SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 6.b

Meeting Date: December 20, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: COMMUNITY DEVELOPMENT

Prepared by: Alicia Giudice, AICP, Director
Jeff Ballantine, Senior Planner

City Manager Approval: _____

TOPIC: **MINISTERIAL REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS PURSUANT TO SENATE BILL 9**

SUBJECT: **A RESOLUTION DIRECTING STAFF TO PREPARE AN INTERIM GUIDANCE DOCUMENT ESTABLISHING STANDARDS AND REVIEW PROCEDURES FOR MINISTERIAL REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS TO IMPLEMENT SB 9 - THE CALIFORNIA HOME ACT; AND DIRECTING THE PREPARATION OF AN SB 9 IMPLEMENTING ORDINANCE**

RECOMMENDATIONS:

Adopt a resolution directing staff to prepare an interim guidance document establishing standards and review procedures for ministerial review of two-unit residential developments and urban lot splits.

BACKGROUND:

On September 16, 2021, Governor Newsom signed Senate Bill 9 (SB 9) into law which will take effect January 1, 2022. This bill requires cities and counties to ministerially approve housing development projects containing no more than two residential units and new lot splits (urban lot splits) that meet certain criteria established under SB 9. The result is that, pursuant to the law, if a lot split is followed by the construction of two units on each lot, four units could be built on what was previously a single-family residential parcel. Pursuant to the regulations adopted by SB 9, local agencies may only apply existing or newly adopted objective development standards (i.e. objective zoning, design review, and subdivision standards) to these types of projects. However, such standards may not have the effect of physically precluding the construction of up to two units that are at least 800 square feet in floor area with four foot side and rear yard setbacks, on each of the existing or newly created lots.

The City's Municipal Code currently contains objective standards in Chapter 14 (Zoning) and Chapter 15 (Subdivisions) that are currently applied to residential projects and/or lot splits and can continue to be applied to these types of projects. Staff recommends developing an interim SB 9 guidance document; the interim guidance document will identify existing, objective standards that apply to SB 9 urban duplexes and urban lot splits. The interim guidance document will also invoke those standards reserved by SB 9 to City discretion and establish review procedures that would be in effect in the event the City receives an application for a housing development or lot split pursuant to SB 9 any time after January 1, 2022.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

DISCUSSION AND ANALYSIS

SB 9 mandates that cities ministerially approve the construction of up to two residential units and urban lot splits that meet certain State standards and objective City standards (i.e. objective zoning, design review and subdivision standards). However, such standards may not have the effect of physically precluding the construction of up to two units that are at least 800 square feet in floor area with four foot side and rear yard setbacks within each existing lot or on any lot created pursuant to SB 9. The State's adopted criteria along with a description of standards that are left to the City's discretion are provided below.

Eligibility Requirements for Ministerial Review of up to Two Units

Regulations Established by SB 9 Legislation. SB 9 requires that a proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

1. The project site is in a single family residential zoning district
2. The proposed housing development would not require demolition or alteration of existing housing that:
    a. 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. Is subject to any form of rent or price control through a public entity's valid exercise of its police power.
    c. Has been occupied by a tenant in the last three years.
3. The proposed housing development would not result in the demolition of more than 25 percent of the existing exterior structural walls unless the site has not been occupied by a tenant in the last three years.
4. The development is not on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code (Ellis Act) within 15 years preceding the development application.
5. The project site is not a historic landmark, or located within a state or local historic district.
6. The development is not located in specified designated areas, including:

    A high fire hazard severity zone, farmland, wetland, hazardous waste site (according to listing on the Cortese list), flood hazard area as determined by FEMA maps, lands within conservation plans, lands under conservation easement, or lands designated as habitat protection areas for species identified in the California Endangered Species Act (CESA) and the U.S. Endangered Species Act (ESA). In addition, State law prohibits the rental of any unit created under SB 9 for a term less than 30 days

    Standards Reserved to City Discretion. SB 9 reserves to local agencies the authority to impose objective development standards and regulations. The San Rafael Municipal Code ("SRMC") currently contains objective development standards embedded in Chapter 14 (Zoning) and Chapter 15 (Subdivision) and the City is able to apply those standards to urban duplexes. The City may also require off-street parking of up to one (1) space per unit unless the parcel is located within:

    a. one-half mile walking distance of a high-quality transit corridor,
    b. one-half mile walking distance of a major transit stop, or one block of a car share vehicle.

Finally, the City may adopt additional objective standards that specifically apply to SB urban duplexes and urban lot splits. For example, the City could adopt additional, more restrictive development standards related to height, setbacks, or lot coverage limits. However, as mentioned above, the City may not impose any existing or proposed development standards that preclude the following:

1. A development consisting of two attached or detached primary dwelling units, each no more than eight hundred (800) square feet in size with side and rear setbacks of four feet.
2. Conversion of an existing structure or reconstruction of any structure constructed in the same location and to the same dimensions as an existing structure.

Eligibility Requirements for Urban Lot Splits

Regulations Established by SB 9 legislation. Similar to review limits established for development projects of up to two units, SB 9 requires that jurisdictions must ministerially approve, without discretionary review or hearing, a parcel map for an urban lot split. Such projects are eligible for ministerial review only if these projects comply with the following requirements:

1. The parcel subdivision would create no more than two new parcels of approximately equal lot area and the smaller parcel shall be not less than forty (40) percent of the lot area proposed for subdivision.
2. Each parcel would have a minimum size of 1,200 square feet, unless authorized by ordinance.
3. The parcel being subdivided is located within a single-family residential zoning district and would not result in the demolition or alteration of the following types of housing units:
    a. Housing unit 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 unit that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
    c. Housing units that have been occupied by a tenant in the last three years.
    d. Housing units that are located on a parcel on which the owner has withdrawn it from renting or leasing under Section 7060 of the Government Code within 15 years preceding the development application (i.e., an exit of the rental housing business pursuant to the Ellis Act);
4. The Site is not a historic landmark, or located within a historic district (state or local)
5. The development is not located in specified designated areas, including a high fire hazard severity zone, farmland, wetland, hazardous waste site (according to listing on the Cortese list), flood hazard area as determined by FEMA maps, lands within conservation plans, lands under conservation easement, or lands designated as habitat protection areas for species identified in the California Endangered Species Act (CESA) and the U.S. Endangered Species Act (ESA).
6. The parcel has not been established through a prior exercise of an urban lot split authorized by SB 9.
7. Neither the parcel owner nor any person acting in concert with the owner has previously exercised an urban lot split under SB 9 on an adjacent parcel.
8. SB 9 requires the City to approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act, except as otherwise provided in SB 9. In addition, SB 9 requires that the City require an applicant for an urban lot split to sign an affidavit stating that

the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. However, no such affidavit is required of a community land trust or qualified nonprofit.

9. No dwelling unit that exists on a lot that was created by an urban lot split is permitted to be rented for a period shorter than 30 days.

Standards Reserved to City Discretion. Development proposed on lots created by an urban lot split subdivision shall comply with all objective development standards applicable to the parcel based on the underlying zoning district. SRMC Chapter 14 (Zoning) and Chapter 15 (Subdivisions) are currently used for review of lot splits, including requirements to facilitate access and provision of public service and facilities to all parcels. The City would continue to use objective standards in these Chapters for review of urban lot splits. The City may also require additional objective provisions and standards that have been reserved to the City's discretion, including:

1. Requirements to facilitate access and provision of public service and facilities to all parcels. These types of requirements are already included in Chapter 15 of the SRMC.
2. Setback requirements of up to four feet from the side and rear lot lines, except that no setback can be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. The proposed resolution includes these setback requirements reserved to the City.
3. Off-street parking of up to one (1) space per unit unless the parcel is located within: one-half mile walking distance of a high-quality transit corridor, one-half mile walking distance of a major transit stop, or one block of a car share vehicle. The proposed resolution includes these parking requirements which have been reserved to the City's discretion.
4. The City may limit the number of units (including primary dwelling units, accessory dwelling units, and/or junior accessory dwelling units) allowed on parcels that have taken advantage of both the urban lot split and the two unit development provisions under SB 9. The proposed resolution includes this limitation. However, the staff will study whether there is value to allowing additional ADUs/JADUs on certain parcels as part of a future update.

Regardless of the above items that have been left to City discretion, the City cannot impose standards that would physically preclude the construction of two (2) units on either of the resulting parcels or that would result in a unit size of less than eight hundred (800) square feet. In addition, the City is prohibited from requiring dedications of rights-of-way or the construction of offsite improvements and shall not require the correction of nonconforming zoning conditions as part of any approval for these types of projects.

Cause for Denial of Projects proposed pursuant to SB 9 (urban lot splits and development of up to 2 units)

Whether or not the City has adopted additional regulations related to SB 9 projects, the City may deny a proposed housing development or urban lot split proposed pursuant to SB 9 if the building official makes a written finding, based on a preponderance of the evidence, that the proposed project would have a specific, adverse impact, upon health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the adverse impact. This provision has been added to the proposed resolution.

Next Steps

With the Council's direction, CDD staff will prepare an interim guidance document that identifies existing, applicable objective standards, invokes those standards reserved by SB 9 to City discretion, and

establishes review procedures for SB 9 projects. This interim guidance document will be finalized by January 1, 2022. In addition, CDD staff will work with other departments, explore opportunities for establishment of additional standards and begin drafting an ordinance that will be brought back for City Council consideration at an early future date. Staff is requesting input from the City Council on whether there is a desire to consider incorporating additional development standards specific to SB 9 projects, which may not already be contained in the City's Municipal Code.

ENVIRONMENTAL DETERMINATION:

Pursuant to Government Code sections 65852.21(j) and 66411.7(n), adoption of the proposed Resolution is not a project under the California Environmental Quality Act and no CEQA review is required.

FISCAL IMPACT:

There is no direct fiscal impact to the City in connection with the action requested in this report.

OPTIONS:

The City Council has the following options:

- Adopt the Resolution (staff recommended);
- Adopt the Resolution with edits and additions;
- Continue the matter for additional information and further review; or
- Reject the Resolution

RECOMMENDED ACTION:

Adopt a resolution adopting and directing staff to prepare interim guidance and establishing application criteria and standards for Senate Bill 9 projects.

ATTACHMENTS:

1. Resolution Directing Staff to Prepare an Interim Guidance Document Establishing Standards and Review Procedures for Ministerial Review of Two-Unit Residential Developments and Urban Lot Splits to Implement SB 9 —The California Home Act; and Directing the Preparation of an SB 9 Implementing Ordinance

2. Senate Bill 9

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DIRECTING STAFF TO PREPARE AN INTERIM GUIDANCE DOCUMENT ESTABLISHING STANDARDS AND REVIEW PROCEDURES FOR MINISTERIAL REVIEW OF TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS TO IMPLEMENT SB 9 - THE CALIFORNIA HOME ACT; AND DIRECTING THE PREPARATION OF AN SB 9 IMPLEMENTING ORDINANCE

WHEREAS, Senate Bill 9 (Atkins) ("SB 9"), entitled the California Home Act, was signed into law by the Governor on September 19, 2021 and becomes effective on January 1, 2022; and

WHEREAS, SB 9 amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

WHEREAS, SB 9 requires cities and counties, including charter cities, to provide for the ministerial approval of a housing development containing two residential units of at least 800 square feet in floor area ("duplex") and a parcel map dividing one existing lot into two equal parts ("lot split") within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of proposed subdivisions of one lot into two parcels by removing public notice and hearings by the Planning Commission, by requiring administrative review of the project, and by providing ministerial approval of a lot split; and

WHEREAS, SB 9 exempts projects authorized thereunder from environmental review pursuant to the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing; and

WHEREAS, SB 9 further stipulates that a city or county cannot require an urban duplex project to comply with any standard that would prevent two units of at least 800 square feet each from being built on each resultant lot, and prohibits a local agency from imposing regulations that require dedications of rights-of way or the construction of offsite and onsite improvements for parcels created through a lot split; and

WHEREAS, in addition to various constraints on SB 9 developments as set forth therein, SB 9 also authorizes cities and counties to enact local SB 9 implementation ordinances and guidelines that are objective and that are not inconsistent with its mandatory provisions; and

WHEREAS, due to SB 9's effective date of January 1, 2022, there is insufficient time for a publicly-considered implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022; however, in the short-term, the City may develop interim regulations and standards to guide City Departments to implement SB 9

until such time as an implementation ordinance may be considered by the City Council for adoption; and

WHEREAS, adoption of this Resolution and the interim SB 9 guidance document are not projects under the California Environmental Quality Act pursuant to Government Code sections 65852.21(j) and 66411.7(n);

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Rafael:

Section 1. The City of San Rafael finds and declares that urban housing developments authorized under SB 9 are a valuable form of housing that allows for the expansion of affordable and flexible housing options.

Section 2. The purpose of this resolution is to establish and adopt interim guidance to comply with Government Code Sections 65852.21 and 66411.7 until an SB 9 implementation ordinance may be prepared and considered for adoption by the City Council. This resolution identifies provisions and standards that shall apply to SB 9 urban lot splits and SB 9 urban duplexes.

Section 3. The City Manager, Community Development Department Director, and City Attorney are directed to establish application procedures for SB 9 urban duplexes and urban lot split applications.

Section 4. The City Manager, Community Development Department Director, and the City Attorney are further directed to consult with the appropriate City Departments and staff to develop an SB 9 implementation ordinance for presentation to, and consideration by, the City Council.

Section 5. **Interim SB 9 Implementation Rules and Regulations**. The City Council hereby establishes and adopts the following rules, regulations and standards for all projects proposed pursuant to the authority of SB 9 (Government Code sections 65852.21 *et seq.* and 66411.7 *et seq.*):

1. All SB 9 urban duplexes and urban lot splits shall be subject to applicable existing objective development standards including, but not limited to those set forth in the General Plan 2040, Downtown Precise Plan, and the San Rafael Municipal Code.

2. All SB 9 urban duplexes shall meet the requirements mandated by SB 9. (Government Code sections 65852.21(a), (b)(2), (e), (g), and (h).)

3. All SB 9 urban duplexes shall be subject to the following conditions (which conditions are reserved to City discretion pursuant to SB 9):
    a. Setbacks of up to four feet from side and rear yard lot lines, except No setback shall be required for an existing structure constructed in

the same location and to the same dimensions as an existing structure. (Gov. Code § 65852.21 (b)(2)(B)(ii).)

b. One off-street parking space per unit, except no parking shall be required in either of the following instances:
    i. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code. (Gov. Code § 65852.21(c)(1).)
    ii. There is a car share vehicle located within one block of the parcel.
c. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no method to mitigate or avoid the specific, adverse impacts. (Gov. Code § 65852.21(d).)
d. The City shall not permit any ADUs or JADUs on parcels that use both the authority of Government Code section 65852.21 (SB 9 housing developments) and section 66411.7 (SB 9 urban lot splits.)

4. All SB 9 urban lot splits shall meet the requirements mandated by SB 9. (Government Code sections 66411.7(a), (b), (c)(2), (f), (g), (h), (k) and (l).)

5. All SB 9 urban lot splits shall be subject to the following conditions (which conditions are reserved to City discretion pursuant to SB 9):
    a. Setbacks of up to four feet from side and rear yard lot lines, except no setback shall be required for an existing structure constructed in the same location and to the same dimensions as an existing structure. (Gov. Code § 66411.7(c)(3).)
    b. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no method to mitigate or avoid the specific, adverse impacts. (Gov. Code § 66411.7 (d).)
    c. Each lot created by an SB 9 urban lot split must adjoin the public right-of-way, or provide access to the public right-of-way, by way of a recorded access easement in favor of the parcel requiring ROW access. (Gov. Code § 66411.7(e)(2).)
    d. One off-street parking space per unit, except no parking shall be required in either of the following instances:
        i. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major

transit stop, as defined in Section 21064.3 of the Public Resources Code.

ii. There is a car share vehicle located within one block of the parcel. (Gov. Code § 66411.7(e)(3).)

e. The City shall not permit more than two units of housing, including primary dwelling units, SB 9 housing development units, ADUs, and/or JADUs, on lots created pursuant to the authority of Government Code section 66411.7 (SB 9 urban lot splits). (Gov. Code § 66411.7(j).)

EFFECTIVE PERIOD.

This Resolution shall become effective immediately upon adoption and shall expire, and be of no further force effect, upon the effective date of an ordinance, adopted by the City Council, implementing the provisions of SB 9.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project Revisions, shall continue in full force and effect unless amended or modified by the City.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was regularly introduced and adopted at a regular meeting of the City Council held on Monday, the 20th day of December 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

_____

Lindsay Lara, City Clerk

SB-9 Housing development: approvals. (2021-2022)

Date Published: 09/17/2021 09:00 PM

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of 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, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency’s processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of 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, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(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 any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, 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.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, 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.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant 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.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or

periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.