is not mandatory. Both SB 9 or SB 10 are exempt from the California Environmental Quality Act (CEQA)

and SB 9 units cannot be used as short-term rentals.

According to Subramanian, the city may only deny an SB 9 lot split “if the county building official finds that the resulting housing development project would have a specific, adverse impact on public health and safety or the physical environment and there is no feasible, satisfactory mitigation.” Parcels cannot be located in Very High Fire Hazard Severity Zones, unless “fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures apply to the development,” Subramanian said.

Several factors were of top-most concern to council members, including overstepping existing hillside ordinances and whether real estate speculators could take advantage of the new laws to subdivide lots, pretending to

be single-family owners. Mayor Susan Candell asked if the city could find out if the applicant was a person or an entity, and Council Member Gina Dawson asked about the need for a lot of recording to keep track of lot splits down the line. Planning Director Greg Wolff said the information would be put into title reports and “it would be a declaration that the lot was created due to this provision and it can only be done one time.”

When Council Member Carl Anduri asked Subramanian about parcels subject to the hillside ordinance, she explained that the lot split would be ministerial and would trump the existing hillside ordinance, if the parcel qualifies for SB 9. “That would be terrible to the extent I can’t fully verbalize,” Anduri said. “That’s just a horrible result.”

Subramanian noted that residents cannot build on conservation easements and Wolff added that submittal requirements need a map showing all easements on the property.

Wolff said he is on a working group with colleagues in Orinda, Moraga and surrounding areas to discuss objective standards and they are advocating for a subcommittee to be formed and to hire a consultant to help.

Since neither bill included an affordability clause, Subramanian said density bonuses including waivers and concessions could apply. “It starts triggering at 15% of units, so less units on a property could trigger density bonus waivers and concessions.” She noted that when implementing the ordinance, council could reit-

erate that there is a maximum of four units allowed under SB 9. Subramanian said the council can impose objective standards, but it does have to permit two 800-square-foot units on the property.

“We would need to quantify these things when we look at objective standards,” Dawson noted. Planning Commissioner Greg Mason, during the public comment portion of the meeting, asked if Subramanian will be drafting something for the planning commission about conservation easements, and asked if tree ordinances are still objective standards. “Tree ordinances,” said Subramanian, “would apply to the extent their objective standards qualify.” Mason also had questions about Junior ADUs and that approval process as well as how to address parking restrictions.

Lafayette resident Bob McClain wondered about the impact of SB 8 (the Housing Accountability Act), which allows one unit on the property, with SB 9, and David Clark brought up housing overlay zones, which are added layers on top of existing zoning ordinances that provide incentives for developers to build housing, particularly affordable housing, within specific districts. Candell noted that the city already has a housing overlay zone, which could be utilized.

Resident Grace Dixon asked if the city could provide examples of how SB 9 and SB 10 would apply in each neighborhood. “There’s a lot of confusion,” she said. “The normal person on the street doesn’t understand.”

Jeremy Levine noted that because of existing ordinances, SB 9 might involve

hundreds of houses, not thousands. Another resident asked if single-family home projects need to go through design review any longer.

“Is design review done? No,” Subramanian replied. “But objective standards are the issue. There may be different levels to this component.”

Vice Mayor Teresa Gerlinger asked if staff will come back with outlines of objective standards, such as setbacks, height limits and parking restrictions, as well as clarification on overlays. City Manager Niroop Srivatsa recommended using planning and design review commissions to establish some of the standards because they have worked on almost all the applications that will come before the city, and the council can lend policy direction and serve on the subcommittee to monitor it, but the work would be done by the commissions, staff and consultants. Candell and Anduri will serve on the subcommittee. The main goal for council would be to draft an implementation ordinance, looking at existing hillside and creek-side ordinances, the affordability issue and units in Very High Fire Hazard Severity Zones.

Eliot Hudson, during public comments, urged the council to draft objective standards “as aggressively as possible” and to think about the character of the community, like building materials.

Wolff said the city has already started getting inquiries about SB 9.

More discussion was planned for the Nov. 8 council meeting, which will be covered in a future issue, since the meeting occurred after press time.



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