

# CITY OF ONTARIO

## Agenda Report

December 21, 2021

## SECTION: PUBLIC HEARINGS

Department: Planning

Submitted To: Council/OHA

Prepared By: Charles Mercier

Approved: \_\_\_\_\_

Staff Member Presenting:

Continued To: \_\_\_\_\_

Scott Murphy, Executive Director Community  
Development

Denied: \_\_\_\_\_

Approved By:

Item No: 17



**SUBJECT: A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE APPROVING FILE NO. PDCA21-003, AMENDING CITY OF ONTARIO DEVELOPMENT CODE CHAPTER 5.0, DIVISION 5.03, ADDING SECTION 5.03.403 (SINGLE-FAMILY TWO-UNIT PROJECTS), AND CHAPTER 6.0, DIVISION 6.08, ADDING SECTION 6.08.060 (URBAN LOT SPLITS), CONSISTENT WITH THE REQUIREMENTS OF CALIFORNIA SENATE BILL NO. 9 (GOVERNMENT CODE SECTIONS 65852.21 AND 66411.7).**

**RECOMMENDATION:** That the City Council consider and adopt the Urgency Ordinance approving File No. PDCA21-003, amending Development Code Chapter 5.0, Division 5.03, adding Section 5.03.403 (Single-Family Two-Unit Projects), and Chapter 6.0, Division 6.08, adding Section 6.08.060 (Urban Lot Splits), Consistent with the requirements of California Senate Bill No. 9 (Government Code Sections 65852.21 and 66411.7).

### THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

**FISCAL IMPACT:** There is not a direct fiscal impact associated with this action.

**BACKGROUND & ANALYSIS:** In September 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.

**Two-Unit Projects.** SB 9 requires that a proposed housing development containing no more than two residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, provided the proposed housing development meets certain requirements, including, but not limited to, the following:

- 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,
- The proposed housing development does not allow for the demolition of more than 25 percent of the existing exterior structural walls, except as provided, and
- 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.

Furthermore, SB 9 establishes what local agencies can and cannot require in approving the construction of a two-unit project, including, but not limited to, authorizing a local agency to impose only objective zoning standards, objective subdivision standards, and objective design standards, and only to the extent that those standards would not have the effect of physically precluding the construction of up to two units or physically precluding either of the two 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.

**Urban Lot Splits.** The Subdivision Map Act (Government Code Section 66410 et seq.) assigns authority to regulate and control the design and improvement of subdivisions to the legislative body of local agencies and establishes procedures governing a local agency's processing; approval, conditional approval or denial; and the filing of tentative and final tract maps 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 as prescribed by local ordinance, not to exceed an additional 12 months, except under certain circumstances.

SB 9 requires local agencies to ministerially approve a parcel map for an Urban Lot Split that meets certain requirements, including, but not limited to, the following:

- 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,
- The parcel is located within a single-family residential zone, and
- The parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not a site that is legally designated or listed as a city or county landmark or historic property or district.

As with the Two-Unit Projects under SB 9, the legislation pertaining to Urban Lot Splits allows a local agency to only impose objective zoning standards, objective subdivision standards, and objective design standards, only to the extent that those standards would have the effect of physically precluding the construction of two units on either of the resulting parcels or physically precluding either of the two 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.

Furthermore, SB 9 requires 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. SB 9 also prohibits local agencies from imposing any additional owner occupancy standards on applicants.

**Proposed Urgency Ordinance.** SB 9 becomes effective on January 1, 2022, and preempts any conflicting city ordinance. Consequently, staff and the City Attorney have prepared an urgency ordinance in accordance with Government Code Section 36937(b). The ordinance will amend the City's local regulatory scheme to comply with Government Code Sections 66411.7 and 65852.21, and to appropriately regulate projects under SB 9. The proposed urgency ordinance will amend the City's Development Code to establish procedures and objective standards for the filing and ministerial approval of Urban Lot Split applications by the City Engineer, subject to the review and approval of

both tentative and final parcel maps. The urgency ordinance further establishes procedures and objective standards for the filing and ministerial approval of Two-Unit Project applications by the Planning Director. Additionally, the urgency ordinance restricts the application of Urban Lot Splits and Two-Unit Projects to the LDR-5 (Low Density Residential – 2/1 to 5.0 DUs/Acre) zoning district, as this zone most closely aligns with the "single family zone" specified in SB 9. The proposed Development Code provisions are included as Exhibits "A" (Urban Lot Splits) and "B" (Two Unit Projects) of the proposed urgency ordinance provided with this report.

It is staff's recommendation that the City Council approve the proposed urgency ordinance to allow sufficient time for City staff to study and prepare a permanent ordinance pertaining to the regulation of Urban Lot Splits and Two-Unit Projects in a manner that complies with the new State law and is consistent with Government Code Sections 65852.21 and 66411.7.

**ENVIRONMENTAL REVIEW:** Pursuant to California Government Code Section 65852.21(j), the adoption of the Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), as the Urgency Ordinance is not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.