

Agenda Item 4.c

ORDINANCE NO. 2013

AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING SECTION 14.16.282 (SB 9 HOUSING DEVELOPMENTS) TO CHAPTER 14.16 (SITE AND USE REGULATIONS) OF DIVISION IV (REGULATIONS APPLYING IN ALL OR SEVERAL DISTRICTS) OF TITLE 14 (ZONING) AND CHAPTER 15.155 (URBAN LOT SPLITS) TO TITLE 15 (SUBDIVISIONS) OF THE SAN RAFAEL MUNICIPAL CODE, TO IMPLEMENT GOVERNMENT CODE SECTIONS 66411.7 AND 65852.21 (SENATE BILL 9) RELATED TO SB 9 HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

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

WHEREAS, these provisions require the City to provide ministerial approval of urban lot splits (“Urban Lot Splits”) and the construction of up to two residential dwelling units (“SB 9 Housing Developments”) on each single-family residential zoned lot within the City, subject to certain limitations; and

WHEREAS, Government Code Section 66411.7(a) limits eligibility of Urban Lot Splits by size and proportionality; and

WHEREAS, Government Code Sections 66411.7(a)(3)(C) and 65852.21(a)(2) limit Urban Lot Splits and SB 9 Housing Developments, respectively, 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, unless projects on such sites meet specified conditions; and

WHEREAS, Government Code Sections 66411.7(a)(3)(D) and 65852.21(a)(3) through (a)(5) limit eligibility of an Urban Lot Split and an SB 9 Development, respectively, 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to rent or price controls, housing that has been occupied by a tenant in the last three years, housing that has been withdrawn from rent or lease within the past 15 years, and housing that requires demolition of existing structural walls unless authorized by local ordinance or has not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) allow a city to deny an Urban Lot Split for properties within a 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 66411.7(c) and 65852.21(b) allow a city to establish objective zoning standards, objective subdivision standards, and objective design review standards for Urban Lot Splits and SB 9 Housing Developments, respectively, 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 from an Urban Lot Split or that would result in a unit size of less than 800 square feet” for an SB 9 Development; and

WHEREAS, Government Code Sections 66411.7 and 65852.21 allow a city to deny a proposed SB 9 Development or Urban Lot Split, respectively, 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, pursuant to Government Code Sections 65852.21(j) and 66411.7(n), the City may adopt an ordinance to implement the provisions of Government Code Sections 65852.21 and 66411.7, and such an ordinance shall not be considered a project under the California Environmental Quality Act (“CEQA”); and

WHEREAS, the City Council desires to implement objective standards and an application process for projects undertaken pursuant to Government Code Sections 65852.21 and 66411.7 by the adoption of such an ordinance.

BE IT ORDAINED by the City of San Rafael as follows:

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 14.16.282 (SB 9 Housing Developments) is added to Chapter 14.16 (Site and Use Regulations) of Division IV (Regulations Applying in All or Several Districts) of Title 14 (Zoning) of the San Rafael Municipal Code as set forth below.

14.16.282 – SB 9 Housing Developments.

- A. Purpose. The purpose of this section is to provide procedures and development standards for the establishment of SB 9 Housing Developments pursuant to Government Code Section 65852.21. To accomplish this purpose, the regulations outlined herein are determined to be necessary for the preservation of the public health, safety and general welfare, and for the promotion of orderly growth and development.

B. Filing, Processing and Action.

1. Ministerial Review. An SB 9 Housing Development shall be ministerially approved, without discretionary review or hearing, if the proposed housing development meets all provisions of this chapter. Review shall be done through submittal of a building permit application.
2. The City shall act on an application for an SB 9 Housing Development within 60 days of receipt of a complete application. If the applicant requests a delay in writing, the sixty-day time period shall be tolled for the period of the delay. The City has acted on the application if it:
 - a. Approves or denies the building permit for the SB 9 Development;
or
 - b. Informs the applicant in writing that changes to the proposed project are necessary to comply with this chapter or other applicable laws and regulations.
3. Adverse Impact Upon Health and Safety. A proposed SB 9 Housing Development shall be denied if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed SB 9 Housing Development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, 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.
4. Limitations on Approval. A proposed SB 9 Housing Development shall not be eligible for approval pursuant to this Chapter if any of the following circumstances apply:
 - a. The SB 9 Housing Development would require demolition or alteration of "protected housing." Protected housing includes:
 - 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.
 - Housing that is subject to rent control through valid local rent control provisions.
 - Housing that has been occupied by a tenant in the last 3 years.
 - b. The SB 9 Housing Development would be located on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act).

- c. The SB 9 Housing Development would be located within a historic district, would be included on the State Historic Resources Inventory, or would be within a site that is legally designated or listed as a city or county landmark or historic property or district.
- d. The SB 9 Housing Development would be located in any of the specified designated areas set forth in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the California Government Code, unless requirements therein are met.

C. Development Standards. The following objective development standards shall apply to SB 9 Housing Developments. In addition to these standards, all provisions of the California Building Code shall apply to SB 9 Housing Developments.

1. General Standards.

- a. SB 9 Housing Developments may either be detached or attached, as long as attached structures meet building code safety standards and are sufficient to allow separate conveyance.
- b. SB 9 Housing Developments shall be permitted in all single-family residential zones including R2a, R1a, R20, R10, R7.5, and R5.
- c. Short Term Rentals Prohibited. The rental of any unit in an SB 9 Housing Development shall be for a term of longer than thirty (30) days.
- d. Utility Connections. Each primary unit in an SB 9 Housing Development shall be served by separate water, sewer and electrical utility connections which connect each unit directly to the utility.
- e. Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) shall be permitted as set forth in Section 14.16.285 – Accessory Dwelling Units on parcels not created through an Urban Lot Split (Chapter 15.155).
- f. On parcels created through an Urban Lot Split (Chapter 15.155) that also contain an SB 9 Housing Development, accessory dwelling units (ADUs) shall be permitted as set forth below:
 - i. An SB 9 Housing Development proposing one primary dwelling unit shall be permitted either one ADU or one JADU as set forth in Section 14.16.285 – Accessory Dwelling Units on the parcel. All other provisions and development standards of Section 14.16.285 shall apply.
 - ii. An SB 9 Housing Development proposing a total of two primary dwelling units (where either of the two primary dwelling units are existing or proposed) shall not be permitted any ADU/JADU on the same parcel.

- iii. A single-family home with an ADU and JADU that was issued a building permit prior to July 18, 2022, shall not otherwise preclude an applicant from developing two dwelling units pursuant to the provisions of this Section on a vacant lot created through an Urban Lot Split (Chapter 15.155).
 - iv. The rental of any ADU/JADU shall be for a term of longer than thirty (30) days. This applies retroactively to any existing ADU/JADU on a parcel that subsequently utilizes the provisions of an SB 9 Development or an Urban Lot Split (Chapter 15.155).
2. Objective Development Standards. All applicable objective development standards set forth in Title 14 – Zoning of the San Rafael Municipal Code apply to an SB 9 Housing Development. However, where the following standards conflict or are inconsistent with objective development standards in Title 14, the following standards shall prevail:
- a. Four-foot rear and side yard setbacks are required.
 - b. Sixteen-foot height limit for portions of new development located outside the minimum rear and side yard setbacks of the parcel's zoning district. This height limit shall not be imposed for an SB 9 Housing Development constructed in the same location and to the same dimensions as an existing structure.
 - c. One off-street parking space is required per dwelling. No parking shall be required if:
 - i. 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; or
 - ii. There is a designated area where a car share vehicle may be accessed within one block of the parcel.
3. Exceptions to Development Standards.
- a. Notwithstanding subsection 2 of this section, all development standards shall be subject to the following exceptions:
 - i. Any standards that would have the effect of physically precluding the construction of two units of at least 800 square feet shall not be imposed.
 - ii. Election of development standards. If necessary, objective zoning, subdivision, or design standards will be set aside in the following order until the site can contain two, 800-square-foot units:

- a) Natural State (where applicable) or Lot Coverage, whichever is more restrictive on the subject parcel;
- b) Natural State (where applicable) or Lot Coverage, whichever is less restrictive on the subject parcel;
- c) Front Setbacks
- d) Second Floor Area limitations
- iii. No setback shall be imposed for an SB 9 Housing Development constructed in the same location and to the same dimensions as an existing structure.
- b. SB 9 Housing Developments are not eligible for any additional Exceptions, Variances, or other deviations from the objective development standards.

Section 3. Chapter 15.155 (Urban Lot Splits) is added to Title 15 (Subdivisions) of the San Rafael Municipal Code to read as follows:

**CHAPTER 15.155
URBAN LOT SPLITS**

15.155.010 Purpose and Intent

It is the purpose of this Chapter to provide procedures necessary for the implementation of Section 66411.7 of the Government Code pertaining to Urban Lot Splits. To accomplish this purpose, the regulations outlined herein are determined to be necessary for the preservation of the public health, safety and general welfare, and for the promotion of orderly growth and development.

15.155.020 Filing, Processing, and Action

- A. Ministerial Review. An Urban Lot Split shall be ministerially approved, without discretionary review or hearing, if the proposed subdivision meets all provisions of this chapter and conforms to all applicable objective requirements of the Subdivision Map Act (Division 2) commencing with Section 66410 of the Government Code.
- B. Parcel Map. Applicants for Urban Lot Splits shall submit a Parcel Map application.
- C. The City shall act on a Parcel Map application for an Urban Lot Split within 60 days of receipt of a complete application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay. The City has acted on the application if it:
 - 1. Approves or denies a Parcel Map application for an Urban Lot Split; or

2. Informs the applicant in writing that changes to the proposed project are necessary to comply with this Chapter or other applicable laws and regulations.
- D. Parcel maps for Urban Lot Splits shall not be conditioned on dedication of right of way or construction of offsite improvements.
- E. Adverse Impact Upon Health and Safety. A proposed Urban Lot Split shall be denied if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed Urban Lot Split would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, 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.
- F. Limitations on Approval. A proposed Urban Lot Split shall not be eligible for approval pursuant to this Chapter if any of the following circumstances apply:
1. The proposed Urban Lot Split would require demolition or alteration of "protected housing." Protected housing includes:
 - 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 rent control through valid local rent control provisions.
 - c. A parcel on which the owner of residential real property has withdrawn accommodations from rent or lease pursuant to Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act).
 - d. Housing that has been occupied by a tenant in the last three years.
 2. The parcel to be subdivided is located within a historic district, is included on the State Historic Resources Inventory, or is within a site that is legally designated or listed as a city or county landmark or historic property or district.
 3. The parcel to be subdivided is located in any of the specified designated areas set forth in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the California Government Code and does not satisfy the eligibility requirements therein.
 4. The parcel to be subdivided has been established through prior exercise of an Urban Lot Split pursuant to this Chapter.

5. Either the owner of the parcel to be subdivided or any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split pursuant to this Chapter. "Acting in concert" means 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.

15.155.030 Development Standards

The following objective development standards shall apply to Urban Lot Splits. In addition to these standards, all provisions of the California Building Code shall apply to Urban Lot Splits.

A. General Standards

1. Urban Lot Splits shall be permitted in all single-family residential zones including R2a, R1a, R20, R10, R7.5, and R5.
2. Uses created through an Urban Lot Split shall be limited to residential uses.
3. Short Term Rentals Prohibited. The rental of any unit created through an Urban Lot Split, either primary or accessory, shall be for a term of longer than thirty (30) days.
4. Accessory Dwelling Units. On parcels created through Urban Lot Splits pursuant to this chapter, accessory dwelling units and junior accessory dwelling units shall be permitted as follows:
 - a. An SB 9 Housing Development proposing one primary dwelling unit shall be permitted either one ADU or one JADU as set forth in Section 14.16.285 – Accessory Dwelling Units on the parcel. All other provisions and development standards of Section 14.16.285 shall apply.
 - b. Lots with two SB 9 Housing Developments (where either of the two primary dwelling units are existing or proposed) shall not be permitted any ADU/JADU on the same parcel.
 - c. A single-family home with an ADU and JADU that was issued a building permit prior to July 18, 2022, shall not otherwise preclude an applicant from developing two dwelling units pursuant to the provisions of SRMC 14.16.282 on a vacant lot created through an Urban Lot Split (Chapter 15.155).
 - d. The rental of any ADU/JADU shall be for a term of longer than thirty (30) days. This applies retroactively to any existing ADU/JADU on a parcel that subsequently utilizes the provisions of an SB 9 Development or an Urban Lot Split (Chapter 15.155).

5. Objective Development Standards. All applicable objective development standards set forth in Title 14 – Zoning and Title 15 – Subdivisions of the San Rafael Municipal Code apply to an Urban Lot Split in addition to, or except as qualified, below.
 6. Parcels created through Urban Lot Splits shall conform to the following:
 - a. One of the two parcels shall not be smaller than 40% of the lot area of the original parcel area of the subdivision.
 - b. Each of the two parcels shall have a minimum lot size of 1,200 square feet.
 - c. Each parcel shall have access to, provide access to, or adjoin the public right-of-way.
 - d. Each parcel shall possess easements and/or other necessary property rights required for the provision of public services and facilities.
- B. Exceptions to Development Standards. Notwithstanding subsection A of this section, all development standards shall be subject to the following:
1. Any standards that would have the effect of physically 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, shall not be imposed.
 2. No setback shall be imposed for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.
 3. Correction of any legal nonconforming zoning condition shall not be required as a condition of approval of an Urban Lot Split.
 4. Urban Lot Splits are not eligible for any additional Exceptions, Variances, or other deviations from the objective development standards.

Section 4: The following sections of Title 14 – Zoning of the San Rafael Municipal Code are amended to read as follows. New wording is shown in underline and deletions are shown in ~~strike through~~.

- Section 14.03.030 – Definitions. The following definition is added to this Section:
“SB 9 Housing Development” means a development in compliance with the provisions of SB 9 HOME Act of SRMC Section 14.16.282 that contains no more than two primary dwelling units.

- Table 14.04.020 in Section 14.04.020 – Land Use Regulations (R, DR, MR, HR, PD) is amended as follows:

Type of Land Use	R	DR	MR	HR	PD	Additional Use Regulations
Residential Uses						
Duplex residential	<u>P*</u>	P	P	P	C	<u>*Pursuant to regulations and restrictions outlined in Section 14.16.282</u>

- Table 14.04.030 - Property development standards (R) with footnotes is amended as follows:

	R2a	R1a	R20	R10	R7.5	R5	Additional Standards
Minimum lot area (sq. ft.)	2 acres	1 acre	20,000	10,000	7,500	5,000/6,000 (corner)	(I)
Minimum lot width (ft.)	150	150	100	75	60	50/60 (corner)	(I)
Minimum yards							
Front (ft.)	20	20	20	20	15	15	(A), (B)
Side/street side (ft.)	15	15	12'6"	10	6	10% of lot width, min. 3', max. 5'	(C), (D), (H)
Rear (ft.)	25	25	10	10	10	10	(H)
Maximum height of structure	30	30	30	30	30	30	(E), (H)

	R2a	R1a	R20	R10	R7.5	R5	Additional Standards
(ft.)							
Maximum lot coverage	20%	25%	30%	40%	40%	40%	
Maximum upper story floor size	50%/75% of lot coverage calculation	(E), (F), (G)					
Private yard area	NR	NR	NR	NR	NR	NR	
Parking	*	*	*	*	*	*	* Based on use. See 14.18.040., (H)

(H) See Section 14.16.282.C. for property development standard applicable to SB 9 Housing Developments.

(I) Parcels created through Chapter 15.155 (Urban Lot Splits) are exempt from these standards.

- Section 14.12.030 – Property development standards (-H) is amended as follows:

Development standards shall be those of the underlying zoning district with which a hillside development overlay district is combined, provided that the following shall be in addition and shall govern where conflicts arise, except for subsection G, Lot Standards, where the lot size standard of the underlying zoning district applies when more restrictive than the subdivision ordinance. Subsections B, F, G, and I shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 - – Urban Lot Splits).

- Section 14.12.040 – Exceptions to property development standards is amended as follows:

City Council Exception Required. Exceptions to the property development standards of this chapter may be approved by the city council, upon the recommendation of the design review board and the planning commission, when the applicant has

demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan based on the following criteria:

- A. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and
- B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

This section shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 - – Urban Lot Splits).

- Section 14.16.285. – Accessory Dwelling Units (ADUs) is amended to read as follows:
 - B. Applicability. An ADU as defined in Chapter 14.03 is permitted in any zoning district that allows the development of single-family or multifamily dwelling residential uses. ADUs may be permitted on any lot with a legal nonconforming residential structure. See exceptions in Section 14.16.282.C.1.f for limitations on parcels created by an Urban Lot Split (Chapter 15.1555). The following are the four (4) types of accessory dwelling units permitted within the city:

- Table 14.18.040 – Parking requirements is amended as follows:

Use Classification	Off-Street Parking Required	<u>Additional Standards</u>
Residential		
Single-family residential	2 covered spaces per unit.	
Single-family residential, hillside	On streets less than 26 feet wide, a minimum of two additional on-site parking spaces shall be provided (not on the driveway apron) per unit. These spaces should be conveniently placed relative to the dwelling unit which they serve. This requirement may be waived or reduced by the hearing body when the size or shape of the lot or the need for excessive grading or tree removal make the requirement infeasible.	<u>See Section 14.16.282.C.2. for parking requirements for SB 9 Housing Developments</u>
Studios (multifamily)	1 covered space per unit.	

Use Classification	Off-Street Parking Required	Additional Standards
unit)		
Studio (duplex unit), 500 sq. ft. or less in size	1 space per unit	
Studio (duplex unit), Greater than 500 sq. ft.	1.5 spaces per unit (including 1 covered space).	See Section 14.16.282.C.2 for parking requirements for SB 9 Housing Developments
1 bedroom unit	1.5 spaces per unit (including 1 covered space).	
Two-bedroom units	2 spaces (1 covered)	
Three or more bedroom units	2 spaces per unit (including 1 covered space).	

- Section 15.07.020 – Lot design standards - is amended to read as follows:

15.07.020 – Lot design standards.

Subsections (a)-(d) shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 - – Urban Lot Splits).

- Section 15.07.030 – Street, driveway and parking standards is amended as follows:

15.07.030 – Street, driveway and parking standards.

Subsection (c) shall not apply to SB 9 Housing Developments (regulated by section 14.15.282) or Urban Lot Splits (regulated by Chapter 15.155 - – Urban Lot Splits).

- Chapter 15.18 – Definitions. The following definition is added to this Chapter:

15.18.375 - Urban Lot Split.

The subdivision of a parcel within a residential single-family zone into no more than two parcels pursuant to the authority set forth in Section 66411.7 of the Government Code.

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 5: Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

Section 6: Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 7: Certification.

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


Kate Colin, Mayor

ATTEST:


LINDSAY LARA, City Clerk

The foregoing Ordinance No. 2013 was introduced at a regular meeting of the City Council of the City of San Rafael on the 18th day of July 2022 and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Hill, Kertz & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: Bushey & Llorens Gulati

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 1st day of August 2022.


LINDSAY LARA, City Clerk