

PC ATTACHMENT 2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST ADDING CHAPTERS 7.50 AND 9.52 TO THE CITY OF LAKE FOREST MUNICIPAL CODE TO ESTABLISH OBJECTIVE DESIGN, DEVELOPMENT AND SUBDIVISION STANDARDS REGULATING URBAN LOT SPLITS AND TWO-UNIT HOUSING PROJECTS IN ACCORDANCE WITH CALIFORNIA SENATE BILL 9 AND DETERMINING THE ACTION TO BE EXEMPT FROM CEQA.

WHEREAS, the City of Lake Forest, 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 took 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, Section 9.196.040 of the Zoning Code and California Government Code section 65854 require the Planning Commission and the City Council to conduct public hearings on Zoning Code amendments. The Planning Commission’s action on proposed Zoning Code amendments shall be forwarded to the City Council as a recommendation; and

WHEREAS, the Director of Community Development prepared an exhibit of the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary for the Planning Commission to take action; and

WHEREAS, on January 20, the City gave public notice of a Planning Commission public hearing to be held to consider the draft ordinance by advertisement in a newspaper of general circulation; and

WHEREAS, the Director of Community Development made the exhibit available for public inspection in the Community Development Department offices and supplied it at cost to all persons desiring a copy, at least ten (10) days prior to the scheduled Planning Commission public hearing date in accordance with Section 9.196.020 of the Municipal Code; and

WHEREAS, on February 3, 2022, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning amendments to the Lake Forest Municipal Code, provided comments on the amendments, and voted to forward the proposed ordinance to the City Council with a recommendation in favor of its adoption; and

WHEREAS, on [DATE], the City gave public notice of a City Council public hearing to be held to consider the draft ordinance by advertisement in a newspaper of general circulation and posted the public notice at City Hall; and

WHEREAS, on [DATE], the City Clerk made the ordinance and all relevant documents available for public inspection in the City Clerk's office, at least five (5) days prior to the scheduled City Council public hearing date in accordance with Section 9.196.020 of the Municipal Code; and

WHEREAS, on [DATE], the City Council considered the staff report, recommendations by staff, and public testimony regarding amendments to the Municipal Code.

NOW, THEREFORE, the City Council of the City of Lake Forest 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, subdivision (j), and 66411.7, subdivision (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.

Section 3. Chapters 7.50 and 9.52 of the Lake Forest Municipal Code are hereby amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

Section 4. 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 5. The City Council hereby directs staff to prepare, execute, and file with the Orange County Clerk Recorder a notice of exemption within five (5) working days of the adoption of this Ordinance.

Section 6. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a Certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2022.

ROBERT PEQUENO
MAYOR

ATTEST:

LISA BERGLUND, MPA
CITY CLERK

APPROVED AS TO FORM:

MATTHEW E. RICHARDSON
CITY ATTORNEY

COUNTY OF ORANGE) SS

CITY OF LAKE FOREST)

I, Lisa Berglund, City Clerk of the City of Lake Forest, California do hereby certify that the foregoing Ordinance No. ____ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ____ day of _____ 2022, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2022, by the following vote, to wit:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

LISA BERGLUND, MPA
CITY CLERK

EXHIBIT A

Amendments to Municipal Code

(follows this page)

Chapter 7.50 is hereby added to Title 7 of the Lake Forest Municipal Code, to read in its entirety as follows:

Chapter 7.50 State-mandated Subdivisions

Section 7.50.010 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) Owners.
 - (A) 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).
 - (B) Any person or entity with a mortgage interest in the lot to be split under this section must sign the application and the parcel map affirming the person’s consent to the project.
 - (2) An application for an urban lot split must be submitted on the City’s approved form. Only a complete application will be processed. The City will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 - (3) The City may establish a fee or deposit 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 or deposit by resolution. The fee or deposit must be paid concurrently with the application submittal.

(d) **Approval.**

- (1) An application for a parcel map for an urban lot split is approved or denied ministerially, by the Director of Community Development, 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, such as the deed restriction and easements, have been 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 comply with each of the following requirements:

(1) **Map Act Compliance.**

- (A) The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., "SMA") and 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.
- (6) **No Impact on Protected Housing.**
- (A) The urban lot split must not require or include the demolition or alteration of any of the following types of housing:
- (i) Housing that is income-restricted for households of moderate, low, or very low income.
- (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
- (iii) 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.
- (iv) Housing that has been occupied by a tenant in the three years prior to submission of the urban lot split application.
- (B) As part of the urban lot split application, the applicant and the owner of a property must provide a sworn statement by

affidavit representing and warranting that subpart (e)(6)(A) above is satisfied.

- (i) 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 15 years preceding the urban lot split application will be demolished or altered.
 - (IV) No housing that has been occupied by a tenant in the three years preceding the urban lot split application will be demolished or altered.
- (ii) 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 urban lot split application. The easement agreements must be recorded before the final map may be approved, in accordance with subpart (d)(2) above.
 - (D) If an easement is recorded and the subdivision is not approved or otherwise 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.
- (9) **Lot Access.** Each resulting lot must adjoin a public street right-of-way with frontage of at least 12.5 feet.
- (10) **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 9.52.010 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 a minimum of five feet from the ground floor facade; 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 applicable in the corresponding zone.
- (ii) **Exceptions.** Notwithstanding subpart (e)(10)(D)(i) above:
 - (l) **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 Sq. Ft.; Four-Foot Side and Rear.** The setbacks applicable in the corresponding 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 be at least 20 feet from the front property line(s). The front setback areas must:
 - (I) be kept free of all structures greater than three feet tall;
 - (II) be at least 50 percent landscaped, with vegetation and irrigation plans prepared by a licensed landscape architect and approved by the Director;
 - (III) allow for fire-safety access to all structures and vehicular access, a minimum of ten feet wide, to each provided parking space, including garages and carports.
- (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) All exterior lighting must be limited to down-lights.
- (iv) 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 a window or door of a structure on or to the rear or side yard of adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (v) If a two-story dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less

than 25 feet from a property line that is not a public right-of-way line, then all second-story 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.

(i) Tree Removal.

- (I) No mature tree may be removed on a lot with any development under this chapter unless removal is necessary to constructing a dwelling unit that must be allowed under state law.
- (II) "Mature tree" means a tree with a diameter of six inches or more or a height of eight feet or taller.
- (III) A tree may only be removed under subparagraph (e)(10)(G)(i)(I) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.

(ii) 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 building 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 to the planting required by paragraph (e)(10)(G)(ii)(I) above, a solid fence of at least six feet in height may be installed.

(H) **Nonconforming Conditions.** An urban lot split is approved without requiring a legal nonconforming zoning condition to be corrected.

(I) **Utilities.**

(i) Each primary dwelling unit on a resulting lot must have its own direct utility connection to the utility service provider.

(ii) All utilities must be underground.

(11) **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) In areas that have only a single egress point, no more than 149 dwellings of any type (primary or accessory) may be developed. A secondary egress point for fire and life safety access must be approved and provided before more than 149 dwellings may be developed.

(ii) The lot must have direct access to a public street right-of-way with a paved street with a width of at least 40 feet.

(iii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

(iv) All enclosed structures on the site must have fire sprinklers.

(v) 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.

(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.

(12) Separate Conveyance.

- (A) Within a resulting lot.
 - (i) Primary dwelling units may not be owned or conveyed separately from each other.
 - (ii) Condominium airspace subdivisions and common interest developments are not permitted.
 - (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.

(13) **Regulation of Uses.**

- (A) **Residential-only.** No non-residential use, including a home occupation, 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.

(14) **Notice of Construction.**

- (A) At least 30 business days before starting any construction of a structure on a lot created by an urban lot split, 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 Division.
- (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 of an urban lot split 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.

- (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 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, including home occupations.
 - (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) States that:
 - (i) The lot 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.
 - (ii) Development on the lot is limited to development of residential units under section 9.52.010 of this Code, except as required by state law.

(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.

Chapter 9.52, in Title 9, of the Lake Forest Municipal Code, is hereby amended to read in its entirety as follows:

Chapter 9.52 State-mandated Residential

Section 9.52.010 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) Owners.
 - (A) 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).
 - (B) Any person with a mortgage interest in the lot 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 deposit or 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 deposit or fee by resolution. The fee must be paid concurrently with the application submittal.
- (d) **Approval.**
- (1) An application for a two-unit project is approved or denied ministerially, by the Director of Community Development, 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, such as the deed restriction and easements, have been 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.** A two-unit project must satisfy each of the following requirements:
- (1) **Map Act Compliance.** The lot must have been created by a legal subdivision.
 - (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.**
- (A) The two-unit project must not require or include the demolition or alteration of any of the following types of housing:
 - (i) Housing that is income-restricted for households of moderate, low, or very low income.
 - (ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.
 - (iii) 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 two-unit project application.
 - (iv) Housing that has been occupied by a tenant in the three years preceding the two-unit project application.
 - (B) As part of the two-unit project application, the applicant and the owner of a property must provide a sworn statement by affidavit representing and warranting that subpart (e)(5)(A) above is satisfied.

- (i) 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 15 years preceding the two-unit project application will be demolished or altered.
 - (IV) No housing that has been occupied by a tenant in the three years preceding the two-unit project application will be demolished or altered.
- (ii) 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) A lot that results from an urban lot split, under section 7.50.010, may have no more than two dwelling units of any kind. See section 7.50.010, subsection (e)(10)(A).
- (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 state law and the City's ADU ordinance.

(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 existing at the time that the application for the two-unit project is submitted. 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 a minimum of five feet from the ground floor facade; 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) **Demolition Limit.** 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 three years preceding application for the two-unit project.

- (E) **Setbacks.**
 - (i) **Generally.** All setbacks must conform to those objective setbacks applicable in the corresponding zone.

 - (ii) **Exceptions.** Notwithstanding subpart (e)(6)(E) 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 Sq. Ft.; Four-Foot Side and Rear.** The setbacks applicable in the corresponding 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 20 feet from the front property line(s). The front setback area must:
 - (I) be kept free of all structures greater than three feet high;

 - (II) be at least 50 percent landscaped, with vegetation and irrigation plans prepared by a licensed landscape architect and approved by the Director;

- (III) allow for fire-safety access to all structures and vehicular access, a minimum of ten feet wide, to each provided parking space, including garages and carports.
- (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) All exterior lighting must be limited to down-lights.
- (iv) No window or door of a dwelling that is constructed on the lot under this section may have a direct line of sight to a window or door of a structure on or to the rear or side yard of adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (v) If any portion of a dwelling is less than 25 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.

- (i) Tree Removal.
 - (I) No mature tree may be removed on a lot with any development under this section unless removal is necessary to constructing a dwelling unit that must be allowed under state law.
 - (II) “Mature tree” means a tree with a diameter of six inches or more or a height of eight feet or taller.
 - (III) A tree may only be removed under subparagraph (e)(6)(H)(i)(I) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.

- (ii) 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 building 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 to the planting required by paragraph (e)(6)(H)(ii)(II), a solid fence of at least 6 feet in height may be installed.
 - (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) 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) A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:
 - (i) In areas that have only a single egress point, no more than 149 dwellings of any type (primary or accessory) may be developed. A secondary egress point for fire and life safety access must be approved and provided before more than 149 dwellings may be developed.

- (ii) The lot must have direct access to a public right of way with a paved street with a width of at least 40 feet.
 - (iii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
 - (iv) All enclosed structures on the site must have fire sprinklers.
 - (v) 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.
- (B) Prior to submitting an application for a two-unit project, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart (e)(7). 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.

(8) Separate Conveyance.

- (A) Primary dwelling units on the lot may not be owned or conveyed separately from each other.
- (B) Condominium airspace subdivisions 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 any lot created by urban lot split. This prohibition includes home occupations.
- (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 City Building Division.
- (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 of a two-unit project 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 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, including home occupations.
 - (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 does not undergo 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) Limits development of the lot to residential units that comply with the requirements of this section, except as required by state law.

(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) **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.