



**CITY OF HUNTINGTON BEACH**  
**CITY COUNCIL MEETING – COUNCIL MEMBER ITEM MEMO**

TO: THE HONORABLE MAYOR AND CITY COUNCIL

FROM: DAN KALMICK, CITY COUNCILMEMBER

DATE: FEBRUARY 17, 2023

**SUBJECT: COUNCILMEMBER BURN'S SB9/SB10 ITEM FOR 2/21/2023 AGENDA**

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I appreciated Councilmember Burn's move to withdraw this item from last meeting's agenda. I am, however, surprised to see it back on the agenda with even wilder asks and requesting less information than last meeting's request. The addition of prohibiting Accessory Dwelling Units (ADUs - as Councilmember Burns fails to define) in this City is a surprisingly huge overreach by this Council. There is NO evidence presented that ADUs are a problem and removing the ability to add ADUs strips property owners of their property rights and could be considered a taking without just compensation, which Councilmember Burns seems to be trying to avoid.

At the June 21, 2022, City Council Meeting, the City Council created Objective Standards to retain local control with regard to SB9. SB10 is an opt-in state law. The City has not opted into SB10 so how would we show harm from it in order to initiate litigation? I have attached the staff report from June of last year that includes a full run down of SB9 and SB10 and how the ordinance passed resolves most of the concerns in Councilmembers Burn's item. Furthermore, the City has **not received a single SB9 application** for a lot split. The attached Los Angeles Times article dated January 18<sup>th</sup>, 2023 and the cited study from UC Berkeley's Turner Center, show that SB9 has been ineffective at producing housing stock. There is no imminent threat from SB9 or SB10. ADUs have been part of the fabric of Huntington Beach since its inception. With nearly 20% of households in California now multigenerational and housing prices keeping more people out of the market, this item is literally NIMBYism: Not allowing ADUs in one's own backyard.

Councilmember Burn's item states that he wants to uphold property rights of neighbors by limiting property rights on those looking to exercise them? This circular argument has no footing in reality. **This item is a solution looking for a problem and a waste of city resources.**

I recommend that Councilmember Burns avail himself of the professional staff of the Community Development Department and not just the City Attorney's office when bringing items forward. This item will put our City and Staff into a peculiar position of violating state law based on local City policy. It is dangerous and misguided.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 2/21/2023

Agenda Item No.: #26 (23-172)



# City of Huntington Beach

File #: 22-437

MEETING DATE: 5/24/2022

## PLANNING COMMISSION STAFF REPORT

**TO:** Planning Commission  
**FROM:** Ursula Luna-Reynosa, Director of Community Development  
**BY:** Jennifer Villasenor, Deputy Director of Community Development

**SUBJECT:**  
**ZONING TEXT AMENDMENT NO. 22-002 (SB 9 DEVELOPMENT PROJECTS)**

**REQUEST:** To amend the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to establish permanent objective development and design standards for SB 9 development projects. On March 1, 2022, the City Council adopted an interim urgency ordinance establishing Chapter 237 of the HBZSO to establish development regulations and processing procedures for SB 9 development projects. The City Council extended the interim urgency ordinance on April 5, 2022.

**LOCATION:** Citywide - Residential Low Density (RL) designated properties

**APPLICANT:** City of Huntington Beach

**PROPERTY OWNER:** N/A

**BUSINESS OWNER:** N/A

### **STATEMENT OF ISSUE:**

Zoning Text Amendment (ZTA) No. 22-002 is a City-initiated request to amend the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) by adding Chapter 237 - *Objective Standards for SB 9 Development Projects*, which establishes development standards and review procedures for projects proposed pursuant to Senate Bill 9 (SB 9). SB 9 became effective on January 1, 2022, and requires cities to ministerially approve two unit developments and/or parcel maps to subdivide an existing lot in single-family residential zones.

### **RECOMMENDATION:**

That the Planning Commission take the following actions:

A) Find that Zoning Text Amendment No. 22-002 is exempt from the California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), which state

that the adoption of an ordinance by a city or county implementing the provisions of Government Code Sections 65852.21 and 66411.7 and regulating urban lot splits and two unit projects is not a project under CEQA.

B) Recommend approval of Zoning Text Amendment No. 22-002 with findings (Attachment No. 1) by approving the draft City Council ordinance (Attachment No. 2) and forward to the City Council for consideration.

**ALTERNATIVE ACTION(S):**

Continue Zoning Text Amendment No. 22-002 and direct staff accordingly.

**PROJECT PROPOSAL:**

ZTA No. 22-002 proposes to amend the HBZSO by adding Chapter 237 - *Objective Standards for SB 9 Development Projects*, establishing development standards and review procedures for projects proposed pursuant to Senate Bill 9.

Effective January 1, 2022, SB 9 adds Sections 65852.21 and 66411.7 to the Government Code. Section 65852.21 requires cities to consider a proposed housing development containing no more than two residential units within a single-family residential zone ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements. Section 66411.7 requires local agencies to ministerially approve a parcel map for an "urban lot split" meeting certain requirements. Both statutes permit the City to impose objective zoning, subdivision, and design standards on such projects as long as those standards would not have the effect of physically precluding the construction of up to two units on a lot or physically preclude either of the two units from being at least 800 square feet in floor area.

**Background:**

SB 9 was signed into law by Governor Newsom on September 16, 2021, and became effective on January 1, 2022. SB 9 was part of the California Senate's 2021 Housing Production Package, a group of housing laws aimed at increasing housing supply throughout the state.

On March 1, 2022, the City Council adopted an interim urgency ordinance establishing Chapter 237 of the HBZSO, which provides development regulations and processing procedures for SB 9 development projects. The City Council extended the interim urgency ordinance on April 5, 2022. The proposed ZTA would establish permanent SB 9 regulations.

To date, the City received several inquiries and one SB 9 submittal, but the submittal was subsequently withdrawn.

**ISSUES AND ANALYSIS:**

**Summary of SB 9**

To qualify for ministerial approval under SB 9, a two-unit development or urban lot split must satisfy specified criteria. These qualifying criteria include, but are not limited to the following:

- The property must be located within a single-family residential zone.
- The proposed development cannot be located within a historic district or on property included

on the State Historic Resources Inventory, or within a site designated or listed as a city landmark or historic property pursuant to a city ordinance.

- The development site cannot be prime farmland, wetlands, a site identified for conservation or habitat preservation, or a regulatory floodway and the development must meet specified standards if it is located in high or very high fire hazard severity zone, the flood zone, or within an earthquake fault zone.
- The proposed development cannot require the demolition or alteration of housing occupied by a tenant within the last three years.
- The proposed development cannot require the demolition or alteration of housing subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very-low income.
- The proposed development cannot require the demolition or alteration of housing subject to any form of rent or price control.
- An owner of the property cannot have removed residential units on the property from the rental market under the Ellis Act within the last 15 years.
- If the site has been occupied by a tenant within the last three years, the proposed development cannot allow for the demolition of more than 25% of the existing exterior structural walls (unless allowed by local ordinance).

In addition, in the case of an urban lot split:

- The parcel map must subdivide an existing lot to create no more than two new lots of approximately equal lot area, provided that one lot shall not be smaller than 40% of the lot area of the original lot;
- Unless the city otherwise allows, both newly created lots must be no smaller than 1,200 square feet;
- The lot proposed to be subdivided must not have been established through a prior urban lot split;
- The subject lot cannot be adjacent to any lot established through an urban lot split by the owner of the subject lot or by any person acting in concert with the owner of the subject lot; and
- Except as otherwise provided in SB 9, the proposed subdivision must comply with all objective requirements of the Subdivision Map Act.

In limited circumstances, a city may deny an application for an SB 9 two-unit development or urban lot split where the proposed project would have a specific, adverse impact upon health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

SB 9 also outlines what types of regulations a local jurisdiction can and cannot impose on an SB 9 project:

Regulation	Permitted	Not Permitted
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<b>Subdivision Requirements</b>	- Easements for provision of public services - Easements to ensure subdivided lots have access to the public right-of-way	- Dedication of right-of-way - Construction of off-site improvements - Correction of nonconforming zoning conditions
<b>Objective Standards</b>	- Objective zoning, subdivision, and design standards	- No setback can be required if unit is built within the footprint of existing structure - Otherwise maximum 4' setback from side and rear yards - Standards cannot physically prevent the development of an 800 s.f. unit on each lot
<b>Parking</b>	- Can require one space per unit	- Cannot require parking if site is within ½ mile of a high quality transit corridor or major transit stop or if there is a car share vehicle within a block of the project
<b>Rental Restrictions</b>	- Can prohibit short term rental of any units created through SB 9 - For lot splits, applicants must submit an affidavit that they intend to occupy one of the unit as a principal residence for at least 3 years	- No additional owner occupancy requirements are allowed

**General Plan Conformance:**

ZTA No. 22-002 would add Chapter 237 to the HBZSO and establish development regulations and processing procedures for SB 9 development projects consistent with state law. SB 9 projects would be permitted within the Residential Low (RL) Density designated areas and allow duplexes and/or subdivisions (i.e. - lot splits) in single-family residential neighborhoods. The proposed regulations of ZTA No. 22-002 provide for duplexes and lot splits in accordance with state law, create ministerial review procedures, and establish objective development and design standards that conform to the goals and policies of the General Plan. ZTA No. 22-002 is consistent with the General Plan goals and policies identified below.

**Land Use Element**

**Policy LU-1(D):** Ensure that new development projects are of compatible proportion, scale, and character to complement adjoining uses.

**Policy LU-2(D):** Maintain and protect residential neighborhoods by avoiding encroachment of incompatible land uses.

**Goal LU-4:** A range of housing types is available to meet the diverse economic, physical, and social needs of future and existing residents, while neighborhood character and residences are well maintained and protected.

**Housing Element**

Policy 1.1: Preserve the character, scale and quality of established residential neighborhoods.

Goal 2: Provide adequate housing sites through appropriate land use, zoning and specific plan designations to accommodate Huntington Beach’s share of regional housing needs.

Policy 4.3: Explore continued improvements to the entitlement process to streamline and coordinate the processing of permits, design review and environmental clearance.

ZTA No. 22-002 would establish regulations to implement SB 9, a state law that allows for duplexes and lot splits in single-family residential zones. The proposed regulations provide a ministerial process for SB 9 projects in accordance with state law while ensuring objective standards are in place to protect the City’s single-family residential neighborhoods from adverse impacts. The proposed ZTA introduces a new residential product type in the RL zoning districts. Consistent with state law, the proposed ZTA could result in development projects with a total of four units where there was previously one unit. As such, objective standards are proposed to ensure site design and architecture is context-sensitive and compatible with the existing single-family residential neighborhood. Because SB 9 units and lots, if a lot split occurs, would generally be smaller than a typical single-family property, SB 9 units may be more affordable to a larger segment of the community. In addition, the proposed ZTA includes an incentive that would allow greater square footage for property owners that voluntarily provide affordable units to low income households. The proposed processing procedures allow for ministerial approval if an applicant complies with the objective standards of the proposed ZTA. The proposed ministerial review procedures and objective standards provide a streamlined process with high level of certainty for property owners seeking to construct SB 9 projects in compliance with the objective standards.

**Zoning Compliance:**

The proposed amendments to the HBZSO have been developed pursuant to the regulations contained in SB 9 and reflect the minimum objective standards to protect the public health, safety and welfare and ensure SB 9 projects do not have a detrimental impact on single-family neighborhoods within the City. Below is a summary of the proposed SB 9 provisions.

**Applicability and General Requirements**

- Permitted in the Residential Low Density (RL) zoning district and specific plans with RL districts
- SB 9 project shall comply with all other applicable requirements, including the HBZSO and Municipal Code
- Applicant must affirm the SB 9 project meets the eligibility requirements of the state law
- Application must include written approval from Homeowners’ Association (HOA), if any
- Applicant is required to record a covenant on the property with the following provisions:
  - Non-residential uses and short-term rentals shall be prohibited
  - Property owner intends to occupy one of the housing units as their principal residence for three years
  - A subsequent urban lot split on land previously subdivided via an urban lot split shall be prohibited
  - Parking for any existing units shall be maintained
  - Access to the public right-of-way shall be maintained in perpetuity

- Residential units on a single lot cannot be sold separately
- For projects with a lot split, accessory dwelling units shall be prohibited

Review procedures

- Applications for SB 9 projects shall be approved ministerially
- During the City's review, if the City identifies a potential issue with respect to adequate water, sewer, traffic flow, or public safety, the City may require the applicant to submit an Administrative Permit application
- A SB 9 project may be denied if the project, based on a preponderance of the evidence, would have a specific, adverse impact with no feasible method to mitigate or avoid the impact
- SB 9 projects requiring a coastal development permit (CDP) or tentative parcel map (TPM) shall be required to go through the normal approval process for those applications except no public hearing would be required

Objective Standards

- All development standards not specified in the ordinance shall apply the standards of the base zoning district
- Maximum size: 800 square feet and one bedroom (lots less than 10,000 square feet); 1,600 square feet and two bedrooms (lots 10,000 square feet or greater)
- Maximum height: 16 feet/one story
- Side and rear setback: four feet (no encroachments would be permitted)
- Parking: one enclosed or partially enclosed space (i.e. - carport) per new unit; no parking is required for new units within one-half mile of a high quality transit corridor or a major transit stop or if there is a car share vehicle within one block of the project
- Design: all new units shall have the same architectural style, roof pitch, and color
- All new units shall have solar panels
- No rooftop decks shall be permitted
- Additional Lot Split Standards: minimum lot width: 20 feet; access to public right-of-way must be maintained; flag lots are not permitted for corner lots, through lots, and lots with alley access.

Environmental Status:

ZTA No. 22-002 is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), which state that the adoption of an ordinance by a city or county implementing the provisions of Government Code Sections 65852.21 and 66411.7 and regulating urban lot splits and two unit projects is not a project under CEQA.

Coastal Status:

ZTA No. 22-002 will require certification of a Local Coastal Program Amendment by the California Coastal Commission.

**Other Departments Concerns and Requirements:**

ZTA No. 22-002 was developed with assistance from the City Attorney's Office.

**Public Notification:**

Legal notice was published in the Huntington Beach Wave on May 12, 2022 and notices were sent to individuals and organizations requesting notification (Planning Division's Notification Matrix). As of May 17, 2022, no communications regarding the request have been received.

**Application Processing Dates:**

DATE OF COMPLETE APPLICATION:	MANDATORY PROCESSING DATE(S):
Not Applicable	Not Applicable

**SUMMARY:**

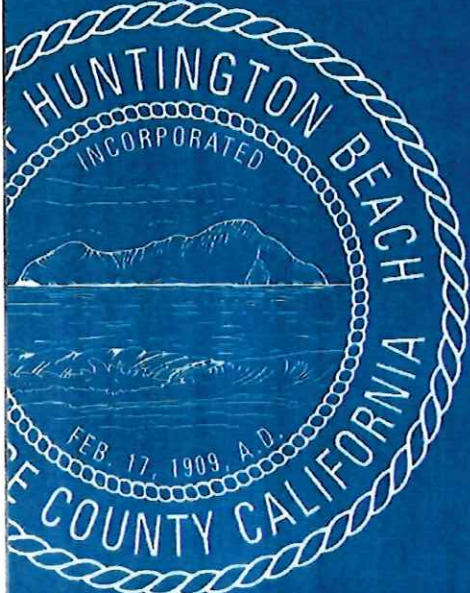
Staff is recommending approval of ZTA No. 22-002 for the following reasons:

- The proposed provisions are consistent with state law
- It is consistent with the goals and policies of the General Plan.
- The proposed ZTA provides clear standards and a ministerial approval process for single-family residential property owners that want to improve their properties while maintaining sensitivity to the existing single-family residential neighborhoods.

**ATTACHMENTS:**

- ~~1. Suggested Findings for Approval Zoning Text Amendment No. 22-002~~
- ~~2. Draft City Council Ordinance~~





**ZTA No. 22-002**

SB 9 Development Projects  
 City Council Meeting  
 June 21, 2022

# Request

- **ZTA No. 22-002**
  - Amend HBZSO by adding Chapter 237 – Objective Standards for SB 9 Development Projects
  - Establishes development standards and review procedures for projects proposed pursuant to Senate Bill 9 (SB 9)
- **Planning Commission Action**
  - Public hearing on May 24, 2022
  - Recommended approval to the City Council



**SUPPLEMENTAL COMMUNICATION**

Meeting Date: 6/21/2022

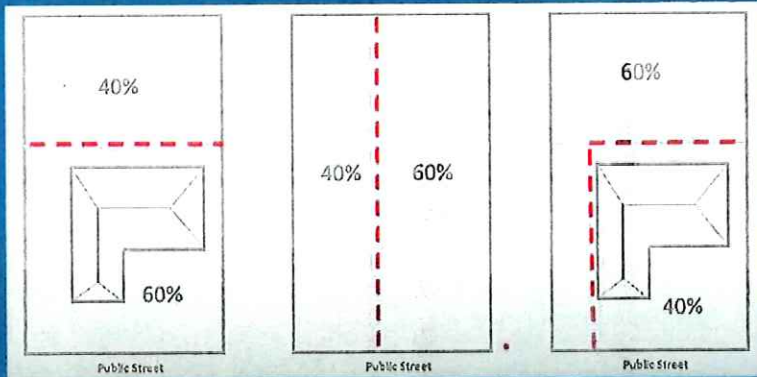
Agenda Item No.: #21 (22-493)

# SB 9 qualifying criteria

- Property must be located in a single-family residential zone (RL)
- Property cannot be a historic site or in a historic district
- Property must be within an urbanized area as designated by the U.S. Census
- Property cannot be located on:
  - Farmland
  - Wetlands
  - Hazardous waste site
  - Conservation or habitat preservation area
  - Regulatory floodway
- Proposed development cannot demolish or alter:
  - Deed restricted affordable housing
  - Housing subject to rent control
  - Housing removed from the rental market pursuant to the Ellis Act within the last 15 years
  - Housing occupied by a tenant in the last 3 years (must maintain at least 75% of the existing exterior walls)



# Urban lot split criteria



- Two new lots of approx. equal size
- Min. lot size: 1,200 square feet
- No prior or subsequent urban lot split
- Same owner (or person acting "in concert" with owner) cannot split adjacent lots



# SB 9 regulations

- SB 9 law allows cities to adopt certain regulations for SB 9 developments:
  - Easements for provision of public services and access to right-of-way
  - Objective zoning, subdivision, and design standards
  - Parking requirement of one space per unit
  - Prohibition of short term rentals
  - Affidavit that the owner intends to occupy one of the units for at least 3 years
- Denial of SB 9 project must be based on specific, adverse health and safety impact with no feasible mitigation



# Interim Urgency Ordinance

- March 1, 2022: City Council adopted urgency ordinance to establish interim standards
- April 5, 2022: City Council extended the urgency ordinance
- Proposed ordinance generally maintains same provisions w/ following changes:
  - Increased maximum square footage for larger lots
  - Clarifies ADUs are prohibited in SB 9 projects proposing a lot split
  - Provision of affordable units is voluntary
    - Increased square footage incentive
  - Design standards revised to be objective



## Objective standards

- Max size: 800 s.f./one bedroom or 1,600 s.f./two bedrooms depending on lot size
- Required parking: One space (garage or carport)
- Max height: 16 feet (if detached from existing dwelling)
- Side and rear setback: 4 feet
- Design: architecture, roof pitch, color same as existing dwelling
- Solar panels required
- STRs not allowed
- Development must occur with concurrent lot split
- All other standards of base zoning district and parcel map requirements apply

Must allow exceptions if standard would preclude two 800 s.f. units on a lot



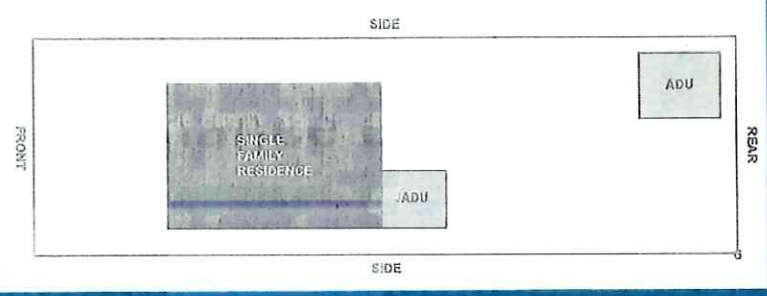
## Review procedures

- Ministerial "by right" process
- Lot split:
  - Subdivision application & process required
  - No public hearing required
- Coastal Zone:
  - Coastal development permit application & process required
  - Notification requirements of HBZSO Chapter 245 apply
  - No public hearing required



# Local ordinance objective standards

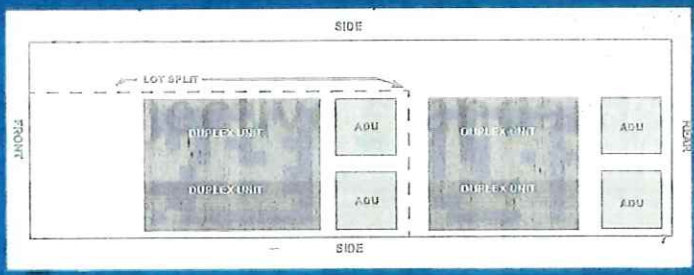
- Existing Regulations → up to 3 units
  - 1 Single Family Residence + 1 ADU + 1 JADU



# Local ordinance objective standards

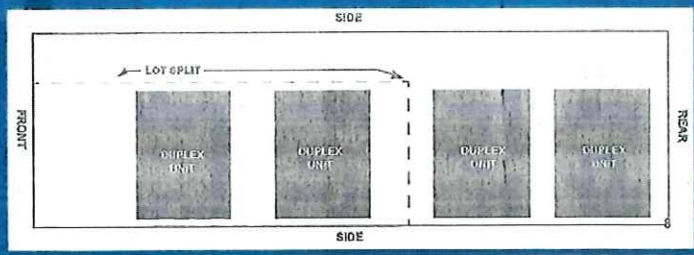
SB 9 without ordinance & objective standards

Up to 8 units



SB 9 with ordinance & objective standards

Up to 4 units

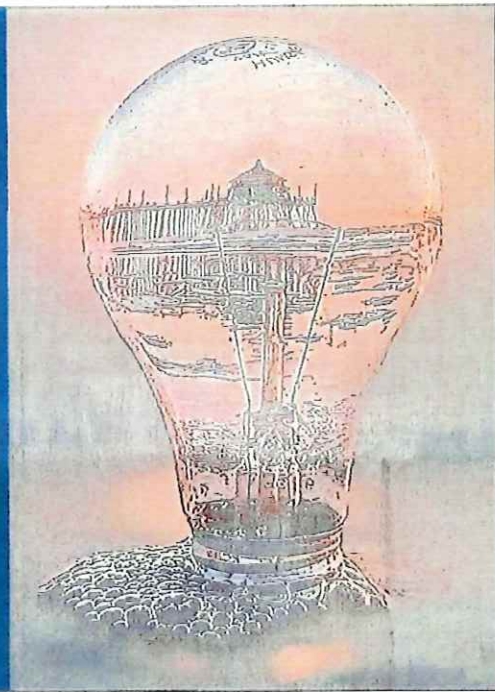


# Recommendation

- Approve ZTA No. 22-002 and forward to the City Council for adoption based on:
  - Complies with state law
  - Consistency with General Plan goals and policies
  - Provides clear standards, streamlined review and certainty in the approval process while avoiding impacts to existing neighborhoods



# Questions?



# California's HOME Act Turns One: Data and Insights from the First Year of Senate Bill 9 - Turner Center

The California HOME Act—otherwise known as Senate Bill (SB) 9—took effect on January 1st, 2022 and makes it possible for homeowners to split their home's lot and build up to four homes on a single-family parcel. Upon the law's passage, some hailed it as a major victory for zoning reform that would open up new avenues for small-scale homebuilding in previously exclusionary places. Others feared that the law might lead to speculation and unchecked growth at the expense of community character and vulnerable residents.

One year in, we find that the impact of SB 9 has been limited so far. Some of the state's largest cities reported that they have received just a handful of applications for either lot splits or new units, while other cities reported none. In this commentary, we take a first look at SB 9's preliminary outcomes by assessing new housing development enabled by the law in a handful of jurisdictions statewide, exploring how many applications were submitted, and talking to local planners about why the numbers are so low.

## What is SB 9?

SB 9 allows homeowners to create up to four homes on an existing parcel, in effect, eliminating single-family-only zoning. Crucially, the law allows the owner to “split” their lot, which makes it easier to sell or finance additional homes on a single parcel. A [2021 analysis by the Turner Center](#) estimated that over 700,000 new homes would be newly feasible to build if SB 9 passed and taking into account on-the-ground market dynamics. However, we noted that it would be unlikely that anywhere near this number of homes would actually be built. Homeowners face multiple barriers to using SB 9 to split their lot and create new homes, including high construction costs and/or lack of expertise with homebuilding. We also found that local governments have created restrictions that limit the potential of SB 9. Our June 2022 [analysis of a sample of ordinances](#) from around the state found that some local regulations—such as low maximum unit size, height limitations, and other design rules—may render the construction of SB 9 homes infeasible.

## Is SB 9 being used?

To answer this question, we collected data from thirteen jurisdictions across the state on applications received and approved for both lot splits and new homes as allowed under SB 9. Cities were selected based on our 2021 analysis showing where SB 9 projects would most likely be financially feasible, as well as cities that have had high accessory dwelling unit (ADU) production relative to their population. Relatively high ADU performance is a relevant metric for this analysis given that the size, scale, and location are likely to be similar—often owner-occupied single-family parcels—for ADU and SB 9 projects. We also interviewed eight planning professionals from four of these jurisdictions to better understand how SB 9 uptake has played out in those communities.

We found that SB 9 activity is limited or non-existent in these thirteen cities (Table 1). Los Angeles had the most overall activity, with 211 applications for new units under SB 9 in 2022. The state’s other large cities all reported very few applications for lot splits or new units. For example, the city of San Diego reported receiving just seven applications for new SB 9 units in 2022. [To put these numbers into context](#), the city of San Diego permitted over 5,000 new homes in all of 2021 and Los Angeles permitted just under 20,000 new homes in 2021.

**Table 1. SB 9 Applications Received and Approved through November, 2022**

Jurisdiction	How many applications for lot splits has your city received?	How many lot splits have been approved in your city?	How many applications for SB 9 units has your city received?	How many applications for SB 9 units has your city approved?
Anaheim	2	0	1	0
Bakersfield	0	0	0	0
Berkeley	1	0	5	0
Burbank	1	0	7	2
Danville	20	13	0	0
Long Beach	1	0	1	0
Los Angeles	28	0	211	38
Sacramento	9	6	9	8
San Diego	3	0	7	0
San Francisco	4	2	25	4
San José	10	5	1	0
Santa Maria	0	0	0	0
Saratoga	21	2	15	1

Among our sample, the smaller cities of Saratoga and Danville stand out for having a relatively higher number of SB 9 applications. Saratoga reported 15 applications for SB 9 units and 21 applications for lot splits in 2022. By comparison, the city permitted 71 total units of housing in 2021. Likewise, the city of Danville reported receiving 20 applications for lot splits, though no applications had been received for new units.

**What’s going on?**

First, why Saratoga and Danville? The overperformance of these two cities relative to others in our analysis may be partly explained by the fact that these cities have larger single-family lot sizes. Planners from each jurisdiction we interviewed have



seen that SB 9 seems to work best on larger lot sizes which allow for more room to build one to two new homes and noted the larger lot sizes in Saratoga and Danville. In addition, most homes are located in the center of their parcel, making the addition of another house geometrically difficult on a smaller lot size. Saratoga and Danville also have significantly higher home sale prices, making it more likely that splitting a lot will be financially beneficial to the homeowner.

Second, why not cities that have seen relatively high levels of ADU development? San Diego has seen almost no SB 9 activity, despite high levels of ADU construction, with 871 ADUs permitted in 2021. Similarly, Santa Maria, which permitted 401 ADUs in 2021, reported receiving no applications for SB 9 units or lot splits. This contrast is worth pointing out given that ADUs are similar in size and location to new SB 9 units. Planners in cities with high ADU development that we interviewed hypothesized that more prescriptive state ADU laws are likely pushing homeowners interested in creating new units towards ADUs. Recent changes in ADU laws—including laws that limit impact fees, remove owner-occupancy requirements, and allow for larger units—have made it easier to build. Currently, however, SB 9 does not have this same flexibility. In fact, we found in [a previous analysis](#) that some cities are imposing additional requirements on SB 9 projects, including guidelines that are prohibited by state law for ADUs. As such, it may be more attractive for a homeowner to pursue an ADU rather than an SB 9 project.

In addition, local ADU incentive programs are likely having an effect. Planning staff in San Diego and San José noted that their local ADU policies may preclude interest in SB 9. For example, San Diego allows larger ADU sizes and bonus ADU units (which allow owners to build multiple units on a single lot) in exchange for restrictions to make the units available to people with moderate incomes. San Diego and San José also adopted fairly permissive SB 9 implementing ordinances, as noted in our previous analysis. However, their ordinances, while more accommodating of SB 9 development than other cities, still do not match the incentives offered to homeowners considering ADUs, such as limiting impact fees or offering pre-approved design plans.

### **Why does this matter?**

SB 9 has the potential to help solve the state's housing shortage, particularly by creating more units in single-family neighborhoods and providing entry-level homeownership opportunities, but only if the law's promise is realized through implementation. It is still too early to say that SB 9 is not working. Limited uptake of the new law may be impacted by the capacity and staff constraints that many planning departments are experiencing, alongside rising interest rates, high inflation, and ongoing supply chain/construction disruptions.

However, it is also not too early to think of ways to strengthen SB 9 and remove ongoing barriers for homeowners interested in building more units on their property. Low numbers of applications for SB 9 projects so far do not necessarily imply low interest overall. Planners told us that while applications for SB 9 have been low, inquiries to their departments about SB 9 are high. That these inquiries have largely not yet translated into a correspondingly high number of applications may simply reflect the time and resources needed to pursue an SB 9 project as well as the aforementioned benefits of pursuing an ADU instead. However, the discrepancy could also suggest that more can be done at the local and state levels to improve overall utilization.

Below are three specific areas that policymakers should examine to improve uptake of one of California's recent signature housing laws:

*Create more prescriptive state standards for SB 9 homes.* SB 9 uptake could be improved by creating more prescriptive land use and zoning standards to enable greater SB 9 feasibility. This approach is one reason that ADUs have become a California success story, going from an insignificant share of the state's housing growth to nearly a fifth of all new units permitted statewide in just six years. This growth took time and persistence, with several rounds of legislation leading to the current ADU boom. SB 9 could benefit from similar legislative efforts. These efforts could include establishing more flexible standards for new home design—such as larger maximum home sizes and heights—and limiting extra costs—such as impact fees, particularly for single-family home to duplex conversions. In addition, planners we interviewed noted that SB 9's owner-occupancy requirement is likely limiting uptake. Policymakers may consider revisiting this requirement to encourage higher usage, while maintaining proper guardrails to protect against speculation by institutional investors and displacement in vulnerable communities.

California's Department of Housing and Community Development should also consider pathways for jurisdictions to better leverage SB 9 for meeting future Regional Housing Needs Assessment (RHNA) goals. One such change could be allowing cities to include more aggressive growth rate assumptions in their planning if that city is taking proactive approaches to implementing SB 9. This shift would create an incentive for local governments to bolster educational outreach to residents and pursue more comprehensive implementation, as many have done with ADUs.

*Adopt more flexible local SB 9 ordinances.* Cities have a role to play in the success of SB 9 as well. Even without new state legislation, local policymakers can consider adopting policies to improve SB 9 uptake, such as limiting fees and creating clear guidance and procedure for homeowners. Local policymakers can also consider additional strategies to increase housing supply in low-density neighborhoods outside of the state's SB 9 framework, including by increasing housing options above and beyond duplexes and creating design standards that facilitate several types of small-scale infill development. Some cities, such as Berkeley and Sacramento, have begun exploring this approach. A comprehensive local approach to missing middle housing can greatly complement the goals of SB 9.

*Address homeownership barriers.* SB 9 has the potential to create more small-scale homeownership opportunities that are affordable to moderate-income buyers, but significant obstacles that are specific to homeownership development under SB 9 remain. Specifically, legislators should reassess requirements under certain policies such as the Subdivision Map Act and construction defect liability laws which increase costs and deter the construction of homeownership projects, as identified [in our previous research](#) on missing middle housing. These policies accrue costs that might otherwise be absorbable in the context of larger-scale homebuilding, but can make new small-scale for-sale homes financially infeasible to build. Legislators should consider creating exemptions or special categories for small-scale homeownership projects such as those allowed under SB 9.

### **What's next?**

The passage of SB 9 in 2021 was hailed by many as a significant housing milestone that could create meaningful amounts of new homes in high-resourced

neighborhoods while partly addressing the nefarious origins of single-family only zoning. However, ensuring major policy shifts achieve their intended goals often requires a sustained effort beyond one legislative cycle. Relatively low usage of SB 9 thus far indicates that the law could benefit from changes to its current form. For SB 9 to fulfill its promise, we should continue to monitor its impacts and legislators should consider revisiting the program as we enter the second year of implementation. As California enters a period of increased economic uncertainty—as shown by the governor's recent budget proposal and pending spending cuts—it is crucial to set up SB 9 for success now to ensure homeowners can make use of the law when economic conditions improve.

## **Acknowledgments**

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*This research does not represent the institutional views of UC Berkeley or of the Turner Center's funders. Funders do not determine research findings or recommendations in Turner Center's research and policy reports.*

# California duplex law not yet working as expected - Los Angeles Times

*Hannah Wiley*

Once seen as the death knell for single-family-home neighborhoods in California, a new law meant to create more duplexes has instead done little to encourage construction in some of the largest cities in the state, according to a new report published Wednesday.

[Senate Bill 9](#) was introduced two years ago as a way to help solve California's severe housing crunch by allowing homeowners to convert their homes into duplexes on a single-family lot or divide the parcel in half to build another duplex for a total of four units. The law went into effect at the start of 2022.

The bill received bipartisan support and ignited fierce debate between its backers, who said SB 9 was a much-needed tool to add housing options for middle-income Californians, and critics, who blasted it as a radical one-size-fits-all policy that undermined local government control.

Neither argument has so far proved to be true.

Across 13 cities in the state, SB 9 projects are "[limited or nonexistent](#)," according to a new study by the UC Berkeley Turner Center for Housing Innovation.

The report focused on cities considered high-opportunity areas for duplexes because they've reported significant increases in the construction of accessory dwelling units — also known as granny flats, casitas or ADUs — in recent years and have available single-family properties for possible divided lots. ADUs are small, free-standing homes most often built in the backyards of existing single-family homes.

The cities are Anaheim, Bakersfield, Berkeley, Burbank, Danville, Long Beach, Los Angeles, Sacramento, San Diego, San Francisco, San Jose, Santa Maria and Saratoga.

By the end of November, the cities had collectively received 282 applications for SB 9 projects, and had approved only 53. Los Angeles accounted for the bulk of applications with 211 submitted and 38 approved, according to the report. San Francisco received 25 applications and had approved four, while San Diego received seven and had approved none.

Three cities received one application, and in Bakersfield, Danville and Santa Maria, zero were submitted.

Applications for dividing lots seem to be even less popular than for building duplexes. Just 100 applications were submitted, the report noted, and 28 had been approved.

David Garcia, Turner Center's policy director, said SB 9 is only in its first year of implementation and should be given more time before it's judged as ineffective. But he added that lawmakers should consider whether the law needs tweaking.

"It doesn't seem like Senate Bill 9 in its first year has resulted in very meaningful amounts of new housing," Garcia said. "Pretty much everywhere you look, Senate Bill 9 activity is very marginal. It is nonexistent in some places."

Homeowners right now have an easier time building an ADU than a duplex, thanks to local and state laws that have eased barriers to construction in recent years, Garcia said. It took multiple rounds of legislation to see productive ADU development, and the same will probably be true for SB 9 projects, he said.

Recognizing that more was needed to speed up housing construction in California, the Legislature began [overhauling state ADU laws](#) in 2016, and cities followed suit with their own [local ordinances](#) to clear red tape in the building process, which has inspired a [widespread ADU movement](#).

Between the start of 2017 and January 2023, the city of Los Angeles reported receiving 35,098 applications for ADUs. It has issued permits for 25,881 and 13,640 have been granted certificates of occupancy.

Heidi Vonblum, San Diego's planning director, said the law is new and barriers to development are still being worked out. At the same time, the city has an ADU program that "has been very attractive to property owners," Vonblum said, while updated zoning rules and community plans have eliminated "the need to rely on other programs."

It's a similar situation in Sacramento, where homeowners are allowed to build up to two ADUs on their properties, said Kevin Colin, the city's zoning administrator. Colin's team handles one to two ADU applications "each working day," he said, because there's such high interest in the projects.

To replicate that success, the Turner Center report suggested cutting fees associated with new duplex development, or adding more uniform standards for SB 9 projects to ensure local governments can't attach subjective criteria that discourage applications, such as [architectural design requirements or stringent landscaping rules](#). It also proposed revising a mandate that homeowners who split their lots must live in one of the units for at least three years, a key concession lawmakers made to reduce opposition from organizations worried about gentrification.

Senate President Pro Tem Toni Atkins (D-San Diego), author of the legislation, said SB 9 was "never intended to be an overnight fix to our housing shortage."

"We always said not every homeowner would be able, or want, to utilize the tools provided by the bill on Day One," Atkins said in a statement. "Subdividing a lot, or even just adding an ADU, is a big investment. This bill was never intended to be a sledgehammer approach — it was meant to increase the housing supply over time, and as awareness of the law increases and more homeowners have the ability to embrace the tools, I'm confident that we will see results."

Garcia and other housing experts said slow progress could also be attributed to the effects of the COVID-19 pandemic, when prices for building materials shot up and homeowners and buyers faced significant market uncertainty. That was followed by

high inflation and interest rates.

But other factors could be contributing to sluggish SB 9 interest.

Matthew Lewis, spokesperson for California YIMBY, a housing advocacy organization that supported SB 9, said both ADUs and duplexes have their financial and logistical pros and cons.

ADUs are an ideal way to generate some “passive income” from a renter, Lewis said, and make great homes for aging parents or young adult children. Duplexes are good for that too, but the additional units can be sold separately for even greater economic opportunity.

On the other hand, ADUs are typically a property extension of the main home, so it can be difficult or even impossible to separately sell the extra unit. Duplexes require significantly more financing, and the addition of a separate sewer line and water service.

“The reality is people will follow the path of least resistance to building the house they want,” Lewis said, adding that it could be worth going back to the drawing board to ensure local governments are doing what they can to ease burdens to duplex development.

Although the Turner Center report offers legislators a limited snapshot of how SB 9 has worked so far, the state is also expected to have more robust data available this summer.

Any attempt to modify SB 9 this year, however, is sure to reignite opposition from many of the dozens of cities and neighborhood associations that tried to block its passage in 2021. Since then, some cities have gone to great lengths to avoid implementing the law, including the Silicon Valley suburb of Woodside, which declared itself a [mountain lion sanctuary](#) and invited a [stern warning](#) for compliance by the state attorney general's office.

## Moore, Tania

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**From:** Kalmick, Dan  
**Sent:** Friday, February 17, 2023 12:46 PM  
**To:** [supplementalcomm@surfcity-hb.org](mailto:supplementalcomm@surfcity-hb.org)  
**Subject:** Please Include this supplemental communication for Item#26  
**Attachments:** 621 Sup Com - PP (1).pdf; Att3 - PC staff report.pdf; SB9 -California's HOME Act Turns One Data and Insights from the First Year of Senate Bill 9 - Turner Center.pdf; SB9 - California duplex law not yet working as expected - Los Angeles Times.pdf; KALMICK 2023-02-07 - MEMO REGARDING BURNS ITEM SB9\_SB10.pdf

Please include the attachments herein as supplemental communication for the City Council on Item #26 – SB9/10

Please make the Memo the lead item.

Thank you,

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