



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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City Manager Approval:  _____

TOPIC: AMENDMENTS TO CHAPTER 15.155 (URBAN LOT SPLITS) AND CHAPTER 15.03 (MINOR SUBDIVISIONS (FOUR OR FEWER LOTS)) OF THE SAN RAFAEL MUNICIPAL CODE

SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 15.155 (URBAN LOT SPLITS) AND CHAPTER 15.03 (MINOR SUBDIVISIONS (FOUR OR FEWER LOTS)) OF THE SAN RAFAEL MUNICIPAL CODE TO CLARIFY AND IMPROVE THE PROCEDURE FOR IMPLEMENTATION OF GOVERNMENT CODE SECTION 66411.7 (SENATE BILL 9) RELATED TO URBAN LOT SPLITS

RECOMMENDATION:

Introduce an Ordinance amending Chapter 15.155 (Urban Lot Splits) and Chapter 15.03 (Minor Subdivisions (Four or Fewer Lots)) of the San Rafael Municipal Code to clarify and improve the procedure for implementation of Government Code Section 66411.7 (Senate Bill 9) related to urban lot splits, waive further reading of the Ordinance, and refer to it by title only.

BACKGROUND:

On September 16, 2021, Governor Newsom signed [Senate Bill 9 \(SB 9\), the California Home Act](#), which requires municipalities to allow additional housing development on single-family zoned parcels through subdivisions and additional primary residential units.

This bill, which took effect on January 1, 2022, consists of two primary components:

1. SB 9 Housing Development (Government Code Section 65852.21). Provisions to allow development of up to two primary residential units on lots in single-family zoning districts; and
2. Urban Lot Splits (Government Code Section 66411.7). Provisions to allow the subdivision of lots in single-family zoning districts into two lots.

On [July 18, 2022](#), the City Council introduced Ordinance No. 2013 to add Section 14.16.282 (SB 9 Housing Developments) and Chapter 15.155 (Urban Lots Splits) to the San Rafael Municipal Code to implement Government Code Sections 65852.21 and 66411.7 (Senate Bill 9) related to SB 9 Housing

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

Developments and Urban Lot Splits. Ordinance No. 2013 was then adopted by the City Council at the [August 1, 2022](#) City Council meeting.

Since the adoption of Ordinance No. 2013, the City has received a number of Urban Lot Split development applications per the provisions of Chapter 15.155. The processing and review of these applications by the Departments of Community Development and Public Works has revealed some necessary changes to Chapter 15.155 to clarify and improve the procedure for Urban Lot Split applications.

ANALYSIS:

In the City of San Rafael, divisions of land into four or fewer lots are considered “Minor Subdivisions” and are governed by the procedures established by [Chapter 15.03](#) of the San Rafael Municipal Code. Under Chapter 15.03, applications for minor subdivisions follow a two-step process. First, the applicant must apply for a tentative map and receive approval from the Community Development Director or, if required per [Section 15.03.050](#), by the the Planning Commission. Once the tentative map has been approved, the applicant may submit a parcel map for approval by the City Engineer, and then record the approved parcel map with the County of Marin Recorder’s Office.

However, under [Chapter 15.155](#), Urban Lot Split applications currently only require the preparation of a parcel map, without the initial step of preparing a tentative map that is required for all other types of minor subdivisions. SB 9 makes the distinction between urban lot splits and other types of minor subdivisions by providing that urban lot splits shall be ministerially approved, without discretionary review or hearing, if the proposed urban lot split meets certain requirements. However, pursuant to Government Code Section 66428(a), SB 9 does not preclude a local agency’s ability to require a tentative map in addition to a parcel map. Other agencies in the Bay Area, such as the City of Walnut Creek, have implemented SB 9 with the requirement to prepare both a tentative map and a parcel map for an urban lot split application.

There are multiple benefits to requiring a tentative map prior to a parcel map:

1. Consistency with Other City Processes. All other types of minor subdivisions follow a two-step application process, with a tentative map followed by a parcel map. Mirroring other City processes as much as possible reduces confusion for applicants and for City staff responsible for reviewing the applications.
2. Reduce Unnecessary Burden on the applicant. A tentative map and parcel map serve different purposes. The tentative map is primarily a planning document, used by the Community Development Department to verify that the proposed subdivision meets all applicable requirements. In the case of an Urban Lot Split application, the tentative map can be used to verify that the proposed urban lot split meets the objective development standards of Chapter 15.155.030 and that none of the circumstances listed as “Limitations on Approval” in Chapter 15.155.020 apply. The engineering aspects of the tentative map, such as lot layout and dimensions, may be approximate at this stage. If the tentative map is approved, then the applicant may submit a parcel map, which is primarily a technical engineering document reviewed and approved by the Public Works Department. A parcel map must be prepared by a registered civil engineer or licensed land surveyor and must contain final lot layout, including traverse closures and the computation of all distances, angle and courses. By separating the content required on the tentative map and parcel map, the applicant can avoid the burden of submitting the technical engineering calculations and mapping until the Community Development Department has verified that the proposed urban lot split does in fact meet the objective development standards by

approving the tentative map. If the tentative map is not approved, there is no benefit to the applicant going through the process of preparing a parcel map.

Therefore, Public Works staff, in collaboration with Community Development staff, have prepared an Ordinance to amend Chapter 15.155 to include a two-step application process of tentative map and parcel map for urban lot splits. The revisions lay out application requirements that refer back to Chapter 15.03 (Minor Subdivisions) as much as possible to provide consistency with other existing City processes.

During the process of revising Chapter 15.155 to implement a two-step application process, staff noticed other revisions that may be made to the chapter for clarity and/or improvement of the urban lot split application process. Consequently, Ordinance amendments also include the following revisions to Chapter 15.155:

- The tentative map application will require the property owner to submit signed affidavits certifying the following:
 - The property owner intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval of the urban lot split. This requirement is added pursuant to Government Code Section 66411.7(g).
 - No demolition or alteration of “protected housing” will be required for the proposed urban lot split. Demolition or alteration of “protected housing” is already not permitted per Section 15.155.020(F)(1), so the addition of an affidavit from the property owner provides further clarity that this requirement is fulfilled.
 - The property owner has not previously subdivided an adjacent parcel using an urban lot split. This is already not permitted per Section 15.155.020(F)(5), so the addition of an affidavit from the property owner provides further clarity that this requirement is fulfilled.
- The parcel map will be required to contain a note on the map indicating that both new parcels were created using the provisions of Chapter 15.155 and that no further subdivision of the parcels is permitted. This requirement will help ensure compliance with Section 15.155.020(F)(4) in the future.
- Prior to approval and recordation of the parcel map, the applicant will be required to record a restrictive covenant and agreement prohibiting further subdivision of the parcel, a limitation restricting the property to residential uses only, and a requirement for dwelling units on the property to be rented or leased only for periods longer than thirty days. This requirement is added pursuant to Government Code Sections 66411.7(a)(3)(F), 66411.7(f), and 66411.7(h).

Finally, two proposed amendments to Chapter 15.03 have also been included in the Ordinance to clarify that tentative maps and parcel maps for urban lot splits submitted pursuant to Chapter 15.155 shall be reviewed ministerially in accordance with the provisions of SB 9.

COMMUNITY OUTREACH:

On August 9, 2024, this public hearing was duly noticed in the Marin Independent Journal for the City Council to receive public comments and consider an Ordinance amending the San Rafael Municipal Code.

FISCAL IMPACT: There is no fiscal impact associated with this action.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Introduce the Ordinance, waive further reading, and refer to it by title only.
2. Do not introduce the Ordinance, and direct staff to return with additional information or changes to the Ordinance.

RECOMMENDED ACTION:

Introduce an Ordinance amending Chapter 15.155 (Urban Lot Splits) and Chapter 15.03 (Minor Subdivisions (Four or Fewer Lots)) of the San Rafael Municipal Code to clarify and improve the procedure for implementation of Government Code Section 66411.7 (Senate Bill 9) related to urban lot splits, waive further reading of the Ordinance, and refer to it by title only.

ATTACHMENTS:

1. Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING CHAPTER 15.155 (URBAN LOT SPLITS) AND CHAPTER 15.03 (MINOR SUBDIVISIONS (FOUR OR FEWER LOTS)) OF TITLE 15 (SUBDIVISIONS) OF THE SAN RAFAEL MUNICIPAL CODE TO CLARIFY AND IMPROVE THE PROCEDURE FOR IMPLEMENTATION OF GOVERNMENT CODE SECTION 66411.7 (SENATE BILL 9) RELATED TO URBAN LOT SPLITS

SECTION 1. FINDINGS

WHEREAS, Senate Bill 9 (Chapter 162, Statutes of 2021) enacted Section 66411.7 to the Government Code, effective January 1, 2022; and

WHEREAS, these provisions require the City to provide ministerial approval of urban lot splits; and

WHEREAS, the City Council adopted Ordinance No. 2013 on July 18, 2022 to add Chapter 15.155 (Urban Lot Splits) to Title 15 (Subdivisions) of the San Rafael Municipal Code to implement the provisions of Government Code Section 66411.7; and

WHEREAS, the application process for urban lot splits projects outlined in Chapter 15.155 does not include preparation of a tentative map prior to the parcel map; and

WHEREAS, requiring preparation of a tentative map prior to the parcel map will provide consistency with other City processes for review of subdivisions and is permitted pursuant to Government Code Section 66428(a); and

WHEREAS, modification to the City's ordinance as provided in the subject ordinance amendments is intended clarify and improve the application process for urban lot splits while continuing to implement the provisions of Government Code section 66411.7.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

SECTION 2. AMENDMENTS TO SAN RAFAEL MUNICIPAL CODE CHAPTER 15.155 OF TITLE 15

Section 15.155.020 of Chapter 15.155 (Urban Lot Splits) of Title 15 (Subdivisions) of the San Rafael Municipal Code is hereby amended to read as follows. Additions are shown in underline, and deletions are shown in ~~strike through~~. All other provisions of Chapter 15.155 are unaffected by these amendments.

15.155.020 Filing, processing, and action.

- A. Ministerial Review. An urban lot split shall be ministerially approved, without discretionary review or hearing, if the proposed subdivision meets all provisions of this chapter and conforms to all applicable objective requirements of the Subdivision Map Act (Division 2) commencing with Section 66410 of the Government Code.

- B. Tentative Parcel Map. Applicants for urban lot splits shall submit a parcel map application. Pursuant to Government Code Section 66428(a), a tentative map and parcel map shall be required for all proposed urban lots splits. Tentative map applications shall be filed with the Department of Community Development by the property owner(s) of record or representatives of the property owner (subdivider) and must include all information specified in Section 15.02.020(a)-(f) of this title. The tentative map shall be reviewed and approved prior to submittal of the parcel map application. As part of the tentative map application, the property owner shall provide signed affidavits, all in a form approved by the City Attorney:
1. A statement that the property owner intends to occupy one of the housing units on the newly created lots as its principal residence for a minimum of three years from the date of the approval of the urban lot split. This subsection shall not apply to a property owner that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.
 2. If any existing housing is proposed to be altered or demolished, the owner of the property's statement that none of the conditions listed in Section 15.155.020(E)(3) exist. This affidavit shall include a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished).
 3. The property owner shall also sign an affidavit stating that neither the property owner nor any person acting in concert with the property owner, has previously subdivided an adjacent parcel using an urban lot split.
- C. Completeness Review of Tentative Map Application by Department of Community Development. Applications for a tentative map for an urban lot split shall be reviewed and processed by the Department of Community Development as follows:
1. Within thirty (30) days of receipt of the application, the Department of Community Development shall review the materials to determine if all information has been submitted to deem the application complete for processing; and shall advise the property owner and/or subdivider, in writing, whether the application is complete or is incomplete, listing the additional information needed for processing.
- DC. Action by Department of Community Development. The city-Department of Community Development shall act on a parcel tentative map application for an urban lot split within sixty (60) days of receipt of a complete application. If the applicant requests a delay in writing, the sixty-day time period shall be tolled for the period of the delay. The city Department of Community Development has acted on the application if it:
1. Approves or denies a parcel tentative map application for an urban lot split; or
 2. Informs the applicant in writing that changes to the proposed project are necessary to comply with this chapter or other applicable laws and regulations.
- D. Parcel maps for urban lot splits shall not be conditioned on dedication of right-of-way or construction of offsite improvements.

- ~~E. Adverse Impact Upon Health and Safety. A proposed urban lot split shall be denied if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed urban lot split would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.~~
- EF. Limitations on Tentative Map Approval. A proposed tentative map for an urban lot split shall not be eligible for approval pursuant to this chapter if any of the following circumstances apply:
1. The proposed map is not consistent with the development standards as specified in Section 15.155.030 of this chapter.
 2. The building official makes a written finding, based upon a preponderance of the evidence, that the proposed urban lot split would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- 34.The proposed urban lot split would require demolition or alteration of "protected housing." Protected housing includes:
- a. Housing that is subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - b. Housing that is subject to rent control through valid local rent control provisions.
 - c. A parcel on which the owner of residential real property has withdrawn accommodations from rent or lease pursuant to Section 7060 of the Government Code within fifteen (15) years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act).
 - d. Housing that has been occupied by a tenant in the last three (3) years.
- 42.The parcel to be subdivided is located within a historic district, is included on the State Historic Resources Inventory, or is within a site that is legally designated or listed as a city or county landmark or historic property or district.
- 53.The parcel to be subdivided is located in any of the specified designated areas set forth in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code and does not satisfy the eligibility requirements therein.
- 64.The parcel to be subdivided has been established through prior exercise of an urban lot split pursuant to this chapter.
- 75.Either the owner of the parcel to be subdivided or any person acting in concert with

the owner has previously subdivided an adjacent parcel using an urban lot split pursuant to this chapter. "Acting in concert" means the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

F. Tentative Map Conditions of Approval. A tentative map for an urban lot split may be approved subject to conditions of approval. Conditions of approval may include the imposing of restrictions and easements, consistent with the provisions of this title, and compliance with specific permit requirements such as set forth in Section 14.16.282. Tentative maps for urban lot splits shall not be conditioned on dedication of right-of-way or construction of offsite improvements. Tentative maps shall be conditioned to require approval of a parcel map by the Department of Public Works.

G. Review of Parcel Map Application. Parcel maps shall conform to the requirements of, and shall be reviewed and approved pursuant to, Sections 15.03.090 through 15.03.140, with the following additional requirements:

1. The parcel map created pursuant to an urban lot split shall contain a note on the map indicating that both new parcels were created using the provision of this chapter and Government Code Section 66411.7, and that no further subdivision of the parcels is permitted.

2. Prior to the approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the City Attorney, which shall run with the land and shall contain the provisions listed below.

a. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this chapter;

b. A limitation restricting the property to residential uses only; and

c. A requirement that dwelling units on the property may be rented or leased only for a period longer than thirty days.

SECTION 3. AMENDMENTS TO SAN RAFAEL MUNICIPAL CODE CHAPTER 15.03 OF TITLE 15

Sections 15.03.050 and 15.03.120 of Chapter 15.03 (Minor Subdivisions (Four or Fewer Lots)) of Title 15 (Subdivisions) of the San Rafael Municipal Code are hereby amended to read as follows. Additions are shown in underline, and deletions are shown in ~~strikethrough~~. All other provisions of Chapter 15.03 are unaffected by these amendments.

15.03.050 Referral to planning commission.

When the tentative map application is determined to be complete, the department of community development shall determine if the minor subdivision application is to be reviewed and acted on by the community development director or the planning commission, except for tentative maps submitted pursuant to Government Code 66411.7 and Chapter 15.155 of this

title, which shall be reviewed ministerially. All minor subdivision applications shall be referred to the planning commission when:

- (a) The application is determined to be subject to environmental review and the preparation of an initial study is required to assess the potential environmental impacts of the minor subdivision;
- (b) The application includes a request for an exception from one or more of the provisions of this title;
- (c) The property proposed for subdivision is located in a hillside area and is subject to the provisions of Chapter 15.07 of this title;
- (d) The application is being processed concurrently with other applications requiring planning commission or city council approval;
- (e) The application involves a division of land where one or more of the created lots or parcels does not have frontage on an existing public street;
- (f) The director of community development determines that there is extraordinary public concern about the proposed division; or
- (g) The director of community development determines that the proposed division is of a size, importance or unique nature such that it is judged not to be a routine matter.

All minor subdivision applications referred to the planning commission for review and action shall be processed consistent with the major subdivision procedures set forth in Chapter 15.02 of this title.

15.03.120 Review by city engineer.

- (a) Upon receipt of the parcel map application, the city engineer shall have sixty (60) calendar days to review and approve the parcel map and all supportive improvements plans and reports. Following initial review, the city engineer shall provide written comments and corrections on these materials to the subdivider's engineer, who shall, in turn, make corrections and/or additions until the map and supportive documents are acceptable to the city engineer, unless the project is approved pursuant to Government Code 66411.7 and Chapter 15.155 of this title, in which case the review shall adhere strictly to ministerial standards without requiring further modifications. The sixty (60) calendar days shall not include any days in which the improvement plans have been returned to the subdivider's engineer for correction or those days for which the plans are subject to review by agencies other than the city.
- (b) Upon making all final corrections and additions, the subdivider's engineer shall submit the original parcel map to the city engineer. This original shall be submitted with the signatures of all parties required to execute the statements on the parcel map.

SECTION 4. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be

severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this Ordinance shall continue in full force and effect unless amended or modified by the city.

SECTION 5. COMPLIANCE WITH CEQA

Pursuant to Government Code Section 66411.7(n), enactment of this Ordinance is not considered a project under the California Environmental Quality Act (CEQA) as this action is to adopt an ordinance to implement the provisions of Section 66411.7 of the Government Code.

SECTION 6. EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in full force and effect thirty (30) days after its adoption. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the 19th day of August 2024, and was passed and adopted at a regular meeting of the San Rafael City Council on the 3rd of September by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

KATE COLIN, Mayor

ATTEST:

LINDSAY LARA, City Clerk