

SB 9: Two Unit Developments & Urban Lot Splits

Senate Bill 9 (SB 9), the California Housing Opportunity and More Efficiency (HOME) Act, was signed into law by Governor Newsom in September 2021, and went into effect on January 1, 2022.¹ Generally, SB 9 allows for the following development activities:

- 1) **Two Unit Development** - the development of two primary dwelling units on an eligible single-family residential parcel
- 2) **Urban Lot Split** – the subdivision of an existing single-family residential parcel into two parcels

SB 9 waives any discretionary review and public hearings. In addition, projects that meet SB 9 requirements are exempt from the California Environmental Quality Act (CEQA).

The Fremont City Council adopted Ordinance 07-2023, establishing local regulations for Two Unit Developments and Urban Lot Splits. The local regulations are codified in Fremont Municipal Code (FMC) [§18.190.007](#).

This informational handout is designed to help explain SB 9 and the City’s requirements. **Please note, the FMC and State law take precedence over this handout in any case of conflicting information.** For any questions or assistance on this handout, please email planinfo@fremont.gov.

¹ SB 9 added Government Code §§ [65852.21](#) (Zoning Regulations) and [66411.7](#) (Subdivisions) and amended Government [§66452.6](#) (Tentative Maps).

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

CONTENTS

Application Process 3

Two-Unit Developments – Criteria 4

Urban Lot Split – Criteria 8

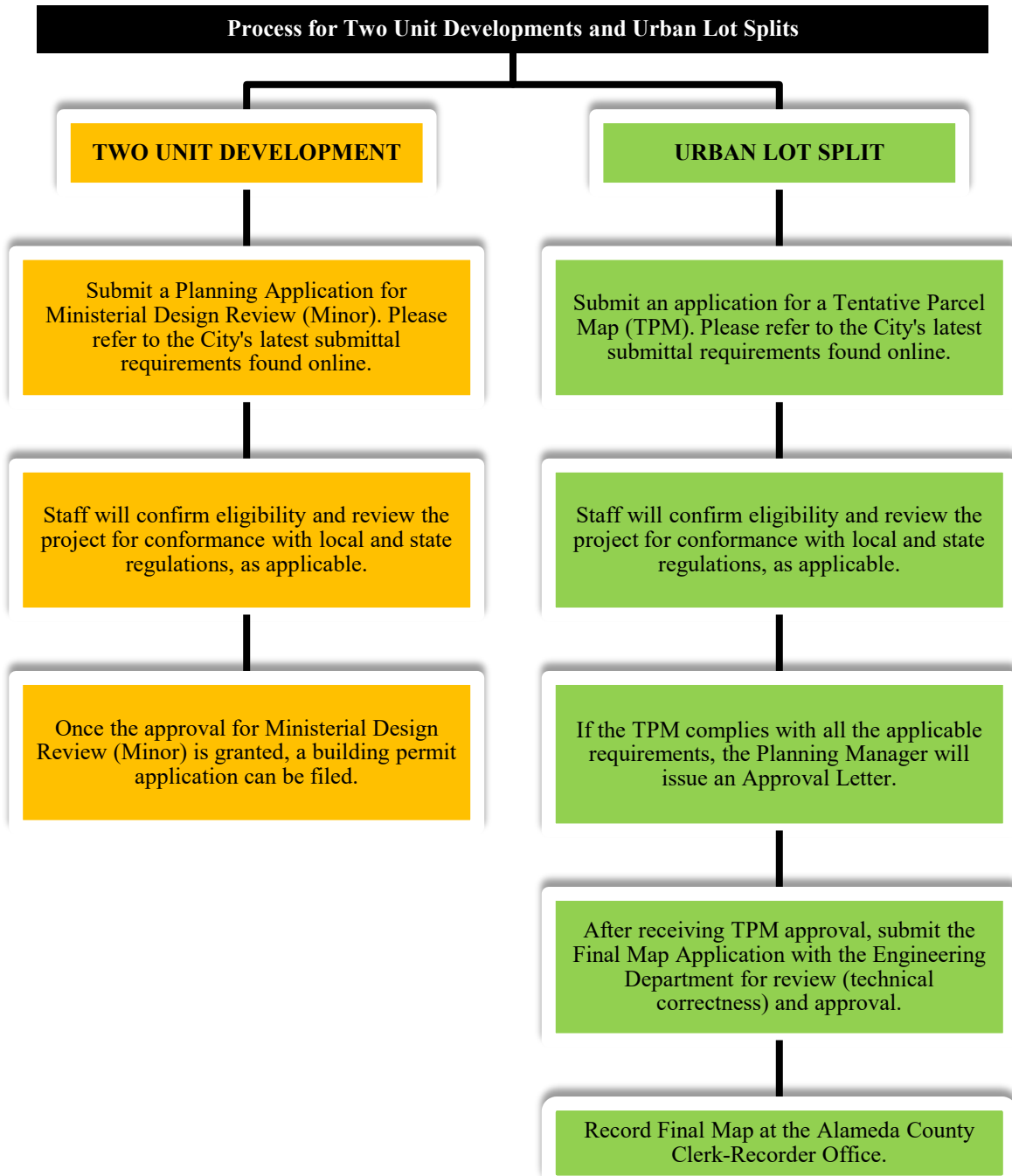
Affidavits 13

Frequently Asked Questions 14

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

APPLICATION PROCESS

The following diagram provides a high-level breakdown of the application and review process for SB 9 projects.



INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

TWO-UNIT DEVELOPMENTS – CRITERIA

The following checklist is intended to serve as a *guide* for determining whether the proposed project meets the criteria for a Two Unit Development.

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| 1) The proposed housing development ² is in a single-family residential zone. | §65852.21(a) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau. | §65852.21(a)(1) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Government Code §65913.4 . | §65852.21(a)(2) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) The proposed housing development would not require demolition or alteration of any of the following types of housing: | §65852.21(a)(3) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

² Per Government Code §65852.21(i)(1), a housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| <ul style="list-style-type: none"> a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income. b. Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power. c. Housing that has been occupied by a tenant in the last three years. | | | | |
| 5) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner’s rights under Chapter 12.75 ³ (commencing with §7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application. | §65852.21(a)(4) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6) The development is not located in either the following: <ul style="list-style-type: none"> a. A contributing structure within a historic district included on the State Historic Resources Inventory, as defined in Public Resources Code §5020.1, or historic | §65852.21(a)(5) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

³ [“Ellis Act.”](#)

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|--|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| <p>property or district pursuant to a city or county ordinance.</p> <p>b. A parcel individually listed as a historical resource included in the State Historic Resources Inventory, as defined in Public Resources Code §5020.1, or within a property individually designated or listed as a city or county landmark under a city or county ordinance.</p> | | | | |
| <p>7) The proposed housing development would conform to all applicable objective zoning, subdivision, and design review standards so long as they do not physically preclude the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.</p> <p>a. No setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.</p> <p>b. A setback of four feet shall be required from the side and rear property lines.</p> | §66411.7(c) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>8) The proposed housing development would provide at least one off-street parking space per unit, unless the parcel on which the housing development is proposed is within:</p> | §65852.21(c)(1) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| <p>a. One-half mile walking distance of either a high-quality transit corridor as defined in Public Resources Code §21155(b) or a major transit stop as defined in Public Resources Code §21064.3; or</p> <p>b. One block of a car share vehicle.⁴</p> | | | | |
| <p>9) For residential units connected to an onsite wastewater treatment system:</p> <p>a. A percolation test has been completed within last five years; or</p> <p>b. A percolation test has been recertified within the last 10 years.</p> | §65852.21(c)(2) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>10) Rental of any unit created pursuant to Government Code §65852.21 (Two Unit Housing Development) shall be for a term longer than 30 days.</p> | §65852.21(e) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>11) If adjacent or connected structures are proposed, the structures shall meet building code standards and are sufficient to allow separate conveyance.</p> | §65852.21(g) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

⁴ “Car share vehicle” means a motor vehicle that is operated as part of a regional fleet by a public or private care sharing company or organization and provides hourly or daily service.

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

URBAN LOT SPLIT – CRITERIA

The following checklist is intended to serve as a *guide* for determining whether the proposed project meets the criteria for an Urban Lot Split.

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|--|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| 12) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. | §66411.7(a)(1) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13) Both newly created parcels would be no smaller than 1,200 square feet. | §66411.7(a)(2) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14) The parcel to be subdivided is in a single-family residential zone. | §66411.7(a)(3)(A) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15) The parcel to be subdivided is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the U.S. Census Bureau, or for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the U.S. Census Bureau. | §66411.7(a)(3)(B) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Government Code §65913.4 . | §66411.7(a)(3)(C) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

INFORMATIONAL HANDOUT
 SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| 17) The proposed Urban Lot Split would not require demolition or alteration of any of the following types of housing: <ul style="list-style-type: none"> a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income. b. Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power. c. A parcel or parcels on which an owner of residential real property has exercised the owner’s rights under Government Code Chapter 12.75⁵ (commencing with §7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application. d. Housing that has been occupied by a tenant in the last three years. | §66411.7(a)(3)(D) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18) The parcel is not located within a historical landmark property included on the State Historic Resources Inventory, as defined in Public Resources Code §5020.1 , or within a site | §66411.7(a)(3)(E) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

⁵ [“Ellis Act.”](#)

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| that is designated or listed as a city or county landmark pursuant to a city or county ordinance. | | | | |
| 19) The proposed urban lot split does not require demolition or alteration of either of the following: a. A contributing structure located within either a historic district that is included on the California Register of Historical Resources or within a historic district listed or designated pursuant to a city or county ordinance. b. An existing exterior structural wall of a structure located within either a historic district that is included on the California Register of Historical Resources or within a historic district listed or designated pursuant to a city or county ordinance. | §66411.7(a)(3)(F) | | | |
| 20) The parcel has not been established through prior exercise of an Urban Lot Split as provided for in Government Code §66411.7. | §66411.7(a)(3)(G) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 21) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split as provided for in Government Code §66411.7. | §66411.7(a)(3)(H) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|--|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| 22) The Urban Lot Split would conform to all applicable objective requirements of the Subdivision Map Act ⁶ , except as otherwise expressly provided Government Code §66411.7. | §66411.7(b)(2) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 23) The Urban Lot Split would conform to all applicable objective zoning, subdivision, and design review standards so long as they do not physically preclude two units on each lot of 800 square feet each and allow a setback of four feet from the rear and side property lines. | §66411.7(c) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 24) The Urban Lot Split parcels would have access to, provide access to, or adjoin the public right-of-way. | §66411.7(e)(2) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 25) The Urban Lot Split parcels would provide at least one off-street parking space per unit, unless the respective parcel is within one-half mile walking distance of either a high-quality transit corridor as defined in Public Resources Code §21155(b) or a major transit stop as defined in Public Resources Code §21064.3 . | §66411.7(e)(3) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 26) The Urban Lot Split parcels would be limited to residential uses. | §66411.7(f) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

⁶ [Government Code §66410 et. seq.](#)

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

| Criteria | Reference to State Law | Does the Proposed Project Meet the Criteria? | | |
|---|------------------------|--|--------------------------|--------------------------|
| | | Not Sure | No | Yes |
| 27) The applicant for the subject Urban Lot Split has signed an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. | §66411.7(g)(1) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 28) Rental of any units on either of the newly created parcels shall be for a term longer than 30 days. | §66411.7(h) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 29) Each lot would comprise no more than two units. ⁷ | §66411.7(j) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 30) If adjacent or connected structures are proposed, the structures would meet building code standards and would be sufficient to allow separate conveyance. | §66411.7(k) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

⁷ “Unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to [Government Code §65852.21](#), a primary dwelling, an accessory dwelling unit as defined in [Government Code §66313\(a\)](#), or a junior accessory dwelling unit as defined in [Government Code §66313\(d\)](#).

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

AFFIDAVITS

Intent to Occupy

State law and the City’s ordinance require that an applicant utilizing the urban lot split provisions submit an affidavit stating that the applicant “intends to occupy” one of the units constructed on one of the resulting lots for at least three years after the approval of the parcel map for the Urban Lot Split.

Prior to approval of a proposed Urban Lot Split application, the Project Planner will provide the applicant with an affidavit regarding owner’s intent to occupy to be signed and notarized.

Prior Tenancy

State law and the City’s ordinance prohibit SB 9 on parcels where a current or prior owner has exercised their rights under Government Code §7060, et. seq., to withdraw accommodations for rent or lease within 15 years prior to the date of the submission of a SB 9 application. State and local regulations also prohibit a SB 9 project from altering or demolishing housing occupied by a tenant in the last three years.

Prior to approval of a Two-Unit Development and/or an Urban Lot Split application, the Project Planner will provide the applicant with an affidavit regarding prior tenancies to be signed and notarized.

FREQUENTLY ASKED QUESTIONS

- 1. When did SB 9 go into effect?**
January 1, 2022.
- 2. Where can I find more information about SB 9?**
Please refer to Government Code §§ 65852.21, 66411.7, and 66452.6.
- 3. Does SB 9 apply in zones that allow single-family development but are zoned for multi-family or mixed-use development?**
No. SB 9 applies only to parcels in single-family residential zones. SB 9 also does not apply to a parcel that is developed with a single-family home, if that parcel is in anything other than a single-family residential zone. A “non-SB 9 subdivision” may be allowed in accordance with standard City regulations.
- 4. Does SB 9 apply to homeowners’ associations (HOAs)?**
SB 9 overrides local zoning only. It does not address rules or restrictions implemented and adopted by HOAs or included in Covenants, Conditions, and Restrictions (CC&Rs).
- 5. Is a lot eligible for an SB 9 Urban Lot Split if it was previously subdivided outside of the SB 9 provisions?**
Yes. SB 9 only prohibits an applicant from using SB 9 to subdivide a lot if it was previously split using SB 9. A “non-SB 9 subdivision” may be allowed in accordance with standard City regulations.
- 6. Is parking required?**
Yes. The City requires one on-site parking space per unit, unless the subject parcel is located within 0.5 mile walking distance of either a stop located in a “[high-quality transit corridor](#)” or a “[major transit stop](#),” or the subject parcel is within one block of a car share vehicle.
- 7. Can units created by the provisions of SB 9 be used for short-term rentals or other nonresidential uses?**
No. Any unit created pursuant to SB 9 cannot be used as a short-term rental and must be rented for a term longer than 30 days. Units cannot be used for purposes other than residential, though certain home businesses may be permitted in accordance with local codes and/or State law, as may be amended.
- 8. Will these projects require a public hearing for approval?**
No. State law requires the City to process SB 9 projects ministerially—without discretionary review or public hearing.
- 9. Are units created under SB 9 subject to development impact fees?**
Yes, the City’s Development Impact Fee Ordinance applies to units created under SB 9. ADUs and JADUs are exempt from development impact fees.

INFORMATIONAL HANDOUT
SB 9: Two Unit Developments & Urban Lot Splits

- 10. Are separate utilities required for units created under SB 9?**
Yes. Applicants are strongly encouraged to contact the Alameda County Water District (ACWD), Pacific Gas & Electric Company (PG&E), and the Union Sanitary District (USD) early in the process to understand the respective agencies requirements.
- 11. How do I apply for a permit and how much would it cost?**
To apply for your permit, you need to be registered with Citizen Access, the City's online permitting portal. For detailed instructions, please visit the City's Planning and Building Permits webpage: <https://city.fremont.gov/permitcenter>.
- 12. What are the submittal requirements for an SB 9 project?**
Please visit <https://city.fremont.gov/permitforms> to see the Planning Project Submittal Requirements.
- 13. Who should I contact if I have more questions?**
For any questions regarding the SB 9 regulations and general zoning questions, please email planinfo@fremont.gov or call (510) 494 - 4455.