New Housing Laws: Navigating & Implementing SB 8, 9, 10
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Agenda

1. SB 9 – Changes to Single Family Zoning
2. SB 8 – Extension of Housing Crisis Act (SB 330)
3. SB 10 – Streamlining for Upzoning
The Basics

SB 9 requires ministerial approval of:

- 2-lot subdivision and/or
- Development projects for 2 units per lot
- For projects that meet certain criteria
# The Basics

- **Location requirements**
  - Single-family residential zone
  - Not in historic/landmark or “sensitive areas”

- **Anti-displacement requirements**
  - Preserve rent-controlled, Ellis Act, or tenant-occupied housing

- **Subdivision requirements, if applicable**
  - 50/50 or 40/60 split, resulting in at least 1,200 sq. ft. lots
  - No repeated SB 9 splits
  - No “acting in concert” to split adjacent lots

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The City can deny the housing development project or the subdivision meeting the foregoing requirements if:

- building official makes written finding
- based on preponderance of evidence
- that project would have a specific, adverse impact on public health and safety that can’t be mitigated

*This is a very high standard to meet*
Relationship to Other Laws

CEQA
– Under SB 9, projects are approved ministerially and are exempt from CEQA
– Adoption of local ordinance related to SB 9 is not a “project” for CEQA purposes

Coastal Act
– Requirements of the law still apply
– Local agencies do not have to hold public hearings for coastal developments permit applications for SB 9 lot splits

Next Steps for Cities

• Adopt an ordinance to implement state law
  – Ordinance is exempt from CEQA
• Create forms and affidavits
  – deed restriction, owner-occupancy affidavit, application form
• Examine administrative process and fees
  – “design review” fees
Implementing SB 9

FAQs

• Can a city regulate front yard setbacks?
• Can a city prohibit more than 4 units?
• Can a city require on-site sidewalks and curbs?
• Can a city require recordation of covenants?
• Does HCD have enforcement authority over SB 9?
• Does SB 9 apply to charter cities?
**Number of Units Permitted**

- SB 9 covers a project proposing 1 or 2 new units
- **If lot split is proposed**
  - City only required to allow 2 units per lot
  - These units can be a combination of primary residence, SB 9 unit, ADUs and JADUs
- **If lot split is not proposed**
  - ADU/JADU law applies
  - City is not required to allow more than 4 units per lot

**Location**

SB 9 projects are permitted in a “single-family residential zone”

- Does not apply to non-residential zones, mixed use zones and multi-family residential zones
- What about zones with Single Family + Other Uses?
  - Is single-family the predominant use in that district?
Objective Standards

- City may impose **objective** zoning standards, subdivision standards, and design standards
- Limitations:
  - Maximum 4’ setback from side and rear yards, and no setback can be required if unit is built within the footprint of an existing structure
  - Standards cannot physically prevent a unit that is at least **800** square feet

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An objective standard is a standard that is **uniformly verifiable** and involves **no personal or subjective judgement**
Impact of SB 330

• SB 330 prohibits zoning changes that reduce the intensity of land use below what was allowed on January 1, 2018
• Do SB 9 specific zoning standards reduce the intensity of land use?
• SB 9 zoning standards do not decrease a site’s residential development capacity
  – Zoning standards impact size of units, but the number of units is set by state law.

Subdivision Requirements

Cities can require:
  – Easements for provision of public services
  – Easements to ensure both lots have access to public ROW

Cities cannot require:
  – Dedication of ROW
  – Construction of offsite improvements
  – Correction of nonconforming zoning conditions
Subdivision Requirements

**What is an “off-site” improvement?**
- Not defined in statute, but references Map Act authority
- New parcels created must function properly

**Other subdivision requirements**
- Tree protection, stormwater control, MWETO
- Nothing in SB 9 prohibits these requirements

Affordability Restrictions

- Some jurisdictions require SB 9 units to be deed-restricted affordable housing
- Not specific authority in SB 9, however:
  - Sponsor of the bill has stated that SB 9 allows such requirements
  - Inclusionary housing requirements are a valid exercise of city police power
  - Objective standard and in furtherance of SB 9 goals
- Be sure to consider:
  - Government Code § 65850.01 [sometimes HCD may review ordinances with inclusionary rental requirements exceeding 15%].
  - See also: *BIA v. City of San Jose*, 61 Cal.4th (2015) [deferential standard for inclusionary ordinances].
Historic Districts

- Cities may prohibit SB 9 units within historic or landmark districts
  - Pursuant to the State Historic Resources Inventory
  - Pursuant to a local ordinance

“within a historic district or property included on the State Historic Resources Inventory ... or within 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”

Landmark and Historic Districts

- City of Pasadena
  - Prohibits SB 9 units on the same lot on properties within individual landmarks or within the City’s Landmark Districts
- Attorney General alleges this ordinance violates SB 9
  - Distinguishes between “landmark districts” and “historic districts”
  - Expresses concerns that landmark districts can be created without concern to historic value and without all properties in district contributing to the district
- Pasadena’s Response
  - Argues SB 9 includes “landmark districts”
  - City’s landmark districts are historic districts
Sensitive Areas

- SB 9 does not apply if project is located in “sensitive areas”
  - i.e., high fire severity zones, earthquake fault zones, habitats for protected species, etc.
- Town of Woodside
  - Cities must examine attributes of individual parcels to make a habitat determination

Examples of City Discretion

- Development Standards
- Design Requirements
- Subdivision Standards
- Incentives
- Other Standards
## City Discretion – Development Standards

- Cannot preclude units of at least 800 square feet
- Cities may be more permissive than the following standards:
  - Side and rear setbacks of 4 feet
  - Maximum size of 800 square feet
  - Maximum of 1 parking space per SB 9 unit
- No rule prohibits regulating:
  - Front Yard Setbacks
  - Height

## City Discretion - Subdivisions

- Lot depth
  - HCD has indicated lot depth is acceptable
- Easements
  - “Easements required for the provision of public services and facilities”
- Parking
  - 1 space per unit maximum
- “Onsite” improvements are allowed: sidewalks, curbs
- Access
  - “A requirement that parcels have access to, provide access to, or adjoin the public right-of-way”
City Discretion – Design Requirements

• “Objective” design requirements are permissible.
• Examples of objective requirements:
  – Eave projections
  – Roof pitch
  – Façade materials
  – Minimum required articulation
  – Color requirements (e.g., matching primary dwelling)
  – Mathematical regulation of porches, windows, balconies
  – Height

City Discretion - Incentives

• To encourage desired outcomes, cities may allow units to exceed other development standards.
• For example a city could opt to allow leniency of one standard in exchange for another with some of these options (among many others):

<table>
<thead>
<tr>
<th>Allow this ...</th>
<th>... but only if they do this</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extra height</td>
<td>Additional setbacks</td>
</tr>
<tr>
<td>Reduced setbacks</td>
<td>Adding screening to block impact on neighbors</td>
</tr>
<tr>
<td>Extra maximum floor area</td>
<td>Preserve no less than 2 garage parking spaces, plus a driveway on site</td>
</tr>
<tr>
<td>Reduced fees</td>
<td>Affordability covenants</td>
</tr>
</tbody>
</table>
Other Standards

- **Percolation**
  - Optional to require new percolation test in the last 5 years, or recertification within the last 10 years

- **Demolition**
  - Must allow at least 25% of walls to be demolished (if no tenants in last 3 years), but may opt to allow more demolition.

- **Development Impact Fees**
  - May continue to be collected for SB 9 units
  - (But exemption or reduced fee rules for ADUs still apply)
    See GC 65852.2(f)(3).

Secondary Resources

- ABAG’s 2 page SB 9 summary here:
  - [https://abag.ca.gov/sites/default/files/documents/2021-12/Senate_Bill_9_SB_9_Overview.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Senate_Bill_9_SB_9_Overview.pdf)

- HCD’s “SB 9 Fact Sheet” – March 2022

- Coastal Commission’s SB 9 Guidance Letter to Planning Directors (January 21, 2022)
Senate Bill 8

Extension of SB 330

- Housing Crisis Act of 2019 (SB 330) contains various requirements intended to increase the supply of housing
- Some of the law was originally scheduled to sunset in 2025, but SB 8 extends the law to housing projects submitted by 2030
Preliminary Application Extended

- *City cannot disapprove* housing development project or approve it at a lower density if project complies with applicable, objective standards in place upon complete **preliminary application**
  - Must contain information required by city’s checklist, which can only require certain limited information
  - Some changes to the application allowed, but must follow up with complete application within 180 days and commence construction within 2.5 years

- Extended to 2034 for projects that submit preliminary application by January 1, 2030

SB 330 Provisions Extended

- **Permit Streamlining Act requirements** relating to completeness and approval

- **Definition of Objective Standards** under the Housing Accountability Act

- **Five-hearing limit** for certain projects with complete applications
  - Extended to 2034 for projects that submit preliminary application by January 1, 2030

- **Declaration of a statewide housing emergency**
Additional Changes

- **Five-hearing limit** includes appeals, and applies to ministerial projects and projects proposing 1 single dwelling unit.
- **Affordable Housing Projects** can benefit from a preliminary application if they commence construction within 3.5 years, instead of 2 years.
- **Broader definition** of “less intensive use” for purposes of downzoning restrictions.

Housing Development Project

- **Housing Accountability Act** defines a “housing development project” as a use consisting of:
  - Residential units only
  - Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use
  - Transitional housing or supportive housing
- Common understanding that definition does not include a single family home
  - Consistent with past HCD guidance
Housing Development Project

- **SB 8 changes the definition** of a “housing development project” as used in most of SB 330:
  - projects that involve no or some discretionary approvals
  - proposal to construct a single dwelling unit
- Does not “not affect the interpretation of the scope” of definition used in HAA
- Potential Impact?
Summary of the Law

- Authorizes legislative bodies to zone any parcel for up to 10 units of residential density
- Parcels must be located in:
  - Urban Infill Site
  - Transit Rich Area
- Parcels cannot be located in:
  - high or very high fire hazard severity zone
  - property designated as open-space land or for park or recreational purposes through a local initiative

Eligible Parcels

- Urban Infill Site
  - located in a city of which some portion is within an urbanized area or urban cluster;
  - 75% of the perimeter must be developed with urban uses
  - site must have residential or mixed use zoning or general plan designation

- Transit Rich Area is a site located within 1/2 mile of:
  - existing rail or bus rapid transit station
  - ferry terminal served by either bus or rail services
  - a high-quality bus corridor with qualifying service interval
Required Procedures

- Ordinance must:
  - Invoke SB 10
  - Clearly demarcate areas that will be upzoned
  - Include a finding that the increased density is consistent with the City’s statutory obligation to affirmatively further fair housing
  - Must be adopted by January 1, 2029
- Authorizes legislative body to override local initiative measures with 2/3 vote

Environmental Procedures

- Ordinance adopting rezoning pursuant to SB 10 is not a project for purposes of CEQA
- No new exemption for the actual projects constructed on rezoned parcels
  - Existing exemptions likely apply
  - City can consider expanding ministerial approval to increase streamlining
Projects over 10 Units

- If a proposed project exceeds 10 units on parcel rezoned by SB 10, the project is not eligible:
  - for any CEQA exemption; or
  - any ministerial or by-right process that would otherwise apply
- Any necessary environmental review would study change in zoning from before SB 10 upzoning

Questions?