



CITY OF
BIG BEAR LAKE *California*

ORDINANCE NO. 2022-500

ORDINANCE AMENDING CHAPTER 16.07 – SUBDIVISIONS - AND CHAPTER 17.25 - RESIDENTIAL ZONES - OF THE MUNICIPAL CODE TO IMPLEMENT SB 9 AND REGULATE URBAN LOT SPLITS AND ADDITIONAL UNITS ON SINGLE-FAMILY RESIDENTIAL PROPERTIES, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Big Bear Lake, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, pursuant to Sections 65800 and 65850 of the California Government Code, the City may adopt ordinances to regulate the use of buildings, structures, and land as between industry, business, residences, and open space, and other purposes; to regulate the location, height, bulk, number of stories and size of buildings and structures, the size and use of lots, yards, courts and other open spaces, the percentage of a lot which may be occupied by a building or structure, and the intensity of land use; and to establish requirements for off-street parking, in compliance with the California Government Code. The City has adopted such an ordinance, referred to as the Development Code, adopted by Ordinance No. 2003-333, on September 8, 2003, and codified in the Municipal Code as Chapter 17; and

WHEREAS, Section 17.03.200 of the Development Code includes provisions for amendments to the Development Code; 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 Sections 65852.21 and 66411.7 to impose new limits on local authority to regulate urban lot splits and two-unit projects. SB 9 took effect on January 1, 2022, and preempts any conflicting City ordinance; and

WHEREAS, on January 11, 2022, the City Council adopted Urgency Ordinance No 2022-499 containing revisions to Municipal Code Chapter 16.07 Subdivisions and Development Code Chapter 17.25 Residential Zones, to implement the provisions of SB 9 until the adoption of a non-urgency ordinance. Upon the effective date of this non-urgency ordinance, Urgency Ordinance No. 2022-499 is rescinded and shall be deemed of no further force or effect; and

WHEREAS, SB 9 allows local agencies to adopt objective subdivision, zoning, and design standards for urban lot splits, second units and two-unit projects; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code Sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

WHEREAS, the approval of urban lot splits and two-unit projects based solely on the State’s standards, without appropriate regulations governing unit size, height, setback, lot coverage, access, design standards, among other things, would threaten the character of existing

neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of a City ordinance; and

WHEREAS, the Planning Commission considered Development Code Amendment 2021-160, to amend the City's subdivision regulations contained in Municipal Code Chapter 16.07 (Subdivisions) to add a new section, Section 16.07.060 to allow and regulate "Urban Lot Splits" as contained in California Government Code Section 66411.7. Development Code Amendment 2021-160 further proposes to amend the City's Residential zoning regulations contained in the City's Municipal Code (Title 17) known also as the Development Code by repealing Development Code Section 17.25.130 currently titled Temporary Dependent Housing Units, comprising outdated legislation and retitling this section Second Units and Two-Unit Projects with new language to allow and regulate second units and two-unit projects as contained in California Government Code 65852.21; and

WHEREAS, on January 19, 2022, the Planning Commission conducted a duly noticed public hearing on the Application in Hofert Hall of the Civic and Performing Arts Center at 39707 Big Bear Boulevard, Big Bear Lake, CA, 92315 and concluded the hearing on this date with the adoption of Resolution No. PC2022-02 by a vote of 4 in favor, 0 against, and 1 absent. This resolution recommends that the City Council approve Development Code Amendment 2021-160 by adoption of an ordinance and find the action exempt from the California Environmental Quality Act; and

WHEREAS, public notice of the public hearing of February 7, 2022, on Development Code Amendment 2021-160 was published in The Grizzly newspaper, on January 26, 2022, posted in three public places and advertised on the City's website; and

WHEREAS, on February 7, 2022, the City Council conducted a duly noticed public hearing on the Development Code amendment in Hofert Hall of the Civic and Performing Arts Center, 39707 Big Bear Boulevard, Big Bear Lake, CA 92315. The City Council read the title, waived further reading, and introduced an ordinance approving Development Code Amendment 2021-160 and amending Municipal Code Chapter 16.07 (Subdivisions) and Development Code Chapter 17.25 (Residential Zones) allowing and regulating urban lot splits, second units, and two-unit projects consistent with Senate Bill 9 (SB 9) and finding the adoption of an ordinance to implement SB 9 statutorily exempt from the California Environmental Quality Act; and

WHEREAS, on March 7, 2022, the City Council conducted a public meeting on the Development Code amendment in Hofert Hall of the Civic and Performing Arts Center, 39707 Big Bear Boulevard, Big Bear Lake, California, 92315, and adopted an ordinance approving Development Code Amendment 2021-160 and amending Municipal Code Chapter 16.07 (Subdivisions) and Development Code Chapter 17.25 (Residential Zones) allowing and regulating urban lot splits, second units, and two-unit projects consistent with Senate Bill 9 (SB 9) and finding the adoption of an ordinance to implement SB 9 statutorily exempt from the California Environmental Quality Act; and,

WHEREAS, the adoption of an Ordinance to implement the requirements of SB 9 is Statutorily Exempt from the California Environmental Quality Act pursuant to Division 13, Section 21000 of the Public Resources Code; and

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

NOW, THEREFORE, the City Council of the City of Big Bear Lake does ordain as follows:

Section 1. The City Council hereby specifically finds that all of the facts set forth in the above recitals of this Ordinance are true and correct.

Section 2. The City Council hereby finds that under California Government Code Sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by the city to regulate urban lot splits, second units, and two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements these new laws enacted by SB 9.

Section 3. Based on the evidence presented to the City Council at the February 7, 2022, and March 7, 2022, public hearing and meeting, including public testimony and written and oral agenda reports, the City Council specifically finds as follows with respect to Development Code Amendment 2021-160:

1. The proposed Development Code Amendment conforms to the goals, objectives and policies of the General Plan, specifically that the proposed amendment is necessary to comply with state law and supports the development of additional housing units. The amendment is consistent with Land Use Element Policy L3.1 to permit a range of residential housing types and density throughout the City. The proposed objective design standards comply with Community Design Element CD 3.1 and CD 3.3 that accessory structures shall use the same design theme and materials as the primary structure, and that building materials should promote a mountain design theme through emphasis on wood, stone, and natural materials. The proposed amendment is consistent with several of the policies of the 2021-2029 Housing Element, specifically Policy H1.1 to ensure availability of adequate land capacity to allow for different densities and housing types for all income levels; and Goal H3 to facilitate housing development with minimal governmental constraints. The proposed fire mitigation measures are appropriate to comply with Public Services Element PS 7.2.4 to require approved access for firefighting equipment and emergency evacuations; and Element PS 7.4 to maintain, review, and enforce fire code standards.
2. The proposed Development Code amendment is necessary to implement the General Plan and to provide for public safety convenience and/or general welfare because the provisions of SB 9 are currently law. The City wishes to adopt an ordinance to appropriately regulate urban lot splits and second unit/two-unit projects for the preservation of the public peace, health, safety, and general welfare of the citizens and property owners. Absent regulations of our own, urban lot splits and the development of second units and two-unit projects would be subject to very few requirements and potentially be developed in a manner inconsistent with existing neighborhoods and the City’s General Plan.
3. The proposed Development Code amendment conforms to the intent of the Development Code and is consistent with all other related provisions thereof. Under the provisions of SB 9, the City is allowed to adopt objective subdivision, zoning, and design standards that

do not conflict with the revised state law. The City proposes to adopt such measures for setbacks, building height, minimum lot frontage, and building appearance that apply to all development throughout the City to provide for orderly development of properties.

4. The proposed Development Code Amendment is reasonable and beneficial at this time because SB 9 was signed into law on September 16, 2021, and became effective on January 1, 2022. The bill requires the City to adopt regulations to implement the revisions to the Subdivision Map Act (Government Code 66411.7) and California zoning law (Government Code Section 65852.21.) Therefore, this Development Code amendment is reasonable and beneficial at this time to bring the City's regulations into compliance with state law.

Section 4. Based on the findings and conclusions as set forth in Sections 1, 2, and 3 above, the City Council hereby adopts an ordinance approving Development Code Amendment 2021-160 amending Municipal Code Chapter 16.07 (Subdivisions) as provided in Exhibit 1 and Development Code Chapter 17.25 (Residential Standards) as provided in Exhibit 2.

Section 5. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions of applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council and the people of the City of Big Bear Lake hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section subsection, sentences clauses or phrases be declared invalid of unconstitutional.

Section 6. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

PASSED, APPROVED AND ADOPTED this 7th day of March, 2022.



Rick Herrick, Mayor

ATTEST:



Erica Stephenson, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF BIG BEAR LAKE)

I, Erica Stephenson, City Clerk of the City of Big Bear Lake, California, do hereby certify that the whole number of the City Council is five; that the foregoing Ordinance, being Ordinance No. 2022-500 is a full, true and correct original of Ordinance No. 2022-500 of the City of Big Bear Lake entitled:

ORDINANCE AMENDING CHAPTER 16.07 – SUBDIVISIONS - AND CHAPTER 17.25 - RESIDENTIAL ZONES - OF THE MUNICIPAL CODE TO IMPLEMENT SB 9 AND REGULATE URBAN LOT SPLITS AND ADDITIONAL UNITS ON SINGLE-FAMILY RESIDENTIAL PROPERTIES, AND FINDING THE ORDINANCE EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT

was duly passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the Clerk of said City, all at a regular meeting of the said Council on the 7th day of March 2022, and that the same was so passed and adopted by the following vote:

AYES: Melnick, Lee, Putz, Herrick
NOES: Mote
ABSTAIN: None
ABSENT: None

I do hereby further certify that pursuant to the provisions of Section 36933 of the Government Code of the State of California that the foregoing Ordinance No. 2022-500 was duly and regularly published according to law and the order of the City Council and circulated within the said City.



Erica Stephenson, City Clerk

ORDINANCE NO. 2022-500
DEVELOPMENT CODE AMENDMENT 2021-160
EXHIBIT 1

THE FOLLOWING CHAPTERS AND SECTIONS OF THE BIG BEAR LAKE MUNICIPAL CODE SHALL BE MODIFIED AS FOLLOWS:

MUNICIPAL CODE CHAPTER 16.07 SUBDIVISIONS

Section 16.07.060 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 a 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 must be submitted on the city’s approved form. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 - (3) The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.
- (d) **Approval.**
 - (1) An application for a parcel map for an urban lot split is approved or denied ministerially, by the Community Development Director or his/her designee director, without discretionary review.
 - (2) A tentative parcel map for an urban lot split is approved ministerially if it complies with all the requirements of this section. The tentative parcel map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements. The tentative parcel map expires three months after approval.

- (3) The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
- (4) The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.
- (e) **Requirements.** An urban lot split must satisfy each of the following requirements:
 - (1) **Map Act Compliance.**
 - (A) The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code §66410 et. seq., "SMA"), including implementing requirements in this code, except as otherwise expressly provided in this section.
 - (B) If an urban lot split violates any part of the SMA, the city'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 city has all the remedies available to it under the SMA, including but not limited to the following:
 - (I) An action to enjoin any attempt to sell, lease, or finance the property.
 - (II) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - (III) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or 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 through an urban lot split is located 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 one (1) single-family residential dwelling unit on a lot, specifically the R-L and R-1 zones. Urban lot splits are prohibited in the Multiple Family Residential (R-3), all Commercial, and Village Specific Plan (VSP) zones.

(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 must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

(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.** The urban lot split must not require or include the demolition or alteration of any of the following types of housing:

- (A) Housing that is income-restricted for households of moderate, low, or very low income.
- (B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.
- (C) Housing, or a lot 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.
- (D) Housing that has been occupied by a tenant in the last three years. The applicant and the owner of a property for which an urban lot split is sought must provide a sworn statement as to this fact with the application for the parcel map. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

(7) **Lot Size.**

- (A) The lot to be split must be at least 2,400 square feet in area.
- (B) Each lot resulting from an urban lot split be at least 1,200 square feet in area.
- (C) Each of the resulting lots must be approximately equal halves (50 percent of the original lot area) but no less than 60 percent and 40 percent of the original lot area.

(8) **Easements.**

- (A) The owner must enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots, if such easements are required by the utility companies.
- (B) Each easement must be shown on the tentative parcel map.
- (C) Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with subpart (d)(2) above.

(9) **Lot Access.**

- (A) As required by Development Code Section 17.25.080.B., each new parcel shall have direct street access to the public right-of-way or private street. The use of private easements as the only access to urban lot split lots is not allowed. However, this provision shall not preclude adjacent property owners from granting reciprocal access rights to each other to share a common driveway. In order to minimize the number of driveways along a street, shared driveways between adjacent properties and urban lot split parcels is encouraged.
- (B) Each resulting lot must have frontage on the public right of way of at least twelve (12) feet. A “flag lot” is allowed provided that the flag “pole” portion of the lot shall be a minimum of 12 feet in width as measured at the public right-of-way.

(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 second unit or two-unit project created under this code, an ADU, or a JADU.
- (B) **Unit Size.**
 - (i) The total floor area of each dwelling unit that is developed on a lot resulting from an urban lot split must be:
 - (I) Equal to or greater than 500 square feet in area, and
 - (II) Less than or equal to 800 square feet in area.
 - (ii) A dwelling unit 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. The floor area of the original dwelling unit may not be expanded.

- (iii) A dwelling unit 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) **Building Height.** The maximum building height of a primary dwelling unit shall be 22 feet, measured in the manner established in Development Code Section 17.02.030 “Building Height.” Relief from setbacks will be granted before relief from building height.

(D) **Lot Coverage.** As established in Development Code Table 17.25.050.A., the maximum lot coverage allowed in the Residential-Low (R-L) zone is thirty (30) percent. The maximum lot coverage allowed in the Single Family Residential (R-1) zone is forty (40) 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.** The open space requirements shall be those established in Development Code Table 17.25.050.A. for the Residential-Low (R-L) and Single Family Residential (R-1) zones. This 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 must conform to those objective setbacks that are imposed through the underlying zone as stated in Development Code Section 17.25.050.

(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) **Side Yard and Rear Yard Setbacks.** The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

(iii) **Front and Streetside Setbacks.** Where the property is adjacent to a public or private street having a right-of-way width of less than 40 feet, the minimum front setback (and streetside setback

where the property contains more than one street frontage) shall be 20 feet. Where the property is adjacent to a public or private street having a right-of-way width of 40 feet or greater, the minimum front setback (and streetside setback where the property contains more than one street frontage) shall be 15 feet.

(G) **Parking.** Each new primary dwelling unit that is built on a lot created by an urban lot split must 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
 - (ia) an existing rail or bus rapid transit station,
 - (ib) a ferry terminal served by either a bus or rail transit service, or
 - (ic) 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.
 - (III.) The site is located within one block of a 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) Exterior siding materials of the dwelling units shall consist of at least two (2) of the following materials; wood or wood-appearing material in a horizontal application, wood or wood-appearing material in a vertical application, natural or cultured stone, decorative masonry, metal, and stucco. Stucco shall not be applied

to an area greater than sixty percent (60%) of any wall surface. Metal siding shall only be used as an accent material and may not be applied to an area greater than twenty-five percent (25%) of any wall surface.

- (iv) All exterior lighting shall comply with Development Code Section 17.25.080. E. Lighting.
- (I) **Landscaping.** All landscaping shall comply with Development Code Section 17.25.080.C. Open Space and Landscaping and the provisions of the California Model Water Efficient Landscape Ordinance (MWELo), as adopted by the City of Big Bear Lake and revised from time to time.
- (J) **Nonconforming Conditions.** An urban lot split may be approved without requiring a legal nonconforming zoning condition to be corrected.
- (K) **Utilities.**
 - (i) Each primary dwelling unit on the resulting lots must 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 must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
- (L) **Building & Safety.** All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.
- (11) **Fire-Hazard Mitigation Measures.**
 - (A) In order to be eligible to be subdivided under the urban lot split provisions, a lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:
 - (i) The lot must have direct access to a paved public or private street having a right-of-way width of at least 40 feet.
 - (ii) The public or private street must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
 - (iii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
 - (iv) All structures on the site must have fire sprinklers as required by the building code.

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

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

(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 must be held equally and undivided by all individual property owners.

(13) **Regulation of Uses.**

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

(B) **No Vacation 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 property owner requesting an urban lot split must sign an affidavit stating that the property owner intends to occupy one of the dwelling units on one of the resulting lots as the property owner's principal residence for a minimum of three years after the urban lot split is approved. The owner occupancy requirement shall be enforced at the time of approval of the parcel map in the case of an urban lot split; or in cases involving undeveloped lots, the owner occupancy requirement shall be enforced at the time of a Final Inspection of a building permit on the first structure built on the property.

(14) **Deed Restriction.** The owner must record a deed restriction, acceptable to the city, that does each of the following:

(A) Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

- (B) Expressly prohibits any non-residential use of the lots created by the urban lot split.
- (C) Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
- (D) States that the property is formed by an urban lot split and is therefore subject to the city's urban lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the city may deny an application for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (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.

ORDINANCE NO. 2022-500
DEVELOPMENT CODE AMENDMENT 2021-160
EXHIBIT 2

DEVELOPMENT CODE CHAPTER 17.25 RESIDENTIAL ZONES

Development Code Section 17.25.130 currently titled “Temporary Dependent Housing Units” contains outdated legislation. This language in this section will be repealed and replaced with new language pertaining to “Second Units and Two-Unit Projects.”

17.25.130 ~~TEMPORARY DEPENDENT HOUSING UNITS~~

- ~~A. In conformance with California Government Code Section 65852.1, temporary dependent housing units shall be allowed in all residential zones subject to land use approval pursuant to Table 17.25.040.A. The standards contained in this section are intended to ensure that these units are compatible with existing adjacent and neighboring residential uses, and that they are maintained in accordance with the use for which they are approved.~~
- ~~B. For purposes of this section, a “temporary dependent housing (TDH) unit” shall mean a detached or attached dwelling unit intended for the sole occupancy of one or two adult persons who have reached the age of sixty two (62) years, or are disabled. A TDH unit provides for complete, independent living facilities, inclusive of, but not limited to, provisions for living, sleeping, eating, cooking, access and sanitation, on the same lot as the permitted primary dwelling.~~
- ~~C. Standards for temporary dependent housing units:~~
- ~~1. The area of the floor space of an attached TDH unit shall not exceed thirty (30) percent of the existing living area. The area of a detached TDH shall not exceed 1,200 square feet.~~
 - ~~2. A TDH unit shall comply with the minimum design standards contained in Section 17.25.090.A.~~
 - ~~3. Approval of a TDH unit shall apply only to the property for which the application was made, and shall apply to that property as long as the unit is maintained and continuously occupied in conformance with the provisions of this section and any other conditions imposed at the time of approval.~~
 - ~~4. For the purposes of this section, a TDH unit shall be deemed continuously occupied where the unit is occupied by qualified resident(s) for no less than nine (9) months out of any twelve (12) month period of the year and is the permanent addressed residence of such occupants. At such time as the TDH unit is abandoned, the property owner shall remove or convert the unit in a safe and efficient manner as determined by the City, either to a guesthouse without kitchen facilities or to a usable portion of the primary structure. Under no circumstances may the TDH unit be converted to or used as a rental unit or second dwelling unit on a residential lot, without obtaining the required land use approval.~~

17.25.130 SECOND UNITS AND TWO-UNIT PROJECTS

- (a) **Purpose.** The purpose of this section is to allow and appropriately regulate second units and two-unit projects in accordance with Government Code section 65852.21.
- (b) **Definition.** A “second unit” means the development of a second primary dwelling unit on a legally subdivided lot that is already developed with one primary dwelling unit. A “two-unit project” means the development of two primary dwelling units on a lot that was previously undeveloped.
- (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) A Building Permit application for a second unit or two-unit project must be submitted on the city’s approved form.
 - (3) The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.
- (d) **Approval.**
 - (1) An application for a second unit or two-unit project shall be acted upon by the Community Development Director or his/her designee, without discretionary review.
 - (2) The Final Inspection of a building permit for a second unit or two-unit project shall not be granted until confirmation is provided to the City that the required documents have been recorded, such as the deed restriction and any required easements.
 - (3) The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
 - (4) The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys’ fees and costs associated with enforcing the requirements of this code.
- (e) **Requirements.** A second unit or two-unit project must satisfy each of the following requirements:
 - (1) **Map Act Compliance.** The lot must have been legally subdivided.

(2) **Zone.** The property for which a building permit for a second unit or two-unit project is proposed is located 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 one (1) single-family residential dwelling unit on a lot, specifically the R-L and R-1 zones. Second units and two-unit projects under this section are prohibited in the Multiple Family Residential (R-3), all Commercial, and Village Specific Plan (VSP) zones.

(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 must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.
- (5) **No Impact on Protected Housing.** The second unit or two-unit project must not require or include the demolition or alteration of any of the following types of housing:
 - (A) Housing that is income-restricted for households of moderate, low, or very low income.
 - (B) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
 - (C) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
 - (D) Housing that has been occupied by a tenant in the last three years. The applicant and the owner of a property for which a second unit or two-unit project is sought must provide a sworn statement as to this fact with the application for the parcel map. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.
- (6) **Unit Standards.** Where a standard is not listed, the standard provided in Development Code Chapter 17.25 shall apply:
 - (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 of this code, an ADU, or a JADU.
 - (ii) A lot that is not created by an urban lot split may have a second unit or two-unit project under this section, plus any ADU or JADU that must be allowed under state law and the city’s ADU ordinance.

(B) **Unit Size.**

- (i) The total floor area of each dwelling unit that is developed under this section must be:
 - (I) Equal to or greater than 500 square feet in area, and
 - (II) Less than or equal to 800 square feet in area.
- (ii) A dwelling unit that was legally established prior to the second unit and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. The floor area of the original dwelling unit may not be expanded.
- (iii) A dwelling unit that was legally established prior to the second unit that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

(C) **Height Restrictions.** The maximum building height of a primary dwelling unit shall be 22 feet, measured in a manner established in Development Code Section 17.02.030 “Building Height.” Relief from setbacks will be granted before relief from building height.

(D) **Demolition Cap.** The second unit or two-unit project shall not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unit unless the site has not been occupied by a tenant in the last three years.

(E) **Lot Coverage.** The maximum lot coverage allowed in the Residential-Low (R-L) zone is thirty (30) percent. The maximum lot coverage allowed in the Single Family Residential (R-1) zone is forty (40) 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.

(F) **Open Space.** The open space requirements shall be those established in Development Code Table 17.25.050.A. for the Residential-Low (R-L) and Single Family Residential (R-1) zones. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

(G) **Setbacks.**

(i) **Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone as stated in Development Code Section 17.25.050.

(ii) **Exceptions.** Notwithstanding subpart 0 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) **Side and Rear Setbacks.** The side and rear setbacks imposed by the underlying zone shall be provided, however, these setback regulations must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

(iii) **Front and Streetside Setbacks.** Where the property is adjacent to a public or private street having a right-of-way width of less than 40 feet, the minimum front setback (and streetside setback where the property contains more than one street frontage) shall be 20 feet. Where the property is adjacent to a public or private street having a right-of-way width of 40 feet or greater, the minimum front setback (and streetside setback where the property contains more than one street frontage) shall be 15 feet.

(H) **Parking.** Each new primary dwelling unit must 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

(ia) an existing rail or bus rapid transit station,

(ib) a ferry terminal served by either a bus or rail transit service, or

(ic) 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 car-share vehicle location.

(I) **Architecture.**

- (i) If there is an existing, legal primary dwelling on the lot that was established before the two-unit project, any new second unit shall match the existing primary dwelling unit in architectural style, 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 proposed for development on the lot, then the two dwellings shall match each other in architectural style, exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (iii) Exterior siding materials of the dwelling units shall consist of at least two (2) of the following materials; wood (or wood-appearing material) in a horizontal application, wood (or wood-appearing material) in a vertical application, natural or cultured stone, decorative masonry, metal, and stucco. Stucco may not be applied to an area greater than sixty percent (60%) of any wall surface. Metal siding shall only be used as an accent material and may not be applied to an area greater than 25% of any wall surface.
- (iv) All exterior lighting shall comply with Development Code Section 17.25.080. E. Lighting.
- (v) All residential structures shall have eave and gable overhangs of not less than 12 inches measured from the vertical side of the residential structure. Roof materials shall be non-flammable; wood shake shingles are prohibited. Roof pitch shall not be less than 2:12.
- (vi) The minimum interior dimensions of a covered or enclosed (garage) parking space is 10 feet wide by 20 feet in depth. The minimum uncovered parking space dimension is 9 feet wide by 19 feet in depth.

- (vii) Utility hook-ups and an area to accommodate installation of a clothes washer and dryer shall be provided within each dwelling unit.
 - (viii) Each dwelling unit shall have private (walled or fenced) patio, balcony, or yard area of not less than 200 square feet in area or 25 percent of the dwelling unit size, whichever is less.
 - (ix) Each dwelling unit shall be provided with a pedestrian access to the public right-of-way in the driveway, by separate stairs, or a separate concrete walkway.
 - (x) The driveway serving the residential unit, or units in the event of a shared driveway, shall not exceed a grade of fourteen percent (14%).
- (J) **Landscaping.** All landscaping shall comply with Development Code Section 17.25.080.C. Open Space and Landscaping and the provisions of the California Model Water Efficient Landscape Ordinance (MWELo) as adopted by the City and revised from time to time.
- (K) **Nonconforming Conditions.** Where a lot is not created by an urban lot split, a second unit or a two-unit project is proposed, the building permit shall only be approved if all nonconforming zoning conditions are corrected.
- (L) **Utilities.**
 - (i) Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
 - (ii) Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
- (M) **Building & Safety.** All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot, and all structures, to the city's current code.
- (7) **Fire-Hazard Mitigation Measures.** In order to be eligible for a second unit or two-unit project under the provisions of this section, a lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:
 - (A) The lot must have direct access to a paved public or private street having a right-of-way width of at least 40 feet.

- (B) The public or private street of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
 - (C) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
 - (D) All enclosed structures on the site must have fire sprinklers.
 - (E) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.
- (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 must 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 Vacation Rentals.** No dwelling unit on the lot may be rented for a period of less than 30 days.
 - (C) **Owner Occupancy.** On a lot that was not created by an urban lot split, the property owner requesting a second unit or n urban lot split must sign an affidavit stating that the property owner intends to occupy one of the dwelling units as the property owner's principal residence for a minimum of three years after the urban lot split is approved. The owner occupancy requirement shall be enforced at the time of a Final Inspection of a building permit on the first structure built on the property.
- (10) **Deed Restriction.** The owner must record a deed restriction, acceptable to the city, that does each of the following:
- (A) Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
 - (B) Expressly prohibits any non-residential use of the 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) If the lot is not created by an urban lot split, the deed restriction expressly requires the property owner to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.
- (E) States that the property is formed by an urban lot split and is therefore subject to the city's urban lot split regulations, including all applicable limits on dwelling size and development.

(f) **Specific Adverse Impacts.**

- (1) Notwithstanding anything else in this section, the city may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (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 second unit or 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 city 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 city's code.

End