

ORDINANCE NO. 24-1007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 11.02 OF THE MONTCLAIR MUNICIPAL CODE AND ADDING A NEW CHAPTER 11.21 AND A NEW CHAPTER 11.87 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.

WHEREAS, on November 17, 2023, a notice of a public hearing on proposed Ordinance No. 24-1007 published in the *Inland Valley Daily Bulletin* per State law. On November 27, 2023, the Planning Commission opened the public hearing to take comments at which time there were there was no comment; and

WHEREAS, at staff’s request, the Planning Commission continued the review of the item three times until January 22, 2024, at which time the item was fully reviewed. During the January 22, 2024 meeting, there were no public comments; and

WHEREAS, on January 22, 2024, the Planning Commission conducted a public hearing at which time there were no public comments and the item was fully reviewed. The Planning Commission then moved to adopt Resolution No. 24-1989, and by a vote of 4-0-1 (absent), and recommended approval of the Ordinance to the City Council; and

WHEREAS, on February 9, 2024, a notice of a public hearing on proposed Ordinance No. 24-1007 was published in the *Inland Valley Daily Bulletin* per State law, for the February 20, 2024, City Council meeting. As of the writing of this report, no public comment have been received regarding the proposed Ordinance; and

WHEREAS, on February 20, 2024, the City Council of the City of Montclair opened the public hearing regarding the proposed ordinance and to take public comment. No comments were made and at the request of City staff the item was continued to the City Council’s regularly scheduled meeting on March 4, 2024; and

WHEREAS, on March 4, 2024, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council conducted a public hearing at which time all persons wishing to testify in connection with the proposed ordinance were given the opportunity to be heard, and the item was fully studied. No public comments were received; and

WHEREAS, on March 4, 2024, the City Council unanimously set March 18, 2024, as the date for the second reading of Ordinance No. 24-1007; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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 an existing legally subdivided lot per the requirements of this section.

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

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

SECTION V. Title 11 (Zoning and Development) of the Montclair Municipal Code shall be amended to add Chapter 11.87 (Urban Lot Splits) as shown in Exhibit “B” attached hereto and incorporated herein by reference.

SECTION VI. This Ordinance shall take effect 30 days after adoption.

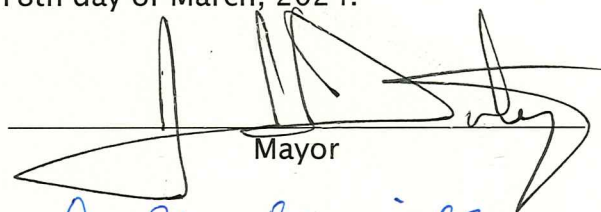
SECTION VII. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity does not affect the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the 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.

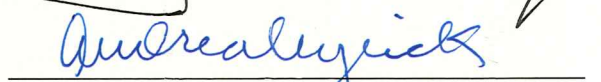
SECTION VIII. The City Council hereby directs staff to prepare, execute, and file with the San Bernardino County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

SECTION IX. 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 X. The City Clerk shall certify the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this 18th day of March, 2024.




Mayor


City Clerk

ATTEST:

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 4th day of March, 2024, and finally passed not less than five (5) days thereafter at a regular meeting of the City Council held on the 18th day of March, 2024, by the following vote, to-wit:

- AYES: Lopez, Martinez, Ruh, Johnson, Dutrey
- NOES: None
- ABSTAIN: None
- ABSENT: None



Andrea M. Myrick
City Clerk

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 a Two-Unit Project 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 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 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)).

The applicant must provide evidence that the requirements of Government Code Section 65913.4(a)(6)(B)–(K) are satisfied.

D. 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.

E. No Impact on Protected Housing.

1. 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.
2. 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.
- a. The sworn statement must state that:
 - i. No housing that is income-restricted for households of moderate income, low income, or very low income will be demolished or altered.
 - ii. No housing that is subject to any form of rent or price control will be demolished or altered.
 - iii. 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.
 - iv. No housing that has been occupied by a tenant in the last three years will be demolished or altered.
 - b. 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.

11.21.060 – 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 SF and
 - b. Larger than 500 SF.
- 2. A primary dwelling that was legally established on the lot prior to the Two-Unit Project and that is larger than 800 SF 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 less than 800 SF may be expanded to 800 SF after, or as part of, the Two-Unit Project.

C. Height Restrictions.

- 1. On a lot that is larger than 2,000 SF, 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 SF, 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.
 - F. Open Space. Each unit shall be provided with 300 SF of useable open space; with a minimum side setback of 10 feet.
 - G. Setbacks.
 1. Generally. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
 2. Exceptions. Notwithstanding subpart (G)(1) above:
 - a. Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - b. 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 SF 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.
 2. The site is located within one block of a car-share vehicle location.

11.21.070 – 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. 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 Chapter is a change of use and subjects the whole of the lot, and all structures, to the City's current code.

G. Fire Prevention Requirements.

1. All Two-Unit Projects must comply with the following requirements:
 - a. All newly constructed structures on the site must comply with current fire code requirements, including the installation of interior fire sprinklers.
 - b. 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. Structures exceeding a 150-foot hose-pull distance shall comply with Fire Marshal requirements, including, but not limited to, a minimum 20-foot wide paved access to provide emergency Fire Department access.
2. Two-Unit Project applications shall require Fire Prevention Bureau review of proposed plans for compliance with the above standards. The applicant must pay the City's costs for plan review.

11.21.080 - Exceptions to Objective Standards.

Any standard 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 SF in floor area must be set aside. Objective standards will be set aside in the following order until the site can contain two 800 SF units:

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

11.21.090 - 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.

11.21.100 - 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.

11.21.110 - 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.

11.21.120 – 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.

11.21.130 – Specific Adverse Impacts.

- A. Notwithstanding anything else in this Chapter, 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.

11.21.140 – 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.

EXHIBIT "B"

New Zoning Code Chapter 11.87

CHAPTER 11.87 – Urban Lot Splits.

11.87.010 – Purpose. The purpose of this Chapter is to allow and appropriately regulate an Urban Lot Split in accordance with Government Code Section 66411.7.

11.87.020 – 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.

11.87.030 – 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.

11.87.040 – 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, including, but not limited to, this Chapter and Chapter 11.86, 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, but not limited to, this Chapter and Chapter 11.86, 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.
 7. Within a regulatory floodway unless all development on the site has received a no-rise certification.
 8. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
 9. Habitat for protected species.
 10. Land under conservation easement.

11. 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.
12. The purpose of this subpart (C) is merely to summarize the requirements of Government Code Section 65913.4(a)(6)(B)–(K). (See Gov. Code §66411.7(a)(3)(C).)
13. The applicant must provide evidence that the requirements of Government Code Section 65913.4(a)(6)(B)–(K) are satisfied.

D. No Prior Urban Lot Split

1. The lot to be split was not established through a prior Urban Lot Split.
2. 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.

E. – No Impact on Protected Housing

1. The Urban Lot Split must not require or include the demolition or alteration of any of the following types of housing:
 - a. Housing that is income-restricted for households of moderate, low, or very low income.
 - b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.
 - c. 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.
 - d. Housing that has been occupied by a tenant in the last three years.
2. 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:
 - a. No housing that is income-restricted for households of moderate, low, 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.

11.87.050 – Lot Size

- A. The existing lot size of the property prior to subdivision under this Chapter must be at least 2,400 SF.
- B. The resulting lots must each be at least 1,200 SF.
- C. Each of the resulting lots must be between 60 percent and 40 percent of the original lots.

11.87.060 – 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.

11.87.070 – 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.
- C. Access through or across a designated horse, pedestrian, or bike trail shall not be permitted.
- D. Access through existing subdivision boundary walls to abutting secondary roadways, major roadways, or arterials as designated in the Montclair General Plan, shall not be permitted.

11.87.080 – Non-Conforming Conditions

An Urban Lot Split is approved without requiring a legal nonconforming zoning condition to be corrected.

11.87.090 – Utilities

- A. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
- B. All utilities must be underground.

11.87.100 – 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.

11.87.110 – 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 11.21 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 SF or greater than 800 SF.
- 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.
- E. Open Space. Open space in the amount of 300 SF 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.

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 SF 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:
 - 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:
 - 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.
2. 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.
- 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.

11.87.110 – Fire Prevention Requirements.

A. All Urban Lot Split projects must comply with each of the following requirements:

1. Have direct, straight access from a public street or an improved public alley. Access through or across a designated horse, pedestrian, or bike trail shall not be permitted.
2. Driveway access to a rear lot shall be at least 12 feet wide, and constructed of a prepared surface such as concrete, brick/pavers, or asphalt.
3. All newly constructed structures on the site must comply with current fire code requirements, including, but not limited to, the installation of interior 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 an onsite fire hydrant or standpipe. A new parcel with structures exceeding a 150-foot hose-pull distance shall comply with Fire Marshal requirements, including, but not limited to, the provision of a minimum 20-foot wide paved access route/driveway for emergency Fire Department access.

B. Urban Lot Split applications shall require Fire Prevention Bureau review of proposed subdivision plans for compliance with the above standards. The applicant must pay the City's costs for plan review.

11.87.120 – Exceptions to Objective Standards.

Any standard 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 SF in floor area must be set aside. Objective standards will be set aside in the following order until the site can contain two 800 SF units:

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

11.87.130 – 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.

11.87.140 – 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.

11.87.150 – 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.

11.87.160 – 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.

11.87.170 – 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.