

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



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.

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

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.