Senate Bill 9
2021 Legislative Update

Presented by:
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How Did We Get Here?

• Existing Housing Requirements/Tools:
  • Regional Housing Needs Allocation
  • Housing Element
  • Redevelopment
    • Ended in 2011
  • Density Bonus
How Did We Get Here?

SB 35 Streamlining (2017)
- No CUP/CEQA
- Based on RHNA numbers
- Not applicable in coastal zone

AB 68/SB 13/AB 881 (2019)
- Accessory Dwelling Units
How Did We Get Here?

**SB 330 (2019)**
- Pre-Application Process
- No Downzoning

**AB 101 (2019)**
- Enforcement

Surplus Land Act
Density Bonus
- 100% Affordable
- Coastal Zone Application
Overview

SB 9

Urban Lot Splits
• Qualifications
• Restraints on Local Standards for Urban Lot Splits

Two-unit Projects
• Qualifications
• Restraints on Local Standards for Two-unit Projects

Applicable to both Lot Splits and Two-unit Projects
• ADUs
• Short-Term Rentals (Not Allowed)
• CEQA—Does Not Apply
All local agencies must approve certain proposed lot splits and two-unit projects ministerially (no discretion, no hearing) beginning 1/2022.

An SB 9 lot split followed by an SB 9 two-unit project on each of the two new lots would result in four total dwellings on a former single-family residential lot.
Urban Lot Splits

To qualify for ministerial approval under SB 9:

1. **At least 1,200 sf.** Each new lot must be at least 1,200 square feet (though the local agency could set a lower minimum).

2. **Roughly equal.** The split must result in two new lots of approximately equal size (60/40 split at most).

3. **Not protected housing.** The split must not involve: the demolition or alteration of affordable housing; rent-controlled housing; housing that was withdrawn from rent by the owner within the last 15 years; and housing occupied by a tenant in the past 3 years.
Urban Lot Splits

To qualify for ministerial approval under SB 9:

4. **Single-family zone.**

5. **Not historic.** The lot must not be a historic landmark or within a designated historic district.

6. **Urban or suburban.** “Within an urbanized area or urban cluster” defined by U.S. Census Bureau (almost all California municipalities, including the City).

7. **First time.** No prior SB 9 lot split.

8. **No coordination.** “Neither the owner nor anyone acting in concert with the owner previously subdivided an adjacent parcel through an SB 9 lot split.”

9. **Subdivision Map Act.** Otherwise meets objective criteria.
Urban Lot Splits

To qualify for ministerial approval under SB 9:

9. Lot is not located on a site that is on an enumerated list of exceptions under Gov. Code 65913.4(a)(6):

- Farmland;
- Wetlands;
- Very High Fire Hazard Severity Zone;
- Hazardous Waste Sites;
- Within a 100-year flood hazard area as determined by FEMA;
- Endangered Species Habitat;
- etc.

• Highly specific, often designated by State or Federal government.
Restraints on Local Standards for Lot Splits

A local agency may restrict an SB 9 lot split, but only within the following statutory restraints:

- **Objective standards only.** Objective zoning standards, subdivision standards, design standards. (Similar to restrictions on housing development projects under recent law).

- Defined as: “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....”
Restraints on Local Standards for Lot Splits

• **Two at 800 sf each.** Objective standards must yield to the extent that they “physically preclude” the construction of two units of at least 800 square feet.

• **Limited parking.** One or none. Only 1 off-street parking space per unit, none if the site is: a) 1/2 mile walking distance to “high-quality transit corridor” or “major transit stop” or b) one block from car share vehicle location.

• **Setbacks.** No setback at all if lot split imposed on an existing structure or one constructed in the same location and to the same dimensions as an existing structure. If needed for an 800 sf unit, side and rear reduced down to 4’.

• **Residential only.** City must prohibit non-residential use of the new lots.

• **Other structures permitted.** Proposed adjacent or connected structures must be allowed.

• **No dedications or offsite improvements.** No right-of-way dedications or construction of offsite improvements may be required.
Restraints on Local Standards for Lot Splits

• **No corrections of nonconformities.** City cannot require the correction of nonconforming zoning conditions.

• **Three-year owner occupancy (by affidavit).** Applicant-owner must sign an affidavit that owner intends to occupy one of the housing units as the owner’s principal residence for at least 3 years following the lot split.
  - Community land trusts and qualified nonprofits are exempt.
  - No other owner-occupancy requirement is allowed.

• **Report to HCD.** Local agencies must include the number of SB 9 lot-split applications in annual housing element reports.
Restraints on Local Standards for Lot Splits

- **Coastal Zone Application:** Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.
Restraints on Local Standards for Urban Lot Splits

Limited grounds to deny.

“…A local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, 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.” - Government Code 66411.7 (d)
Two-unit Projects

• City must ministerially approve a proposed two-unit development project on a single family lot in a single-family residential zone. (no discretion, no hearing) beginning 1/2022.
  • Applies to building two new units or adding a second one.
• Qualifications for ministerial approval are very similar to lot splits under SB 9.
Two-unit Projects

To qualify for ministerial approval under SB 9:

• **Single-family zone.** The site must be in a single-family residential zone.

• **Urban or suburban.** The lot must be located within an urbanized area or urban cluster as defined (includes City).

• **Not protected housing.** Must not involve demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from rent by owner within the last 15 years or housing occupied by a tenant (market-rate or affordable) in the past 3 years.

• **Not historic.** The site must not be a historic landmark or within a designated historic district.

**Demolition cap:** The project does not involve demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless: a) the local agency chooses to allow otherwise or b) the site has not been occupied by a tenant in the last 3 years.
Restraints on Local Standards for Two-unit Projects (same as lot splits, including)

• **Objective only.** Same as lot splits, City may only impose *objective* zoning, subdivision and design standards on an eligible two-unit development project.

• **800 sq. ft.** Objective standards must yield to the extent that they “physically preclude” the construction of two units of at least 800 square feet.

• **Limited parking: one or none.** Same as lot splits, may only require one off-street parking space per unit, none if the site is close to transit, care share vehicle location.

• **Side and rear setbacks of four feet or less.** Setbacks are limited in a similar manner as lot splits.
For Both Lot Splits and Two-unit Projects

1) **ADUs – Not Required.** SB 9 creates two narrow exceptions from the general requirement that local agencies allow accessory dwelling units and junior accessory dwelling units ministerially:

- When a lot is created by an SB 9 lot split, then developed with an SB 9 two-unit development, a local agency does not need to allow an ADU or JADU.
- A local agency does not need to allow an ADU or JADU on a lot if there are already two units of any kind on the lot. Note: For purposes of SB 9, **JADUs and ADUs count as units.**
2. **Short-Term Rentals – Not Allowed.** Local agencies must prohibit short-term rentals (term must be longer than 30 days) in any dwelling created under SB 9 (whether through the lot split or two-unit development approval, or both).

3. **CEQA – Does Not Apply.** Because approval under SB 9 is ministerial, the California Environmental Quality Act does not apply to individual-project approvals, and the bill creates a new statutory exemption for an ordinance adopted to implement SB 9, such as an ordinance to adopt new objective standards.
Not just SB 9

• SB 8 (expands “housing development projects” subject to streamlined review), SB 10 (Optional up-zoning), … etc. etc.

• The Governor recently signed more than 30 housing-related bills. The City Attorney’s Office will work with Planning to evaluate any additional impacts to the City.
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