SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 9 (Atkins) - Housing development: approvals

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Policy Vote: HOUSING 7 - 2, GOV. & F. 5 - 0
Urgency: No
Mandate: Yes
Hearing Date: May 10, 2021
Consultant: Mark McKenzie

Bill Summary: SB 9 would require cities and counties to provide for the ministerial consideration of a proposed housing development containing no more than two residential units (a duplex), and ministerial approval of a parcel map dividing a lot into two approximately equal parts for residential use (an urban lot split), as specified.

Fiscal Impact:
- The Department of Housing and Community Development (HCD) estimates it would incur costs of $87,000 annually for 0.5 PY of staff time to update the Streamlined Ministerial Approval Guidelines, and provide technical assistance and outreach education to local agencies and affordable housing developers. (General Fund)

- Unknown local costs to establish streamlined project review processes for proposed duplex housing developments and tentative maps for urban lot splits, and to conduct expedited design reviews of these proposals. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds).

Background: The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. Zoning ordinances establish the type of land uses that are authorized in a designated area, often identifying a primary use for parcels in an area, as well as other uses that may be allowed if they meet conditions imposed by the local agency to address aesthetics, community impacts, or other site-specific considerations.

Some local ordinances provide "ministerial" processes for approving projects that are permitted "by right"—the zoning ordinance clearly states that a particular use is allowable, and local government does not have any discretion regarding approval of the permit if the application is complete. Local governments have two options for providing landowners with relief from zoning ordinances that might otherwise prohibit or restrict a particular land use: variances and conditional use permits. A variance may be granted to alleviate a unique hardship on a property owner because of the way a generally-applicable zoning ordinance affects a particular parcel, and a conditional use permit allows a land use that is not authorized by right in a zoning ordinance, but may be

authorized if the property owner takes certain steps, such as to mitigate the potential impacts of the land use. Both of these processes require hearings by the local zoning board and public notice.

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 meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are discretionary and vetted through both public hearings and administrative review, including design review and appeals processes. Most housing projects that require discretionary review and approval are subject to California Environmental Quality Act (CEQA) review, while projects permitted ministerially are not.

Existing law requires local agencies to ministerially permit the development of accessory dwelling units (ADUs) on residential parcels, either within the space of an existing single family home or in a new or converted structure in the rear of a property, or both, regardless of local zoning restrictions. ADU law places numerous specified limitations on the ability of local governments to impose requirements on ADUs to encourage small-scale neighborhood development.

The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land into parcels for sale, lease, or financing. Local subdivision approvals must be consistent with city and county general plans. 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.

Proposed Law: SB 9 would require cities and counties to provide for the ministerial consideration of a proposed housing development containing no more than two residential units (a duplex) in a single-family residential zone, and ministerial approval of a parcel map dividing a parcel into two approximately equal parts for residential use (an urban lot split), under specified conditions.

To be eligible, a proposed duplex or parcel proposed for subdivision must be located within an urbanized area or urban cluster, as defined by the United States Census and cannot be located on any of the following:

- Prime farmland or farmland of statewide importance;
- Wetlands;
- Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
- A hazardous waste site;
- An earthquake fault zone;
- Land within the 100-year floodplain or a floodway;
- Land identified for conservation under a natural community conservation plan, or lands under conservation easement;

- Habitat for protected species; or
- A historic district or property included on the State Historic Resources Inventory, or a site that is designated or listed as a city our county landmark or historic property or district pursuant to a city or county ordinance.

Duplex provisions. SB 9 would require a housing development containing no more than two units to be considered ministerially in single family zones if the development meets certain conditions, including the requirements on eligible parcels above. A development can include adding one unit to an existing unit, or constructing two new units. SB 9 would prohibit demolition of more than 25% of the existing exterior structural walls unless the local ordinance allows it or if the site has not been occupied by a tenant in the last three years. A local agency may require a percolation test for units connected to an onsite wastewater treatment system.

Urban lot splits. SB 9 would require a city or county to ministerially approve or deny a parcel map for an urban lot split that meets specified requirements, in addition to the requirements for eligible parcels that apply to both duplexes and urban lot splits. Specifically, the urban lot split must meet the following requirements:

- The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area, as specified.
- Both newly created parcels are no smaller than 1,200 square feet, unless the local agency adopts a smaller minimum lot size subject to ministerial approval.
- The parcel being subdivided is located within a single-family residential zone.
- The proposed lot split does not require demolition or alteration of rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or housing that has been occupied by tenants in the past three years.
- The parcel being subdivided was not previously created through an urban lot split, and none of the adjoining parcels were created by an urban lot split and owned by the same owner.

A city or county can only approve an urban lot split if it conforms to all applicable objective requirements of the Subdivision Map Act. SB 9 would prohibit a local agency from imposing regulations that require dedications of rights-of-way or the construction of reasonable offsite and onsite improvements for parcels created through an urban lot split. However, a local agency may require easements and that the parcel have access to, provide access to, or adjoin the public right-of-way, as well as any other conditions allowed under the Subdivision Map Act that don't conflict with the bill. The uses allowed on a lot created by an urban lot split must be limited to residential use. No more than two units may be developed on each of the resulting parcels from a lot split, including ADUs and JADUs.

SB 9 would authorize a local agency, until January 1, 2027, to only impose an owner occupancy requirement on an applicant for an urban lot split that meets one of the following conditions:

- The applicant intends to occupy one of the housing units as a principal residence for at least a year from the date of approval of the lot split.

- The applicant is a qualified nonprofit corporation that has received a welfare exemption under specified statutes for properties either owned by a land trust or properties intended to be sold to low-income families, as specified.

Provisions applicable to duplexes and urban lot splits. SB 9 would prohibit projects or lot splits that would require demolition or alteration of an existing housing unit of any of the following types of housing:

- Rent-restricted housing, including deed-restricted affordable housing and housing subject to rent or price control by a public entity's police power;
- Housing that has been the subject of an Ellis Act eviction within the past 15 years; or
- Housing that has been occupied by a tenant in the last three years.

SB 9 would authorize a local agency to impose objective zoning, subdivision, and design standards that do not conflict with the provisions of the bill. However, a city or county cannot require a project or lot split to comply with any standard that would physically preclude two units of at least 800 square feet from being built. SB 9 would also prohibit a local agency from requiring a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. Otherwise local agencies may not require greater than a four-foot setback.

SB 9 would authorize a local agency to adopt an ordinance to implement the duplex and urban lot split requirements and provides that such an ordinance is not a project under the California Environmental Quality Act. It would also provide that nothing in the bill supersedes the Coastal Act of 1976, except that a local government is not required to hold public hearings for coastal development permit applications. A local agency also cannot deny a project or lot split because it proposed adjacent or connected structures, so long as they comply with the building code. A local agency must also require that a rental of any unit permitted by the bill is for a term of longer than 30 days.

SB 9 would require local agencies to report the number of units produced and applications for urban lot splits in their annual report to HCD on the implementation of their general plan.

SB 9 would prohibit the development of ADUs on parcels that use both the urban lot split and duplex provisions of the bill, and it would apply the limitations on parking requirements from ADU law to both duplexes and urban lot splits under the bill.

SB 9 would allow local governments to extend the life of subdivision maps by one year, up to a total of four years.

Related Legislation: SB 1120 (Atkins), which passed both houses last year, but was not taken up for a concurrence vote before the end of session, was substantially similar to this bill.

Staff Comments: The bill's mandated local costs would not be subject to state reimbursement because local agencies have the authority to charge and adjust planning and permitting fees as necessary to cover administrative costs. Existing law authorizes

planning and zoning fees to "include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations." Case law and previous decisions by the Commission on State Mandates support the position that local governments' planning costs are not reimbursable when the state imposes new planning mandates.

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