



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and consider adopting Urgency Ordinance No. 38.844 amending sections of Chapter 1 “Subdivisions” and Chapter 10 “Zoning” 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 statutorily exempt from CEQA (Staff Contact: Ned Thomas, 408-586-3273)
Category:	Public Hearings-Community Development
Meeting Date:	12/14/2021
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273
Recommendation:	1. Conduct a public hearing and move to close the hearing following comments. 2. Adopt Urgency Ordinance No. 38.844 amending sections of Chapter 1 “Subdivisions” and Chapter 10 “Zoning” 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 statutorily exempt from CEQA

Background:

Governor Newsom signed Senate Bill 9 (SB 9) on September 16, 2021, establishing a two-pronged approach to require increased housing density in single-family residential zones.

- First, if certain conditions are met, SB 9 requires ministerial approval of up to two units on a lot in single-family residential zones. The units may be in one structure or two separate structures.
- Second, the statute requires ministerial approval of lot splits in single-family residential districts, subject to similar conditions. Eligible single-family lots may be split, roughly into halves, with resulting lots as small as 1,200 square feet.

If the conditions are met for both approvals, the applicant could build at least four units on what was originally one single-family residential lot. No public hearing is required for these ministerial approvals. Many cities across the state are considering the adoption of urgency ordinances to amend local subdivision and zoning regulations to comply with state law before the new legislation takes effect on January 1, 2022. Future refinements to the state legislation are expected.

On November 29, 2021, the Planning Commission held a special meeting and conducted a public hearing to consider the proposed City-initiated amendments to the Subdivision Ordinance and Zoning Ordinance. The Commission voted 5-1 (Tao, nay; one vacancy) to adopt Resolution No. 21-025 recommending that the City Council approve Zoning Text Amendment ZA21-0004 amending sections of Chapter 1 “Subdivisions” and Chapter 10 “Zoning” of the Milpitas Municipal Code to modify or add regulations relating to urban lot splits and two-unit projects to comply with Government Code section 65852.21 and 66411.7.

Analysis:

The proposed zoning text amendments would amend sections of Chapter 1 “Subdivisions” and Chapter 10 “Zoning” of the Milpitas Municipal Code (MMC) to comply with Government Code Sections 66411.7 and 65852.21. The proposed amendments would modify the Milpitas Municipal Code to appropriately regulate urban lot splits and two-unit projects under SB 9. Specifically, the amendments would make the following modifications:

- Amends Title XI, Chapter 1 “Subdivisions,” Section 3 “Definitions” of the MMC to add a new definition for “Urban Lot Split” as Subsection XI-1-3.09.
- Amends Title XI, Chapter 1 “Subdivisions” of the MMC to add a new Subsection XI-1-31 to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.
- Amends Title XI, Chapter 10 “Zoning,” Section 2.03 “Definitions” of the MMC to add new definitions for “Urban Lot Split and Two-unit Project” to the Zoning Ordinance.
- Amends Title XI, Chapter 10 “Zoning,” Section 4 “Residential Zones and Standards,” of the MMC to add a new Subsection XI-10-4.08 to allow and appropriately regulate two-unit projects in accordance with Government Code Section 65852.21.

The proposed amendments are consistent with Milpitas General Plan policies to facilitate new housing production and provide for a variety of housing types and densities that meet the needs of individuals and families.

Proposed Amendments to Milpitas Municipal Code:

SB 9 allows a local agency to impose objective zoning and design standards so long as those standards would not physically preclude the construction of up to two units at least 800 square feet in floor area on a single-family lot. SB 9 also requires a local agency to grant ministerial approval of a parcel map for an urban lot split in a single-family residential zone if it meets certain requirements, including a minimum lot size of 1,200 square feet and other objective zoning standards, objective subdivision standards, and objective design standards, unless those standards would physically preclude the construction of two units at least 800 square feet in floor area on either of the resulting parcels.

The proposed zoning text amendments would amend the City’s subdivision regulations to allow urban lot splits consistent with the provisions of SB 9 and establish objective standards to regulate the subdivision of parcels and the development of new two-unit projects on residential parcels within the City. Establishing these regulations will result in the orderly subdivision and development of parcels.

The requirements of SB 9 related to urban lot splits will be addressed in additions to MMC Title XI, Chapter 1 “Subdivisions.” Specifically, the proposed zoning text amendments include the following changes:

1. Add new Subsection XI-1-3.09 to establish a definition for “Urban Lot Split.”

Under SB 9, local agencies must grant ministerial approval of certain subdivisions of one lot into two without discretionary review or a hearing. To qualify for ministerial approval under SB 9, the proposed lot split must satisfy certain criteria. The establishment of this definition aids in the regulation of parcel maps for urban lot splits consistent with the requirements of Government Code Section 66411.7.

2. Add new Section XI-1-31 to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.

The proposed zoning text amendments would amend the City’s zoning regulations to provide directive language regarding certain subdivisions and establish objective zoning standards, objective subdivision standards, and objective design review standards.

3. Add two new definitions to Subsection XI-10-2.03 to establish definitions for “Urban Lot Split” and “Two-unit Project” to implement SB 9.

Under SB 9, local agencies must grant ministerial approval of certain two-unit projects on one single-family residential lot without discretionary review or a hearing. To qualify for ministerial approval under SB 9, the proposed two-unit projects must meet certain criteria. The establishment of these definitions will aid in the regulation urban lot splits consistent with the requirements of Government Code Section 66411.7 and two-unit projects in accordance with Government Code Section 65852.21.

4. Add new Subsection XI-1-4.08 to allow and appropriately regulate two-unit projects in accordance with Government Code Section 65852.21.

The proposed zoning text amendments would amend the City's zoning regulations to provide directive language regarding certain aspects of two-unit residential development and establish objective zoning standards, objective subdivision standards, and objective design review standards.

General Plan Conformance:

The City's General Plan is the primary long-range planning document that provides the vision for the future growth and development of Milpitas. The proposed urgency ordinance conforms to the policies and standards in the City's General Plan, as summarized in Table 1:

Table 1: General Plan Consistency

Policy	Conformance
<p><i>Land Use 1-4:</i> Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offers residents of all income levels, age groups and special needs sufficient housing opportunities and choices for locating in Milpitas.</p>	<p>Consistent. The zoning text amendments modify or add text to the City Subdivision Ordinance and Zoning Ordinance to allow and appropriately regulate urban lot splits and two-unit projects consistent with State law. The proposed changes will streamline and encourage the production of new housing units, which will add diversity to the City's housing stock in terms of unit size and cost. Allowing urban lot splits and two-unit projects in previously exclusive single-family neighborhoods may offer new housing options that help meet the needs of a range of household sizes, income levels, and ages.</p>
<p><i>Community Health and Wellness 4-1</i> Ensure that there is a diversity of housing types to accommodate all income levels and provide housing for very low and extremely low-income populations in areas with high accessibility to public transportation.</p>	<p>Consistent. The proposed zoning text amendments amend the subdivision and zoning regulations for a specific type of residential development that may increase the diversity of housing types. By reducing setbacks and parking requirements for new units and providing a ministerial review process, new lots and units that meet certain criteria, including those located near transit, are incentivized. Because the new residential units will be smaller than traditional single-family residences, they may be more affordable.</p>
<p><i>Housing Element Goal C:</i> Facilitate New Housing Production</p>	<p>Consistent. The proposed zoning text amendments modify the City's subdivision and zoning regulations to comply with new State laws intended to reduce barriers to the construction of "missing-middle" housing types, which are multifamily residential buildings that are compatible in scale and form with detached single-family homes. The streamlined review process and objective standards are intended to facilitate and accelerate the production of new housing units in existing residential neighborhoods.</p>

<p><i>Housing Element Goal D:</i> Support Housing Diversity and Affordability</p>	<p>Consistent. The proposed zoning text amendments modify the City's subdivision and zoning regulations to encourage the production of additional housing units that will be available and appropriate to different household sizes, and income levels. Because the new urban lots and two-unit projects will be smaller than traditional single-family residences and lots, they may be more affordable to a wider variety of people.</p>
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FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Council has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. The following are the required findings for approval of a Zoning Ordinance Text Amendment:

Zoning Amendment (MMC Section XI-10-57.02(G)(3))

1. *The proposed amendment is consistent with the General Plan.*

As summarized in Table 1 above, the proposed zoning text amendments include amendments to the City's subdivision and zoning regulations that are consistent with the Milpitas General Plan. Specifically, the proposed amendments implement policy 1-4 of the Land Use Element and policy 4-1 of the Community Health and Wellness Element, which speak to the need to provide a variety of housing suited to a range of household types (e.g. individuals, families) and income levels and create housing in close proximity to public transportation. The zoning amendments would also help to realize the intent of Goals C and D of the Housing Element, which call for the City to facilitate new housing production and support diversity and affordability in Milpitas' housing stock. Adoption of the proposed amendments to the Zoning Ordinance would make it easier, faster, and more cost-efficient for property owners to create new single-family residential units on smaller lots, and the new units are likely to be more affordable. Adding "missing middle" housing types within the City's existing neighborhoods would greatly help to meet local housing demand, especially for smaller households with lower to moderate incomes such as students, single working individuals, and seniors.

2. *The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed zoning text amendments include amendments to the City's subdivision and zoning regulations that will provide a streamlined ministerial review and approval process for qualifying projects. The amendments also add new regulations specific to urban lot splits and two-unit projects to ensure that future units are compatible with surrounding single-family residential uses and avoid potential impacts (e.g. to privacy and solar access) on adjacent properties.

Policy Alternatives:

Alternative 1: Do not amend sections of Chapter 1 "Subdivisions" and Chapter 10 "Zoning" of the Milpitas Municipal Code relating to urban lot splits and two-unit projects to comply with the provisions of SB 9.

Pros: The City would not be required to consider future amendments if the Legislature makes future changes to SB 9.

Cons: The City would only be able to require SB 9 projects to comply with the limited requirements in SB 9. Therefore, the City would be limited in its ability to regulate SB 9 projects, which will potentially result in parking, privacy, and visual impacts to single-family neighborhoods.

Reason not recommended: Without an ordinance establishing local requirements for urban lot splits and two-unit projects, the City would only be able to implement the limited requirements in SB 9. The proposed

amendments are intended to protect neighborhood character and address the property rights of Milpitas residents who live in single-family neighborhoods.

Fiscal Impact:

SB 9 requires local jurisdictions to approve certain proposed lot splits and two-unit projects, beginning in January 2022. An SB 9 lot split followed by an SB 9 two-unit project on each of the two new lots would result in four total dwellings on what was originally one single-family lot. The actual number of property owners who may choose to take advantage of this new development potential is unknown, but the new regulations create the *potential* to significantly increase the number of residential units requiring city services and increasing costs. On the other hand, the construction of additional units could also generate new fee revenue. The full fiscal impact of allowing urban lot splits and two-unit projects is unknown at this time.

California Environmental Quality Act:

Under California Government Code sections 65852.21(j), and 66411.7(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.

Planning Commission Action:

The Planning Commission considered the proposed zoning text amendment, including text amendments to the City's Subdivision Ordinance and Zoning Code, at a special meeting on November 29, 2021. Following public comment, the Planning Commission adopted Resolution No. 21-025 (Attachment A) by a vote of 5-1 (Tao, nay; one vacancy) recommending that the City Council adopt an Urgency Ordinance 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 consistent with the provision of SB 9.

Recommendation:

1. Conduct a public hearing and move to close the hearing following comments.
2. Adopt Urgency Ordinance No. 38.844 amending sections of Chapter 1 "Subdivisions" and Chapter 10 "Zoning" 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 statutorily exempt from CEQA.

Attachments:

1. Urgency Ordinance No. 38.844
2. Exhibit A to Urgency Ordinance No. 38.844
3. Planning Commission Resolution No. 21-025