



Senate Bill 9

Ministerial Urban Lot Splits & Two-Unit Developments Frequently Asked Questions (FAQ)

BASICS

1. When does SB 9 go into effect?

January 1, 2022. Palo Alto has adopted an interim urgency ordinance to immediately integrate SB 9 into the Palo Alto Municipal Code (PAMC), and by reference adopted objective design standards for qualifying SB 9 projects. The interim ordinance affects PAMC chapters 18.10 (Low-Density Residential, RE, R-2, and RMD Districts), 18.12 (R-1 Single-Family Residential District), 18.40 (General Standards and Exceptions), and 18.42 (Standard for Special Uses) of Title 18 and a new Chapter 21.10 (Parcel Maps for Urban Lot Splits) of Title 21. City staff will work on a permanent ordinance for adoption by the Council in 2022.

2. Where does SB 9 apply?

SB 9 applies to R-1 (Single Family Residence District) and RE (Residential Estate District) zoned districts within Palo Alto. Consult the City's Zoning Map: <https://www.cityofpaloalto.org/files/assets/public/planning-amp-development-services/file-migration/current-planning/forms-and-guidelines/zone-map-2021.pdf>.

3. Can you use SB 9 in zones that allow single-family development but are zoned primarily for multi-family or mixed-use development?

No. The language of the statute is clear that it applies only to parcels in single-family residential zones. Since the intent of the legislation was to upzone or densify areas where only single-family development is currently permitted, it would not serve the purposes of the legislation for it to apply in areas where multi-family or denser uses are already permitted. SB 9 also does not apply to a parcel that is currently developed with a single-family home, if that parcel is in anything other than a single-family residential zone.

4. Does SB 9 apply to homeowners' associations (HOAs)?

SB 9 overrides local zoning only. It does not address rules or restrictions implemented and adopted by homeowners' associations or included in CC&Rs (covenants, conditions, and restrictions).

5. Is a lot eligible for an SB 9 lot split if it was split before SB 9?

Yes. The language of SB 9 only prohibits an applicant from using SB 9 to subdivide a lot if it was previously split *using the authority contained in SB 9*. Even after using SB 9, the lot could be further split using ordinary procedures under the Subdivision Map Act and local

subdivision ordinance subject to minimum lot size and other requirements that apply to the parcel.

6. Is the restriction on the demolition of 25% of the exterior walls of the building only applicable to deed-restricted affordable units?

No. This restriction applies to all units.

7. How do you verify that existing housing has not been rented in the last three years?

SB 9 does not provide an explicit mechanism for determining whether existing housing has been rented in the last three years. Given that, Palo Alto will be evaluating different ways to verify this requirement. It may be possible to use surveys or utility information to confirm.

INTERSECTION WITH OTHER LAWS

8. How does the state Density Bonus Law apply to the four-unit scenario?

State Density Bonus Law would not be applicable to SB 9 projects. Government Code § 65915(i) defines "housing development," for the purposes of state density bonus, as "a development project for five or more residential units." SB 9 only allows up to four units total on two contiguous lots. Additionally, the urban lot split section of SB 9 states specifically that local agencies are not required to allow more than the maximum of two units on each lot. Palo Alto Municipal Code Section 21.10.050(b)(2) limits urban lot split developments to two units on each lot.

9. How do SB 9 urban lot splits relate to the Subdivision Map Act and the fact that the Subdivision Map Act requires general plan conformance?

The language in SB 9 overrides any conflicting provisions of the Subdivision Map Act. Specifically, Government Code § 66411.7(b)(2) provides that "[a] local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act..., except as otherwise expressly provided in this section." For instance, General Plan and specific plan conformance is not required if it would preclude lot splits mandated by SB 9.

10. Do minimum frontage requirements apply to restrict lot subdivision?

Minimum frontage requirements continue to apply unless the requirements would physically preclude the lot split or the construction of two units of at least 800 square feet each. Each parcel created by an Urban Lot Split shall adjoin the public right of way by means of a minimum fifteen-foot street frontage.

11. How does the Permit Streamlining Act apply if these are ministerial actions?

SB 8, also effective January 1, 2022, extends the requirements of the Permit Streamlining

Act to housing projects of one unit or more that require no discretionary approvals. Consequently, SB 9 projects are subject to the Permit Streamlining Act's requirements for completeness letters (within 30 days of submittal) and approval deadlines (within 60 days of determining that the project is exempt from CEQA).

QUANTITY/ACCESSORY DWELLING UNITS

12. SB 9 states that "[a] housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to an existing unit." Why are some people saying that you can add two new units to a parcel with an existing single-family home?

As the question states, Gov. Code § 65852.21(i) provides that a development contains two residential units if "the development proposes no more than two *new units* or if it proposes to add one new unit to one existing unit." This could be interpreted to mean that the statute applies to a two-unit proposal even if those units are proposed for a lot already containing a unit. For Urban Lot Splits, Palo Alto Municipal Code Section 21.10.050(b)(2) restricts development to two units on each lot. Pursuant to Palo Alto Municipal Code Section 18.42.180(f)(2) on parcels that are not the result of an Urban Lot Split under Chapter 21.10, accessory dwelling units may be proposed in addition to the primary dwelling unit or units, consistent with Chapter 18.09, provided, however, that ADUs associated with projects proceeding under this Section shall not receive any exemption from Floor Area Ratio except to the minimum extent required by California Government Code Section 65852.2.

13. Does SB 9 prohibit ADUs with an urban lot split, or can the City disallow Accessory Dwelling Units (ADUs) with an urban lot split?

SB 9 does not prohibit accessory dwelling units or junior accessory dwelling units on lots created by an urban lot split. Under SB 9 a local agency "shall not be required to approve" more than two units (including ADUs and JADUs) on a lot created via an SB 9 lot split. Given this language, local agencies could choose to limit development on these lots to two units via adoption of an SB 9 implementing ordinance. Palo Alto has chosen not to allow more than two units on a lot created via an SB 9 lot split (Palo Alto Municipal Code Section 21.10.050(b)(2)).

14. Are the two new SB 9 units entitled to an ADU or JADU?

If the two new SB 9 units are not located on a lot created via the urban lot split provision, then ADUs and JADUs are allowed as under existing law. If the applicant used both the SB 9 lot split provisions and the SB 9 two-unit development provisions, then a local ordinance can limit total development to two units per lot, including ADUs and JADUs. Palo Alto has

chosen not to allow more than two units on a lot created via an SB 9 lot split (Palo Alto Municipal Code Section 21.10.050(b)(2)).

15. Does SB 9 allow an applicant to use the duplex entitlements to build a single unit "monster home" and get around non-objective single-family design guidelines?

Palo Alto does not consider a single unit a project that qualifies for SB 9. A single unit would need to follow the requirements contained within the Palo Alto Municipal Code, which for two-story single units, is compliance with the Individual Review process in accordance with Palo Alto Municipal Code Section 18.12.110.

16. Are the new units created via the authority in SB 9 condominiums? Does SB 9 facilitate ministerial condominium conversions? Does SB 9 allow for condominium conversion of existing duplexes?

SB 9 does not amend laws regarding condominiums. SB 9 does not allow denial of attached units so long as their design and construction allow them to be “separately conveyed,” i.e., sold separately as condominiums may be sold. New units created via the authority in SB 9 may be approved as condominiums if the applicant asks for that approval, but the application would need to meet state and local law concerning condominiums. Palo Alto’s regular condominium conversion process would also continue to apply.

OBJECTIVE STANDARDS

17. Can the applicant seek variances from zoning requirements?

SB 9 provides that a local agency may apply its objective zoning standards so long as they do not physically preclude the construction of two units of at least 800 square feet each with four-foot setbacks (no setbacks are required if the unit is constructed in the same location and with the same dimensions as an existing structure). In that situation, the applicant does not need to apply for a variance. Palo Alto has adopted objective design standards for SB 9 qualified projects.

However, if the applicant desires to construct a unit which does not meet the objective design standards, it could be denied under SB 9, or the applicant could propose their project and proceed through the Individual Review process.

18. My understanding is that SB 330 requires only objective design standards for design standards adopted after Jan 1, 2020, is this the same for SB 9?

SB 330 would apply to an SB 9 implementing ordinance, so any design standards adopted

must be objective.

19. Is there a street frontage or lot width requirement for ministerial lot splits?

Minimum frontage requirements continue to apply unless the requirements would physically preclude the lot split or the construction of two units of at least 800 square feet each. Each parcel created by an Urban Lot Split shall adjoin the public right of way by means of a minimum fifteen-foot street frontage.

20. Is the four-foot setback provision like that for ADUs?

Yes. No regulation can impose a rear or side setback greater than four feet, or less if a structure is in the same location and with the same dimensions as an existing structure.

21. Could Palo Alto define "sufficient to allow separate conveyance" to require separate HVAC systems and separate water connection to meet Title 24 requirements?

Yes. Title 24 is a state law requirement. Therefore, compliance can be mandated assuming that Title 24 requires separate HVAC systems and water connections for units that are separately conveyed.

22. Can Palo Alto impose affordability requirements on units created via SB 9?

There is nothing in the statute that would prohibit the imposition of objective affordability requirements. The City of Palo Alto is currently evaluating imposing affordability requirements for units created via SB 9.

23. Can Palo Alto impose conditions of approval on an SB 9 project?

Palo Alto may impose standard objective conditions of approval on an SB 9 project.

FIRE/INFRASTRUCTURE CHALLENGES

24. Is it true that SB 9 cannot be used in high fire hazard severity zones?

No. SB 9 provides that any proposed two-unit development or urban lot split must comply with the requirements of Government Code § 65913.4(a)(6)(D), which excludes projects in high or very high fire hazard severity zones, *unless* either: (1) the site was excluded from the zone by the jurisdiction; or (2) the site has adopted fire hazard mitigation measures "pursuant to existing building standards or state fire mitigation measures applicable to the development." "Fire hazard mitigation measures" and "state fire mitigation measures" are not defined. Pursuant to Palo Alto Municipal Code Section 18.42.180(c)(1), to qualify for ministerial approval, the proposed site must adopt certain fire hazard mitigation measures administered by the City's Fire Department.

The City may also reject SB 9 proposals on a case-by-case basis where the local building official makes a written finding that the project would have a specific, adverse impact on public health and safety or the physical environment, based on inconsistency with an objective standard, and there is no feasible method to satisfactorily mitigate or avoid the impact (Palo Alto Municipal Code 18.42.180(c)(6)).

25. Can Palo Alto prohibit someone from creating a new unit in an existing structure that would be below the Base Flood Elevation?

To qualify for ministerial approval, the applicant must meet certain federal requirements administered by the City's Public Works Department (Palo Alto Municipal Code Section 18.42.180(c)(1)).

URBAN LOT SPLITS

26. Would the "sufficient to allow separate conveyance" provision allow someone to build an attached duplex but then sell them as two separate lots with their own yard?

"Sufficient to allow separate conveyance" is not defined in the statute. However, "separate conveyance" means that the units can be sold separately. This phrase would seem to require that each unit be built to condominium standards so that they can be sold separately if the City approves a condominium application. Palo Alto defines "sufficient to allow separate conveyance" as meaning the two dwelling units constitute clearly defined, separate, and independent housekeeping units without interior access points to the other dwelling unit.

27. Can Palo Alto impose that an owner record a deed restriction stating that the lot has been split using SB 9 and cannot be split further?

This is not specifically addressed by SB 9. Two possibilities are a recorded deed restriction and a notation on the approved parcel map. The City of Palo Alto is currently evaluating potential requirements.