

ORDINANCE NO. 385

AN URGENCY ORDINANCE TO IMPLEMENT SENATE BILL 9 BY SETTING FORTH OBJECTIVE STANDARDS APPLICABLE TO PROJECTS REQUIRED TO BE PROCESSED FOR ONLY MINISTERIAL REVIEW UNDER GOVERNMENT CODE SECTIONS 65852.1 OR 66411.7 SUCH AS LOT SPLITS AND TWO UNIT DEVELOPMENTS IN SINGLE FAMILY ZONING DISTRICTS

WHEREAS, on September 16, 2021, the Governor Newsom signed into law Senate Bill 9 (“SB9”), entitled the “California Home Act”. Among other provisions, this bill adds Sections 65852.21 and 66411.7 to the California Government Code and becomes effective on January 1, 2021; and

WHEREAS, SB 9 requires the ministerial approval of a parcel map for an urban lot split to create two parcels and/or a proposed housing development containing a maximum of two residential units within a single-family residential zone; and

WHEREAS, SB 9 limits the standards and regulations that a local agency, including Saratoga, may impose on qualifying two-unit or subdivision projects. For example, SB 9 specifies that local agencies may only impose objective zoning, subdivision, and design standards that would not physically preclude a unit size of 800 square feet or the subdivision of an existing a parcel with lot sizes of no less than 1,200 square feet; and

WHEREAS, the City of Saratoga’s significant natural resources and orderly residential development are a valuable public resource. The reasonably regulated and orderly development of residential construction and subdivision projects as permitted by SB9 is desirable, and unregulated or disorderly development represents a potential impact to the health, welfare and safety of the community; and

WHEREAS, SB9 specifically authorizes local agencies to impose objective zoning, subdivision, and design standards consistent with the bill’s provisions, and to adopt an ordinance to implement its provisions. SB9 further provides that such ordinances are not considered a “project” under the California Environmental Quality Act (CEQA).

NOW, THEREFORE, BE IT ORDAINED:

SECTION 1. Notwithstanding the City of Saratoga Subdivision and Zoning Regulations contained in Chapter 14 and Chapter 15, respectively, of the Saratoga Municipal Code (“City Code”), the Community Development Director shall ministerially review an application for a Two Unit Residential Development or a parcel map for an Urban Lot Split in accordance with the requirements of this ordinance. .

- A. **Purpose.** The purpose of this ordinance is to regulate Two-Unit Residential Development and Urban Lot Splits in compliance with California Government Code Sections 66452.6, 65852.21, and 66411.7 to allow up to two detached or attached housing units on one parcel, and ancillary uses and structures. An application for a Two-Unit Residential Development shall be considered ministerially, without discretionary review or a hearing.

B. **Applicability.** A Two-Unit Residential Development or Urban Lot Split may be located on parcels within all Single-Family Residential Zoning Districts with the following exceptions:

1. Any parcel where the Two-Unit Residential Development or Urban Lot Split would require demolition or alteration of any of the following housing types:
 - 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 within the last three years.
 - d. As to Urban Lot Splits only, a building on 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.
2. As to Two-Unit Residential Developments only parcel in which an owner of residential real property has exercised the owner's rights under Government Code Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 year before the date that the development proponent submits an application.
3. The development is not located within a historic district or property included on the State's 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 districts pursuant to a city or county ordinance.
4. A parcel that satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of Government Code Section 65913.4(a)(6). Without limiting the foregoing, the most applicable of those requirements to the City of Saratoga are the following:
 - a. A Two-Unit Residential Development or Urban Lot Split may not be located on any parcel within a very high fire hazard severity zone, as determined the Department of Forestry and Fire Protection pursuant to Government Code Section 51178, or within a high or very high fire hazard severity zone as indicated on the maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202. This subsection does not apply to parcels that have been excluded from specific hazard zones by actions of the City pursuant to Government Code Section 51179(b), or parcels that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 - b. A Two-Unit Residential Development or Urban Lot Split may not be located on any parcel located within a delineated earthquake fault zone as determined by the State Geologist in any official map published by the State Geologist, unless the

development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by the City of Saratoga Building Department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

5. A proposed Two-Unit Residential Development that allows the demolition of more than 25 percent of the existing exterior structural walls, unless the Two-Unit Residential Development is on a site that has not been occupied by a tenant in the last three years.

C. **Development Standards.** Development pursuant to this ordinance. shall comply with the following development standards and all applicable objective standards of the City Code, except as otherwise expressly provided for in this section.

1. **Number and size of units.** The application of objective standards of the City Code shall not physically preclude construction of up to two units on a lot, with each unit being at least 800 square feet in floor area.
2. **Accessory Dwelling Units.** In addition to the two residential units allowed under this section, per City Code Section 15-56.020, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on any one lot, except as provided in Section 1.D.2 of this ordinance.
3. **Maximum Height.** No dwelling unit shall exceed one story and shall not exceed a height of eighteen feet. Dwelling units shall not exceed a height of sixteen feet when located within either the required side or rear setback area as set by the underlying zoning district
4. **Side and Rear Setbacks.** No dwelling unit shall have an interior side or rear setback of less than four feet. Notwithstanding, 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.
5. **Accessory Uses and Structures.** All accessory uses and structures shall comply with the development regulations contained in Chapter 15 of the City Code.
7. **Decks.** Roof decks are not permitted.
8. **Off-Street Parking.** One off-street parking space within an enclosed garage shall be required per unit, with the exception that no off-street parking shall be required if any of the following apply:
 - a. The parcel is located within one-half mile walking distances or either a high-quality transit corridor, as defined in Public Resources Code Section 21155(b) of the , or a major transit stop, as defined in Public Resources Code Section 21064.3.
 - b. There is a designated parking area for one or more car share vehicles within one block of the parcel.
9. **Rental.** No dwelling unit shall be rented for a period of less than 30 days.

10. **Septic System.** For any Two-Unit Residential Development that will be connected to an onsite septic system, a percolation test showing compliance with applicable public health and safety standards and completed within the last five years, or, if the percolation test has been recertified, within the last ten years.
11. **Adjacent or Connected Units.** Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. An existing accessory unit that is separated from its primary unit by an Urban Lot Split shall meet all building code and other applicable requirements.
12. **Lot Coverage.** If application of development standards pursuant to this ordinance would preclude construction of dwellings with a combined floor area equal to the floor area allowed for a dwelling by the underlying zoning district by City Code section 15-12.085, then the Two-Unit Residential Development may exceed the maximum site coverage allowed for the underlying zoning district in City Code section 15-12.080. Such exceedance shall be limited to the minimum site coverage required to construct dwellings with the allowed floor area. For purposes of this paragraph the “site” for the purpose of calculating site coverage shall be the lot on which the Two-Unit Residential Development is to be constructed or as depicted in a site plan, including one of the lots resulting from an Urban Lot Split.
13. **Dedications.** As to an Urban Lot Split, no provision of the City Code shall apply that requires dedication of right-of-way or the construction of offsite improvements for the lots being created, although easements may be required for the provision of public services and facilities to the resulting lots.
14. **Adverse Impacts.** An application under this ordinance may be denied if the Chief Building Official makes a written finding, based upon a preponderance of evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in Government Code Section 65589.5(d)(2), 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.

D. **Urban Lot Splits.** A parcel map for an Urban Lot Split shall be allowed subject to ministerial review if the parcel map for the lot split meets all of the requirements in this section.

1. **Parcel Map.** A parcel map for an Urban Lot Split shall be allowed with ministerial approval if the parcel map for the lot split meets all of the following requirements:
 - a. The parcel is located within a Single-Family Residential Zoning District.
 - b. The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.
 - c. Both newly created lots are no smaller than 1,200 square feet.

- d. Each lot resulting from the Urban Lot Split shall adjoin the public right-of-way or have access to the public right-of-way via a recorded access easement benefiting the lot; if necessary to allow one lot resulting from an Urban Lot Split to meet this requirement, the other lot shall provide such an access agreement.
 - e. The subdivision shall not result in a new lot with a width that is less than 50 percent of the width of the original parcel. For purposes of this ordinance “width” means the distance of the longest possible straight line between the side property lines and parallel to the fronting street.
 - f. The parcel has not been established through prior exercise of an Urban Lot Split as provided for in this ordinance and Government Code section 66411.7.
 - g. The parcel is not 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 districts pursuant to a city or county ordinance.
 - h. 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.
 - i. The Urban Lot Split conforms to all applicable objective requirements of the Subdivision Map Act [Division 2 (commencing with Government Code Section 664100)] and the City Code, except as otherwise expressly provided for in this section.
 - j. The landowner provides all easements required for the provision of public services and facilities to the resulting lots.
2. **Number of Units.** No more than two dwelling units shall be allowed on any parcel created by the use of an Urban Lot Split. For purposes of this provision, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Government Code Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.
3. **Development Standards.** Residential uses are the only allowed uses of a lot created by an Urban Lot Split. Development standards for residential development on each new lot resulting from an Urban Lot Split shall conform to Section 11.C of this ordinance. Development standards shall be applied to each new building individually.
4. **Accessory Dwelling Units.** Notwithstanding Government Code Section 65852.2 or 65852.22, Accessory Dwelling Units and Junior Accessory Dwelling Units shall not be permitted on any lot resulting from an Urban Lot Split on which a Two-Unit Residential Development has been approved under this ordinance.
5. **Nonconforming Zoning Conditions.** Correction of nonconforming zoning conditions shall not be required as a condition for ministerial approval of a parcel map application for the creation of an Urban Lot Split.

6. **Residency Requirement.** An applicant for an Urban Lot Split shall sign an affidavit stating that the applicant intends to occupy one of the housing units on the resulting lots as their principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. This requirement shall not apply to an applicant that is a “community land trust,” as defined in Revenue and Taxation Code Section 402.1(a)(11)(C)(ii) , or is a “qualified nonprofit corporation” as described in Revenue and Taxation Code Section 214.15.

E. **Definitions.** Terms used in this ordinance have the meanings set forth below:

1. A person “**acting in concert with the owner,**” means a person that has common ownership or control of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided. As used here, “Common ownership or control” means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.
2. “**Adjacent parcel**” means any parcel of land that is (1) touching the parcel at any point; (2) separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property which is in common ownership or control of the applicant
3. “**Car share vehicle**” means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.
4. “**Sufficient for separate conveyance,**” means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.
5. “**Single-Family Residential Zoning District**” means the R-1, HR, and R-OS zoning districts as defined in Chapter 15 of the City Code, as well as any area covered by the P-C (Planned Combined District) for which single-family residences are the only dwelling units allowed, and which does not allow two-family residences or multifamily residences.
6. “**Urban Lot Split**” means a subdivision of an existing parcel into no more than two separate parcels that meets all the criteria and standards set forth in this ordinance.
7. “**Two-Unit Residential Development**” means a development that proposes no more than two new dwelling units or proposes to add one new dwelling unit to one existing dwelling unit that meets all the criteria and standards set forth in this ordinance.

SECTION 2. Government Code Section 36937(a) authorizes the adoption of an urgency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by four-fifths of the City Council.

SECTION 3. The City Council hereby finds, determines and declares that this urgency ordinance adopted pursuant to California Government Code Section 36937 is necessary because there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, all of which are deemed true and correct, as well any oral and written testimony at the December 15, 2021 City Council meeting.

SECTION 4. The City Council of the City of Saratoga held a duly noticed public meeting on December 15, 2021, and after considering all testimony and written materials provided in connection with that meeting adopted this ordinance and waived the reading thereof.

SECTION 5. This urgency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

SECTION 6. A summary of this ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

SECTION 7. Should any provision of this ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this ordinance or the application of this ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Following a duly noticed public meeting the foregoing urgency ordinance was introduced and adopted at the regular meeting of the City Council of the City of Saratoga held on December 15, 2021.

AYES: Council Members Bernald, Kumar, Zhao, Vice Mayor Fitzsimmons, Mayor
Walia

NOES: None

ABSENT: None

ABSTAIN: None

SIGNED:



Tina Walia
MAYOR, CITY OF SARATOGA, CALIFORNIA

ATTEST:



Britt Avrit, MMC
CITY CLERK

DATE: 12-17-2021

APPROVED AS TO FORM:



Richard Taylor
CITY ATTORNEY

DATE: 12/16/21