

# SENATE BILL 9 (SB 9): AN OVERVIEW

## WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

Senate Bill 9 (SB 9) is a new California State Law taking effect **January 1, 2022**.

Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 overrides existing density limits in single-family zones. SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.



### SB 9 WAIVES DISCRETIONARY REVIEW AND PUBLIC HEARINGS FOR:

**BUILDING TWO HOMES  
ON A PARCEL IN A SINGLE-FAMILY ZONE**



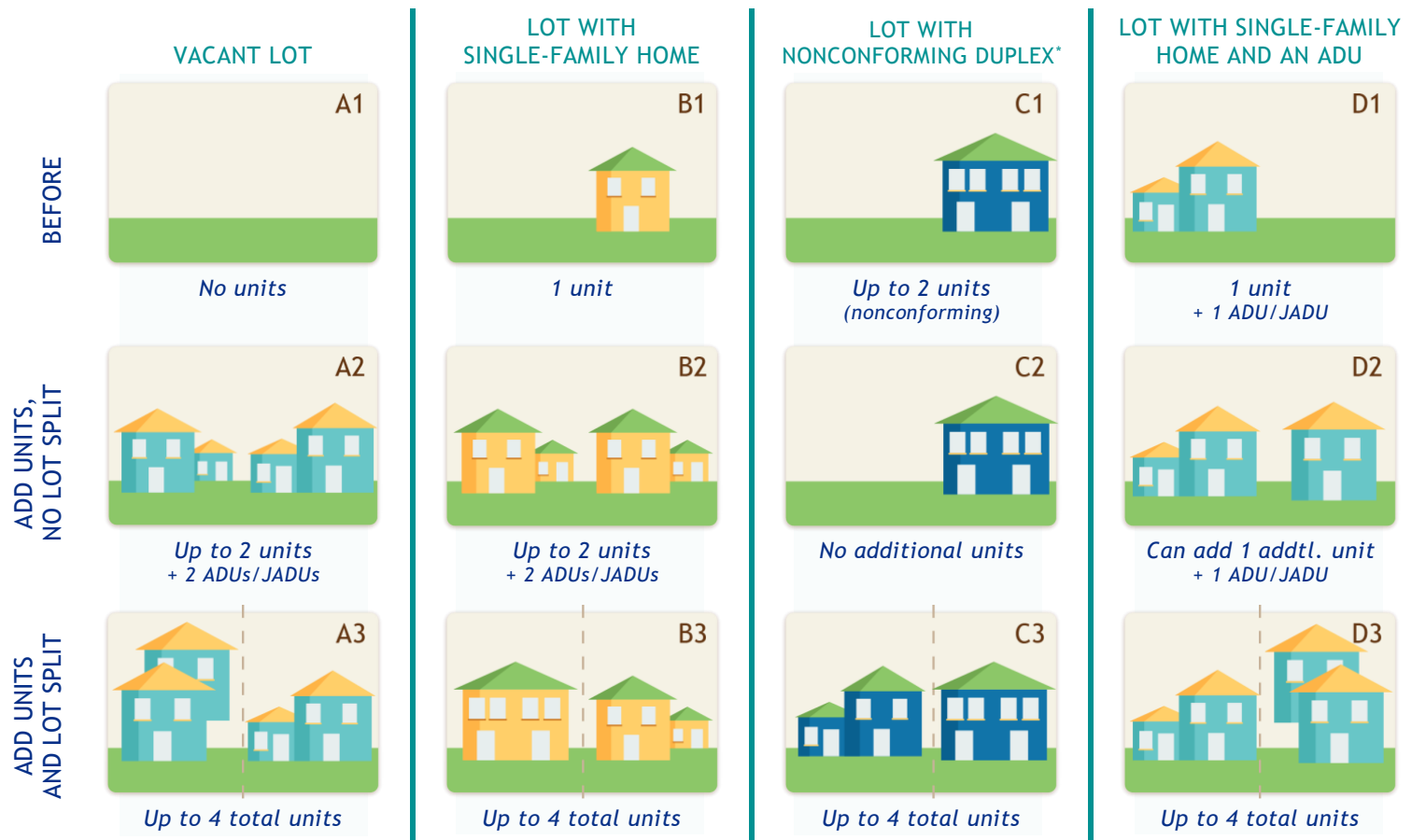
**SUBDIVIDING A LOT INTO TWO  
THAT CAN BE SMALLER THAN REQUIRED MIN. SIZE**

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

SB 9 CAN BE USED TO: Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes

### WHAT IT CAN MEAN FOR DEVELOPMENT OF NEW HOMES

Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only.



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

#### USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) - but other laws might.
- SB 9 **could be interpreted** to allow 2 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

#### USING SB 9 WITH A LOT SPLIT:

- SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.



#### SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units - but projects must comply with all SB 9 requirements.

## DOES THE PROJECT QUALIFY?

### 2-UNIT DEVELOPMENTS AND LOT SPLITS

- Single-family lot (usually R-1)
- Located in an urbanized area or urban cluster<sup>1</sup>
- Not in state/local historic district, not an historic landmark
- Meets requirements of SB35 subparagraphs (a)(6)(B)-(K)<sup>2</sup>:

#### PROPERTY CANNOT BE:

- Prime farmland or farmland of statewide importance (B)
- Wetlands (C)
- Identified for conservation or under conservation easement (I+K)
- Habitat for protected species (J)

#### PROPERTY CANNOT BE (UNLESS MEETING SPECIFIED REQUIREMENTS):

- Within a very high fire hazard safety zone (D)
- A hazardous waste site (E)
- Within a delineated earthquake fault zone (F)
- Within a 100-year floodplain or floodway (G+H)
- Project would not alter nor demolish:
  - Deed-restricted affordable housing
  - Rent-controlled housing
  - Housing on parcels with an Ellis Act eviction in last 15 yrs
  - Housing occupied by a tenant currently or in last 3 yrs<sup>3</sup>

#### 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<sup>4</sup>
- Each new lot is at least 1,200ft<sup>2</sup><sup>5,6</sup>
- Lot is not adjacent to another lot split by SB 9 by the same owner or "any person acting in concert with the owner"
- Lot was not created by a previous SB 9 split<sup>7</sup>

### 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



<sup>1</sup> Defined by the Census Bureau

<sup>2</sup> See Section 65913.4(a)(6) Exclusions for full details and definitions

<sup>3</sup> Lot can split, then new units added to the lot w/o the Ellis-affected building

<sup>4</sup> Each lot can be smaller than required minimum lot size

<sup>5</sup> This number can be lowered by local ordinance

## LIMITATIONS APPLIED

### 2-UNIT DEVS. AND LOT SPLITS



- Agencies **MUST** only impose objective<sup>8</sup> 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<sup>2</sup>
- Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
  - A local agency **MAY NOT** require rear or side setbacks of more than 4 feet, and cannot require any setback if utilizing an existing structure or rebuilding a same-dimensional structure in the same location as an existing structure
  - Project **MAY** be denied if a building official makes a written finding of specific, adverse impacts on public health or safety based on inconsistency with objective standards, with no feasible method to mitigate or avoid impact
- Agency **MAY** require 1 parking space/unit, unless the project is:
  - Within 1/2 mile of "high-quality transit corridor" or "major transit stop"<sup>9</sup>
  - Within 1 block of a carshare vehicle
- Agency **MUST** require that units created by SB 9 are not used for short-term rental (up to 30 days)
- Agency **MUST** allow proposed adjacent or connected structures as long as they comply with building codes and are "sufficient to allow separate conveyance"
- HOAs **MAY** restrict use of SB 9

#### 2-UNIT DEVS

- Without a lot split, agency **CANNOT** use SB 9 to limit ADUs/JADUs *e.g., lot can have 2 primary units+1 ADU+1 JADU*
- Agency **MUST** include # of SB 9 units in annual progress report
- For properties with on-site wastewater treatment, agency **MAY** require a percolation test w/in last 5 years or recertification within last 10 years

#### LOT SPLITS

- Agency **MAY** approve more than 2 units on a new parcel *including ADUs, JADUs, density bonus units, duplex units*
- Project **MUST** conform to all relevant objective reqs. of Subdivision Map Act
- Agency **MAY** require easements for provision of public services and facilities
- Agency **MAY** require parcels to have access to, provide access to, or adjoin public right of way
- Project **MUST** be for residential uses only
- Applicant **MUST** sign affidavit stating they intend to live in one of the units for 3+ years<sup>10</sup>
- Agency **MUST** include number of SB 9 lot split applications in annual progress report
- Agency **CANNOT** require right-of-way dedications or off-site improvements
- Agency **CANNOT** require correction of nonconforming zoning conditions

## KEY DECISIONS FOR AGENCIES TO MAKE

### WHETHER TO REQUIRE:

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

### WHETHER TO ALLOW:

- Creation of lots <1,200ft<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

<sup>6</sup> If min. size is 1,200ft<sup>2</sup>, this requires a 2,400ft<sup>2</sup> lot, or 3,000ft<sup>2</sup> if a 60/40 split

<sup>7</sup> This does not apply to previous lot splits taken under usual Map Act procedures

<sup>8</sup> "Objective" as defined by the Housing Accountability Act

<sup>9</sup> See Sections 21155 and 21064.3 of the Public Resources Code for definitions

<sup>10</sup> Unless the applicant is a land trust or qualified non-profit