



Agenda Report

22-716

Agenda Date: 5/25/2022

REPORT TO PLANNING COMMISSION

SUBJECT

Amend Title 18 Zoning to Establish an SB 9 Implementing Ordinance Including Development Standards for SB 9 Residential Projects (Continued from May 11, 2022)

BACKGROUND

On May 11, 2022 the Planning Commission received a presentation on an ordinance amending Title 18 Zoning of the Santa Clara City Code to add a new Chapter 18.13 Two-Unit Dwelling Residential Development and Urban Lot Splits to implement the provisions of Senate Bill 9 (SB 9). The Commission discussed the draft ordinance (Attachment 1), including potential changes to several of the proposed development standards, and continued their discussion of four topics, summarized in the discussion section below, to the May 25, 2022 Planning Commission hearing.

The staff report with attachments for the May 11, 2022 Planning Commission hearing, included for reference as Attachment 2, provides additional background on where SB 9 applies, what SB 9 allows, and the ways in which jurisdictions may and may not regulate SB 9 proposals.

DISCUSSION

Parking Design & Location Requirements

As drafted, the proposed ordinance (Section 18.13.040(b)) requires any required or proposed parking for an SB 9 project to meet the City's parking design standards including the requirement that the parking be covered (i.e., a garage or carport) and located outside of required setbacks.

The Commission discussed, but did not reach an agreement, on modifying the draft ordinance to:

1. Allow uncovered parking for SB 9 units; and
2. Allow parking in the front setback (i.e., on a driveway) to count toward any required parking for SB 9 units.

The Commission generally indicated support for allowing uncovered parking for SB 9 units to provide applicants with design flexibility and to encourage the provision of off-street/on-site parking, especially in locations where SB 9 precludes the City from requiring any parking.

The Commission was split on the proposed change to allow parking in the front setback to count toward any required parking. Commissioners that did not support this proposal noted that this change would likely reduce the total number of off-street parking spaces provided for an SB 9 project. As the ordinance is currently drafted, an SB 9 unit that is required to provide one (1) parking space would have one (1) space located outside of the required setbacks and one (1) or more additional spaces

on a driveway. Advocates of the proposed change suggested that because the City already allows uncovered parking on driveways in the front setback and because SB 9 states that jurisdictions can only require one (1) parking space, that the proposed ordinance should allow parking on a driveway in the front setback to count toward any required parking.

Front Yard Landscaping/Paving

Related to the Planning Commission's parking discussion, a proposal was introduced to modify Section 18.13.060(i) Front Yard Landscaping to reduce the minimum required front yard landscaping (i.e., un-paved area) from 60-percent to 50-percent or 40-percent. Staff noted that the current R1 Zoning requirement is that a minimum of 35-percent of the front yard be permanently maintained as landscaped area.

The Commission discussed, but did not reach agreement on, a recommended change to the minimum percentage of landscaping / maximum percentage paving in the front yard. The discussion focused on changing the requirement to either:

1. Minimum 50-percent landscaping (maximum 50-percent paving)
2. Minimum 40-percent landscaping (maximum 60-percent paving)

The proposed change was introduced primarily to facilitate parking on a driveway in the front setback.

On a typical 60-foot wide lot with a 20-foot deep front yard, a two-car side-by-side driveway can be accommodated under the proposed minimum 60-percent front yard landscaping requirement. Reducing the front yard landscaping requirement to 50-percent or 40-percent would allow a three-car wide driveway.

- Percent Landscaping / Percent Paving (driveway width/depth)
 - 60 / 40 (24' W x 20' D) = 2 parking spaces
 - 50 / 50 (30' W x 20' D) = 3 parking spaces
 - 40 / 60 (36' W x 20' D) = 3 parking spaces

Solar Access

Chair Biagini expressed a concern that the construction of new units could cast a shadow on solar panels installed on adjacent houses, and asked whether there was a way to preserve the solar access. Assistant City Attorney Alexander Abbe responded that the Commission could add language to the ordinance addressing solar panels, and suggested the California Solar Shade Control Act (SSCA) as a model. The SSCA requires that trees and shrubs be trimmed so that they cast a shadow covering no more than 10 percent of solar collector absorption areas between 10 a.m. and 2 p.m. standard time. The SSCA does not apply to shrubs and trees that were planted prior to the installation of the solar panel.

Based on that model, Assistant City Attorney Abbe suggested that Chair Biagini could move to insert the following language into Section 18.13.040 of the ordinance, only it would apply to new or renovated homes instead of trees and shrubs:

- (b) After the installation of a solar collector, a person owning or in control of another property

shall not construct or alter a residence so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., Pacific standard time.

Assistant City Attorney Abbe also suggested including a definition of “solar collector” that mirrored the SCSA, Public Resources Code § 25981. Later in the discussion, Commissioner Saleme pointed out that an expansive definition of “solar collector” could apply to water heating and space heating without the presence of photovoltaic panels. Based on that, Mr. Abbe suggested a narrower definition than in the SCSA, which would exclude water heating and space heating. The definition would read as follows:

“Solar collector” means a fixed device, structure, or part of a device or structure, on the roof of a building, comprising photovoltaic panels, that is used primarily to transform solar energy into electrical energy.

Affordability

Chair Biagini also asked whether it would be possible to include an affordability requirement for a second unit constructed under SB 9. Assistant City Attorney . Abbe responded that Fremont and Santa Barbara had both recently adopted ordinances imposing such a requirement, although he would need to research whether SB 9 allowed for such a provision in Santa Clara. In the meantime, Assistant City Attorney Abbe suggested that the Commission could make a separate motion on an affordability recommendation to the Council, and that he would research the feasibility of including an affordability requirement prior to the Council meeting. (Because the City’s affordability requirements are contained in Title 17 of the City Code, rather than the Zoning Ordinance, the Planning Commission would not review the actual ordinance imposing an affordability requirement.)

ENVIRONMENTAL REVIEW

Pursuant to California Government Code Sections 65852.21 (j) and 66411.7 (n), a local agency may adopt an ordinance to implement SB 9 and that ordinance shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

FISCAL IMPACT

There is not a fiscal impact to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by publishing a hearing notice in the Mercury News on April 29, 2022. The Planning Commission agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

An email notification of the May 11, 2022 Planning Commission meeting and a link to the City's SB 9 page with additional background information was sent via e-notify to those that are subscribed to the Zoning Code Update topic through the City's email subscription service GovDelivery.

ALTERNATIVES

1. Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits.
2. Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits with specified modifications to the draft ordinance.

RECOMMENDATION

Alternative 1: Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Manuel Pineda, Assistant City Manager

ATTACHMENTS

1. SB 9 Implementing Ordinance DRAFT
2. May 11, 2022 Planning Commission Staff Report and Attachments

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING TITLE 18 (“ZONING”) BY
ADDING A NEW CHAPTER 18.13 (“TWO-UNIT DWELLING
RESIDENTIAL DEVELOPMENT AND URBAN LOT SPLITS”)
TO “THE CODE OF THE CITY OF SANTA CLARA,
CALIFORNIA”**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on September 16, 2021, Governor Newsom signed into law legislation known as Senate Bill 9, the “California H.O.M.E. Act” (SB 9), which added Sections 65852.21 and 66411.7 to the California Government Code;

WHEREAS, beginning January 1, 2022, SB 9 requires local agencies to ministerially approve the construction of two primary dwellings and lot splits, pursuant to a parcel map, on single-family residential zoned lots upon satisfaction of a number of qualifying criteria;

WHEREAS, SB 9 allows local agencies to impose objective zoning, subdivision, and design review standards on the construction of two residential dwellings on single-family lots, subject to certain limitations;

WHEREAS, this ordinance amends Title 18 to implement the provisions of SB 9 with specific objective zoning, subdivision, and design review standards; and

WHEREAS, pursuant to Government Code Sections 65852.21 (j) and 66411.7 (n), a local agency may adopt an ordinance to implement SB 9 and that ordinance shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That a new Chapter 18.13 (entitled “Two Unit Dwelling Residential

Development and Urban Lot Splits”) is hereby added to Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“Chapter 18.13

Two Unit Dwelling Residential Development and Urban Lot Splits

18.13.010 Purpose. The purpose of this Chapter is to regulate two dwelling unit residential development and urban lot splits in compliance with California Government Code Sections 65852.21 and 66411.7 to allow two detached or attached housing units on one parcel, and ancillary uses and structures, and to allow urban lot splits. Proposed two dwelling unit housing developments and urban lot splits shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the requirements of this Chapter.

18.13.020 Applicability.

This Chapter shall apply to properties within the Single-Family Residential Zone (R1-6L) and Single-Family Residential, Larger Parcel Zone (R1-8L), with the following exceptions:

(a) The development site is within a state or local historic district or is included on the State Historical Resources Inventory or on the City’s Historic Resource Inventory.

(b) The property is located on a hazardous waste site, as defined by Government Code Section 65913.4(a)(6)(E).

(c) The property is within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), as defined by Government Code Section 65913.4(a)(6)(G).

(d) The property is within a regulatory floodway, as defined by Government Code Section 65913.4(a)(6)(H).

(e) The development would demolish or alter any existing dwelling unit that is subject to affordability restrictions under a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(f) The development would demolish or alter any existing dwelling unit on the lot that has been occupied by a tenant in the last three years prior to the date of application.

18.13.030 Construction of Multiple Units in Single Family Zones

Notwithstanding Sections 18.10.030 and 18.12.030, up to two homes are permitted on a single parcel within the R1-6L and R1-8L zones, subject to the requirements of this Chapter. On a parcel that has not been divided pursuant to Section 18.13.050, accessory dwelling units meeting the requirements of Sections 18.10.030(d) or 18.12.030(d) are also permitted.

18.13.040 Development Standards Applicable to All Lots With Two Units.

(a) **Off-Street Parking Requirements.** For development that will result in two units on a lot, the minimum parking requirement shall be one space per unit, with the exception that no parking is required if the parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code, or if the parcel is located within one block of a car share facility.

(b) **Off-Street Parking Design Standards.** If off-street parking is required or proposed, the parking shall meet the parking design standards in Chapter 18.74.

18.13.050 Development Standards within R-1 Building Envelope

For development that will result in two units on a lot, if both units proposed will be located entirely within the allowed R-1 building envelope, the development standards of the R1-6L or R1-8L zone will apply to each house, except that the maximum number of houses shall be two per lot.

18.13.060 Development Standards outside of R-1 Building Envelope

For development that will result in two units on a lot, where any portion of a building or buildings is proposed to be located outside of the allowed R-1 building envelope, the following development standards apply.

Residential developments shall comply with the development standards in this Chapter and for the R1-8L and R1-6L Zones, as applicable, set forth in Chapters 18.10 and 18.12 (Single-Family, Larger Lot Area Zoning and Single-Family Zoning Districts) and additional parking regulations set forth in Chapter 18.74 (Parking Regulations), with the following exceptions:

(a) **Size.** Units may be as small as 220 square feet in floor area or as large as 1,000 square feet in floor area.

(b) **Maximum Height/Stories.**

(1) Rear 15 feet of a parcel: Buildings or structures shall not exceed one story in height or 16-feet.

(2) All other areas on the parcel: Buildings or structures shall not exceed one and one-half stories or 25 feet in height

(c) **Side and Rear Setbacks.** Minimum side and rear setbacks shall be the least of the following:

(1) As required by Chapters 18.10 (R1-8L) or 18.12 (R1-6L), as applicable;

(2) 4 feet;

(3) The setbacks of an existing structure for which there is no proposal to alter its dimensions, or a structure constructed in the same location and to the same dimensions as an existing structure.

(d) **Upper Story Windows.** Second story egress windows shall face the front property line or interior of the project. Otherwise second story windows must be either of the following:

(1) 5-foot minimum sill height above finished floor; or

(2) Clerestory; or

(3) Opaque/frosted glass.

(f) **Second Story Balconies and Roof Decks.** Balconies with a maximum depth of 4-feet allowed within the R1-6L and R1-8L setbacks. Roof decks are not allowed.

(g) **Front Door Placement/Orientation.** For units within 30-feet of a street, the main entrance door or entry porch must be oriented to the street and be located no more than 5-feet behind the front most wall of the unit.

(h) **Garage Location/Size.** For garages within 30-feet of a street, the maximum width for a garage with a garage door facing the street is 40 percent of the lot width.

(i) **Front Yard Landscaping.** A minimum of 60 percent of the front yard shall be maintained as un-paved landscaping, except as may be required to meet minimum off-street parking and access requirements of the Zoning Code.

(j) **Modification or Waiver of Standards.** An applicant for a residential development that will result in two homes on a lot may apply for a modification or waiver of specific development standards, if all of the following requirements are met:

(1) The applicant must demonstrate, to the satisfaction of the Zoning Administrator, that the strict application of development standards in this Chapter, or the standards for the R1-6L or R1-8L Zones (set forth in Chapters 18.12 and 18.10) would preclude the construction of a maximum of two units, where each unit is at least 800 square feet in floor area.

(2) The applicant shall have the burden of proof to establish that the modification or waiver is necessary and that there is no redesign possible that would still allow for the construction of two dwellings of at least 800 square feet without the modification or waiver.

(3) Notwithstanding the foregoing, a modification or waiver shall not be used to reduce the minimum setback size to less than four feet, unless the setback is on an existing legal structure with setbacks of less than four feet, and the proposed development either (A) does not propose to modify the dimensions of that existing structure, or (B) will replace the structure with another structure with exactly the same dimensions.

18.13.070 Urban Lot Splits.

An application for a parcel map for an urban lot split within the R1-6L or R1-8L zones shall go through a streamlined review process pursuant to Section 17.05.430 if it meets all of the requirements of this Section.

(a) **Subdivision Requirements.** A parcel map for an urban lot split must meet all of the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) Both newly created parcels are no smaller than 1,200 square feet.

(3) Both newly created parcels have a minimum 24 feet of street frontage with a minimum average width of 24 feet. For flag lots, the flagpole portion, whether this is part of the flag lot or an easement to the flag lot, shall have a minimum width of 12 feet and a maximum width of 15 feet and the flag portion shall have a minimum depth of 40 feet.

(4) Both parcels resulting from the urban lot split have access to, provide access to, or adjoin the public right-of-way through right-of-way frontage or recorded access easements (as a Covenant of Easement on the parcel map).

(5) The approved parcel map shall include a notation that the parcels were created using the Urban Lot Split provisions of this Chapter and the resulting parcels cannot be further subdivided under this Section.

(6) The urban lot split conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this Section.

(7) The parcel being subdivided was not established through prior exercise of an urban lot split as provided for in this Chapter.

(8) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this Chapter.

(b) **Development Standards.** Development standards for each new parcel resulting from an urban lot split shall conform to Section 18.13.030. Development standards shall be applied to each new parcel individually. New flag lots shall provide a 15-foot minimum front setback (measured from the property line shared between the front lot and the flag lot).

(c) **Nonconforming Zoning Conditions.** Correction of legal nonconforming zoning conditions shall not be required as a condition for ministerial approval of a parcel map application for the creation of an urban lot split.

(d) **Residency Requirement.** An applicant for an urban lot split shall sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. This requirement shall not apply to an applicant that is a “community land trust” as defined in Revenue and Taxation Code Section 402.1(a)(11)(C), or is a

“qualified nonprofit corporation” as described in Revenue and Taxation Code Section 214.15.

(e) **Residential Use.** Except as authorized by Chapter 18.100, any parcel created through this Chapter may only be used for residential purposes and any unit created through this Chapter shall not be used as a short-term rental (rented for a period of 30 days or less).

18.13.080 Accessory Dwelling Units.

On a parcel that has not been divided pursuant to Section 18.13.050, an Accessory Dwelling Unit (ADU) and/or a Junior ADU (JADU) that conform with California Government Code Sections 65852.2 (ADUs) and 65852.22 (JADUs) are allowed in addition to the units allowed in this Section. Once a parcel has been divided pursuant to Section 18.13.050, however, the maximum number of dwellings on each resulting parcel, inclusive of any ADU or JADUs, is two.

18.13.090 Definitions. For purposes of this Chapter the following definitions shall apply:

(a) “Acted in concert” means that the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

(b) “Car Share Facility” means one or more parking spaces that have been designated permanently for car share vehicles, where the vehicles are leased for short periods of time, often by the hour.

(c) "Demolish or alter" means removal of more than 25-percent of exterior walls on a building even if the rental unit itself is not altered.

(d) "Egress window" means a window with a minimum net clear opening dimensions of at least 20" in width and 24" in height.

(e) "Flag Lot" means a parcel with access provided to the bulk of the lot by means of a corridor between 12 and 15 feet in width, inclusive.

(f) "Half Story" means a habitable living space with a sloping roof, which may have dormer windows.

(g) "R-1 Building Envelope" means an area defined by the minimum setback and maximum lot coverage requirements of Chapters 18.10 or 18.12, whichever is applicable.

(h) "Urban Lot Split" means a subdivision of a residential lot located in either the R1-6L or R1-8L zone into two lots subject to the requirements of this Chapter."

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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SECTION 3: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2022, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None



Agenda Report

22-476

Agenda Date: 5/11/2022

REPORT TO PLANNING COMMISSION

SUBJECT

Amend Title 18 Zoning to Establish an SB 9 Implementing Ordinance Including Development Standards for SB 9 Residential Projects

BACKGROUND

Senate Bill 9 (SB 9) was signed into law by Governor Newsom on September 16, 2021 and became effective on January 1, 2022. For projects that meet specific eligibility criteria, SB 9 requires ministerial review and approval of a housing development with two primary dwelling units on a single-family (R1) zoned property, the subdivision of an R1 zoned parcel, or both.

Ministerial review of an SB 9 application means a process without discretionary review or hearing, where City staff is limited to ensuring that the proposed development meets all eligibility criteria and applicable objective zoning, subdivision, and design review standards.

For additional background on where SB 9 applies, what SB 9 allows, and the ways in which jurisdictions may and may not regulate SB 9 proposals, please see attached staff report and presentation from the January 25, 2022 joint City Council and Planning Commission study session.

Objective Standards

Any SB 9 proposal submitted after the law became effective on January 1, 2022 is automatically subject to the City's current objective standards (Title 18 Zoning) and/or (Title 17 Development/Subdivision) standards, so long as those standards:

1. do not physically preclude the construction of two units of at least 800 square feet each, per property, and
2. do not conflict with SB 9 standards (e.g., setbacks, parking, etc.) and
3. do not conflict with the ministerial review requirement for SB 9 projects.

Attached is the City's SB 9 Eligibility Checklist and Planning Application, with a list of general requirements for SB 9 proposals, including references to current objective standards in Title 18.

At the January 25, 2022 joint study session, staff identified several topic areas that SB 9 and/or the City's current Zoning Code do not adequately address. These topics include parking, urban lot split standards, privacy, and neighborhood compatibility.

Recommendations for additional objective zoning and design standards for SB 9 projects are incorporated into the attached draft Ordinance, which would amend the current Title 18 to add a new chapter specifically for SB 9 projects.

If adopted by City Council, the SB 9 ordinance will go into effect 30 days after the subject ordinance's second reading by the City Council and incorporated into the Final Draft of the City's Zoning Code Update, which is scheduled for recommendation and adoption hearings by the Planning Commission and City Council in the next few months.

DISCUSSION

State law allows a local jurisdiction, on a limited basis, to adopt ordinances that establish development standards to regulate the implementation of SB 9 projects. The primary issue for the Planning Commission to consider when evaluating the proposed ordinance is the appropriateness and adequacy of the proposed development standards for SB 9 projects (listed in Sections 18.13.030 and 18.13.040 of the draft ordinance and summarized below). As part of the discussion staff has provided questions for the Planning Commission to consider as you review the proposed development standards.

Unit Size

SB 9 states that a local agency may impose objective zoning, subdivision, and design review standards, providing such objective standards do not preclude the construction of either of the two units being less than 800 square feet in floor area; however SB 9 does not establish a minimum or maximum floor area. The proposed ordinance identifies the minimum unit size allowed per Building Code (220 square feet) and a maximum unit size based on the maximum Accessory Dwelling Unit (ADU) size proposed in the Zoning Code Update (1,000 square feet).

Question 1. Should the maximum SB 9 unit size be smaller (can be as small as 800 square feet) or larger than 1,000 square feet?

Off-Street Parking

SB 9 requires parking of no more than one space per dwelling unit, except no parking is required for projects within a half-mile walking distance of a high-quality transit corridor or a major transit stop, or within one block of a car share. The proposed ordinance is consistent with this requirement and each project will be evaluated to determine if one space or zero spaces are required per unit.

Question 2. Should all SB 9 projects be exempt from providing parking regardless of proximity to transit or car share?

The proposed ordinance will require any off-street parking, whether required or proposed, to meet the City's parking design standards. However, the City's existing ordinance regulating Accessory Dwelling Units (ADUs) has no parking requirements for any ADUs, regardless of proximity to transit.

Question 3. Should SB 9 projects be subject to less restrictive parking design standards (e.g., smaller parking space dimensions, smaller setbacks, etc.)?

Privacy Standards

To help address privacy concerns, particularly with SB 9 units being allowed with reduced side and rear setbacks (can require no greater than 4-feet), the following standards, which are based on the City's existing Single-family and Duplex Residential Design Guidelines (RDGs) and draft Zoning Code Update, are included in the draft ordinance.

Buildings or structures associated with an SB 9 project that are located within the rear 15 feet of a

parcel shall not exceed one story or 16-feet in height. On the rest of the parcel, buildings or structures shall not exceed one and one-half stories or 25-feet in height. (A “half story” is habitable space with a sloping roof that reduces the total volume of space. Dormer windows are common in half stories.)

Second story egress windows are required to face the front property line or interior of the SB 9 project (i.e., not facing adjacent properties) and for other second story windows to be either high/clerestory or opaque.

Second story balconies are limited to a maximum depth of 4-feet and roof decks are not allowed.

Question 4. Do these standards sufficiently address privacy concerns from SB 9 projects?

Neighborhood Compatibility

The draft ordinance includes standards to enhance the compatibility of SB 9 units with adjacent properties and the surrounding neighborhood, including standards for front door placement/orientation, garage location/size, and front yard landscaping.

For units within 30-feet of a street, the main entrance door or entry porch must be oriented to the street and be located no more than 5-feet behind the front most wall of the unit.

If an SB 9 unit includes a garage that is located within 30-feet of a street with a garage door that faces the street, the maximum width for the garage is 40 percent of the lot width.

SB 9 properties are required to maintain of minimum of 60 percent of the front yard as un-paved landscaping, except as may be required to meet Zoning Code minimum off-street parking and access requirements.

Question 5. Are there additional standards that could be applied to SB 9 projects that would support enhanced neighborhood compatibility?

Applicability of Standards

One additional consideration in preparing the ordinance was whether these standards should apply only to the second house built on a property, or whether they would apply to both an existing house and the newly constructed house. The disadvantage of the latter approach is that if the original house exceeded any of the new standards of the ordinance, it would become legal nonconforming, which would limit a homeowner’s ability to make renovations or expansions to the house in the future. In addition, it would treat homeowners differently based on whether they already had one house and were building a second home, or whether they were building two houses on a vacant lot.

Rather than focus on when a house was constructed, the ordinance instead considers where the houses are located on a lot. For larger lots, if it possible for both houses to be located within the building envelope that would otherwise apply to a single home (in other words, the standard setbacks and lot coverage requirements), then the standard R-1 requirements will apply. So neither house would, for example, be subject to the 1000 sf maximum size. If, however, either house uses the reduced setbacks or lot coverage requirements allowed by SB 9, then both houses would become subject to the stricter standards listed above, including the 1000 sf maximum.

Question 6. *Is the Planning Commission comfortable with this approach?*

Subdivision Process

When a homeowner splits a lot using SB 9, the law requires that the process be conducted ministerially (without a public hearing or discretionary review). The City's subdivision ordinance, City Code Chapter 17.05, currently requires all subdivisions to have a public hearing at City Council. As a result, it is necessary to also make amendments to Chapter 17.05 to set up this new ministerial process. There is a reference to a new section of Chapter 17.05 in the proposed ordinance, but the actual amendments to Chapter 17.05 will be brought forward to City Council separately, since the Planning Commission does not make recommendations on ordinances outside of the zoning code. For reference, a draft of the proposed changes to Chapter 17.05 is attached as Attachment 5.

ENVIRONMENTAL REVIEW

Pursuant to California Government Code Sections 65852.21 (j) and 66411.7 (n), a local agency may adopt an ordinance to implement SB 9 and that ordinance shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

FISCAL IMPACT

There is not fiscal impact to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by publishing a hearing notice in the Mercury News on April 29, 2022. The Planning Commission agenda was also posted on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

An email notification of this meeting and a link to the City's [SB 9 page](https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/zoning/sb-9) <<https://www.santaclaraca.gov/our-city/departments-a-f/community-development/planning-division/zoning/sb-9>> with additional background information was sent to people that are subscribed to the Zoning Code Update topic through the City's email subscription service GovDelivery.

A joint City Council and Planning Commission study session was held on January 25, 2022.

ALTERNATIVES

1. Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits
2. Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits with specified modifications to the draft ordinance.

RECOMMENDATION

1. Recommend that the City Council adopt an ordinance amending Title 18 Zoning to include Chapter 18.13 Two Unit Dwelling Residential Development and Urban Lot Splits

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Rajeev Batra, City Manager

ATTACHMENTS

1. Joint City Council/Planning Commission Study Session Staff Report
2. Joint City Council/Planning Commission Study Session Presentation
3. City of Santa Clara SB 9 Eligibility Checklist and Application
4. SB 9 Implementing Ordinance DRAFT
5. Proposed revisions to Chapter 17.05 (Subdivision).



Agenda Report

22-85

Agenda Date: 1/25/2022

REPORT TO COUNCIL

SUBJECT

Joint City Council and Planning Commission Study Session on Senate Bill (SB) 9

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

EXECUTIVE SUMMARY

Senate Bill (SB) 9 (Atkins), signed into law by Governor Newsom on September 16, 2021, effective January 1, 2022, preempts restrictions imposed by local jurisdictions to allow property owners within a single-family residential zone to build two units and/or to subdivide a lot into two parcels, for a total of four units.

The law also outlines how jurisdictions may regulate SB 9 projects. Jurisdictions may only apply *objective* zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct objective design review but may not have hearings for units that meet the state rules (with limited exceptions).

The purpose of this study session is to provide the Planning Commission and City Council with an overview of SB 9 and discuss some examples of how other jurisdictions have proposed to regulate SB 9 projects, and how the City of Santa Clara could adopt its own implementing ordinance with objective design, subdivision, and zoning standards.

BACKGROUND

SB 9 requires ministerial approval of the following development activities:

- **Two-unit housing development** - Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).
- **Urban lot split** - A one-time subdivision of an existing single-family residential lot into two parcels. This would allow up to a total of four units (unless a jurisdiction decides to allow additional units).

SB 9 applies to all single-family (R1-6L and R1-8L) residentially zoned properties within an urbanized area with several key exceptions:

- Environmentally sensitive areas
- Environmental hazard areas if mitigations are not possible
- Historic properties and districts

- Properties where the Ellis Act was used to evict tenants at any time in the last 15 years. The Ellis Act is a 1985 California state law that allows landlords to evict residential tenants to "go out of the rental business".
- Additionally, demolition is generally not permitted for units rented in the last 3 years, rent-controlled units or units restricted to people of low or moderate incomes.

This law is similar to recent state ADU legislation in that it allows jurisdictions to apply local standards as long as they do not prevent the development of a small new home (or multiple homes in the case of lot splits). Market analysis predicts the uptake will be limited in part because homeowners already have many of the same rights under the ADU law. The bigger change is likely permitting the splitting and sale of lots by homeowners.

What Can Be Built

Prior to SB 9

Prior to SB 9, a single-family residentially zoned property was allowed one primary dwelling unit, one Accessory Dwelling Unit (ADU), and one Junior ADU, for a total of up to three housing units.

1 primary dwelling unit +
1 ADU + 1 JADU = **3 Total Housing Units**

SB 9 with no Lot Split

Homeowners can use SB 9 to build two new homes on a vacant lot. If there is an existing home, they can add one primary dwelling unit. In addition, an ADU and a JADU would also be allowed, for a total of up to four housing units.

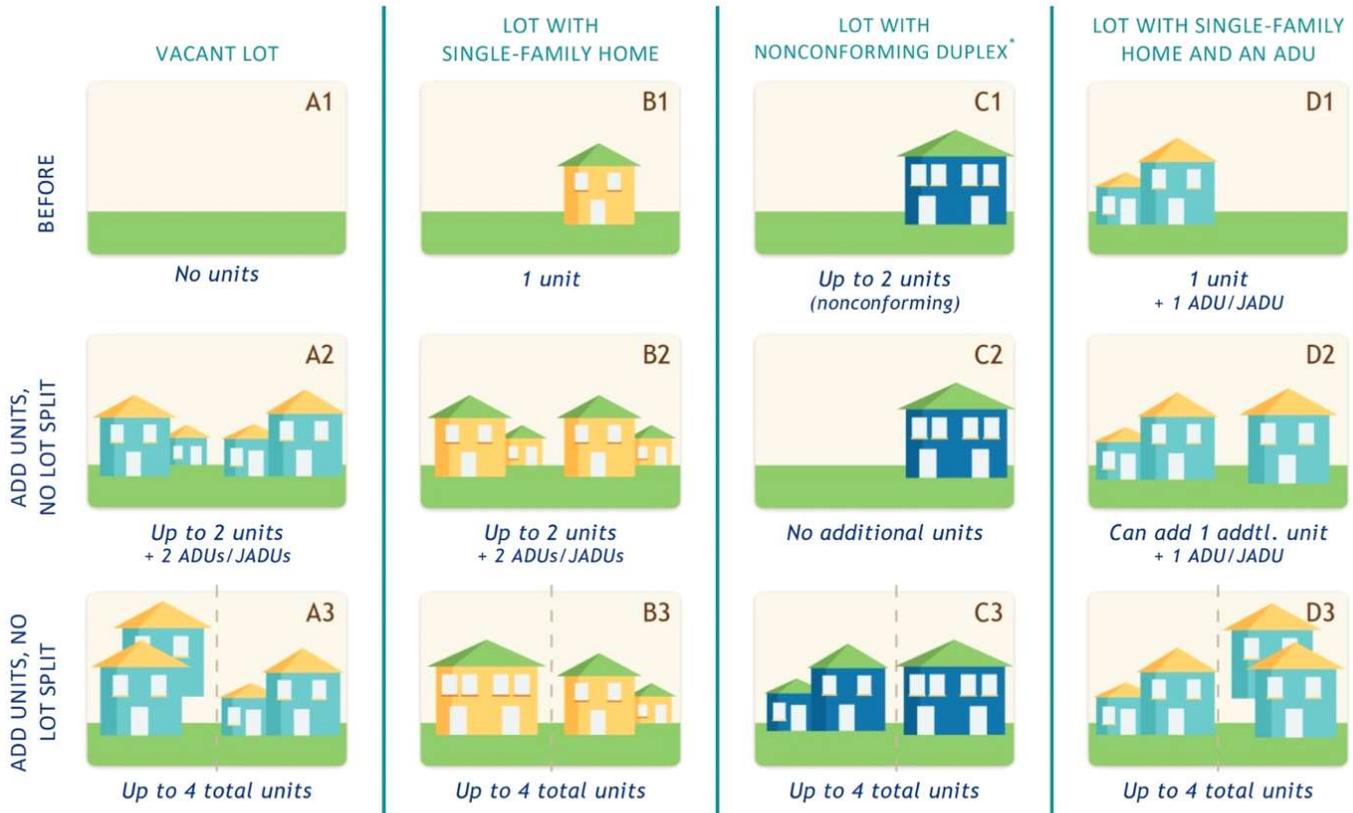
2 primary dwelling units +
1 ADU + 1 JADU = **4 Total Housing Units**

SB 9 with Lot Split

Homeowners that split a lot will be allowed to build one new primary dwelling unit plus one additional primary dwelling unit or one ADU on each of the two new lots, allowing for a total of up to four housing units.

1 primary dwelling unit +
1 primary dwelling unit or 1 ADU =
2 Housing Units on each lot (**4 Total Housing Units**)

The following graphic illustrates potential scenarios that could occur on a single-family property under SB 9:



*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).

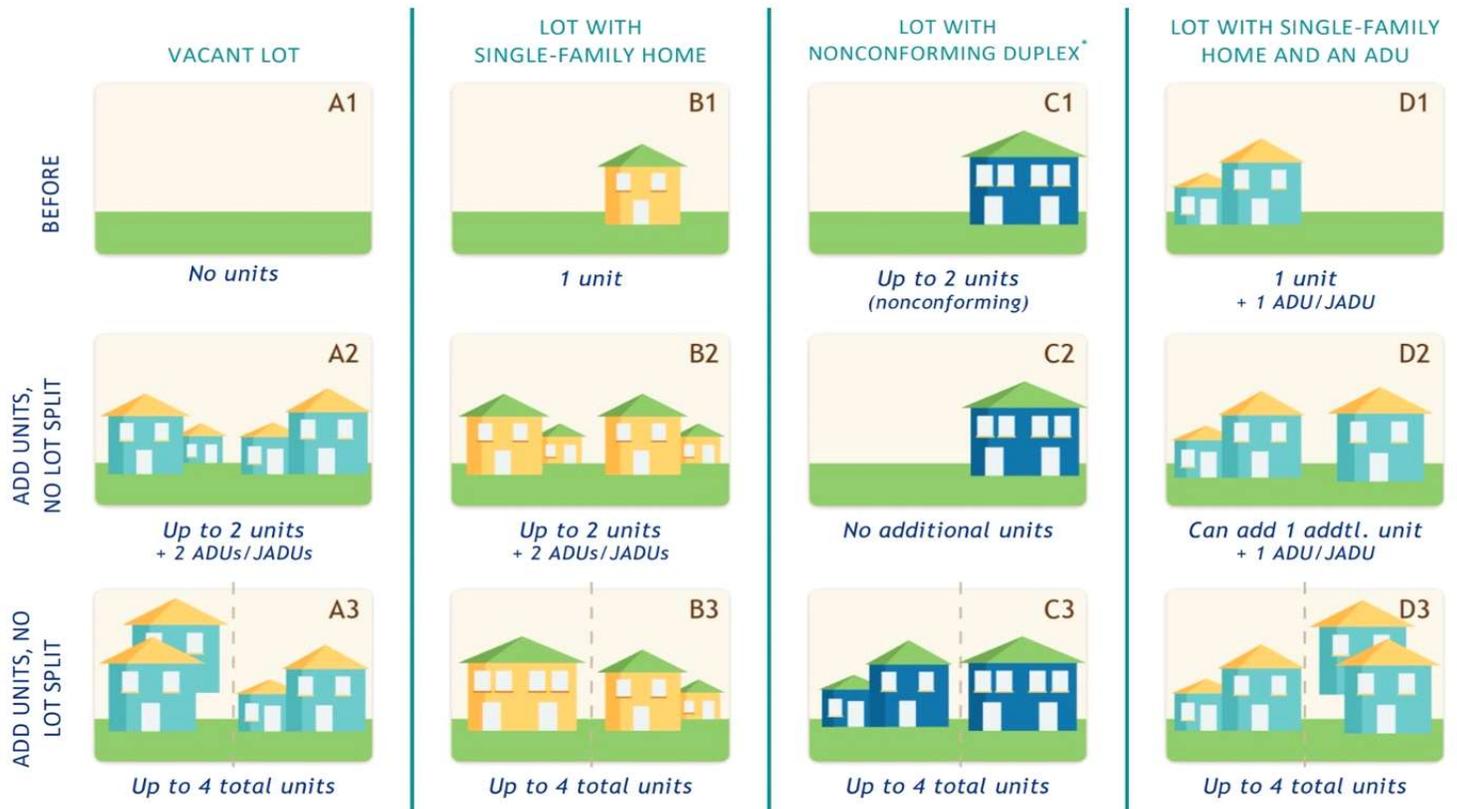
USING SB 9 WITH A LOT SPLIT:

- 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.



*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.
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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.

Potential New Home Creation

It is unclear how many homes will be created by SB 9 over time. While SB 9 increases the zoned *potential* for residential units in single-family neighborhoods, market conditions and other factors are likely to limit the impacts of SB 9. The City of Santa Clara has approximately 18,000 single-family residential lots that would be subject to SB 9. While social, physical or economic factors will likely constrain utilization of the SB 9 provisions, the new law should still be expected to result in changes within established Santa Clara neighborhoods. (Constraints may include construction costs, a limited number of developers interested in taking on small scale projects, smaller properties that constrain the ability to develop multiple units, and/or the desire of property owners to continue living in traditional single-family homes within established neighborhoods.)

While SB 9 applies to an estimated 18,000 parcels in the City of Santa Clara, past experience with state housing laws such as Accessory Dwelling Unit (ADU) laws suggests that only a small percentage of owners may choose to utilize SB 9. For reference, in 2020, a similar number of parcels were eligible to build up to two ADUs (one full size and one junior) in the City of Santa Clara, but only 74 permits for ADUs were issued, and almost all of those were for one ADU per lot.

In July, UC Berkeley's Turner Center for Housing Innovation published a report on SB 9, concluding that single family homes would continue to be the dominant land use in areas covered by SB 9. This is because single family sales prices are high, many lots have limited buildable area, and construction costs limit what is feasible. Even when the economics are right, many property owners will still choose not to build. The report estimates that less than 4-percent (approximately 700 lots) of

the City of Santa Clara's single-family parcels would be economically viable to allow new unit construction under SB 9, compared to prior law. The report states that the construction of 1,100 new units in Santa Clara could be market-feasible under SB9.

Note the Turner Center projection is a snapshot of economic viability under current market conditions, not a time-horizon forecast. Changes in land, labor, and material cost over time will continue to shift the number of parcels that may be potentially developed under SB 9.

Regional Housing Needs Allocation (RHNA)

SB 9 units may be able to count for purposes of Housing Elements and RHNA, but the exact methodology is currently unclear. In future years, it will be based on actual construction trends, but for the upcoming housing element, there is not sufficient time or data available to establish a pattern upon which to project housing yield. HCD is expected to provide guidance on this in the coming months. For subsequent annual progress reports to the State, local jurisdictions will be required to include data on all SB 9 units and applications for urban lot splits.

Regulations

The law details which ways jurisdictions may regulate SB 9 proposals. There are some actions jurisdictions must take, some decisions that jurisdictions can choose to take, and some areas they may not regulate.

The following requirements and limitations apply to all two-unit housing development and urban lot split projects under SB 9:

- **Ministerial review** - Jurisdictions must review and process applications for SB 9 two-unit housing developments and urban lot splits ministerially, without any discretionary/subjective review or CEQA.
- **Objective standards** - Jurisdictions may only impose objective zoning, design, and subdivision standards. Such standards shall not physically preclude the construction of two units of at least 800 square feet each, per property. Note that applicants may propose units that are as small as 220 square feet.
- **4-foot rear and side setbacks** - Jurisdictions may not impose residential setbacks greater than 4 feet for side and rear property lines.
- **Rebuild demolished buildings with same setback** - Jurisdictions may not impose any new setback requirements for a new residence constructed in the same location and to the same dimensions as an existing structure that is demolished.
- **Zero or one parking space** - Jurisdictions may not require more than one parking space per unit. For properties within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or within one block of a car share vehicle, no parking spaces may be required.
- **Denials for public health and safety exemption** - Jurisdictions may only deny an SB 9 proposal if the Building Official finds that it would have a "specific, adverse impact [as defined by law], upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." Any denials must be based on objective, identified public health and safety standards, policies or conditions that existed when the application was submitted.

- **Attached buildings allowed** - Jurisdictions may not reject an application because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance. Note that SB 9 does not define “sufficient to allow separate conveyance.”

The following additional limitations apply to all urban lot split projects under SB 9:

- **Dedications/Improvements** - Jurisdictions may not require dedications of rights-of-way or the construction of offsite improvements.
- **Easements** - Jurisdictions may require easements required for the provision of public services and facilities and may require that parcels have access to, provide access to, or adjoin the public right-of-way.
- **No correction of non-conforming conditions** - Jurisdictions may not require correction of an existing legal non-conforming condition as a condition for ministerial approval.

Additional Information on Applicability and Restrictions

SB 9 applies in all Urban Areas, as defined by the US Census Bureau, except the following:

- **Environmental Sensitivity/Environmental Hazards** - Properties designated as:
 - Prime farmland or farmland of statewide importance
 - Wetlands
 - Within a very high fire hazard severity zone (with exceptions)
 - A hazardous waste site (with exceptions)
 - Within a delineated earthquake fault zone (with exceptions)
 - Within a flood zone (with exceptions)
 - Identified for conservation or under conservation easement
 - Habitat for protected species
- **Ellis Act** - Properties where the Ellis Act was used to evict tenants at any time in the last 15 years.
- **Historic Properties** - Properties located in a state or local historic district, or properties designated historic landmarks on a state or local register.

SB 9 includes the following additional restrictions:

- **Deed restricted affordable housing and rental housing** - SB 9 projects may not demolish 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. Nor is it allowed for housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power. Demolition is also not permitted for housing that has been occupied by a tenant in the last three years.
- **No short-term rentals** - Rental terms less than 30 days are not allowed.
- **Limits on demolition** - Projects may not demolish more than 25 percent of existing exterior structural walls unless (a) the property has not been occupied by a tenant for 3 years or (b) otherwise allowed by the jurisdiction.

The following rules are specific to SB 9 Urban Lot Splits:

- **One lot split only** - Only one lot split is allowed through use of SB 9 (additional splits would only be possible if otherwise allowed by the City’s Zoning Code).

- **Residential only** - The uses on the resulting lots are limited to residential uses.
- **Approximately equal size** - Each new parcel must be “approximately equal” in lot area provided that one parcel shall not be smaller than 40 percent the size of the original parcel.
- **Minimum parcel size** - No parcel shall be less than 1,200 square feet. Jurisdictions may by ordinance adopt a smaller minimum lot size subject to ministerial approval.
- **Intention to occupy** - The subdivider must sign an affidavit stating they intend to occupy one of the units for a minimum of three years. The local jurisdiction cannot impose additional owner occupancy standards. Community land trusts and qualified nonprofits are exempted from this requirement.
- **Limits on adjacent urban lot splits** - Neither the subdivider nor any person “acting in concert” with the subdivider has previously subdivided an adjacent parcel using an urban lot split. Note that SB 9 does not define what “acting in concert” means, or how it would be proven.

DISCUSSION

As described above, the law establishes limited standards that jurisdictions may apply to the review of qualifying SB 9 projects. However, jurisdictions may impose objective zoning, subdivision, and design standards to the extent that 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.

Staff is seeking input on the following topics where the City of Santa Clara can apply existing objective standards and establish new objective standards for the review of SB 9 applications:

- **Parking** - SB 9 limits the number of parking spaces that can be required to a maximum of one space per unit, or no parking if the parcel is within one-half mile of a high-quality transit corridor or a major transit stop, or if the parcel is within one block of a car share.
 - Since SB 9 is otherwise silent on the topic of parking, the City may apply current zoning parking design standards (or develop less restrictive standards) for SB 9 projects that are required to provide parking or propose parking.
- **Urban Lot Split Standards** - SB 9 requires that one parcel shall not be smaller than 40 percent of the lot area of the original parcel and both newly created parcels are no smaller than 1,200 square feet. Forty percent of a typical 6,000 square foot lot is 2,400 square feet.
 - The City may apply current zoning and subdivision standards to SB 9 Urban Lot Split projects to the extent that those standards do not conflict with the limitations imposed by SB 9. The City may establish lot width, frontage width, and flag lot standards that are specific to SB 9 Urban Lot Split projects.
- **Privacy** - Privacy is not addressed in SB 9. Establishing objective standards for the following could help address privacy concerns:
 - Size and/or placement of second stories
 - Size, placement, or style of second story windows
 - Second story balconies and roof decks
- **Maximum Unit Size** - Local standards shall not preclude construction of up to 2 units that are each at least 800 square feet.
 - Since SB 9 is otherwise silent on unit size, the City may establish a maximum unit size that is at least 800 square feet. Note that an applicant may propose units as small as 220 square feet.

- **Neighborhood Compatibility** - There are no standards in SB 9 that address neighborhood compatibility concerns, but the City may apply current zoning development standards and can adopt additional objective standards that are not in conflict with SB 9 including the following:
 - Front and street-side setbacks
 - Front door placement/orientation
 - Garage location/size
 - Front yard landscaping

The presentation for the study session will include examples of how other jurisdictions propose to address the above topic areas and recommendations for how the City of Santa Clara could address these topics.

Historic Preservation - As mentioned above, SB9 is not applicable to properties located in a state or local historic district, or properties designated historic landmarks on a state or local register. The City may want to consider undertaking or promoting the designation of historical properties or districts as a means of preserving historical areas that could be otherwise affected by SB9.

ENVIRONMENTAL REVIEW

The action being considered is a study session only and does not constitute a “project” within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(a), as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Future action to adopt an ordinance implementing SB 9 would not be considered a project per Section 65852.21(j) of the California Government Code.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney’s Office and the City Manager’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Provide feedback on the following SB 9 Study Session topics:

1. Parking
2. Urban Lot Split Standards
3. Privacy
4. Maximum Unit Size
5. Neighborhood Compatibility

6. Researching Historic Preservation Analysis and Incentives

Reviewed by: Andrew Crabtree, Director, Community Development Department

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. SB 9 Overview/Checklist
2. SB 9 FAQ

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**



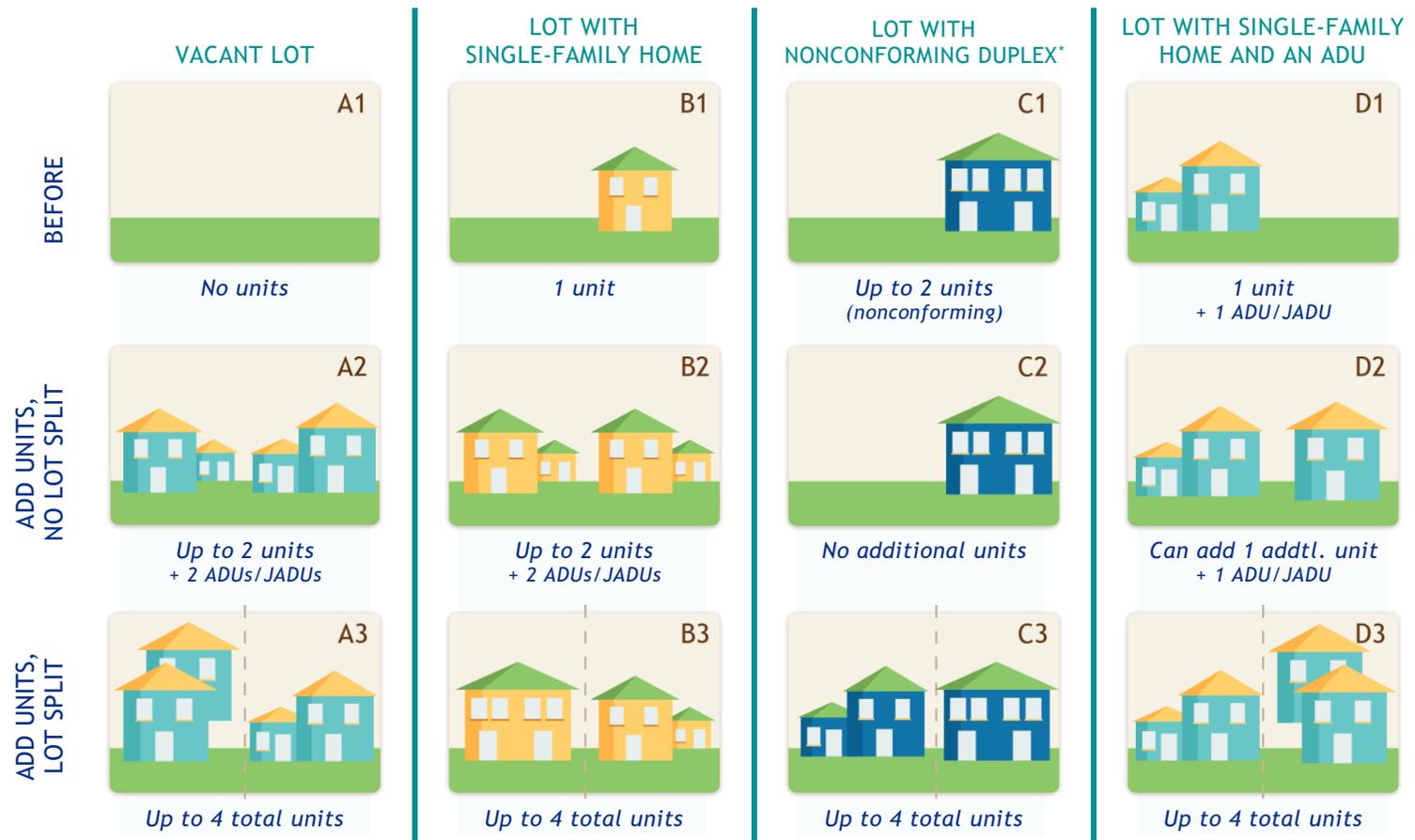
**SUBDIVIDING A LOT INTO TWO
THAT CAN BE SMALLER THAN REQUIRED MIN. SIZE**

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 R1-6L or R1-8L)
- Located in an urbanized area or urban cluster¹
- Not in state/local historic district, not an 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 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 yrs³

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 lot⁴
- Each new lot is at least 1,200ft²^{5,6}
- 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 split⁷

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



¹ Defined by the Census Bureau

² See Section 65913.4(a)(6) Exclusions for full details and definitions

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

⁴ Each lot can be smaller than required minimum lot size

⁵ This number can be lowered by local ordinance

LIMITATIONS APPLIED

2-UNIT DEVS. AND LOT SPLITS



- Agencies **MUST** only impose objective⁸ 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 800ft²
- 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"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"
- 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+ years¹⁰
- 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 <1,200ft²
- 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

⁶ If min. size is 1,200ft², this requires a 2,400ft² lot, or 3,000ft² if a 60/40 split

⁷ This does not apply to previous lot splits taken under usual Map Act procedures

⁸ "Objective" as defined by the Housing Accountability Act

⁹ See Sections 21155 and 21064.3 of the Public Resources Code for definitions

¹⁰ Unless the applicant is a land trust or qualified non-profit

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

DISCLAIMER: *These frequently asked questions about SB 9 are provided by the Association of Bay Area Governments (ABAG). 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 document. 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)?

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 an applicant 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 subject to minimum lot size and other requirements that apply to the parcel.

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 their 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 covers up to four units total on two contiguous lots. Additionally, the urban lot split section states specifically 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." General Plan and specific plan conformance is not required if it would preclude lot splits mandated by SB9.

11. Do minimum frontage requirements apply to restrict lot subdivision?

Minimum frontage requirements continue to apply unless 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 the 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." This could be interpreted to mean that the statute applies to a two-unit proposal even if those units are proposed for a lot already containing a unit. 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. The Legislature's intent regarding a two-unit development on a single lot is not clear. It may be possible for an applicant who only uses the two-unit development provisions, but not the urban lot split provisions, to have more than two units on the 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 lots created by an urban lot split. Under SB9 a local agency "shall not be required to approve" more than two units (including ADUs and JADUs) on a lot created via an SB 9 lot split. Agencies may also prohibit ADUs and JADUs on parcels created by urban lot splits that

use the two-unit provision. Given this language, local agencies could choose to limit development on lots created by an urban lot split to two primary units each 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 as under existing law. 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, including ADUs and JADUs, or could choose to allow only two primary units on each 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 in a single-family zone. Depending on the jurisdiction's non-conforming use policies, the non-conforming structure may need to be removed if the applicant wishes to add a duplex. However, the urban lot split provision (section 66411.7(i)) prohibits requiring correction of nonconforming zoning conditions for urban lot splits. Nonetheless, the agency can require that no more than two units be located on each lot.

17. Does SB 9 allow an applicant to use the duplex entitlements to build a single unit "monster home" and get around non-objective 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?

SB9 does not amend laws regarding condominiums. SB9 does not allow denial of attached units so long as their design and construction allow them to be "separately conveyed," i.e., sold separately as condominiums may be sold. New units created via the authority in SB 9 may be approved as condominiums if the applicant asks for that approval, but the application would need to meet state and local law concerning

condominiums. A jurisdiction's regular condominium conversion process would also continue to apply.

OBJECTIVE STANDARDS

19. Can the applicant seek variances from zoning requirements?

SB 9 provides that a local agency may apply its objective zoning standards so long as they do not physically preclude the construction of two units of at least 800 square feet each with four-foot setbacks (no setbacks are required if the unit is constructed in the same location and with the same dimensions as an existing structure). 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, for example, 10 feet 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. Also note that section 66411.7(k) provides that an urban lots split "shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance."

22. Is there a street frontage or lot width requirement for ministerial lot splits?

SB 9 does not contain street frontage or lot width requirements. A local agency may apply an objective frontage or lot width requirement. It must, however, allow lot splits that create lots that are at least 1,200 square feet each where both lots 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?

The agency may require the parcel to have access to, provide access to, or adjoin a public right of way but must allow the lot split. Where a parcel does not front on a public right of way, the options are to allow a flag lot or to provide access to the public right-of-way via an easement through the other 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 right-of-way, could the jurisdiction require that those meet the jurisdiction's standards for right of way improvements?

If an applicant includes improvements to the public right of way in its SB 9 application, the jurisdiction can require that those improvements meet objective agency standards.

27. Does the 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, SB 9 supersedes local standards. 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 objective affordability requirements. However, agencies should examine the economic feasibility of any affordability requirements to ensure that urban lot splits and two-unit developments remain economically feasible.

29. Can a local jurisdiction impose conditions of approval on an SB 9 project?

A jurisdiction may impose standard objective 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 excludes projects in high or very high fire hazard severity zones, *unless* either: (1) the site was excluded from the zone by the jurisdiction; or (2) the site has adopted fire hazard mitigation measures “pursuant to existing building standards or state fire mitigation measures applicable to the development.” “Fire hazard mitigation measures” and “state fire mitigation measures” are not defined. A local ordinance could specify which “building standards” apply or reference the appropriate “state fire mitigation measures.”

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. 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 county 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.

32. 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, by violating an existing objective standard, with no feasible method to satisfactorily mitigate or avoid the impact.

33. 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 §§ 65913.4(a)(6)(B)-(K). Subparagraphs (G) and (H) exclude development within a flood plain or floodway, respectively, as those sites are determined by maps promulgated by FEMA. However, subparagraphs (G) and (H) also allow development in a flood plain where FEMA has issued a flood plain development permit or meet FEMA criteria and allow development in a floodway where a no-rise certification has been issued or the project otherwise meets FEMA criteria. If these mitigation requirements are met, then it may be possible for the new unit to be built below Base Flood Elevation. Agencies should refer to the text of the statute.

URBAN LOT SPLITS

34. Would the "sufficient to allow separate conveyance" provision allow someone to build an attached duplex but 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 if the local agency approves a condominium application. Agencies may wish to define this in their local ordinances.

35. Should agencies record a deed restriction stating that the lot has been split using SB9 and cannot be split further?

This is not specifically addressed by SB 9. Two possibilities are a recorded deed restriction and a notation on the approved parcel map. It would be good practice for local agencies to include such a requirement in their implementing ordinances.

REPORTING REQUIREMENTS/HOUSING ELEMENT

36. 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 lot 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.

37. 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.

38. Could cities use the Turner 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.



City Council / Planning Commission Study Session

Item 2 RTC 22-85

SB 9: California HOME Act

January 25, 2022



Topics

- Details of the new law
- Impact on Santa Clara
- Options for local controls



SB 9

The California

H.O.M.E. Act

(The Housing Opportunity & More Efficiency Act)

Part 1: Legal Details



**City of
Santa Clara**
The Center of What's Possible



Ministerial Approval of...

- 2 units per R-1 lot
 - Add a second SFR to a lot with an existing SFR
 - Build two new SFRs
 - Build new duplex





Ministerial Approval of...

- Lot splits
 - Divisions of 50/50 to 40/60 (“approximately equal area”)
 - Both parcels ≥ 1200 sf
 - Applicant must intend to occupy a unit for 3+ years





“Ministerial Approval” means:



- No CEQA review
- No hearings
- City cannot disapprove, unless:
 - does not meet objective criteria
 - Specific health & safety impacts



Where SB 9 applies

All R-1 lots in urbanized areas, *except*:

- Rental units
- Historic properties
- Certain special types of land (wetlands, prime farmland, conservation easements)



What the City *can* impose

- Easements for provision of public facilities & services
- Requirement that new parcels are connected to a public right-of-way
- Limitation on short-term rentals

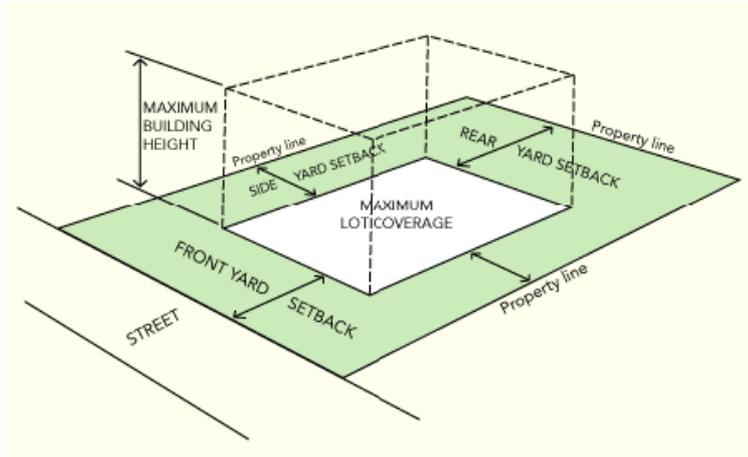




What the City *can* impose

- “Objective” zoning, subdivision & design standards*
- “Objective” means:
 - no personal or subjective judgment
 - uniformly verifiable
 - knowable by both the applicant & public official

* Limitations on city control



- Setbacks
 - Maximum side/rear: 4 feet
 - No requirement for existing structure, or same footprint
- No correction of LNC conditions



* Limitations on city control

- Parking
 - Site $> \frac{1}{2}$ mi from transit:
1 space per unit
 - Site $\leq \frac{1}{2}$ mi from transit:
no parking spaces



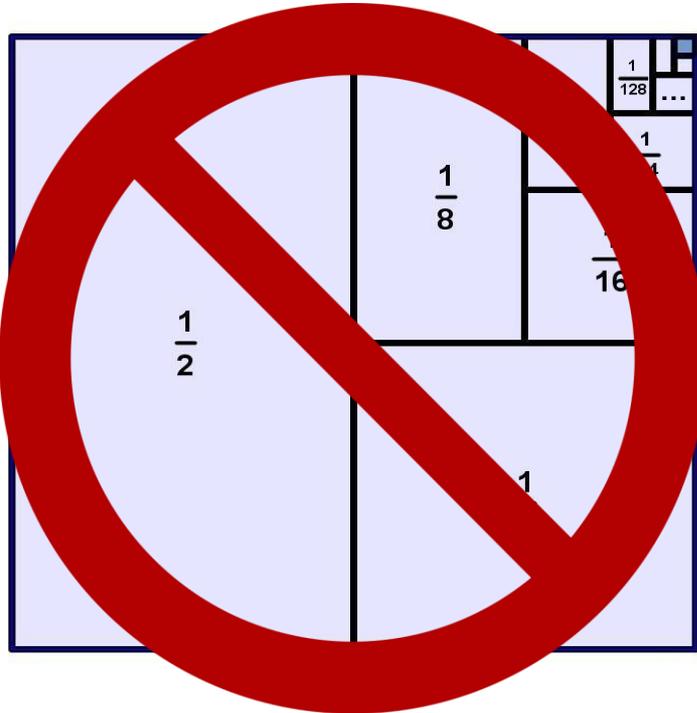


* **Limitations on city control**

- Subdivision improvements
 - No dedications of PROW
 - No construction of offsite improvements
- Development standards must allow for construction of 2 units of 800 sf each



How Often Can It Be Used



- Limit of *one* subdivision under SB 9.
- Any subsequent lot split would have to go through standard subdivision process

Interplay with ADUs

- *Existing law:*
 - SFR + 1 detached ADU + 1 attached JADU = 3 du
 - MFR + 2 detached ADUs = 4+ du





Interplay with ADUs

- *If no lot split:*
ok to build ADUs
- 2 SFRs +
1 detached ADU +
1 JADU = 4 du



Interplay with ADUs

- *After lot split:* no ADU allowed, if result is > 2 units on either lot
 - 1 SFR + 1 ADU = 2 du
 - 1 SFR + 1 SFR = 2 du
- total: 4 units

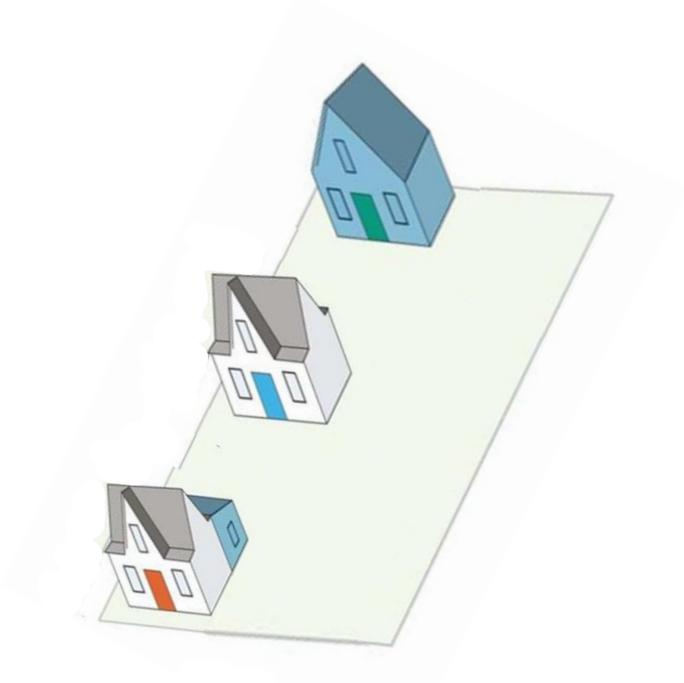




Interplay with ADUs

SB 9's Maximum Potential:

- Prior to lot split, ok to build ADUs

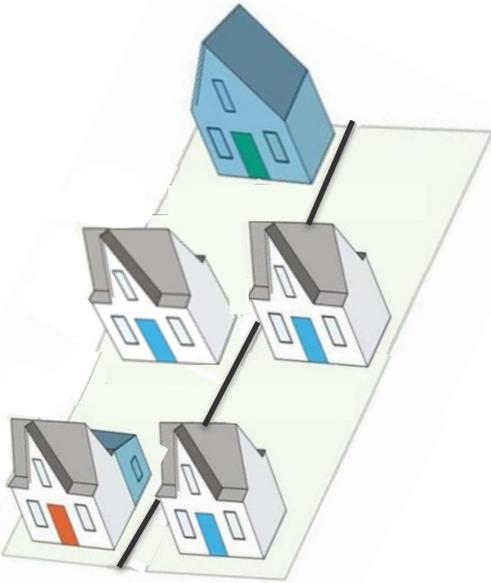




Interplay with ADUs

SB 9's Maximum Potential:

- Prior to lot split, ok to build ADUs
- After lot split, ADU laws cannot be used.





Upcoming

- Redondo Beach lawsuit
- Initiative petition



SB 9

The California H.O.M.E. Act

(The Housing Opportunity & More Efficiency Act)

Part 2: Impact & Options



**City of
Santa Clara**
The Center of What's Possible



SB 9 Potential New Home Creation City of Santa Clara

- Approx. 18,000 single-family lots subject to SB 9
- In 2020 a total of 74 permits for ADUs filed
- SB 9 would increase number of market-feasible units on less than 4-percent of eligible single-family lots in Santa Clara (approx. 700 lots)

[“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”. Terner Center 2021.](#)



Key Implementation Topics

- **Parking**
- **Urban Lot Split Standards**
- **Privacy**
- **Maximum Unit Size**
- **Neighborhood Compatibility**



Parking – SB 9 Requirement and Examples

SB 9	Sunnyvale & San Jose	Campbell
<p><u>Number of Spaces:</u> Max. 1 parking space per unit or no parking if parcel within ½-mile of high-quality transit corridor or major transit stop or if car share within one block.</p>	<p>Same as SB 9</p>	<p>Same as SB 9</p>
<p><u>Design Standards:</u> Not defined in SB 9</p>	<p>If parking required or proposed, spaces must meet current Zoning Code requirements for size, design, and placement</p>	<p>Meet current Zoning Code requirements for size, except uncovered spaces allowed and may encroach into required front or street-side yard setback</p>



Parking – Recommendations

SB 9	City of Santa Clara	City of Santa Clara (Alt.)
<p><u>Number of Spaces:</u> Max. 1 parking space per unit or no parking if parcel within ½-mile of high-quality transit corridor or major transit stop or if car share within one block.</p>	<p>Same as SB 9</p>	<p>Exempt SB 9 units from providing any parking like ADUs.</p>
<p><u>Additional Requirements</u></p>	<p>If parking required or proposed, spaces must meet current Zoning Code requirements for size, design, and placement</p>	<p>NA</p>



Urban Lot Splits – SB 9 Requirement and Examples

SB 9	San Jose	Campbell
<p><u>Min. Lot Size:</u> One parcel shall not be smaller than 40% of the lot area of the original parcel and both newly created parcels are no smaller than 1,200 square feet.</p>	<p>Same as SB 9</p>	<p>Same as SB 9</p>
<p><u>Min. Lot Width:</u> Not defined in SB 9</p>	<p>30-feet of street frontage and average width. Width of flag pole portion of flag lot between 12 and 15 feet.</p>	<p>25-feet of street frontage and minimum width. Flag lots allowed 12-foot frontage.</p>



Urban Lot Splits – Recommendations

SB 9	City of Santa Clara
<p><u>Min. Lot Size:</u> One parcel shall not be smaller than 40% of the lot area of the original parcel and both newly created parcels are no smaller than 1,200 square feet.</p>	<p>Same as SB 9</p>
<p><u>Min. Lot Width:</u> Not defined in SB 9</p>	<p>Min. 24-feet of street frontage and average width. Min. 12-feet and Max. 15-feet width of flagpole portion of flag lot. (note: 24-feet is 40% of a typical 60 foot wide lot)</p>

Conventional Lot Split Example

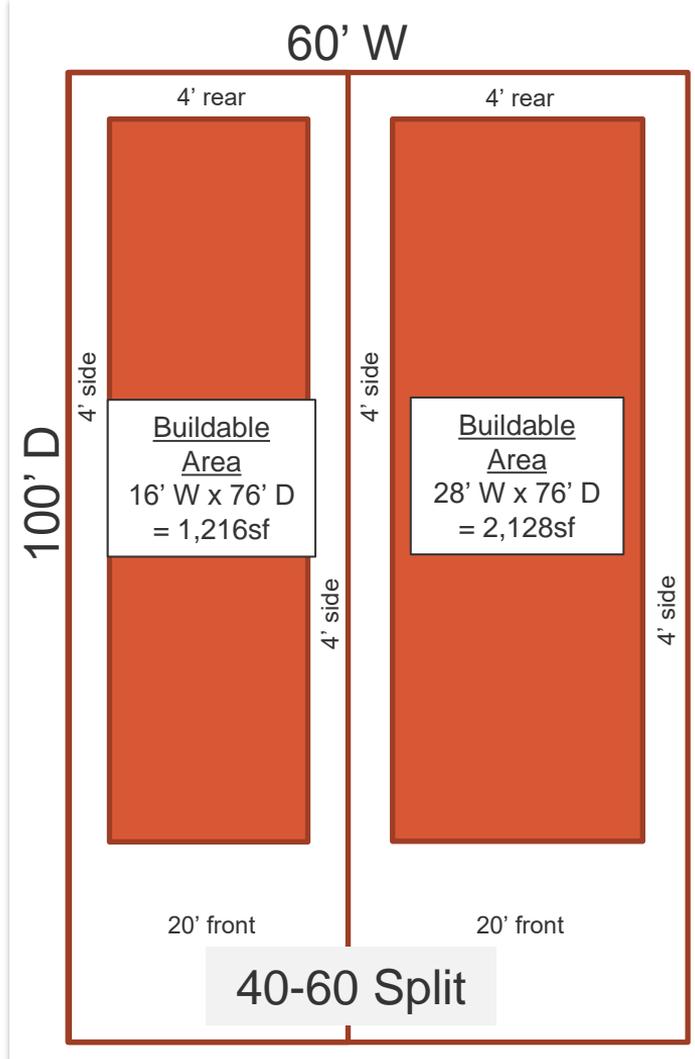
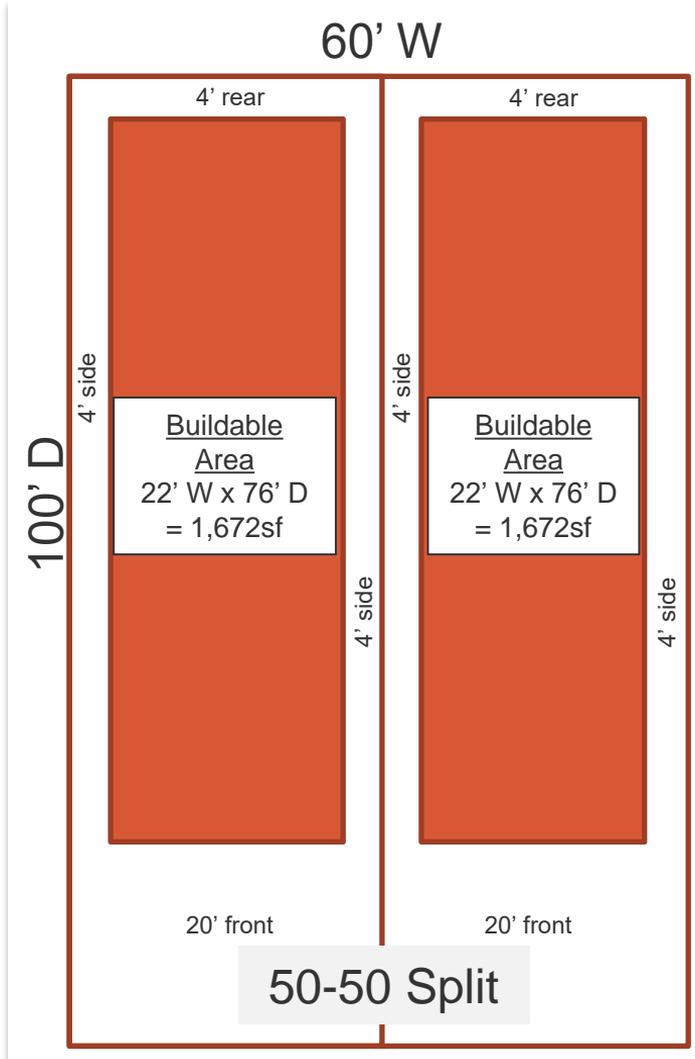
Two Lots
30' W x 100' D
= 3,000sf

Or

24' W x 100' D
= 2,400sf

and

36' W x 100' D
= 3,600sf



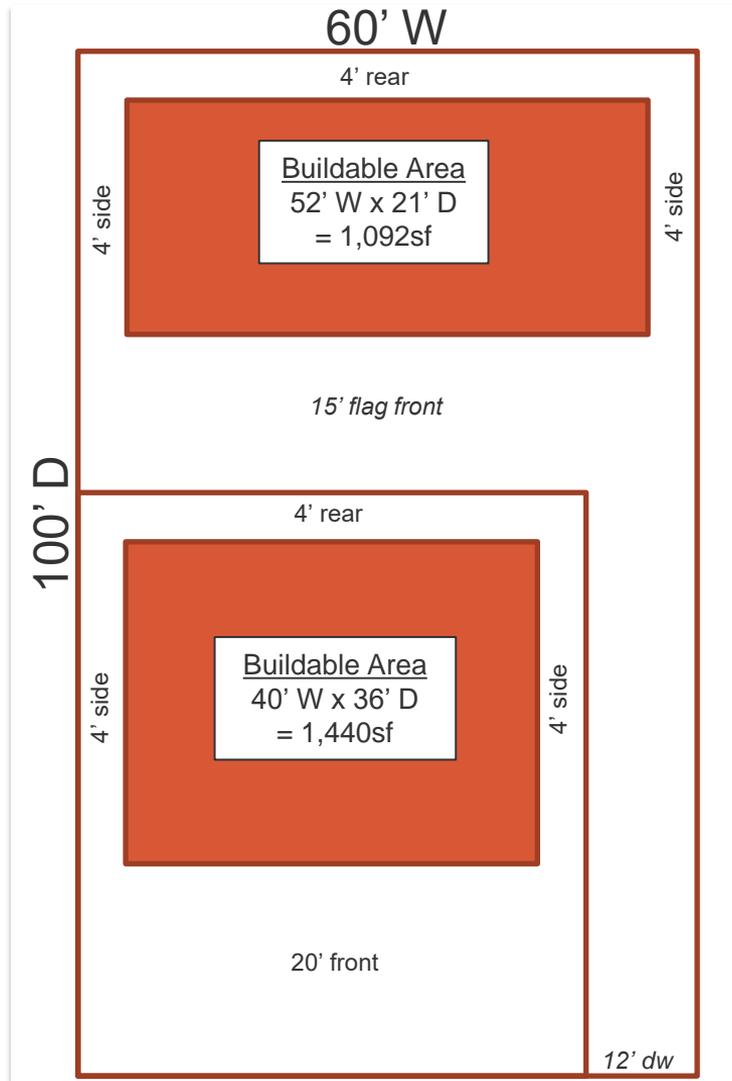
Flag Lot Split Example

Rear Lot

$$\begin{aligned} &60' \text{ W} \times 40' \text{ D} \\ &+ 12' \text{ W} \times 60' \text{ D} \\ &= 3,120\text{sf} \end{aligned}$$

Front Lot

$$\begin{aligned} &48' \text{ W} \times 60' \text{ D} \\ &= 2,880\text{sf} \end{aligned}$$



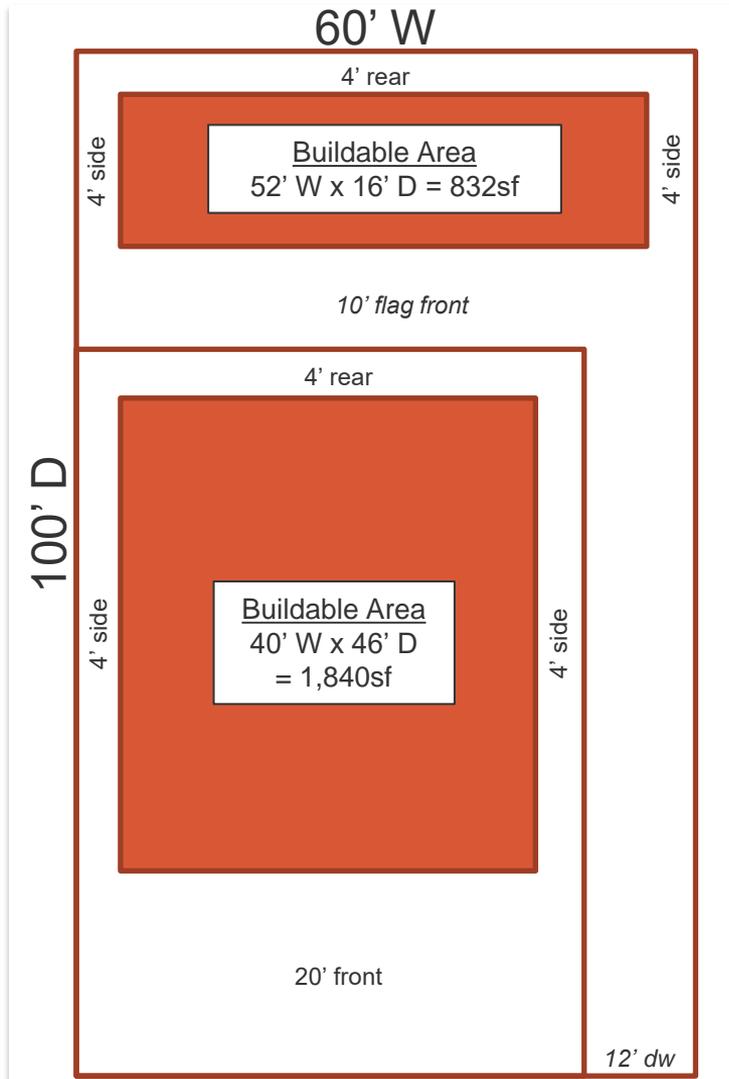
Flag Lot Split Example

Rear Lot

$$60' W \times 30' D \\ + 12' W \times 70' D \\ = 2,640sf$$

Front Lot

$$48' W \times 70' D \\ = 3,360sf$$





Privacy – SB 9 Requirement and Examples

SB 9	Sunnyvale	Campbell
<u>Size/Placement/Style</u> <u>Second Story Windows:</u> Not addressed in SB 9	Windows facing a side property line must be high sill and opaque unless no other location available for required egress	Windows less than 8 feet from rear and interior property lines shall be clerestory. Other windows only min. number and size for egress.
<u>Second Story Balconies</u> <u>and Roof Decks:</u> Not addressed in SB 9	Balconies and decks more than 2-feet above grade: 10-foot side and 20-foot rear setback when adjacent to residential.	Balconies only permitted on front elevation of primary dwelling unit. Rooftop terraces/decks prohibited.



Privacy – SB 9 Requirement and Examples

SB 9	Palo Alto	San Jose
<p><u>Size/Placement Second Stories:</u> Not addressed in SB 9</p>	<p>Second floor area not permitted within the side and rear yard setbacks of underlying zoning district.</p>	<p>1 story, 20-foot height limit within 20-feet of rear property line.</p>



Privacy – Recommendations

SB 9	City of Santa Clara
<p><u>Size/Placement/Style Second Story Windows:</u> Not addressed in SB 9</p>	<p>Second story egress windows shall face the front property line or interior of the project. Otherwise windows must be either of the following: sill height 5-foot min. above finished floor; clerestory; or opaque/frosted glass.</p>
<p><u>Second Story Balconies and Roof Decks:</u> Not addressed in SB 9</p>	<p>Roof decks are prohibited. Balconies only allowed within underlying setbacks with a maximum depth of 4-feet.</p>
<p><u>Size/Placement Second Stories:</u> Not addressed in SB 9</p>	<p>SB 9 units greater than one story in height must have a minimum 15-foot rear yard setback (consistent with proposed ADU standards)</p>



Maximum Unit Size – SB 9 Requirement and Examples

SB 9	Campbell	Sunnyvale
<p><u>Maximum Unit Size:</u> Not addressed in SB 9. Local standards may not preclude construction of up to 2 units that are at least 800 sf.</p>	<p>1,200 sf subject to maximum FAR and lot coverage</p>	<p>Based on 45% FAR</p>



Maximum Unit Size – Recommendation

SB 9	City of Santa Clara
<p><u>Maximum Unit Size:</u> Not addressed in SB 9. Local standards may not preclude construction of up to 2 units that are at least 800 sf.</p>	<p>1,000 sf for new SB 9 unit(s) (subject to existing Zoning Code 40% maximum lot coverage)</p>

Note: Although local standards may not preclude construction of up to 2 units that are at least 800sf, applicants may propose units as small as 220 square feet (as allowed by Building Code).



Neighborhood Compatibility – Examples

SB 9	Campbell	Sunnyvale
<p><u>Front and Street-side/corner setbacks:</u> Front not addressed in SB 9. SB 9 side 4-feet</p>	<p>Front setback per Zoning Code. Front and street-side elevations of the second-story shall be recessed by 5-feet from the first story, as measured wall to wall</p>	<p>Front setback per Zoning Code. Front yard setback minimum 25-feet for the second story</p>
<p><u>Front door placement/orientation:</u> Not addressed in SB 9</p>		



Neighborhood Compatibility – Examples

SB 9	Campbell	Sunnyvale
<p><u>Garage location/size:</u> Not addressed in SB 9</p>	<p>Street-facing attached garages shall not exceed 50% of the linear width of the front yard or street-side yard elevation</p>	
<p><u>Front yard landscaping:</u> Not addressed in SB 9</p>		<p>Not more than 50% of the required front yard shall be paved with asphalt, concrete cement, or any other impervious surface, except as may be required to meet off-street parking and access</p>



Neighborhood Compatibility – Recommendations

SB 9	City of Santa Clara
<p><u>Front and Street-side setbacks:</u> Front not addressed in SB 9 SB 9 side 4-feet</p>	<p>Per current underlying zoning</p>
<p><u>Front door placement/orientation:</u> Not addressed in SB 9</p>	<p>For units within 30-feet of street, main entrance door or entry porch must be oriented to street and no more than 5-feet behind the front most wall of the house</p>
<p><u>Garage location/size:</u> Not addressed in SB 9</p>	<p>For garages within 30-feet of street, max. garage width with garage door facing street: 40% width of newly created lot with.</p>
<p><u>Front yard landscaping:</u> Not addressed in SB 9</p>	<p>Min. 60% of required front yard maintained as un-paved landscaping, except as may be required to meet min. off-street parking and access requirements of Zoning Code.</p>



Next Steps

- **Interim Guidance**
- **Draft Ordinance**
- **Public Hearings (Spring)**
 - **Planning Commission**
 - **City Council**
- **Zoning Code Update Integration (Spring)**



City Council / Planning Commission Study Session

Item 2 RTC 22-85

SB 9 California HOME Act

January 25, 2022



Image from: <https://www.houzz.com/>

SB 9 CALIFORNIA HOME ACT PROJECT ELIGIBILITY CHECKLIST AND PLANNING APPLICATION



CITY OF SANTA CLARA, COMMUNITY DEVELOPMENT/PLANNING DIVISION
1500 Warburton Avenue, Santa Clara, CA 95050
(408) 615-2450 Fax: (408) 247-9857
E-mail: Planning@SantaClaraCA.gov
Website: www.SantaClaraCA.gov

SB 9 Eligibility Checklist¹

All the following boxes must be checked in order for a project to potentially qualify for ministerial approval of additional residential dwelling units and/or a parcel map for an urban lot split under [California Government Code Sections 65852.21](#) and [66411.7](#) (SB 9 (2021))

Two Dwelling Unit Residential Developments and Urban Lot Splits

- Parcel located entirely within a single-family lot zoned R1-6L or R1-8L
- Site is not listed on the City's [Historic Resources Inventory](#) (HRI) or included on the State Historic Resources Inventory
- Site meets requirements of [Government Code Section 65913.4](#) (a)(6)(E), (G), and (H)²:
 - Property cannot be (unless meeting specified requirements):
 - A hazardous waste site (E)
 - Within a 100-year floodplain(G)
 - Within a regulatory floodway (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 years
 - Housing occupied by a tenant currently or in last 3 years

Additional Qualifications for Two Dwelling Unit Residential Developments

- Project does not remove more than 25% of exterior walls on a building that currently has a tenant in the last 3 years (even if the rental unit itself isn't altered).

Additional Qualifications for Urban Lot Splits

- Existing lot is split roughly in half – smaller lot is at least 40% of the original lot
- Each new lot is at least 1,200 square feet
- 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 Urban Lot Split

¹ It is the applicant's responsibility to verify that the property's Homeowner Association (HOA) and/or Conditions, Covenants, and Restrictions (CC&Rs) allow the proposed SB 9 project.

² Senate Bill 35 does not apply to certain types of properties listed in Government Code Section 65913.4(a)(6)(B)-(K). In addition to the properties listed in the checklist above, this includes (B) prime farmland; (C) wetlands; (D) high fire hazard zones; (F) earthquake fault zones; (I) lands in a natural resource protection plan; (J) habitat for protected species; and (K) lands under a conservation easement. These types of properties are not currently present in Santa Clara.

General Requirements for Two Dwelling Unit Residential Developments and Urban Lot Splits

1. Each of the proposed units must meet the following development standards:
 - a. Minimum unit size: 220 square feet per unit.
 - b. Efficiency Dwelling Unit. Each unit shall meet the minimum Building Code standards required for an efficiency dwelling unit, including the provision of:
 - i. Adequate food preparation and cooking facilities – kitchen sink, cooking appliance, and refrigeration facilities, each having a clear working space of not less than 30 inches in front.
 - ii. Separate bathroom containing a water closet (toilet), lavatory, and bathtub or shower.
 - c. Setbacks (measured from property line)
 - i. Front yard⁴: same as underlying zoning district requirement (typically 20-feet)
 - ii. Street side/corner yard⁴: same as underlying zoning district requirement (typically 15-feet)
 - iii. Interior side yard: 4-feet
 - iv. Rear yard: 4-feet
 - d. Lot Coverage⁴: same as underlying zoning district requirement (typically 40%)
 - e. Rear Yard Coverage⁴: same as underlying zoning district requirement (typically 40%)
 - f. Parking:
 - i. Number of spaces: One parking space is provided per unit, if the parcel is not located within 1/2-mile walking distance of a high-quality transit corridor or major transit stop, and no car share vehicle facility is located within one block of the parcel.
 - ii. Design⁴: If parking is required or proposed it must meet Zoning Code requirements
 - g. Rental Term: if a unit will be used as a rental, the unit must be rented for a term longer than 30 days.

Additional Requirements for Urban Lot Splits

2. No more than two new parcels are being created.
3. The two new parcels will be of approximately equal lot area, with the smaller of the two parcels 40% or more of the original parcel lot area.
4. The newly created parcels will be no smaller than 1,200 square feet each.
5. Each of the proposed parcels has access to, provides access to, or adjoins the public right-of-way.
6. All easements required for the provision of public services and facilities are provided to the satisfaction of the Director of Public Works.
7. The parcels created by the Urban Lot Split will be for residential uses only.
8. Number of Dwelling Units. No more than two dwelling units will be permitted on each parcel, inclusive of Accessory Dwelling Units (ADUs).
9. Owner Affidavit. The owner of the parcel to be subdivided has provided a signed affidavit stating the intent to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval of the Urban Lot Split.⁵

⁴ The City shall waive objective design standards if the applicant can demonstrate with sufficient evidence that the standards would preclude the development of a unit or units of at least 800 square feet in area. Units greater than 800 square feet in area must comply with all design standards.

⁵ Unless the applicant is a community land trust or a qualified nonprofit corporation.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING TITLE 18 (“ZONING”) BY
ADDING A NEW CHAPTER 18.13 (“TWO-UNIT DWELLING
RESIDENTIAL DEVELOPMENT AND URBAN LOT SPLITS”)
TO “THE CODE OF THE CITY OF SANTA CLARA,
CALIFORNIA”**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on September 16, 2021, Governor Newsom signed into law legislation known as Senate Bill 9, the “California H.O.M.E. Act” (SB 9), which added Sections 65852.21 and 66411.7 to the California Government Code;

WHEREAS, beginning January 1, 2022, SB 9 requires local agencies to ministerially approve the construction of two primary dwellings and lot splits, pursuant to a parcel map, on single-family residential zoned lots upon satisfaction of a number of qualifying criteria;

WHEREAS, SB 9 allows local agencies to impose objective zoning, subdivision, and design review standards on the construction of two residential dwellings on single-family lots, subject to certain limitations;

WHEREAS, this ordinance amends Title 18 to implement the provisions of SB 9 with specific objective zoning, subdivision, and design review standards; and

WHEREAS, pursuant to Government Code Sections 65852.21 (j) and 66411.7 (n), a local agency may adopt an ordinance to implement SB 9 and that ordinance shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That a new Chapter 18.13 (entitled “Two Unit Dwelling Residential

Development and Urban Lot Splits”) is hereby added to Title 18 (entitled “Zoning”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“Chapter 18.13

Two Unit Dwelling Residential Development and Urban Lot Splits

18.13.010 Purpose. The purpose of this Chapter is to regulate two dwelling unit residential development and urban lot splits in compliance with California Government Code Sections 65852.21 and 66411.7 to allow two detached or attached housing units on one parcel, and ancillary uses and structures, and to allow urban lot splits. Proposed two dwelling unit housing developments and urban lot splits shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the requirements of this Chapter.

18.13.020 Applicability.

This Chapter shall apply to properties within the Single-Family Residential Zone (R1-6L) and Single-Family Residential, Larger Parcel Zone (R1-8L), with the following exceptions:

(a) The development site is within a state or local historic district or is included on the State Historical Resources Inventory or on the City’s Historic Resource Inventory.

(b) The property is located on a hazardous waste site, as defined by Government Code Section 65913.4(a)(6)(E).

(c) The property is within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), as defined by Government Code Section 65913.4(a)(6)(G).

(d) The property is within a regulatory floodway, as defined by Government Code Section 65913.4(a)(6)(H).

(e) The development would demolish or alter any existing dwelling unit that is subject to affordability restrictions under a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(f) The development would demolish or alter any existing dwelling unit on the lot that has been occupied by a tenant in the last three years prior to the date of application.

18.13.030 Construction of Multiple Units in Single Family Zones

Notwithstanding Sections 18.10.030 and 18.12.030, up to two homes are permitted on a single parcel within the R1-6L and R1-8L zones, subject to the requirements of this Chapter. On a parcel that has not been divided pursuant to Section 18.13.050, accessory dwelling units meeting the requirements of Sections 18.10.030(d) or 18.12.030(d) are also permitted.

18.13.040 Development Standards Applicable to All Lots With Two Units.

(a) **Off-Street Parking Requirements.** For development that will result in two units on a lot, the minimum parking requirement shall be one space per unit, with the exception that no parking is required if the parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code, or if the parcel is located within one block of a car share facility.

(b) **Off-Street Parking Design Standards.** If off-street parking is required or proposed, the parking shall meet the parking design standards in Chapter 18.74.

18.13.050 Development Standards within R-1 Building Envelope

For development that will result in two units on a lot, if both units proposed will be located entirely within the allowed R-1 building envelope, the development standards of the R1-6L or R1-8L zone will apply to each house, except that the maximum number of houses shall be two per lot.

18.13.060 Development Standards outside of R-1 Building Envelope

For development that will result in two units on a lot, where any portion of a building or buildings is proposed to be located outside of the allowed R-1 building envelope, the following development standards apply.

Residential developments shall comply with the development standards in this Chapter and for the R1-8L and R1-6L Zones, as applicable, set forth in Chapters 18.10 and 18.12 (Single-Family, Larger Lot Area Zoning and Single-Family Zoning Districts) and additional parking regulations set forth in Chapter 18.74 (Parking Regulations), with the following exceptions:

(a) **Size.** Units may be as small as 220 square feet in floor area or as large as 1,000 square feet in floor area.

(b) **Maximum Height/Stories.**

(1) Rear 15 feet of a parcel: Buildings or structures shall not exceed one story in height or 16-feet.

(2) All other areas on the parcel: Buildings or structures shall not exceed one and one-half stories or 25 feet in height

(c) **Side and Rear Setbacks.** Minimum side and rear setbacks shall be the least of the following:

(1) As required by Chapters 18.10 (R1-8L) or 18.12 (R1-6L), as applicable;

(2) 4 feet;

(3) The setbacks of an existing structure for which there is no proposal to alter its dimensions, or a structure constructed in the same location and to the same dimensions as an existing structure.

(d) **Upper Story Windows.** Second story egress windows shall face the front property line or interior of the project. Otherwise second story windows must be either of the following:

(1) 5-foot minimum sill height above finished floor; or

(2) Clerestory; or

(3) Opaque/frosted glass.

(f) **Second Story Balconies and Roof Decks.** Balconies with a maximum depth of 4-feet allowed within the R1-6L and R1-8L setbacks. Roof decks are not allowed.

(g) **Front Door Placement/Orientation.** For units within 30-feet of a street, the main entrance door or entry porch must be oriented to the street and be located no more than 5-feet behind the front most wall of the unit.

(h) **Garage Location/Size.** For garages within 30-feet of a street, the maximum width for a garage with a garage door facing the street is 40 percent of the lot width.

(i) **Front Yard Landscaping.** A minimum of 60 percent of the front yard shall be maintained as un-paved landscaping, except as may be required to meet minimum off-street parking and access requirements of the Zoning Code.

(j) **Modification or Waiver of Standards.** An applicant for a residential development that will result in two homes on a lot may apply for a modification or waiver of specific development standards, if all of the following requirements are met:

(1) The applicant must demonstrate, to the satisfaction of the Zoning Administrator, that the strict application of development standards in this Chapter, or the standards for the R1-6L or R1-8L Zones (set forth in Chapters 18.12 and 18.10) would preclude the construction of a maximum of two units, where each unit is at least 800 square feet in floor area.

(2) The applicant shall have the burden of proof to establish that the modification or waiver is necessary and that there is no redesign possible that would still allow for the construction of two dwellings of at least 800 square feet without the modification or waiver.

(3) Notwithstanding the foregoing, a modification or waiver shall not be used to reduce the minimum setback size to less than four feet, unless the setback is on an existing legal structure with setbacks of less than four feet, and the proposed development either (A) does not propose to modify the dimensions of that existing structure, or (B) will replace the structure with another structure with exactly the same dimensions.

18.13.070 Urban Lot Splits.

An application for a parcel map for an urban lot split within the R1-6L or R1-8L zones shall go through a streamlined review process pursuant to Section 17.05.430 if it meets all of the requirements of this Section.

(a) **Subdivision Requirements.** A parcel map for an urban lot split must meet all of the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) Both newly created parcels are no smaller than 1,200 square feet.

(3) Both newly created parcels have a minimum 24 feet of street frontage with a minimum average width of 24 feet. For flag lots, the flagpole portion, whether this is part of the flag lot or an easement to the flag lot, shall have a minimum width of 12 feet and a maximum width of 15 feet and the flag portion shall have a minimum depth of 40 feet.

(4) Both parcels resulting from the urban lot split have access to, provide access to, or adjoin the public right-of-way through right-of-way frontage or recorded access easements (as a Covenant of Easement on the parcel map).

(5) The approved parcel map shall include a notation that the parcels were created using the Urban Lot Split provisions of this Chapter and the resulting parcels cannot be further subdivided under this Section.

(6) The urban lot split conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this Section.

(7) The parcel being subdivided was not established through prior exercise of an urban lot split as provided for in this Chapter.

(8) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this Chapter.

(b) **Development Standards.** Development standards for each new parcel resulting from an urban lot split shall conform to Section 18.13.030. Development standards shall be applied to each new parcel individually. New flag lots shall provide a 15-foot minimum front setback (measured from the property line shared between the front lot and the flag lot).

(c) **Nonconforming Zoning Conditions.** Correction of legal nonconforming zoning conditions shall not be required as a condition for ministerial approval of a parcel map application for the creation of an urban lot split.

(d) **Residency Requirement.** An applicant for an urban lot split shall sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. This requirement shall not apply to an applicant that is a “community land trust” as defined in Revenue and Taxation Code Section 402.1(a)(11)(C), or is a

“qualified nonprofit corporation” as described in Revenue and Taxation Code Section 214.15.

(e) **Residential Use.** Except as authorized by Chapter 18.100, any parcel created through this Chapter may only be used for residential purposes and any unit created through this Chapter shall not be used as a short-term rental (rented for a period of 30 days or less).

18.13.080 Accessory Dwelling Units.

On a parcel that has not been divided pursuant to Section 18.13.050, an Accessory Dwelling Unit (ADU) and/or a Junior ADU (JADU) that conform with California Government Code Sections 65852.2 (ADUs) and 65852.22 (JADUs) are allowed in addition to the units allowed in this Section. Once a parcel has been divided pursuant to Section 18.13.050, however, the maximum number of dwellings on each resulting parcel, inclusive of any ADU or JADUs, is two.

18.13.090 Definitions. For purposes of this Chapter the following definitions shall apply:

(a) “Acted in concert” means that the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

(b) “Car Share Facility” means one or more parking spaces that have been designated permanently for car share vehicles, where the vehicles are leased for short periods of time, often by the hour.

(c) "Demolish or alter" means removal of more than 25-percent of exterior walls on a building even if the rental unit itself is not altered.

(d) "Egress window" means a window with a minimum net clear opening dimensions of at least 20" in width and 24" in height.

(e) "Flag Lot" means a parcel with access provided to the bulk of the lot by means of a corridor between 12 and 15 feet in width, inclusive.

(f) "Half Story" means a habitable living space with a sloping roof, which may have dormer windows.

(g) "R-1 Building Envelope" means an area defined by the minimum setback and maximum lot coverage requirements of Chapters 18.10 or 18.12, whichever is applicable.

(h) "Urban Lot Split" means a subdivision of a residential lot located in either the R1-6L or R1-8L zone into two lots subject to the requirements of this Chapter."

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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SECTION 3: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2022, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

CHAPTER 17.05

SUBDIVISIONS

[sections that require revision only – all other sections of Chapter 17.05 will remain in effect, unchanged]

17.05.110 Responsibilities.

...

- (c) City Council. The City Council shall have final jurisdiction in the approval of tentative and final maps, tentative parcel maps and improvement agreements, and the acceptance by the City of lands and/or improvements as may be proposed for dedication to the City for subdivisions of five or more parcels. [Notwithstanding the foregoing, the City Engineer shall have approval authority over lot splits pursuant to Sections 17.05.430 and 18.13.050.](#)

The City Council shall act as the appeal board for hearing appeals of the approval, conditional approval or denial of tentative subdivision maps for subdivisions of five or more parcels.

- (d) City Engineer. The City Engineer shall be responsible for:

- (1) Establishing design and construction details, standards and specifications;
- (2) Determining if proposed subdivision improvements comply with the provisions of this chapter and the Subdivision Map Act and for reporting the findings together with any recommendations for approval, or conditional approval, of the tentative map to the Director of Planning and Inspection;
- (3) The processing of final maps, parcel maps, reversion to acreage maps and amended maps; the processing and approval of subdivision improvement plans, lot line adjustments, mergers, [lot splits pursuant to Sections 17.05.430 and 18.13.050](#), and certificates of compliance;
- (4) Examining and stating that final maps and parcel maps are in substantial conformance with the approved tentative map;
- (5) The inspection, approval and acceptance of subdivision improvements;
- (6) The acceptance of dedications and improvements for subdivisions of four or fewer parcels.

...

SB 9 – Draft Ordinance

17.05.400 Tentative parcel map.

...

(e) Approval and/or Denial.

(1) In approving or conditionally approving the tentative map, the City Council shall find that the proposed subdivision, together with its provisions for its design and improvements, is consistent with the General Plan and any applicable specific plans adopted by the City and all applicable provisions of this code and if the tentative map provides, to the extent feasible, for future passive or natural heating or cooling opportunities.

(2) Whether or not such a condition is explicitly listed as a condition of approval, every approved tentative map shall be deemed to include a condition requiring the subdivider to defend, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attach, set aside, void or annul an approval of the City Council, Planning Commission, Subdivision Committee or City staff concerning a subdivision. The City shall promptly notify the subdivider of any claim, action or proceeding and shall cooperate fully in the defense.

...

17.05.430 Parcel Map for Lot Splits Pursuant to Section 18.13.050

(a) Parcel Maps for Lot Splits pursuant to Section 18.13.050 shall comply with all requirements of Section 17.05.400, Tentative Parcel Map, except for subsections (d), (e)(1), and (f).

(b) Parcel Maps for Lot Splits Pursuant to Section 18.13.050 shall also comply with all requirements of Section 17.05.410, Parcel Maps.

(c) The City Engineer shall approve the Parcel Map for a Lot Split pursuant to Section 18.13.050 unless the City Engineer determines that the proposed map is not consistent with specific objective standards of the General Plan, applicable specific plans, or any applicable provision of this Code.

17.05.500 Dedication of streets, alleys and other public rights-of-way or easements.

(a) As a condition of approval of a tentative, or parcel map, the subdivider shall dedicate or make an irrevocable offer of dedication of all parcels of land within the subdivision that are needed for streets and alleys, including access rights and abutters' rights, drainage, public greenways, scenic easements, public utility easements, and other public easements. In addition, the subdivider shall improve or agree to improve all streets and alleys, including access rights and abutters' rights, drainage, public utility easements and other public easements.

SB 9 – Draft Ordinance

[\(b\) This Section does not apply to lot splits pursuant to Sections 17.05.430 and 18.13.050.](#)

17.05.610 Improvements required.

- (a) General. All improvements as may be required as conditions of approval of the tentative map or City ordinance, together with, but not limited to the following shall be required of all subdivisions.
- (1) Requirements for construction of on-site and off-site improvements for subdivisions of four or less parcels shall be noted on the parcel map, or waiver of parcel map or the subdivision improvement agreement recorded prior to or concurrent with the parcel map.
 - (2) As a condition of approval of a tentative map, there may be imposed a requirement that improvements installed by the subdivider for the benefit of the subdivision contain supplemental size, capacity, number or length for the benefit of property not within the subdivision and that those improvements be dedicated to the public, subject to the provisions of Sections 66485 through 66489 of the Subdivision Map Act.
 - (3) [Notwithstanding subsections \(a\)\(1\) and \(a\)\(2\) above, for Lot Splits authorized by Sections 18.13.050 and 17.050.430, required improvements shall be limited to on-site improvements.](#)

...