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## SENATE BILL 9 FAQs for Unincorporated Santa Clara County

### **What is SB 9?**

Senate Bill 9 (SB 9) is a new law enacted by the State of California that increases the allowed density on certain single-family lots. SB 9 adds two new sections to the Government Code (§§ [65852.21](#) and [66411.7](#)) that make it easier to add a second single-family residence or split an existing lot (urban lot-split) in areas which meet the requirements.

### **When does SB 9 go into effect?**

January 1, 2022.

### **Can I use SB 9 to build a second single-family residence on my parcel?**

This depends on where the parcel is located. Only parcels in U.S. Census-designated urbanized areas are eligible. Furthermore, there are several other circumstances that may disqualify a parcel even if it meets the urbanized criteria, including parcels that are in historic districts, historic-designated places, under a conservation easement, habitat for special status species, prime farmland, or wetlands. Parcels in fire, geologic, or flood hazards zones must mitigate for those risks, and sufficient water and sewage must be available. The County may deny an application if there is a specific adverse impact to public health and safety or the physical environment that cannot be mitigated.

### **Can I use SB 9 to split my parcel?**

SB 9 “urban lot-splits” are subject to the same restrictions set forth in the preceding FAQ. (See Government Code § [66411.7](#).) If a parcel has some of these restrictions, please meet with a planner to determine the applicability of SB 9. SB 9 requires that each resulting lot be at least 1,200 square feet. A parcel may only be subdivided using SB 9 one time (i.e., the 2 parcels resulting from the urban lot-split may not be further subdivided pursuant to SB 9).

### **What is the definition of an urbanized area or urban cluster?**

As defined by the U.S. Census Bureau, an urbanized area is an area with 50,000 or more persons, and an urban cluster is an area with at least 2,500 people, but less than 50,000 people. Maps of urbanized areas and urban clusters can be found on the official U.S. Census Bureau [website](#). Maps of parcels within the unincorporated County can be found on the mapping tool on the County of Santa Clara SB 9 [webpage](#).

**The County has some areas that are identified as "urban" or "urban clusters" and could be a qualifying parcel under SB9, but do not have access to water or sewer connections and may have to expand an existing leach field and utilize other water sources. If the applicant cannot demonstrate that they can build what is allowed under SB9 with an onsite wastewater treatment system and water source that meets County ordinances and standards, would the County deny the application?**

Yes. In this scenario, the County would deny the application because it would not meet objective standards. It would be appropriate for the Building Official to find that the project would have a specific, adverse impact on public health and safety or the physical environment if there is no feasible method to satisfactorily mitigate or avoid that impact.

**If a parcel is in an area with substandard existing sewer infrastructure, would that parcel be excluded from SB 9 applicability?**

If a parcel is in such an area, the application would be denied if the Building Official determines that the proposed project would have a specific, adverse impact on public health and safety or the physical environment, if there is no feasible method to satisfactorily mitigate or avoid the impact.

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

It depends on the particular circumstances of the parcel. SB 9 provides that any proposed two-unit development or urban lot-split must comply with 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 County; or (2) the site has adopted fire hazard mitigation measures “pursuant to existing building standards or state fire mitigation measures applicable to the development.” Proposals may also be denied on a case-by-case basis where the County Building Official makes a written finding that the project would have a specific, adverse impact on public health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the impact.

**Can the County prohibit someone from creating a new unit in an existing structure that would be below the Base Flood Elevation?**

SB 9 generally does not allow development in a flood plain or floodway, as delineated on FEMA maps, but there are exceptions (See Government Code [§ 65913.4\(a\)\(6\)\(G\), \(H\)](#).)

**What limits can the County place on an SB 9 project?**

All projects must meet the objective standards set by the State and County, including compliance with California Building Code sections related to habitable spaces. For an SB 9 urban lot-split, the two lots must be roughly of equal size (each must be at least 40% of the original lot). Side and rear setbacks are reduced to four (4) feet. Lots created by an urban lot-split are limited to two total units (e.g., one duplex or one primary residence plus one ADU). Two units of 800 square feet must be allowed regardless of other Zoning Ordinance requirements (including floor area

ratio (FAR) and setbacks). The County also intends to establish objective paint light reflectance value (LRV) standards for projects in Design Review districts, similar to the standards for accessory dwelling units (ADUs). One off-street parking spot for each unit is required unless the unit is near transit or a car share vehicle. The County is developing new objective development standards for SB 9 projects that would be applicable when the ordinance is adopted. Please refer to the County SB 9 [webpage](#) for updates regarding the ordinance adoption.

### **Can I rent out the units created by an SB 9 project?**

Applicants for an urban lot-split under SB 9 must sign and record a deed restriction that they will use one of the units as their primary residence for a minimum of three years. Otherwise, units may be rented, but for terms of at least 30 days (no Short-Term Rentals).

### **Does SB 9 apply to homeowners' associations (HOAs)?**

SB 9 does not address rules or restrictions implemented and adopted by homeowners' associations or included in CC&Rs (covenants, conditions, and restrictions). The County does not enforce private CC&Rs.

### **Is a lot eligible for an SB 9 urban lot-split if it was split before SB 9?**

Yes, if it meets all requirements of SB 9 and County ordinances. SB 9 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 may qualify for further subdivision if it meets all criteria under the Subdivision Map Act and the [County subdivision, zoning and other ordinances](#) (e.g., minimum lot size).

### **What permits do I need?**

For qualified parcels, the process can be as simple as obtaining building permits depending on the specifics of the project. In no case will a public hearing be required for development under SB 9.

### **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. As a consequence, SB 9 projects are subject to the Permit Streamlining Act's requirements for completeness determinations (within 30 days of submittal) and approval deadlines (within 60 days of determining that the project is exempt from CEQA).

### **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." General Plan and specific plan conformance is not required if it would preclude urban lot-

splits mandated by SB 9.

**Do minimum street frontage requirements apply to restrict urban lot-split subdivisions?**

Minimum street frontage requirements continue to apply unless the requirements would physically preclude the urban lot-split or the construction of two units of at least 800 square feet each. The County will be proposing an ordinance that requires a minimum lot frontage of 30 feet for SB 9 lot-splits, and a minimum access corridor of 15 feet for flag lots. The resulting parcels must have access to or adjoin the public right-of-way.

**If the County can't require "dedications" but a property owner wants to put some improvements in the right-of-way, could the County require that those improvements meet the County's standards for right of way improvements?**

If an applicant includes improvements to the public right of way in its SB 9 application, an encroachment permit is required from the County and the improvements must meet objective County standards.

**Is the 4-foot setback provision similar to that for ADUs?**

Yes. The County cannot impose a rear or side setback greater than 4 feet. If an existing structure is closer than 4 feet from the property line, a new dwelling may be constructed in the same location and with the same dimensions as an existing structure.

**Does the requirement for one parking space per unit supersede other local minimum parking requirements? For example, if local parking standards require two covered spaces per residential unit and additional parking spaces tied to additional bedrooms.**

Yes, SB 9 supersedes County parking standards. The County will be proposing an ordinance that requires off-street parking of one space per SB 9 unit unless the parcel is located within one-half mile walking distance of either a high-quality transit corridor or major transit stop, or where there is a car share vehicle located within one block of the parcel.

**Can the applicant seek variances from zoning requirements?**

SB 9 provides that the County may apply objective zoning standards. However, exceptions must be granted to the limited extent that those standards would physically preclude the construction of two units of at least 800 square feet each with 4-foot side and rear setbacks. (No setbacks are required if the unit is constructed in the same location and with the same dimensions as an existing legal structure). In that situation, the applicant would not need to apply for a variance.

**For development proposals that involve adjacent or connected structures, does the County define "sufficient to allow separate conveyance" to require separate HVAC systems and separate water connection for the purpose of meeting Title 24 requirements?**

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.

**Can I partially or completely demolish an existing dwelling for my SB 9 project?**

You may not demolish the dwelling if it is rent-controlled, subject to affordable housing restrictions, or a renter was evicted from the dwelling in the past 15 years. You may not demolish more than 25% of an existing dwelling's exterior walls if the dwelling has been a rental property in the past three years.

**When the provisions of SB 9 are unclear, can we seek clarification from the Department of Housing and Community Development?**

Unlike other recent state laws, such as SB 35 or SB 330, SB 9 does not include any provisions requiring HCD to issue guidelines for the implementation of SB 9. Nonetheless, HCD has indicated that it intends to provide a technical assistance memo on SB 9 implementation. The timeline for when HCD's memo will be available is unclear.