

## **Senate Bill (SB) 9 (Atkins) Detailed Analysis**

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### **SB 9 (Atkins) Statewide Rezoning of Single-Family Neighborhoods & Urban Parcel Splits**

**Rezones by state statute virtually all parcels within single-family residential zones<sup>1</sup> in California allowing for the creation of (when combined with state Accessory Dwelling Unit (ADU) law) up to six,<sup>2</sup> eight<sup>3</sup> or even 10<sup>4</sup> units; and further authorizes urban parcel splits<sup>5,6</sup>, without any local discretionary hearing or review, including compliance with the California Environmental Quality Act (CEQA)<sup>7</sup>, as follows:**

<sup>1</sup> US Census data indicates there are nearly 6.9 million detached homes in California. State and local historic zones are proposed to be exempted, but most other limitations are of relatively minor impact to the massive and sweeping scope of this bill. This measure is silent on how/if it applies to homes within common interest developments, or homeowner's associations, where development is tightly regulated by codes, covenants, and restrictions (CC&R's) that are agreed to by contract and administered by local association boards under the Davis-Stirling Act. California homeowners can take little comfort in the reliability of any potential exceptions in this bill. The Legislature's objective of eliminating single-family zoning statewide is clear, so this law can be expected to be amended in the future to further its intent. The passage of multiple bills in recent years to expand ADU laws are an example of how the Legislature can be expected to quickly widen this law once it is established.

<sup>2</sup> At a minimum a developer could create six units by doing the following: (1) First add a junior and separate accessory dwelling units as permitted by recently-enacted state ADU law; then (2) use Sec. 65852.21 in SB 9 to split the single-family home into two units; then (3) apply for an urban parcel split under Sec. 66411.7 of SB 9, and build an additional two units on the newly created parcel.

<sup>3</sup> A developer could potentially create even two more accessory dwelling units connected to the subdivision of the original single-family home if the division of the main dwelling is considered a condominium. It could then be argued that each condominium is a separate "lot," so each separate unit is entitled to the development of both junior and separate ADU's. While such an interpretation may seem farfetched, SB 9 only says (Sec. 6582.21 (e)) that ADU's need not be permitted by a local agency when the developer also proposes the parcel to be split. However, the urban parcel split section of SB 9 (Sec. 66411.7) contains no mention of Section 65852.21-, or single-family homes, or ADU's that may be on the parcel prior to a proposed split. Thus, a savvy developer can exploit this by first maximizing and completing development of the parcel prior to requesting a split. Given SB 9's objective is to preempt local zoning, and prohibit related local public hearings and discretionary decisions, the total amount of allowed units on a parcel will likely trigger litigation over how to interpret SB 9's interactions between dividing single-family homes, adding ADU's and splitting parcels.

<sup>4</sup> Yes, potentially 10 units. There is an omission in the draft of SB 9 that raises the question whether a developer could create two junior accessory dwelling units in addition to the two new dwelling units on the split parcel, because Section 67411.7 (h) in SB 9 only refers to a prohibition on accessory dwelling units per Sec. 65852.2, which applies to accessory dwelling units, but does not also reference Sec. 65852.22 which specifically applies to junior accessory dwelling units. This concern is further bolstered by language in SB 10 (Wiener) which implies that each section contains separate authority and reads as follows: *"(2) Paragraph (1) shall not apply to a project to create no more than two accessory dwelling units and no more than two junior accessory dwelling units per parcel pursuant to Sections 65852.2 and 65852.22 of the Government Code."*

<sup>5</sup> SB 9 prohibits local agencies from requiring the dedication of a right of way to a newly created parcel created in a backyard. Easements for public services and facilities, or access to a public right of way may be required. Presumably, for a parcel with no access to the street, the residents would park on the street and cross the front parcel on a path along the property line.

<sup>6</sup> Section 66411.7 in SB 9, which enables urban parcel splits, contain no reference to single family homes, thus enabling a multifamily parcel to be also split.

<sup>7</sup> It is hard to imagine a bigger CEQA exemption than proposed by SB 9. If a city or county proposed such zoning changes locally CEQA analysis would apply. SB 9 is designed to work around environmental analysis by dictating specific zoning criteria in state statute, and requiring locals to approve applications "ministerially" without public review. Thus, the state Legislature is avoiding environmental reviews in a proposal that rezones virtually all of the single-family lots in the state.

- **Single-Family Residential Zones:** Permits the division, partial or full tear down of an existing single-family home to create two separate residential units, eligible to be sold separately<sup>8</sup>. Since SB 9 also operates in conjunction with ADU law, it will allow even more units to be built on the parcel without public review. All local ordinances<sup>9</sup> that would physically preclude construction of the two units cannot be enforced. ADU law has separate authority enabling the construction of additional units. Parking is limited to one space per unit<sup>10</sup>, and must be eliminated entirely if within one-half mile of transit or if there is a car share vehicle within one block.
- **Urban Parcel Splits:** Permits urban lot splits in residential zones to create two equal parcels of a minimum of 1,200 square feet<sup>11</sup>. Prohibits the application of local requirements that would physically preclude the construction of two units to be built on each split lot. (Applies to all residential parcels, not just single-family)<sup>12</sup>
- **Area Limitations:** Parcels must be located in a US Census designated urban area or urban cluster.<sup>13</sup> Parcels within the Coastal Zone are also included<sup>14</sup>. Parcels cannot be located

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<sup>8</sup> It is not legally necessary to formally divide the parcel to create two units. Condominiums or townhouses could be created that can be sold separately.

<sup>9</sup> Many local ordinances that can be ignored by developers under this law can result in significant environmental and community impacts. Applying such an edict statewide with no understanding of the myriad of conditions that may apply to an individual existing parcel makes no sense. For example, some communities have ordinances seeking to preserve heritage trees, maintain views, or allow space for a community bike path. SB 9 preempts the application of such any such ordinances that physically preclude the development of units.

<sup>10</sup> Vehicle ownership in the US average two cars per household. Under SB 9, a developer is able to tear down and convert an existing garage as part of dividing a single-family home into two units. If the developer decides to also build ADU's then this could result in eight or more cars parking on the street. Not requiring adequate parking for new units or eliminating parking entirely will impose a significant burden on adjacent homeowners when residents of the new units' park in front of neighboring properties. Allowing for such major impacts on adjacent property owners statewide in violation of local zoning without opportunity for a public discussion and due process will exacerbate political tensions.

<sup>11</sup> Major social equity issues are raised with this provision. 1,200 square foot parcels are shockingly small and will be further limited by four-foot setbacks for ingress and fire access. This will result in rental units crammed together with no green space and certainly no parking. This small square footage will have the most impact in poor neighborhoods that are already densely developed. Executive homes on larger parcels, however, will be less impacted. For instance, a half-acre parcel that is split in half, will still enable separation between units, and areas for greenspace and parking.

<sup>12</sup> SB 9 prohibits a lot that has been split pursuant to its provisions from being split again. It also prohibits an owner of a parcel, or, and any person acting in concert with the owner, to split adjacent lots. These provisions are of absolutely no comfort to those concerned about retaining neighborhood integrity. Unlike a local city or county, the Legislature is removed from any direct implications from what this bill actually means to a neighborhood or a homeowner. If SB 9 is allowing parcels as small as 1,200 square feet, why wouldn't legislators entertain changes next year to this provision on behalf of developers who have their eyes on larger lots? Also, for those who think that 1,200 square feet is a minimum, consider that SB 9 requires locals to allow two units on that lot. Also, the limitation on a developer splitting adjacent lots enables multiple work arounds for savvy investors and attorneys who can maintain separate ownership of adjacent parcels, and nothing stops an investor from freely targeting every other parcel for this activity. And other investors can focus on the rest.

<sup>13</sup> This exception will increase demand for living on rural parcels outside of these urban census tracts and contribute to further sprawl. Those that have more resources will likely pay a premium to live on parcels not subject to the uncertainties of SB 9. Realtors will likely have to disclose whether a property is within an SB 9 zone.

<sup>14</sup> It is surprising that the Coastal Act is included in this bill. How this measure interacts with the application of the Coastal Act, approved by the voters, deserves additional examination.

within a fire hazard zone<sup>15</sup>, hazardous waste site, on land designated for conservation, or within a historic district, as those various terms are defined. If parcel is located in an earthquake fault zone, floodplain or regulatory floodway, the development shall be constructed in compliance with applicable state and local requirements.

- **Parcel Occupancy Limitations:** The affected development cannot affect units occupied by a tenant within the prior three years,<sup>16</sup> units subject to local rent control, units that have been withdrawn (Ellis Act) from rental housing within the prior 15 years, or units restricted by covenant for low- and moderate-income households.
- **Single-Family Home Demolishing:** A single family home may be demolished entirely if a tenant has not lived in the home during the prior three years, otherwise only 25 percent may be demolished, unless a greater percentage is allowed by local ordinance.
- **Setbacks:** Provides that local building setbacks cannot be greater than what is applied to an existing structure and requires those same setbacks to be applied to a structure constructed in the same location and the same dimension as the existing structure.<sup>17</sup> Related conditions include:
  - i. Stipulates that a proposal shall not be rejected solely because it proposes adjacent or connected structures that meeting building code safety standards and are sufficient to allow a separate conveyance.<sup>18</sup>
  - ii. Permits local governments to require four-foot setbacks from the rear and side lot lines in other circumstances.<sup>19</sup>
  - iii. Requires units that are proposed to be connected to an on-site waste treatment system to have a percolation test completed within the prior five years, or if percolation has been recertified, within 10 years.
- **Parking:** Authorizes a local agency to require parking of one space per unit, but prohibits a parking requirement if:

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<sup>15</sup> There are various exceptions to this prohibition where state building standards and state fire hazard mitigation measures have been applied. The cross-referenced definition reads as follows: *“Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.”*

<sup>16</sup> This limitation is of minor relevance. The economic potential offered by SB 9, far exceeds the impacts of purchasing a desired property and living in for several years, while plans to develop it are prepared. Still given the delay, developers will likely avoid a rental occupied home in a neighborhood and focus on owner-occupied homes, which will accelerate the conversion of a neighborhood to rental properties.

<sup>17</sup> This allows for the full teardown, including the garage.

<sup>18</sup> “Conveyance” in real estate terminology means “sale.”

<sup>19</sup> This allows the entire back half of the property to be used without any open space, other than walking paths. This also will create privacy issues when windows look onto adjoining properties, or other disputes when building remove heritage trees and block views.

- i. The project is within one-half mile of a high-quality transit corridor or a major transit stop, as defined<sup>20</sup>.
  - ii. There is a car-share vehicle<sup>21</sup> located within one block of the parcel.
- **Zoning:** Authorizes the proposed development to comply with local “objective” zoning, subdivision, and design standards, but states that such standards cannot have the effect of precluding<sup>22</sup> the development of two units. Defines these terms to mean standards that are uniformly verifiable by reference to an external and uniform benchmark or criterion and involve no personal and subjective judgement by a public official. Stipulates that local agencies shall require that any units constructed under this provision that are to be rented shall be for a term longer than 30 days. (Avoids vacation rentals)<sup>23</sup>
  - Prohibits a local agency from being required to permit an accessory dwelling unit on parcels where an applicant constructs units in compliance with this section and also subdivides the lot into two separate parcels.<sup>24</sup>
  - Authorizes a local agency to adopt an ordinance to implement these provisions but stipulates that the adoption of the ordinance shall not be considered a project under the California Environmental Quality Act (CEQA).<sup>25</sup>

#### D. Consultant Comments:

- 1) ***Voters Deserve a Voice on Proposed Elimination of Single-Family Zoning:*** It is difficult to conceive of a more aggressive law the Legislature could attempt to pass affecting the nearly seven million California homeowners who have scrimped and saved to acquire and maintain their piece of the California Dream, a single-family home. The Legislature should not leap blindly to the enactment of a sweeping statewide law, without the proper reflection, due diligence, and true public transparency on what such a proposal really means for millions of Californians and the state’s future economy. Enacting such a law without consultation with the voters would be massively reckless. The origins of this bill supposedly are based on recent experiments in Minneapolis and Oregon and fueled by the unfair characterization

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<sup>20</sup> Corridor with bus service at 15-minute intervals during peak commute hours, and includes existing rail or bus transit stations, ferry terminals served by bus or rail transit, or major transit stops included in regional transportation plan. These distances bear no real correlation with reality. Most residents living in units subject to SB 9 will have cars. Most Californian’s need cars to get to work, take children to school, shop, visit doctor’s offices etc. In most areas of California, outside of urban core areas, transit is insufficient for the variety of most needs. Many also consider transit to be unsafe, and (more recently with COVID) unhealthy.

<sup>21</sup> This reference in the bill only mentions a “car share vehicle” within one block but does not mention a car share parking space. A clever developer could park a car share vehicle permanently on the property, or on the street in front of it, and argue that no other parking is required.

<sup>22</sup> There is no way of fully knowing what this exemption from applicable local ordinances really means. Such an exemption means that the laws of a community will apply unequally. For instance, a family that wants to add more room to an existing house cannot do so because of a view ordinance, but a developer who buys the property next door is free to use SB 9 to split the lot and put multiple units on the property blocking the views of others in violation of the ordinance. How is this equitable?

<sup>23</sup> Likely difficult to enforce with numerous tenants inhabiting properties.

<sup>24</sup> Footnotes 2, 3 and 4 describe ways this can be worked around.

<sup>25</sup> Locals are provided little real authority in this measure. No doubt, they will be heavily blamed by residents for the widespread impacts of SB 9 and the absence of any due process for those affected.

that single-family homes and (and, therefore, their owners) are racists, deserves much more public sunshine than is permitted in the COVID-impacted Legislature where public transparency and access has become even more limited. If such a radical proposal has merit, then all affected Californian's deserve an opportunity to fully understand it and weigh in via an advisory ballot measure put to the voters in November 2022.

- 2) ***Governor's Position on SB 9 Will Determine Outcome:*** Governor Newsom holds all the power on this measure. Last year, SB 1120, a virtually identical bill, made it all the way through the Legislature. It passed both the Senate and the Assembly, and only stalled from being taken up on the last night of session because of a midnight floor deadline. SB 9 is authored by the Senate Pro Tem Atkins; it already made it through the Legislature once, as SB 1120, and is anticipated to do so again. That means the fate of this measure come down to a decision by Governor Newsom. While the Governor clearly supports additional housing production, he has opted to do so in a measured way, by increasing accountability for cities and counties to adopt state approved housing element plans and allocating billions in state funding to address homelessness and support affordable housing development. In his most recent budget proposal, he also proposed a special unit at the Department of Housing and Community Development to monitor local housing activities. Moreover, the Governor's own life choices support the referral of the SB 9 proposal for an advisory vote by California voters. When Governor Newsom was inaugurated, he opted to purchase a single-family home on several acres in the suburbs, reported to be the most expensive home ever sold within the region, rather than living in the Governor's mansion in downtown Sacramento. California voters deserve a similar opportunity to decide at the ballot box whether they want to continue to have the opportunity to achieve and maintain benefits of single-family home and associated quality of life for their own families.
- 3) ***Lack of Due Process and Transparency:*** Much is made in the Legislature of the value of public engagement and transparency when local governments make decisions. Local officials must comply with rigorous transparency requirements under the Brown Act. The benefits of CEQA are also strongly defended, to ensure that both the public and decision makers are fully informed and have the opportunity to mitigate environmental impacts. Yet, SB 9 tosses both public transparency and environmental principles aside. Without any due process for those affected, including an opportunity for local hearings or input, or even compliance with CEQA, the Legislature will allow most single-family neighborhoods to become the target of "buy, flip and split" speculators who are free to demolish homes and replace them with units jammed up against four-foot setbacks, with little to no parking, while avoiding compliance with local laws and ordinances that apply to others. It is inequitable to upend single family zoning and destabilize existing neighborhoods without adequate due process to those locally affected.
- 4) ***Inequitable Impacts:*** It is likely that the disruption caused by SB 9 will have inequitable impacts depending on wealth. Flipping homes to duplexes and splitting parcels down to 1,200 square feet are likely to affect middle class and lower income neighborhoods and homeowners more than wealthier individuals. The wealthy, as always, will have more options, including moving to larger estates.

- 5) ***SB 9 Only the Beginning:*** The premise behind SB 9 is that single family zoning must be eliminated. If so, then SB 9 is only the beginning. While SB 9 does not mention new subdivisions, it would be surprising if eliminating new single-family developments is not the next step. It is inconsistent to upend existing single-family neighborhoods, while allowing new subdivisions to be created. The state would also need to reconsider its own single-family home purchase programs and the mortgage interest tax deduction. State housing policies that mention single-family homes in a positive way, would also need to be revised or repealed, such as Section 50007 (HSC) : *The Legislature finds and declares that the large equities that the majority of California residents in most economic strata have now accumulated in single-family homes must be protected and conserved.*”
- 6) ***Upends State Housing Element Planning:*** The state already has numerous housing laws in place that ensure that the states’ housing needs are incorporated in to local plans, via local zoning. These plans, in turn, must be state approved by the Department of Housing and Community Development. Over 98 percent of cities and counties have obtained such approvals, and the state recently significantly strengthened enforcement provisions to ensure full accountability. Any city and county that has obtained state approval for their local housing plan should be completely exempted from SB 9.
- 7) ***Destabilizing Economic Impacts:*** The purchase of a home is typically an individual’s largest investment. Establishing a state policy that permits unlimited and radical developments on adjacent parcels with no public process will destabilize single-family neighborhoods. Those concerned about protecting the value of their investment, and/or seeking to obtain/preserve the traditional benefits of single-family neighborhoods (less noise, traffic, etc.) will opt to move to more rural settings—contributing to additional sprawl—or add to economic and social divisions by increasing demand for living in homeowner’s associations where such activities would be prohibited via CC&R’s or is the final straw that accelerates a move out of state. Business location and retention decisions will likely be affected as well, since local quality-of-life for those making the decision is often a major factor.

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