

**ORDINANCE NO. NS-240**  
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTE SERENO**  
**AMENDING CHAPTER 10.05 (ZONING DISTRICT REGULATIONS), CHAPTER 10.08**  
**(SITE DEVELOPMENT PERMITS AND PLANNED DEVELOPMENT PERMITS), AND**  
**CHAPTER 10.15 (TREE PRESERVATION), AND CHAPTER 13.06 (URBAN LOT**  
**SPLITS)**

WHEREAS, SB-9 (Chapter 162, Statutes of 2021) enacted sections 65852.21 and 66411.7 to the Government Code, effective January 1, 2022; and

WHEREAS, these provisions require cities to provide ministerial approval of urban lot splits and the construction of up to two dwelling units on single family residential lots within any urbanized area of the City, as designated by the US Census Bureau, subject to certain limitations; and

WHEREAS, Government Code Sections 66411.7(a) limits eligibility of urban lot splits by size and proportionality; and

WHEREAS, Government Code Sections 65852.21(a)(2) and 66411.7(a)(3)(C) limits such urban lot splits and construction to sites that are not located on or within certain farmland, wetlands, very high fire hazard severity zones, hazardous waste sites, earthquake fault zones, special flood hazard areas, regulatory floodways, lands identified for conservation, habitats for protected species, and historic properties; and

WHEREAS, Government Code Sections 65852.21(a)(3) through (a)(5), limits eligibility of such construction of secondary units that proposes to demolish or alter housing subject to affordability restrictions, housing subject to rent or price controls, housing that has been occupied by a tenant in the last three years, housing that has been withdrawn from rent or lease within the past 15 years, and housing that requires demolition of existing structural walls unless authorized by local ordinance or has not been tenant-occupied within the past 3 years; and

WHEREAS, Government Code Sections 66411.7(a)(3)(D) also limits eligibility of an urban lot split that proposes to demolish or alter housing subject to affordability restrictions, housing subject to rent or price controls, housing that has been occupied by a tenant in the last three years, housing that has been withdrawn from rent or lease within the past 15 years, and housing that requires demolition of existing structural walls unless authorized by local ordinance or has not been tenant-occupied within the past 3 years; and

WHEREAS, Government Code Sections 65852.21(a)(6) and 66411.7(a)(3)(E) allows a city to deny an urban lot split for properties within an historic district or listed on the State's Historic Resource Inventory or within a site that is designated or listed as a

city or county landmark or historic property or district pursuant to a city or county ordinance; and

WHEREAS, Government Code Sections 65852.21(b) and 66411.7(c) allows a city to establish objective zoning standards, objective subdivision standards, and objective design review standards for projects, subject to limits within state law; and

WHEREAS, such objective zoning standards, objective subdivision standards, and objective design review standards may not have the effect of “precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet”; and

WHEREAS, Government Code Sections 65852.21 and 66411.7 allow a city to deny a proposed housing development or urban lot split if the project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

WHEREAS, the City of Monte Sereno has multiple parcels in the Wildland Urban Interface (WUI) zone, as well as parcels in a designated as being included in the Very High Fire Hazard Severity Zone (VHFHSZ), as officially designated by CalFIRE; and

WHEREAS, Monte Sereno is included in the list of Communities at Risk from wildfires on the Federal and/or California Fire Alliance list of Communities at Risk in Santa Clara County; and

WHEREAS, the City of Monte Sereno contains multiple neighborhoods, including those within the WUI and VHFHSZ , that do not have an secondary egress route available in case of fire or natural disaster; and

WHEREAS, the City desires to enact a clear application process to ensure that projects involving parcels within the WUI and VHFHSZ will be reviewed carefully to ensure compliance with eligibility requirements and in light of the public health, safety, and welfare; and

WHEREAS, the City of Monte Sereno has multiple parcels with considerable slopes; and

WHEREAS, grading for construction or access on heavily sloped lots creates adverse impacts to the physical environment by denuding natural vegetation and destabilizing soils, and the City desires to enact overall size limits on ministerially-approved projects under Sections 65852.21 and 66411.7 to minimize the potential for

issues related to runoff or excessive grading that may occur in the absence of clear size limitations; and

WHEREAS, the City of Monte Sereno has numerous creeks, wetlands, drainages and sensitive habitat through the City, which may be harmed without appropriate impervious structural and impervious coverage limitations for ministerially-approved projects under Sections 65852.21(a)(2) and 66411.7; and

WHEREAS, in order to protect the public health and safety, the City Council desires to provide guidelines for projects subject Government Code Sections 65852.21 and 66411.7.

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

SECTION 1. Amend Section 10.05.080. Section 10.05.080 of the Monte Sereno Municipal Code is amended to read in entirety as follows:

**“10.05.080 Residential Developments Under Government Code Section 65852.21**

A. The purpose of this section is to provide regulations for the establishment of residential developments pursuant to Government Code section 65852.21.

B. Incompatibility with the City’s density limitations shall not provide a basis to deny a two-unit residential development that otherwise conforms to the requirements of this section.

C. Notwithstanding anything in this Title 10 to the contrary, a residential development containing no more than two residential units on one legal lot within any residential zone may be constructed following approval of a site development permit issued by the City Planner under section 10.08.050.E, without discretionary review or a public hearing, if the proposed housing meets all of the standards set forth below. A residential development may be permitted under this section if the development proposes no more than two new units in total on the parcel or if it proposes to add one new unit to a lot with one existing unit. If a parcel includes an existing single-family dwelling, one additional unit may be developed pursuant to this section. If a parcel does not include an existing single-family dwelling, or if an existing single-family dwelling is proposed to be demolished in connection with the creation of a two-unit residential development, two units may be developed pursuant to this section.

D. A residential development shall not be approved in each of the following circumstances:

1. The residential development would require demolition or alteration of any of the following types of housing:

a. Housing that is 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.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

c. Housing that has been occupied by a tenant in the last three years.

2. The parcel subject to the proposed housing development is a parcel on which an owner of residential real property has exercised the owner's rights under Government Code Section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

3. The parcel subject to the proposed housing development is located within a historic district or property included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

4. The parcel does not satisfy the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

E. Residential developments under this section shall conform to all objective property development regulations of the zone and in which the property is located including, but not limited to, setbacks, building height, building size, structural coverage, and impervious coverage, and any objective requirements in the City's design guidelines, unless the applicant demonstrates that such zoning or design standard would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area, subject to the following modifications:

1. 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. Verification of size and location of the existing and proposed structure requires pre-and post-construction surveys by a California licensed land surveyor.

2. A setback of at least four feet is required from the rear and side property lines. Front yard setbacks shall be as required for the zone in which the property is located.

3. Any dwelling unit constructed under this Section shall not exceed the maximum building height of a single-story building.

F. Residential developments under this section shall be subject to the following additional standards and requirements:

1. Two dwelling units shall be constructed. The first dwelling unit shall meet the requirements of an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit as specified in 10.06.140 as well as the provisions of this section. The main dwelling unit shall comply with the provisions of this section. The first dwelling unit shall be constructed prior to or concurrently with the main dwelling.

2. If any portion of any proposed new main dwelling unit would be located in any of the front, side, or rear setbacks applicable to a single-story building district in the same zoning district as set forth in Chapter 10.05, the building area shall not exceed 800 square feet.

3. If a proposed dwelling unit will be connected to an onsite wastewater treatment system, the applicant shall provide a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

4. Any dwelling unit, or portion thereof, that is constructed pursuant to an approval under this section shall only be used for rentals of terms of longer than thirty days. It shall be unlawful to rent, offer to rent or lease, or to advertise for rent or lease, any dwelling unit or portion thereof built pursuant to authority under this section for a term that is thirty days or less.

5. A minimum of one off-street parking space shall be provided for each dwelling unit except where the parcel meets one of the following instances:

a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

b. There is a car share vehicle located within one block of the parcel.

6. When construction of a new dwelling unit is proposed on a parcel with an existing dwelling unit, any new dwelling unit shall utilize the same exterior materials and colors as the existing dwelling unit, subject to any restrictions on use of building materials in Title 9. Where two new units are proposed to be constructed on a parcel, each unit shall utilize the same exterior materials and colors as the other unit.

7. Each dwelling unit constructed under this section shall be on a separate utility connection directly between each dwelling unit and the utility for water, sewer, and electrical utilities. Gas utility connections shall be prohibited for such dwelling units.

8. The maximum building area shall as follows:

a. R-1-8 zoning district or effective zoning district: two thousand eight hundred fifty (2,850) square feet.

b. R-1-20 zoning district or effective zoning district: four thousand five hundred (4,500) square feet.

c. R-1-44 zoning district or effective zoning district: six thousand one hundred fifty (6,150) square feet.

d. The maximum building area on lots with an average slope of 10% or greater shall be determined by using the slope density defined in Section 13.04.080 with a reduction of 450 square feet.

e. In addition to the building area specified in a. through d. above, an additional 450 square feet can be constructed for an enclosed attached garage. If a larger garage is constructed, the area in excess of 450 square feet must be included in the maximum building area specified in a. through d. above.

f. The maximum building area specified in a. through d. above includes the area of the first dwelling unit, any garage area over 450 square feet, and the main house.

9. Rooftop decks shall be prohibited.

10. The footprint of proposed buildings shall not be located on lands with an average slope exceeding 30%. This provision applies only to the building site, not the property as a whole.

11. Grading shall not exceed 50 cubic yards of cut plus fill except such grading activities as specified in 9.04.090.

G. In cases of conflict between this section and any other provision of this title, the provisions of this section shall prevail. To the extent that any provision of this section is in conflict with state law, the applicable provision of state law shall control, but all other provisions of this section shall remain in full force and effect.”

SECTION 2. Amendment of Chapter 10.08. Section 10.08.050(E) of the Monte Sereno Municipal Code are amended to read in entirety as follows:

**“10.08.050 Permit process.**

E. *Review by City Planner for Residential Development Projects*  
Under Section 10.05.080. A residential development project meeting the requirements of Section 10.05.080 shall be reviewed ministerially and without public hearing by the City Planner. In considering such application, the City Planner shall approve the project unless: (1) the proposed project does not meet the requirements of Section 10.05.080, or (2) if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. Any approval, conditional approval or denial by the City Planner of a site development permit under this Subsection shall be final with no further appeal. All permits granted under this Subsection shall be conditioned on: (1) compliance with the objective zoning standards that are applicable to the parcel based on the applicable zoning district as set forth in Chapter 10.05 of this Code, except for as such standards may be modified under Section 10.05.080, and (2) compliance with any objective design standards adopted into the City's design guidelines, unless the applicant demonstrates that such objective zoning or design standard would have the effect of physically precluding the construction of up to two (2) units or that would physically preclude either of the two (2) units from being at least eight hundred (800) square feet in floor area. The City Planner shall cause notice of the application to be sent to property owners within six hundred (600) feet upon the submission of an application.”

SECTION 3. Amendment of Chapter 10.15. Section 10.15.070 of the Monte Sereno Municipal Code is amended to read in entirety as follows:

**“10.15.070 Permit; application; review.**

Each application shall be reviewed to determine the condition of the tree or trees with respect to disease, danger of falling, proximity to existing or proposed structures and interference with utility services. With respect to dead trees or unsuitable trees, each application shall be reviewed to validate the health of the tree and/or species. In addition, in the case of a significant tree the following shall be determined:

A. The significant tree or trees need to be removed to allow reasonable economic enjoyment of the property or the significant tree or trees need to be removed due to disease, danger of falling or threat to owner or surrounding residents;

B. If the topography of the land and the effect of the removal of the significant tree will have a significant effect on erosion, soil retention and diversion or increased flow of surface waters;

C. The number of trees existing in the neighborhood on improved property and the effect the removal would have on the established standard of the area and the property values; and

D. The number of trees the particular parcel can adequately support according to good forestry practices.

In reviewing applications, the Site and Architectural Commission shall give priority to those based on hazard or danger of disease and may refer any application to the City Engineer or other officer of the City for a report and recommendation. In approving a tree removal permit, the Site and Architectural Commission may impose conditions requiring replacement of trees as may be deemed appropriate to mitigate impacts of development or provide equivalent aesthetic benefits in terms of size, height, location, appearance, and other characteristics of the removed tree.

For tree removals that are in conjunction with a project permitted under Section 10.05.080, Section 10.06.140, or Chapter 13.06, the City Manager or City Planner shall approve such permit subject a requirement to replace each tree removed with two trees, each of a native or drought tolerant species, but shall not be an Unsuitable Tree as defined in Section 10.15.015, with a minimum circumference of ten inches measured at a height of 48 inches above the grade as planted. If the removed tree is an Unsuitable Tree as defined in Section 10.15.015, the City Manager or City Planner shall approve such permit subject to a requirement to replace each Unsuitable Tree removed with one tree of a native or drought tolerant species but shall not be an Unsuitable Tree as defined in Section 10.15.015, with a minimum size of twenty-four (24) inch box as planted. The City Manager or City Planner shall not approve a permit for removal of a significant tree that is an oak species measuring at least 115 inches in circumference at 48 inches above grade, unless the applicant demonstrates one of the following: (1) the project subject to mandatory approval pursuant to Government Code section 65852.2(e) and Monte Sereno Municipal Code section 10.06.140.H, (2) for projects subject to Monte Sereno Municipal Code section 10.05.080, the denial would have the effect of physically precluding the construction of up to two units on the lot or would physically preclude either of the two units from being at least 800 square feet in floor area, or (3) for projects subject to chapter 13.06, the denial would have the effect of physically precluding the construction of up to two units per created parcel or would physically preclude such units from being at least 800 square feet in floor area.”



SECTION 4. Amendment of Chapter 13.06., Sections 13.06.020, 13.06.030 and 13.06.40 of the Monte Sereno Municipal Code are amended to read in entirety as follows:

**“13.06.020 – Requirements**

A parcel map shall be required for all urban lot splits pursuant to section 66411.7 of the Government Code. An application for a parcel map urban lot split shall be approved ministerially by the City Engineer where the applicant has paid the application fee, which may be established by resolution of the City Council, and demonstrates that the application meets all the following requirements:

A. The proposed urban lot split will create no more than two new parcels, and each of the newly created parcels meets the following requirements:

1. Has at least 1,200 square feet in size,
2. Has at least 40 percent of the lot area of the original parcel,
3. Has access to or adjoins the public right-of-way,
4. Has at least 10 percent of the lot frontage of the original parcel, unless the applicant can demonstrate that this would have the effect of the effect of physically precluding the construction of two units on either of the resulting parcels or would necessarily result in a unit size of less than 800 square feet, in which case the applicant shall demonstrate the parcel has sufficient frontage to comply with any property access road requirements under the California Fire Code section 503, and
5. New parcels shall maintain right angles to streets or radial to the centerline of curved streets.

B. The parcel to be subdivided is located within a single-family residential zone.

C. The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

D. The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

1. Housing that is 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.

2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

3. A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

4. Housing that has been occupied by a tenant in the last three years based on the date of the application for an urban lot split.

E. The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city landmark or city heritage resource.

F. The parcel has not been established through prior exercise of an urban lot split provided for in Section 66411.7 of the Government Code and this section.

G. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this chapter.

H. The proposed new parcels are intended for exclusively residential use.

I. The owner of the parcel to be subdivided signs an affidavit on the cover sheet of the Parcel Map under penalty of perjury declaring all of the following to be true:

1. The housing units proposed to be demolished or altered have not been occupied by a tenant at any time within three years of the date of the application for an urban lot split.

2. The owner of the parcel intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. Owner-occupancy is not required if the owner is a community land trust or qualified nonprofit corporation under Sections 214.15 or 402.1 of the Revenue and Taxation Code.

3. The owner has not previously subdivided an adjacent parcel using an urban lot split.

4. The owner has not previously acted in concert with any person to subdivide an adjacent parcel using an urban lot split. "Acted in concert" means that the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

J. A minimum of one off-street parking space shall be provided on each parcel except where the parcel meets one of the following instances:

1. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

2. There is a car share vehicle located within one block of the parcel.

K. 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, and in all other circumstances a setback of four feet from the side and rear lot lines shall be provided, unless the applicant can demonstrate that this would have the effect of the effect of physically precluding the construction of two units on either of the resulting parcels or would necessarily result in a unit size of less than 800 square feet. Verification of size and location of the existing and proposed structure requires pre- and post-construction surveys by a California licensed land surveyor.

L. The parcel map satisfies the objective requirements of the Subdivision Map Act and this title regarding parcel maps, except as provided herein.

#### **13.06.30 - Filing, processing, and action.**

A. Parcel Maps shall be prepared, filed and recorded in accordance with the Map Act. The City Engineer shall, from time to time, prepare and provide detailed specifications to any subdivider setting forth the specific requirements necessary for preparing, filing and recording a parcel map.

B. The subdivider for an urban lot split shall not be required to dedicate right-of-way, construct off-site improvements, or correct non-conforming conditions except as necessary for a parcel to have access to the right-of-way. Any work in the right-of-way shall be subject to the requirements of this code.

C. In addition to other information requirement by this Title, an application for a parcel map for an urban lot split shall include the following:

1. Location of easements required for the provision of public services and facilities to each of the proposed parcels.

2. Location of any easements necessary for each parcel to have access to the public right-of-way.

D. The City Engineer shall deny the tentative map if any of the following is found:

1. The map fails to meet or perform one (1) of more objective requirements imposed by the Subdivision Map Act or by this Title. Any such requirement or condition shall be specified.

2. The Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed subdivision would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

E. The City Engineer shall not reject an application solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance. The City Engineer shall condition approval on the dedication of any easements deemed necessary for the provision of public services to the proposed parcels and any easements deemed necessary for access to the public right-of-way. The City Engineer shall not require the correction of nonconforming zoning conditions.

#### **13.06.40 Use and Development Requirements**

A. It shall be unlawful to rent, offer to rent or lease, or to advertise for rent or lease, any dwelling unit or portion thereof built on a parcel that is created by parcel map under this chapter for a term that is thirty days or less.

B. It shall be unlawful to use any parcel created by parcel map under this chapter for any use other than a residential use.

C. Each parcel shall include no more than a single driveway unless the parcel has more than 80 feet of contiguous street frontage.

D. Notwithstanding section 10.06.140 or any other provision of this code, no more than two dwelling units shall be permitted on any parcel created under the provisions of this chapter."

SECTION 5. Environmental Review.

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Government Code sections 65852.21(j) and 66411.7(n), as this action is to adopt an ordinance to implement the requirements of sections 65852.21 and 66411.7 of the Government Code.

SECTION 6. Effective Date.

This ordinance shall be in full force and effective 30 days after its adoption.

SECTION 7. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 8. Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the 17<sup>th</sup> day of October 2023, and was adopted at a regular meeting of the City Council on the 7<sup>th</sup> day of November 2023, by the following vote:

AYES: CRAIG, ELLAHIE, TURNER, WOLSHEIMER, MEKECHUK  
NOES: NONE  
ABSENT: NONE

Attest: Gloisy Gonzalez-Langarica  
486E81777D0A486...  
Gloisy Gonzalez-Langarica, City Clerk

DocuSigned by:  
Bryan Mekechuk  
3C7ABD41239EC4E4  
Bryan Mekechuk, Mayor

Approved as to form:

DocuSigned by:  
Kirsten Powell  
D457EC6D45884A8...  
Kirsten Powell, City Attorney