



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.

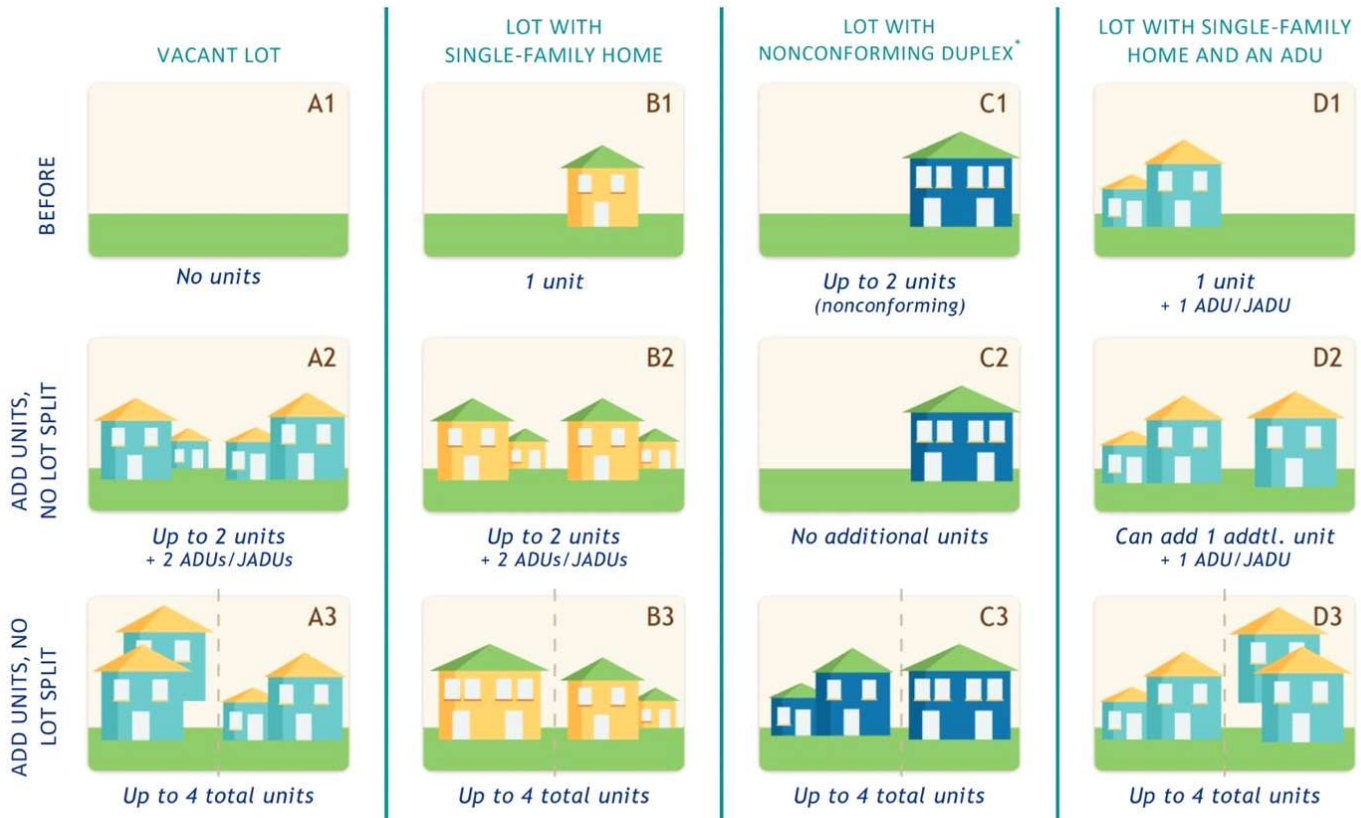
2 primary dwelling units +
1 ADU + 1 JADU = **4 Total Housing Units**

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).

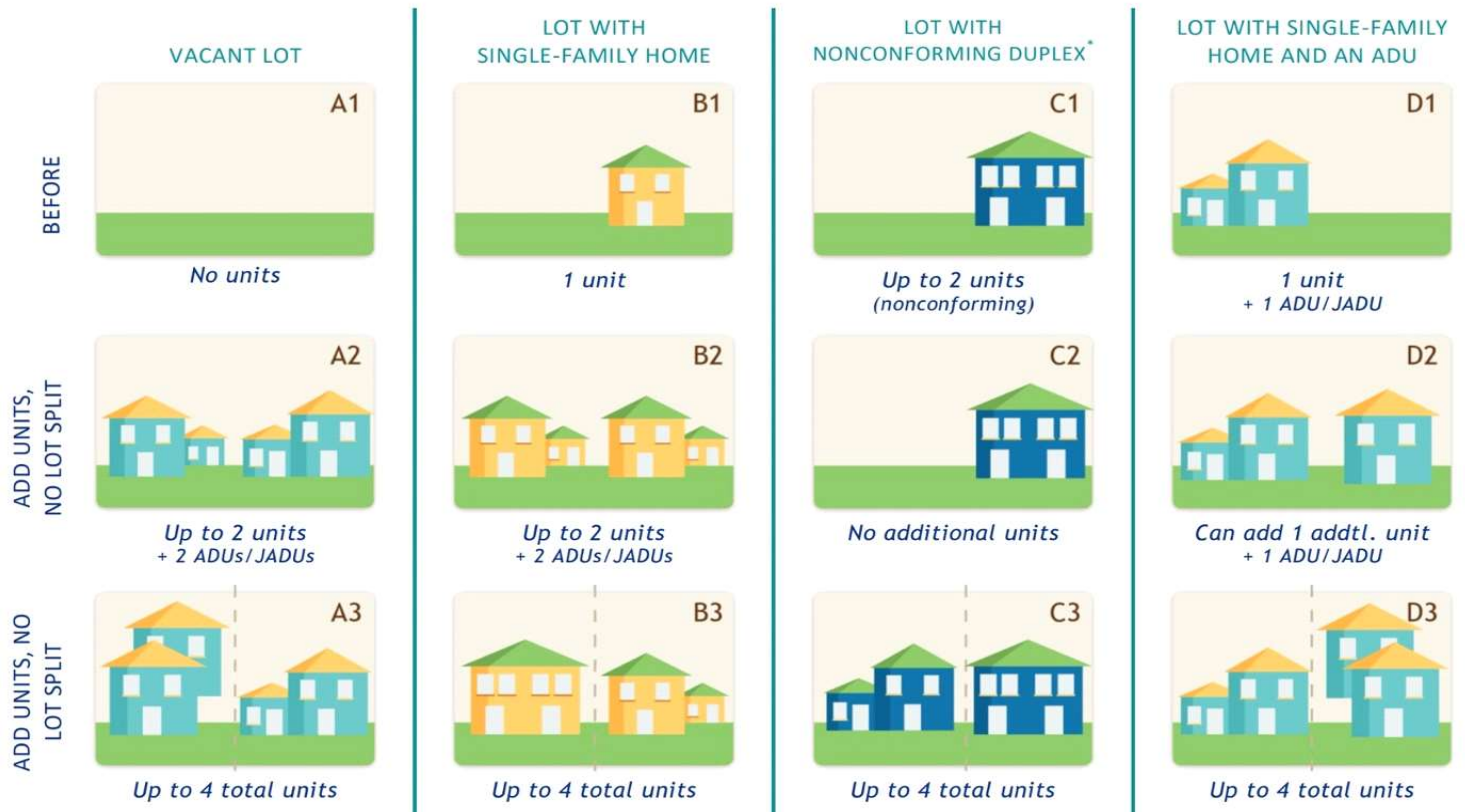
USING SB 9 WITH A LOT SPLIT:

- 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.



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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 Terner 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