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October 1, 2021

SB 9 Mandates Ministerial Approval of Urban Lot Splits and Two-Unit Developments

Senate Bill 9, which adds sections 65851.21 and 66411.7 to the California Government Code, goes into effect January 1, 2022. This law requires public agencies to grant ministerial, or by-right, approval of urban lot splits and two-unit developments that meet certain criteria. The intent of the legislation is to increase density in single-family neighborhoods, allowing additional units to be built on a lot that is currently zoned for a single-family residence.

Under SB 9, local agencies must ministerially approve certain subdivisions of one lot in a single-family residential zone into two lots without discretionary review or hearing. To qualify for by-right approval, the proposed lot split must meet the following criteria:

- The lot split must result in two lots of approximately equal size (60/40 split at most);
- Each new lot must be at least 1,200 square feet (unless the local agency adopts a lower minimum);
- The lot to be split cannot have been established through a prior SB 9 lot split;
- Neither the lot owner nor anyone acting "in concert with" the owner has previously subdivided an adjacent parcel through a SB 9 lot split;
- The uses on the resulting lots would be residential;
- The applicant has stated, by affidavit, that they intend to live in one of the units for three years, unless the applicant is a qualified non-profit or community land trust.

Other than the previously stated requirement, no other owner occupancy requirement may be imposed on an urban lot split. In approving an SB 9 lot split, local agencies may not require the correction of nonconforming zoning conditions, right-of-way dedications, or the construction of off-site improvements, although they may require access to a public right-of-way and may require easements for public services and facilities.

Similarly, local agencies must also ministerially approve certain qualifying two-unit housing developments in single-family residential zones. Two-unit developments are either those that propose the construction of two new units, or those that propose the addition of one new unit to an existing unit. The project may not demolish more than 25 percent of the exterior walls of an existing unit unless the local agency permits otherwise or the site has not been occupied by a tenant in the last 3 years. Under SB 9, local agencies cannot apply any zoning standards, except for four-foot side and rear setbacks, that would not allow each of the new units to be at least 800 square feet in size. There appears to be no prohibition on local owner occupancy requirements if two units are proposed without an urban lot split.

Other qualifying criteria applicable to both urban lots splits and two-unit developments include:

- The lot split or two-unit development may not result in the demolition or alteration of affordable housing, rent-controlled housing, housing that was withdrawn from the rental market in the last 15 years, or housing occupied by a tenant in the past 3 years.
- The lot or development must be located within an urbanized area or urban cluster, or within a city with boundaries in an urbanized area or urban cluster.

- The parcel cannot be designated a local or state historic landmark and is not within a local or state historic district.
- Dwelling units created via SB 9 may not be used for short-term rentals of less than 30 days.
- Parcels may not contain prime agricultural land, wetlands, or protected species habitat. They may be in a very high fire hazards zone, earthquake fault zone, floodplain, floodway, and site with hazardous materials if they meet certain conditions.

Urban lot splits and two-unit developments may be located within the Coastal Zone but must comply with any Local Coastal Plan and Coastal Act. No review is needed under the California Environmental Quality Act for an urban lot split, two-unit development, or local ordinance implementing SB 9.

As with similar streamlining legislation in recent years, such as the Housing Accountability Act, SB 9 provides that local agencies may only apply objective standards to qualifying urban lot splits and two-unit developments. The legislation also limits parking requirements to one space per unit (or none if the project is near transit or car share locations) and limits side and rear setbacks to four feet or less (or none for existing structures or new structures in the same location and of the same size as an existing structure). Finally, local agencies must permit proposed adjacent or connected structures meeting certain criteria.

While current law generally provides for the creation of accessory dwelling units ("ADUs") by ministerial approval, SB 9 creates two exceptions to this requirement. A local agency is not required to allow more than two units of any kind on a parcel created through an urban lot split, including ADUs, and is not required to permit ADUs on parcels that use both the urban lot split provision and the two-unit provision.

Lastly, SB 9 amends the Subdivision Map Act at section 66452.6 of the Government Code. Currently, an approved or conditionally approved tentative map expires either 24 months after its approval, or after any additional period permitted by local ordinance, not to exceed an additional 12 months. SB 9 allows a local ordinance to permit an extension for 24 months. Where local agencies adopt this change by ordinance, a tentative map would expire up to 48 months after its approval.

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