

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Urgency Ordinance of the City Council of the City of)
Lafayette Adding Chapter 6-38 "Housing Developments)
and Urban Lot Splits" to Part 7 "Special Housing)
Regulations" of Title 6 "Planning and Land Use" of the)
Lafayette Municipal Code in Single Family Residential)
Zones)

Ordinance No. 681

WHEREAS, the City of Lafayette, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 ("SB 9") that, among other things, adds Government Code sections 65852.21 and 66411.7 to impose new limits on local authority to regulate up to two-unit housing developments and urban lot splits; and

WHEREAS, SB 9 allows cities to adopt objective design, development, and subdivision standards for up to two-unit housing developments and urban lot splits;

WHEREAS, SB 9 takes effect January 1, 2022, and preempts any conflicting City ordinance; and

WHEREAS, there are hills and ridges within the City that constitute significant natural topographical features and impart a sense of identity and image to the City and it is desirable to ensure the existence of a harmonious relationship between the existing natural hillside environment and the manmade environment through development standards designed for hillside development; and

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

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare because if the City does not adopt appropriate objective standards for up to two-unit housing developments and urban lot splits under SB 9 as of January 1, 2022, the City will thereafter be limited to applying the few objective standards that are already in its municipal code, which did not anticipate and were not enacted with SB 9 in mind; and

WHEREAS, the approval of up to two-unit housing developments and urban lot splits based solely on the default standards, without appropriate regulations governing landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety, and these threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, the City Council has expressed an interest in requiring an affordable housing component in the future for housing developments and urban lot splits; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance by a four-fifths vote as an urgency measure in accordance with Government Code section 36937(b).

NOW, THEREFORE, the City Council of the City of Lafayette does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Government Code sections 65852.21(j) and 66411.7(n), the adoption of an ordinance by a city implementing the provisions of Government Code sections 65852.21 and 66411.7 and up to two-unit housing developments and regulating urban lot splits 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.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 15 exemption set forth in State CEQA Guidelines section 15315. The Class 15 exemption categorically exempts from CEQA, among other things, the division of property in urbanized areas zoned for residential use into four or fewer parcels. Here, the ordinance is categorically exempt under Class 15 exemption because the ordinance regulates a single urban lot split of one parcel into two separate lots between 60 percent and 40 percent of the original lot area in a residential zone. Further, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of a second dwelling unit in a residential zone and a duplex or similar multi-family residential structure totaling no more than four dwelling units as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the construction of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit, in a residential zone.

Section 3. Chapter 6-38 ("Housing Developments and Urban Lot Splits") in Part 7 ("Special Housing Regulations") of Title 6 ("Planning and Land Use") of the Lafayette Municipal Code is hereby added as provided in Exhibit "A", attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect immediately upon its adoption.

Section 5. 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.

Section 6. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 7. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

PASSED, APPROVED AND ADOPTED by the City Council of the Lafayette, California, at a regular meeting of the City Council held on the 13th day of December, 2021 by the following vote:

AYES: Gerringer, Anduri, Candell, Dawson and Kwok
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

APPROVED:



Joanne Robbins
Joanne Robbins, City Clerk

Teresa Gerringer
Teresa Gerringer, Mayor

EXHIBIT A

Amendments to Municipal Code

(following this page)

Chapter 6-38 HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

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6-3801 Purpose.

The purpose of this chapter is to provide objective zoning standards for housing developments and urban lot splits within single-family residential zones, to implement the provisions of state law as reflected in Government Code sections 65852.21 and 66411.7, and to facilitate the development of new residential housing units in a manner compatible with existing single-family residential uses and ensure sound standards of public health and safety.

6-3802 Definitions.

As used in this chapter, the following terms have the following meanings:

“Adjacent parcel” means a parcel sharing any portion of its property line(s) with the parcel being subdivided using the provisions of an urban lot split.

“Person acting in concert” means a person that has common ownership of the adjacent parcel with the owner of the subject parcel, or a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided.

“Hillside overlay district” means the area shown on the map entitled Hillside Overlay District dated July 8, 2002, adopted by Ordinance 528, a copy of which is on file at the City Offices.

“Housing development” means one or two residential units on a single parcel within a single-family residential zone.

“Building footprint” means the area within the exterior walls of a building.

“Lafayette area ridge map” means the map entitled Lafayette Area Ridge Map, dated July 8, 2002 adopted by Ordinance 528, a copy of which is on file at the City Offices.

“Natural contours” mean those contours existing on January 1, 2022 created through natural processes or pursuant to a valid permit to alter the grades on the site.

“Light reflectance value” (LRV) means the percentage of light a color reflects and is measured on a scale that ranges from zero (absolute black, absorbing all light) to 100 percent (pure white, reflecting all light).

“Percent slope” means the slope (“S”) calculated for an area using either of the following formulas:

$$S = 0.002296 i L / A \quad \text{or} \quad S = 100 i L / a$$

Where S = average percent slope

i = contour interval in feet

L = summation of length of all contours in feet

A = area in acres of parcel being considered

a = area in square feet of parcel being considered

“Protected tree” means a tree that is defined as a protected tree in Chapter 6-17 of the Lafayette Municipal Code

“Urban lot split” means a subdivision of an existing legal lot of record into no more than two separate parcels meeting the objective standards set forth in this chapter and the Subdivision Map Act.

“Viewing evaluation map” means the map entitled Viewing Evaluation Map, dated March 1, 1993, as amended by Ordinance 558 on September 25, 2006, a copy of which is on file at the City Offices.

6-3803 Eligibility

(a) To be eligible for a housing development or urban lot split as specified under state law and this Chapter, the proposed housing development or urban lot split shall meet all of the following criteria:

- (1) The parcel is located within a single-family residential district as provided for in Chapter 6-7 of the Lafayette Municipal Code.
- (2) The parcel is not located on either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
- (2) The parcel is not located on wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- (3) The parcel is not located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public

Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

- (4) The parcel is not located within a hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
- (5) The parcel is not located within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
- (6) The parcel is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:
 - (i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.
 - (ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.
- (7) The parcel is not located within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply

with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

- (8) The parcel is not located within lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
 - (9) The parcel is not located on lands with habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
 - (10) The parcel or any portion thereof is not under a conservation easement, which shall include conservation easements, scenic deed easements, and open-space easements.
 - (11) The parcel is not included on the State Historic Resources Inventory.
 - (12) The urban lot split or 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.
 - Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - Housing that has been occupied by a tenant in the last three years.
 - (13) The parcel 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.
- (b) In addition, to be eligible for a housing development, the proposed housing development:
- (1) Creates one or two new dwelling units, and
 - (2) Does not allow 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.
- (c) In addition, to be eligible for an urban lot split the proposed urban lot split shall meet all of the following criteria:
- (1) The new created parcels are no smaller than 1,200 square feet.

- (2) 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.
- (3) The parcel has not been established through prior exercise of an urban lot split as provided for in this Chapter.
- (4) 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.

6-3804 Application Procedure

All housing developments and urban lot splits as permitted under state law and this Chapter shall be considered ministerially, without discretionary review or a hearing.

A proposal for a housing development or urban lot split under this chapter shall be initiated by an application on a form prescribed by the City together with the required fees as adopted by City Council resolution.

6-3805 Permit Expiration

A permit approval automatically expires if the use or action authorized is not started or construction incident thereto is not begun on or before the time limit specified in the permit, and thereafter diligently pursued. If no time is specified, the permit expires 12 months after the date of approval. The manager may grant one 12-month extension of time upon written request if the City has not made applicable changes to the Lafayette Municipal Code and the development is not changed.

6-3806 Application of this Chapter

The requirements of this Chapter are in addition to other applicable provisions of the Lafayette Municipal Code. Where there is a conflict between this Chapter and other sections of the Lafayette Municipal Code, this Chapter shall prevail.

6-3807 Construction of Up to Two Units of at least 800 square feet

The standards set forth in this Chapter shall not physically preclude the construction of up to two units per parcel and shall not preclude each unit from being at least 800 square feet in floor area, unless otherwise precluded by law. If the housing project cannot be designed to meet the objective standards and the objective standards would preclude two 800 square foot units, the City will provide relief from one or more of the objective standards set forth in this Chapter and as prioritized by the City Council. The City shall determine the extent of relief necessary to allow two 800 square foot units. The purpose of this section is for the housing development and/or urban lot split to comply with the objective standards, General Plan and Lafayette Municipal Code to the maximum extent.

The City Council hereby lists the following objective standards from lowest-to-highest priority. Encroach into 1) side yard, 2) rear yard, 3) front yard, 4) creek setback, and 5) ridgeline setback in that order.

6-3808 Number and Type of Units Allowed

- (a) No more than two total units on each parcel, including accessory dwelling units and junior accessory dwelling units, shall be allowed on parcels that have been created by an urban lot split pursuant to state law and this Chapter.
- (b) No more than four dwelling units, including accessory dwelling units and junior accessory dwelling units, shall be allowed on a parcel that has utilized the housing development provisions pursuant to state law and this Chapter.

6-3809 Owner Occupancy

- (a) For a housing development, one of the two units shall be the property owner(s)' principal residence.
- (b) An applicant for an urban lot split shall 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. This does not apply to a community land trust or a qualified nonprofit corporation.

6-3810 Deed Restriction

The property owner must record a deed restriction, acceptable to the City, that does each of the following:

- a) Documents the parcel or housing development was created using the provisions of SB 9.
- b) Expressly prohibits any rental of any dwelling on the property for a term of 30 days or less.
- c) Expressly prohibits any non-residential use of the lots.
- d) Expressly requires the property owner(s) to occupy one of the dwelling units on the lot as the property owner(s)' principal residence. This provision does not apply to dwelling units on parcels created pursuant to an SB 9 urban lot split.

6-3811 Objective Standards

1. Housing Development

The following objective standards shall be complied with.

- (a) The front setback, side yard setback, rear yard setback and secondary front setback shall be those established by the zoning district in which the property is located pursuant to Chapter 6-7 of the Lafayette Municipal Code. If one or more of those setbacks would preclude construction of two units of 800 square feet each, then the City will relax one or more setbacks to allow two units of 800 square feet each. At no time shall the side yard setback or rear yard setback be reduced to less than 4 feet for new construction.

Nonconforming setbacks shall be permitted to be maintained for an existing structure or structures constructed in the same location and to the same dimensions as an existing structure. Increased non-conforming setbacks are not permitted.

- (b) Building height shall not exceed 35' as defined in Section 6-313 and 2-1/2 stories. Building height for Accessory Dwelling Units where permitted shall not exceed 17'.

- (c) One off-street parking space per unit shall be provided, unless 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 or there is a car share vehicle located within one block of the parcel. The parking space shall have minimum dimensions of at least 10 feet by 20 feet, either covered or open, and shall not be located within the required setback or side yard
- (d) Import and off-haul shall be limited to a maximum of 200 cu. yds. combined for grading outside the building footprint.
- (e) Retaining walls outside the building footprint shall not exceed 4-ft. in height. Multiple 4-ft walls are permissible if they are separated by a minimum of 4-ft. Walls shall be constructed of natural stone or concrete and/or masonry with a cultured stone or stucco finish with a light reflectance value not to exceed 50%. Cut and fills shall be balanced so that off-hauling is maintained under 200 cu. yds.
- (f) Grade changes outside a building footprint within the dripline of protected trees are prohibited. If required to comply with state law, building footprints within the dripline of protected trees shall be drilled pier construction.
- (g) Building footprints shall not encroach in creek setbacks as calculated using the formula in section 6-1841 LMC.
- (h) No protected tree shall be removed. If a protected tree must be removed in order to comply with state law, the applicant shall replace the removed tree pursuant to the tree mitigation calculations in Chapter 6-17 Tree Protection.
- (i) Driveways shall be constructed with permeable pavers where slope is under 5%. Impermeable paving is permissible where the driveway is over 5% slope.
- (j) Patios and walkways shall be constructed with permeable pavers, decomposed granite or other permeable materials and applicant shall provide a permeability certificate. Impermeable surfaces adjacent to pools shall be limited to a 10-ft. radius outboard.
- (k) A stormwater control plan on a form established by the Contra Costa Clean Water Program shall be completed for each project demonstrating compliance by the Municipal Regional Water Quality Permit 3.0 established by the CA Clean Water Act and the National Pollutant Discharge Elimination System (NPDES).
- (l) Detention basins for regulating stormwater shall not be constructed within 10-ft. of downhill adjoining properties.
- (m) Windows facing side property lines shall have a 5-ft. minimum sill height, except as otherwise required by fire code. This requirement does not apply to ground floor windows.
- (n) Compressors, pumps and HVAC equipment shall not be located between the front of residence and the front property line or secondary frontage and shall not be located within 10' of a side or rear property line.
- (o) Applicant shall submit a water budget consistent with the Model Water Efficient Landscape Ordinance (MWELO) demonstrating water use of no more than 500 gallons per 10,000 sq. ft. of lot area per day. The landscape area of single-family residence, or duplexes shall be designed with no more than 20% of the landscaped area planted in turf or plants that are not water-wise as defined as needing "low" or "very low" water per Water Use Classifications of Landscape Species (WUCOLS) established by the Water Use Efficiency Office of the California Department of Water Resources (DWR) or other sources as verified by a licensed landscape architect.

- (p) Each dwelling unit must demonstrate legal access meeting current fire district standards which shall be demonstrated by a sign off from the Fire District prior to application submittal.
- (q) Utilities shall be installed underground in accordance with applicable underground utility ordinances and with the rules and regulations of the state Public Utilities Commission (6-2053).
- (r) Electric, gas and water utilities shall be separately metered for energy conservation purposes except for ADUs under 800 sq. ft. and shall be subject to grading requirements of this section unless superseded by State standards.

2. Hillside Development

For properties located in the mapped Hillside Overlay District (HOD), the following standards shall apply in addition to those listed above in section 6-3812 1 a-q.

- (a) No portion of a structure may be erected within a mapped ridgeline setback as shown on the Lafayette Area Ridge Map (LARM).
- (b) Specifically, no development may take place within 400 ft. (measured in plan view) of a Class I ridgeline; no development may take place within 250 ft. (measured in plan view) of a Class II ridgeline and no portion of a structure may be erected within 250-ft. of a class III ridge that is higher than a horizontal plane that intercepts the ridgeline. The horizontal plane shall be at the nearest point of the structure to the ridgeline and perpendicular to the ridgeline or have an arc of 90 degrees from the endpoint of the ridgeline.
- (c) Each structure in the hillside overlay district shall not be visible when viewed from lower elevations using the adopted Viewing Evaluation Map showing the streets/locations from which views are considered. If a structure permitted under state law is visible, the applicant shall plant and maintain a minimum of one 15-gallon tree along each five (5) linear feet of visible structure to screen the structure. The trees shall be of a species listed in Chapter 6-17 Tree Protection. Trees for this purpose shall be planted on the side of the residence that is visible and the exterior colors of the residence must have a light reflectance value below 50.
- (d) Buildings shall be designed to have their longest dimensions parallel the natural contours.
- (e) Beyond 30' from a house any new tree species planted shall be one of the species listed in Chapter 6-17 Tree Protection.
- (f) Grading located outside a building footprint shall be limited to an aggregate maximum of cut and fill of 200 cubic yards.
- (g) No portion of a lot which has a ground slope in excess of 35 percent may be altered by grading.

3. Urban Lot Split

- (a) Size. Each new parcel shall be a minimum of 1,200 sq. ft. in area.
- (b) Number. Each parcel shall not be split into more than two parcels.
- (c) Fire Safety. Each new parcel must demonstrate legal access meeting current fire district standards which shall be demonstrated by a sign off from the Fire District prior to application submittal.
- (d) Depth. Minimum lot depth requirements shall be that established by zoning district in which the parcel is located.
- (e) Width. Average lot width requirements shall be that established by zoning district in which the parcel is located.
- (f) Slope. Each lot in the hillside overlay district will have a naturally contoured (not manmade) building site of thirty percent slope or less. All construction on each building site shall take place within the designated 30 percent slope area with the exception of:
 - i. An access road or driveway (not parking area) that does not require grading;
 - ii. An ancillary structure, such as a deck supported by posts or cantilevered, and where the natural grade is undisturbed.
