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.

<u>OBJECTIVE STANDARDS</u>

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.