

IMPACT OF NEW HOUSING LEGISLATION: SB 9

September 20, 2021

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OVERVIEW

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- **Adds Gov. Code § 65852.21 (PIng Law):** ministerial approval of qualifying “duplex” units within single-family residential zones
- **Adds Gov. Code § 66411.7 (Map Act):** ministerial approval of qualifying “urban lot splits” within single-family residential zones
- **Amends Gov. Code § 66452.6 (Subdivision Map Act):** allows map extensions for up to 24 months rather than 12 if allowed by local ordinance and extends expiration by 4 years rather than 3 for phased maps that have constructed off-site improvement

MINISTERIAL TWO-UNIT DEVELOPMENTS

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MINISTERIAL DUPLEX DEVELOPMENT (§ 65852.21)

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- Provides for ministerial approval of “proposed housing development containing no more than two residential units” on a lot, if certain requirements are met.
- “A housing development contains 2 residential units if the **development** proposes no more than **2 new units** or if it proposes to add one new unit to one existing unit.”
 - ▣ If a lot already has a single-family home and an ADU, does this allow two additional (non-ADU) units?

WHAT PROJECTS QUALIFY?

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- Two-unit development project may receive ministerial approval IF:
 - ▣ Site is in a single-family residential zone;
 - ▣ Site is not a historic landmark, or located within a historic district (state or local);
 - ▣ Parcel is located within urbanized area or urban cluster;
 - ▣ Parcel meets requirements of § 65913.4(a)(6)(B)-(K) (may be in coastal zone);
 - ▣ Project would not alter or demolish deed-restricted affordable housing, rent-controlled housing, housing that was Ellis'd in last 15 years, or housing occupied by a tenant in the last 3 years;
 - ▣ Project would not demolish more than 25 percent of the existing exterior walls, unless either (a) the local agency allows otherwise; or (b) the site has not been occupied by a tenant in the last three years.

WHAT CRITERIA MAY BE APPLIED?

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- Agencies may ONLY impose **objective** zoning standards, **objective** subdivision standards, and **objective** design standards. May adopt local ordinance.
 - However, objective standards may not have the effect of physically precluding the construction of two units of at least 800 square feet.
 - Definition of “objective” is the same as in the Housing Accountability Act.
 - Rear and side setbacks can be required to be 4 feet (even if 800 sf can’t be achieved), or none if existing structure or rebuilt in same location.
- If otherwise complies, locality may deny proposed project if **building official** makes written finding, based on preponderance of the evidence, that project would have specific, adverse impact on public health and safety or physical environment and there is no feasible method to satisfactorily mitigate or avoid the impact. (Similar to HAA.)

WHAT CRITERIA MAY BE APPLIED?

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- Agency may require one parking space per unit.
 - ▣ However, cannot impose parking requirements if project is either within a half-mile walking distance of high-quality transit corridor or major transit stop, or within one block of car share vehicle.
 - ▣ “High quality transit corridor” means “a corridor with fixed route bus service intervals no longer than 15 minutes during peak commute hours”
 - ▣ “Major transit stop” means a site containing (1) an existing rail or bus rapid transit station (2) a ferry terminal served by either a bus or rail transit service, or (3) the intersection of two or more major bus routes with a frequency of service interval of no more than 15 minutes during morning and afternoon peak commute periods
- Agency may require percolation test completed within last 5 years, or if percolation test has been recertified, within last 10 years.

WHAT CRITERIA MUST BE APPLIED?

WHAT CANNOT BE APPLIED?

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- Agency must ensure:
 - ▣ The units created are NOT used for short-term rentals of 30 days or less;
 - ▣ The number of units constructed via SB 9 are included in the annual progress report.
- Local agency must allow (i.e. cannot deny) proposed adjacent or connected structures so long as they comply with building safety codes and are “sufficient to allow separate conveyance.”
 - ▣ Not clear what was intended. Apparently units must be designed to allow condo or separate sale if desired. Not clear how fits into “urban lot split.”
- No bar on owner-occupancy requirements in this section.

MINISTERIAL URBAN LOT SPLITS

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MINISTERIAL URBAN LOT SPLITS (§ 6641 1.7)

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- Provides for ministerial approval of subdivision of one lot into two lots that meets certain requirements.
 - ▣ No discretionary review or hearings permitted.

WHAT PROJECTS QUALIFY?

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- Application for urban lot split may receive ministerial approval IF:
 - ▣ **Split results in two approx. equal-sized lots (60-40 split max);**
 - ▣ **Each new lot is at least 1,200 square feet (lower minimum may be set by ordinance; requires 2,400 sf lot or 3,000 sf if 60-40);**
 - ▣ Lot to be split is zoned single-family residential;
 - ▣ **Lot split was not established through a prior SB 9 lot split;**
 - ▣ **Neither the owner nor “any person acting in concert with the owner” has previously subdivided an adjacent parcel through an SB 9 lot split;**

PROJECT QUALIFICATIONS, CONT'D.

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- Required project criteria, continued:
 - ▣ Lot to be split is not a historic landmark, or located within a historic district (state or local);
 - ▣ Lot to be split is located within urbanized area or urban cluster;
 - ▣ Lot to be split meets requirements of § 65913.4(a)(6)(B)-(K) (may be in coastal zone);
 - ▣ Split would not alter or demolish deed-restricted affordable housing, rent-controlled housing, housing that was Ellis'd within the last 15 years, or housing occupied by a tenant in the last 3 years;

WHAT CRITERIA MUST BE APPLIED?

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- Local agency must ensure that:
 - ▣ Units created are used for residential purposes only;
 - ▣ Applicant signs affidavit stating that **applicant** “intends to occupy” one of the housing units as their principal residence for at least 3 years from date of approval of the lot split, unless land trust or qualified non-profit;
 - ▣ **No other owner occupancy requirements**
 - ▣ Units created are NOT used for short-term rentals of 30 days or less;
 - ▣ Urban lot split conforms to all applicable **objective** requirements of the Subdivision Map Act;
 - ▣ Applications for urban lot splits reported in annual housing element report.

WHAT CRITERIA MAY BE APPLIED?

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- Agencies may ONLY impose **objective** zoning standards, **objective** subdivision standards, and **objective** design standards. May adopt local ordinance.
 - However, objective standards may not have the effect of physically precluding the construction of two units of at least 800 square feet.
 - Definition of “objective” is the same as in the Housing Accountability Act.
 - Rear and side setbacks can be required to be 4 feet (even if 800 sf can’t be achieved), or limited to none if existing structure or rebuilt in same location.
- If otherwise complies, locality may deny proposed project if **building official** makes written finding, based on preponderance of the evidence, that project would have specific, adverse impact on public health and safety or physical environment and there is no feasible method to satisfactorily mitigate or avoid the impact. (Similar to HAA.)

WHAT CRITERIA MAY BE APPLIED?

15

- Agency may require the creation of one parking space per unit.
 - ▣ However, cannot impose parking requirements if project is located either within a half-mile walking distance of high-quality transit corridor or major transit stop, or within one block of car share vehicle.
- **Agency may require easements needed for the provision of public services and facilities;**
- **Parcels may be required to have access to, provide access to, or adjoin the public right-of-way.**

WHAT CRITERIA MAY BE APPLIED?

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- **Agency not required to allow more than two units on any parcel created through an urban lot split**
 - ▣ Includes ADUs, JADUs, density bonus units, and units created by duplex developments
- **Not required to permit ADUs or JADUs on parcels that use *both* duplex provision and urban lot split provision**

WHAT CANNOT BE APPLIED?

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- Local agency cannot:
 - ▣ Impose regulations that require right-of-way dedications or construction of off-site improvements;
 - ▣ **Impose any other owner occupancy standards;**
 - ▣ Require the correction of nonconforming zoning conditions as a condition of approval;
 - ▣ Deny application solely because it proposes adjacent or connected structures so long as structures meet building code safety standards and **are sufficient to allow separate conveyance.**

RELATION TO OTHER LAWS

CEQA AND COASTAL ACT

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- CEQA does not apply to duplex approvals and urban lot split approvals.
- CEQA does not apply to ordinances implementing duplex and lot split provisions.
- Coastal Act applies, but no public hearings needed for duplex and lot split CDPs (coastal development permits).

HOUSING CRISIS ACT (SB 330)

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- Local implementing ordinances cannot “reduce the intensity of land use” on housing sites, including reductions in height, lot coverage, or FAR, increased open space, increased setbacks, etc (§66300(b)(1)(A))
- Subject to Permit Streamlining Act completeness deadlines
- (Note that SB 478 will not apply)

NEXT STEPS

NEXT STEPS

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- Local agencies should try to adopt objective standards for urban lot splits and duplex projects before January 1, 2022.
- Possible issues:
 - ▣ Design standards (but note SB 330 prohibitions)
 - ▣ Define “acting in concert with owner;” “sufficient for separate conveyance”
 - ▣ Application forms and checklists; deed restriction for short-term rentals; form of affidavit
 - ▣ Review historic districts
 - ▣ Owner-occupancy for duplexes (if no urban lot split)?

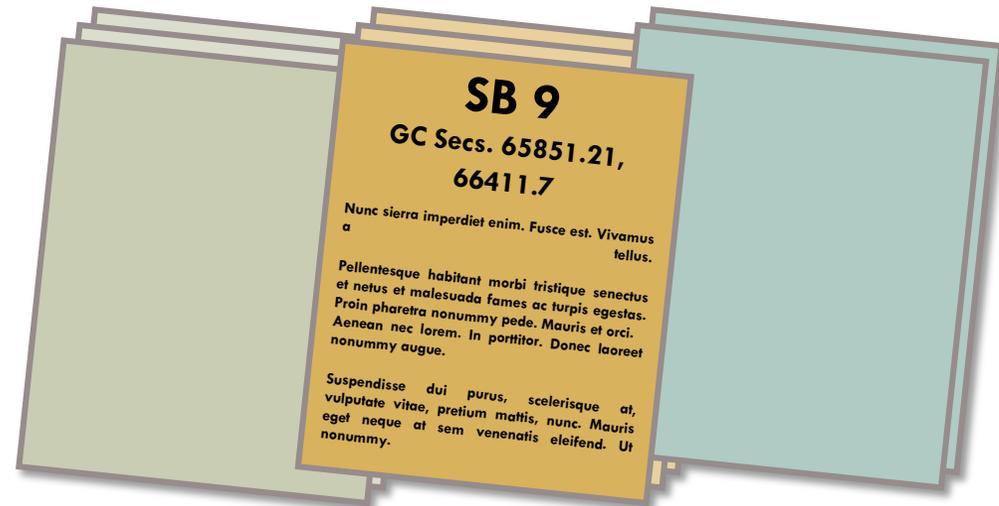
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