

## **AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 1, SECTION 3**

Title XI, Chapter 1, Section 3 “Definitions” of the Milpitas Municipal Code is hereby amended to add Subsection XI-1-3.09 “Urban Lot Splits” to read as follows:

### **XI-1-3.09 – Urban Lot Split**

“Urban Lot Split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.

## **AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 1, SECTION 31**

Title XI, Chapter 1 “Subdivisions” of the Milpitas Municipal Code is hereby amended to add Section 31 “Urban Lot Splits” to read as follows:

### **Section 31 – Urban Lot Splits**

#### **XI-1-31.00 – Purpose**

The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.

#### **XI-1-31.01 – Definition**

As defined in subsection XI-1-3.09 of this chapter, an “urban lot split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.

#### **XI-1-31.02 – Application**

31.02-1 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).

31.02-2 An application for an urban lot split must be submitted on the city’s approved form. 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.

31.02-3 The city may establish a 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 fee by resolution. The fee must be paid with the application.

### **XI-1-31.03 Approval**

31.03-1 An application for a parcel map for an urban lot split is approved or denied ministerially, by the Planning Director or his or her agent, without discretionary review.

31.03-2 A tentative parcel map for an urban lot split may receive ministerial approval if it complies with all the requirements of this section. The tentative parcel map may not be recorded. A final parcel map may also receive ministerial approval as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements. The tentative parcel map expires three months after approval.

31.03-3 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.

31.03-4 The approval must require the owner and applicant to reimburse the city of all costs of enforcement, including attorney's fees and costs associated with enforcing the requirements of this chapter.

### **XI-1-31.04 – Requirements. An urban lot split must satisfy each of the following requirements:**

31.04-1 Map Act Compliance. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., “SMA”), including implementing requirements in this code, except as otherwise expressly provided in this section.

31.04-2 If an urban lot split violates any part of the SMA, the city's subdivision regulations, including this section, or any other legal requirement:

- (a) 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.
- (b) 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.

31.04-3 Zone. The lot to be split shall be located in a single-family residential zone. For the purposes of this section, the R1 Zoning District shall be the only single-family residential zone.

31.04-4 Lot Location. The lot to be split shall not be located on a site that is any of the following, as contained within Government Code section 65913.4(a)(6)(B)-(K), as may be amended from time to time:

(a) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

(b) A wetland.

(c) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

(d) A hazardous waste site that has not been cleared for residential use.

(e) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

(f) 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.

(g) Within a regulatory floodway, unless all development on the site has received a no-rise certification.

(h) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

(i) Habitat for protected species.

(j) Land under conservation easement.

31.04-5 Historic Properties. The lot to be split shall 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.

31.04-6 No Prior Lot Split.

- (a) The lot to be split shall not be a lot that was established through a prior urban lot split.
- (b) The lot to be split shall not be 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. “Any person acting in concert with the owner” here includes any third-party that coordinates with the owners of two adjacent lots with their respective urban lot splits.

31.04-7 No Impact on Protected Housing. The urban lot split must not require or include the demolition or alteration of any of the following types of housing:

- (a) Housing that is income-restricted for households 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, 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.
- (d) Housing that has been occupied by a tenant in the last three years. The applicant and the owner of a property for which an urban lot split is sought must provide a sworn statement as to this fact with the application for the parcel map. 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.

31.04-8 Lot Size.

- (a) The lot to be split must contain a minimum of 2,400 square feet.
- (b) The resulting lots must each contain a minimum of 1,200 square feet.
- (c) Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

**XI-1-31-05 – Easements.**

31.05-1 The owner of the property subject to an urban lot split 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.

31.05-2 Each easement must be shown on the tentative parcel map.

31.05-3 Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved.

**XI-1-31.06 – Lot Access.**

31.06-1 Each resulting lot must adjoin the public right of way.

31.06-2 Each resulting lot must have frontage on the public right of way of at least 12.5 feet.

**XI-1-31.07 – Compliance with Zoning Ordinance**

The urban lot split shall conform with the requirements and standards of Section XI-10-4.08 “Urban Lot Splits” and Section XI-10-4-0.09 “Two-unit Projects” of this Title.

**XI-1-31.08 – Specific Adverse Impacts**

31.08-1 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.

31.08-2 “Specific adverse impact” has the same meaning as in Government Code Section 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).

31.08-3 The Building Official may consult with and be assisted by the Planning Director or other City staff or consultants, as necessary, in making a finding of specific, adverse impact.

**AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 2**

Title XI, Chapter 10, Section 2.03 “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definitions to read as follows:

“Urban Lot Split” means the subdivision of an existing, legally subdivided lot into two lots.

“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.

## AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

Title XI, Chapter 10, Section 4 “Residential Zones and Standards” of the Milpitas Municipal Code is hereby amended to add Subsection XI-10-4.08 to read as follows:

### XI-10-4.08 – 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. 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 § 214.15).
  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 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 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 fee by resolution. The fee must be paid with the application.
- D. Approval
1. An application for a two-unit project is approved or denied ministerially, by the Planning Director, 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 with the Santa Clara County Clerk.
  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. Location Requirements. A two-unit project must satisfy each of the following requirements:

1. Map Act Compliance. The lot must have been legally subdivided.
2. Single-family Residential Zone. The two-unit project shall be located in a single-family residential zone. For the purposes of this section, the R1 zone is the only single-family residential zoning district where a two-unit project may be located.
3. Lot Location. The two-unit project shall be located on a lot that conforms with the applicable requirements of Sections XI-1-31.04-4 through XI-1-31.04-8 of this Title.
4. Not Historic. The two-unit project shall be located on a lot that conforms with the applicable requirements of Section XI-1-31.05 of this Title.
5. No Impact on Protected Housing. The two-unit project shall be located on a lot that conforms with the applicable requirements of Section XI-1-31.06 of this Title.

F. Residential Unit Standards

1. Quantity.

- a. 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 a dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under Section XI-10-04.08 of this Chapter, an ADU, or a JADU.
- b. 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.

2. Unit Size.

- a. 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 or equal to 500 square feet.
- b. 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.

- c. 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.
3. Demo Cap. 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 last three years.

#### G. Maximum Height

1. 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.
2. 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 by an additional five (5) feet from the ground floor; no balcony deck or other portion of the second story may project into the step-back area.
3. No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

#### H. Setbacks.

1. General Setbacks. All setbacks must conform to those objective setbacks that are imposed through the underlying R1 zone.
2. Exceptions. Notwithstanding Subsection XI-10-4.08.H.1 above:
  - a. 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.
  - b. Minimum Unit Size. The setbacks imposed by the underlying 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.
3. Front Setback Area. Notwithstanding any other part of this code, dwellings that are constructed under this section must be a minimum of 15 feet from the front property lines. The front setback area must:
  - a. be kept free from all structures greater than three feet high;
  - b. be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;



c. allow vehicular and fire-safety access to the front structure in accordance with the City's adopted Building and Fire Safety Codes.

#### I. Parking.

1. Off-street Parking Requirement. Each new primary dwelling unit that is built on an existing lot or a lot created through an urban lot split must have at least one (1) off-street parking space per unit.

2. Exceptions. Notwithstanding Subsection XI-10-4.08.I.1 above:

a. Proximity to Transit. No additional parking is required for any new primary dwelling unit located within one-half mile walking distance of:

i. a corridor with fixed-route bus service or the intersection of two or more major bus routes with frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute hours; or

ii. a site that contains an existing rail or bus rapid transit station; or

b. Proximity to Car-Share Service. No additional parking is required for a new primary dwelling unit located within one block of a car-share vehicle location.

#### J. Architecture.

1. 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.

2. 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.

4. All exterior lighting must be limited to down-lights.

5. 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 an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

6. If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 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.

#### K. Landscaping

1. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
  - a. At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24" box size plant shall be provided for every ten linear feet of exterior wall.
  - b. Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
  - c. All landscaping must be drought-tolerant to conserve water used for irrigation.

L. Non-conforming Conditions. A two-unit project may only be approved if all nonconforming zoning conditions are corrected.

#### M. Utilities

1. Each primary dwelling unit on an existing lot or the lots resulting from an urban lot split must have a separate direct water connection to the water service provider.
2. Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

N. Building and 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.

#### O. Separate Conveyance

1. Within a resulting lot.
  - a. Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.
  - b. Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.
  - c. All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.

#### P. Regulation of Uses

1. Residential-only. Non-residential uses, except for legal home-based businesses, are not permitted on any single-family residential lot.

2. No STRs. No dwelling unit located on a lot created by an urban lot split may be rented for a period of less than 30 days.
3. Owner Occupancy. Unless the lot was created 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.

Q. Notice of Construction

1. At least 30 business days prior to starting any construction activities related to a structure on a lot created by an urban lot split, the property owner must provide written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:
  - a. Notice that construction has been authorized:
  - b. The estimated start and end dates for construction:
  - c. The hours of construction;
  - d. Contact information for the project manager (for construction-related issues); and
  - e. Contact information for the City Building Safety & Housing Department.
2. This notice requirement does not confer a right on the noticed persons or any others to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a project under this Chapter. This notice requirement is intended to foster neighborhood awareness and expectations.

R. Deed Restriction. The owner must record a deed restriction, acceptable to the City of Milpitas, 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.
- 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 the property 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.

## S. Specific Adverse Impacts

1. Notwithstanding any other provisions 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.

## T. 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 Milpitas Municipal Code.