SB 9 Model Ordinance

Note: Unless otherwise noted, provisions in this document reflect the provisions in SB 9. "Recommended" Provisions are recommended to clarify ambiguities in the statute or assist in enforcement. "Policy" Provisions are optional provisions for local agencies to consider.

ORDINANCE NO. XXXX[1]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____ AMENDING SECTIONS ___ AND ADDING SECTIONS ___ TO THE CITY OF _____ MUNICIPAL CODE TO COMPLY WITH SENATE BILL 9

WHEREAS, on September 16, 2021, Senate Bill 9 (Chapter 162, Statutes of 2021) was approved by the Governor of the State of California and filed with the Secretary of State, amending Section 66452.6 of the California Government Code and adding to the Government Code Sections 65852.21 and 66411.7, allowing additional housing units on properties within single-family zones and providing for parcel map approval of an Urban Lot Split; and

WHEREAS, the changes made to the Government Code by Senate Bill 9 go into effect on January 1, 2022; and

WHEREAS, state law allows a local agency to adopt an ordinance to implement the provisions in Senate Bill 9; and

WHEREAS, the [City/County of _____ (the "City"/the "County")] has implemented land use policies based on the [City's/County's General Plan], which provide an overall vision for the community and balance important community needs, and the [City/County] seeks to ensure that Senate Bill 9 projects are consistent with those policies; and

WHEREAS, the proposed amendments to the [City of _____ Municipal Code/County of _____ County Code] implement requirements of state law and add local policies that are consistent with the state law and implement the [City's/County's General Plan]; and

[1] Local agencies should consult with their legal counsel prior to the use or implementation of this model ordinance, conformance with standard ordinance formats, and any provisions outlined herein. This ordinance is drafted as a regular ordinance, not an urgency ordinance, includes only substantive provisions to be considered, and does not include standard provisions such as a severability clause, publication, dates of introduction and adoption, and votes, which vary from agency to agency,

WHEREAS, the [City Council/Board of Supervisors] has found that the provisions of this ordinance are consistent with the goals and policies of the [City's/County's General Plan]; and

WHEREAS, the proposed code amendments are intended to implement Senate Bill 9 and are not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code, as provided in Government Code Sections 65852.21(j) and 66511.7(n).[2]

NOW, THEREFORE, THE [CITY COUNCIL OF THE CITY OF _____ /the BOARD OF SUPERVISORS OF THE COUNTY OF _____] DOES ORDAIN AS FOLLOWS:

Section 1. Purpose.

The purpose of this chapter is to provide objective zoning standards for Two-Unit Developments and Urban Lot Splits within single-family residential zones, to implement the provisions of state law as reflected in Government Code Section 65852.21 et seq. and Section 66411.7 et seq., and to facilitate the development of new residential housing units consistent with the [City's/County's General Plan] and ensure sound standards of public health and safety.

Section 2. Authority.

The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code Sections 65852.21 et seq. and 66411.7 et seq. [If a city.]

Section 3. Definitions.

A. [Recommended provision] A person "acting in concert with the owner," as used in Section 4(B)(8) below, 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.

B. [Recommended provision] "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

[2] Note that these Government Code Sections are not effective until January 1, 2022. Cities and counties adopting ordinances before that date should include additional exemptions. For instance, in urbanized areas, the proposed code amendments may be found to be categorically exempt from CEQA under Guidelines Section 15303, New Construction or Conversion of Small Structures, which provides an exemption for up to three single-family homes and to duplexes and apartments containing no more than six units.

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.

C. [Recommended provision] "Car share vehicle" means a motor vehicle that is operated as part of a regional fleet by a public or private care sharing company or organization and provides hourly or daily service.

D. [Recommended provision] "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.

E. [Recommended provision] "Lower income household" has the meaning set forth in Health & Safety Code Section 50079.5.

F. [Recommended provision] "Moderate income household" has the meaning set forth in Health & Safety Code Section 50093.

G. [Recommended provision] "Sufficient for separate conveyance," as used in Sections 4(B)(11) and 5(B)(8) below, 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.

H. "Two-Unit Development" means a development that proposes no more than two new units or proposes to add one new unit to one existing unit.

I. "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 chapter.

J. [Recommended provision] "Very low income household" has the meaning set forth in Health & Safety Code Section 50105.

Section 4. Urban Lot Split.[3]

A. The [--] Official[4] shall ministerially review an application for a parcel map that subdivides an existing parcel to create no more than two new parcels in an Urban Lot Split, and shall approve the application if the criteria in Government Code Section 66411.7 and this section are satisfied.

B. Qualifying Criteria. Within the time required by the Subdivision Map Act, the [] shall determine if the parcel map for the Urban Lot Split meets all the following requirements:

1. The parcel is located within one of the following single-family residential zones: _____.

2. The parcel being subdivided is not located on a site that is any of the following:

   i. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

   ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not

[3] Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text.

[4] Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, in addition to designating the applicable zoning districts.

apply to sites excluded from the specified hazard zones by the [city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.[5]

iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

v. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps 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 building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

vi. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

[5] The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.

viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. Lands under conservation easement.

3. Both resulting parcels are no smaller than 1,200 square feet.[6]

4. Neither resulting parcel shall be smaller than 40 percent of the lot area of the parcel proposed for the subdivision.

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

i. 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.

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. 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 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

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

6. 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/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.[7]

7. The parcel being subdivided was not created by an Urban Lot Split as provided in this section.

8. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split as provided in this section.

9. The development proposed on the parcels complies with all objective zoning standards, objective subdivision standards, and objective design review

[6] Agencies may allow smaller lots if desired.

[7] Local agencies may wish to specify which ordinance or code section designates historic properties.

standards applicable to the parcel as provided in the zoning district in which the parcel is located[8]; provided, however, that:

i. The [--] Official, or their designee, shall waive or modify any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.

ii. Notwithstanding subsection (9)(i) above, required rear and side yard setbacks shall equal four feet,[9] except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.

10. Each resulting parcel shall have access to, provide access to, or adjoin the public right-of-way.[10]

11. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed dwelling units shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

12. **Parking.** One parking space[11] shall be required per unit constructed on a parcel created pursuant to the procedures in this section, except that no parking may be required where:

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

ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

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[8] Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.
[9] Localities may allow a smaller setback if desired.
[10] Local agencies may wish to impose frontage requirements or requirements for access to the public right of way, such as the required width of a driveway.
[11] Agencies may reduce parking standards if desired.

13. **Compliance with Subdivision Map Act.** The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410)), except as otherwise expressly provided in Government Code Section 66411.7. Notwithstanding Government Code Section 66411.1, no dedications of rights-of-way or the construction of offsite improvements may be required as a condition of approval for an Urban Lot Split, although easements may be required for the provision of public services and facilities.

14. The correction of nonconforming zoning conditions may not be required as a condition of approval.

15. Parcels created by an Urban Lot Split may be used for residential uses only and may not be used for rentals of less than 30 days.

16. [Recommended provision] If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d).

C. Owner-Occupancy Affidavit. The applicant for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that the applicant intends to occupy one of the housing units on the newly created lots as its principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. This subsection shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

D. [Recommended provision] **Additional Affidavit[12].** If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (4)(B)(5) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form prescribed by [ ]. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using an Urban Lot Split.

[12] Local agencies may want to include a provision that indicates enforcement/legal remedies where there is evidence of fraudulent intent. misrepresentation, etc.

E. [Recommended provision] **Recorded Covenant.** Prior to the approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

1. A prohibition against further subdivision of the parcel using the Urban Lot Split procedures as provided for in this section;

2. A limitation restricting the property to residential uses only; and

3. A requirement that any dwelling units on the property may be rented or leased only for a period longer than thirty (30) days.

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

F. **Specific Adverse Impacts.** In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A "specific adverse impact" is 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. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

G. **Enforcement.** The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

1. **Number of units to be allowed on each parcel.** If a parcel uses the Urban Lot Split provision, a local agency does not need to allow more than two units on each lot, including ADUs, JADUs, density bonus units, and two-unit developments. If an agency desires to take advantage of this provision, it should adopt the following:

> No more than two dwelling units may be located on any lot created through an Urban Lot Split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as a two-unit development.

Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

Another alternative is to consider allowing an ADU and JADU with a primary dwelling unit on one lot, rather than two primary dwelling units.

2. **Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

   These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018. Consequently, height, size, and similar restrictions on units created through Urban Lot Splits should be limited to units that do not meet existing zoning standards.

   Affordable units. There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.

Section 5. Two-Unit Development.

A. The [--] Official[13] shall ministerially review without a hearing an application for an application for a Two-Unit Development, and shall approve the application if all the criteria in Government Code Section 65852.21 and this section are satisfied.

B. Qualifying Criteria. The [] shall determine if the Two-Unit Development meets all the following requirements:

1. The Two-Unit Development is located within one of the following single-family residential zones: _____.[for counties: also must be located within the boundaries of an urbanized area or urban cluster].

2. The Two-Unit Development is not located on a site that is any of the following

   i. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.[14]

   ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not

[13] Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text. Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, or reference a website showing those areas, in addition to designating the applicable zoning districts.
[14] Would be best to specify the local ballot measure.

apply to sites excluded from the specified hazard zones by the[city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.[15]

iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

v. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps 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 any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

vi. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

[15] The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.

viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. Lands under conservation easement.

3. Notwithstanding any provision of this section or any local law, the proposed Two-Unit Development would not require the demolition or alteration of any of the following types of housing:

i. Housing that is subject to recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families 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 that has been occupied by a tenant in the last three years.

4. The parcel is not a parcel on which an owner of residential real property has exercised the owner's right under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within the last 15 years before the date that the development proponent submits an application.

5. The proposed Two-Unit Development does not include the demolition of more than 25 percent of the existing exterior structural walls unless the site has not been occupied by a tenant in the last three years.

6. The proposed Two-Unit Development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a [city/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.[16]

7. The proposed Two-Unit Development complies with all objective zoning standards, objective subdivision standards, and objective design review standards applicable to the parcel as provided in the zoning district in which the parcel is located[17]; provided, however, that:

i. The [--] Official, or their designee, shall modify or waive any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of

[16] Local agencies may wish to specify which ordinance or code section designates historic properties.
[17] Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.

development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.

ii. Notwithstanding subsection (7)(i) above, required rear and side yard setbacks shall equal four feet, except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.

iii. For a Two-Unit Development connected to an onsite wastewater treatment system, the applicant must provide a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last 10 years.[18]

8. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed Two-Unit Development shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

9. **Parking.** One parking space shall be required[19] per unit constructed via the procedures set forth in this section, except that the City shall not require any parking where:

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

ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

10. Dwelling units created by a Two-Unit Development may be used for residential uses only and may not be used for rentals of less than 30 days.

[18] A local agency may waive this requirement if desired.
[19] Agencies may elect to require fewer parking spaces.

11. [Recommended provision] If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d).

C. [Recommended provision] **Declaration of Prior Tenancies.** If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (5)(B)(3) and (B)(4) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form approved by [].

D. [Recommended provision] **Recorded Covenant.** Prior to the issuance of a building permit, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

1. A limitation restricting the property to residential uses only; and

2. A requirement that any dwelling units on the property may be rented or leased only for a period of longer than thirty (30) days.

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

E. **Specific Adverse Impacts.** In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A "specific adverse impact" is 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. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

F. **Enforcement.** The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method

permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

1. **Number of units to be allowed on each parcel.** Local agencies are not required to allow ADUs or JADUs on parcels that utilize both the Urban Lot Split provision and the Two-Unit Development provision. If agencies desire to utilize this provision, they should adopt the following:

   > Two primary dwelling units only may be located on any lot created through an Urban Lot Split that utilized the Two-Unit Development provision. Accessory dwelling units and junior accessory dwelling units are not permitted on these lots.

   Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

   Where a lot was not created through an Urban Lot Split, there is no limitation on the construction of ADUs and JADUs except that provided by existing ADU law.

2. **Owner-occupancy requirement.** Where there is no Urban Lot Split, the jurisdiction may adopt a provision requiring that one unit in a Two-Unit Development be owner-occupied, including a requirement to record a covenant notifying future owners of the owner-occupancy requirements.

3. **Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

   These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018.

Consequently, height, size, and similar restrictions on units created as Two-Unit Developments should be limited to units that do not meet existing zoning standards.

4. **Affordable units.** There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.

5. **Fire sprinklers.** If not already required, agencies may wish to consider requiring that units created through Two-Unit Developments be fire-sprinklered.

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