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THIRD READING

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Bill No: SB 9  
Author: Atkins (D), Caballero (D), Rubio (D) and Wiener (D), et al.  
Amended: 4/27/21  
Vote: 21

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SENATE HOUSING COMMITTEE: 7-2, 4/15/21  
AYES: Wiener, Caballero, Cortese, McGuire, Skinner, Umberg, Wieckowski  
NOES: Bates, Ochoa Bogh

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 4/22/21  
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

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**SUBJECT:** Housing development: approvals

**SOURCE:** Author

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**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 or JADU 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 only if the local agency determines that the parcel map for the urban lot split 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 no more than 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) Provides that 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.

## **Background**

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.

## Comments

- 1) *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 by this bill created new two-unit structures, this bill would result in nearly 600,000 new homes.
- 2) *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.

This bill also contains a very broad definition of what kinds of historic districts are automatically exempt from this 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. 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 exemption — for example, similar to what the Governance and Finance Committee placed in SB 50 (Wiener, 2019) — should be considered.

- 3) *Senate's 2021 Housing Production Package*. This bill has been included in the Senate's 2021 Housing Production Package and is virtually identical to SB 1120 (Atkins, 2020). For key differences, see the Senate Housing Committee analysis.
- 4) *Triple Referral*. This bill was also referred to the Senate Governance and Finance Committee and the Environmental Quality Committee. 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. For comments from the Environmental Quality Committee, see the Senate Housing Committee analysis.

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

According to the Senate Appropriations Committee:

- The Department of Housing and Community Development 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).

**SUPPORT:** (Verified 5/20/21)

AARP

Abundant Housing LA

ADU Task Force East Bay

All Home

American Planning Association, California Chapter

Bay Area Council

Bridge Housing Corporation

California Apartment Association

California Asian Pacific Chamber of Commerce

California Building Industry Association

California Chamber of Commerce

California Hispanic Chamber of Commerce

California YIMBY

Casita Coalition

Chan Zuckerberg Initiative

Circulate San Diego

City of Oakland

City of San Diego

Council Member Jon Wizard, City of Seaside

Council Member Zach Hilton, City of Gilroy

Council of Infill Builders

County of Monterey

East Bay for Everyone

Eden Housing

Facebook, INC.

Fieldstead and Company, INC.

Generation Housing

Greenbelt Alliance

Habitat for Humanity California

Hello Housing

Hollywood Chamber of Commerce

Housing Action Coalition

Innecity Struggle

LISC (Local Initiatives Support Corporation) San Diego

Livable Sunnyvale

Local Government Commission

Long Beach YIMBY  
Los Angeles Business Council  
Mayor Darrell Steinberg, City of Sacramento  
MidPen Housing Corporation  
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 Fernando Valley YIMBY  
San Francisco Bay Area Planning and Research Association  
San Francisco YIMBY  
Sand Hill Property Company  
Santa Cruz YIMBY  
Schneider Electric  
Share Sonoma County  
Silicon Valley @ Home  
Silicon Valley Leadership Group  
South Bay YIMBY  
South Pasadena Residents for Responsible Growth  
Streets for People Bay Area  
TechEquity Collaborative  
Tent Makers  
Turner 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  
YIMBY Democrats of San Diego County  
Zillow Group  
92 Individuals

**OPPOSITION:** (Verified 5/20/21)

Adams Hill Neighborhood Association  
Aids Healthcare Foundation

Alameda Citizens Task Force  
Albany Neighbors United  
Berkeley Associated Neighbors Against Non-affordable Housing  
Brentwood Homeowners Association  
Burton Valley Neighborhoods Group  
California Alliance of Local Electeds  
California Cities for Local Control  
California Contract Cities Association  
Catalysts  
Cities of Arcata, Azusa, Bellflower, Belmont, Beverly Hills, Brea, Brentwood, Burbank, Camarillo, Carpinteria, Carson, Cerritos, Chino, Chino Hills, Clayton, Clearlake, Clovis, Colton, Corona, Cupertino, Cypress, Diamond Bar, Dorris, Downey, Dublin, Eastvale, El Segundo, Escalon, Fortuna, Foster City, Fountain Valley, Garden Grove, Glendora, Grand Terrace, Half Moon Bay, Hesperia, Hidden Hills, Huntington Beach, Indian Wells, Inglewood, Irvine, Irwindale, Kerman, King, La Canada Flintridge, La Mirada, La Palma, La Quinta, La Verne, Lafayette, Laguna Beach, Laguna Niguel, Lakeport, Lakewood, Lancaster, Lomita, Los Alamitos, Los Altos, Martinez, Maywood, Menifee, Merced, Mission Viejo, Montclair, Monterey, Moorpark, Murrieta, Newman, Newport Beach, Norwalk, Novato, Oakdale, Ontario, Orinda, Palo Alto, Palos Verdes Estates, Paramount, Pasadena, Pinole, Pismo Beach, Placentia, Pleasanton, Poway, Rancho Cucamonga, Rancho Palos Verdes, Rancho Santa Margarita, Redding, Redondo Beach, Rohnert Park, Rolling Hills, Rolling Hills Estates, San Carlos, San Clemente, San Dimas, 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  
Citizens Preserving Venice  
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  
Kensington Property Owners 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 (UNREG)  
Save Lafayette  
Seaside Neighborhood Association  
Shadow Hills Property Owners Association  
Sherman Oaks Homeowners Association  
South Bay Cities Council of Governments  
South Bay Residents for Responsible Development  
South Shores Community Association  
Southwood Homeowners Association  
Sunnyvale United Neighbors  
Sunset-Parkside Education and Action Committee

Sustainable Tamalmon  
Tahoe Donner Association  
Temecula Valley Neighborhood Coalition  
Towns of Apple Valley, Colma, Fairfax, Mammoth Lakes, Ross, and Truckee  
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 Hills Property Owners Association  
Westwood Homeowners Association  
Wilshire Montana Neighborhood Coalition  
Windsor Square Association  
236 individuals

**ARGUMENTS IN SUPPORT:** According to the author, “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.”

**ARGUMENTS IN OPPOSITION:** 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].”

Prepared by: Alison Hughes / HOUSING / (916) 651-4124  
5/22/21 14:52:20

\*\*\*\* **END** \*\*\*\*