

Understanding and Navigating SB 9 in Your City

Barbara Kautz
Partner
Goldfarb & Lipman LLP
and

Joan Cox
Partner

Burke, Williams & Sorensen, LLP

Planning Commissioners Academy – Spring 2022

Presented March 17, 2022

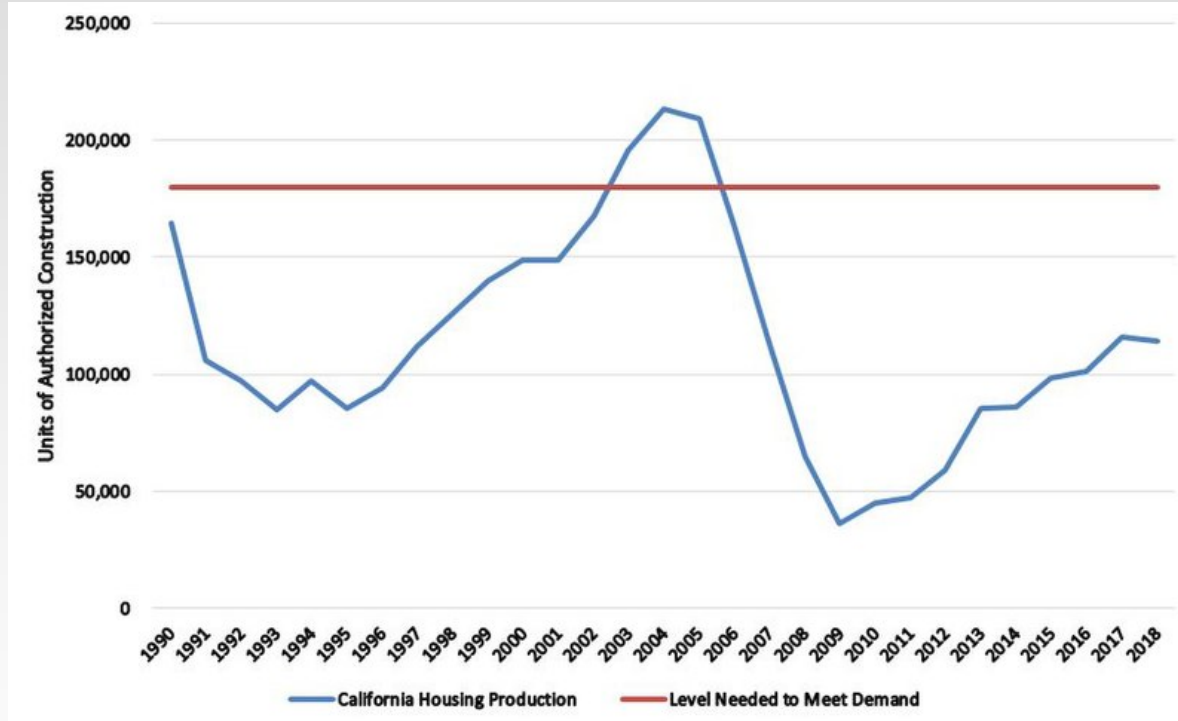
Agenda

- Introduction
- The Basics of SB 9
- SB 9 Implementation in Your City
- Practice Tips
- Questions

HOUSING LEGISLATION FRENZY



California New Housing Starts



Percentage of California's Renter Households Experiencing Rent Burden by Income

Income	Total Renter Households (million)	% Rent Burdened	% Severely Rent Burdened
Extremely Low-Income or Below Poverty Line	1.41	90.2%	76.9%
Very Low-Income	.82	85.4%	47.4%
Low-Income	1.13	64.6%	16.9%
All Lower-Income Renter Households (80% AMI and below) Subtotal of above	3.36	80.4%	49.5%
Moderate-Income	.59	41.5%	5.3%
Above Moderate-Income	2.03	12%	0.9%
All Renter Households Total	5.97	53.4%	28.7%

Source: 2017 National Low-Income Housing Coalition tabulations of 2015 American Community Survey Public Use Microdata Sample (PUMS) housing file.

Homelessness Statistics for California

Total Homeless Population	161,548
Total Family Households Experiencing Homelessness	8,030
Veterans Experiencing Homelessness	11,401
Persons Experiencing Chronic Homelessness	51,785
Unaccompanied Young Adults (Aged 18-24) Experiencing Homelessness	12,172
<hr/>	
Total Number of Homeless Students	271,528
Total Number of Unaccompanied Homeless Students	7,633
Nighttime Residence: Unsheltered	11,021
Nighttime Residence: Shelters	19,758
Nighttime Residence: Hotels/motels	14,386
Nighttime Residence: Doubled up	226,363

MANY CAUSES

- Labor shortages
- Construction costs
- Material shortages
- Obsolete technology
- Large investors
- Rising inequality
- Airbnb and second homes
- **Zoning and planning**



SB 9: The California HOME Act (Atkins)

Requires ministerial approval of:

- **Two-unit housing development** – Two homes on a single-family residential parcel
- **Urban lot split** - A one-time subdivision of an existing single-family residential parcel into two parcels

What Can Be Built:

Current Law

Under current state law, single-family zoned property allows 3 units:

1 primary dwelling unit

1 accessory dwelling unit (ADU)

1 junior accessory dwelling unit (JADU)

3 Total Housing Units

What Can Be Built: Lots Not Being Subdivided

2-Unit Duplex

2 Detached ADUs

4 Total Housing Units

2 Detached Primary Units

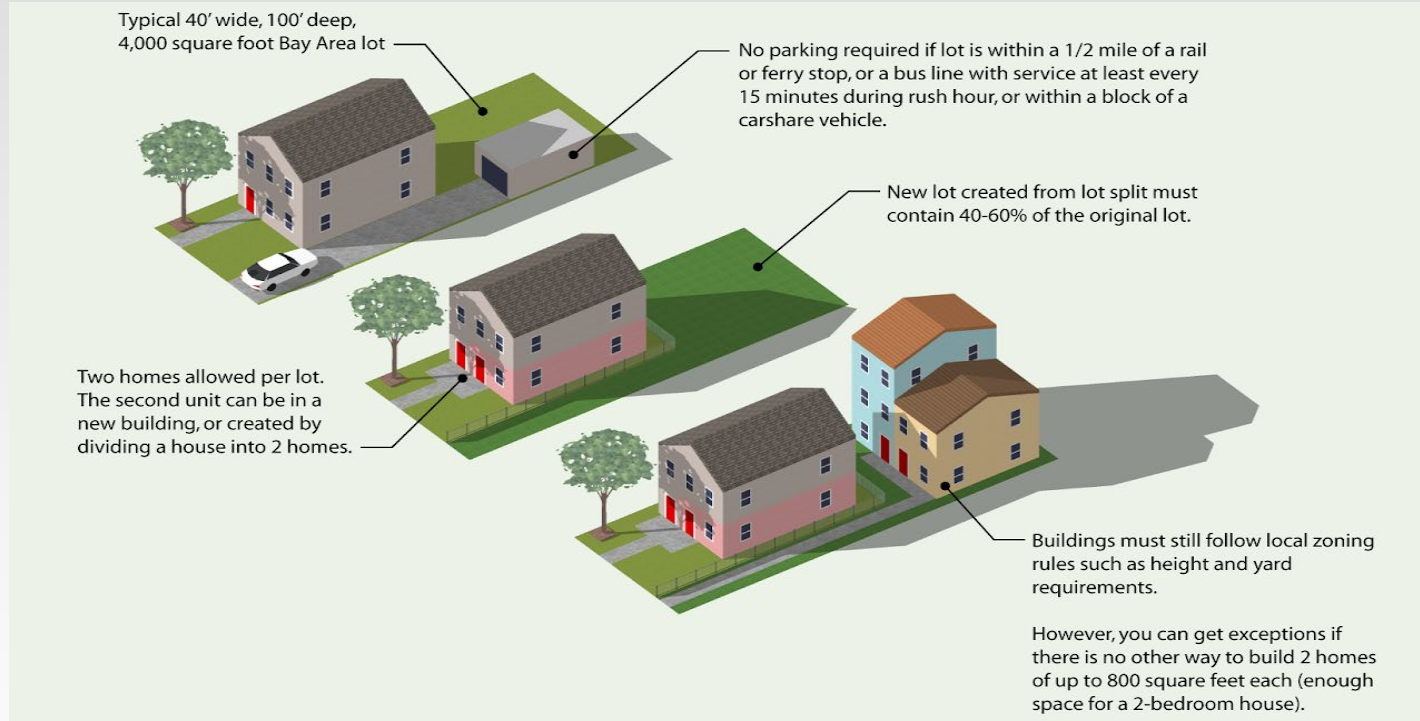
1 New Accessory Dwelling Unit (attached or detached)

3 Total Housing Units

What Can Be Built: Lots Being Subdivided

- Homeowners can build 2 homes on each of the 2 new lots, allowing for a total of 4 units
- If there are existing units, new homes can be added to result in a maximum of 4 potential units
- Cities can allow more, e.g., JADU's

Potential Development Scenarios



Examples



What Projects Qualify?

- Site is in a single-family residential zone;
- Not a historic site or district;
- Can't alter or demolish rent-controlled housing, housing that was Ellis'd in last 15 years, or housing occupied by a tenant in the last 3 years

What Projects Qualify?

May be in:

- High fire hazard areas;
- Flood zones and floodways;
- Earthquake fault zones;
- Hazmat sites

IF meet code standards.

What Criteria May Be Applied?

ONLY **objective** zoning standards, subdivision standards, and design standards apply.

- Standards cannot preclude two units of 800 sf.
- Can require 4' rear and side setbacks or none if existing structure or built in same location.
- No more than one parking space/unit.

Other Criteria

- Cannot be used for short-term rentals.
- Cannot reject solely because connected if would allow “separate conveyance”
 - Units must be designed to allow condo or separate sale if connected or adjacent.

Other Criteria for Urban Lot Splits

- Not required to allow more than two units on any parcel created through an urban lot split
 - Includes ADUs, JADUs, density bonus units
- Not required to permit ADUs or JADUs on parcels that use both duplex provision and urban lot split provision

Other Criteria for Urban Lot Splits

- Split results in two approx. equal-sized lots (60-40 split);
- Each new lot is at least 1,200 square feet;
- Lot split was not established through a prior SB 9 lot split;
- Neither the owner nor “any person acting in concert with the owner” has previously subdivided an adjacent parcel through an SB 9 lot split;

Other Criteria for Urban Lot Splits

- Applicant signs affidavit stating that applicant “intends to occupy” one of the units as principal residence for at least 3 years from date of approval of the lot split, unless land trust or qualified non-profit;
- No other owner occupancy requirements

Other Criteria for Urban Lot Splits

- May require easements needed for public services and facilities;
- May require access to public right-of-way.
- Can't require right-of-way dedications or off-site improvements;
- Can't require the correction of nonconforming zoning conditions

For More Information

ABAG SB 9 Site:

<https://abag.ca.gov/our-work/housing/regional-housing-technical-assistance/sb-9-resources>

SB 9 Is Not a Panacea to Meet RHNA

Requirements

- Since SB 9 allows the splitting of single-family zoned parcels and allows a homeowner to construct up to two units on each of those two, newly created lots, for a total of 4 units on an existing single-family zoned lot, and since the ability to do this “by right,” why can't a city now claim that it already has sufficient zoning in place to satisfy its RHNA housing quota, without doing any additional multifamily rezoning?

SB 9 Is Not a Panacea to Meet RHNA Requirements

- In other words, the state has now rezoned all single-family lots into higher density to accommodate lot splits and duplex construction (by right). So, some residents are asking how can the state simultaneously require cities and counties to meet enormous RHNA quotas by rezoning more and more commercial, retail, industrial, and existing multifamily zoned land for higher density housing but at the same time say that all the newly zoned development under SB 9 is not “countable” toward a city’s RHNA quota fulfillment requirements

SB 9 Is Not a Panacea to Meet RHNA Requirements

- Interestingly, a study done by the Turner Center for Housing Innovation concluded that SB9's impacts will be negligible and that only 5.4% of single-family parcels in California could feasibly allow for development under SB 9.
- The counterargument to that is that going forward, increased development resulting from the passage of SB 9 may be as much driven by financial necessity for debt-burdened, savings-return-starved homeowners seeking passive income as it is by statistical metrics.

SB 9 Is Not a Panacea to Meet RHNA Requirements

- A practical answer is that development “potential” does not guarantee actual development.
- SB 35 was enacted in 2017 to streamline housing development in cities that are not meeting their housing needs.
 - As of December 2018, only 29 cities and counties were meeting their RHNA goals, exempting them from SB 35 streamlining
 - In SCAG, only 6 cities have approved housing elements (due 10/21); 179 are not compliant
- SB 35 transformed RHNA requirements from identifying development potential to development quotas that must be built within the housing cycle to avoid SB 35 streamlining.

SB 9 Is Not a Panacea to Meet RHNA Requirements

- Moreover, simply identifying SB 9 development potential will not satisfy the affordable component of RHNA requirements. That is because although they were touted as legislation to incentivize affordable housing, neither SB 9 nor SB 10 mandates any affordable housing.
- In this housing cycle, the state is not only requiring that local governments plan for more housing, it insists on a much larger proportion of the planned units actually getting built. As part of the Housing Element process, cities, including Planning Commissioners, will be required to identify sites that are likely to actually be developed in each of the four affordability categories.
- HCD will not approve Housing Elements that do not demonstrate probability of actual development.

SB 9 Ordinance Considered by Some Cities

- Some cities are attempting to set rational rules for an expected wave of development via SB 9 to mitigate potential environmental and economic damage.
- SB 9 authorizes a City to deny an SB 9 project upon written findings by a building official based upon adopted standards that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid

SB 9 Ordinance Considered by Some Cities

- Among the efforts:
 - The wealthy Silicon Valley suburb of Woodside tried – and failed – to stave off Senate Bill 9 by claiming to be a habitat for the big cats.
 - Silicon Valley's Cupertino passed an ordinance that would prevent owners from building new units if they cast shadow over more than 10 percent of a neighbor's solar panel array – and require them to hire a licensed engineer to measure its size.

SB 9 Ordinance Considered by Some Cities

- Among the efforts:
 - Los Altos Hills, in Santa Clara County, is limiting new units to 800 square feet, the minimum allowed under SB9, while requiring new units to also have sprinklers and a hedge of evergreen shrubs along the unit closest to the property line.

SB 9 Ordinance Considered by Some Cities

- Proposed provisions include:
 - Prohibition on additional units on any parcel that has been split once and on which 4 units approved
 - Requiring off-street parking of one space per unit unless parcel is located w/in ½ mile walking distance of transit
 - Require setbacks of up to 4 feet from side and rear lot lines
 - Require applicant residency for 3 years
 - Unclear whether from date of application or from date of occupancy

SB 9 Ordinance Considered by Some Cities

- Proposed provisions include:
 - Require a 30-year affordable covenant for at least one of the units or payment of an in-lieu fee to be applied toward affordable housing
 - Because these small developments will not have to pay park and school fees or provide community benefits as larger projects typically do when building density is increased, the cost for these to support an increasing population will have to be borne by all residents, not the developers. In response, some municipalities are requiring payment of impact / development fees related to specific impact imposed on community by creation of SB 9 second lot and additional units

SB 9 Ordinance Considered by Some Cities

- Proposed provisions include:
 - Identification of special districts exempted from SB 9 due to unavoidable adverse impacts including hillside areas with substandard streets, wildlife corridors, and high wind areas
 - Requirement of LEED certified construction
 - Build within building envelope prior to expanding into backyard
 - Requirement that City notify property owners / tenants within a 500-foot radius from the proposed project site upon each SB 9 filing

SB 9 Ordinance Considered by Some Cities

- Municipalities aren't just working on their own — a grassroots effort called Our Neighborhood Voices, which started in Southern California, is seeking to put a ballot initiative on next November's ballot to restore land-use control to cities. It would amend the state constitution and let local zoning ordinances overrule state laws if they are in conflict.
- Among those leading the initiative is Redondo Beach Mayor Bill Brand, who opposed the SB 9 legislation. Brand says it will allow hedge funds to buy single-family homes and turn them into multi-unit investment properties.

Caution to Cities

- Avoid unintended consequences
- Imposing overly severe restrictions may trigger additional legislation
- Consult with your city attorney to ensure consistency with your city's specific circumstances

The Future of SB 9

- Amendments to clarify?
- Streamlining of approval process?
- Litigation?

QUESTIONS?