Legislative Action Committee
Meeting Agenda

November 11, 2021 | 6:00 PM
Virtual Meeting via Zoom

Chair: Hon. Rich Constantine, Morgan Hill

Campbell	Hon. Elizabeth "Liz" Gibbons / Alternate: Hon. Anne Bybee
Cupertino	Hon. Liang Chao / Alternate: Hon. Darcy Paul
Gilroy	Hon. Marie Blankley / Alternate: Hon. Peter Leroé-Muñoz
Los Altos	Hon. Neysa Fligor / Alternate: Hon. Anita Enander
Los Altos Hills	Hon. Stanley Mok / Alternate: Hon. Lisa Schmidt
Los Gatos	Hon. Marico Sayoc / Alternate: Hon. Rob Rennie
Milpitas	Hon. Carmen Montaño / Alternate: Hon. Evelyn Chua
Monte Sereno	Hon. Rowena Turner / Alternate: Hon. Liz Lawler
Morgan Hill	Hon. Rich Constantine / Alternate: Hon. John McKay
Mountain View	Hon. Ellen Kamei / Alternate: Hon. Lucas Ramirez
Palo Alto	Hon. Tom DuBois / Alternate: Hon. Eric Filseth
San Jose	Hon. Charles "Chappie" Jones / Alternate: Hon. Matt Mahon
Santa Clara	Hon. Kathy Watanabe / Alternate: Hon. Anthony Becker
Saratoga	Hon. Yan Zhao / Alternate: Hon. Tina Walia
Sunnyvale	Hon. Gustav Larsson / Alternate: Hon. Alysa Cisneros

Register for Zoom webinar [HERE] Meeting also livestreamed on YouTube [LINK]

More info on public comment and accessibility given at the end of the agenda.

Discussion & action may be taken on any of the items below. Times are approximate.

	WELCOME AND ROLL CALL – (Constantine, 6 PM)
1.	**CONSENT AGENDA**
1a.	Approval of committee minutes from June 10, 2021 *Attachment:* Minutes
2.	**Legislative Update – Senator Dave Cortese**
3.	**Legislative Year-In-Review**
	Attachment: Written Legislative Update
4.	**Discussion by LAC Members of Legislative Session**
	Possible discussion items include: SB7, SB8, SB9, SB10 and SB478 *Attachments:* SB 9 Infographic, SB 9 FAQ, SB 9 Legal Summary
	PUBLIC COMMENT
	ADJOURNMENT

PUBLIC COMMENT INFORMATION

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

1. Email comments to audin@citiesassociation.org
   - Emails will be forwarded to the Legislative Action Committee
   - IMPORTANT: identify the Agenda Item number in the subject line of your email. All emails received will be entered into the record for the meeting.

2. Provide oral public comments during the meeting:

- When the Chair announces the item on which you wish to speak, click the "raise hand" feature in Zoom. Speakers will be notified shortly before they are called to speak.
- When called to speak, please limit your comments to the time allotted (up to 3 minutes, at the discretion of the Chair).
- Phone participants:
  *6 - Toggle mute/unmute
  *9 - Raise hand

ACCESSIBILITY

We strive for our meetings and materials to be accessible to all members of the public. Those requiring accommodations to participate in this meeting may contact our Office Assistant at audin@citiesassociation.org. Notification at least three business days prior to the meeting will allow us to best meet your needs.

Legislative Action Committee Meeting Minutes

June 10, 2021 6:00 PM / Virtual Meeting via Zoom

Meeting recording available on YouTube [LINK]

Agenda in black/Minutes in blue

Board Members

Chair: Hon. Rich Constantine, Morgan Hill

Campbell	Hon. Elizabeth "Liz" Gibbons / Alternate: Hon. Anne Bybee
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Sunnyvale	Hon. Gustave Larsson / Alternate: Hon. Alyssa Cisneros

WELCOME AND ROLL CALL (Constantine)

Members present:
Gibbons, Chao, Blankley, Fligor, Mok, Sayoc, Montano, Turner, Constantine, Kamei, DuBois, Jones, Zhao, Larsson

Members absent:
Watanabe

Others in attendance:

- Andi Jordan, Executive Director
- Audin Leung, Board Clerk
- Kat Wellman, Counsel
- Joshua Ishimatsu, San José Housing Department
- Bena Chang, Silicon Valley Clean Energy
- Melicia Charles, Silicon Valley Clean Energy
- Raania Mohsen, Office of Vice Mayor Chappie Jones
- Roland Lebrun, Member of the Public
- Walter C. Rossman, Finance Director, City of Milpitas
- Tina Walia, Saratoga City Councilmember
- Hung Wei, Cupertino City Councilmember
- Anita Enander, Los Altos City Councilmember
- Paul Peninger, Baird + Driskell Planning
- Jonathan Weinberg, Los Altos City Councilmember
- Mary-Lynne Bernald, Saratoga City Councilmember
- Gary Baum, Prospective Counsel
- Mike Wasserman, Santa Clara County Supervisor, District 1
- Christine Stavem, Chief of Staff, Santa Clara County District 1

1.	**Consent Agenda**
	Motion to approve consent agenda by Jones. Seconded by Gibbons. Motion adopted 14-0-0-1 AYES (14): Gibbons, Chao, Blankley, Fligor, Mok, Sayoc, Montano, Turner, Constantine, Kamei, DuBois, Jones, Zhao, Larsson NAYES (0) ABSTENSIONS (0) ABSENCES (1): Watanabe

	Approval of April Legislative Action Committee Meeting Minutes
2.	**Consideration of Bills and Actions Before the California State Legislature**
2a.	SB 612 (Portantino) Electrical corporations and other load-serving entities: allocation of legacy resources ▪ Presentation from Melicia Charles, Silicon Valley Clean Energy Motion to support SB 612 by Larsson. Seconded by Fligor. Motion adopted 14-0-0-1 AYES (14) Gibbons, Chao, Blankley, Fligor, Mok, Sayoc, Montano, Turner, Constantine, Kamei, DuBois, Jones, Zhao, Larsson NAYES (0) ABSTENSIONS (0) ABSENCES (1) Watanabe Tina Walia gave comment on item 2a.
2b.	SB 649 (Cortese) Local governments: affordable housing: local tenant preference ▪ Request from Racial Justice Committee to Support ▪ Presentation from Joshua Ishimatsu, San José Housing Department Motion to take "watch" position on SB 649. Seconded by Montaño. Motion adopted 14-0-0-1 AYES (14) Gibbons, Chao, Blankley, Fligor, Mok, Sayoc, Montano, Turner, Constantine, Kamei, DuBois, Jones, Zhao, Larsson NAYES (0) ABSTENSIONS (0) ABSENCES (1) Watanabe
2c.	SB 9 (Atkins, Caballero, Rubio, and Wiener) Housing development: approvals Tina Walia gave comment on item 2c.
2d.	AB 1401 (Friedman) Residential and commercial development: parking requirements

	Motion to oppose SB 9 and AB1401 by Constantine. Seconded by Mok. Motion adopted 12-0-2-1 AYES (12) Gibbons, Chao, Blankley, Mok, Sayoc, Montano, Turner, Constantine, DuBois, Jones, Zhao, Larsson NAYES (0) ABSTENSIONS (2) Fligor, Kamei ABSENCES (1) Watanabe Roland Lebrun gave comment on item 2d.
2e.	2021-22 State Budget Request for California Cities
2f.	AB 1091 (Berman) Santa Clara Valley Transportation Authority: board of directors ▪ Discussion and consideration of member survey requesting member interest to work with Assemblymember Berman on modifications to the bill
2g.	Other bills as requested by members to be considered at later date
	Public Comment
	Roland Lebrun gave comment.

ADJOURNMENT

Respectfully submitted,

Audin Leung
Board Clerk

Legislative Action Committee
2021 Legislative Update

November 11, 2021

Table of Contents

Prepared by Audin Leung, Board Clerk

CASCC Bills With Positions

SB 612 (Portantino)

Electrical corporations and other load-serving entities: allocation of legacy resources.

Position **SUPPORT**

Summary Would require an electrical corporation, by July 1, 2022, and not less than once every 3 years thereafter, to offer an allocation of certain electrical resources to its bundled customers and to other load-serving entities, including electric service providers and community choice aggregators, that serve departing load customers who bear cost responsibility for those resources. The bill would authorize a load-serving entity within the service territory of the electrical corporation to elect to receive all or a portion of the vintaged proportional share of those legacy resources allocated to its end-use customers and, if it so elects, would require it to pay to the electrical corporation the commission-established market price benchmark for the vintage proportional share of the resources received.

Result Turned into two-year bill in Assembly Committee on Utilities and Energy.

SB 9 (Atkins)

Housing development: approvals

Position **OPPOSE**

Summary The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant,

ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

Result Chaptered, taking effect January 2022.

AB 1401 (Friedman)

Residential and commercial development: remodeling, renovations, and additions: parking requirements.

Position **OPPOSE**

Summary The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

Result Turned into two-year bill in Senate Appropriations.

SB 649 (Cortese)

Local governments: affordable housing: local tenant preference.

Position Legislative Action Committee – **WATCH**
Board of Directors – **SUPPORT**, as part of an endorsement of the Racial Justice Committee's recommendations that were presented on October 14, 2021.

Summary Would establish a state policy supporting local tenant preferences for lower income households, as defined, that are subject to displacement risk, and, further, permit local governments and developers in receipt of local or state funds, federal or state tax credits, or an allocation of tax-exempt private activity bonds designated for affordable rental housing to restrict occupancy by creating a local housing preference for lower income households subject to displacement risk. The bill, subject to certain requirements and limitations, would authorize a local government to allow a local tenant preference in an affordable housing rental development to reduce displacement of lower income households with displacement risk beyond local government boundaries by adopting a program that allows preferences in affordable rental housing acquired, constructed, preserved or funded with state or local funds or tax programs.

Result Turned into two-year bill in Assembly Committee on Rules.

State Budget Request for Cities

The Cities Association echoed the League of California Cities' **request for a state appropriation of $10 billion** to assist cities in:

(1) Direct and Flexible State Aid
(2) Homelessness and Housing
(3) Broadband Infrastructure
(4) Organic Waste Diversion

The following report assesses whether the state met this request and provides information on funds relevant to cities. Note that allocations for programs run solely by the state and not disbursed to local entities were excluded from this report.

Request 1:

$2 BILLION IN DIRECT AND FLEXIBLE STATE AID

To address local budget gaps left by the American Rescue Plan Coronavirus State and Local Fiscal Recovery Fund and to prevent sustained cuts to good government jobs and jumpstart core services including the easing of municipal hiring freezes.

Result: Not funded.

However, concerns regarding retention of city employees may be partly alleviated by state ARP funds directed to **workforce development programs,** including $600 million to establish the Community Economic Resilience Fund to disburse grants for regional programs and economic development strategies that complement state and federal infrastructure investments.[1]

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[1] The 2021-22 California Spending Plan: Other Provisions. Under "Labor and Employment Issues". https://lao.ca.gov/Publications/Report/4452

Request 2:

$5 BILLION FOR EVIDENCE-BASED HOMELESSNESS AND HOUSING SOLUTIONS

To support cities in their efforts towards ending homelessness and increasing the construction of housing that is affordable to all Californians. This includes funds to provide housing and rent assistance, drug rehabilitation services, and landlord relief programs.

Result: Mostly Funded.

The state spending plan included a slew of allocations to local governments for housing and homelessness programs, including those below.[2] However, the Cities Association's specific request for funds towards housing and rent assistance, as well as landlord relief programs, were not met. The state funded rent assistance, but the assistance goes to renters themselves rather than cities, and no new funds were indicated for landlord relief programs.

Funds for housing were provided in the following ways:

- The **state excess sites program** received $45 million for expansion, including local government matching grants that incentivize affordable housing development on excess lands
- The **Infill Infrastructure Grant** (IIG) Program received $160 million to fund selected capital improvement projects in large jurisdictions.

Funds for addressing homelessness were provided in the following ways:

- The **Homeless Housing, Assistance, and Prevention Program** (HHAPP) will receive $1 billion annually from FY 21-23. The HHAPP provides flexible funding to local entities and is administered by the Homelessness Coordinating and Financing Council (HCFC).

  The $1 billion is apportioned as follows:

  - $800 million to local entities according to a county's proportion of the total homeless population in its Continuum of Care (CoC)[3] region.

[2] The 2021-22 California Spending Plan: Housing and Homelessness. https://lao.ca.gov/Publications/Report/4468

[3] A Continuum of Care (CoC) is a regional or local planning body that coordinates housing and services funding for homeless families and individuals, according to the National Alliance to End Homelessness. https://endhomelessness.org/resource/what-is-a-continuum-of-care/

- $336 million to cities with populations over 300,000 according a city's proportion of the total homeless population in its CoC region.
- $180 million to bonuses for HHAP grantees that establish performance goals

- **COVID-19 emergency homelessness funding grant allocations** under SB 89 sent $1,891,521.87 to the San Jose/Santa Clara City & County Continuum of Care and 1,740,250.66 to the County of Santa Clara

- **Project Homekey** received $2.75 billion to fund additional housing that can be converted and rehabilitated to provide permanent housing for the unhoused. The average statewide cost to the Homekey Program per housing unit is $124,000 and the average local match is $24,000, making the average total cost per unit $148,000.

- The **Family Homelessness Challenge Grants and Technical Assistance Program** received $40 million to provide local governments two grounds of grants, as well as technical assistance in developing action plans to address family homelessness and accelerate local rehousing. Funds must be expended by June 30, 2026.

- The **Behavioral Health Continuum Infrastructure Program** will receive $2.2 billion to provide grants to local entities for behavioral health facilities or mobile crisis infrastructure, contingent on these entities providing matching funds and committing to providing funding for ongoing services.

Request 3:

AT LEAST $3 BILLION FOR BROADBAND INFRASTRUCTURE

To support expansion and related infrastructure upgrades in unserved and underserved communities to help cities catalyze projects statewide.

Result: Partially funded through grants only.

SB 156 recast the CPUC's **California Advanced Services Fund** (CASF), which uses revenues from a surcharge rate collected by telecommunications companies to provide broadband infrastructure grants.

The following are key elements of the SB 156 budget update pertinent to local governments.[4]

[4] The 2021-22 California Spending Plan: Broadband Infrastructure. Legislative Analyst's Office. https://lao.ca.gov/Publications/Report/4467

$50 million Broadband Loan Loss Reserve Fund provides financial backing for local government and non-profit broadband projects

- Additional appropriations for reserve fund operations total $700 million over FY 22-24.
- Benefits of the Fund include:[5]
    - These funds may leverage 3-10 times the guaranteed amount in bond funds (e.g., a $10 million guarantee could support a $30 million –$100 million bond issuance).

$2 billion for last-mile broadband[6] project grants connects service providers to communities and their households

- The $2 billion is apportioned accordingly:
    - $5 million is provided in base funding for each county.
    - Additional funds are allocated according to each county's proportion of households with download speeds slower than 100 megabits per second.
    - The $2 billion is allocated evenly between rural and urban areas ($1 billion each).
- "Unserved areas" where service is too slow to load real-time interactive applications are prioritized for grants.

Additionally, SB 156:

- Gives authority for local governments to issue bonds, and acquire, construct, and maintain broadband infrastructure.
- Makes broadband deployment projects exempt from CEQA review.

Request 4:

$225 MILLION FOR MANDATES TO DIVERT ORGANIC WASTE FROM LANDFILLS

To enable cities and the state stay on course to meet our ambitious goals to reduce landfill disposal.

Result: Partially Funded. Cap-and-trade revenue was directed towards $60 million in grants for local governments to assist in compliance with the SB 1383, the 2015 bill that set ambitious

[5] Last-Mile Broadband Fact Sheet. https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/telecommunications/broadband--fact-sheet_083021.pdf

[6] A middle-mile network consists of high-capacity fiber-optic cables laid over tens or hundreds of miles, for example, near the state's highways. Last-mile projects, by contrast, connect middle-mile networks to individual communities and their households

organic waste reduction goals for the state. $70 million of cap-and-trade revenue goes to organic waste infrastructure.

The Circular Economy Package additionally provided $40 million in various grants for recycling and organic waste infrastructure projects.

Notable Chaptered Bills Under CASCC Policy Priorities

On January 14, 2021, the Board of Directors voted to prioritize the policy areas of **COVID-19 Recovery and Resilience, Housing, Racial Justice,** and **Transportation.**

Below is a round-up of bills that have local level-effects and were signed by the Governor in September or October of 2021. Housing legislation is covered by the Planning Collaborative in a separate attachment.

COVID-19 Recovery & Resilience| Policy Priority 1

A trio of bills, **SB 314** (Wiener), **AB 61** (Gabriel), and **SB 389** (Dodd) were passed to support food businesses in their re-opening and recovery from pandemic-related losses by offering greater regulatory flexibility.

The most impactful elements of SB 314 and AB 61 both work to extend the length of temporary permits, called the COVID-19 Temporary Catering Authorization, that allowed certain businesses to expand activities such as alcohol sales, outdoor dining, and delivery services during the pandemic.

The permits are extended one year after the end of the state of emergency, giving businesses a grace period to apply for a permanent expansion permit.

Additionally,

SB 314 alleviates administrative costs by authorizing licensed manufacturers to share a common area with multiple licensed retailers, and by increasing the number of times that catering businesses can use the same license.

AB 61 requires a local jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas to reduce the number of required parking spaces enough to accommodate an outdoor dining area. These provisions go into effect on January 1, 2022, and sunset on July 1, 2024.

SB 389 allows restaurants to sell to-go alcoholic beverages with food orders, with provisions to ensure alcohol is not sold to minors, until the end of 2026.

Racial Justice | Policy Priority 2

PUBLIC SAFETY

Governor Newsom signed a series of public safety reform bills, two of which have received the most attention.

SB 2 (Bradford, Atkins)

- Gives the state's Commission on Peace Officer Standards and Training (POST) the power to suspend decertify an officer for serious misconduct including excessive force, sexual assault, demonstration of bias and dishonesty.
- Creates an advisory board made up of mostly civilians without policing experience to investigate serious misconduct allegations and make recommendations to the commission on whether to revoke an officer's certification.
- Effectively ends qualified immunity, a legal principle that grants government officials immunity from civil suits unless the person injured can prove that the official violated clearly established statutory or constitutional rights.
- It does so by eliminating certain immunity provisions peace officers and custodial officers hold, as well as the public entities that employ them when sued under the act, and by removing the requirement of proving intent.
- Was amended to partially incorporate law enforcement feedback, including requiring a higher two-thirds threshold vote of commissioners to decertify officers.

SB 16 (Skinner)

- Expands the public's access to police records, allowing them to view sustained findings in which an officer used unreasonable force, failed to intervene when another officer used excessive force, engaged in racist or biased behavior, or conducted unlawful arrests and searches.
- Allows release of records after an officer resigns and puts a 45-day limit on when agencies must respond to records requests
- Removes the time limit on when judges can consider police misconduct complaints to be admissible in criminal cases.

Cities may be especially interested in the opportunity offered by AB 118, known as **the CRISES Act**, that assists cities and counties in "lessening the reliance on law enforcement agencies as first responders to crisis situations unrelated to a fire department or emergency medical service response." It does so through the C.R.I.S.E.S. Grant Pilot Program, which awards grants of at least $250,000 for local governments to shift certain emergency calls to departments of social services, disability services, health services, public health, or behavioral health. These departments would then be required to award at least 90% of funds to one or more community-based organizations.

Santa Clara County's own Assemblymember Ash Kalra, in partnership with Assemblymembers Gonzalez and Garcia, authored **AB 48** which:

- Limits police use of rubber bullets and other less lethal weapons at demonstrations to certain situations, such as when someone's life is in danger or to bring an objectively dangerous and unlawful situation under control if de-escalation tactics do not work.
- Requires departments to release reports on their use of such weapons.

Governor Newsom also notably signed:

- AB 481 (Chiu) which compels police departments to be approved by council ordinance before buying or receiving funds to buy military equipment like armored cars and unmanned aircraft
- AB 26 (Holden) which creates guidelines for police officers to intercede and immediately report if another officer is using excessive force
- AB 89 (Jones-Sawyer) which raises the minimum age to become a police officer to 21 and will enhance education requirements
- AB 490 (Gipson) which bans technique and transport methods that involve risk of positional asphyxia
- AB 958 (Gipson) which bans "police gangs," making participation grounds for termination

EDUCATION

AB 101 (Medina)

- Makes one semester of ethnic studies into a graduation requirement. It goes into effect by the 2024-25 school year and begins with the class of 2030.
- Allows school districts to either develop their own lessons or use the model curriculum developed by the State Board of Education.
- Expressly authorizes schools to increase the requirement for an ethnic studies course from one semester to one year, at their discretion.

Transportation | Policy Priority 3

TRANSPORTATION FINANCING
SB 640 (Becker) allows cities to band together when applying for state funding for infrastructure projects that could have shared benefit.

ELECTRIC VEHICLES

Background: In 2015, the Legislature passed AB 1236 (Chiu) to streamline the permitting process for EV charging station installations. However, most local governments have established conditions for permit approval that are not authorized under AB 1236, and 76% have failed to adopt an ordinance to streamline the review of permit applications altogether.

AB 970 (McCarty) aims to streamline the permitting process with strict timelines for review.

Specifically, an application to install an EV charging station would be deemed *complete* if the local jurisdiction has not reviewed it either 5 business days or 10 business days after the application was submitted, depending on the number of electric vehicle charging stations proposed in the application.

An application would be deemed *approved* if, 20 business days or 40 business days after the application was deemed complete, depending on the number of electric vehicle charging stations proposed in the application, (1) the local jurisdiction has not approved the application, (2) the building official has not declared adverse impact or denied the permit, and (3) an appeal has not been made to the planning commission.

The bill would require local jurisdictions to reduce the number of required parking spaces to accommodate EV charging stations.

The bill goes into effect January 1, 2022, but for every local jurisdiction with a population of less than 200,000 residents, the bill's provisions would apply beginning on January 1, 2023. These provisions apply to all cities, including charter cities.

AB 1110 (Rivas) establishes the California Clean Fleet Accelerator Program, which has three primary functions:

- It provides technical assistance to local school districts, small government entities, and other public entities to adopt ZEV fleets

- It helps reduce the purchase price of clean trucks and buses by streamlining bulk purchase orders for multiple entities at a time,
- It gives schools, towns, and small transit agencies access to low cost financing so they can start saving money right away by upgrading their oldest and dirtiest vehicles.

SLOW STREETS

AB 773 (Nazarian) will permanently allow local jurisdictions to restrict traffic on selected streets. The legislation expands on Governor Newsom's Emergency Executive Order, which granted local areas the ability to implement Slow Streets Programs as a response to COVID-19 public health guidelines.

SPEED LIMITS

Background: For years, California has based its speed limits using a decades-old process known as the 85th percentile. Traffic surveyors measure the speed of drivers and set the speed limit to reflect the speed at which 85% of drivers were driving. It has long been believed that this is the safest way to determine street speed, but the data – a rising number of traffic-related injuries and deaths, and progressively increased speed limits in many cities – suggest otherwise. Speed limits based on the 85th percentile reflect the speed the majority are comfortable driving at regardless of posted speed limits.

AB 43 (Friedman) would require traffic surveyors to take into account the presence of vulnerable groups, including children, seniors, the unhoused, and people with disabilities when setting speed limits; permit cities to lower speed limits beyond the 85th percentile on streets with high injuries and fatalities; and provide for greater flexibility in setting school speed limits to protect children.

Technical Assistance for Local Planning HOUSING

SENATE BILL 9 (SB 9): AN OVERVIEW

WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

ASSOCIATION OF BAY AREA GOVERNMENTS

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, middle-class 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

Used together, this allows
4 HOMES
where 1 was allowed before

SUBDIVIDING A LOT INTO TWO
that can be smaller than required min. size

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 RESIDENTIAL DEVELOPMENT

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	LOT WITH SINGLE-FAMILY HOME AND AN ADU
BEFORE	A1	B1	C1	D1
	No units	*One unit*	*Up to 2 units (nonconforming)*	*1 unit + 1 ADU/JADU*
ADD UNITS, NO LOT SPLIT	A2	B2	C2	D2
	Up to 2 units + 2 ADUs/JADUs	*Up to 2 units + 2 ADUs/JADUs*	*No additional units*	*Can add 1 addtl. unit + 1 ADU/JADU*
ADD UNITS AND LOT SPLIT	A3	B3	C3	D3
	Up to 4 total units	*Up to 4 total units*	*Up to 4 total units*	*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.
- SB 9 ***could be interpreted*** to allow 2 new units beyond an existing unit (for a total of 3 units/lot).

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 PROPERTY QUALIFY?

2-UNIT DEVELOPMENTS AND LOT SPLITS

- ☐ Single-family lot (usually R-1)
- ☐ Located in an Urbanized Area or Urban Cluster[1]
- ☐ Not in state/local historic district, not a 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 severity 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 yrs[3]

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 lot[4]
- ☐ Each new lot is at least 1,200ft^2 [5, 6]
- ☐ Lot is not adjacent to another lot split by SB 9 by the same owner or "any ptwerson acting in concert with the owner"
- ☐ Lot was not created by a previous SB 9 split[7]

[1] Defined by the Census Bureau; [2] See Section 65913.4(a)(6) Exclusions for full details and definitions; [3] Lot can be split first, then new units added to the lot without the Ellis Act-affected building; [4] Each lot can be smaller than required minimum lot size; [5] This number can be lowered by local ordinance; [6] If minimum size is 1,200ft^2, this requires a 2,400ft^2 lot to start with, or 3,000ft^2 if a 60/40 split; [7] This does not apply to previous lot splits taken under usual Map Act procedures

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

LIMITATIONS APPLIED

2-UNIT DEVS. AND LOT SPLITS

- HOAs MAY restrict use of SB 9
- Agencies MUST only impose objective[8] 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 800ft^2
- 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 ft, 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"

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 within last 5 yrs or recertification within last 10 yrs

LOT SPLITS

- Agency MAY approve more than two 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+ yrs[10]
- 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

[8] "Objective" as defined by the Housing Accountability Act; [9] See Sections 21155 and 21064.3 of the Public Resources Code for definitions of these terms; [10] Unless the applicant is a land trust or qualified non-profit

KEY DECISIONS FOR AGENCIES TO MAKE

Whether to require:

- Septic tank percolation tests
- 1 parking space per unit
- *2-UNITS* Owner-occupancy
- *SPLIT* Public services/facilities easements
- *SPLIT* Right-of-way easements

Whether to allow:

- Creation of lots <1,200ft^2
- *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

Senate Bill 9 – Ministerial Urban Lot Splits & Two-Unit Developments
Frequently Asked Questions (FAQ)

DISCLAIMER: *This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this FAQ. Seek the advice of your attorney before acting or relying upon the following information.*

BASICS

1. **When does SB 9 go into effect?**
   January 1, 2022.

2. **What is the definition of an urbanized area or urban cluster?**
   As defined by the U.S. Census Bureau, an urbanized area is an area with 50,000 or more persons, and an urban cluster is an area with at least 2,500 people, but less than 50,000 people. Maps of urbanized areas and urban clusters can be found on the official U.S. Census Bureau website.

3. **Can you use SB 9 in zones that allow single-family development but are zoned primarily for multi-family or mixed-use development?**
   No. The language of the statute is clear that it applies only to parcels in single-family residential zones. Since the intent of the legislation was to upzone or densify areas where only single-family development is currently permitted, it would not serve the purposes of the legislation for it to apply in areas where multi-family or denser uses are already permitted. SB 9 also does not apply to a parcel that is currently developed with a single-family home, if that parcel is located in anything other than a single-family residential zone.

4. **Does SB 9 apply to homeowners' associations (HOAs)? If not, could neighborhoods frustrate the purpose of the law by forming HOAs?**
   SB 9 overrides local zoning only. It does not address rules or restrictions implemented and adopted by homeowners' associations or included in CC&Rs (covenants, conditions, and restrictions).

5. **Is a lot eligible for an SB 9 lot split if it was split before SB 9?**
   Yes. The language of SB 9 only prohibits a lot from using SB 9 to subdivide a lot if it was previously split *using the authority contained in SB 9.* Even after using SB 9, the lot could be further split using ordinary procedures under the Subdivision Map Act and local subdivision ordinance.

6. **Is the restriction on the demolition of 25% of the exterior walls of the building only applicable to deed-restricted affordable units?**

No. This restriction applies to all units unless (1) the city adopts an ordinance allowing for demolition of more than 25% of the exterior walls of an existing structure, or (2) a tenant has not resided on the property in the last three (3) years.

7. **How do you verify that existing housing has not been rented in the last 3 years?**
   SB 9 does not provide an explicit mechanism for determining whether existing housing has been rented in the last three years. Given that, this is an issue that local agencies will want to address in an implementing ordinance or in its application procedures. Some approaches might include:
   - In jurisdictions with existing records of rental properties, which may include business licenses, rent control registries, or inspection records, using data from the local records to be cross-referenced upon submission of an SB 9 application;
   - Requiring applicants to sign a declaration under penalty of perjury; and/or
   - Providing that it is a violation of the Municipal Code or allowing a private cause of action if inaccurate information is submitted.

8. **When the provisions of SB 9 are unclear, can we seek clarification from the Department of Housing and Community Development?**
   Unlike other recent state laws, such as SB 35 or SB 330, SB 9 does not include any provisions requiring HCD to issue guidelines for the implementation of SB 9. Nonetheless, HCD has indicated that it intends to provide a technical assistance (TA) memo on SB 9 implementation. The timeline for when HCD's TA memo will be available is unclear.

INTERSECTION WITH OTHER LAWS

9. **How does the state Density Bonus Law apply to the 4-unit scenario?**
   State Density Bonus Law would not be applicable to SB 9 projects. Government Code § 65915(i) defines "housing development project," for the purposes of state density bonus, as "a development project for five or more residential units." SB 9 only covers two-unit developments, and at most, up to four units total on two contiguous parcels. The urban lot split section states that local agencies are not required to allow more than the maximum of two units on each lot notwithstanding any provision of density bonus law.

10. **How do SB 9 urban lot splits relate to the Subdivision Map Act and the fact that the Subdivision Map Act requires general plan conformance?**
    The language in SB 9 overrides any conflicting provisions of the Subdivision Map Act. Specifically, Government Code § 66411.7(b)(2) provides that "[a] local agency shall approve an urban lot split only if it conforms to all applicable

objective requirements of the Subdivision Map Act…, except as otherwise expressly provided in this section."

11. **Do minimum frontage requirements apply to restrict lot subdivision?**
Minimum frontage requirements likely would not apply if the requirements would physically preclude the lot split or the construction of two units of at least 800 square feet each. However, SB 9 does allow local agencies to require the resulting parcels to have access to, provide access to, or adjoin the public right-of-way.

12. **How does the Permit Streamlining Act apply if these are ministerial actions?**
SB 8, also effective January 1, 2022, extends the requirements of the Permit Streamlining Act to housing projects of one unit or more that require no discretionary approvals. As a consequence, SB 9 projects are subject to Permit Streamlining Act's requirements for completeness letters (within 30 days of submittal) and approval deadlines (within 60 days of determining that the project is exempt from CEQA).

QUANTITY/ACCESSORY DWELLING UNITS

13. **SB 9 states that "[a] housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to an existing unit." Why are some people saying that you can add two new units to a parcel with an existing single-family home?**
As the question states, Gov. Code § 65852.21(i) provides that a development contains two residential units if "the development ***proposes no more than two new units*** or if it proposes to add one new unit to one existing unit." Within this definition, the proposal of two new units is not limited to vacant lots. While the urban lot split section (Gov. Code § 66411.7) clearly allows local agencies to limit total development to two units per lot, including existing units, ADUs, and JADUs, the same language is not present in the two-unit development section. As such, an applicant who only uses the two-unit development provisions, but not the urban lot split provisions, is seemingly not limited to construction of only two units on a lot.

14. **Does SB 9 prohibit ADUs with an urban lot split, or can jurisdictions disallow ADUs with an urban lot split?**
SB 9 does not prohibit accessory dwelling units or junior accessory dwelling units on urban lot splits. The language of SB 9 is that a local agency "shall not be required to permit" ADUs and JADUs and "shall not be required to approve" more than two units on a lot created via an SB 9 lot split. Given this language, local agencies could choose to prohibit ADUs or JADUs on these lots via adoption of an SB 9 implementing ordinance.

15. **Are the two new SB 9 units entitled to an ADU or JADU?**

If the two new SB 9 units are not located on a lot created via the urban lot split provision, then ADUs and JADUs are allowed. If the applicant used both the SB 9 lot split provisions and the SB 9 two-unit development provisions, then a local ordinance can limit total development to two units per lot.

16. **If there is an existing four-unit building on a parcel in a single-family residential zone, can an applicant still add a duplex?**
    The existing four-unit building would already be a non-conforming use on a single-family lot. Therefore, whether the applicant can use SB 9 to add a duplex may depend on the jurisdiction's non-conforming use policies.

17. **Does SB 9 prevent an applicant from using the duplex entitlements to build a "monster home" and get around single-family design guidelines?**
    Probably, yes. Section 65852.21(a) states, "A proposed housing development containing ***no more than two residential units*** within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing…." Later in the section, in paragraph (i), it also states "[a] housing development contains two residential units if the development ***proposes no more than two new units*** or if it proposes to add one new unit to one existing unit." Although it is not clear whether the legislature intended to include single-family home development, the "no more than two units" language in SB 9 could be interpreted to cover development projects proposing to construct one single-family home.

18. **Are the new units created via the authority in SB 9 condominiums? Does SB 9 facilitate ministerial condominium conversions? Does SB 9 allow for condominium conversion of existing duplexes?**
    The new units created via the authority in SB 9 are not condominiums unless the applicant applies to have the units created as condominiums. SB 9 seems to contemplate that the units may be approved as condominiums, because it does not allow denial of attached units so long as their design and construction allow them to be "separately conveyed," i.e., sold separately.

    There is nothing in SB 9 that would refers to the conversion of existing duplexes to condominiums. In that situation, a jurisdiction's regular condominium conversion process would apply.

OBJECTIVE STANDARDS

19. **Can the applicant seek variances from zoning requirements?**
    SB 9 provides that a local agency may only apply its objective zoning standards if they

do not physically preclude the construction of two units of at least 800 square feet each. In that situation, the applicant does not need to apply for a variance.

However, if the applicant desires to construct a larger unit which does not meet the agency's zoning standards, it could be denied under SB 9, or the applicant could apply for a variance.

20. **My understanding is that SB 330 requires only objective design standards for design standards adopted after Jan 1, 2020, is this the same for SB 9?**
SB 330 would apply to an SB 9 implementing ordinance, so any design standards adopted must be objective.

21. **For purposes of a duplex, can jurisdictions adopt an objective standard that says the units have to be within, oh let's say, within 10% of each other?**
Yes, a city could adopt this as an objective standard. However, if the standard or requirement would physically preclude the construction of two units or the construction of a unit that is at least 800 square feet, then it cannot be applied to the specific project.

22. **Is there a street frontage or lot width requirement for ministerial lot splits?**
No. A local agency must allow lot splits that create parcels that are at least 1,200 square feet each where both parcels are of approximately equal size. This likely means that the local agency may not be able to apply its minimum lot dimensions or frontage requirements to some urban lot splits.

23. **Is the 4-foot setback provision similar to that for ADUs?**
Yes. A local agency cannot impose a rear or side setback greater than 4 feet, or less if a structure is in the same location and with the same dimensions as an existing structure.

24. **Does the right of way dedication provision require cities to allow for flag lots, provided they meet the 60-40 split?**
No. The city may require the parcel to have access to, provide access to, or adjoin a public right of way. Rather than allowing flag lots, a city could require a parcel to have access to the public right-of-way via an easement through the other parcel. However, this would have the same practical effect as a flag lot.

25. **Could a jurisdiction define "sufficient to allow separate conveyance" to require separate HVAC systems and separate water connection to meet Title 24 requirements?**
Yes. Title 24 is a state law requirement. Therefore, compliance can be mandated assuming that Title 24 requires separate HVAC systems and water connections for units

that are separately conveyed.

26. **If a jurisdiction doesn't require "dedications" but a property owner wants to put in some improvements in the area which would otherwise be dedicated, could the jurisdiction require that those match what would otherwise be required?**
    If an applicant includes improvements to the public right of way in its SB 9 application, the jurisdiction can require that those improvements meet agency standards.

27. **Does requirement for one parking space/unit supersede other local minimum parking requirements? For example, if local parking standards require two covered spaces per residential unit and additional parking spaces tied to additional bedrooms.**
    Yes. A local agency "may require" off-street parking of up to one space per unit, and "shall not impose" parking requirements where the parcel is located within one-half mile walking distance of either a high-quality transit corridor or major transit stop, or where there is a car share vehicle located within one block of the parcel.

28. **Can a jurisdiction impose affordability requirements on units created via SB 9?**
    There is nothing in the statute that would prohibit the imposition of affordability requirements.

29. **Can a local jurisdiction impose conditions of approval on an SB 9 project?**
    To the extent that the conditions are adopted standard objective conditions, a jurisdiction may impose conditions of approval on an SB 9 project.

FIRE/INFRASTRUCTURE CHALLENGES

30. **Is it true that SB 9 cannot be used in high fire hazard severity zones?**
    No. SB 9 provides that any proposed two-unit development or urban lot split must comply with the requirements of Government Code § 65913.4(a)(6)(D), which prohibits development in high or very high fire hazard severity zones, *unless* the site was excluded from the zone by the jurisdiction, the site has adopted fire hazard mitigation measures "pursuant to existing building standards or state fire mitigation measures." A local ordinance could specify these standards.

    An agency may also reject SB 9 proposals on a case-by-case basis where the local building official makes a written finding that the project would have a specific, adverse impact on public health and safety or the physical environment, based on inconsistency with an objective standard, and there is no feasible method to satisfactorily mitigate or avoid the impact.

31. **What provisions of SB 35 would have to be met to qualify for SB 9 in very high fire hazard zones? Some sort of fire separation requirement? Do separately owned townhomes require additional fire separation?**
    Government Code § 65913.4(6)(D) provides that SB 9 may be used in very high fire hazard severity zones where (1) those sites have been excluded from the specified hazard zones by a local agency, or (2) those sites have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures. It does not specify what "fire hazard mitigation measures" or "state fire mitigation measures" are being referenced. Cities may want to include them in their local ordinances.

32. **X County has some areas that are identified as "urban" or "urban clusters" and could be a qualifying parcel under SB9. However, those areas do not have access to water or sewer connections and may have to expand an existing leach field and utilize other water sources. If the applicant cannot demonstrate that they can build what's allowed under SB9 with a wastewater treatment system and water source that meets Environmental Health Codes, would the County be able to deny them their application?**
    Yes. In this scenario, the project could deny the application because it would not meet objective standards. The building official could also likely make a finding that the project would have a specific, adverse impact on public health and safety or the physical environment and that there is no feasible method to satisfactorily mitigate or avoid specific impact.

33. **If a jurisdiction has substandard existing sewer infrastructure, can those areas of the jurisdiction be excluded from SB 9 applicability?**
    The local agency likely could not outright exclude those areas from SB 9 applicability. However, if projects are proposed in these areas, the local building official could deny the application if it would have a specific, adverse impact on public health and safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the impact.

34. **Can a jurisdiction prohibit someone from creating a new unit in an existing structure that would be below the Base Flood Elevation?**
    To qualify for ministerial approval, SB 9 provides that an applicant must comply with all the requirements in Government Code §§ 65913(a)(6)(B)-(K). Subparagraphs (G) and (H) prohibit development within a flood plain or floodway, respectively, as those sites are determined by maps promulgated by FEMA. However, subparagraphs (G) and (H) also exempt, or allow, development in a flood plain where a flood plain development permit has been issued and allow development in a floodway where a no-reside certification has

been issued. If these mitigation requirements are met, then a local agency would have to permit the new unit below Base Flood Elevation.

URBAN LOT SPLITS

35. **Is the "sufficient to allow separate conveyance" to allow someone to build an attached duplex but to then sell them as two separate lots with their own yard?**
"Sufficient to allow separate conveyance" is not defined in the statute. However, "separate conveyance" means that the units can be sold separately. This phrase would seem to require that each unit be built to condominium standards so that they can be sold separately. Agencies may wish to define this in their local ordinances.

36. **Would there be a deed restriction recorded including that the lot has been split using SB9 and cannot be split further?**
This is not specifically addressed by SB 9. However, it would be good practice for local agencies to include such a provision in their implementing ordinances.

REPORTING REQUIREMENTS/HOUSING ELEMENT

37. **How do jurisdictions account for SB 9 in Housing Elements?**
SB 9 requires jurisdictions to report (1) the number of units constructed pursuant to SB 9 and (2) the number of applications for parcel maps for urban lots splits under SB 9 in their annual housing element report. SB 9 itself does not include any reference to housing elements. The HCD TA memo may provide some guidance on how to project SB 9 development in a community's housing element.

38. **What can be included in a sites inventory?**
There is nothing in SB 9 that prohibits a jurisdiction from using SB 9-eligible parcels in their sites inventory, but there would be limited history to project how many units might be built and what income levels might be served.

39. **Could cities use the Terner Center's findings to project above moderate- and moderate-income housing in their Housing Elements?**
This may be a reasonable approach. It is not known if HCD will accept it, however.

Senate Bill 9 Summary

Senate Bill 9 adds Government Code Sections 65851.21 and 66411.7 and amends Government Code Section 66452.6 (Subdivision Map Act). The provisions of SB 9 are effective beginning January 1, 2022. Below is a summary of those provisions.

I. Government Code Section 65851.21 – Ministerial Two-Unit Developments

Under SB 9, local agencies must approve in a ministerial process, without any discretionary review or hearing, certain two-unit developments. Two-unit developments are those that propose either the construction of no more than two new units, or the addition of one new unit to an existing unit.

To qualify for this ministerial process, the two-unit development must be proposed in a single-family residential zone. Other requirements that a project must satisfy to qualify for SB 9's benefits include:

- **Location.** The project must be in an urbanized area or urban cluster, or within a city with boundaries in an urbanized area or urban cluster, as those terms are defined by the U.S. Census Bureau. The project cannot be on a site designated as a local or state historic landmark or within a local or state historic district. The project may not be on prime agricultural land, wetlands, or protected species habitat, but may be in a high or very high fire severity hazard zone, earthquake fault zone, floodplain, floodway, and site with hazardous materials so long as certain mitigation measures (as outlined in Government Code Section 65913.4(a)(6)) have been implemented on those sites.
- **Protected Units.** The two-unit development may not result in the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from the rental market in the last 15 years, or housing occupied by a tenant in the past 3 years.
- **Limit on Demolition.** The project may not demolish more than 25 percent of the exterior walls of an existing unit unless either the local agency permits otherwise or the site has not been occupied by a tenant in the last 3 years.
- **Residential Uses.** Any units constructed via SB 9 must be used for residential purposes and cannot be used for short-term rentals of less than 30 days.

A project that meets these criteria and otherwise qualifies for the SB 9's ministerial process is exempt from the provisions of the California Environmental Quality Act, as is an ordinance implementing these provisions. However, the provisions of the California Coastal Act of 1976 are applicable to SB 9 two-unit developments, except that a local agency is not required to hold a public hearing for coastal development permit applications.

SB 9 provides narrow parameters for local agencies regarding the standards which they may apply to qualifying two-unit developments and the circumstances under which they may reject an otherwise qualifying two-unit development. As a general matter, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards, so long as those standards do not conflict with the limitations imposed by SB 9 and would not physically preclude the construction of up to two units of at least 800 square feet each. Other limitations in SB 9 include:

- **Setbacks.** A local agency may not require rear and side yard setbacks of more than four feet. No setback may be required for a unit constructed (1) within an existing living area, or (2) in the same location and to the same dimensions as an existing structure.
- **Parking Requirements.** A local agency may only require one off-street parking space per unit. No parking requirements may be imposed if the parcel is located within (1) one-half mile walking

distance of either a statutorily defined high-quality transit corridor or major transit stop, or (2) one block of a car share vehicle.

- **Adjacent or Connected Structures.** A local agency may not deny an application for a two-unit development solely because it proposes adjacent or connected structures, as long as the structures meet building code safety standards and are sufficient to allow separate conveyance.
- **Percolation Test.** For residential units connected to an onsite wastewater treatment system, the local agency may require a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last ten years.

SB 9 provides that a local agency may deny an otherwise qualifying two-unit development if the local building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, and there is no feasible method by which to satisfactorily mitigate the adverse impact.

II. Government Code Section 66411.7 – Ministerial Urban Lot Splits

Under SB 9, local agencies must also ministerially approve, without discretionary review or hearing, certain urban lot splits. To qualify for ministerial approval under SB 9, the parcel to be split must be in a single-family residential zone, and the parcel map for the urban lot split must meet the following requirements:

- **Location.** The project must be in an urbanized area or urban cluster, or within a city with boundaries in an urbanized area or urban cluster, as those terms are defined by the U.S. Census Bureau. The project cannot be on the site of a designated local or state historic landmark or within a local or state historic district. The project may not be on prime agricultural land, wetlands, or protected species habitat, but may be in a high or very high fire severity hazard zone, earthquake fault zone, floodplain, floodway, and site with hazardous materials so long as certain mitigation measures (as outlined in Government Code Section 65913.4(a)(6)) have been implemented on those sites.
- **Parcel Size.** The parcel map must subdivide an existing parcel to create no more than two new parcels of approximately equal lot area, with neither resulting parcel exceeding 60 percent of the lot area of the original parcel. Additionally, both newly created parcels must be at least 1,200 square feet (unless the local agency adopts a smaller lot size).
- **No Prior SB 9 Lot Split.** The parcel to be split may not have been established through a prior SB 9 lot split. Neither the owner nor anyone acting in concert with the owner may have previously subdivided an adjacent parcel using an SB 9 lot split.
- **Subdivision Map Requirements.** The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act, except those that conflict with SB 9 requirements.
- **Protected Units.** The urban lot split may not result in the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from the rental market in the last 15 years, or housing occupied by a tenant in the past 3 years.
- **Owner-Occupancy Affidavit.** The applicant must indicate, by affidavit, the applicant's intention to reside in one of the units built on either parcel for at least three years. This requirement does not apply if the applicant is a qualified non-profit or community land trust. A local agency may not impose any additional owner occupancy requirements on units built on a SB 9 lot.
- **Residential Uses.** Any units constructed on a parcel created through via SB 9 must be used for residential purposes and cannot be used for short-term rentals of less than 30 days.

A parcel map application for an urban lot split that meets these criteria and otherwise qualifies for the SB 9's ministerial process is exempt from the provisions of the California Environmental Quality Act, as is an ordinance implementing these provisions. The provisions of the California Coastal Act of 1976 are applicable to SB 9 urban lot splits, except that a local agency is not required to hold a public hearing for coastal development permit applications.

As with two-unit developments under SB 9, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards to an SB 9 urban lot split, so long as those standards do not conflict with the limitations imposed by SB 9 and would not physically preclude the construction of up to two units of at least 800 square feet each. Other limitations in SB 9 include:

- **Setbacks.** A local agency may not require rear and side yard setbacks of more than four feet. No setback may be required for a unit constructed (1) within an existing living area, or (2) in the same location and to the same dimensions as an existing structure.
- **Parking Requirements.** A local agency may only require one off-street parking space per unit. No parking requirements may be imposed if the parcel is located within (1) one-half mile walking distance of either a statutorily defined high-quality transit corridor or major transit stop, or (2) one block of a car share vehicle.
- **Easements, Access, and Dedications.** A local agency may require an application for a parcel map for an urban lot split to include easements necessary for the provision of public services and facilities. The local agency may also require that the resulting parcels have access to, provide access to, or adjoin the public right-of-way. The local agency may not require dedications of rights-of-way or construction of offsite improvements.
- **Number of Units; ADUs and JADUs.** Notwithstanding the provisions of Government Code Sections 65852.1, 65852.21, 65852.22, and 65915, a local agency is not required to permit more than two units on any parcel created through the authority in SB 9, inclusive of any accessory dwelling units or junior accessory dwelling units.
- **Adjacent or Connected Structures.** A local agency may not deny an application for an urban lot split solely because it proposes adjacent or connected structures, as long as the structures meet building code safety standards and are sufficient to allow separate conveyance.

The standard for denying an application for a parcel map for an urban lot split is the same as for denying an SB 9 two-unit development – the local building official must make a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety, or the physical environment, and there is no feasible method by which to satisfactorily mitigate the adverse impact.

III. Government Code Section 66452.6 – Subdivision Map Act Amendment

Currently, an approved or conditionally approved tentative map expires either 24 months after its approval, or after any additional period permitted by local ordinance, not to exceed an additional 12 months. SB 9 extends the limit on the additional period that may be provided by local ordinance from 12 to 24 months. Where local agencies adopt this change by ordinance, an approved or conditionally approved tentative map would expire up to 48 months after its approval if it received a 24-month extension of approval.