



City of Sebastopol
Community Development Department
Memorandum

Date: May 27, 2025
To: Planning Commission
From: Joshua Montemayor, Interim Associate Planner
Emi Thériault, Community Development Director
Subject: Agenda Item 7A – Informational Update on Senate Bill 9 (“SB 9”)-
The California Home Act (Atkins)

Overview <i>What is it and how does it impact residential land use?</i>	
Purpose	SB 9 changes existing density limits in single-family zones. Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.
Date Went Into Effect	SB 9 took effect on January 1, 2022.
Key Factors of SB 9 (See Attachment 1 for an infographic).	<ul style="list-style-type: none">• SB 9 can allow for building a two-unit housing development in a single-family zone, and for urban lot splits by allowing a one-time subdivision of an existing single-family residential parcel into two parcels.• Used together, <u>this allows 4 homes</u> where 1 was allowed before. SB can be used to add new homes to an existing parcel, divide an existing house into multiple units, and/or divide parcels and add homes.• An application made under SB 9 must be considered ministerially without discretionary review or hearing.
Parcels Affected	All single-family residential zones within urbanized areas, except environmentally sensitive areas, historic properties and districts, and properties where the Ellis Act was used to evict tenants in the last 15 years.

Background

Senate Bill 9 (SB 9), passed in 2021, requires cities to approve certain housing projects in single-family zones without discretionary review.

It allows:

- Up to two homes on a single-family lot.
- Splitting a single-family lot into two.
- Or both — potentially creating up to four homes where only one was allowed before.

To qualify, projects must meet criteria related to environmental safety, tenant protections, and preservation of historic areas. Cities must also relax or remove certain development rules if they block eligible projects, especially those with homes of at least 800 square feet.

As of January 1, 2024, the California Department of Housing and Community Development (HCD) can enforce SB 9 under Assembly Bill 434. Violating SB 9 may also violate other state housing laws. Local governments must consider all relevant laws when applying SB 9 and creating related ordinances.

Applicability to Single-Family Zones Only

SB 9 applies only to parcels located in single-family residential zones. It does **not** apply to parcels in multi-family, commercial, agricultural, or mixed-use zones — even if single-family homes are allowed there.

Some single-family zones are clearly labeled (e.g., R-1), while others may require closer review. Cities are advised to take a closer look at their individual zoning codes and General Plans to determine which zones are primarily intended for single-family housing. Factors like minimum lot size, hillside location, or allowances for horses do **not** affect whether a parcel qualifies under SB 9. SB 9 only applies to housing developments with **one or two residential units**. It does not change the underlying land use rules in single-family zones. For example, if commercial uses like hotels or restaurants are not allowed in those zones, SB 9 does not make them permissible.

Adopting Objective Design Standards

*A model ordinance from ABAG is included as **Attachment 2**.*

Local governments may adopt objective zoning, subdivision, and design standards (such as setbacks, building height, or design details) under SB 9 —only if those standards do not:

- Prevent building up to two primary units per parcel (or per lot in a lot split); and
- Prevent allowing each unit to be at least 800 square feet in size.

Objective standards must be clearly defined, measurable, and leave no room for personal judgment. If a standard would physically prevent either of these requirements, it must be waived or modified, with two exceptions:

1. **Existing Structures** – No setback is required for existing structures or rebuilds on the same footprint.
2. **Side and Rear Setbacks** – A maximum setback of four feet applies. Cities may allow smaller setbacks but not larger ones.

Next Steps and Considerations

SB 9 is a complex law, and the Planning Commission should continue to evaluate whether the City should adopt objective design standards. While this memo includes a model ordinance and a brief overview, additional attachments provide more detailed guidance — including eligibility scenarios, limitations, CEQA considerations, and how SB 9 interacts with other housing laws.

Key implementation issues also require further discussion, such as parking requirements, the potential creation of parcels smaller than 1,200 square feet, and the development of new application forms and checklists, amongst a list of many other considerations

Adopting a comprehensive SB 9 ordinance will require time, staff capacity, and resources. However, a wide range of tools and guidance materials are available to support local agencies in this effort.

Attachments

Attachment 1 – SB 9 Infographic (ABAG, March 2022)
Attachment 2 – Model Ordinance (ABAG, August 2022)
Attachment 3 – SB 9 Fact Sheet (HCD, September 2024)

SENATE BILL 9 (SB 9): AN OVERVIEW

WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

Senate Bill 9 (SB 9) is a new California State Law taking effect **January 1, 2022**.

SB 9 changes existing density limits in single-family zones. Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.



SB 9 WAIVES DISCRETIONARY REVIEW AND PUBLIC HEARINGS FOR:

**BUILDING TWO HOMES
ON A PARCEL IN A SINGLE-FAMILY ZONE**



**SUBDIVIDING A LOT INTO TWO
THAT CAN BE SMALLER THAN REQUIRED MIN. SIZE**

Used together, this allows **4 HOMES** where 1 was allowed before.

SB 9 CAN BE USED TO: Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes

WHAT IT CAN MEAN FOR DEVELOPMENT OF NEW HOMES

Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only.

	VACANT LOT	LOT WITH SINGLE-FAMILY HOME	LOT WITH NONCONFORMING DUPLEX ¹	LOT WITH SINGLE-FAMILY HOME AND AN ADU
BEFORE	A1 No units	B1 1 PRIMARY UNIT	C1 2 PRIMARY UNITS	D1 1 PRIMARY UNIT + 1 ADU/JADU ²
ADD UNITS, NO LOT SPLIT	A2 Up to 2 PRIMARY UNITS + Up to 2 ADUs/JADUs ³	B2 Up to 2 PRIMARY UNITS ⁴ + Up to 2 ADUs/JADUs ³	C2 (No additional units) ⁵	D2 Up to 2 PRIMARY UNITS ⁴ + 1 ADU/JADU ³
ADD UNITS AND LOT SPLIT	A3 Up to 4 TOTAL UNITS	B3 Up to 4 TOTAL UNITS	C3 Up to 4 TOTAL UNITS	D3 Up to 4 TOTAL UNITS

USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) - but other laws might.

USING SB 9 WITH A LOT SPLIT:

- SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.



SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units - but projects must comply with all SB 9 requirements.

1 Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.
2 Junior Accessory Dwelling Units (JADUs) are small (max. 500ft²) rentable units within a single-family structure. See your jurisdiction's specifications for more details.

3 The exact number and type of ADUs/JADUs allowed should be confirmed based on project specifics.
4 Added primary unit can be new construction or a split of the existing house.
5 Check local nonconforming use rules for more information about ADUs/JADUs.

DOES THE PROJECT QUALIFY?

2-UNIT DEVELOPMENTS AND LOT SPLITS

- Single-family lot (usually R-1)
- Located in an urbanized area or urban cluster¹
- Not in state/local historic district, not an historic landmark
- Meets requirements of SB35 subparagraphs (a)(6)(B)-(K)²:

PROPERTY CANNOT BE:

- Prime farmland or farmland of statewide importance (B)
- Wetlands (C)
- Identified for conservation or under conservation easement (I+K)
- Habitat for protected species (J)

PROPERTY CANNOT BE (UNLESS MEETING SPECIFIED REQUIREMENTS):

- Within a very high fire hazard safety zone (D)
- A hazardous waste site (E)
- Within a delineated earthquake fault zone (F)
- Within a 100-year floodplain or floodway (G+H)
- Project would not alter nor demolish:
 - Deed-restricted affordable housing
 - Rent-controlled housing
 - Housing on parcels with an Ellis Act eviction in last 15 yrs
 - Housing occupied by a tenant currently or in last 3 yrs³

Additional Qualifications for 2-UNIT DEVELOPMENTS

- Project does not remove more than 25% of exterior walls on a site that currently has a tenant or has had a tenant in the last 3 yrs *even if the rental unit itself isn't altered*

Additional Qualifications for LOT SPLITS

- Lot is split roughly in half - smaller lot is at least 40% of the original lot⁴
- Each new lot is at least 1,200ft²^{5,6}
- Lot is not adjacent to another lot split by SB 9 by the same owner or "any person acting in concert with the owner"
- Lot was not created by a previous SB 9 split⁷

RELATIONSHIPS TO OTHER LAWS

CEQA Does not apply to 2-unit or lot split approvals or ordinances implementing 2-unit or lot split provisions

COASTAL ACT Applies, but no public hearings needed for duplex and lot split coastal development permits

HOUSING CRISIS ACT Local ordinances cannot impose restrictions that reduce the intensity of land use on housing sites (*including total building envelope, density, etc.*)

SB8 SB 9 projects are subject to Permit Streamlining Act deadlines

SB478 Does not apply to single-family zones

LIMITATIONS APPLIED 2-UNIT DEVS. AND LOT SPLITS



- Agencies **MUST** only impose objective⁸ zoning standards, subdivision standards, and design standards (they may impose a local ordinance to set these standards)
 - Stds. **MUST** not preclude 2 units of at least 800ft² on each lot
- Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
- A local agency **MAY** require rear or side setbacks of up to, but no more than 4 feet, but cannot require any setback if utilizing an existing structure or rebuilding a same-dimensional structure in the same location as an existing structure
- Project **MAY** be denied if a building official makes a written finding of specific, adverse impacts on public health or safety based on inconsistency with objective standards, with no feasible method to mitigate or avoid impact
- Agency **MAY** require 1 parking space/unit, unless the project is:
 - Within 1/2 mile of "high-quality transit corridor" or "major transit stop"⁹
 - Within 1 block of a carshare vehicle
- Agency **MUST** require that units created by SB 9 are rented for a period of longer than 30 days (i.e. no short-term rentals)
- Agency **MUST** allow proposed adjacent or connected structures as long as they comply with building codes and are "sufficient to allow separate conveyance"
- HOAs **MAY** restrict use of SB 9

2-UNIT DEVS

- Without a lot split, agency **CANNOT** use SB 9 to limit ADUs/JADUs *e.g., lot can have 2 primary units+1 ADU+1 JADU*
- Agency **MUST** include # of SB 9 units in annual progress report
- For properties with on-site wastewater treatment, agency **MAY** require a percolation test w/in last 5 years or recertification within last 10 years

LOT SPLITS

- Agency **MAY** approve more than 2 units on a new parcel *including ADUs, JADUs, density bonus units, duplex units*
- Project **MUST** conform to all relevant objective reqs. of Subdivision Map Act
- Agency **MAY** require easements for provision of public services and facilities
- Agency **MAY** require parcels to have access to, provide access to, or adjoin public right of way
- Project **MUST** be for residential uses only
- Applicant **MUST** sign affidavit stating they intend to live in one of the units for 3+ years after approval¹⁰
- Agency **MUST** include number of SB 9 lot split applications in annual progress report
- Agency **CANNOT** require right-of-way dedications or off-site improvements
- Agency **CANNOT** require correction of nonconforming zoning conditions

KEY DECISIONS FOR AGENCIES TO MAKE

WHETHER TO REQUIRE:

- 1 parking space per unit
- 2-UNITS Septic tank percolation tests
- 2-UNITS Owner-occupancy
- SPLIT Public services/facilities easement
- SPLIT Right-of-way easements

WHETHER TO ALLOW:

- Creation of lots <1,200ft²
- SPLIT >2 units/new lot

DEFINE:

- Objective zoning/subdivision/design review standards
- "Acting in concert with owner"
- "Sufficient for separate conveyance"

CREATE:

- Application forms and checklists
- Recording of deed restrictions for short-term rentals and future lot splits
- Owner-occupancy affidavit

¹ Defined by the Census Bureau.

² See Govt. Code Section 65913.4(a)(6)(B)-(K) for full details and definitions.

³ Lot can split, then new units added to the lot w/o the Ellis-affected building.

⁴ Each lot can be smaller than required minimum lot size.

⁵ This number can be lowered by local ordinance.

⁶ If min. size is 1,200ft², this requires a 2,400ft² lot, or 3,000ft² if a 60/40 split.

⁷ This does not apply to previous lot splits taken under usual Map Act procedures.

⁸ "Objective" as defined by the Housing Accountability Act.

⁹ See Sections 21155 and 21064.3 of the Public Resources Code for definitions.

¹⁰ Unless the applicant is a land trust or qualified non-profit.

SB 9 Model Ordinance

Note: Unless otherwise noted, provisions in this document reflect the provisions in SB 9. “Recommended” Provisions are recommended to clarify ambiguities in the statute or assist in enforcement. “Policy” Provisions are optional provisions for local agencies to consider.

ORDINANCE NO. XXXX¹

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____ AMENDING SECTIONS ____ AND ADDING SECTIONS ____ TO THE CITY OF _____ MUNICIPAL CODE TO COMPLY WITH SENATE BILL 9

WHEREAS, on September 16, 2021, Senate Bill 9 (Chapter 162, Statutes of 2021) was approved by the Governor of the State of California and filed with the Secretary of State, amending Section 66452.6 of the California Government Code and adding to the Government Code Sections 65852.21 and 66411.7, allowing additional housing units on properties within single-family zones and providing for parcel map approval of an Urban Lot Split; and

WHEREAS, the changes made to the Government Code by Senate Bill 9 go into effect on January 1, 2022; and

WHEREAS, state law allows a local agency to adopt an ordinance to implement the provisions in Senate Bill 9; and

WHEREAS, the [City/County of _____ (the “City”/the “County”)] has implemented land use policies based on the [City’s/County’s General Plan], which provide an overall vision for the community and balance important community needs, and the [City/County] seeks to ensure that Senate Bill 9 projects are consistent with those policies; and

WHEREAS, the proposed amendments to the [City of _____ Municipal Code/County of _____ County Code] implement requirements of state law and add local policies that are consistent with the state law and implement the [City’s/County’s General Plan]; and

¹ Local agencies should consult with their legal counsel prior to the use or implementation of this model ordinance, conformance with standard ordinance formats, and any provisions outlined herein. This ordinance is drafted as a regular ordinance, not an urgency ordinance, includes only substantive provisions to be considered, and does not include standard provisions such as a severability clause, publication, dates of introduction and adoption, and votes, which vary from agency to agency,

WHEREAS, the [City Council/Board of Supervisors] has found that the provisions of this ordinance are consistent with the goals and policies of the [City's/County's General Plan]; and

WHEREAS, the proposed code amendments are intended to implement Senate Bill 9 and are not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code, as provided in Government Code Sections 65852.21(j) and 66511.7(n).²

NOW, THEREFORE, THE [CITY COUNCIL OF THE CITY OF _____ /the BOARD OF SUPERVISORS OF THE COUNTY OF _____] DOES ORDAIN AS FOLLOWS:

Section 1. Purpose.

The purpose of this chapter is to provide objective zoning standards for Two-Unit Developments and Urban Lot Splits within single-family residential zones, to implement the provisions of state law as reflected in Government Code Section 65852.21 et seq. and Section 66411.7 et seq., and to facilitate the development of new residential housing units consistent with the [City's/County's General Plan] and ensure sound standards of public health and safety.

Section 2. Authority.

The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code Sections 65852.21 et seq. and 66411.7 et seq. [If a city.]

Section 3. Definitions.

A. [Recommended provision] A person “acting in concert with the owner,” as used in Section 4(B)(8) below, means a person that has common ownership or control of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided.

B. [Recommended provision] “Adjacent parcel” means any parcel of land that is (1) touching the parcel at any point; (2) separated from the parcel at any point only by a

² Note that these Government Code Sections are not effective until January 1, 2022. Cities and counties adopting ordinances before that date should include additional exemptions. For instance, in urbanized areas, the proposed code amendments may be found to be categorically exempt from CEQA under Guidelines Section 15303, New Construction or Conversion of Small Structures, which provides an exemption for up to three single-family homes and to duplexes and apartments containing no more than six units.

public right-of-way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property which is in common ownership or control of the applicant.

C. [Recommended provision] “Car share vehicle” means a motor vehicle that is operated as part of a regional fleet by a public or private care sharing company or organization and provides hourly or daily service.

D. [Recommended provision] “Common ownership or control” means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

E. [Recommended provision] “Lower income household” has the meaning set forth in Health & Safety Code Section 50079.5.

F. [Recommended provision] “Moderate income household” has the meaning set forth in Health & Safety Code Section 50093.

G. [Recommended provision] “Sufficient for separate conveyance,” as used in Sections 4(B)(11) and 5(B)(8) below, means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

H. “Two-Unit Development” means a development that proposes no more than two new units or proposes to add one new unit to one existing unit.

I. “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 chapter.

J. [Recommended provision] “Very low income household” has the meaning set forth in Health & Safety Code Section 50105.

Section 4. Urban Lot Split.³

A. The [--] Official⁴ shall ministerially review an application for a parcel map that subdivides an existing parcel to create no more than two new parcels in an Urban Lot Split, and shall approve the application if the criteria in Government Code Section 66411.7 and this section are satisfied.

B. Qualifying Criteria. Within the time required by the Subdivision Map Act, the [] shall determine if the parcel map for the Urban Lot Split meets all the following requirements:

1. The parcel is located within one of the following single-family residential zones: _____.
2. The parcel being subdivided is not located on a site that is any of the following:
 - i. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
 - ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not

³ Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text.

⁴ Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, in addition to designating the applicable zoning districts.

apply to sites excluded from the specified hazard zones by the [city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.⁵

- iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
- v. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by the building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.
- vi. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

⁵ The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

- vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.
- viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
- ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
- x. Lands under conservation easement.

3. Both resulting parcels are no smaller than 1,200 square feet.⁶
4. Neither resulting parcel shall be smaller than 40 percent of the lot area of the parcel proposed for the subdivision.
5. The proposed lot split would not require demolition or alteration of any of the following types of housing:
 - i. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low- or very low-income.
 - ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - iii. A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
 - iv. Housing that has been occupied by a tenant in the last three years.
6. The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a [city/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.⁷
7. The parcel being subdivided was not created by an Urban Lot Split as provided in this section.
8. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split as provided in this section.
9. The development proposed on the parcels complies with all objective zoning standards, objective subdivision standards, and objective design review

⁶ Agencies may allow smaller lots if desired.

⁷ Local agencies may wish to specify which ordinance or code section designates historic properties.

standards applicable to the parcel as provided in the zoning district in which the parcel is located⁸; provided, however, that:

- i. The [--] Official, or their designee, shall waive or modify any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.
 - ii. Notwithstanding subsection (9)(i) above, required rear and side yard setbacks shall equal four feet,⁹ except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.
10. Each resulting parcel shall have access to, provide access to, or adjoin the public right-of-way.¹⁰
11. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed dwelling units shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.
12. **Parking.** One parking space¹¹ shall be required per unit constructed on a parcel created pursuant to the procedures in this section, except that no parking may be required where:
 - i. The parcel is located within one-half mile walking distance of either a stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
 - ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

⁸ Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.

⁹ Localities may allow a smaller setback if desired.

¹⁰ Local agencies may wish to impose frontage requirements or requirements for access to the public right of way, such as the required width of a driveway.

¹¹ Agencies may reduce parking standards if desired.

13. **Compliance with Subdivision Map Act.** The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410)), except as otherwise expressly provided in Government Code Section 66411.7. Notwithstanding Government Code Section 66411.1, no dedications of rights-of-way or the construction of offsite improvements may be required as a condition of approval for an Urban Lot Split, although easements may be required for the provision of public services and facilities.

14. The correction of nonconforming zoning conditions may not be required as a condition of approval.

15. Parcels created by an Urban Lot Split may be used for residential uses only and may not be used for rentals of less than 30 days.

16. [Recommended provision] If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d).

C. Owner-Occupancy Affidavit. The applicant for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that the applicant intends to occupy one of the housing units on the newly created lots as its principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. This subsection shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

D. [Recommended provision] Additional Affidavit¹². If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (4)(B)(5) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form prescribed by []. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using an Urban Lot Split.

¹² Local agencies may want to include a provision that indicates enforcement/legal remedies where there is evidence of fraudulent intent, misrepresentation, etc.

E. [Recommended provision] **Recorded Covenant.** Prior to the approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

1. A prohibition against further subdivision of the parcel using the Urban Lot Split procedures as provided for in this section;
2. A limitation restricting the property to residential uses only; and
3. A requirement that any dwelling units on the property may be rented or leased only for a period longer than thirty (30) days.

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

F. Specific Adverse Impacts. In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A “specific adverse impact” is a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

G. Enforcement. The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

- 1. Number of units to be allowed on each parcel.** If a parcel uses the Urban Lot Split provision, a local agency does not need to allow more than two units on each lot, including ADUs, JADUs, density bonus units, and two-unit developments. If an agency desires to take advantage of this provision, it should adopt the following:

No more than two dwelling units may be located on any lot created through an Urban Lot Split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as a two-unit development.

Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

Another alternative is to consider allowing an ADU and JADU with a primary dwelling unit on one lot, rather than two primary dwelling units.

2. **Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018. Consequently, height, size, and similar restrictions on units created through Urban Lot Splits should be limited to units that do not meet existing zoning standards.

Affordable units. There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.

Section 5. **Two-Unit Development.**

A. The [--] Official¹³ shall ministerially review without a hearing an application for an application for a Two-Unit Development, and shall approve the application if all the criteria in Government Code Section 65852.21 and this section are satisfied.

B. **Qualifying Criteria.** The [] shall determine if the Two-Unit Development meets all the following requirements:

1. The Two-Unit Development is located within one of the following single-family residential zones: _____. [for counties: also must be located within the boundaries of an urbanized area or urban cluster].

2. The Two-Unit Development is not located on a site that is any of the following

- i. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.¹⁴
- ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not

¹³ Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text. Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, or reference a website showing those areas, in addition to designating the applicable zoning districts.

¹⁴ Would be best to specify the local ballot measure.

apply to sites excluded from the specified hazard zones by the [city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.¹⁵

- iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
- v. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.
- vi. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

¹⁵ The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

- vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.
- viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
- ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
- x. Lands under conservation easement.

3. Notwithstanding any provision of this section or any local law, the proposed Two-Unit Development would not require the demolition or alteration of any of the following types of housing:

- i. Housing that is subject to recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low-, or very low-income.
- ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
- iii. Housing that has been occupied by a tenant in the last three years.

4. The parcel is not a parcel on which an owner of residential real property has exercised the owner's right under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within the last 15 years before the date that the development proponent submits an application.

5. The proposed Two-Unit Development does not include the demolition of more than 25 percent of the existing exterior structural walls unless the site has not been occupied by a tenant in the last three years.

6. The proposed Two-Unit Development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a [city/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.¹⁶

7. The proposed Two-Unit Development complies with all objective zoning standards, objective subdivision standards, and objective design review standards applicable to the parcel as provided in the zoning district in which the parcel is located¹⁷; provided, however, that:

- i. The [--] Official, or their designee, shall modify or waive any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of

¹⁶ Local agencies may wish to specify which ordinance or code section designates historic properties.

¹⁷ Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.

development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.

- ii. Notwithstanding subsection (7)(i) above, required rear and side yard setbacks shall equal four feet, except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.
- iii. For a Two-Unit Development connected to an onsite wastewater treatment system, the applicant must provide a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last 10 years.¹⁸

8. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed Two-Unit Development shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

9. **Parking.** One parking space shall be required¹⁹ per unit constructed via the procedures set forth in this section, except that the City shall not require any parking where:

- i. The parcel is located within one-half mile walking distance of either a stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
- ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

10. Dwelling units created by a Two-Unit Development may be used for residential uses only and may not be used for rentals of less than 30 days.

¹⁸ A local agency may waive this requirement if desired.

¹⁹ Agencies may elect to require fewer parking spaces.

11. [Recommended provision] If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d).

C. [Recommended provision] **Declaration of Prior Tenancies.** If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (5)(B)(3) and (B)(4) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form approved by [].

D. [Recommended provision] **Recorded Covenant.** Prior to the issuance of a building permit, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

1. A limitation restricting the property to residential uses only; and
2. A requirement that any dwelling units on the property may be rented or leased only for a period of longer than thirty (30) days.

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

E. **Specific Adverse Impacts.** In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A “specific adverse impact” is a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

F. **Enforcement.** The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method

permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

- 1. Number of units to be allowed on each parcel.** Local agencies are not required to allow ADUs or JADUs on parcels that utilize both the Urban Lot Split provision and the Two-Unit Development provision. If agencies desire to utilize this provision, they should adopt the following:

Two primary dwelling units only may be located on any lot created through an Urban Lot Split that utilized the Two-Unit Development provision. Accessory dwelling units and junior accessory dwelling units are not permitted on these lots.

Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

Where a lot was not created through an Urban Lot Split, there is no limitation on the construction of ADUs and JADUs except that provided by existing ADU law.

- 2. Owner-occupancy requirement.** Where there is no Urban Lot Split, the jurisdiction may adopt a provision requiring that one unit in a Two-Unit Development be owner-occupied, including a requirement to record a covenant notifying future owners of the owner-occupancy requirements.
- 3. Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018.

Consequently, height, size, and similar restrictions on units created as Two-Unit Developments should be limited to units that do not meet existing zoning standards.

4. **Affordable units.** There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.
5. **Fire sprinklers.** If not already required, agencies may wish to consider requiring that units created through Two-Unit Developments be fire-sprinklered.

California Department of Housing and Community Development

SB 9 Fact Sheet

On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)



Housing Policy Development Division
September 2024

Executive Summary of SB 9

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

Pursuant to Assembly Bill (AB) 434 (Chapter 740, Statutes of 2023), the California Department of Housing and Community Development (HCD) has enforcement authority over Government Code sections 65852.21 and 66411.7 starting January 1, 2024. Violations of SB 9 may concurrently violate other housing laws, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind.

Single-Family Residential Zones Only

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 “Single-Family Residential”), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses, and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features such as hillsides, or the permissibility of keeping horses should not factor into the determination.

Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

Up to Two Primary Units. The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.

Units at least 800 square feet in size. The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform

benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

Setbacks for Existing Structures. The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

Four-Foot Side and Rear Setbacks. SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Environmental Site Constraints

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's [Streamlined Ministerial Approval Process Guidelines](#) for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

California Environmental Quality Act (CEQA)

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

Anti-Displacement Measures

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable

to persons and families of moderate, low, or very low-income; (2) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.

Lot Split Requirements

(Reference: Gov. Code, § 66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (f); 66411.7, subd. (j))

SB 9 and ADU Law (Gov. Code, §§ 66310 and 66342) are complementary. The requirements of each can be implemented in ways that result in developments with both "SB 9 Units" and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

"Units" Defined. The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

Primary Unit. A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.

Accessory Dwelling Unit. An ADU is an attached or a 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 residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.

Junior Accessory Dwelling Unit. A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

Number of ADUs Allowed. ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

Lot Split. When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three-unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.

No Lot Split. When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s [ADU and JADU webpage](#) for more information and resources.

Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

Housing Element Law. To utilize projections based on SB 9 toward a jurisdiction's regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees, and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's [Housing Elements webpage](#).

Housing Crisis Act of 2019. An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. "Reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about [Designated Jurisdictions Prohibited from Certain Zoning-Related Actions](#) on HCD's website.

Housing Accountability Act. Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of "housing development project" includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD's [Housing Accountability Act Technical Assistance Advisory](#).

Rental Inclusionary Housing. Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD's [Rental Inclusionary Housing Memorandum](#).