

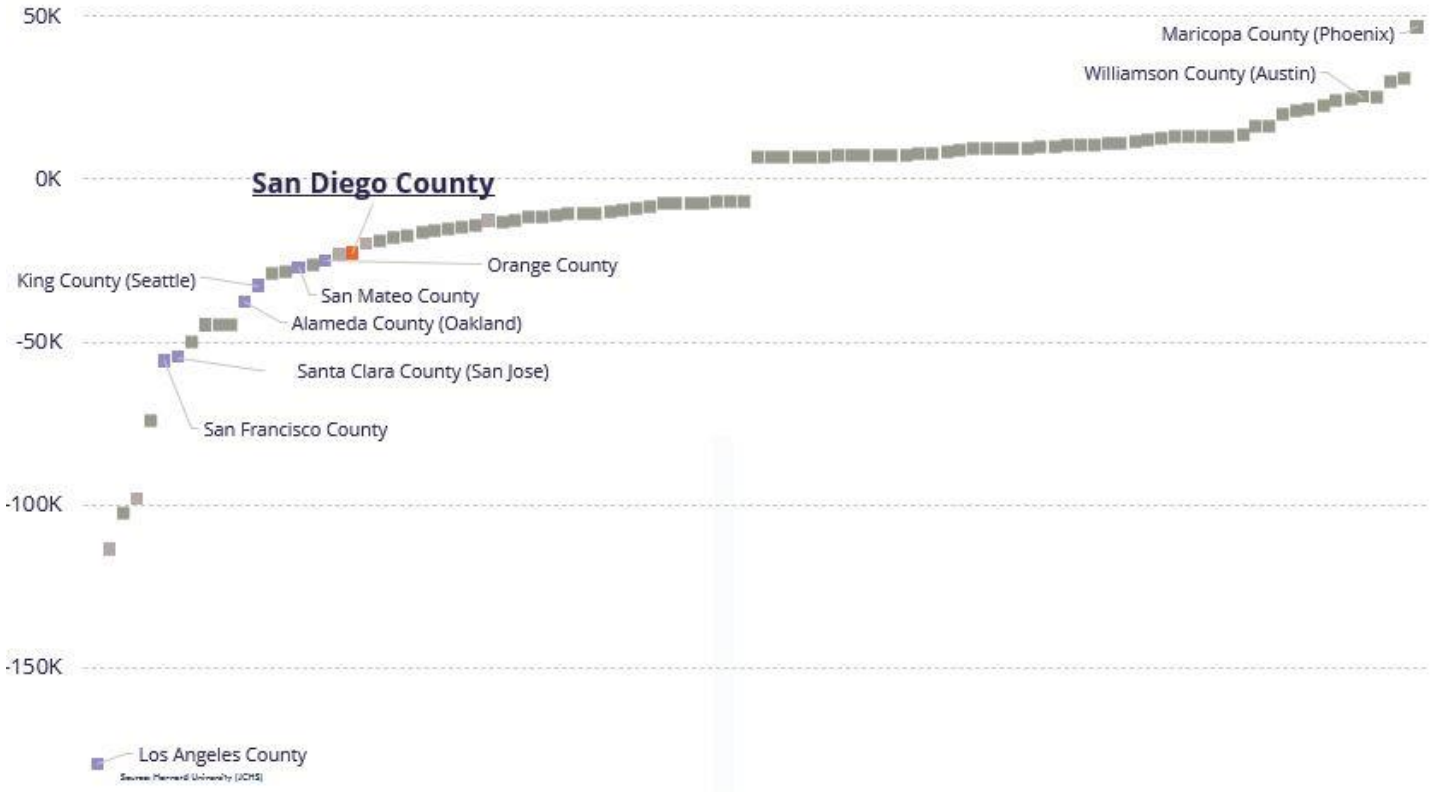
## **California Housing Laws: The Past, Present & Future of SB 9, SB 10, AB 6 & AB 2011**

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This report on California's new proposed bills to encourage an increase in housing supply throughout the state was made possible with the assistance and guidance of Martin Flores, Seth Litchney, and Alan Nevin. The impact and contribution of these three individuals is felt throughout the report.

The real estate industry is in the midst of answering multiple paradigm shifting questions: When or if employees will return to offices post Covid-19? Are the viable options for office-to-residential conversions? But, in California, and more locally, San Diego, the question that is on the minds of real estate professionals and general citizens alike is how can we possibly create more housing to ease the affordability crisis impacting nearly every corner of the state?

Between real estate impact fees and active efforts by communities to prevent housing development, California has developed a reputation for being difficult to build any new real estate projects, but that goes double for housing. According to the First Tuesday Journal, as of 2019, California was 980,000 housing units behind statewide demand, with San Diego being 68,000 units behind demand. These numbers pose a significant issue for affordability in both rental and purchasing affordability. This crisis in affordability, in conjunction with other issues, has led to large numbers of Californian’s leaving the state to growing regions like Boise, Phoenix, and Austin. As highlighted in the below chart, every major county in California saw negative net migration of residents in 2020 & 2021. But while San Diego County also saw negative net migration during this time, it experienced the lowest rates of any major county on the west coast.



While these better-than-average migration numbers are a positive sign of the desirability of San Diego, availability and affordability of housing remain as chief concerns for the region., on September 16, 2021, California Governor Gavin Newsom signed into effect two Senate Bills, SB 9 and SB 10, aimed at combatting the severely lacking housing inventory available to own throughout the state.

## **SB 9 & SB 10**

### **What are they and what do they allow?**

SB 9 & SB 10 are two bills aimed at altering uses for properties zoned for single family homes to allow for anywhere from 4 to 10 units depending on which bill is being utilized. SB 9, which is focused more generally on any home zoned for single family zoning, gives a property owner the opportunity to split their property into two parcels with the ability to build two units on each parcel, totaling 4 total units on a formerly one-unit site.

While similar to SB 9 in that single family lots can add units and provide more housing density to the respective lot, the requirements to do so and the extent to which units can be added vary greatly. Some notable similarities and differences of SB 9 and SB 10 are:

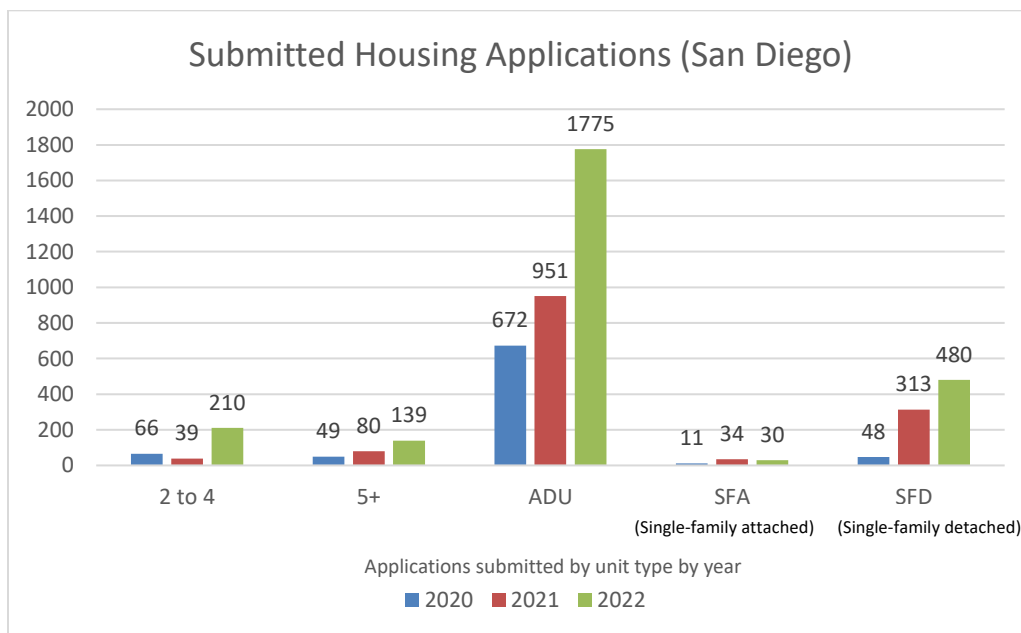
<b>Differences &amp; Similarities</b>		
<b>SB 9</b>	<b>Element</b>	<b>SB 10</b>
4	<b>Max units</b>	10
1,200 sf	<b>Minimum Parcel Size</b>	1,000 sf per unit
Prohibited	<b>Short-term rental?</b>	No Restrictions
Required (3-year min)	<b>Owner to live on-site?</b>	Not required
25% of original structure must remain	<b>Maximum % of existing property demolished?</b>	No Restrictions
Single-family zoning	<b>Zoning</b>	Transit-oriented zoning within 1 mile of public transit

### Adoption: A Tale of Two Senate Bills

While SB 9 & SB 10 were signed by Governor Newsome in 2021, only SB 9 has been implemented in San Diego at the beginning of 2022, while the details of SB 10 are still being worked out at the city level. Most recently, the San Diego Planning Commission voted unanimously to move forward with a Housing Plan that does not include the adoption of SB 10, requiring the bill to be reworked at the City level. According to a [study](#) conducted by the Turner Center for Housing Innovation at UC Berkeley, during the 2022 calendar year, the first year that applications could be submitted to utilize SB 9, only 7 applications have been submitted in San Diego. Of the 7 applications submitted, none had been approved at the time of this study. While low, so to were submissions for construction of Accessible Dwelling Units (ADUs), when the initial law was passed allowing them in 2017.

### ADUs: A Blueprint for Success in Housing Policy?

It wasn't until 2020 when legislation that streamlined the process for construction of ADUs was adopted that led to wider adoption by the residents of San Diego. As shown below, ADU permits have grown nearly 165% over the last 3 years from 672 applications to construct ADUs in 2020 to 1775 applications in 2022.



While the numbers for ADU submissions are significantly higher than the SB 9 submissions in 2022, there are numerous reasons for this. Mainly, the barriers to entry to complete an ADU project are significantly lower than the barriers for SB 9. A primary barrier is cost. According to [HomeAdvisor](#), price of construction in California in 2023 is roughly \$200 per square foot. Not including preconstruction costs, the cost of an ADU is potentially 4-times lower than that of a SB 9 project.

These costs could be difficult to overcome, so, if left to decide between pursuit of an ADU, which is cheaper and faster than an SB 9 project, it is understandable that applicants may would choose a path of lower resistance that is still providing a net increase in housing inventory for a region with demand that is outpacing supply while still providing an opportunity to generate both short-term value in the form of rental income and long-term value in the form of appreciation of their property.

### **ADU Laws and Their Impact**

According to [“Neighbors for a Better San Diego”](#), the community concerns surrounding SB 9 and SB 10 that eventually led to rejection of SB 10 at the city level on August 3, 2023, include a perceived lack of parking requirements, excessive heights for single-family residential neighborhoods (SB 10 allows up to 3 stories), and allowing to build “almost the entire lot”. The opponents viewed these Senate Bills as potentially irreparably altering the fabric of their neighborhoods, and while ADUs have not been without opposition, the requirements for approving and constructing ADUs address some of the above concerns in the following ways:

- Only one ADU and one Junior ADU (JADU) allowed per single family dwelling for a total of two net new units on a parcel.
  - o ADU can be as large as 1,200 square feet depending on the Floor Area of the Single-Family Dwelling
  - o JADUs are not to exceed 500 square feet
- One parking stall is required to be provided per ADU (so long as it is not within 0.5 miles of a transit stop)
- Height restricted to 25’
- Various setback rules are in place

With ADUs and JADUs being required to be built within the confines of a single-family lot alongside a single-family home, the aesthetic changes to a neighborhood are limited while also producing net new units to housing inventory.

## **AB-2011 and SB-6**

Another set of laws, the Affordable Housing and High Roads Jobs Act of 2022 (AB 2011) and the Middle-Class Housing Act (SB 6), were signed by Gavin Newsom on September 29, 2022, and took effect on July 1, 2023. While SB 9 and SB 10 are focused on the further utilization of single-family residential zones and parcels, AB 2011 and SB 6 are focused on providing opportunities for certain commercially zoned properties to be converted into residential uses.

### **AB 2011 Requirements**

Requirements for AB 2011 can be divided into two separate project types, mixed-income housing projects and 100% affordable housing projects. While both project types provide a path for a CEQA-exempt re-development opportunity with ministerial approval process, the two project types do differ in what makes a site eligible.

#### **AB 2011 Requirements:**

- Requires a zone where office, retail or parking are principal permitted use
- Projects must pay prevailing wages to construction workers
- May be in a Coastal Zone
- Projects with 150 units or less, must be processed in 90 days
- Projects with more than 150 units, must be processed in 180 days

#### **Mixed-income housing projects Requirements:**

- Project site abuts a commercial corridor and has frontage along the commercial corridor of minimum 50 feet along a public street with a 70-150-foot right-of-way.
- Site size must be 20 acres or fewer

#### **100% affordable projects Requirements:**

- No site size maximums

### **SB 6 Requirements**

SB 6, unlike AB 2011, does not create a new approval process and is not exempt from California Environmental Quality Act ([CEQA](#)). CEQA, as defined by the State of California, generally requires state

and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent

feasible. This process adds both additional costs and up to 12 to 18 weeks of additional review to receive approvals. Some important elements of what qualifies for redevelopment under SB 6 are:

- Requires a zone where office, retail or parking are principal permitted use
- Site size must be 20 acres or fewer
- Can be converted into 100% residential or mixed-use so long as the project's proposed square footage is more than 50% residential
- No affordable housing requirement
- Required to pay prevailing wages to a "skilled and trained" workforce.
- If the project meets all requirements (except non-compliance with zoning prohibiting residential use), then it may invoke SB 35 and the Housing Accountability Act

### **San Diego's Progressive Re-zoning**

AB 2011 and SB 6 both provide ample opportunity for large-scale redevelopment of under-utilized commercial properties, this does not fully apply to San Diego. Given recent re-zoning efforts, the City of San Diego has included residential development through a ministerial approval into most commercial zones. Where this might have a much greater impact in San Diego County is in the smaller cities surrounding San Diego.

### **Unintended Consequences**

While well intentioned, a potential unintended consequence of these various bills is that they are all seeking to accomplish similar objective. ADUs, SB 9, & SB 10 each have their own unique set of requirements that ultimately could be simplified by the implementation of simpler legislation with fewer requirements that may lead to faster and simpler approvals while also providing more housing.

A potential issue that may arise from the increased utilization of the ADU law as well as the new SB 6, SB 9, SB 10, and AB 2011 is the strain that it will put on city planning departments in a time when permitting in California is difficult. Knowing that supply is far behind demand statewide, time is of the essence both for developers and for potential renters and future owners of units and the potential for gridlock grows as more and more applications are submitted. While, at first thought, the influx of utilization of these new laws may help in meeting demand, the minimal net new units added to inventory in comparison to larger projects is a worthwhile conversation.

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