SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair
2023 - 2024 Regular

Bill No:	SB 450	**Hearing Date:**	4/26/23
Author:	Atkins	**Tax Levy:**	No
Version:	3/16/23	**Fiscal:**	Yes
Consultant:	Peterson		

HOUSING DEVELOPMENT: APPROVALS

Makes various changes to provisions from Senate Bill 9 (Atkins, 2021) regarding housing development and subdivision map reviews.

Background

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory "elements," including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

Zoning and approval processes. Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Typically, most large housing projects require "discretionary" approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission, public notice, and may require additional approvals. City or county planning staff can permit some housing projects "ministerially" or "by right": without discretionary approval from elected officials.

Accessory dwelling units. In recent years, the Legislature has taken large strides to facilitate the development of accessory dwelling units (ADUs), also known as granny flats or second units. Chief among these steps was to require local agencies to ministerially permit the creation of certain types of ADUs within the space of a single family home or in a new or converted structure in the rear of the property, regardless of what local zoning provides. Under this provision of law, a property owner may construct both a junior ADU (JADU) within the single-family home and a new construction ADU on the same property. ADU law places numerous limitations on the ability of local governments to impose requirements on ADUs, such as requirements for minimum ADU sizes, impact fees, and owner-occupancy. ADU law also limits the parking that local agencies may require for ADUs to one space per unit, and provides that no parking can be required if the ADU is located within one-half mile walking distance of public transit, the ADU is located within an architecturally and historically significant historic district, or there is a car share vehicle located within one block of the ADU.

Subdivision Map Act. The Subdivision Map Act (or Map Act) governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.

Under the Subdivision Map Act, cities and counties can attach scores of conditions. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdividers comply with those conditions, local officials must issue final maps. For smaller subdivisions that create four or fewer parcels, local officials usually use parcel maps, but they can require tentative parcel maps followed by final parcel maps. The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

In good economic times, an experienced subdivider can comply with a tentative map's conditions in a few years. Scarce financing, complex settings, and inexperience can drag out the time between a tentative map's approval and the filing of a final map. If a tentative map expires, the subdivider must start over, complying with any new required conditions.

Senate Bill 9 (Atkins, 2021). SB 9 requires cities and counties to permit ministerially either or both of the following, as long as they meet specified conditions:

- A housing development of no more than two units (a duplex).
- The subdivision of a parcel into two approximately equal parcels (urban lot split).

To be eligible, a development or parcel to be subdivided must be located within an urbanized area or urban cluster, as defined by the United States Census and cannot be located on any of the following:

- Prime farmland or farmland of statewide importance;
- Wetlands;

- Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
- A hazardous waste site;
- An earthquake fault zone;
- Land within the 100-year floodplain or a floodway;
- Land identified for conservation under a natural community conservation plan, or lands under conservation easement;
- Habitat for protected species; or
- A historic district or property included on the State Historic Resources Inventory, or 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.

SB 9 requires a city or county to permit a housing development containing no more than two units ministerially in single family zones if the development meets certain conditions, including the requirements on eligible parcels above. A development can include adding one unit to an existing unit, or constructing two new units. However, the project cannot include demolition of more than 25 percent of the exterior walls of an existing structure, unless a local ordinance is more permissive or the site has not been occupied by a tenant in the past three years. A local agency may require a percolation test for units connected to an onsite wastewater treatment system.

SB 9 requires a city or county to ministerially approve or deny a parcel map or a tentative and final map for an urban lot split that meets specified requirements, in addition to the requirements for eligible parcels that apply to both duplexes and urban lot splits. Specifically, the urban lot split must meet the following requirements:

- The parcel map subdivides an existing parcel to create two new parcels of approximately equal size, such that one parcel cannot be smaller than 40 percent of the size of the original lot;
- Both newly created parcels are no smaller than 1,200 square feet, unless the local agency adopts a smaller minimum lot size;
- The parcel being subdivided is located within a residential zone;
- The proposed lot split would not require demolition or alteration of rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or housing that has been occupied by tenants in the past three years; and
- The parcel being subdivided was not previously created through an urban lot split, and none of the adjoining parcels were created by an urban lot split and owned by the same owner or anyone working in concert with the owner.

SB 9 allows a local agency to approve the lot split only if it conforms to all applicable objective requirements of the Map Act, unless otherwise specified. It also prohibits a local agency from imposing regulations that require dedications of rights-of-way or the construction of offsite improvements for parcels created through an urban lot split. However, a local agency may require easements needed for the provision of public services and facilities and require that the parcel have access to, provide access to, or adjoin the public right-of-way, as well as any other conditions allowed under the Map Act that do not conflict with the bill. Local agencies must require that the uses allowed on a lot created by an urban lot split are limited to residential uses.

SB 9 allows, until January 1, 2027, a local agency to impose conditions that an applicant be either:

- An owner-occupant for one year from the date of approval of the urban lot split; or
- A qualified nonprofit corporation that receives a welfare exemption from the property tax pursuant to specified sections of law.

Except for the above, the measure prohibits a local agency from imposing other owner occupancy standards, and cannot require the correction of nonconforming zoning conditions.

SB 9 prohibits developing more than two units on each of the resulting parcels from a lot split, including ADUs and JADUs, and prohibits projects that would demolish or alter an existing housing unit of specified types of housing. It also prohibits the development of ADUs on parcels that use both the urban lot split and duplex provisions of the bill.

SB 9 allows a local agency to impose objective zoning, subdivision, and design standards that do not conflict with the provisions of the bill. However, a city or county cannot require a project or lot split to comply with any standard that would physically preclude two units of at least 800 square feet from being built. It also prohibits a local agency from requiring a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. Otherwise, local agencies may not require greater than a four-foot setback. SB 9 also applies the limitations on parking requirements from ADU law to both duplexes and urban lot splits under the bill.

Under the measure, a local agency can adopt an ordinance to implement the duplex and urban lot split requirements and provides that such an ordinance is not a project under the California Environmental Quality Act. It also provides that nothing in the bill supersedes the Coastal Act of 1976, except that a local government is not required to hold public hearings for coastal development permit applications. Local agencies also cannot deny a project or lot split because it proposed adjacent or connected structures, so long as they comply with the building code. A local agency must also require that a rental of any unit permitted by the bill is for a term of longer than 30 days.

SB 9 requires local agencies to report the number of units produced and applications for urban lot splits in their annual report to the Department of Housing and Community Development (HCD) on the implementation of their general plan.

Recent reports on SB 9's effectiveness. After one year of SB 9 implementation, the Terner Center for Housing Innovation at UC Berkeley evaluated its effectiveness. The report found that SB 9's impact has been limited, and some larger cities have only seen a few, if any, applications for lot splits or new units. According to the report:

> 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.

The author wants to make various changes to SB 9 to encourage more projects to take advantage of the streamlining the measure offers.

Proposed Law

Senate Bill 450 makes various changes to SB 9's provisions regarding housing development reviews, subdivision map reviews, and other changes.

Changes to housing development review. The measure removes the requirement that a housing development proposed for SB 9 streamlining not allow the demolition of more than 25 percent of existing exterior structural walls, unless a local ordinance allows it, or a tenant has not occupied the site in the last three years.

The measure prohibits a local agency from imposing objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.

The measure removes the ability for a local agency to deny a proposed project if the building official makes a written finding that the proposed development would have a specific, adverse impact upon the physical environment.

The measure provides that applications for proposed housing developments must be considered and approved or denied within 60 days from the date the local agency receives a completed application, or is deemed approved. If a permitting agency denies an application, it must return written comments to the applicant, including a list of the defective or deficient items and a description of how the applicant can remedy the application.

Changes to subdivision map review. The measure requires that the local agency consider and approve or deny an urban lot split within 60 days from the date it receives a completed application, or is deemed approved. If the permitting agency denies an application, it must return written comments to the applicant, including a list of the defective or deficient items and a description of how the applicant can remedy the application.

The measure limits the objective zoning, subdivision, and objective design review standards that a local agency may impose on a parcel created by an urban lot split to those related to the design or improvements of a parcel. These standards cannot impose regulations that require dedication of rights-of-way or the construction of offsite improvements as a condition of issuing a parcel map for the urban lot split. They can include easements for public services and facilities, a requirement that parcels provide access to the public right-of-way, and require off-street parking up to one space per unit so long as the parcel is not within one-half mile walking distance of certain transit stops or corridors, or there is a car share vehicle within one block of the parcel.

The measure removes the ability for a local agency to deny a proposed urban lot split if the building official makes a written finding that the proposed development would have a specific, adverse impact upon the physical environment.

Other changes. SB 450 also expands the requirement that HCD must notify the local agency, and may also notify the Attorney General, about violations of state law that it finds in the housing element process to include actions in violation of SB 9.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "To address decades of under-producing housing, the state Department of Housing and Community Development estimates that California must plan for more than 2.5 million new homes over the next eight years. Over the past seven years, the Legislature has taken a number of actions to encourage housing development. Those efforts include SB 9, which was an integral part of the Senate's 2021 housing package to address California's ongoing housing crisis. Following decades of historical patterns of housing segregation and exclusion embedded in land use and finance policies, SB 9 encourages the creation of new housing – making positive changes in our communities that strengthen the fabric of our neighborhoods with equity and inclusivity. This bill maintains the goals of SB 9 by addressing explicit attempts by some local governments to either ignore the law in its entirety or impose local standards that seek to discourage the creation of new units and lot splits. SB 450 makes a number of changes to SB 9 to improve access and certainty for homeowners and enhance oversight to ensure that the law can be used."

2. The right time? SB 9 went into effect on January 1, 2022. After modest results in its first year, SB 450 makes numerous changes to its provisions. However, it is unclear whether the limited number of applications for SB 9 projects in its first year of implementation was the result of any specific limitations that SB 450 attempts to correct, or if residents and local agencies are still adjusting to its provisions. Since SB 9 has only been in effect for a little over a year, the Committee may wish to consider whether more time is necessary to evaluate SB 9's effectiveness before making further changes.

3. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution does not define "municipal affairs," the courts determine whether a topic is a municipal affair or an issue of statewide concern. SB 450 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that ensuring access to affordable housing is a matter of statewide concern.

4. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 450 adds to the duties of local planning officials, Legislative Counsel says that the bill imposes a new state mandate. SB 9 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

5. Incoming! The Committee on Housing approved SB 450 by a vote of 9 to 1 on April 18th. The Committee on Governance and Finance is hearing the measure as the committee of second reference.

Support and Opposition (4/21/23)

Support: AARP
American Planning Association, California Chapter
Buildcasa

California Apartment Association
California Association of Realtors
California Yimby
Civicwell
Cupertino for All
East Bay for Everyone
East Bay Yimby
Eastside Housing for All
Grow the Richmond
Habitat for Humanity California
Housing Trust Silicon Valley
How to Adu
Mountain View Yimby
Napa-solano for Everyone
North Bay Leadership Council
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
People for Housing Orange County
Progress Noe Valley
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Spur
Urban Environmentalists
Ventura County Yimby
Westside for Everyone
Yimby Action
Yimby Law

Opposition: None submitted.

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