
SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2021 - 2022 Regular

Bill No:	SB 9	Hearing Date:	4/15/2021
Author:	Atkins		
Version:	4/5/2021 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Alison Hughes		

SUBJECT: Housing development: approvals

DIGEST: This bill requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split), or both.

ANALYSIS:

Existing law:

- 1) Governs, pursuant to the Subdivision Map Act, how local officials regulate the division of real property into smaller parcels for sale, lease, or financing.
- 2) Authorizes local governments to impose a wide variety of conditions on subdivision maps.
- 3) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 4) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.
- 5) Establishes the California Environmental Quality Act (CEQA), which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government. (See “Comments” below for more information.)

- 6) Requires ministerial approval by a local agency for a building permit to create an accessory dwelling unit (ADU) provided the ADU was contained within an existing single-family home and met other specified requirements. Requires a local agency to ministerially approve an ADU or junior accessory dwelling unit (JADU), or both, as specified, within a proposed or existing structure or within the same footprint of the existing structure, provided certain requirements are met.
- 7) Requires each city and county to submit an annual progress report (APR) to the Department of Housing and Community Development (HDC) and the Office of Planning and Research (OPR) that provides specified data related to housing development.

This bill:

- 1) Requires a city or county to ministerially approve either or both of the following, as specified:
 - a) A housing development of no more than two units (duplex) in a single-family zone.
 - b) The subdivision of a parcel zoned for residential use, into two approximately equal parcels (lot split), as specified.
- 2) Requires that a development or parcel to be subdivided must be located within an urbanized area or urban cluster and prohibits it from being located on any of the following:
 - a) Prime farmland or farmland of statewide importance;
 - b) Wetlands;
 - c) Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
 - d) A hazardous waste site;
 - e) An earthquake fault zone;
 - f) Land within the 100-year floodplain or a floodway;
 - g) Land identified for conservation under a natural community conservation plan, or lands under conservation easement;
 - h) Habitat for protected species; or
 - i) A site located within a historic or landmark district, or a site that has a historic property or landmark under state or local law, as specified.

- 3) Prohibits demolition or alteration of an existing unit of rent-restricted housing, housing that has been the subject of an Ellis Act eviction within the past 15 years, or that has been occupied by a tenant in the last three years.
- 4) Prohibits demolition of more than 25% of the exterior walls of an existing structure unless the local ordinance allows greater demolition or if the site has not been occupied by a tenant in the last three years.
- 5) Authorizes a city or county to impose objective zoning, subdivision, and design review standards that do not conflict with this bill, except:
 - a) A city or county shall not impose objective standards that would physically preclude the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area. A city or county may, however, require a setback of up to four feet from the side and rear lot lines.
 - b) A city or county shall not require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as the existing structure.
- 6) Prohibits a city or county from requiring more than one parking space per unit for either a proposed duplex or a proposed lot split. Prohibits a city or county from imposing any parking requirements if the parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or if there is a car share vehicle located within one block of the parcel.
- 7) Authorizes a city or county to require a percolation test completed within the last five years or, if the test has been recertified, within the last 10 years, as part of the application for a permit to create a duplex connected to an onsite wastewater treatment system.
- 8) Requires a city or county to prohibit rentals of less than 30 days.
- 9) Prohibits a city or county from rejecting an application solely because it proposes adjacent or connected structures, provided the structures meet building code safety standards and are sufficient to allow separate conveyance.
- 10) Provides that a city or county shall not be required to permit an ADU in addition to units approved under this bill.
- 11) Requires a city or county to include the number of units constructed and the number of applications for lot splits under this bill, in its APR.

- 12) Requires a city or county to ministerially approve a parcel map for a lot split that meets the following requirements, in addition to the requirements for eligible parcels that apply to both duplexes and lot splits:
 - a) The parcel map subdivides an existing parcel to create two new parcels of approximately equal size, provided that one parcel shall not be smaller than 40% of the lot area of the original parcel.
 - b) Both newly created parcels are at least 1,200 square feet, unless the city or county adopts a small minimum lot size by ordinance.
 - c) The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or has been occupied by tenants in the past three years.
 - d) The parcel has not been established through prior exercise of an urban lot split.
 - e) Neither the owner of the parcel, or any person acting in concert with the owner, has previously subdivided an adjacent parcel using an urban lot split.
- 13) Requires a city or county to approve a lot split if it conforms to all applicable objective requirements of the Subdivision Map Act not except as otherwise expressly provided in this bill. Prohibits a city or county from imposing regulations that require dedicated rights-of-way or the construction of offsite improvements for the parcels being created, as a condition of approval.
- 14) Authorizes a city or county to impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this bill. A city or county may, however, require easements or that the parcel have access to, provide access to, or adjoin the public right-of-way.
- 15) Provides that a local government shall not be required to permit more than two units on a parcel.
- 16) Prohibits a city or county from requiring, as a condition for ministerial approval of a lot split, the correction of nonconforming zoning conditions.
- 17) Allows a local government to impose owner occupancy requirements on a lot split if it meets either of the following requirements:
 - a) The applicant intends to live in the unit for a minimum of one year from the date of the approval of the lot split, or
 - b) The applicant is a “qualified non-profit”.

- 18) No additional owner occupancy standards may be imposed other than those contained within (17 above), and that requirement expires after five years.
- 19) Allows a city or county to adopt an ordinance to implement the urban lot split requirements and duplex provisions, and provides that those ordinances are not a project under CEQA.
- 20) Allows a city or county to extend the life of subdivision maps by one year, up to a total of four years.
- 21) Provides that nothing in this bill shall be construed to supersede the California Coastal Act of 1976, except that a local government shall not be required to hold public hearings for a coastal development permit applications under this bill.

COMMENTS

- 1) *Author's statement.* "Senate Bill 9 promotes small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot. SB 9 strikes an appropriate balance between respecting local control and creating an environment and opportunity for neighborhood scale development that benefits the broader community. To that end, the bill includes numerous safeguards to ensure that it responsibly creates duplexes and strategically increases housing opportunities for homeowners, renters, and families alike. At a time when many Californians are experiencing economic insecurity caused by the pandemic, this bill will provide more options for families to maintain and build intergenerational wealth – a currency we know is crucial to combatting inequity and creating social mobility. SB 9 provides flexibility for multigenerational housing by allowing homeowners to build a modest unit on their property so that their aging parent or adult child can have an affordable place to live. Building off the successes of ADU law, SB 9 offers solutions that work in partnership with a number bills included in the Senate's Housing Package, 'Building Opportunities For All' aimed at combating the State's housing crisis."
- 2) *Housing development approvals.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially, or without further approval from elected officials.

Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meeting standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review; instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

- 3) *Subdivision Map Act*. Cities and counties adopt local subdivision ordinances to carry out the Subdivision Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.

Under the Subdivision Map Act, cities and counties can attach scores of conditions. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdividers comply with those conditions, local officials must issue final maps. For smaller subdivisions that create four or fewer parcels, local officials usually use parcel maps, but they can require tentative parcel maps followed by final parcel maps. The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

- 4) *Denser Housing in Single-Family Zoning*. California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst's Office (LAO) found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

The UC Berkeley Turner Center conducted a residential land use survey in California from August 2017 to October 2018.¹ The survey found that most jurisdictions devote the majority of their land to single-family zoning and in two-thirds of jurisdictions, multifamily housing is allowed on less than 25% of land. Some jurisdictions in the US have taken steps to increase density in single-family zones. Minneapolis recently became the first major U.S. city to end single-family home zoning when its City Council passed a comprehensive plan to permit three-family homes in the city's residential neighborhoods, abolish parking minimums for all new construction, and allow high-density buildings along transit corridors. The City of Sacramento may be the first city in California to end single-family zoning; in January 2021, its City Council gave preliminary approval to a proposal to allow up to four homes per lot in single-family zones.

According to a 2016 McKinsey Report, California has the capacity to build between 341,000 and 793,000 new units by adding units to existing single-family homes.²

A 2019 Zillow report found that even modest densification, such as duplexes and fourplexes could result in millions more homes.³ Across 17 metro areas analyzed nationwide, allowing 10% of single-family lots to house two units instead of one could yield almost 3.3 million additional housing units to the existing housing stock. In the L.A. region, if one in five single-family lots were re-zoned to hold two homes, the local housing stock could be boosted by 775,000 homes.

- 5) *Modest density can result in large-scale housing production.* This bill could lead to up to four homes on lots where currently only one exists. It would do so by allowing existing single-family homes to be converted into duplexes; it would also allow single-family parcels to be subdivided into two lots, while allowing for a new two-unit building to be constructed on the newly formed lot. According to the University of California, Berkeley Turner Center for Housing Innovation, this bill has the potential to allow for the development of nearly 6 million new housing units. Assuming only five percent of the parcels impacted

¹ Sarah Mawhorter and Carolina Reid. *Local Housing Policies Across California: Presenting the Results of a New Statewide Survey*. (Turner Center for Housing Innovation, University of California, Berkeley, December 2018) https://californialanduse.org/download/Turner_California_Residential_Land_Use_Survey_Report.pdf

² Jonathan Woetzel, Jan Mischke, and Shannon Pelouin. *Closing California's Housing Gap*. (McKinsey & Company, October 24, 2016) <https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap>

³ Zillow. *A Modest Proposal: How Even Minimal Densification Could Yield Millions of New Homes*. (December 6, 2019) <https://www.zillow.com/research/modest-densification-new-homes-25881/>

by this bill created new two-unit structures; this bill would result in nearly 600,000 new homes.⁴

- 6) *Historic preservation versus housing production.* As part of their general police powers, local governments have the authority to designate historic districts, which set specific regulations and conditions to protect property and areas of historical and aesthetic significance. While well-intentioned, academics and others have pointed out that there are negative impacts of historic districts on housing supply and racial equity. For example, in 2017, the Sightline Institute noted that, in relation to Seattle’s historic preservation efforts, “rules for historic preservation can sabotage housing affordability just like any other cost, red tape, permitting delay, or capacity limits imposed on homebuilding.” It made recommendations such as educating historic preservation board members on how the historic review process and resulting preservation mandates can impede homebuilding and harm affordability; raising the bar for justifying landmark designations in order to counteract local anti-development sentiment; and even prohibiting historic preservation restrictions from limiting new construction to less than the height or capacity that zoning allows.

Sites within a historic district are categorically exempt from the provisions of this bill. While the committee understands the desire to protect the integrity of historic districts from an aesthetic perspective, it is unclear that allowing small multi-unit construction in historic districts — which would be subject to objective historic design standards — would undermine the integrity of the historic districts. In addition, exempting historic districts from bills designed to increase multi-unit housing supply could lead to fair housing challenges. This committee is aware of several California cities — including neighborhoods in Eastern San Francisco, Los Angeles, and San Jose — that have not excluded historic districts when performing rezonings.

The bill also contains a very broad definition of what kinds of historic districts are automatically exempt from the bill. The historic district exemption, similar to exemptions included in other pending bills in the Senate, does not require a historic district to be on a federal or state historic registry. Instead, a city can designate a zone as historic without the typical rigorous historic designation process required for a historic district to be placed on a federal or state registry. The committee is aware that certain NIMBY groups are already discussing use of this broad exemption as a tool to exempt communities from state housing laws. If a historic district exemption is needed, a more focused and rigorous

⁴ David Garcia, *Single-Family Zoning Reform: An Analysis of SB 1120*. (Turner Center for Housing Innovation, University of California, Berkeley, July 30, 2020) <https://turnercenter.berkeley.edu/blog/sb-1120/>

exemption — for example, similar to what the Governance and Finance Committee placed in SB 50 (Wiener, 2019) — should be considered.

The committee understands and respects that the scope of historic district exemptions has been a subject of significant discussion within the Senate. The committee looks forward in the coming months and years to ongoing discussion about interaction between historic districts and state housing laws.

- 7) *Opposition concerns.* According to the League of California Cities, “SB 9 as currently drafted will not spur much needed housing construction in a manner that supports local flexibility, decision making, and community input. State-driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by the [HCD].”
- 8) *Senate’s 2021 Housing Production Package.* This bill has been included in the Senate’s 2021 Housing Production Package. It is virtually identical to SB 1120 (Atkins, 2020), except for the following changes:
 - a) Clarifies that no more than two units are authorized when providing for ministerial approval of a duplex on a single-family parcel.
 - b) States that a local government shall not be required to permit more than two units on a parcel when a lot split is authorized.
 - c) Adds a new provision specifying that this bill shall not be construed to supersede the California Coastal Act of 1976, except that local governments shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this bill.
 - d) Precludes locals from requiring either unit in a duplex or units on a lot split from being at least 800 square feet.
 - e) Authorize the lot splits to be up to 40/60 split, instead of two parcels of equal size.
 - f) Allows a local government to impose owner occupancy requirements on a lot split if it meets either of the following requirements: (i) the applicant intends to live in the unit for a minimum of one year from the date of the approval of the lot split, or (ii) the applicant is a “qualified non-profit”. No additional owner occupancy standards may be imposed, and this requirement expires after five years.
- 9) *Triple-referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees as a typical timeline would

allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the other committees included in the original referral. This bill has also been referred to the Governance and Finance Committee.

According to the Senate Environmental Quality Committee:

“CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one.” (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.) The Senate Environmental Quality Committee has generally expressed concern with ministerial approvals and CEQA exemptions because they do not promote informed decision making by local governments. While the ministerial approval processes and CEQA exemptions provided by this bill would be prohibited from applying in specified environmentally-sensitive areas, not including the coastal zone, CEQA’s environmental review process lends to comprehensive overview of a project and informs governmental officials of associated significant direct and indirect environmental impacts. Without this review, how will officials be fully informed of the potential consequences of their decision, including approving an ordinance or the cumulative impacts of seemingly small individual projects?”

RELATED LEGISLATION:

SB 1120 (Atkins, 2020) — would have required ministerial approval of duplexes and specified subdivision maps. *This bill died on the Senate Floor (Unfinished Business).*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Friday, April 9, 2021.)

SUPPORT:

Council Member Jon Wizard, City of Seaside
Council Member Zach Hilton, City of Gilroy
AARP
Abundant Housing LA
ADU Task Force East Bay

All Home
American Planning Association, California Chapter
Bay Area Council
Bridge Housing Corporation
Cal Chamber
CalChamber
California Apartment Association
California YIMBY
Casita Coalition
California Building Industry Association
Chan Zuckerberg Initiative
Circulate San Diego
City of Oakland
City of San Diego
East Bay for Everyone
Facebook
Fieldstead and Company
Generation Housing
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
Housing Action Coalition
Local Government Commission
Los Angeles Business Council
Midpen Housing
Modular Building Institute
Mountain View YIMBY
National Association of Hispanic Real Estate Professionals
Non-profit Housing Association of Northern California
North Bay Leadership Council
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Research Association (SPUR)
San Francisco YIMBY
Sand Hill Property Company
Share Sonoma County
Silicon Valley Leadership Group
South Bay Cities Council of Governments
South Bay YIMBY
South Pasadena Residents for Responsible Growth

Streets for People Bay Area
Silicon Valley @ Home
TechEquity Collaborative
Tent Makers
Terner Center for Housing Innovation At the University of California, Berkeley
The Two Hundred
TMG Partners
United Way of Greater Los Angeles
Urban Environmentalists
YIMBY Action
92 Individuals

OPPOSITION:

Adams Hill Neighborhood Association
Aids Healthcare Foundation
Alameda Citizens Task Force
Albany Neighbors United
Berkeley Associated Neighbors Against Non-affordable Housing
Burton Valley Neighborhoods Group
California Alliance of Local Electeds
California Cities for Local Control
California Contract Cities Association
Catalysts
Citizens Preserving Venice
Cities of Arcata, Azusa, Bellflower, Beverly Hills, Brentwood, Burbank,
Camarillo, Carpinteria, Carson, Cerritos, Chino, Chino Hills, Clayton,
Clearlake, Clovis, Cupertino, Cypress, Diamond Bar, Dorris, Downey,
Dublin, Eastvale, El Segundo, Escalon, Fortuna, Fountain Valley, Garden
Grove, Glendora, Grand Terrace, Half Moon Bay, Hesperia, Hidden Hills,
Irvine, Irwindale, Kerman, King, La Palma, La Verne, Lafayette, Laguna
Beach, Laguna Niguel, Lakeport, Lakewood, Lancaster, Lomita, Los
Alamitos, Los Altos, Martinez, Maywood, Menifee, Merced, Mission Viejo,
Monterey, Moorpark, Murrieta, Newman, Newport Beach, Norwalk,
Novato, Oakdale, Ontario, Orinda, Palo Alto, Palos Verdes Estates,
Paramount, Pismo Beach, Placentia, Pleasanton, Poway, Rancho
Cucamonga, Rancho Palos Verdes, Rancho Santa Margarita, Redding,
Redondo Beach, Rohnert Park, Rolling Hills, Rolling Hills Estates, San
Gabriel, San Jacinto, San Marcos, San Marino, Santa Clara, Santa Clarita,
Santa Monica, Saratoga, Signal Hill, South Pasadena, Stanton, Sunnyvale,
Temecula, Thousand Oaks, Torrance, Tracy, Vacaville, Ventura, Vista,
Westlake Village, Whittier, and Yorba Linda

Coalition for San Francisco Neighborhoods
Coalition to Save Ocean Beach
College Street Neighborhood Group
College Terrace Residents Association
Committee to Save the Hollywoodland Specific Plan
Community Associations Institute - California Legislative Action Committee
Comstock Hills Homeowners Association
D4ward
Durand Ridge United
Encinitas Neighbors Coalition
Friends of Sutro Park
Hidden Hill Community Association
Hills 2000 Friends of The Hills
Hollywood Knolls Community Club
Hollywoodland Homeowners Association
Howard Jarvis Taxpayers Association
LA Brea Hancock Homeowners Association
Lafayette Homeowners Council
Lakewood Village Neighborhood Association
Las Virgenes-Malibu Council of Governments
Latino Alliance for Community Engagement
League of California Cities
League of California Cities Central Valley Division
Linda Vista-Annandale Association
Livable California
Livable Pasadena
Los Altos Residents
Los Angeles County Division, League of California Cities
Los Feliz Improvement Association
Marin County Council of Mayors and Councilmembers
Miracle Mile Residential Association
Miraloma Park Improvement Club
Mission Street Neighbors
Montecito Association
Neighborhood Council Sustainability Alliance Trees Committee
North of Montana Association
Northeast Neighbors of Santa Monica
Pacific Palisades Community Council
Planning Association for The Richmond
Riviera Homeowners Association
San Gabriel Valley Council of Governments
Save Lafayette

Seaside Neighborhood Association
Shadow Hills Property Owners Association
Sherman Oaks Homeowners Association
South Shores Community Association
Southwood Homeowners Association
Sunnyvale United Neighbors
Sunset-Parkside Education and Action Committee
Sustainable Tamalmonite
Temecula Valley Neighborhood Coalition
Towns of Apple Valley, Colma, Fairfax, Mammoth Lakes, and Ross
Ventura Council of Governments
Verdugo Woodlands West Homeowners Association
West Pasadena Residents' Association
West Torrance Homeowners Association
West Wood Highlands Neighborhood Association
Westside Regional Alliance of Councils
Westwood Homeowners Association
Wilshire Montana Neighborhood Coalition
Windsor Square Association
235 Individuals

-- END --