



**MONTCLAIR**  
**REGULAR MEETING OF THE**  
**MONTCLAIR PLANNING COMMISSION**

to be held in the Council Chambers  
5111 Benito Street, Montclair, California

Monday, January 22, 2024  
7:00 P.M.

*Remote Participation Information:*

Zoom Link: <https://zoom.us/j/95858571900>

Dial Number: 1-(669)-900-6833

Meeting ID: 95858571900

*To make a public comment or speak on an agenda item, including a public hearing, please complete a Speaker Card located in the Council Chambers or online before the meeting at <https://www.cityofmontclair.org/public-comment/>. Written comments (200-word limit per agenda item and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to [pcclerk@cityofmontclair.org](mailto:pcclerk@cityofmontclair.org) at least one hour before the meeting begins. The chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate time during the meeting. Those participating remotely may request to speak using the "raise hand" function in Zoom (dial \*9 if on the phone, and then \*6 to un-mute when called on to speak).*

*Please be advised that those participating via Zoom do so at their own risk. The meeting will not be suspended or cancelled if any technical issues occur during the meeting.*

**AGENDA**

- 1. **CALL TO ORDER**
- 2. **PLEDGE OF ALLEGIANCE**
- 3. **ROLL CALL**
- 4. **APPROVAL OF MINUTES**

January 8, 2024

- 5. **ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS**

*The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.*

*Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete an online public comment form as described above.*

- 6. **AGENDA ITEMS**

**A. CASE NUMBER            2023-39**

**Location of Property   Single-Family Residential Zones**

**Project Applicant        City of Montclair**

**Project Planner          Silvia Gutiérrez**

**Request:**

A request for a proposed Zoning Code Amendment, proposed Ordinance No. 24-1007, relating to Urban Lot Splits and Two-Unit Project development in the R1-single-family zones.

**CEQA Determination:**

The proposed Zoning Code Amendment Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to 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 section 66411. 7 and 65852.21, which is California's SB 9 Law and which regulates urban lot splits and two-unit projects, is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA").

**7. INFORMATION ITEMS**

*Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back, or place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly, report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.*

**8. ADJOURNMENT**

*The next regular meeting of the Planning Commission will be held on February 12, 2024, at 7:00 P.M.*

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Planning Commission after the publication of the agenda packet are available for public inspection on the City's website at [www.cityofmontclair.org/agendas](http://www.cityofmontclair.org/agendas) or at Montclair City Hall in the Community Development Department located at 5111 Benito Street, Montclair, from 7:00 A.M. to 6:00 P.M., Monday through Thursday.

If you need special assistance to participate in this meeting, please call (909) 625-9477 or e-mail [pcclerk@cityofmontclair.org](mailto:pcclerk@cityofmontclair.org). Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

**CERTIFICATION OF AGENDA POSTING**

I, Michael Diaz, Secretary of the Montclair Planning Commission, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on January 18, 2024.



**CASE NUMBER 2023-39**

APPLICATION TYPE(S)	Zoning Code Amendment
NAME OF APPLICANT	City of Montclair
LOCATION OF PROPERTY	R1 Single-family Zones
ENVIRONMENTAL DETERMINATION	Exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h)
PROJECT PLANNER	Silvia Gutiérrez

**Project Description**

This item was first continued from the November 27, 2023, Planning Commission meeting and subsequently continued three additional times to the January 22, 2024, meeting. The purpose of the continuations was to allow staff additional time to internally review and revise a proposed Zoning Code Amendment related to ministerial approval of Urban Lot Splits and Two-Unit Projects in R-1 Single-family zones.

The proposed Zoning Code Amendments are in response to the passage of California Senate Bill 9 (“SB 9”) mandating the ministerial approval of Urban Lot Splits and Two Unit Projects. However, SB 9 allows cities to adopt objective design, development, and subdivision standards for Urban Lot Splits and Two-Unit Projects. Proposed Ordinance No. 24-1007 proposes such standards to the ministerial approval process.

**Summary of Zoning Code Amendment**

SB 9 went into law on January 1, 2022, as part of the State’s efforts to encourage the production of housing across California. SB 9 requires the City to approve eligible Urban Lot Splits and Two-Unit Projects administratively without a public hearing. Property owners can utilize both provisions of SB 9, meaning that an Urban Lot Split may be followed by a Two-Unit Project on each of the two new lots, potentially resulting in four dwellings on what was formerly one single-family residential lot.

SB 9 mandates the ministerial approval of the following changes to existing single-family residential properties by allowing the following ministerial approvals:

1. Two-Unit Project - Allows for the development of two primary homes on a single-family residential parcel. There is no legal requirement for a lot split/creation of two legal lots with this provision.
2. Urban Lot Split - A one-time subdivision of an existing single-family residential parcel into two parcels for the development of a primary unit on the newly created second lot.

The Planning Commission is requested to review proposed Ordinance No. 24-1007 and forward its recommendations to the City Council for consideration. The City Council will take the final action on the proposed ordinance.

A copy of the draft Ordinance No. 24-1007 is attached to this report, and the entire agenda is available on the City's website at <https://www.cityofmontclair.org/planning-commission-meetings/>

### **Proposed Zoning Code Amendment**

Adoption of Ordinance No. 24-1007 requires changes to Title 11 *Zoning and Development* of the Montclair Municipal Code (MMC). The full text of proposed changes is found in the draft ordinance provided in Exhibit A. Key provisions of the proposed ordinance are as follows:

*New definitions added to Chapter 11.02 - Definitions;*

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

**"Unit"** means any dwelling unit, including, but not limited to, a unit or units created pursuant to Government Code Section 65852 .21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.

**"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.

**"Parcel Map"** is a land division map used for developments of four (4) or fewer residential lots.

New Chapter 11.21: Two-Unit Project

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 an existing legally subdivided lot.

The details of the application process and the requirements for a Two-Unit Project are found in the attached draft Ordinance No. 24-1007, Chapter 11.21.030 through 11.21.150. The more salient provisions of the ordinance related to Two-Unit Project development are as follows:

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 A 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 qualified nonprofit corporation (as defined by Rev. & Tax Code § 214.15).
2. The subject lot must be in an R-1 single-family residential zone.
3. 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.
4. The two-unit project 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 before submission of the application.
  - d. Housing that has been occupied by a tenant in the last three years.
5. Generally, all setbacks must conform to those objective setbacks that are imposed through the underlying zone.
6. The total floor area of each primary dwelling built that is developed under this section cannot be less than 500 SF or exceed 800 SF.
7. Each new primary dwelling unit must have at least one enclosed off-street parking space within a garage unless the site meets specific criteria related to public transit as detailed in proposed Ordinance 24-1007 Chapter 11.21.080.
8. A Parcel Map is not required for this type of development if the existing single lot remains intact and is not subdivided to create two legal lots.

### New Chapter 11.86: Urban Lot Splits

Proposed new Chapter 11.86 is intended to provide the regulations and procedures necessary for considering the approval of an Urban Lot Split within an R-1 zone. The Urban Lot Split differs from a Two-Unit Project in that a single-family lot is legally subdivided to create two legal lots.

An Urban Lot Split allows the following:

1. An existing R-1 single-family zoned lot may be subdivided into a maximum of two lots. An Urban Lot Split can occur in a Single-family Residential Zone.
2. The newly created lot cannot be less than 40 percent of the original lot size.
3. The minimum size of a new lot is 1,200 square feet.
4. Each lot can have up to two units, if implementing the provisions of the Two-Unit Project upon subdivision of the lot.
5. Unit size for the new dwelling unit cannot exceed 800 square feet.
6. 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.
7. The two-unit project 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 before submission of the Urban Lot Split application.
  - d. Housing that has been occupied by a tenant in the last three years.

### **Objective Design Standards**

The State of California has adopted legislation requiring cities to approve certain housing proposals (including SB 9 applications) through ministerial or "over-the-counter" processes based on objective standards. State law defines objective standards as those that "involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and public official prior to submittal." The result of these laws is to encourage cities to create quicker, more accessible pathways for housing to be built. The following objective design standards are included in the proposed ordinance:

Maximum/Minimum Unit Size - 500 SF minimum unit size and 800 SF maximum unit size.

Height - Dwelling units may not be more than one-story and shall not exceed 16 feet in height; may be exempt from one-story height limitation but may be constructed up to 25 feet in height if an 800 square-foot unit cannot be physically built on the lot without the height exemption.

Front Yard Landscaping - At least 50 percent of the front yard area is required to be maintained with landscaping (live organic plant materials), and one 24" box-sized tree is required to be planted in the front yard.

Front Yard Paving - The maximum pavement/driveway width is the width of the garage or 12 feet if there is no garage.

Front Elevation Design - The primary entrance with a roofed porch (minimum 6 feet deep by 6 feet wide) are required to be located along the front elevation.

Building Material and Color - All structures are required to utilize at least two building wall materials (e.g., stucco, brick, wood, stone) and painted at least two colors throughout all exterior elevations.

Roof Design - Roof design of new units shall be compatible with the existing primary unit on the property. If no existing primary unit exists on the site, the roof design of new units shall be compatible in design with the general character of the dwellings in the surrounding area. Unscreened roof-mounted HVAC equipment (including ductworks and conduit lines) is prohibited.

Windows and Balconies - Window treatment is required on all windows. Balconies and second-floor side windows are prohibited (this is designed to address potential privacy concerns).

Street Frontage - All lots are required to have a minimum of 12 feet of street frontage for vehicular access. Twelve feet is the minimum driveway width in the R-1 zone.

### **Planning Division Comments**

The intent of the proposed ordinance is to retain as much local control as possible when approving Urban Lot Splits and/or Two-Unit Project development within the R-1 zone through the creation of objective development and design standards. Generally, the proposed ordinance is written to allow the City to exercise as much local control over SB 9 projects as state law allows.

As previously mentioned, there are limits on the discretion a City has related to SB 9 applications. Staff has drafted an ordinance that is compliant but includes a number of local provisions to protect the community. Below are highlights of additional measures included in the draft ordinance:

1. If a parcel includes an existing single-family residence, one more additional unit of not more than 800 square feet may be created with the provision that no more than 25 percent of the existing exterior structural walls shall be demolished to create the two-unit residential development unless the existing single-family residence has not been occupied by a tenant in the last three years.
2. If the parcel is vacant and undeveloped or if the existing single-family residence is proposed to be demolished in conjunction with said request, no more than two units of not more than 800 square feet each may be developed.
3. Each unit in a two-unit residential development must either be attached or separated by a distance of 10 feet from any other structure.
4. In the case of units created as the result of the urban lot split process, no more than two units in any combination, including primary dwelling units, ADUs, or JADUs, will be allowed.

### **Review Process**

Allowing ministerial Urban Lot Splits and Two-Unit Project without a public hearing could potentially negatively impact the character of the neighborhoods/City without proper consideration of the aesthetic and character impacts of each proposed project. While an Urban Lot Split and Two-Unit Project would be an administrative action, approval is based on the proposal's ability to meet objective design standards enumerated previously in this report and in the proposed Ordinance 24-1007. Staff is recommending the necessary amendments to the Montclair Municipal Code as summarized in this report and detailed in the proposed Ordinance.

### **Public Notice and Comment**

On November 17, 2023, a notice of a public hearing on proposed Ordinance No. 24-1007 was published in the Daily Bulletin per State law. On November 27, 2023, the Planning Commission opened the public hearing to take comments at which time there no comments were received. The item was subsequently continued three times for review until January 22, 2024.

At the time the report for the January 22, 2024, meeting was prepared, no comments regarding the project were received.

### **ENVIRONMENTAL REVIEW**

The proposed Zoning Code Amendment Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to 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, which is California's SB 9 Law and which regulates 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 the State's SB 9 Law because the required changes have no potential for resulting in a physical change to the environment, directly or indirectly, and the changes are consistent with the goals and policies of the General Plan and will bring the City's code into compliance with State Law.

#### RECOMMENDATION

1. Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding urban lot splits and two unit design standards in single-family zones to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA; and
2. Adopt Planning Commission Resolution 24-1989 recommending the City Council approve Zoning Code Amendment ZCA 24-1007 to amend regulations pertaining to Chapter 11.87 of the Montclair Municipal Code.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz". The signature is fluid and cursive, with a large, prominent "D" at the end.

Michael Diaz  
Director of Community Development

MD/sgutierrez  
Attachments:

Exhibit A - Draft Ordinance No. 24-1007  
Exhibit B - Draft Resolution No. 24-1987



**RESOLUTION NO. 24-1989**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL APPROVAL OF PROPOSED ORDINANCE NO. 24-1007 TO AMEND CHAPTERS 11.02 AND 11.86 AND ADD CHAPTER 11.21 TO THE MONTCLAIR MUNICIPAL CODE RELATING TO URBAN LOT SPLITS AND TWO-UNIT PROJECTS IN THE R-1 SINGLE-FAMILY RESIDENTIAL ZONES**

**A. RECITALS.**

**WHEREAS**, Senate Bill 9 ("SB 9") 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**, 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**, 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, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

**WHEREAS**, the proposed Zoning Code Amendment is consistent with the Montclair General Plan and implements the following General Plan Goals and Policies; and

**WHEREAS**, a notice of a public hearing on said application has been given in the manner and for the time required by law; and

**WHEREAS**, public notice of this item was advertised as a public hearing in the *Inland Valley Daily Bulletin* newspaper on November 17, 2023; and

**WHEREAS**, on November 27, 2023, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission opened the public hearing and requested public comment and continued the item to December 11, 2023, January 8, 2024, and January 22, 2024, and opened and closed a public hearing at which time all persons wishing to testify in connection with the said proposal were heard, and said application was fully studied.

**NOW, THEREFORE**, the Planning Commission hereby finds, determines, resolves, and recommends as follows:

**SECTION 1.** The Planning Commission recommends that the City Council adopt Ordinance No. 24-1007, adding Chapter 11.87 of the Montclair Municipal Code regulating urban lot splits for compliance with recent changes to State Government Code sections 66411.7 and 65852.21.

**SECTION 2. FINDINGS.** The Planning Commission hereby makes the following findings and determinations in connection with the recommendation for approval of Ordinance No. 24-1007:

- A. The above Recitals are true and correct.
- B. The proposed zoning amendment is consistent with the General Plan as provided by Government Code Section 65860.

**SECTION 3. DETERMINATION.** In light of the evidence presented at the hearing on this application, and based on the findings set forth above, the Planning Commission hereby finds that the requirements are necessary for the recommendation of approval of Ordinance No. 24-1007, subject to all applicable provisions of the Montclair Municipal Code.

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).** This ordinance is exempt from review under the California Environment Quality Act ("CEQA") 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 adoption of the proposed ordinance is statutorily exempt from CEQA in that the proposed Ordinance implements these new laws enacted by SB 9.

In addition to being statutorily exempt from CEQA, adoption of the proposed Ordinance is also categorically exempt from CEQA under the Class 15 exemption outlined in State CEQA Guidelines section 15315. The Class 15 exemption categorically exempts from CEQA, among other things, the division of property in urbanized areas zoned for residential use into four or fewer parcels. Here, adoption of the Ordinance is categorically exempt under Class 15 exemption because the ordinance regulates a single urban lot split of one parcel into two separate lots between 60 percent and 40 percent of the original lot area in a residential zone.

Further, the adoption of the proposed Ordinance is also categorically exempt from CEQA under the Class 3 exemption outlined in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of a second dwelling unit in a residential zone and a duplex or similar multi-family residential structure totaling no more than four dwelling units as examples of activity that expressly falls within this exemption. Here, adoption of the Ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the construction 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, in a residential zone.

**SECTION 5. INCONSISTENCY.** If any section, division, sentence, clause, phrase or portion of this resolution or the document in the record in support of this resolution is determined by a court of competent jurisdiction to be invalid, unenforceable, unconstitutional or otherwise void, that determination shall not affect the validity of the remaining sections, divisions, sentences, clauses, phrases of this resolution.

**B. RESOLUTION.**

**NOW, THEREFORE,** it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts outlined in the Recitals, Part A, of this Resolution, are true and correct.
2. This Commission recommends that the City Council adopt the finding that proposed Ordinance No. 24-1007 is exempt from the California

Environmental Quality Act (CEQA) pursuant to State CEQA and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h). To the extent that any provisions of this ordinance are not exempt pursuant to Section 15282(h), the amendments are not subject to CEQA pursuant to CEQA Guidelines Section 15061 (b)(3).

- 3. This Commission recommends the City Council adopt proposed Ordinance No. 24-1007, to amend Chapters 11.02 and 11.86 and add Chapter 11.21 in order to comply with Senate Bill 9.

The Secretary to this Commission shall certify the adoption of this Resolution.

**APPROVED AND ADOPTED THIS 22ND DAY OF JANUARY, 2024. PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA**

By: \_\_\_\_\_  
**Manny Martinez, Chair**

ATTEST: \_\_\_\_\_  
**Michael Diaz, Secretary**

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 22nd day of January 2024, by the following vote, to-wit:

AYES:  
NOES:  
ABSENT:



**ORDINANCE NO. 24-1007**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 11.02 OF THE MONTCLAIR MUNICIPAL CODE ADDING NEW DEFINITIONS, ADDING CHAPTER 11.21 AND AMENDING CHAPTER 11.86 RELATING TO URBAN LOT SPLITS AND TWO-UNIT PROJECTS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

**WHEREAS**, the City of Montclair, 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 on 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**, 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, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:**

**SECTION I.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION II** 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 adoption of the proposed ordinance is statutorily exempt from CEQA in that the proposed Ordinance implements these new laws enacted by SB 9.

In addition to being statutorily exempt from CEQA, adoption of the proposed Ordinance is also categorically exempt from CEQA under the Class 15 exemption set forth in State CEQA Guidelines Section 15315. The Class 15 exemption categorically exempts from CEQA, among other things, the division of property in urbanized areas zoned for residential use into four or fewer parcels. Here, adoption of the Ordinance is categorically exempt under Class 15 exemption because the ordinance regulates a single urban lot split of one parcel into two separate lots between 60 percent and 40 percent of the original lot area in a residential zone.

Further, the adoption of the proposed Ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of a second dwelling unit in a residential zone and a duplex or similar multi-family residential structure totaling no more than four dwelling units as examples of activity that expressly falls within this exemption. Here, adoption of the Ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the construction 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, in a residential zone. Moreover, the City Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the adoption of the proposed Ordinance will:

1. Not result in a potentially significant cumulative impact in that residential zones were designed to accommodate low-density residential development. The proposed standards seek to comply with new State of California legislation to allow increased low-density housing and establish parameters to mitigate impacts that would result from a higher-density development;
2. Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances in that the implementation of the development standards will result in residential development standards within residentially zoned properties and the proposed standards are intended to preserve the characteristics and activity with residential zones;
3. Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway in that there are no designated scenic highways in the City of Montclair.
4. Not be located on a hazardous waste site or included on any list compiled under § 65962.5 of the Government Code. The proposed standards apply to single-family residential zones only and there are no known single-family residential zoned properties in the City of Montclair listed as a hazardous waste site.
5. Not result in a substantial adverse change in the significance of a historical resource in that the proposed standards prohibit the demolition or alteration of historically designated properties.



**SECTION III.** Chapter 11.02 “Definitions” of Title 11 (Zoning and Development) of the Montclair Municipal Code is hereby amended to add the following definitions:

**11.02 Definitions.**

**“Urban Lot Split”** means the subdivision of an existing legally subdivided lot into two lots per the requirements of this section.

**“Unit”** means any dwelling unit, including, but not limited to, a unit or units created under Government Code Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.

**“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 per the requirements of this section.

**SECTION IV.** Title 11 (Zoning and Development) of the Montclair Municipal Code shall be amended to add Chapter 11.21 relating to Ministerial Two-Unit Development as shown in Exhibit A attached hereto and incorporated herein by reference; and

**SECTION V.** Chapter 11.86 (Subdivisions) of the Montclair Municipal Code shall be amended to add Section 11.86.240 (Urban Lot Splits) as shown in Exhibit “A” attached hereto and incorporated herein by reference.

**SECTION VI.** This Ordinance takes effect 30 days after its adoption.

**SECTION VII.** The City Clerk shall either: (a) have this Ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

**SECTION VIII.** If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity does not affect 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 Ordinance irrespective of the invalidity of any portion thereof.

**SECTION IX.** The City Council hereby directs staff to prepare, execute, and file with the San Bernardino County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

**SECTION X.** The Custodian of Records for this Ordinance is the City Clerk and the records comprising the administrative record for this Ordinance are located at 5111 Benito Street, Montclair, CA 91763.

**SECTION XI.** The City Clerk shall certify the passage of this Ordinance and cause the same to be posted under Government Code Section 36933.

**APPROVED AND ADOPTED** this XX day of XX, 2024.

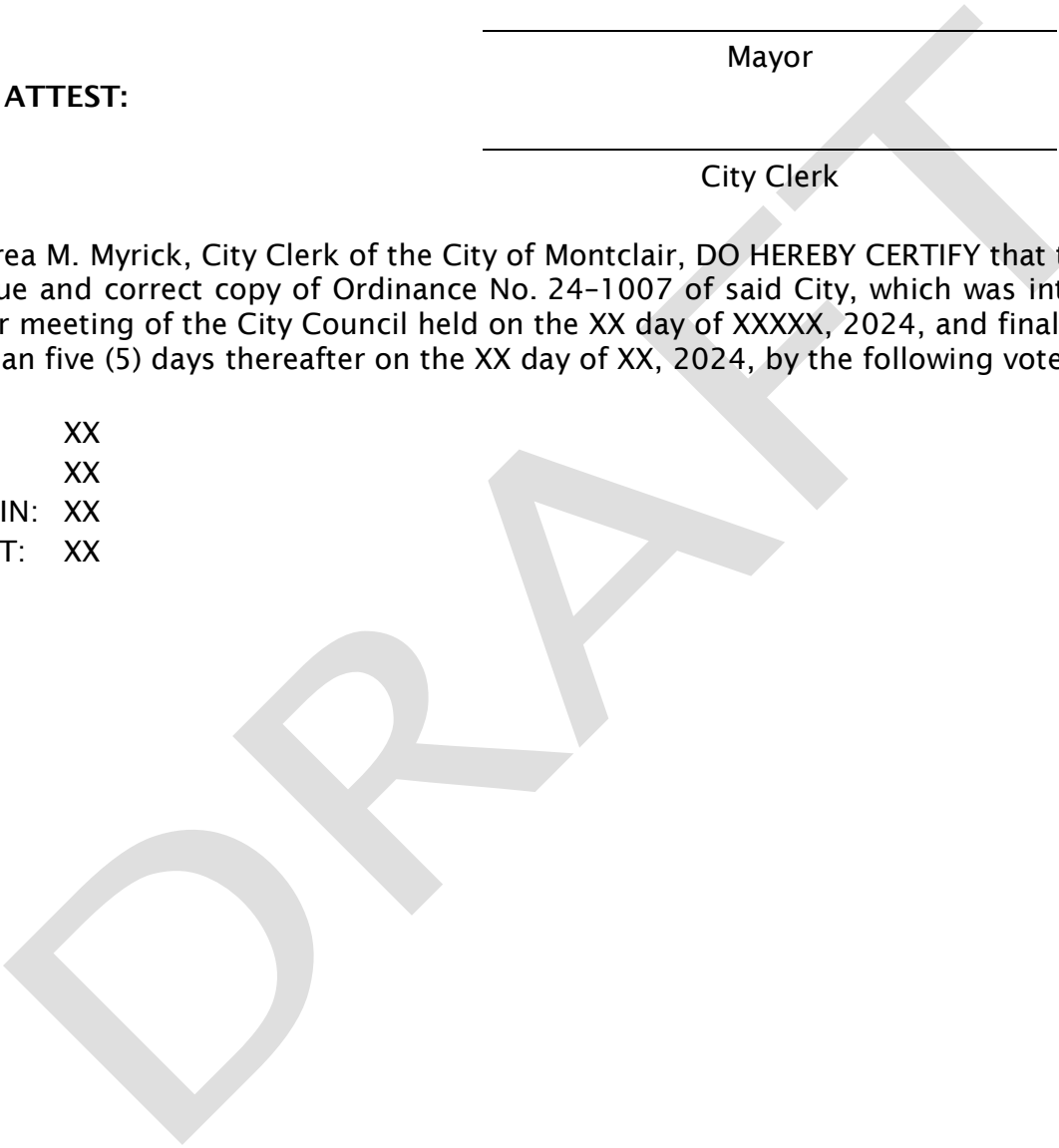
**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 24-1007 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XXXXX, 2024, and finally passed not less than five (5) days thereafter on the XX day of XX, 2024, by the following vote, to-wit:

- AYES: XX
- NOES: XX
- ABSTAIN: XX
- ABSENT: XX



**EXHIBIT "A"**

**ORDINANCE NO. 24-1007**

(follows this page)

DRAFT



## EXHIBIT "A"

### New Zoning Code Chapter 11.21

#### CHAPTER 11.21 - MINISTERIAL TWO-UNIT PROJECTS.

**11.21.010 - Purpose.** The purpose of this Chapter is to allow and appropriately regulate two-unit projects under Government Code section 65852.21.

**11.21.020 - 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 Chapter.

#### **11.21.030 - Application.**

##### A. Owners

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 Revenue & Tax Code §402.1 (a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Revenue & Tax Code §214.15).
2. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person's consent to the project.

B. An application for a two-unit project must be submitted on the City's approved form.

C. The applicant must obtain a Certificate of Compliance pursuant to the Subdivision Map Act and implementing regulations in this code for the lot and provide the certificate with the application.

D. Only a complete application will be considered. The City of Montclair (City) will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.

E. 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.

#### **11.21.040 - Approval.**

A. An application for a two-unit project is approved or denied ministerially, by the Director of Community Development, without discretionary review.

- B. The ministerial approval of a two-unit project does not take effect until the City has confirmed that the required documents have been recorded, such as the deed restriction and easements.
- C. 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.
- D. 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.

**11.21.050 – Requirements.** A two-unit project must satisfy each of the following requirements:

- A. Subdivision Map Act Compliance. The lot must have been legally subdivided.
- B. Zone. The lot is in the R-1 single-family residential zone.
- C. Lot Location.
  - 1. The lot is not located on a site that is any of the following:
    - 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.
      - iii. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

- iv. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
  - v. Habitat for protected species.
  - vi. Land under conservation easement.
- 2. The purpose of subpart C(1) 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)).
  - 3. The applicant must provide evidence that the requirements of Government Code Section 65913.4(a)(6)(B)-(K) are satisfied.

**11.21.060 – 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.

**11.21.070 – 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:
  - 1. Housing that is income-restricted for households of moderate, low, or very low income.
  - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
  - 3. 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 before submission of the urban lot split application.
  - 4. Housing that has been occupied by a tenant in the last three years.
- 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 11.21.070.A above is satisfied.
  - 1. The sworn statement must state that:
    - a. No housing that is income-restricted for households of moderate income, low income, or very low income will be demolished or altered.

- b. No housing that is subject to any form of rent or price control will be demolished or altered.
  - c. No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
  - d. No housing that has been occupied by a tenant in the last three years will be demolished or altered.
2. 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.

#### **11.21.080 – Unit Standards.**

##### **A. Quantity.**

1. 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 this section of this code, an ADU, or a JADU.
2. A lot that is not created by an urban lot may have a two-unit project in this section plus any ADU or JADU that must be allowed under State Law and the City ADU ordinance.

##### **B. Unit Size.**

1. The total floor area of each primary dwelling built that is developed under this section must be as follows:
  - a. Less than or equal to 800 square feet and
  - b. Larger than 500 square feet.
2. 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 at the time of the two-unit project. The unit may not be expanded.
3. 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.**

1. 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.



2. 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 an additional five feet from the ground floor exterior walls; no balcony deck or other portion of the second story may project into the step back.
  3. No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a two-unit project.
- D. 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.
- E. Lot Coverage. A maximum lot coverage of 45 percent is permitted. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- F. Open Space. Each unit shall be provided with 300 SF of useable open space; with a minimum side setback of 10 feet. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- G. Setbacks.
1. Generally. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
  2. Exceptions. Notwithstanding subpart 5f)7) 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. 800 sf; four-foot side and rear. 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 at least 25 feet from the front property lines. The front setback area must:
    - a. Be kept free from all structures greater than three feet high; and
    - b. Be landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect; and
    - c. Allow for vehicular and fire-safety access to the front structure.

- H. Parking. Each new primary dwelling unit must have at least one enclosed off-street parking space, within a garage, per unit unless one of the following applies:
1. The lot is located within one-half mile walking distance of either:
    - a. A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours; or
    - b. A site that contains the following features:
      - i. An existing rail or bus rapid transit station,
      - ii. A ferry terminal served by either a bus or rail transit service, or
      - iii. 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.
      - iv. The site is located within one block of a car-share vehicle location.

#### **11.21.090 – Architecture.**

- A. 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.
1. 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.
  2. All new residential development is subject to compliance with objective R-1 design standards within this chapter. All new residential development is subject to the objective design standards.
  3. All exterior lighting must be limited to downlights.
  4. No window or door of a dwelling that is constructed on the lot 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.
  5. If any portion of a 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 doors) utilize frosted or obscure glass.
- B. Landscaping. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:

1. At least one 15-gallon size plant shall be provided for every five linear feet of the exterior wall. Alternatively, at least one 24" box-size plant shall be provided for every ten linear feet of the exterior wall.
  2. 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.
  3. All landscaping must be drought-tolerant pursuant to the City's *Water-Efficient Landscaping and Conservation Ordinance*.
  4. All landscaping must be from the City's approved plant list.
- C. **Tree Preservation.** In cases where an addition or new construction is being proposed to provide for urban dwelling, the property owner must not remove mature trees on site. A mature tree is defined as a tree with a diameter-at-breast-height (DBH) of 19 inches or greater. Removal includes moving a tree or removing more than one-third of a tree's vegetation. In addition to the preservation of the tree, the owner must record a covenant showing the location of the mature tree, requiring all trimming of the tree to be overseen by a licensed arborist, prohibiting the tree from being topped, and that the City must approve any tree removal.
- D. **Nonconforming Conditions.** A two-unit project may only be approved if all nonconforming zoning conditions are corrected.
- E. **Utilities.**
1. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
  2. Notwithstanding paragraph E.1 above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot 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.
  3. All utilities must be underground.
- F. **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.
- G. **Exceptions to Objective Standards.** Any objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area must be set aside. Objective zoning standards will be set aside in the following order until the site can contain two, 800-square-foot units:

1. Lot Coverage
2. Floor Area Ratio
3. Open Space
4. Tree Preservation
5. Articulation
6. Second Floor Setback

H. Fire-Hazard Mitigation Measures.

1. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:
  - a. It must have direct access to a public right-of-way with a paved street with a width of at least 40 feet. The public right-of-way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
  - b. All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
  - c. All enclosed structures on the site must have fire sprinklers.
  - d. All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right-of-way or an onsite fire hydrant or standpipe.
  - e. If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.
2. 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 5)g). The City or its authorized agent must inspect the site, including all structures on the site, and certify 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.

**11.21.100 – Separate Conveyance.**

- A. Primary dwelling units on the lot may not be owned or conveyed separately from each other.
- B. Condominium airspace divisions 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.

D. No timeshare, as defined by state law or this code, is permitted.

#### **11.21.110 – Regulation of Uses.**

- A. Residential-only. Non-residential uses are not permitted on the lot.
- 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 and an owner occupancy covenant shall be recorded prior to issuance of building permits.

#### **11.21.120 - 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:
  - 1. Notice that construction has been authorized;
  - 2. The anticipated start and end dates for construction;
  - 3. The hours of construction;
  - 4. Contact information for the project manager (for construction related complaints); and
  - 5. Contact information for the Building & Safety Department.
- 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 is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this Chapter. This notice requirement is purely to promote neighborhood awareness and expectations.

#### **11.21.130 - Deed Restriction.**

- A. The owner must record a deed restriction, on a form approved by the City, that does each of the following:
  - 1. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
  - 2. Expressly prohibits any non-residential use of the lot.
  - 3. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

4. If the lot does not undergo an urban lot split: The individual property owners must live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.
5. Property owner must provide for an inspection by City officials every six months for the first three years to ensure the property owner is living onsite. The property owner must pay the special inspection fee as set forth in the City's fee resolution.

#### **11.21.140 – Specific Adverse Impacts.**

- A. 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.
- B. "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).
- C. The Building Official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impacts.

#### **11.21.150 – Remedies.**

If a two-unit project violates any part of this code or any other legal requirement:

- A. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.
- B. The City may:
  1. Bring an action to enjoin any attempt to sell, lease, or finance the property.
  2. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
  3. 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.
  4. Record a Notice of Violation.
  5. Withhold any or all future permits and approvals.
  6. Pursue all other administrative, legal, or equitable remedies that are allowed by law or the city's code.

## Zoning Code Amendment to Amend Chapter 11.86

### URBAN LOT SPLITS

#### **SECTION 11.86.240 - Urban Lot Splits.**

**SECTION 11.86.240.010 - Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code Section 66411.7.

#### **SECTION 11.86.240.020 – Application.**

A. Owners

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 a 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. Any person with mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person's consent to the project.

B. 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.

C. 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.

#### **SECTION 11.86.240.030 – Approval.**

A. An application for a parcel map for an urban lot split is approved or denied ministerially, by the Director of Public Works, without discretionary review.

B. 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 have been recorded, such as the deed restriction and easements. The tentative parcel map expires three months after approval.

C. The approval requires the property owner and/or applicant to hold the City harmless from all claims and damages related to the approval and its subject matter.

- D. The approval requires the property owner and/or applicant to reimburse the City for all costs of enforcement, including attorneys' and costs associated with enforcing this code.

**SECTION 11.86.240.040 – Requirements.**

An urban lot split must satisfy each of the following requirements.

**A. Subdivision Map Act Compliance**

- 1. 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.
- 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 by misdemeanor.
    - iv. Record a notice of violation.
    - v. Withhold any or all future permits and approvals.
- 3. Notwithstanding Section 66411.1 of the SMA, no dedication of right-of-way or construction of offsite improvements is required for an urban lot split.

**B. Zone Limit - The lot to be split is in a single-family residential zone known as R-1.**

**C. Prohibited Locations**

The lot split shall not be located on a site that has any of the following characteristics:

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



2. A wetland.
3. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
4. A hazardous waste site that has not been cleared for residential use.
5. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
6. Within a 100-year flood hazard area, unless the site has either:
  - a. Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
  - b. Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
  - c. Within a regulatory floodway unless all development on the site has received a no-rise certification.
7. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
8. Habitat for protected species.
9. Land under conservation easement.
10. 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.
11. The purpose of subpart e)3)A)1) 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).)
12. The applicant must provide evidence that the requirements of Government Code Section 65913.4(a)(6)(B)-(K) are satisfied.

#### **SECTION 11.86.240.050 – 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. "Any person acting in concert with the owner" here includes any third-party

that coordinates or assists the owners of two adjacent lots with their respective urban lot splits.

#### **SECTION 11.86.240.060 – 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:
  - 1. Housing that is income-restricted for households of moderate, low, or very low income.
  - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.
  - 3. Housing, or a lot formerly used for affordable 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.
  - 4. Housing that has been occupied by a tenant in the last three years.
- 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 A above is satisfied. The sworn statement must state that:
  - 1. No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.
  - 2. No housing that is subject to any form of rent or price control will be demolished or altered.
  - 3. No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.

#### **SECTION 11.86.240.070 – Lot Size**

- A. The existing lot size of the property prior to subdivision under this section 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 lots.

#### **SECTION 11.86.240.080 – 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 application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with this section.
- D. If an easement is recorded and the project is not 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.

**SECTION 11.86.240.090 – Lot Access**

- A. Each lot must adjoin the public right-of-way.
- B. Each resulting lot must have frontage on the public right of way of at least 12 feet.

**SECTION 11.86.240.100 – Non-Conforming Conditions**

An urban lot split is approved without requiring a legal nonconforming zoning condition to be corrected.

**SECTION 11.86.240.110 – Utilities**

- A. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
- B. Notwithstanding paragraph A above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot 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.
- C. All utilities must be underground.

**SECTION 11.86.240.120 – Building and Safety**

All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.

**SECTION 11.86.240.130 – Dwelling Unit Development 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 Chapter 11.18 of the Montclair Municipal Code, and ADU or JADU.
- B. Unit Size. The total floor area of the primary dwelling unit on a resulting lot shall contain not less than 500 square feet or greater than 800 square feet.

- C. Height Restrictions. No new primary dwelling unit may exceed a single story or 16 feet in height, measured from finished grade to peak of the dwelling unit structure.
- D. Lot Coverage. A maximum lot coverage of 45 percent is permitted. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at up to 800 square feet each.
- E. Open Space. Open space in the amount of 300 square feet per unit shall be provided with a minimum dimension of 10 feet. The required open space shall be one consecutive area and shall not include setbacks. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- F. Setbacks.
  - 1. Generally. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
  - 2. Exceptions Notwithstanding subpart F.1. above:
    - a. No setback is required for existing legally established structure or for a new structure that is constructed in the same location and to dimensions as an existing legally established structure
    - b. Four-foot side and rear. 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.
    - c. Front Setback Area. Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split must be at least 25 feet from the front property lines. The front setback areas must:
      - i. Be kept free from all structures greater than three feet high;
      - ii. Be fully landscaped except approved walkways and driveways, with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect.
- G. 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, within a two-car garage, per unit unless one of the following applies:
  - 1. The lot is located within one-half mile walking distance of either allowing for vehicular and fire-safety access to the front structure.
  - 2. A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours; or

3. A site that contains the following:
  - a. An existing rail or bus rapid transit station.
  - b. A ferry terminal served by either a bus or rail transit service, or
  - c. 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.
  - d. The site is located within one block of a car-share vehicle location.

#### H. 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, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
3. All exterior lighting must be limited to down-lights.
4. 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 provide a direct line of sight.
5. 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.

#### I. Landscaping.

1. Tree Removal.
  - a. No mature tree may be removed on a lot with any development under this section, unless removal is necessary to construct a dwelling unit that must be allowed under state law.
  - b. "Mature tree" means a tree with a diameter of six inches or more or a height of eight feet or taller.

- c. A tree may only be removed 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. If a certified arborist determines that there is not space on the lot for a replacement trees, owner may pay the replacement cost of the tree.
  2. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots 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-inch 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 six feet high may be installed.
    - c. All landscaping must be drought-tolerant pursuant Chapter 11.60 Water Efficient Landscaping and Conservation.

**SECTION 11.86.240.140 – 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:
  1. It must have direct access to a public right-of-way with a paved street with a width of at least 40 feet. The public right-of-way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
  2. All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
  3. All enclosed structures on the site must have fire sprinklers.
  4. All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right-of-way or of an onsite fire hydrant or standpipe.
  5. If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.
- 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. 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.

**SECTION 11.86.240.150 – Separate Conveyance.**

- A. Within a resulting lot.
  - 1. Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.
  - 2. Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.
  - 3. All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.
  - 4. No timeshare, as defined by state law or the Montclair Municipal 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.
  - 1. 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.
  - 2. If any attached structures span or will span the new lot line, the owner must record appropriate CC&R's, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

**SECTION 11.86.240.160 – Regulation of Uses.**

- A. Residential-only. No non-residential use is permitted on any lot created by the 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.

**SECTION 11.86.240.170 – 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:

1. Notice that construction has been authorized;
  2. The anticipated start and end dates for construction;
  3. The hours of construction;
  4. Contact information for the project manager (for construction related complaints); and
  5. Contact information for the Building & Safety 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 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.

**SECTION 11.86.240.180 – 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.
- 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:
  - a. 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.
  - b. Development on the lot is limited to the development of residential units under this Chapter, except as required by state law.

**SECTION 11.86.240.190 – Specific Adverse Impacts.**

- A. Notwithstanding anything else in this Chapter, 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.
- B. "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).

- C. The Building Official may consult with and be assisted by Planning Division staff and others as necessary in making a finding of specific adverse impact.

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