



**LEAGUE OF CALIFORNIA CITIES**

**City Attorneys Spring Conference**



## New Housing Laws: Navigating & Implementing SB 8, 9, 10

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# Agenda



1. SB 9 – Changes to Single Family Zoning
2. SB 8 – Extension of Housing Crisis Act (SB 330)
3. SB 10 – Streamlining for Upzoning




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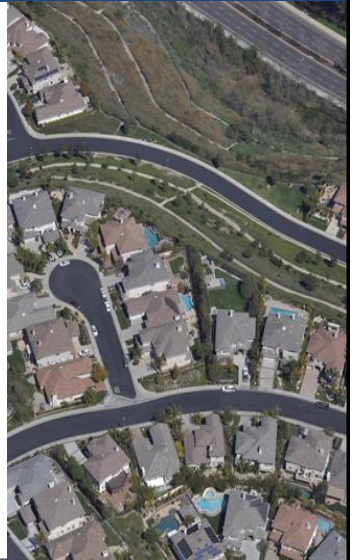
# Senate Bill 9

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## The Basics

SB 9 requires **ministerial approval** of:

- 2-lot subdivision  
and/or
- Development projects for 2 units per lot
- For projects that meet **certain criteria**



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## The Basics

- **Location requirements**
  - Single-family residential zone
  - Not in historic/landmark or “sensitive areas”
- **Anti-displacement requirements**
  - Preserve rent-controlled, Ellis Act, or tenant-occupied housing
- **Subdivision requirements, if applicable**
  - 50/50 or 40/60 split, resulting in at least 1,200 sq. ft. lots
  - No repeated SB 9 splits
  - No “acting in concert” to split adjacent lots

## The Basics

The City can deny the housing development project or the subdivision meeting the foregoing requirements if:

- building official makes written finding
- based on preponderance of evidence
- that project would have a specific, adverse impact on public health and safety that can't be mitigated



**\*This is a very high standard to meet\***

## Relationship to Other Laws



### CEQA

- Under SB 9, projects are approved ministerially and are exempt from CEQA
- Adoption of local ordinance related to SB 9 is not a “project” for CEQA purposes



### Coastal Act

- Requirements of the law still apply
- Local agencies do not have to hold public hearings for coastal developments permit applications for SB 9 lot splits

## Next Steps for Cities

- Adopt an ordinance to implement state law
  - Ordinance is exempt from CEQA
- Create forms and affidavits
  - deed restriction, owner-occupancy affidavit, application form
- Examine administrative process and fees
  - “design review” fees

# Implementing SB 9

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## FAQs

- Can a city regulate front yard setbacks?
- Can a city prohibit more than 4 units?
- Can a city require on-site sidewalks and curbs?
- Can a city require recordation of covenants?
- Does HCD have enforcement authority over SB 9?
- Does SB 9 apply to charter cities?



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## Number of Units Permitted

- SB 9 covers a project proposing 1 or 2 new units
- **If lot split is proposed**
  - City only required to allow 2 units per lot
  - These units can be a combination of primary residence, SB 9 unit, ADUs and JADUs
- **If lot split is not proposed**
  - ADU/JADU law applies
  - City is not required to allow more than 4 units per lot



## Location

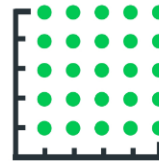


### **SB 9 projects are permitted in a “single-family residential zone”**

- Does not apply to non-residential zones, mixed use zones and multi-family residential zones
- What about zones with Single Family + Other Uses?
  - Is single-family the predominant use in that district?

## Objective Standards

- City may impose **objective** zoning standards, subdivision standards, and design standards
- Limitations:
  - Maximum 4' setback from side and rear yards, and no setback can be required if unit is built within the footprint of an existing structure
  - Standards cannot physically prevent a unit that is at least **800** square feet



## Objective Standards

An objective standard is a standard that is  
uniformly verifiable and involves  
no personal or subjective judgement

## Impact of SB 330

- SB 330 prohibits zoning changes that reduce the intensity of land use below what was allowed on January 1, 2018
- Do SB 9 specific zoning standards reduce the intensity of land use?
- SB 9 zoning standards do not decrease a site's residential development capacity
  - Zoning standards impact size of units, but the number of units is set by state law.



## Subdivision Requirements

Cities can require:

- Easements for provision of public services
- Easements to ensure both lots have access to public ROW

Cities cannot require:

- Dedication of ROW
- Construction of offsite improvements
- Correction of nonconforming zoning conditions



## Subdivision Requirements

### What is an “off-site” improvement?

- Not defined in statute, but references Map Act authority
- New parcels created must function properly

### Other subdivision requirements

- Tree protection, stormwater control, MWELO
- Nothing in SB 9 prohibits these requirements



## Affordability Restrictions

- Some jurisdictions require SB 9 units to be deed-restricted affordable housing
- Not specific authority in SB 9, however:
  - Sponsor of the bill has stated that SB 9 allows such requirements
  - Inclusionary housing requirements are a valid exercise of city police power
  - Objective standard and in furtherance of SB 9 goals
- Be sure to consider:
  - Government Code § 65850.01 [sometimes HCD may review ordinances with inclusionary rental requirements exceeding 15%].
  - See also: *BIA v. City of San Jose*, 61 Cal.4th (2015) [deferential standard for inclusionary ordinances].

## Historic Districts

- Cities may prohibit SB 9 units within historic or landmark districts
  - Pursuant to the State Historic Resources Inventory
  - Pursuant to a local ordinance



*“within a historic district or property included on the State Historic Resources Inventory ... or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance”*

## Landmark and Historic Districts

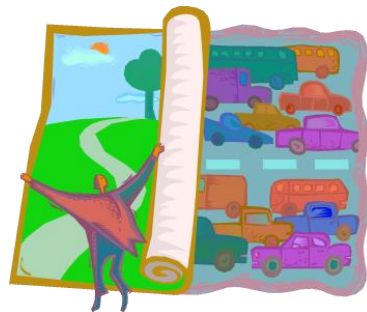
- City of Pasadena
  - Prohibits SB 9 units on the same lot on properties within individual landmarks or within the City’s Landmark Districts
- Attorney General alleges this ordinance violates SB 9
  - Distinguishes between “landmark districts” and “historic districts”
  - Expresses concerns that landmark districts can be created without concern to historic value and without all properties in district contributing to the district
- Pasadena’s Response
  - Argues SB 9 includes “landmark districts”
  - City’s landmark districts are historic districts

## Sensitive Areas

- SB 9 does not apply if project is located in “sensitive areas”
  - i.e., high fire severity zones, earthquake fault zones, habitats for protected species, etc.
- Town of Woodside
  - Cities must examine attributes of individual parcels to make a habitat determination

## Examples of City Discretion

- Development Standards
- Design Requirements
- Subdivision Standards
- Incentives
- Other Standards



## City Discretion – Development Standards

- Cannot preclude units of at least 800 square feet
- Cities may be more permissive than the following standards:
  - Side and rear setbacks of 4 feet
  - Maximum size of 800 square feet
  - Maximum of 1 parking space per SB 9 unit
- No rule prohibits regulating:
  - Front Yard Setbacks
  - Height



## City Discretion - Subdivisions

- Lot depth
  - HCD has indicated lot depth is acceptable
- Easements
  - “Easements required for the provision of public services and facilities”
- Parking
  - 1 space per unit maximum
- “Onsite” improvements are allowed: sidewalks, curbs
- Access
  - “A requirement that parcels have access to, provide access to, or adjoin the public right-of way”



## City Discretion – Design Requirements

- “Objective” design requirements are permissible.
- Examples of objective requirements:
  - Eave projections
  - Roof pitch
  - Façade materials
  - Minimum required articulation
  - Color requirements (e.g., matching primary dwelling)
  - Mathematical regulation of porches, windows, balconies
  - Height



## City Discretion - Incentives

- To encourage desired outcomes, cities may allow units to exceed other development standards.
- For example a city could opt to allow leniency of one standard in exchange for another with some of these options (among many others):

Allow this ...	... but only if they do this
Extra height	Additional setbacks
Reduced setbacks	Adding screening to block impact on neighbors
Extra maximum floor area	Preserve no less than 2 garage parking spaces, plus a driveway on site
Reduced fees	Affordability covenants

## Other Standards

- Percolation
  - Optional to require new percolation test in the last 5 years, or recertification within the last 10 years
- Demolition
  - Must allow at least 25% of walls to be demolished (if no tenants in last 3 years), but may opt to allow more demolition.
- Development Impact Fees
  - May continue to be collected for SB 9 units
  - (But exemption or reduced fee rules for ADUs still apply) See GC 65852.2(f)(3).



## Secondary Resources

- ABAG's 2 page SB 9 summary here:
  - [https://abag.ca.gov/sites/default/files/documents/2021-12/Senate\\_Bill\\_9\\_SB\\_9\\_Overview.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Senate_Bill_9_SB_9_Overview.pdf)
- HCD's "SB 9 Fact Sheet" – March 2022
- Coastal Commission's SB 9 Guidance Letter to Planning Directors (January 21, 2022)



# Senate Bill 8

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## Extension of SB 330

- Housing Crisis Act of 2019 (SB 330) contains various requirements intended to increase the supply of housing
- Some of the law was originally scheduled to sunset in 2025, but SB 8 extends the law to housing projects submitted by 2030

### Senate Bill No. 330

#### CHAPTER 654

An act to amend Section 65589.5 of, to amend, repeal, and add Sections 65940, 65943, and 65950 of, to add and repeal Sections 65905.5, 65913.10, and 65941.1 of, and to add and repeal Chapter 12 (commencing with Section 66300) of Division 1 of Title 7 of, the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 330, Skinner. Housing Crisis Act of 2019.

(1) The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based on a preponderance of the evidence in the record. The act specifies that one way to satisfy that requirement is to make findings that the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. The act requires a local agency that proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria that were in effect at the time

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## Preliminary Application Extended

- City cannot disapprove housing development project or approve it at a lower density if project complies with applicable, objective standards in place upon complete **preliminary application**
  - Must contain information required by city's checklist, which can only require certain limited information
  - Some changes to the application allowed, but must follow up with complete application within 180 days and commence construction within 2.5 years
- Extended to 2034 for projects that submit preliminary application by January 1, 2030

## SB 330 Provisions Extended

- Permit Streamlining Act requirements relating to completeness and approval
- Definition of Objective Standards under the Housing Accountability Act
- Five-hearing limit for certain projects with complete applications
  - Extended to 2034 for projects that submit preliminary application by January 1, 2030
- Declaration of a statewide housing emergency



## Additional Changes

- **Five-hearing limit** includes appeals, and applies to ministerial projects and projects proposing 1 single dwelling unit
- **Affordable Housing Projects** can benefit from a preliminary application if they commence construction within 3.5 years, instead of 2 years
- **Broader definition** of “less intensive use” for purposes of downzoning restrictions

## Housing Development Project

- **Housing Accountability Act** defines a “housing development project” as a use consisting of:
  - Residential units only
  - Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use
  - Transitional housing or supportive housing
- Common understanding that definition does not include a single family home
  - Consistent with past HCD guidance

## Housing Development Project

- ***SB 8 changes the definition*** of a “housing development project” as used in most of SB 330:
  - projects that involve no or some discretionary approvals
  - proposal to construct a single dwelling unit
- Does not “not affect the interpretation of the scope” of definition used in HAA
- Potential Impact?



## Senate Bill 10

## Summary of the Law

- Authorizes legislative bodies to zone any parcel for up to **10 units** of residential density
- Parcels must be located in:
  - Urban Infill Site
  - Transit Rich Area
- Parcels cannot be located in:
  - high or very high fire hazard severity zone
  - property designated as open-space land or for park or recreational purposes through a local initiative



## Eligible Parcels

- Urban Infill Site
  - located in a city of which some portion is within an urbanized area or urban cluster;
  - 75% of the perimeter must be developed with urban uses
  - site must have residential or mixed use zoning or general plan designation
- Transit Rich Area is a site located within 1/2 mile of:
  - existing rail or bus rapid transit station
  - ferry terminal served by either bus or rail services
  - a high-quality bus corridor with qualifying service interval

## Required Procedures

- Ordinance must:
  - Invoke SB 10
  - Clearly demarcate areas that will be upzoned
  - Include a finding that the increased density is consistent with the City's statutory obligation to affirmatively further fair housing
  - Must be adopted by January 1, 2029
- Authorizes legislative body to override local initiative measures with 2/3 vote

ADOPTION



## Environmental Procedures

- Ordinance adopting rezoning pursuant to SB 10 is **not a project for purposes of CEQA**
- No new exemption for the actual projects constructed on rezoned parcels
  - Existing exemptions likely apply
  - City can consider expanding ministerial approval to increase streamlining



## Projects over 10 Units

- If a proposed project exceeds 10 units on parcel rezoned by SB 10, the project is not eligible:
  - for any CEQA exemption; or
  - any ministerial or by-right process that would otherwise apply
- Any necessary environmental review would study change in zoning from before SB 10 upzoning

## Questions?

