

# SB 9 & Santa Clara County Jurisdictions

November 11, 2021



# SB 9: The California HOME Act (Atkins)



- Ministerial approval of two-unit housing developments in single-family residential zones
- Ministerial approval of the subdivision of one lot into two lots (“Urban Lot Splits” within single-family residential zones)

# SB 9 Two-Unit Housing Developments

Ministerial approval of two-unit housing developments in single-family residential zones

- Units may not be utilized as short-term rentals (< 30 days)
- Cannot result in the demolition of > 25% of existing exterior structural walls unless it has not been occupied by a tenant in the last 3 years or as otherwise allowed by [City/County/Town]

# SB 9 Urban Lot Splits



Ministerial approval of the subdivision of one lot into two lots within single-family residential zones

- Only residential uses are allowed
- Neither new parcel shall be smaller than 40% of the original parcel, and no parcel shall be < 1,200 sf
- Requires affidavit from applicant stating intention to occupy one of the units for at least 3 years. Community land trusts and qualified nonprofits are exempt
- May NOT be utilized as a short-term rental (< 30 days)
- Parcel cannot have been previously created through an SB 9 urban lot split
- Neither the subdivider nor any person "acting in concert" with the subdivider has previously subdivided an adjacent parcel using an urban lot split

# SB 9 Qualifying Criteria



All single-family residential zoned properties within urbanized areas, EXCEPT:

- Properties designated as:
  - Farmland, wetlands, flood zones
  - Very high fire hazard severity zones, hazardous waste sites or within delineated earthquake fault zones (unless mitigated)
  - Identified for conservation, under conservation easement or habitat for protected species
- Proposals that would include demolition of affordable housing, rent-controlled housing or housing that has been occupied by a tenant in the last three years
- Properties where the Ellis Act was used to evict tenants in the last 15 years
- Properties located in a state or local historic district or historic landmarks

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  No units	B1  One unit	C1  Up to 2 units (nonconforming)	D1  1 unit + 1 ADU/JADU
ADD UNITS, NO LOT SPLIT	A2  Up to 2 units + 2 ADUs/JADUs	B2  Up to 2 units + 2 ADUs/JADUs	C2  No additional units	D2  Can add 1 addtl. unit + 1 ADU/JADU
ADD UNITS AND LOT SPLIT	A3  Up to 4 total units	B3  Up to 4 total units	C3  Up to 4 total units	D3  Up to 4 total units

### USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) - but other laws might.
- 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.

THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE OR OPINIONS REGARDING SPECIFIC FACTS. FOR MORE INFORMATION ABOUT SB 9, PLEASE CONTACT YOUR OWN LEGAL COUNSEL.

\* Currently being reviewed by ABAG General Counsel

# Potential Impacts

- Impacts likely to be modest and gradual in most communities
- According to an analysis by UC Berkeley's Turner Center:

*SB 9's primary impact will be to unlock incrementally more units on parcels that are already financially feasible under existing law, typically through the simple subdivision of an existing structure. Relatively few new single-family parcels are expected to become financially feasible for added units as a direct consequence of this bill.*



**TURNER CENTER** OF HOUSING INNOVATION  
UC BERKELEY

A TURNER CENTER REPORT - JULY 2021

## Will Allowing Duplexes and Lot Splits on Parcels Zoned for Single-Family Create New Homes?

Assessing the Viability of New Housing Supply Under California's Senate Bill 9

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# Potential Impacts: Santa Clara County

## Terner Center SB 9 Model Results,: Jurisdictions with greater than 5,000 single family parcels

Name	Total single-family parcels	SB 9-eligible parcels	Parcels where SB9 would increase the number of market-feasible units (rounded to nearest 100)	Parcels where SB9 changes feasible outcome from no new units to 1+ new units (rounded to nearest 100)	Total market-feasible new units if SB9 were enacted per (rounded to nearest 100)	SB9 Units Eligible Lot
Campbell	7,600	7,600	400	200	700	0.09
Cupertino	11,700	11,600	700	400	1,300	0.12
Gilroy	11,700	11,600	700	100	1,100	0.09
Los Altos	9,100	9,100	1,500	1,200	3,500	0.38
Los Gatos	7,300	5,200	500	200	900	0.18
Milpitas	12,500	12,500	700	100	900	0.08
Morgan Hill	9,800	8,300	700	300	1,400	0.17
Mountain View	9,100	9,100	700	300	1,100	0.12
Palo Alto	14,800	14,200	1,000	400	1,700	0.12
San Jose	168,600	168,100	10,300	2,500	15,900	0.09
Santa Clara	18,100	18,000	700	300	1,100	0.06
Saratoga	9,600	7,900	1,100	700	2,600	0.33
Sunnyvale	21,000	21,000	900	400	1,400	0.07
Unincorporated Santa Clara	16,400	11,500	1,300	800	3,300	0.29
<b>TOTAL</b>	<b>327,300</b>	<b>315,700</b>	<b>21,200</b>	<b>7,900</b>	<b>36,900</b>	<b>0.12</b>

Source: Terner Center, 2021.



# Key Action Items for Jurisdictions

## 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<sup>2</sup>
- *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

# Santa Clara County Planning Collaborative SB9 Activities



- Technical Assistance and Training
- Connecting jurisdictions with regional (produced by and/or for ABAG) and State (HCD) resources
- Developing scope of work template for SB-9 related Objective Design Standards

**Questions?**

