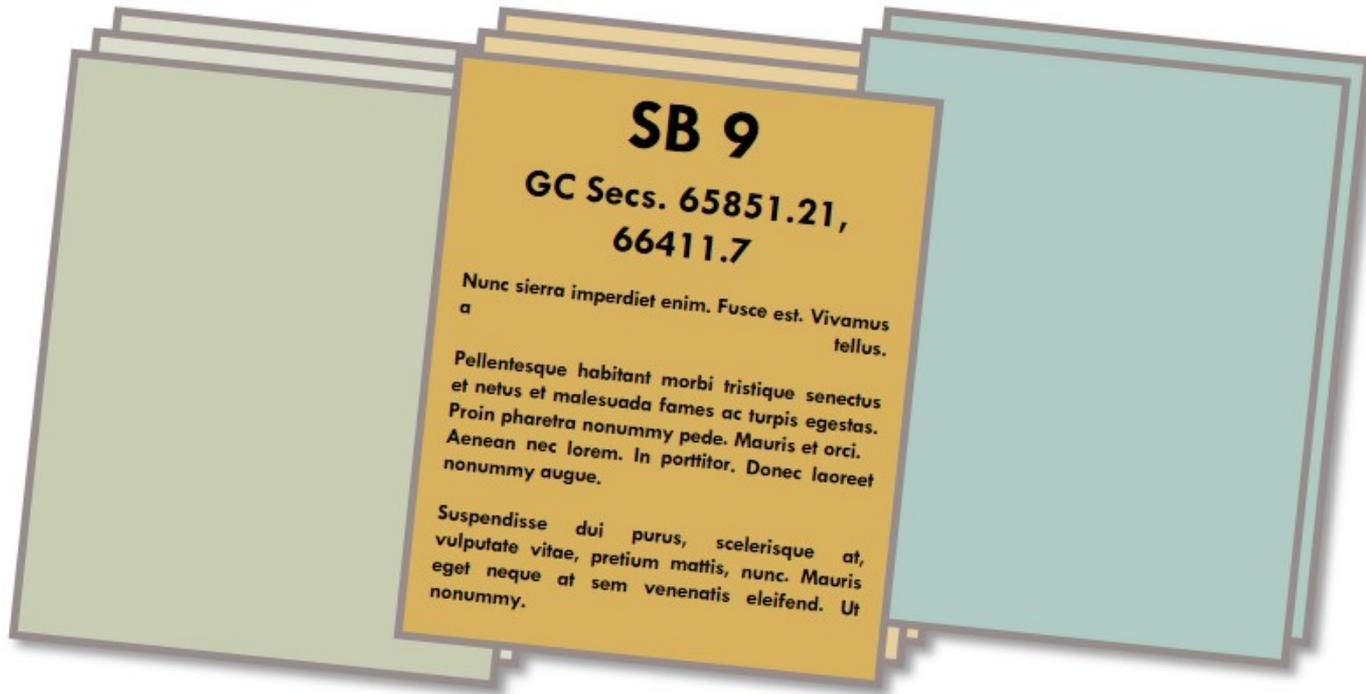


SB 9 and SB 10



December 14, 2021
City of Brentwood City Council

A dark green map of the Brentwood area is visible at the top of the page. The map shows various streets including Valley, Briones Valley, Foothill, Central, Minnesota, Fairview, St. Hwy, Jose Av, Brentwood, Sunset, Knightsen, Sellers, Eden Plains, Hwy, Chestnut, and Briones. The word "Brentwood" is prominently displayed in the center of the map area.

SB 9

OVERVIEW

- **Adds Gov. Code § 65852.21 (Planning Law):** ministerial approval of qualifying “two-unit developments” within single-family residential zones
- **Adds Gov. Code § 66411.7 (Map Act):** ministerial approval of qualifying “urban lot splits” within single-family residential zones
- **Amends Gov. Code § 66452.6 (Map Act):** allows map extensions for up to 24 months rather than 12 if allowed by local ordinance and extends expiration by 4 years rather than 3 for phased maps that have constructed off-site improvements



MINISTERIAL TWO-UNIT DEVELOPMENTS

MINISTERIAL TWO-UNIT DEVELOPMENTS (§ 65852.21)

- Provides for ministerial approval of “proposed housing development containing no more than two residential units” on a lot, if certain requirements are met.
- “A housing development contains 2 residential units if the development proposes no more than 2 new units or if it proposes to add 1 new unit to one existing unit.”

What projects qualify?

- Two-unit development project may receive ministerial approval IF:
 - Site is in a single-family residential zone;
 - Site is not a historic landmark, or located within a historic district (state or local);
 - Parcel is located within urbanized area or urban cluster;
 - Parcel meets requirements of § 65913.4(a)(6)(B)-(K);
 - Project would not alter or demolish deed-restricted affordable housing, rent-controlled housing, Ellis Act housing in last 15 years, or housing occupied by a tenant in the last 3 years;
 - Project would not demolish more than 25% of the existing exterior walls, unless either (a) the City allows otherwise; or (b) the site has not been occupied by a tenant in the last 3 years.

What criteria may be applied?

- Cities may ONLY impose **objective** zoning standards, **objective** subdivision standards, and **objective** design standards. May adopt local ordinance.
 - However, objective standards may not preclude the construction of two units of at least 800 square feet.
 - Definition of “objective” is the same as in the Housing Accountability Act.
 - Rear and side setbacks can be required to be 4 feet (even if 800 sf can’t be achieved), or none if existing structure or rebuilt in same location.
- If otherwise complies, city may deny proposed project if **building official** makes written finding, based on preponderance of the evidence, that project would have specific, adverse impact on public health and safety or physical environment and there is no feasible method to satisfactorily mitigate or avoid the impact.

What criteria may be applied?

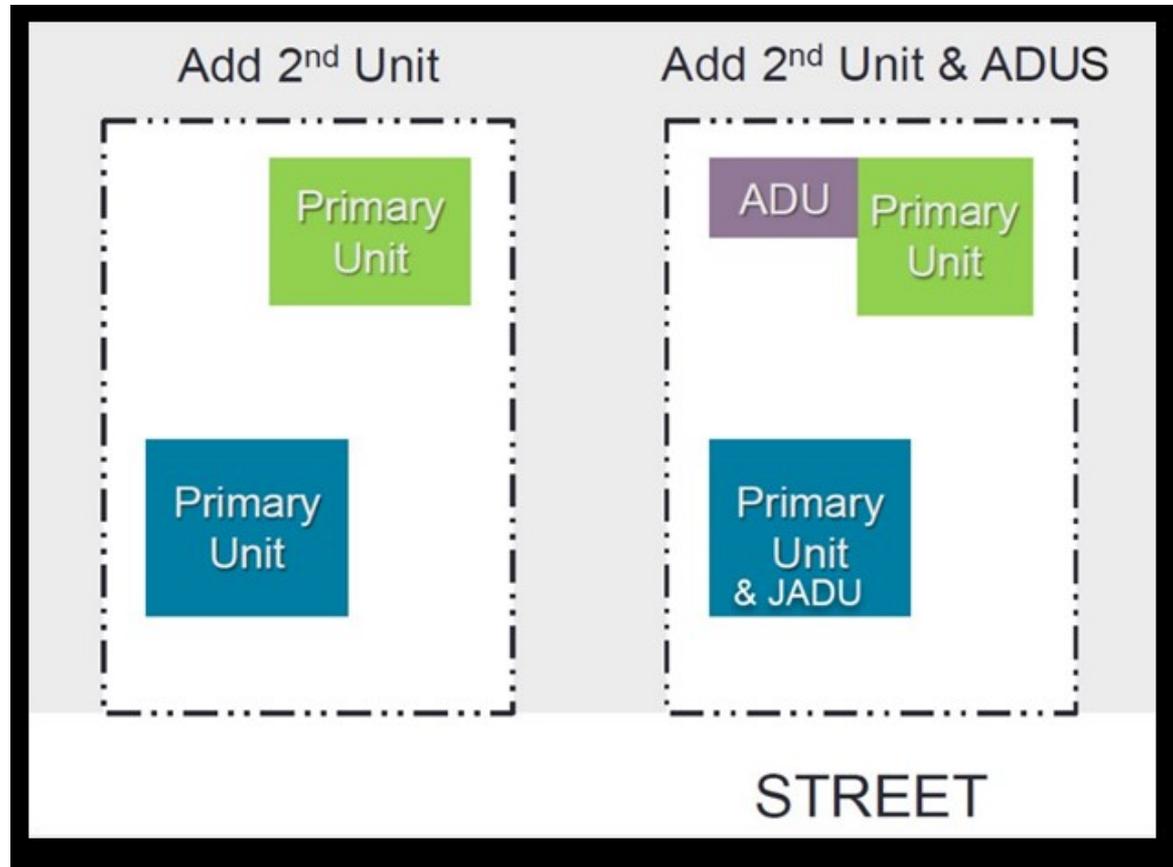
- City may require one parking space per unit.
 - However, cannot impose parking requirements if project is either within a half-mile walking distance of high-quality transit corridor or major transit stop, or within one block of car share vehicle.
 - “High quality transit corridor” means “a corridor with fixed route bus service intervals no longer than 15 minutes during peak commute hours”
 - “Major transit stop” means a site containing (1) an existing rail or bus rapid transit station (2) a ferry terminal served by either a bus or rail transit service, or (3) the intersection of two or more major bus routes with a frequency of service interval of no more than 15 minutes during morning and afternoon peak commute periods

What criteria must be applied?

What cannot be applied?

- City must ensure:
 - The units created are NOT used for short-term rentals of 30 days or less;
 - The number of units constructed via SB 9 are included in the Housing Element annual progress report.
- City must allow (i.e. cannot deny) proposed adjacent or connected structures so long as they comply with building safety codes and are “sufficient to allow separate conveyance.”
 - Apparently units must be designed to allow condo or separate sale if desired.
- Owner-occupancy requirements allowed in this section.

How many units may result?





MINISTERIAL URBAN LOT SPLITS

MINISTERIAL URBAN LOT SPLITS (§ 66411.7)

- Provides for ministerial approval of subdivision of one lot into two lots that meets certain requirements.
 - No discretionary review or hearings permitted.

What projects qualify?

- Application for urban lot split may receive ministerial approval IF:
 - Split results in two equal-sized lots (60-40 split max);
 - Each new lot is at least 1,200 square feet (lower minimum may be set by ordinance; requires 2,400 sf lot or 3,000 sf if 60-40);
 - Lot to be split is zoned single-family residential;
 - Lot split was not established through a prior SB 9 lot split;
 - Neither the owner nor “any person acting in concert with the owner” has previously subdivided an adjacent parcel through an SB 9 lot split;

Project Qualifications, cont'd.

- Required project criteria, continued:
 - Lot to be split is not a historic landmark, or located within a historic district (state or local);
 - Lot to be split is located within urbanized area or urban cluster (Brentwood qualifies);
 - Lot to be split meets requirements of § 65913.4(a)(6)(B)-(K);
 - Split would not alter or demolish deed-restricted affordable housing, rent-controlled housing, Ellis Act housing within the last 15 years, or housing occupied by a tenant in the last 3 years;

What criteria must be applied?

- City must ensure that:
 - Units created are used for residential purposes only;
 - Applicant signs affidavit stating that applicant “intends to occupy” one of the housing units as their principal residence for at least 3 years from date of approval of the lot split, unless land trust or qualified non-profit;
 - No other owner occupancy requirements allowed;
 - Units created are NOT used for short-term rentals of 30 days or less;
 - Urban lot split conforms to all applicable *objective* requirements of the Subdivision Map Act;
 - Applications for urban lot splits reported in annual housing element report.

What criteria may be applied?

- Cities may ONLY impose **objective** zoning standards, **objective** subdivision standards, and **objective** design standards. May adopt local ordinance.
 - However, objective standards may not have the effect of physically precluding the construction of two units of at least 800 square feet.
 - Definition of “objective” is the same as in the Housing Accountability Act.
 - Rear and side setbacks can be required to be 4 feet (even if 800 sf can't be achieved), or limited to none if existing structure or rebuilt in same location.
- If otherwise complies, city may deny proposed project if **building official** makes written finding, based on preponderance of the evidence, that project would have specific, adverse impact on public health and safety or physical environment and there is no feasible method to satisfactorily mitigate or avoid the impact. (Similar to HAA.)

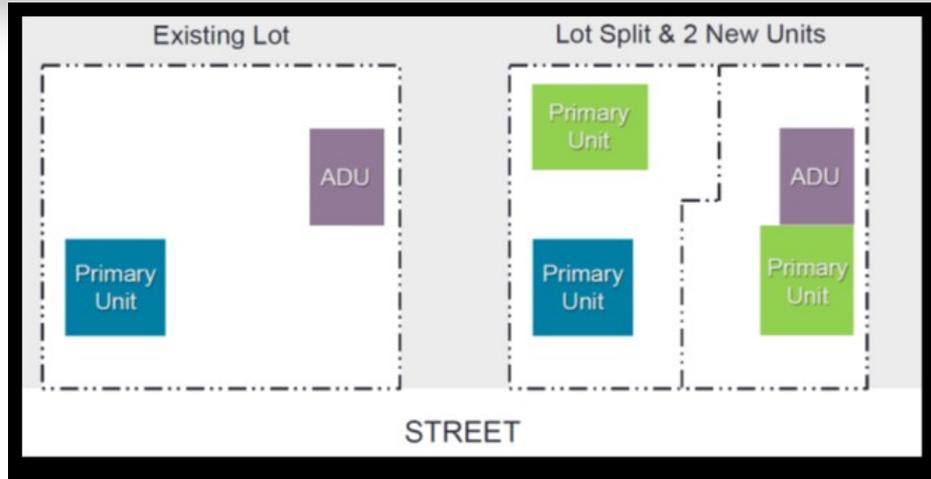
What criteria may be applied?

- City may require one parking space per unit.
 - However, cannot impose parking requirements if project is located either within a half-mile walking distance of high-quality transit corridor or major transit stop, or within one block of car share vehicle.
- City may require easements needed for the provision of public services and facilities;
- Parcels may be required to have access to, provide access to, or adjoin the public right-of-way.

What criteria may be applied?

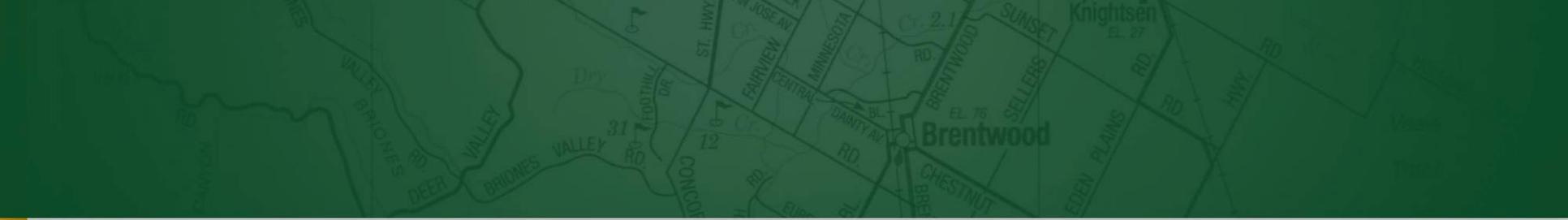
- **City not required to allow more than two units on any parcel created through an urban lot split**
 - Includes ADUs, JADUs, density bonus units, and units created by duplex developments
- **Not required to permit ADUs or JADUs on parcels that use *both* duplex provision and urban lot split provision**

How many units may result?



What cannot be applied?

- City cannot:
 - Impose regulations that require right-of-way dedications or construction of off-site improvements;
 - Impose any other owner occupancy standards;
 - Require the correction of nonconforming zoning conditions as a condition of approval;
 - Deny application solely because it proposes adjacent or connected structures so long as structures meet building code safety standards and are sufficient to allow separate conveyance.



RELATION TO OTHER LAWS

CEQA

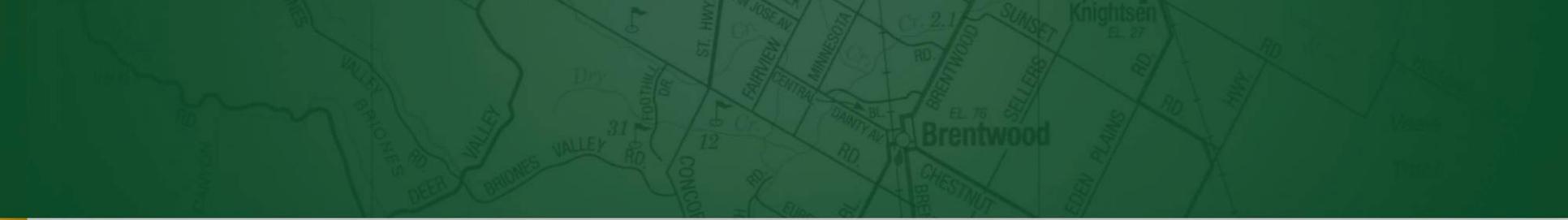
- CEQA does not apply to two-unit development approvals and urban lot split approvals.
- CEQA does not apply to ordinances implementing two-unit developments and lot split provisions.

HOUSING CRISIS ACT (SB 330)

- Local implementing ordinances cannot “reduce the intensity of land use” on housing sites, including reductions in height, lot coverage, or FAR, increased open space, increased setbacks, etc. (§66300(b)(1)(A))
- Subject to Permit Streamlining Act completeness deadlines

PROPOSED URGENCY ORDINANCE AND RESOLUTION

- Urgency ordinance proposed due to timing
 - Will be followed by a regular ordinance
 - Ordinance includes objective subdivision and development standards
 - Ordinance requires compliance with new objective design standards
- Proposed resolution adds objective design standards for SB 9 units to Residential Design Guidelines for ease of updating in the future, if necessary
- Expecting HCD guidance next year, which could result in updates to Ordinance or Objective Design Standards



SB 10

SB 10: UPZONING

- CODIFIED AT GOVERNMENT CODE SECTION 65913.5
 - Gives the OPTION of zoning a residential/mixed-use parcel for up to 10 units on infill sites and in “transit-rich areas”
 - May override local initiative by a 2/3 vote unless an open space initiative
 - Ordinance is exempt from CEQA (but projects are not)
 - Can never downzone site
 - Sites subject to 1.25 FAR
- Brentwood currently has no qualifying transit rich areas
- SB 10 upzoning not recommended for Brentwood