



# **TOWN OF FAIRFAX**

## **STAFF REPORT**

### **January 20, 2022**

**TO:** Planning Commission

**FROM:** Ben Berto, Director of Planning and Building Services

**SUBJECT:** SB 9 Ordinance Establishing Regulations for the Land Division and Development of qualified Senate Bill 9 properties

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#### **RECOMMENDATION**

Review and recommend to the Council adoption of the attached non-urgency ordinance establishing regulations for the land division and development of qualified Senate Bill 9 properties within the Town of Fairfax.

#### **BACKGROUND**

On September 16, 2021, Governor Newsom signed Senate Bill 9 (SB 9) into law, substantially altering low-density, single-family zoning throughout the state. The most significant component of this bill is that it requires ministerial approval of a one-time, two-lot land division and/or development projects for up to two (2) units per lot. The proposed land division or development project is required to meet certain qualifying location and development criteria. Although the new law supersedes varying Town regulations regarding subdivision and development standards, SB 9 preserves some authority for local agencies to enact regulations through the adoption of new objective subdivision and zoning regulations. The State statute became effective on January 1, 2022.

The Town Attorney's office and Planning Department developed a model ordinance that enacted local regulations to respond to the passage of Senate Bill 9. The Town Council adopted this as an urgency ordinance on December 1, 2021, which is why the Planning Commission did not review the ordinance. The model ordinance incorporated such local provisions that in the Town Attorney's opinion could be implemented.

An urgency ordinance can remain in effect for up to a year, during which time a local jurisdiction (Fairfax) must adopt a non-urgency version of the ordinance in order for the regulations to remain in effect for more than one year.

#### **DISCUSSION**

The State of California continues its ongoing blitz of new statutes intended to spur the provision of housing, the lack thereof which is acknowledged as a crisis in the State as a whole and its major metropolitan areas in particular. A common feature on these statutes is the diminution or elimination of local discretionary regulatory authority.

Senate Bill 9 furthers this trend. Its central elements are more or less eliminating single family-only zoning throughout the State, allowing duplexes via a non-discretionary process on previously single-family zoning, and allowing the division of single-family-zoned parcels into two parcels (and allowing afore-mentioned duplexes on each new parcel). The duplex provision isn't as drastic as it may seem, since the State has already mandated allowing accessory dwelling units and junior accessory units, which in effect currently allows up to three units on existing single family-zoned parcels.

Under the new State statutes, unless otherwise locally regulated, a landowners/developer would be able to split any single-family zoned parcel into two parcels, as long as neither of the resulting new parcels were less than 1,200 square feet in area, and ratio of the relative sizes of the two new parcels was not more unequal than a 60%/40% split. For example, if a person wanted to divide a 5,000 square foot parcel, the largest of the resulting two parcels could not exceed 3,000 square feet in area (60% of the original parcel size) and the smallest new parcel be less than 2,000 square feet (40% of the original parcel size).

The Town Attorney's office and Planning have developed a local ordinance version of the State SB 9 statutes (see attachment A). It reflects the requirements of State laws, but provides certain local standards that address SB 9's most troublesome aspects. Without the Town's ordinance, SB 9 would otherwise allow the division of single-family parcels and subsequent creation of four housing units throughout areas of Fairfax that suffer from inadequate fire access.

The general minimum fire department standard for public paved roadway width is 20 feet. The Town's adopted urgency (and now recommended regular) SB 9 ordinance requires that in order for a parcel to be split and/or duplexes built pursuant to the State's requirements/allowances, there can be no less than 20 feet of clear pavement width of any roadway serving as egress to a primary evacuation route from the location of the parcel and the evacuation route. Staff has already measured and confirmed that virtually none of the Town's hillside roads meet this standard. Hence, no hillside parcels served by these under-width roadways will now be subdividable, nor allowed to develop duplexes.

The full text of the non-urgency ordinance contains other features, such as limiting the maximum size of any duplex unit to 800 square feet (which could be construed as a semi-affordable-by-design requirement). Per State mandate, the local ordinance only requires 4 foot rear and sideyard setbacks for duplexes

### **CONCLUSION/RECOMMENDATION**

The ordinance before your Commission represents the Town Attorney's office and staff's efforts to make the State's housing mandates more reflective of fire safety realities in Fairfax, while remaining within statutory prerogatives. State government continues to demonstrate a lack of care or understanding about fire safety in regards to housing – is 2 million acres burned and 1,000 homes destroyed annually in California to be considered the new 'normal'? Meanwhile new housing units are mandated to be planned for in high fire risk areas. For the time being this ordinance retains SB 9's desired effect of promoting new, potentially more affordable housing, without promulgating its most egregious flaws.

Adopting this non-urgency ordinance (a duplicate of the urgency ordinance) affords the Town additional longer-standing local protections that a regular ordinance provides, and buffers effects that would otherwise apply via the State statutes that would otherwise apply.

Staff therefore recommends that the Planning Commission hold a public hearing, and after deliberation approve the attached resolution recommending Town Council adoption of the ordinance as written.

## **ATTACHMENTS**

- A. Ordinance
- B. Exhibit A Town Code text amendments
- C. Resolution 2022-03 recommending the SB 9 Ordinance to the Town Council

FAIRFAX ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN  
OF FAIRFAX ADDING CHAPTER 16.22 URBAN LOT SPLITS  
AND CHAPTER 17.049 TWO-UNIT PROJECTS TO THE TOWN  
OF FAIRFAX TOWN CODE AND DETERMINING THE  
ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the Town of Fairfax, California (“Town”) 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 January 1, 2022, and preempts any conflicting Town ordinance; and

WHEREAS, the Town Council adopted an urgency SB 9 Ordinance on December 1, 2021 which temporarily amended its regulations to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

WHEREAS, the Town now desires to adopt non-urgency regulations to comply with Government Code sections 66411.7 and 65852.21 and continue to appropriately regulate projects under SB 9; and

WHEREAS, the approval of urban lot splits and two-unit projects based solely on the Town’s default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

**Section 1.** The recitals above are each incorporated by reference and adopted as findings by the Town Council.

**Section 2.** Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by a city or county implementing the provisions of

Government Code sections 66411.7, and 65852.21, regulating urban lot splits, two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements these new laws enacted by SB 9.

In addition to being statutorily exempt from CEQA, 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, 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 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, 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 Town 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 Town Council finds that the ordinance will:

Not result in a potentially significant cumulative impact: Government Code section 65852.21 and 66411.7 impose a duty on the Town to ministerially approve two-unit developments and urban lot splits. This ordinance imposes objective development standards to ensure the new developments are consistent in size and scale with the surrounding residential development (albeit on smaller parcels) and continue to meet minimum standards for access and public safety while providing for adequate light and ventilation. Accordingly, there is no potential for significant cumulative impact.

- (1) (2) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances: Unusual circumstances such as development proposed or accessed on a street of 20 feet or less in width as defined in the ordinance will not be permitted.
- (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: The ordinance will require replacement in a

2:1 ratio any heritage trees removed by a project processed under this ordinance with 36-inch trees. The Town does not contain any scenic highways.

- (4) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code: No single-family residential properties in Fairfax have been identified as a hazardous waste site.
- (5) Not result in a substantial adverse change in the significance of a historical resource: The Town does not have any designated historic resources in single family residential zoned areas.

Each of the foregoing exemptions is asserted in the alternative and each is independently sufficient to fully exempt the whole of the project.

**Section 3.** Chapter 16.22 Urban Lot Splits And Chapter 17.049 Two-Unit Projects are hereby added to the Town Code as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

**Section 4.** This ordinance takes effect immediately upon its adoption.

**Section 5.** The Town 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 6. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

**Section 7.** The Town Council hereby directs staff to prepare, execute, and file with the Marin County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

**Section 8.** The Custodian of Records for this Ordinance is Town Clerk and the records compromising the administrative record for this Ordinance are located at 142 Bolinas Road, Fairfax, CA 94930.

**PASSED, APPROVED AND ADOPTED** by the Town Council of the Town of Fairfax, California, at a regular meeting of the Town Council held on the \_\_\_ th day of \_\_\_\_\_, 2022 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Stephanie Hellman, Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk

**EXHIBIT A**

**Amendments to Town Code**

(follows this page)



**EXHIBIT “A”**

**TOWN OF FAIRFAX MUNICIPAL CODE TITLE 16: SUBDIVISIONS:**

**Chapter 16.22 Urban Lot Splits**

**Section 16.22.010 Urban Lot Splits**

- (a) **Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.
- (b) **Definition.** An “urban lot split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.
- (c) **Application.**
  - (1) Only individual property owners may apply for an urban lot split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).
  - (2) An application for an urban lot split shall be submitted on the town’s approved form. Only a complete application will be considered. The town will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
  - (3) The town may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The Town Council may establish and change the fee by resolution. The fee shall be paid with the application.
- (d) **Approval.**
  - (1) An application for a parcel map for an urban lot split is approved or denied ministerially, by the Director of Planning and Building Services, without discretionary review.
  - (2) A parcel map for an urban lot split shall be ministerially approved if it complies with all the requirements of Chapter 16.20 (Parcel Maps) of this Title with the exception of Subsection 16.20.080(D) “Approval by Town Council”, which is herein waived for applications processed under this Chapter.
  - (3) The approval shall require the owner and applicant to hold the town harmless from all claims and damages related to the approval and its subject matter.

- (4) The approval shall require the owner and applicant to reimburse the town for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.
- (e) **Requirements.** An urban lot split shall satisfy each of the following requirements:
  - (1) **Map Act Compliance.**
    - (A) The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., "SMA"), including implementing requirements as set forth in Title 16, except as otherwise expressly provided in this section.
    - (B) If an urban lot split violates any part of the SMA, the town's subdivision regulations, including this section, or any other legal requirement:
      - (i) 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.
      - (ii) The town has all the remedies available to it under the SMA, including but not limited to the following:
        - (I) An action to enjoin any attempt to sell, lease, or finance the property.
        - (II) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
        - (III) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
        - (IV) Record a notice of violation.
        - (V) Withhold any or all future permits and approvals.
    - (C) Notwithstanding section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an urban lot split.
  - (2) **Zone.** The lot to be split is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

(3) **Lot Location.**

- (A) The lot to be split is not located on a site that is any of the following:
- (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
  - (ii) A wetland.
  - (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
  - (iv) A hazardous waste site that has not been cleared for residential use.
  - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
  - (vi) 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.
  - (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
  - (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
  - (ix) Habitat for protected species.
  - (x) Land under conservation easement.
- (B) The purpose of subpart (e)(3)(A) 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).)

- (4) **Not Historic.** The lot to be split shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor

may the lot be or be within a site that is designated by ordinance as a town or county landmark or as a historic property or district.

(5) **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.

(6) **No Impact on Protected Housing.**

- (A) The urban lot split shall not require or include the demolition or alteration of any of the following types of housing (“Protected Housing”):
  - (i) Housing that is income-restricted for households of moderate, low, or very low income.
  - (ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
  - (iii) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
  - (iv) Housing that has been occupied by a tenant in the last three years.
- (B) The Application for the Urban Lot Split shall include a sworn affidavit from the applicant and the owner of the property that the urban lot split will not demolish or alter Protected Housing as set forth in Subsection 6(A)(i)-(iv) above. The town may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

(7) **Lot Size.**

- (A) The lot to be split shall be at least 2,400 square feet.
- (B) The resulting lots shall each be at least 1,200 square feet.
- (C) Each of the resulting lots shall be between 60 percent and 40 percent of the original lot area.

(8) **Easements.**

- (A) The owner shall 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 shall be shown on the parcel map.
- (C) Copies of unrecorded and recorded easement agreements shall be submitted with the application. All easement agreements shall be recorded against the property prior to approval of the parcel map.
- (D) If an easement is recorded and the project is not completed, making the easement moot, the property owner may request termination of the parcel map, and the city will provide, a notice of termination of the easement and the parcel map, which the owner may record.

(9) **Lot Access.**

- (A) Each resulting lot shall adjoin the public right of way.
- (B) Each resulting lot shall have frontage on the public right of way of at least 20 feet.

(10) **Unit 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 Section 17.049 (Two-Unit Projects), an ADU, or a JADU.
- (B) **Unit Size.**
  - (i) The total floor area of each primary dwelling that is developed on a resulting lot shall be
    - (I) less than or equal to 800 and
    - (II) more than 500 square feet.
  - (ii) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.
  - (iii) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

(C) **Height Restrictions.**

- (i) On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
- (ii) On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height. Any portion of a new primary dwelling that exceeds one story shall be stepped back by an additional five feet from the ground floor; no balcony, deck, eave, or other portion of the second story may project into the stepback.
- (iii) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

(D) **Lot Coverage.** No resulting lot subject to this division may result in the total lot coverage of the resulting lot to exceed 35 percent. 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.

(E) **Open Space.** No dwelling unit on a resulting lot subject to division (10) (D) may cause the open space area to fall below 300 square feet per unit. "Open space area" shall not include any required yard or setback, required building separation, access area, or area with dimensions of less than ten feet or slope of greater than ten percent, subject to division (10) (D) above. 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.**

- (i) **Generally.** All setbacks shall conform to those objective setbacks that are imposed through the underlying zone.
- (ii) **Exceptions.** Notwithstanding subpart (e)(10)(F) above:
  - (I) **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.
  - (II) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone shall 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.

(iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split shall be at least 10 feet from the front property lines. The front setback area shall:

- (I) be kept free from all structures greater than three feet high;
- (II) be at least 50 percent landscaped with landscaping on the FireSafe Marin Fire-Smart Plant list, drought-tolerant landscaping is encouraged, with vegetation and irrigation plans approved by a licensed landscape architect;
- (III) allow for vehicular and fire-safety access to the front structure.

(G) **Parking.** Each new primary dwelling unit that is built on a lot after an urban lot split shall have at least one off-street parking space per unit unless one of the following applies:

- (i) The lot is located within one-half mile walking distance of either
  - (I) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
  - (II) a site that contains 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.
- (ii) The site is located within one block of a permanently designated car-share vehicle location.

(H) **Architecture.**

- (i) If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit shall 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.
- (ii) 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 shall 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.

- (iii) All exterior lighting shall be limited to down-lights, that comply with the town's night-sky standards, and be the minimum necessary for safety.
- (iv) No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (v) 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 shall 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.**

- (i) Evergreen landscape screening shall be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
  - (I) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall.
  - (II) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.
  - (III) All landscaping shall be on FireSafe Marin Fire-Smart Plant list and is encouraged to be drought-tolerant.
  - (IV) No Undesirable Tree Species as defined by Section 8.36.020 shall be planted.
  - (V) Any Heritage Tree, as defined by Section 8.36.020, removed shall require two 36" box trees FireSafe Marin Fire-Smart Plant list to be planted on the lot prior to final inspection.

(J) **Nonconforming Conditions.** An existing legal nonconformity shall not require any correction prior to approval of an urban lot split.

(K) **Utilities.**

- (i) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.



(ii) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall comply with current County wastewater treatment system requirements for new parcels.

(L) **Building & Safety.** All structures built on the lot shall comply with all current local building standards. An urban lot split is a change of use.

(11) **Fire-Hazard Mitigation Measures.**

(A) A lot shall comply with each of the following fire-hazard mitigation measures:

(i) All enclosed structures on the site shall have fire sprinklers.

(ii) Windows in any portion of a dwelling with less than a five-foot setback to a property line shall be equipped with heat activated self-closing shutters.

(iii) All sides of all dwellings on the site shall be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.

(iv) A lot shall have direct access to a public right of way with a paved street with a minimum width consisting of a net horizontal unobstructed clearance of not less than 20 feet exclusive of gutters, curbs, and shoulders, that connects to a designated evacuation route.

(B) Prior to submitting an application for an urban lot split, the applicant shall obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart (e)(11). The town or its authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the town's costs for inspection. Failure to pay is grounds for denying the application.

(12) **Separate Conveyance.**

(A) Within a resulting lot.

(i) Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.

(ii) Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.

(iii) All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

(B) Between resulting lots. 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. If any attached structures span or will span the new lot line, the owner shall record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

(13) **Regulation of Uses.**

(A) **Residential-only.** No non-residential use is permitted on any lot created by 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 shall 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.

(14) **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 shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(i) Notice that construction has been authorized,

(ii) The anticipated start and end dates for construction,

(iii) The hours of construction,

(iv) Contact information for the project manager (for construction-related complaints), and

(v) 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 Town has no discretion in approving or denying a particular project under this section. This notice

requirement is purely to promote neighborhood awareness and expectation.

- (15) **Deed Restriction.** The owner shall record a deed restriction, acceptable to the town, that does each of the following:
- (A) Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
  - (B) Expressly prohibits any non-residential use of the lots created by the urban lot split.
  - (C) Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
  - (D) States that the property is formed by an urban lot split and is therefore subject to the town's urban lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the town 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.
- (2) "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).
- (3) The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

**Chapter 17.049 Two-unit Projects**

**Section 17.049.010 Two-unit Projects**

- (a) **Purpose.** The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.

(b) **Definition.** A “two-unit project” means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot in accordance with the requirements of this section.

(c) **Application.**

- (1) Only individual property owners may apply for a two-unit project. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).
- (2) An application for a two-unit project shall be submitted on the town’s approved form.
- (3) The applicant shall obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.
- (4) Only a complete application will be considered. The town will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
- (5) The town may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The Town Council may establish and change the fee by resolution. The fee shall be paid with the application.

(d) **Approval.**

- (1) An application for a two-unit project is approved or denied ministerially, by the Director of Planning and Building Services, without discretionary review.
- (2) The ministerial approval of a two-unit project does not take effect until the town has confirmed that the required documents have been recorded, such as the deed restriction and easements.
- (3) The approval shall require the owner and applicant to hold the town harmless from all claims and damages related to the approval and its subject matter.
- (4) The approval shall require the owner and applicant to reimburse the town for all costs of enforcement, including attorneys’ fees and costs associated with enforcing the requirements of this code.

(e) **Requirements.** A two-unit project shall satisfy each of the following requirements:

- (1) **Map Act Compliance.** The lot shall have been legally subdivided.
- (2) **Zone.** The lot is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.
- (3) **Lot Location.**
  - (A) The lot is not located on a site that is any of the following:
    - (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters
    - (ii) A wetland.
    - (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
    - (iv) A hazardous waste site that has not been cleared for residential use.
    - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
    - (vi) 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.
    - (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
    - (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
    - (ix) Habitat for protected species.
    - (x) Land under conservation easement.

- (B) The purpose of subpart (e)(3)(A) 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).)
- (4) **Not Historic.** The lot shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a town or county landmark or as a historic property or district.
- (5) **No Impact on Protected Housing.**
  - (A) The two-unit project shall not require or include the demolition or alteration of any of the following types of housing (“Protected Housing”):
    - (i) Housing that is income-restricted for households of moderate, low, or very low income.
    - (ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
    - (iii) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
    - (iv) Housing that has been occupied by a tenant in the last three years.
  - (B) The Application for the two-unit project shall include a sworn affidavit from the applicant and the owner of the property that the two-unit project will not demolish or alter Protected Housing as set forth in Subsection 5(A)(i)-(iv) above. The town may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.
- (6) **Unit Standards.**
  - (A) **Quantity.**
    - (i) 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 (Section 17.049), an ADU, or a JADU.
    - (ii) A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that shall be allowed under state law and the town’s ADU ordinance.

(B) **Unit Size.**

- (i) The total floor area of each primary dwelling built that is developed under this section shall be
  - (I) less than or equal to 800 and
  - (II) more than 500 square feet.
- (ii) 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.
- (iii) 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.**

- (i) 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.
- (ii) 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 shall be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.
- (iii) 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.** The total lot coverage shall not exceed 35 percent of the lot. 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.** No dwelling unit on a resulting lot subject to division (D) may cause the open space area to fall below 300 square feet per unit. "Open space area" shall not include any required yard or setback, required building separation, access area, or area with dimensions of less than ten feet or slope of greater than ten percent, subject to division (D) above 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.**

(i) **Generally.** All setbacks shall conform to those objective setbacks that are imposed through the underlying zone.

(ii) **Exceptions.** Notwithstanding subpart (e)(6)(G) above:

(I) **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.

(II) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone shall 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.

(iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed under this section shall be at least 10 feet from the front property lines. The front setback area shall:

(I) be kept free from all structures greater than three feet high;

(II) be at least 50 percent landscaped with landscaping on the FireSafe Marin Fire-Smart Plant list, drought-tolerant landscaping is encouraged, with vegetation and irrigation plans approved by a licensed landscape architect;

(III) allow for vehicular and fire-safety access to the front structure.

(H) **Parking.** Each new primary dwelling unit shall have at least one off-street parking space per unit unless one of the following applies:

(i) The lot is located within one-half mile walking distance of either

(I) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(II) a site that contains 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.

- (ii) The site is located within one block of a permanently designated car-share vehicle location.

**(I) Architecture.**

- (i) If there is a legal primary dwelling on the lot that was established before the two-unit project, any new primary dwelling unit shall 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.
- (ii) 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 shall 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.
- (iii) All exterior lighting shall be limited to down-lights, that comply with the town's night-sky standards, and be the minimum necessary for safety.
- (iv) 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.
- (v) 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 shall 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.

**(J) Landscaping.**

- (i) Evergreen landscape screening shall be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
  - (I) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall.
  - (II) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.

- (III) All landscaping shall on the FireSafe Marin Fire-Smart Plant list and is encouraged to be drought-tolerant.
  - (IV) No Undesirable Tree Species as defined by Section 8.36.020 shall be planted.
  - (V) Any Heritage Tree, as defined by Section 8.36.020, removed shall require two 36" box trees FireSafe Marin Fire-Smart Plant list to be planted prior to final approval
- (K) **Nonconforming Conditions.** Nonconforming Conditions. An existing legal nonconformity shall not require any correction prior to approval of an two-unit project.
- (I) **Utilities.**
  - (i) Each primary dwelling unit on the lot shall have its own direct utility connection to the utility service provider.
  - (ii) Notwithstanding paragraph (e)(10)(K)(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the town's code. Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall comply with current County wastewater treatment system requirements for new parcels.
- (L) **Building & Safety.** All structures built on the lot shall 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 town's current code.
- (7) **Fire-Hazard Mitigation Measures.** Fire-Hazard Mitigation Measures.
  - (A) A lot shall comply with each of the following fire-hazard mitigation measures:
    - (i) All enclosed structures on the site shall have fire sprinklers.
    - (ii) Windows in any portion of a dwelling with less than a five-foot setback to a property line shall be equipped with heat activated self-closing shutters.
    - (iii) All sides of all dwellings on the site shall be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.

- (iv) A lot shall have direct access to a public right of way with a paved street with a minimum width consisting of a net horizontal unobstructed clearance of not less than 20 feet exclusive of gutters, curbs, and shoulders, that connects to a designated evacuation route.
  - (B) Prior to submitting an application for an urban lot split, the applicant shall obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart (e)(11). The town or its authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the town's costs for inspection. Failure to pay is grounds for denying the application.
- (8) **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 shall be held equally and undivided by all individual property owners.
- (9) **Regulation of Uses.**
  - (A) **Residential-only.** No non-residential use is 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 shall occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.
- (10) **Notice of Construction.**
  - (A) At least 30 business days before starting any construction of a two-unit project, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:
    - (i) Notice that construction has been authorized,
    - (ii) The anticipated start and end dates for construction,

- (iii) The hours of construction,
    - (iv) Contact information for the project manager (for construction-related complaints), and
    - (v) 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 Town 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) **Deed Restriction.** The owner shall record a deed restriction, on each lot that results from the urban lot split, on a form approved by the town, 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 lot.
  - (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) State that:
    - (i) If the lot is not created by an urban lot split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile; or
    - (ii) If the property is formed by an urban lot split it is therefore subject to the town's urban lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the town may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (2) "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact,

based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

- (3) The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

(g) **Remedies.**

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

- (1) The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.
- (2) The town may:
  - (A) Bring an action to enjoin any attempt to sell, lease, or finance the property.
  - (B) Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
  - (C) Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
  - (D) Record a notice of violation.
  - (E) Withhold any or all future permits and approvals.
  - (F) Pursue all other administrative, legal, or equitable remedies that are allowed by law or the town’s code.

**RESOLUTION NO. 2022-03**

**A Resolution of The Fairfax Planning Commission Recommending Town Council Approval of a Non-Urgency Local SB 9 Ordinance Concerning Lot Splits and Duplex Development**

**WHEREAS**, in 2021, the California Legislature approved, and the Governor in September 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**, the Town Council adopted an urgency SB 9 Ordinance which temporarily amended its regulations to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects pursuant to SB 9; and

**WHEREAS**, the Town now desires to adopt non-urgency regulations to comply with Government Code sections 66411.7 and 65852.21 and continue to appropriately regulate projects pursuant to SB 9 beyond the timeframe afforded by the Urgency Ordinance; and

**WHEREAS**, the approval of urban lot splits and two-unit projects based solely on the Town’s default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

**WHEREAS**, the Fairfax Planning Commission has held a duly noticed public hearing on January 20, 2022 and reviewed the draft non-urgency SB 9 Ordinance and finds it furthers the Town’s legitimate regulatory interests in regards to the above.

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby recommends to the Town Council that it approve the draft local SB 9 Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th day of January, 2022 by the following vote:

AYES:

NOES:

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Chair Norma Fragoso

Attest:

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Ben Berto, Director of Planning and Building Services