

**URGENCY**

**NUMBER: 38.844**

**TITLE: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS OF CHAPTER 1 “SUBDIVISIONS” AND CHAPTER 10 “ZONING” OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO URBAN LOT SPLITS AND TWO-UNIT PROJECTS TO COMPLY WITH GOVERNMENT CODE SECTIONS 66411.7 AND 65852.21 AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

**HISTORY:** This Ordinance was adopted by the City Council by a four-fifths (4/5) vote in order to protect the public health, safety and welfare at its meeting of December 14, 2021, upon motion by \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with the law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Wendy Wood, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## **RECITALS:**

**WHEREAS**, the City of Milpitas, 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 takes 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**, there is a current and immediate threat to the public health, safety, or welfare based on the passage of the new SB 9 Law because if the City does not adopt appropriate objective standards for urban lot splits and two-unit projects under SB 9 as of January 1, 2022, the City would thereafter be limited to applying the few objective standards that already in its code, which did not anticipate and were not enacted with urban lot splits and ministerial two-unit projects in mind; and

**WHEREAS**, the approval of urban lot splits and two-unit projects based solely on the City’s default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

**WHEREAS**, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. INCORPORATION OF RECITALS**

The City Council hereby finds that all the foregoing recitals and staff report presented herewith are true and correct and are hereby incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (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. URGENT NEED**

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

### **SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTERS 1 AND 10**

Chapters 1 and 10 of Title XI of the Milpitas Municipal Code are hereby amended and restated as provided in Exhibit "A", attached hereto and incorporated herein by reference.

### **SECTION 5. AUTHORITY**

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

### **SECTION 6. EFFECTIVENESS OF ORDINANCE**

This ordinance takes effect immediately upon its adoption.

### **SECTION 7. SEVERABILITY**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

### **SECTION 8. NOTICE OF CEQA EXEMPTION**

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

### **SECTION 9. CERTIFICATION**

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

**EXHIBIT A**

**Amendments to Chapter 1 and Chapter 10 of Title XI of the Milpitas Municipal Code**

(follows this page)