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# TWO-UNIT DEVELOPMENT AND/OR URBAN LOT SPLITS (SB 9)

This FAQ provides a summary of the major provisions of the City's Urgency Ordinance No. 2022-19 related to SB 9. Early consultation with the City is strongly recommended since codes, standards and other requirements may apply to your project that could affect the anticipated scope. Please note that SB 9 is complex, and applicants should also review the adopted Urgency Ordinance and the specific provisions of Government Code Sections 65852.21, 66411.7, and 66452.6 before making an application which is available at:

[www.encinitasca.gov/SB9Implementation](http://www.encinitasca.gov/SB9Implementation)

## WHAT IS SB 9?

California Senate Bill 9 (SB 9) was signed by Governor Gavin Newsom on September 16, 2021 and went into effect on January 1, 2022.

SB 9 requires Cities and Counties in an urbanized area or urban cluster to ministerially approve (no public hearing) a subdivision parcel map for an urban lot split and/or a proposed housing development containing a maximum of two residential units within a single-family residential zone, if the two-unit development or subdivision project meets certain statutory criteria.

The Encinitas City Council adopted the Urgency Ordinance on December 14, 2022, to establish interim objective development and design standards for implementing SB 9 while the City completes the process to amend the General Plan, Specific Plan(s), Municipal Code, and Local Coastal Program.

## WHAT IS A TWO-UNIT RESIDENTIAL DEVELOPMENT?

A two-unit residential development is defined in Government Code Section 65852.21 to consist of two primary residential dwelling units located on a single lot that is zoned for single-family residential development. As defined in the Urgency Ordinance, the residential units may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings on a single lot with one unit in each building.

## WHAT IS AN URBAN LOT SPLIT?

SB 9 added Government Code Section 66411.7 to the State's Subdivision standards. This provision allows the City to ministerially approve (no public hearing) a parcel map that subdivides a single-family residentially zoned parcel into a maximum of two new parcels that are no smaller than 1,200 square feet and have a minimum parcel split of 60/40 from the original parcel size. An urban lot split parcel can only be approved one time and shall be limited to residential uses.

## WHAT LOTS ARE ELIGIBLE FOR SB 9?

Lots or parcels that are zoned for single-family residential development within the City include: RR, RR-1, RR-2, R-3, R-5, R-8, and RS-11.

## HOW MANY UNITS CAN BE BUILT UNDER SB 9?

The City's Urgency Ordinance allows for no more than four-units to be built on an individual lot (existing lot or lots created through an urban lot split) that consists of any combination of two primary dwelling units and two accessory dwelling units (ADU) [EMC 30.48.040]. Each unit shall have independent exterior access. Junior accessory dwelling units (JADU) are not allowed.

### Affordable Housing

When a total of four dwelling units, inclusive of accessory dwelling units, are proposed on a single lot, one of the two accessory dwelling units shall be affordable to a low or very low-income household in perpetuity. The development shall not be permitted to pay in-lieu fees as an alternative to satisfying the affordable housing requirements of Chapter 30.41

## WHAT ARE THE DEVELOPMENT STANDARDS?

The units are subject to the underlying objective development regulations of the zone for which the property is located. This includes, but is not limited to: lot size, height, setbacks, lot coverage, open space, landscape, floor area ratio (FAR), as well as fire, health, safety, and building provisions. See [Urgency Ord. 2022-19](#) for any other exceptions that are not listed below.

### Parking

One off-street parking space (covered or uncovered) is required for each unit. If an existing garage, carport, or other covered parking is converted or demolished to construct a new two-unit development, then at least one replacement parking space is required. The location of the required parking space(s) shall not obstruct the required parking of another dwelling unit.

If the unit is located within ½ mile walking distance of a high-quality transit corridor or major transit stop, or a designated parking space for a car share vehicle within one block of the parcel, then parking is not required.

### Storm Water Management

Two-residential unit development must comply with the City's Storm Water Runoff Requirements pursuant to Title 20 Stormwater Management.

### Access

Each dwelling unit shall have frontage or permanent means to access a public street. A shared driveway is limited to a maximum of two lots.

### Design Review

All developments are subject to the City's adopted objective design standards that are in effect at the time a complete application is submitted. The permit shall be reviewed ministerially by the Development Services Director, or designee.

**The following exceptions to the development standards may apply:**

### **Setbacks ([Urgency Ord. 2022-19](#))**

A minimum setback of four feet, or the applicable setback for the zoning district, whichever is less, is allowed from the rear and side property lines, except:

- 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
- On parcels with a lot width of 40 feet or less that proposes both a Two-Unit Residential Development and an Urban Lot Split, a zero-side yard setback shall be allowed along the proposed lot line only.
- On parcels with a lot depth of 100 feet or less with alley access that proposes both a Two-Unit Residential Development and an Urban Lot Split, parcels are allowed up to zero rear yard setback provided that, if parking is proposed it meets the standards for parking off an alley as outlined in the Off-street Parking Design Manual

### **Height**

A 16-foot maximum height applies if setbacks are reduced; the height shall not exceed the height of the underlying zone to allow the development of two 800-square-foot units.

### **Size**

If a two-unit development cannot achieve a minimum unit size of 800 square feet due to lot coverage, floor area ratio, or open space, then these requirements may be waived until the 800 square feet can be achieved. The previous coverage shall be at least 75 percent of the remaining lot area.

## **ARE THERE ANY DEVELOPMENT PROHIBITIONS WITH SB 9?**

Yes. A two-unit development and an urban lot split are prohibited in any of the following instances (*unless noted otherwise*):

### **Historic Resources**

A structure on a lot that is included on the State Historic Resources Inventory or the National Register.

### **Rental Units**

Demolition, substantial redevelopment, or alteration of the following housing types:

Housing 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; Housing subject to rent or price control; Housing that has been occupied by a tenant in the last three years; and a parcel or parcels of which an owner of a residential property has exercised the owner's rights under the Ellis Act (Government Code Ch. 12.75 commencing with Section 7060, Div. 7, Title 1) to withdraw accommodations from rent or lease within 15 years before the date of the application submittal.

### **Replacement Housing**

If an existing dwelling unit is proposed to be demolished, then the applicant must comply with the replacement housing provisions of Government Code Section 66300(d).

### **Substantial Redevelopment**

Demolition of 25 percent of the existing exterior walls shall not be allowed unless the replacement building conforms to current development standards of the zoning district, or the replacement of a nonconforming structure is reconstructed in the same location and with the same dimensions including building height and floor area as the existing building. This provision does not apply to an urban-lot split project.

### **Location**

The development cannot be located on properties within any of the following areas:

- Farmland (prime/statewide significance/or preserved by local voter approved ballot measure);
- Wetlands (U.S Fish and Wildlife) and Hazardous waste site.
- High or very high fire hazard severity zone (HFHSZ or VHFHSZ) (*Development may occur if the parcels have adopted fire hazard mitigation measures, or state fire mitigation measures applicable to the development of the site, or the development includes the high fire construction standards adopted by the City.*);
- Delineated earthquake fault zone (*Development may occur if it complies with applicable seismic protections under the California Building Code.*);
- Floodplain/floodway (*Development may occur if the proposal meets FEMA specified minimum floodplain management criteria of the National Flood Insurance Program; or the site has been subject to a FEMA issued Letter of Map Revision (LOMR).*).
- Land conservation area or habitat for protected species; and
- Land under a conservation or open space easement.

## **ARE THERE RENTAL RESTRICTIONS?**

Yes. All units, including ADUs, are limited to rental terms of 30 days or greater and are prohibited for use as a short-term rental.

When a total of four dwelling units, inclusive of accessory dwelling units, are proposed on a single lot, one of the two accessory dwelling units shall be affordable to a low or very low-income household in perpetuity.

## **ARE THERE ANY OTHER REQUIREMENTS?**

Yes. Additional standards apply, which include and are not limited to:

- Address locations visible from the public street;
- A recorded covenant to inform future owners of items such as: the number of units, the size of units, attributes, rental restrictions, and if an urban lot split occurred; and
- Signed affidavit for an urban lot split project where the applicant intends to occupy the units for a minimum of three years.

## **IS A COASTAL DEVELOPMENT PERMIT (CDP) REQUIRED?**

A CDP is required pursuant to EMC Chapter 30.80 requirements, which shall involve a ministerial action with no public hearing. A CDP may be appealed directly to the California Coastal Commission if the project is located within an appealable area of the Coastal Zone.

## **CAN AN SB 9 APPLICATION BE DENIED?**

Yes. An application can be denied if:

- The two-unit residential development/urban lot split is not in compliance with the provisions of Urgency Ordinance No.2022-19
- The Building Official finds a specific adverse impact upon public health and safety standards or the physical environment; and
- The development does not comply with applicable objective requirements.

## **WHERE CAN I LEARN MORE?**

Information on submittal requirements can be found on the City's [Applications & Information](#) webpage, or by contacting Planning Services at 760-633-2710 or [planning@encinitasca.gov](mailto:planning@encinitasca.gov).