

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**.

Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 overrides existing density limits in single-family zones. 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**



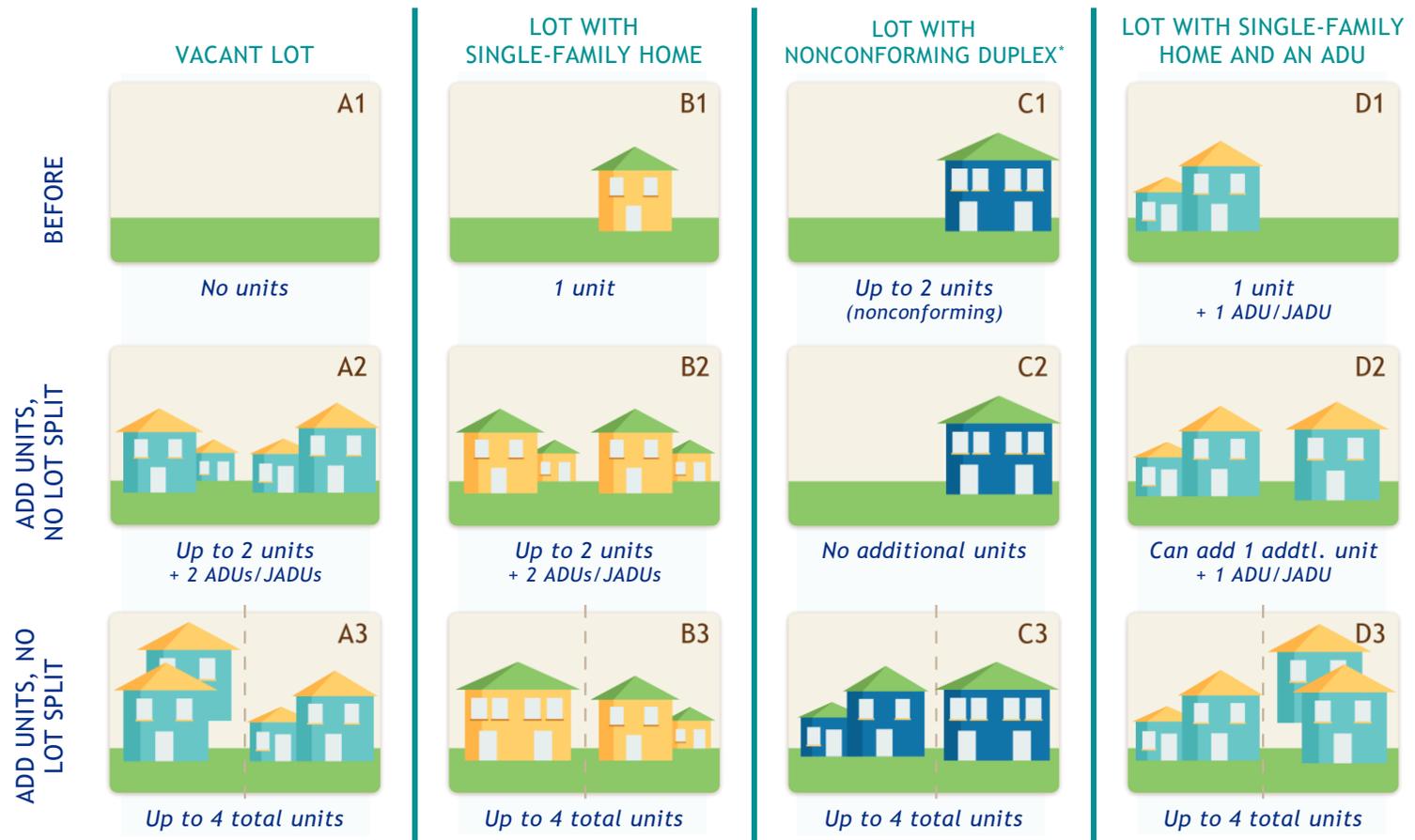
**SUBDIVIDING A LOT INTO TWO
THAT CAN BE SMALLER THAN REQUIRED MIN. SIZE**

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.



*Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.

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.
- SB 9 **could be interpreted** to allow 2 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

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.

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

Addtl. Qualifications for 2-UNIT DEVELOPMENTS

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

Addtl. 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 Section 65913.4(a)(6) Exclusions 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)
 - These standards **MUST** not preclude 2 units of at least 800ft²
- Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
 - A local agency **MAY NOT** require rear or side setbacks of more than 4 feet, and 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 not used for short-term rental (up to 30 days)
- 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+ years¹⁰
- 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