



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
CHAIR AND MEMBERS OF THE PLANNING COMMISSION**

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: LISA COSTA SANDERS, TOWN PLANNER

DATE: MARCH 16, 2022

SUBJECT: ADOPTION OF AN ORDINANCE ESTABLISHING REGULATIONS AND OBJECTIVE STANDARDS FOR URBAN LOT SPLITS AND DEVELOPMENT PROJECTS SOUGHT PURSUANT TO GOVERNMENT CODE SECTIONS 65852.21 AND 66411.7 (SENATE BILL 9).

RECOMMENDATION

Staff recommends that the City Council adopt the Ordinance establishing regulations and objective standards for urban lot splits and development projects sought pursuant to Government Code Sections 68852.21 and 66411.7 (Senate Bill 9) to the Zoning Code based on the following finding and for the reasons outlined in this report:

- 1. The proposed municipal code text amendments are consistent with the general plan goals, policies, and implementation programs.*

Basis for finding: The proposed Municipal Code amendments allow the Town to implement the provisions of state law to the extent feasible, in keeping with the goals and policies of the General Plan. General Plan Land Use objective LU 1.1 “*to establish a framework for determining the location and extent of land uses within the Town’s area of interest*”, and LU-1.3 “*to retain the quality of life, character existing in the Town’s residential neighborhoods.*”

BACKGROUND

Senate Bill (SB) 9 requires jurisdictions to ministerially approve of up to two dwelling units on a single-family lot. It also provides for splitting a single-family lot into two parcels, and the construction of up to two units on each resulting parcel. Jurisdictions are required to comply with the newly enacted law. Jurisdictions may adopt an implementing ordinance but cannot be more restrictive than state law.

On December 1, 2021, the City Council and Planning Commission held a joint study session on SB 9. The Staff Report from this session outlines the conditions required for additional units and lot splits undertaken under SB 9 and provides several illustrative examples for additional clarity. That staff report is available online at: <https://www.ci.atherton.ca.us/DocumentCenter/View/9611/3B>.

SB 9 went into effect on January 1, 2022, meaning eligible applicants can now apply for additional units on a single-family parcel or a lot split based on the provisions outlined within the state law. While no applications have yet been received, staff has received a number of inquiries in the preceding months from interested parties.

The Planning Commission, at its January 26, 2022 meeting conducted a public hearing and voted to recommend the City Council adopt the Ordinance implementing SB 9 regulations for the Town of Atherton. The City Council, at its February 16, 2022 meeting conducted the public hearing and introduced the Ordinance implementing SB 9 as recommended by the Planning Commission.

ANALYSIS

The provisions in the ordinance are the minimum allowed under state law and the Town cannot further restrict development. The ordinance includes incentives for property owners to comply with current Town setback requirements for new dwelling unit construction. State law requires jurisdictions to permit dwelling units with minimum 4' side and rear yard setbacks, allow a minimum of 800 square feet per dwelling unit with a minimum height of 16'. These minimums are carried forward in the ordinance. However, if a property owner elects to construct the dwelling unit(s) in compliance with the Town's current setback requirements, the dwelling unit(s) could then be built up to the Town's standard floor area requirements as well as height limit. This would permit larger dwelling units than 800 square feet per lot.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15378(a), which defines projects subject to these provisions. The proposal does not meet the definition of a project.

POLICY ISSUES

The proposed Municipal Code amendments allow the Town to implement the provisions of state law to the extent feasible, in keeping with the goals and policies of the General Plan. General Plan Land Use objective LU 1.1 *"to establish a framework for determining the location and extent of land uses within the Town's area of interest"*, and LU-1.3 *"to retain the quality of life, character existing in the Town's residential neighborhoods."*

FISCAL IMPACT

Staff cost to prepare the Ordinance is funded by the Town General Fund, Planning Division budget. Staff time to implement the new regulations will be funded by applicant paid planning review fees.

GOAL ALIGNMENT

Consideration of the draft Ordinance establishes the City Council's desire for a well-planned community within the framework of state mandated laws consistent with the following Council Policy Goals:

- Goal B – Preserve Small Town Character and Quality of Life
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the City Council agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power and sewer), and regional elected officials.

In addition, a public notice was published in The Almanac on February 4, 2022 per the requirements of section 17.06.080 B of the Atherton Municipal Code.

ORDINANCE _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADDING CHAPTER 17.53 TO THE ATHERTON MUNICIPAL CODE**

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1: Chapter 17.53 is hereby added to the Atherton Municipal Code as follows:

CHAPTER 17.53

**Regulations and Objective Standards for Urban Lot Splits and Development Projects
Sought Pursuant to Government Code Sections 65852.21 and 66411.7**

17.53.010 - Purpose and Intent.

- (a) The purpose of this chapter is to provide the owner of a parcel that is zoned for single-family residential use, as defined in Chapters 17.32, 17.33 and 17.37, additional options to subdivide their parcel through an urban lot split and develop the parcel for the purpose of creating additional housing within the Town of Atherton.
- (b) This chapter implements Government Code Section 66411.7 and 68852.21 ("SB 9") by establishing the objective criteria applicable to such urban lot splits and development.
- (c) These regulations are established to provide for the orderly subdivision and development of qualified projects while ensuring that the urban lot splits and developments are consistent with the existing development patterns of the Town and do not create any significant impacts with regards to public infrastructure or public safety.
- (d) The City Council of the Town of Atherton adopts this chapter to comply with SB 9 under protest, as it is the Council's position that in enacting these laws, the legislature has improperly usurped local land use authority.

17.53.020 Definitions.

For purposes of this chapter, the following definitions apply:

- (e) "Accessory dwelling unit" or "ADU" means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities.
- (f) "Applicant" means the owner of a parcel, or their representative, applying for an urban lot split or the development of an additional single-family dwelling based on the provisions of this chapter.
- (g) "Dwelling Unit" means a primary dwelling unit, ADU, or JADU.
- (h) "Existing dwelling unit" means a primary dwelling unit or other dwelling unit on a parcel that exists prior to any voluntary demolition or reconstruction or remodel where more than 50% of the exterior wall framing has been removed or altered. Any existing dwelling unit where more than 50% of the exterior wall framing has been removed is considered a new dwelling for purposes of this article.

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- (i) “Junior Accessory Dwelling Unit” or “JADU” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.
- (j) “Lot” means a parcel of land consisting of a single lot of record, used or intended for use under town zoning regulations as one site for a use or group of uses.
- (k) “Primary dwelling unit” means a single-family residence on the parcel and is the larger of the two if there is an existing accessory dwelling unit on the parcel.
- (l) “SB 9 dwelling unit” or “SB 9 unit” or “second primary dwelling unit” means a dwelling unit that is developed using the provisions in this article and the provisions identified in California Government Code Sections 65852.21 and 66411.7.
- (m) “Single-family dwelling” means a building designed for use and occupancy by no more than one individual, family, or group of individuals.
- (n) “Urban Lot Split” means the subdivision of an existing legal parcel zoned for single-family residential use to create no more than two new parcels.

17.53.030 Urban Lot Split Eligibility.

The following parcels are not eligible for an urban lot split under this chapter:

- (a) Any parcel that was established through a prior urban lot split pursuant to this chapter.
- (b) Any parcel that is adjacent to another parcel where either the owner of the parcel proposing to be split or any person acting in concert with that owner has previously split an adjacent parcel using the provisions in this chapter. For the purposes of this article, “any person acting in concert” with the owner includes, but is not limited to, an individual or entity operating on behalf of, acting jointly with, or in partnership or another form of cooperative relationship with, the owner.
- (c) Any parcel where the urban lot split would result in a parcel that contains more than two existing dwelling units, including primary dwelling units, ADUs, and JADUs.
- (d) Any parcel located within a historic district or included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or a parcel within a site that is designated or listed as a Town of Atherton or San Mateo County landmark or historic property or district pursuant to a Town of Atherton or San Mateo County ordinance.
- (e) Any parcel where the urban lot split would require the 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 Government Code section 7060 et seq. to withdraw accommodations from rent or lease within fifteen (15) years before the date of the application to split the lot.
 - iv. Housing that has been occupied by a tenant in the last three years.
- (f) Any parcel where 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.

- (g) Any parcel located within any of the following: a very high fire severity zone; delineated earthquake fault zone; 100-year flood zone or floodway; designated prime farmland or farmland of statewide importance; hazardous waste site; identified for conservation in an adopted natural community conservation plan; wetlands; habitat for protected species or lands under conservation easement.

17.53.040 Objective standards and requirements for urban lot splits.

In addition to all applicable objective subdivision standards found in Article 16 of the AMC, the following objective standards and regulations apply to all urban lot splits sought under this chapter:

- (a) An application on the form prescribed by the Town, accompanied by a parcel map.
- (b) An urban lot split shall create no more than two new parcels of approximately equal area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed to be split. Under no circumstances may any resulting parcel be smaller than 1,200 square feet.
- (c) Existing parcels shall be split approximately perpendicular to the longest contiguous property line.
- (d) The front parcel line of any newly created parcel shall be the parcel line that is closest to or parallel to the public road that serves the parcel.
- (e) The side lot lines of all lots, as far as practicable, shall be at right angles to straight streets on which the lot faces, or radial to curved streets.
- (f) Flag lots shall have a minimum access width of 20'.
- (g) Separate utility meters shall be provided for each parcel.
- (h) The urban lot split shall comply with Atherton Municipal Code Chapter 16.32 relating to Improvements.
- (i) The urban lot split is subject to all impact or development fees related to the creation of a new parcel.
- (j) A note on the parcel map and a recorded deed restriction in a form approved by the Town shall be applied to all newly created parcels indicating that the parcel was split using the provision of this article and that no further urban lot split of the parcels is permitted.
- (k) Prior to the recordation of the parcel map, the applicant shall sign and record an affidavit stating that the applicant will reside in one of the proposed or existing primary dwelling units or SB 9 units for three years from the date of the approval of the urban lot split. This requirement shall not apply if the applicant is a community land trust or a qualified nonprofit corporation as provided in Sections 402.1 and 214.15 of the Revenue and Taxation Code.

17.53.050 Objective standards and requirements for dwelling units developed pursuant to this chapter.

The following objective standards and regulations apply to all development on a parcel that has been subdivided or concurrently subdivided under the provisions of this article:

- (a) A maximum of two units shall be permitted per parcel resulting from an urban lot split, including

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any ADU or JADU. Any ADU or JADU constructed as part of an SB 9 unit application shall be subject to the requirements of this Chapter and shall not receive any incentives set forth in Chapter 17.52. If a parcel resulting from an urban lot split contains an existing primary dwelling unit and either an ADU or JADU, no additional units are permitted on that parcel. The following dwelling unit configurations are acceptable on parcels resulting from an urban lot split.

- (b) The use on any parcel resulting from an urban lot split shall be limited to residential.
- (c) The following development is permitted on the parcel:
 - (1) An existing primary dwelling unit and an SB 9 unit.
 - (2) Two SB 9 units.
 - (3) A primary dwelling unit and an ADU or JADU
- (d) Floor area, setbacks and height:
 - (1) Developments that comply with the setback requirements of the underlying zoning district (17.32 or 17.33) and side yard setback requirements defined in 17.38, shall be subject to the maximum height and floor area standards of the underlying zoning district (17.32 or 17.33).
 - (2) Developments that do not comply with the setback requirements of the underlying zoning district (17.32 or 17.33) are subject to a minimum side and rear yard setback of 4' and limited to a maximum floor area of 800 square feet per dwelling unit and maximum height of 16 feet for each dwelling unit.
 - (3) Developments that retain the existing main residence and construct a new SB 9 dwelling unit are limited to a maximum floor area of 800 square feet and limited to 16 feet maximum height for the newly developed SB 9 units on the same parcel.
- (e) One parking space is required for each dwelling unit. The parking space shall be at least 10 feet wide by 20 feet deep and shall be contained entirely on the private property. No parking is required when 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; there is a car share vehicle located within one block of the parcel.
- (f) If the two SB 9 dwelling units are configured as a duplex on a parcel, a solid one-hour fire wall between the units is required. In addition, a deed restriction in a form approved by the City Attorney shall be recorded stipulating that the duplex shall be maintained as two separate units.
- (g) If the parcel is fully developed with the number of units permitted under this section, the applicant or property owner shall record a deed restriction in a form approved by the City Attorney stipulating that no further development of the parcel is permitted.
- (h) Driveway access to all new units shall be compliant with the Fire Department standard details and specifications for driveways and turnarounds.
- (i) If the proposed dwelling units are developed subsequent to an urban lot split completed pursuant to this Article, the owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner intends to reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

- (j) No dwelling unit shall be rented for a period of less than thirty-one (31) days and cannot be occupied as a short-term rental unit.
- (k) An SB 9 dwelling unit may be rented separately from the primary dwelling unit.
- (l) Development projects pursuant to this section shall be subject to all impact or development fees related to the development of a new dwelling unit.

17.53.060 Objective building and design requirements for dwelling units.

- (a) **Applicable Objective Design Criteria.** As part of the Planning Department's ministerial review, staff will review the project for compliance with the following regulations:
 - (1) The General Plan land use designation and zoning for the property
 - (2) Zoning regulations contained in Chapters 17.32 (R1-A) and 17.33 (R1-B), 17.40 (Accessory Buildings and Structures), 17.42 (Building Height and Measurement), 17.44 (Basements), 17.46 (Fences and Walls), 17.48 (Home Occupations), 17.50 (Landscape screening), 17.52 (Accessory Dwelling Units) and 17.54 (Yard Measurements and Projections)
- (b) The following objective design criteria shall apply to properties containing two or more dwelling units:
 - (1) Each dwelling unit shall be provided with a location for the storage of trash and recycling receptacles which is screened from the view of the public right-of-way.
 - (2) Transformers, back flow preventers, generators and other similar elements shall be screened from view from the public right-of-way.
 - (3) Exterior building and landscape lighting shall be directed downward, have a shielded light source and be designed so that the light is not directed off site. Up-lighting of trees and permanent lighting within trees is prohibited.
- (c) **Feasibility.** Where an applicant contends the objective subdivision, zoning, and design criteria described in the Atherton Municipal Code render a project including two (2) 800-square-foot dwelling units infeasible, the applicant shall provide all necessary information requested by the City (e.g., a topographic survey, etc.) to demonstrate its infeasibility. On review of the complete feasibility study, the Town Planner will determine which Objective Design Standards may be reduced or waived to allow for up to two dwelling units that are no more than 800 square feet and evaluate feasible locations for the residential unit(s) to find the location(s) that create the fewest impacts to environmentally sensitive areas.

17.53.070 Application review process.

- (a) **Ministerial Review and Approval.** Urban lot splits and the development of dwelling units sought pursuant to this chapter are reviewed and approved ministerially by the Planning Department, without discretionary review or hearings.
- (b) **Order of Concurrent Approvals.** No building permits will be issued for any dwelling units developed under this chapter until a parcel map is recorded.
- (c) **Denials.** The Planning Department shall deny an urban lot split where Town staff has made written findings, based upon a preponderance of the evidence, that the proposed project would have a specific, adverse impact, as defined in Government Code Section

65589.5(d)(2).

(d) **Appeals.** Appeals shall be filed in accordance with Chapter 17.06.

17.53.080 Fees.

All fees described in this Chapter are established by resolution of the City Council, consistent with Government Code sections 65852.2 and 65852.22, and related provisions.

SECTION 2: California Environmental Quality Act (CEQA) Finding.

The Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) to CEQA Section 15378(a), which defines projects subject to these provisions. The proposal does not meet the definition of a project

SECTION 3: Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.15, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4: Effective Date and Publication.

This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Town of Atherton, a municipal corporation

Introduced this 16th day of February, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the ____ day of ____, 2022 by the following vote:

MAYOR: _____
Rick DeGolia

ATTEST: _____
ANTHONY SUBER, CITY CLERK

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney