

URGENCY ORDINANCE NO. 2021-10

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AZUSA ADDING SECTION 66-472 – URBAN LOT SPLITS AND SECTION 88.42.250 – TWO-UNIT PROJECTS OF THE CITY OF AZUSA MUNICIPAL CODE RELATING TO URBAN LOT SPLITS AND TWO-UNIT PROJECTS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Azusa, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 (“SB 9”), which among other things, adds Government Code section 65852.21 and 66411.7 to impose new limits on local authority to regulate urban lot splits and two-unit projects; and

WHEREAS, SB 9 allows local agencies to adopt objective design, development, and subdivision standards for urban lot splits and two-unit projects; and

WHEREAS, SB 9 takes effect January 1, 2022, and preempts any conflicting city ordinance; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of the new SB 9 Law because if the City does not adopt appropriate objective standards for urban lot splits and two-unit projects under SB 9 as of January 1, 2022, the City would thereafter be limited to applying the few objective standards that already in its code, which did not anticipate and were not enacted with urban lot splits and ministerial two-unit projects in mind; and

WHEREAS, the approval of urban lot splits and two-unit projects based solely on the City’s default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

NOW, THEREFORE, the City Council of the City of Azusa does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 66411.7 and 65852.21 and regulating urban lot splits and two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements these new laws enacted by SB 9.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 15 exemption set forth in State CEQA Guidelines section 15315. The Class 15 exemption categorically exempts from CEQA, among other things, the division of property in urbanized areas zoned for residential use into four or fewer parcels. Here, the ordinance is categorically exempt under Class 15 exemption because the ordinance regulates a single urban lot split of one parcel into two separate lots between 60 percent and 40 percent of the original lot area in a residential zone. Further, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of a second dwelling unit in a residential zone and a duplex or similar multi-family residential structure totaling no more than four dwelling units as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the construction of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit, in a residential zone. Moreover, the City Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

- (1) Not result in a potentially significant cumulative impact, the Urgency Ordinance will not potentially have significant cumulative impact since the construction of single structures are potentially being constructed only.

- (2) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, the construction of single structures for the residential use will not have a significant effect on the environment. The construction of residential use primarily exempt and statutorily exempt from CEQA.
- (3) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. We have no residential properties located adjacent to a state scenic highway.
- (4) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code. We have no property zoned residential that is located on a hazardous waste site.
- (5) Not result in a substantial adverse change in the significance of a historical resource. The City's Chapter 55 – Historic Preservation of the Azusa Municipal Code requires a separate permitting process for historic resources in the City.

Each of the foregoing exemptions is asserted in the alternative and each is independently sufficient to fully exempt the whole of the project.

Section 3. Section 66-472 – Urban Lot Splits and Section 88.42.250 – Two-unit Projects of the Azusa Municipal Code is hereby amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect immediately upon its adoption.

Section 5. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

Section 6. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 7. The City Council hereby directs staff to prepare, execute, and file with the [County name] Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

Section 8. The Custodian of Records for this Ordinance is [name of position responsible for records] and the records compromising the administrative record for this Ordinance are located at [address of lead agency].

PASSED, APPROVED AND ADOPTED by the City Council of the Azusa, California, at a special meeting of the City Council held on the 13th day of December, 2021 by the following vote:

AYES: COUNCILMEMBERS: GONZALES, ALVAREZ, AVILA, MENDEZ, BECKWITH
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: NONE

/s/ Robert Gonzales, Mayor
Mayor

ATTEST:

/s/ Jeffrey Lawrence Cornejo, Jr., City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF AZUSA)

I HEREBY CERTIFY that the foregoing Urgency Ordinance No.2021-10 was duly introduced and adopted by the City Council of the City of Azusa, at a special meeting thereof held on the 13th day of December 2021, by the following vote of the Council:

AYES: COUNCILMEMBERS: GONZALES, ALVAREZ, AVILA, MENDEZ, BECKWITH
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: NONE

/s/ Jeffrey Lawrence Cornejo, Jr., City Clerk

APPROVED AS TO FORM:

/s/Best, Best & Krieger, LLP, City Attorney

EXHIBIT A

Amendments to Municipal Code

(follows this page)

ARTICLE IX – URBAN LOT SPLITS

Section 66-472 Urban Lot Splits

- (a) **Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.
- (b) **Definition.** An “urban lot split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.
- (c) **Application.**
 - (1) Only individual property owners may apply for an urban lot split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).
 - (2) Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel indication the person consent to the project.
 - (3) An application for an urban lot split must be submitted on the city’s approved form. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 - (4) The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.
- (d) **Approval.**
 - (1) An application for a parcel map for an urban lot split is approved or denied ministerially, by the Director of Public Works/City Engineer, without discretionary review.
 - (2) A tentative parcel map for an urban lot split is approved ministerially if it complies with all the requirements of this section. The tentative parcel map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements. The final parcel map must be recorded.

- (3) The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
 - (4) The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.
- (e) **Requirements.** An urban lot split must satisfy each of the following requirements:
- (1) **Map Act Compliance.**
 - (A) The urban lot split must conform to all applicable objective requirements parcel map of the Subdivision Map Act (Gov. Code § 66410 et. seq., “SMA”), including implementing requirements in this code, except as otherwise expressly provided in this section.
 - (B) If an urban lot split violates any part of the SMA, the city’s subdivision regulations, including this section, or any other legal requirement:
 - (i) The buyer or grantee of a lot that is created by the urban lot split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.
 - (ii) The city has all the remedies available to it under the SMA, including but not limited to the following:
 - (I) An action to enjoin any attempt to sell, lease, or finance the property.
 - (II) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - (III) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
 - (IV) Record a notice of violation.
 - (V) Withhold any or all future permits and approvals.
 - (C) Notwithstanding section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an urban lot split.

- (2) **Zone.** The lot to be split is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

(3) **Lot Location.**

- (A) The lot to be split is not located on a site that is any of the following:
- (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
 - (ii) A wetland.
 - (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
 - (iv) A hazardous waste site that has not been cleared for residential use.
 - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
 - (vi) Within a 100-year flood hazard area, unless the site has either:
 - (I) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
 - (II) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
 - (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
 - (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
 - (ix) Habitat for protected species.
 - (x) Land under conservation easement.

- (B) The purpose of subpart (e)(3)(A) above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)
- (C) The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.
- (4) **Not Historic.** The lot to be split must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.
- (5) **No Prior Urban Lot Split.**
 - (A) The lot to be split was not established through a prior urban lot split.
 - (B) The lot to be split is not adjacent to any lot that was established through a prior urban lot split by the owner of the lot to be split or by any person acting in concert with the owner. “Any person acting in concert with the owner” here includes any third-party that coordinates or assists the owners of two adjacent lots with their respective urban lot splits.
- (6) **No Impact on Protected Housing.**

The urban lot split must not require or include the demolition or alteration of any of the following types of housing:

 - (A) Housing that is income-restricted for households of moderate, low, or very low income.
 - (B) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
 - (C) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
 - (D) Housing that has been occupied by a tenant in the last three years.

The applicant and the owner of a property for which an urban lot split is sought must provide a sworn statement by affidavit representing and warranting that subpart (e)(6)(A) above is satisfied.

As to this fact with the application for the parcel map. The sworn statement must state that:

- (I) No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.
- (II) No housing that is subject to any form of rent or price control will be demolished or altered.
- (III) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
- (IV) No housing that has been occupied by a tenant in the last three years will be demolished or altered.

The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

(7) Lot Size.

- (A) The lot to be split must be at least 2,400 square feet.
- (B) The resulting lots must each be at least 1,200 square feet.
- (C) Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

(8) Easements.

- (A) The owner must enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.
- (B) Each easement must be shown on the tentative parcel map.
- (C) Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with subpart (d)(2) above.

- (9) If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the city will provide, a notice of termination of the easement, which the owner may record.

(10) Lot Access.

- (A) Each resulting lot must adjoin a public street right-of-way.

- (B) Each resulting lot must have frontage on the public right-of-way of at least 15 feet.

(11) **Unit Standards.**

- (A) **Quantity.** No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 88.42.250 of this code, an ADU, or a JADU

- (B) **Unit Size.**

- (i) The total floor area of each primary dwelling that is developed on a resulting lot must be
 - (I) less than or equal to 800 square feet and
 - (II) more than 500 square feet.
 - (ii) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.
 - (iii) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

- (C) **Height Restrictions.**

- (i) On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
 - (ii) On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.
 - (iii) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

- (D) **Setbacks.**

- (i) **Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
- (ii) **Exceptions.** Notwithstanding subpart (e)(10)(F) above:
 - (I) **Existing Structures.** No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - (II) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
- (iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split must a front setback that is determined by the underlying zone from the front property lines. The front setback area must:
 - (I) be kept free from all structures greater than three feet high;
 - (II) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans prepared by a licensed Landscape Architect and approved by Planning Division and Parks Division;
 - (III) allow for vehicular and fire-safety access to the front structure.
- (E) **Parking.** Each new primary dwelling unit that is built on a lot after an urban lot split must have at least one off-street parking space per unit unless one of the following applies:
 - (i) The lot is located within one-half mile walking distance of either
 - (I) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
 - (II) a site that contains
 - (ia) an existing rail or bus rapid transit station,

- (ib) a ferry terminal served by either a bus or rail transit service, or
 - (ic) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- (ii) The site is located within one block of a car-share vehicle location.

(F) **Architecture.**

- (i) If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (ii) If there is no legal primary dwelling on the lot before the urban lot split, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (iii) At least 50 percent of a structure's walls fronting any street must incorporate at least two of the following surface materials:
 - 1) Brick,
 - 2) Natural Stone,
 - 3) Terracotta,
 - 4) Stucco, cement plaster, or other similar troweled finish,
 - 5) Wood or other similar faux wood siding such as PVC or cement fiber.
- (iv) Dwellings shall incorporate at least three of the following elements along the side of any wall fronting a street:
 - 1) Arches,
 - 2) Awnings,
 - 3) Balconies,

- 4) Bay windows,
 - 5) Brick, rock, or stone veneer
 - 6) Columns,
 - 7) Decorative iron railing,
 - 8) Plazas or courtyards,
 - 9) Porches, covered and open on at least three sides,
 - 10) Window shutters,
 - 11) Window trim
- (v) Balconies are only allowed on the front elevation of a dwelling facing a public street.
 - (vi) Upper and lower windows must align vertically whenever possible.
 - (vii) No linear wall of a second story may extend more than 24'feet horizontally without architectural articulation or an offset of at least two feet for not less than eight feet.
 - (viii) All vents, gutters, downspouts, flashing, and electrical panels must be painted to match the surface to which they are attached, unless concealed.
 - (ix) All roof, ground, and wall-mounted equipment must be screened from public view in compliance with [Section 88.30.020.G.2](#) of the Development Code.
 - (x) All exterior lighting must be limited to down-lights.
 - (xi) No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
 - (xii) If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

- (G) **Landscaping.** Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
 - (i) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
 - (ii) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
 - (iii) All landscaping must be drought-tolerant.
 - (iv) All landscaping must be from the city’s approved plant list.
- (H) **Nonconforming Conditions.** An urban lot split may be approved without requiring a legal nonconforming zoning condition to be corrected.
- (I) **Utilities.**
 - (i) Each primary dwelling unit on the resulting lots must have its own direct utility connection to the utility service provider.
 - (ii) Notwithstanding paragraph (e)(10)(K)(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city’s code. Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
 - (iii) No water lateral may cross over adjacent property lines to supply adjacent properties, units or buildings. All units must have their own water meter and be supplied by a water service lateral over their own parcel/property lines.
 - (iv) Each dwelling unit must have its own separate water meter and water service in accordance with Azusa Light and Water Department standards.
 - (v) All adopted Water System Development Fees and Water Capacity Fees as approved by Resolution of the City Council must be paid.
 - (vi) The owner must pay all cost arising from any modification,

relocation or alteration of existing water facilities cause by this project in accordance with the standards of Light and Water Department.

- (vii) The development of water utilities requires Azusa Light and Water Plan Check that includes but not limited to a Water Plan, including Water Plan must have the Azusa Light and Water Department title block. The Plan Check and Water Plan approval is valid for one year from the date that the plans are signed and stamped by the Azusa Light and Water Department.
- (viii) No public water facilities, including water mains, fire hydrants, and water meters are allowed on private property or private sidewalks. All proposed water meters, public fire hydrants, public water mains must be within the public right-of-way.
- (ix) Owners must size their own meters to meet their proposed needs. New services and meters are required to be installed per ALW Standards W-1 through W-4. All irrigation meters must have a backflow device per ALW Standard W-15
- (x) All easements shall be identified on the water plans and on the Tract Map, Lot Line Adjustment or Parcel Map. The existing water main(s) shall be identified on improvement plans including any/all easements. Required to submit Tract Map, Lot Line Adjustment or Parcel Map to ALW Water Division for review and approval prior to recording. Applicant shall bare the cost related to Easements. The applicant shall be all cost related to easements.

- (J) **Building & Safety.** All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.

(12) **Fire-Hazard Mitigation Measures.**

- (A) A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:
 - (i) It must have direct access to a public street right-of-way with a paved street with a width of at least 40 feet. The public street right-of-way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
 - (ii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
 - (iii) All enclosed structures on the site must have fire sprinklers.

- (iv) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.
- (v) If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.
- (B) Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart (e)(11). The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

(13) **Separate Conveyance.**

- (A) Within a resulting lot.
 - (i) Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.
 - (ii) Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.
 - (iii) All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.
 - (iv) No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.
- (B) Between resulting lots. Separate conveyance of the resulting lots is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the urban lot split boundary may separate them for conveyance purposes if the structures meet building code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner must record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

(14) **Regulation of Uses.**

- (A) **Residential-only.** No non-residential use is permitted on any lot created by urban lot split.
- (B) **No Short-Term Rentals.** No dwelling unit on a lot that is created by an urban lot split may be rented for a period of less than 30 days.
- (C) **Owner Occupancy.** The applicant for an urban lot split must sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of three years after the urban lot split is approved.

(15) **Deed Restriction.** The owner must record a deed restriction on each lot that results from the urban lot split, on a form approved by, acceptable to the city, that does each of the following:

- (A) Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
- (B) Expressly prohibits any non-residential use of the lots created by the urban lot split.
- (C) Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
- (D) State that the property is formed by an urban lot split and is therefore subject to the city's lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the city may deny an application for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (2) "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land

use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

- (3) The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.
- (g) **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

IN THE LAND USE TITLE:

Section 88.42.250 - Two-unit Projects

- (a) **Purpose.** The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.
- (b) **Definition.** A “two-unit project” means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot in accordance with the requirements of this section.
- (c) **Application.**
 - (1) Only individual property owners may apply for a two-unit project. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Rev. & Tax Code § 214.15). Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project.
 - (2) An application for a two-unit project must be submitted on the city’s approved form.
 - (3) The applicant must obtain a certificate of compliance with the Subdivision Map Act and the implementing regulations in this code for the lot and provide the certificate with the application.
 - (4) Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 - (5) The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city

council may establish and change the fee by resolution. The fee must be paid with the application.

(d) **Approval.**

- (1) An application for a two-unit project is approved or denied ministerially, by the planning director, without discretionary review.
- (2) The ministerial approval of a two-unit project does not take effect until the city has confirmed that the required documents have been recorded, such as the deed restriction and easements.
- (3) The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
- (4) The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

(e) **Requirements.** A two-unit project must satisfy each of the following requirements:

- (1) **Map Act Compliance.** The lot must have been legally subdivided.
- (2) **Zone.** The lot is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.
- (3) **Lot Location.**
 - (A) The lot is not located on a site that is any of the following:
 - (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
 - (ii) A wetland.
 - (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
 - (iv) A hazardous waste site that has not been cleared for residential use.
 - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

- (vi) Within a 100-year flood hazard area, unless the site has either:
 - (I) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
 - (II) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
- (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
- (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
- (ix) Habitat for protected species.
- (x) Land under conservation easement.
- (B) The purpose of subpart (e)(3)(A) above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)
- (C) The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.
- (4) **Not Historic.** The lot must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.
- (5) **No Impact on Protected Housing.**

The two-unit project must not require or include the demolition or alteration of any of the following types of housing:

 - (A) Housing that is income-restricted for households of moderate, low, or very low income.
 - (B) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.

(C) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.

(D) Housing that has been occupied by a tenant in the last three years.

As part of the two-unit project application, the applicant and the owner of a property for which a two-unit project is sought must provide a sworn statement by affidavit representing and warranting that subpart (e)(5)(A) above is satisfied.

The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

(6) Unit Standards.

(A) Quantity.

- (i) No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under this section of this code, an ADU, or a JADU.
- (ii) A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that must be allowed under Section 88.42.190 – Accessory Dwelling Units.

(B) Unit Size.

- (i) The total floor area of each primary dwelling built that is developed under this section must be
 - (I) less than or equal to 800 square feet and
 - (II) more than 500 square feet.
- (ii) A primary dwelling that was legally established on the lot prior to the two-unit project and that is larger than 800 square feet is limited to the lawful floor area at the time of the two-unit project. The unit may not be expanded.
- (iii) A primary dwelling that was legally established prior to the two-unit project and that is smaller than 800 square feet may be expanded to 800 square feet after or as part of the two-unit project.

(C) **Height Restrictions.**

- (i) On a lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
- (ii) On a lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.
- (iii) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a two-unit project.

(D) **Demo Cap.** The two-unit project may not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.

(E) **Setbacks.**

- (i) **Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
- (ii) **Exceptions.** Notwithstanding subpart (e)(6)(G) above:
 - (I) **Existing Structures.** No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - (II) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
- (iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed under this section must be at least 25 feet from the front property lines. The front setback area must:
 - (I) be kept free from all structures greater than three feet high;

- (II) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;
 - (III) allow for vehicular and fire-safety access to the front structure.
- (F) **Parking.** Each new primary dwelling unit must have at least one off-street parking space per unit unless one of the following applies:
 - (i) The lot is located within one-half mile walking distance of either
 - (I) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
 - (II) a site that contains
 - (ia) an existing rail or bus rapid transit station,
 - (ib) a ferry terminal served by either a bus or rail transit service, or
 - (ic) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
 - (ii) The site is located within one block of a car-share vehicle location.
- (G) **Architecture.**
 - (i) If there is a legal primary dwelling on the lot that was established before the two-unit project, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
 - (ii) If there is no legal primary dwelling on the lot before the two-unit project, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
 - (iii) At least 50 percent of a structure's walls fronting any street shall incorporate at least two of the following surface materials:

- 1) Brick,
 - 2) Natural Stone,
 - 3) Terracotta,
 - 4) Stucco, cement plaster, or other similar troweled finish,
 - 5) Wood or other similar faux wood siding such as PVC or cement fiber.
- (iv) Dwellings shall incorporate at least three of the following elements along the side of any wall fronting a street:
- 1) Arches,
 - 2) Awnings,
 - 3) Balconies,
 - 4) Bay windows,
 - 5) Brick, rock, or stone veneer
 - 6) Columns,
 - 7) Decorative iron railing,
 - 8) Plazas or courtyards,
 - 9) Porches, covered and open on at least three sides,
 - 10) Window shutters,
 - 11) Window trim
- (v) Balconies are only allowed along the front elevation or corner side elevation of a dwelling facing a public street.
- (vi) Any faux shutters should be proportionate to the adjacent window so as to create the appearance of a real and functional shutter.
- (vii) Upper and lower windows should align vertically whenever possible.
- (viii) No linear wall of a second story may extend more than twenty-four feet (24') without architectural articulation or an offset of at least two feet (2') for not less than eight feet (8').

- (ix) All vents, gutters, downspouts, flashing, and electrical panels must be painted to match the surface to which they are attached, unless concealed or used as a major design element, in which case the color is to be consistent with the overall color scheme of the building.
- (x) All roof, ground, and wall-mounted equipment must be screened from public view in compliance with [Section 88.30.020.G.2](#) of the Development Code.
- (xi) All exterior lighting must be limited to down-lights.
- (xii) No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (xiii) If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.
- (H) **Landscaping.** Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
 - (i) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24” box size plant shall be provided for every ten linear feet of exterior wall.
 - (ii) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
 - (iii) All landscaping must be drought-tolerant.
 - (iv) All landscaping must be from the city’s approved plant list.
- (I) **Nonconforming Conditions.** A two-unit project may only be approved if all nonconforming zoning conditions are corrected.
- (J) **Utilities.**

- (i) Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
- (ii) Notwithstanding paragraph (e)(6)(L)(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

(iii) All utilities must be underground.

- (K) **Building & Safety.** All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot, and all structures, to the city's current code.

(7) **Fire-Hazard Mitigation Measures.**

A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

- (A) It must have direct access to a public right-of way with a paved street with a width of at least 40 feet. The public street right of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
- (B) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
- (C) All enclosed structures on the site must have fire sprinklers.
- (D) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.
- (E) If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

(8) **Separate Conveyance.**

- (A) Primary dwelling units on the lot may not be owned or conveyed separately from each other.

- (B) Condominium airspace divisions and common interest developments are not permitted within the lot.
- (C) All fee interest in the lot and all the dwellings must be held equally and undivided by all individual property owners.
 - (i) No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

(9) **Regulation of Uses.**

- (A) **Residential-only.** No non-residential use is permitted on the lot.
- (B) **No Short-Term Rentals.** No dwelling unit on the lot may be rented for a period of less than 30 days.
- (C) **Owner Occupancy.** Unless the lot was formed by an urban lot split, the individual property owners of a lot with a two-unit project must occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

(10) **Notice of Construction.**

- (A) At least 30 business days before starting any construction of a two-unit project, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:
 - (i) Notice that construction has been authorized,
 - (ii) The anticipated start and end dates for construction,
 - (iii) The hours of construction,
 - (iv) Contact information for the project manager (for construction-related complaints), and
 - (v) Contact information for the Building & Safety Department.
- (B) This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

(11) **Deed Restriction.** The owner must record a deed restriction, on a form approved by acceptable to the city, that does each of the following:

- (A) Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
- (B) Expressly prohibits any non-residential use of the lot.
- (C) Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
- (D) If the lot is not created by an urban lot split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.
- (E) States that the property is formed by an urban lot split and is therefore subject to the city's urban lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the city may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (2) "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).
- (3) The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

(g) **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

(h) **Remedies.**

If a two-unit project violates any part of this code or any other legal requirement:

- (1) The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.
- (2) The city may:
 - (A) Bring an action to enjoin any attempt to sell, lease, or finance the property.
 - (B) Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - (C) Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
 - (D) Record a notice of violation.
 - (E) Withhold any or all future permits and approvals.
 - (F) Pursue all other administrative, legal, or equitable remedies that are allowed by law or the city's code.