



## CITY of CALABASAS

Date: September 2, 2021

To: Calabasas Homeowner Associations

From: Maureen Tamuri AIA, AICP  
Community Development Director

Ref: California State Senate Bill 9  
Residential Lot Splits

I write to share the latest news on Senate Bill 9, which would encourage development of new housing units by permitting duplexes and lot splits of existing single-family home lots in all residential zones, with certain narrow exceptions. Because the bill has received so much attention in the press, the City of Calabasas is reaching out to help you understand the bill, your rights, and options to reduce possible impacts arising from this housing legislation.

Recently SB 9 passed both houses of the Legislature. The Governor still needs to sign SB 9 before it becomes law. If signed into law, SB 9 would require the City to ministerially (automatically) approve lot splits for certain single-family residential lots. After splitting their lot, an owner would be allowed to also add an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) to both of the two new lots. Thus, a property owner could build four units (two single-family residences and two ADUs) on two residential lots on a site which previously had one residential lot, with a residence and an ADU and/or JADU.

While the City cannot prohibit this legislation from applying in the entire City, it is studying its possible impacts. A public workshop exploring how SB 9 might be applied in our community will be held with the **Calabasas Planning Commission on Thursday, October 7<sup>th</sup> at 6pm.** Details on how to attend will be posted as part of the agenda on the City's Calendar; we encourage you to participate in this Zoom meeting. The workshop will cover possible code modifications and exemptions contained within the bill, including one for historic districts applicable if a community applies to be, and is approved by the City Council as, a historic district.

The City also wants to ensure that every mandatory HOA, meaning communities in which each home is governed by covenants, conditions, and restrictions (CC&Rs), are aware of their option to use their powers to prohibit lot splits and duplexes through revisions to HOA covenants,

conditions and restrictions (CC&Rs). It is up to each HOA to evaluate and exercise this option, not the City.

### **SENATE BILL 9 OVERVIEW**

If signed by the Governor, SB 9 would require the City to process lot splits and applications for duplexes in single-family zones ministerially, meaning automatically without public notice and approval would be presumed absent a specific legal reason. SB 9 would permit a single-family lot to be split into two independent lots, with each lot having one single-family residence, and one accessory or junior accessory dwelling unit. State law already requires the City to process ADU applications ministerially, meaning without public notice.

Current state law requires the City of Calabasas to approve lot splits under a ministerial process, provided that the resulting lot is a minimum of 5,000sf. SB 9 would impose a new minimum lot size standard – as allowing for lot splits to result in lots as small as 1,200sf in certain instances.

Further, SB 9 permits side and rear yard setbacks of only 4 feet, a huge departure from the City's current code minimums of 10 feet and 20 feet, respectively.

While daunting, SB 9 does contain some provisions which will provide protection to our communities as follows:

First, the City can require any new home to have a one car garage, and driveway access to a public right of way (street). Because most of the City was constructed under the County code with narrow 5 foot wide side yards, driveway access to backyards is difficult, which largely eliminates all but corner lots from being split — unless the existing home is torn down as part of the project.

Second, SB 9 requires one lot to be no less than 40% of the original lot size. Because many homes in the City have extensive backyard improvements, the 40% minimum lot split standard will be more difficult to meet, again without tear downs and complete redevelopment of the existing lots.

Finally, SB 9 requires that property owners who split their lots sign an affidavit stating that they intend to occupy one of the resulting units as their primary residence for a period of three years after the lot split.

### **SB 9 AND MANDATORY HOAS**

SB 9 does not address mandatory homeowners' associations ("HOAs") and other common interest developments such as condominiums, cooperatives, and planned developments, which are subject to the Davis-Stirling Common Interest Development Act.<sup>1</sup> All gated communities are mandatory HOAs. Mandatory HOAs, legally known as common interest developments, are properties where the owners share a common set of financial obligations and property and easement rights, which are recorded in a set of covenants, conditions, and restrictions (CC&Rs). Mandatory HOAs are associations in which one is required to join when purchasing a home.

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<sup>1</sup> Cal. Civil Code, § 4000 *et seq.*

Mandatory HOAs require the new homeowner to sign a contract agreeing to abide by certain CC&Rs.

SB 9 only limits the power of local agencies, including the City of Calabasas, to impose “objective zoning standards.” Therefore, mandatory HOAs subject to the Davis-Stirling Act can enforce their CC&Rs — including any new or existing prohibitions on lot splits and duplexes.<sup>2</sup> In other words, SB 9 creates an option for mandatory HOAs to prohibit lot splits and duplexes, despite SB 9’s limits on the City’s power.

Should mandatory HOAs and other common interest developments want to prohibit lot splits and duplexes they will need to, individually, and through their own boards of directors and counsel, determine whether their existing CC&Rs prohibit lot splits and duplexes, and if not, then determine whether and how to lawfully adopt a rule or bylaw prohibiting lot splits and duplexes. Once adopted, it would then be up to each HOA, not the City, to enforce that contractual prohibition on lot splits and duplexes.

In contrast, voluntary HOAs do not require a person purchasing a home to join the HOA, but give the new homeowner a choice on whether to join. If a homeowner joins the voluntary HOA, they are not subject to any additional legal restrictions on their use of property. Voluntary HOAs have no legal power over the homeowners, and thus cannot exempt themselves from SB 9.

#### **SB 9: EXEMPTION FOR HISTORIC ZONES AND LANDMARK PROPERTIES**

Historic zones and designated landmark properties are exempted from SB 9’s special development rules. The City currently has no historic districts. Generally, a historic district is a neighborhood with a noteworthy historic, cultural, or architectural context common through the neighborhood and determined to be significant and worthy of preservation through a public hearing process upon recommendation by the Historic Preservation Commission and approval by the City Council.<sup>3</sup> The process requires several public hearings to determine whether the high bar for a historic district to be approved is met. The Historic District exemption will be discussed at the October 7<sup>th</sup> Planning Commission Workshop starting at 6pm.

#### **SB 10: THE LIGHT TOUCH DENSITY ACT**

Finally, we will briefly comment on SB 10, as it often is spoken of in tandem with SB 9. SB 10 would allow, but not require, cities to upzone transit-rich and urban-infill areas for up to 10 residential units per parcel. Cities are barred from using this law to rezone land designated as “Open Space” by voter initiative – including all open spaces lands in Calabasas protected by Measures D and O. Therefore, SB 10 would not affect the City’s land designated open space. Here too, a mandatory HOA can exempt itself from SB 10 via its CC&Rs. However, the City has no interest nor plans to up-zoning any private communities.

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<sup>2</sup> NB: This is different than the rule for accessory dwelling units. Mandatory HOAs are barred by state law from prohibiting accessory dwelling units. (Civil Code section 4751.)

<sup>3</sup> The Calabasas Historic Preservation Ordinance (Calabasas Municipal Code Chapter 17.36) defines the eligibility requirements for landmarks and historic districts in greater detail and is available on the City’s website: <https://www.cityofcalabasas.com/government/commissions/historic-preservation-commission>

Below, please find a link to the final versions of SB 9 and SB 10 for your review.

Please let me know if I can address any questions you may have prior to the October 7<sup>th</sup> Planning Commission Workshop. The City Attorney has prepared an additional memorandum with further information regarding SB 9 and SB 10, available on the City's website [www.cityofcalabasas.com](http://www.cityofcalabasas.com). I can be reached during normal business hours at (818) 224-1701.

Very truly yours,

Maureen Tamuri AIA, AICP  
Community Development Director

Attachment:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB9](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9)

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB10](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB10)