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Lawmakers Get Creative: Recent Housing Legislation Acknowledges the Challenges of Zoning and CEQA and Attempt to Move the Housing Needle

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by and Katherine McComic

Two key bills focused on giving California homeowners greater power to become small-scale developers of middle-income housing could significantly impact real estate development across the state and particularly in San Diego. The two bills, SB 10 (Senator Wiener) and SB 9 (Senator Atkins), were signed into law by Governor Gavin Newsom on September 16, 2021.

While SB 10 gives cities and counties the option to up-zone certain qualifying properties for up to ten dwelling units per property without needing to conduct costly and time-consuming environmental review under the California Environmental Quality Act (“CEQA”), SB 9 gives power directly to homeowners to become small scale housing developers in their own right.

SB 9 mandates local agencies to immediately allow property owners of single family lots of at least 2,400 square feet to “split” their lots and build up to four units between them (e.g., a duplex on each lot). Applications to split lots and build according to SB 9 are reviewed and approved ministerially—meaning cities must approve an SB 9 application if the applicant meets certain objective criteria—and are not subject to CEQA.

While opponents of SB 9 decry the “end-of-single-family zoning,” SB 9 contains clever safeguards to prevent its abuse. Importantly, SB 9 applications must include a signed affidavit noting that the applicant intends to occupy one of the resulting housing units as a principal residence for a minimum of three years, unless the applicant is a community land trust or qualified non-profit. Further under SB 9, applicants (including applicants working in concert with their neighbors) are prohibited from buying multiple adjacent single-family parcels and attempting to apply SB 9 to all of them in order to—for example—transform three adjacent single family lots into a 24-unit development. SB 9 only permits homeowners a one-time/one-lot 4x increase in density. Relative to affordable housing, SB 9 may not be used in ways that would require the demolition of either existing affordable or rent-controlled units or units that have been occupied by a tenant within the last three years.

SB 10 and SB 9 reflect legislative creativity with different degrees of impact. The practical effect of SB 10 is that it removes roadblocks for city and county decision makers to decide to add housing capacity to local land use plans. SB 10 is permissive and incentivizing, but not mandatory. So, unless cities and counties decide to make use of SB 10, it won’t amount to a direct boon to developers or property owners in jurisdictions that elect to forgo its implementation.

By contrast, the practical effect of SB 9 is that it acts as



homeowners to build wealth while creating more housing options for moderate-income families in existing neighborhoods

Given that the majority of San Diego is composed of single-family homes on single-family lots, SB 9 offers San Diego homeowners a unique and immediate boon in development potential. San Diego homeowners now have opportunity to immediately yield more value out of their properties because, under SB 9, being in a single-family zone will no longer preclude homeowners from transforming their homes into multifamily duplexes.

With our extensive land use experience in the City of San Diego and our knowledge of the statutory underpinnings of SB 9, we at Procopio are ready and happy to help you put SB 9 to use and keep tabs on the City's actions relative to SB 10.



ABOUT THE AUTHORS

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