



Rules Committee Chair Chappie Jones (Council District 1),
Committee Vice chair Raul Peralez (D3),
Committee Members Sylvia Arenas (D8), David Cohen (D4), and Dev Davis (D6)
via email, sent Aug. 9, 2021

re: Rules Cmte 8/11/21 Agenda, Item 2: State SB's 9 & 10 – Opportunity Housing

Dear Rules Committee Members,

The District 6 Neighborhood Leaders Group (D6NLG), an association established over a decade ago, is comprised of officers, boardmembers and involved community representatives from the various neighborhood associations across District 6 in San José. We have been involved for years in advocating for developing San José into a safe, attractive, and inviting city. At our August 2nd meeting, by consensus we decide to write you regarding your upcoming discussion on State Senate Bills 9 and 10.

We have been following the housing crisis and proposed remedies with considerable interest. We agree that there is a severe housing shortage that contributes to homelessness and severe rent burden for many residents. SB 9 and SB 10 are not the solution to this problem. They mandate solutions that do not fit San José, eliminate local control, and come with a substantial unfunded mandate. San José is a charter city specifically for the benefits of local control, and these bills obliterate the flexibility that the City of San José needs to implement housing solutions. Given the severity of the housing crisis, we find it disingenuous that the legislature is focusing on solutions that are least likely to produce the needed housing stock rather than addressing those cities that have not been authorizing housing at the same rate as the City of San José. The legislature has not focused on facilitating larger projects due to their inability to come to agreement over fair labor practices. These SB 9 and SB 10 small-scale projects are exempt from fair labor practices and hold little promise to make a dent in the housing crisis.

The City's Envision 2040 plan for urban villages encourages development in concentrated areas so that infrastructure can be upgraded cost effectively. Urban villages are to have transit or transit potential to help with climate goals. Our area, District 6, is home to six urban villages that are already underway, as well as multiple transit corridors with higher density developments. District 6 is a pioneer in San José's transition to high density housing. Additionally, the City planning department is already analyzing "opportunity housing" in the context of San José's existing housing stock.

District 6 contains some of the oldest neighborhoods of our city. Many properties were developed as subdivisions of subdivisions, leading to irregularly sized lots from very small to very large. The sewer system and electrical infrastructure are old and, in some parts of our district, at or near capacity.

Our council district has many structures that could be called "opportunity housing" that were built in the 1920s and 1930s as market rate housing when most people did not own a car and instead walked or took the streetcar to work. As older buildings, they currently command lower rents. Our lived experience provides critical information about how to integrate small scale multi-family housing into a modern single family community.



The state legislature's bills SB 9 and 10 create regulations that

- are incompatible with San José's current regulations and would require extensive, unfunded zoning code revision;
- create haphazard growth patterns that make it difficult to cost-effectively upgrade infrastructure such as sewage, water, electrical and broadband, potentially forcing significant large rate surcharges to build capacity everywhere all at once;
- mandates an unproven development strategy in a modern city environment;
- requires development of a large rental and housing database (which the SJ Housing Dept. has said would depend primarily on self-reporting and would be enormously expensive to maintain), with accompanying enforcement provisions, all of which are unfunded by the state;
- would be subject to interpretation and litigation in the neighborhoods that have been subdivided multiple times since the County first accepted subdivision maps in the 1880s;
- call for projects that, according to the Turner Institute of Berkeley, are infeasible as financial investments;
- create multiple small parcels that would be a major barrier to the future parcel consolidation needed for redeveloping high density housing in our city's core and urban villages;
- are likely to attract state-wide litigation that could prevent the City of San José from investigating or implementing "opportunity housing" as a one tool among many to increase housing as it awaits guidance from the statewide lawsuit;
- create a set of rules where San José's lowest cost single family homes are most vulnerable to lot split, intensifying the racial and economic disparities in the city;
- increase the number of companies seeking to locate out of state where their middle and upper level managers may enjoy "executive housing;"
- and are likely to increase the number of gated communities with HOA ordinances that prevent lots splits and opportunity housing, further exacerbating the racial and economic separation.

Specific conditions with **SB 9**, the lot split state law, that concern us (taken from the bill analysis on the California Legislative Information website¹):

- An unfunded mandate to monitor owner occupancy post-construction as it requires owner occupancy for one year after construction.
 - g) Authorizes a local agency to, until 2027, impose only the following owner occupancy requirements on an applicant for an urban lot split:
 - i) The applicant must intend to occupy one of the units created under the provisions of this bill for one year after the approval of an urban lot split; or
 - ii) The applicant must be a qualified nonprofit corporation, as defined.
- Potentially thwarts the intention of the City's ADU, junior ADU law to provide low cost housing.
 - Specifies that a local agency is not required to permit accessory dwelling units (ADUs) or junior accessory dwelling units (JADUs) on lots that have utilized the provisions of this bill to both subdivide the lot and construct two units on the subdivided parcel.

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9



- This is an unfunded mandate with the State ordering City-collected fees and assessment to cover the costs. This will increase the cost of local development.
 - 6) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
- The restrictions on setbacks are incompatible with the irregular and small lots sizes found in our older neighborhoods. We are concerned about the potential for economic chaos in the single family home market as units with tiny setbacks are constructed. We worry about the under-analyzed ripple down effect on property tax collection and market flight when the single family home market responds.
 - Cannot require side or rear setbacks of more than four feet if it prevents subdivision or if units are under 800 square feet.
- The law protects homes that were occupied by tenants in the past three years from demolition or alteration. Since San José's single family homes are mostly ranch style covering the full width of the property and the law requires access of the subdivided lot to a public right of way, this suggests no existing rental could undergo a lot split unless the owner evicted the tenants and either moved in or left it vacant for 3 years. Homes with driveways and rear garages do not seem to be similarly impaired by the provisions. It seems a property owner could evict tenants, demolish or remodel their home, and then after completion and a total of 36 months, submit a lot split in order to create a second market rate high end home. In high value neighborhoods such as Willow Glen or the Rose Garden, the high profitability of these neighborhoods makes "gaming" the law attractive. The net effect is eliminating lower cost older homes for two high value homes. This would increase housing stock, but not affordable housing stock.

Specific Provisions in **SB 10** that concern us²:

The senate bill calls for up to ten units per parcel within one-half mile of transit corridors or infill sites. Our lived experience in District 6 suggests that this upper limit of number of units creates more problems than they solve, particularly when these units are in multiple adjacent parcels. In order to fit ten units on a single-family home site, all quality of life amenities disappear. Children play in streets and driveways. The small scale of the project leaves little margin for the investor who is almost always not a large corporate investor that can spread risk and repair investments over many properties. This was a common product in the 1970s and in our experience, the units are often not well-maintained. In contrast, our district contains many duplexes and a few fourplexes: these smaller scale units can often be accommodated more easily and survive the test of time.

² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB10



Furthermore, the definition of transit corridor precludes most parts of the city: the parts of the city most affected by this legislation were already identified for urban villages. This legislature has the potential to subvert the intention of the urban village plans by making it more difficult to intensify along the corridors. The City of San José planning department was expected to explore the impacts on urban villages of this small scale multi-family “opportunity housing.” All analysis is eliminated if SB 10 passes. All risks are ignored.

CEQA

Both laws exempt all projects from CEQA. Environmentalists have suggested that since it is a single law for statewide application, a statewide EIR is required. This suggests there would be a large scale statewide lawsuit. Minneapolis passed an “opportunity housing” law in 2018. In February 2021, Minnesota Supreme Court ruled that Smart Growth Minneapolis’ lawsuit³ against the “opportunity housing” ordinance could go forward.

Summary:

The District 6 neighborhood leaders have been at the forefront of implementing change in the profile of the City’s growth. We participated in Envision 2040 workshops and supported the Urban Village concept and the development of the plans. The city must grow and change to accommodate more residents. Taking a hammer blow to the City from the State with unfunded mandates and a plan that is unlikely to dent the housing shortage is the wrong solution.

Please tell the State Legislature that the City of San José does not support SB 9 and 10.

Please support thoughtful smart growth in San Jose that is already environmentally clear and will not be subject to the delays of the inevitable state-wide lawsuits from coalitions of Smart Growth advocates, realtors, environmentalists and homeowners.

Thank you.

~Larry Ames

Lawrence L Ames, Chair, D6NLG

cc:

- Mayor Sam Liccardo
- Councilmembers Magdalena Carrasco (D5), Maya Esparza (D7), Pam Foley (D9), Sergio Jimenez (D2), and Matt Mahan (D10)
- Toni Taber, City Clerk
- Nora Frimann, City Attorney
- Jennifer Maguire, City Manager; Lee Wilcox, Deputy City Manager; and Gloria Schmanek and Rosalynn Hughey, City Manager’s Office
- Chris Burton, Director of Planning
- Nanci Klein, Director of Economic Development
- Kelly Kline, Mayor’s Office
- Jacky Morales-Ferrand, Housing Department

³ <https://www.smartgrowthminneapolis.org/our-work/lawsuit/>