SB 9 Key Actions/Decisions Worksheet for Planners

6/14/22

*Please note that:*

1. *this technical assistance is for informational purposes only and does not constitute legal advice,*
2. *no attorney-client relationship will be created with any local jurisdictions, and*
3. *jurisdictions are advised to seek legal counsel for advice on implementing all laws.*

Senate Bill 9 (SB 9) is a new California state Law taking effect January 1, 2022. It is intended to support increasing the supply of starter, modestly priced homes by encouraging building of smaller houses on small lots. SB 9 changes existing density limits in single-family zones, and it waives discretionary review and public hearings for two types of projects:

* 2-unit developments on a parcel in a single-family zone
* Subdividing one parcel into two (“urban lot split”) in a single-family zone

In general, this means that most single-family parcels could now hold four units, though staff should seek guidance from legal counsel to confirm.

SB 9 lays out several requirements for jurisdictions regarding what actions they can take, must take, or may not take, but it also affords local discretion on several points.

# SECTION 1 – CONSIDER MISSING MIDDLE HOUSING

SB 9 may be an opportunity for jurisdictions to provide more “missing middle” housing in their communities.

“Missing middle housing” refers to small-scale multifamily housing that can range from ADUs to duplexes to townhouses to smaller apartment buildings. Missing middle housing has captured the interest of many jurisdictions that seek to increase housing density in existing single-family home neighborhoods. Because of zoning changes in the mid-1940s and later, new duplexes, triplexes and quads generally are not allowed uses in single-family home residential neighborhoods, although many of these house-scaled multifamily buildings exist and are compatible with single family homes in many older communities throughout the Bay Area. Additionally, missing middle housing tends to be more affordable than single family homes. ABAG has created several resources on missing middle housing and is building an inventory of relevant photographs and reference images

Missing middle housing can assist with fulfilling RHNA requirements and alleviating the region’s housing shortage. SB 9 could be one of many tools that jurisdictions use to support the creation of missing middle housing. Each jurisdiction's approach to SB 9 implementation will impact the feasibility and practical utility of SB 9 as a tool.

A broad-based Missing Middle approach would likely start with a public meeting to study Missing Middle and a well-crafted package of incentives and policy changes to promote this type of development. Jurisdictions may want to hire an urban economist to predict likely uptake. Additionally, they can utilize the resources and interactive feasibility tool developed for ABAG’s Middle Housing Work Group.

Helpful resources:

* [ABAG’s Missing Middle Housing Workgroup resources](https://abag.ca.gov/our-work/housing/regional-housing-technical-assistance/peer-cohorts-work-groups)
* [Missing Middle Housing resources on ABAG’s Technical Assistance Portal](https://abag.ca.gov/technical-assistance/results?search=missing+middle) to assist in community engagement and education
* [Additional SB 9 technical assistance materials from ABAG](https://abag.ca.gov/our-work/housing/regional-housing-technical-assistance/sb-9-resources)

# SECTION 2 – CONSIDERATIONS WHEN DRAFTING AN ORDINANCE

SB 9 will require policymakers to make several decisions when a jurisdiction adopts an ordinance to implement this state legislation. The below worksheet identifies some of the more significant decision points required by SB 9. ABAG’s model application checklist, which will be located on [ABAG’s SB 9 resources webpage](https://abag.ca.gov/our-work/housing/regional-housing-technical-assistance/sb-9-resources), comprehensively enumerates these detailed aspects of SB 9 implementation.

## Applies to both 2-unit developments and urban lot splits

### 2-unit developments or urban lot splits

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| --- | --- |
| Does the jurisdiction prefer to incentivize owners to choose 2-unit developments on a single lot or urban lot splits? Or is there no preference? Considerations may include aesthetic/design outcomes (attached duplexes vs. separate structures, the higher likelihood of flag lots with urban lot splits), property tax consequences (different market demand, market valuation, rates of turnover) and affordability (different market demand and market valuation).  Within the limitations of SB 9, jurisdictions may also choose to allow greater flexibility (larger units, smaller lots, more units) with the SB 9 option they prefer to see built. | Jurisdiction plans: |

### Units Permitted, including ADUs

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| To the extent SB 9 permits a jurisdiction to decide, should the jurisdiction allow Accessory Dwelling Units (ADUs) on properties that have been subject to SB 9 divisions? SB 9 does not require jurisdictions to allow ADUs and JADUs on a site using both the 2-unit development and urban lot split provisions of the law. However, jurisdictions may by ordinance allow more units (ADUs and JADUs) on those parcels if they choose. | Jurisdiction plans: |
| SB 9 is not clear on the maximum number of units allowed on sites that only utilize the 2-unit development provisions without an urban lot split. Jurisdictions should clarify their interpretation in their implementing ordinance. SB 9 also does not indicate how existing nonconforming duplexes or triplexes should be treated. Can new units be added, expanding an existing nonconforming use? Jurisdictions should clarify their interpretation in their implementing ordinance. | Jurisdiction Plans: |

### Larger units

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| Does the jurisdiction want to encourage new units larger than 800 sf? Under SB 9, objective standards for all SB 9 projects may not preclude the construction of two 800-square-foot units. However, if the jurisdiction prefers to encourage new units that are larger than 800 square feet to encourage family-friendly housing, staff may want to look at the jurisdiction’s standards to allow for and facilitate larger units. | Jurisdiction plans: |

### Parking

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| Should parking be set to the state limits or lowered? SB 9 allows jurisdictions to require up to 1 parking space per unit, except in certain transit-accessible locations where no parking requirements are allowed.  However, jurisdictions may choose to require less than 1 parking space per unit or eliminate parking requirements if they wish. Reducing parking requirements may make small-scale multifamily more feasible on many parcels.  Jurisdictions will want to establish or clarify their parking requirements in these zones. | Jurisdiction plans: |

### Objective standards

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| Should a jurisdiction apply existing objective zoning and design standards to the extent they do not conflict with the requirements of SB 9, or should the jurisdiction adopt a new set of objective standards? Considerations may include speedier adoption of an SB 9 ordinance vs. better tailoring of the legislation to missing middle housing needs. Some jurisdictions are taking an overlay zone approach to expediently meet state requirements without doing a larger overhaul of their zoning code or design standards. | Jurisdiction plans: |

## Applies to 2-unit developments only

### Owner Occupancy

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| Should there be owner occupancy requirements for 2-unit developments? SB 9 requires an affidavit from urban lot split applicants stating their intention to live on the property for 3 years. It also prohibits any additional owner occupancy restrictions on urban lot split parcels.  However, the law does not specify an owner occupancy requirement for 2-unit developments, nor does it limit jurisdictions’ ability to set owner occupancy requirements for 2-unit developments.  Jurisdictions should decide if they want to require applicants to live in one of the units and how to document compliance. ABAG’s model affidavit for urban lot splits includes language that could be imported to the 2-unit affidavit. | Jurisdiction plans: |

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