



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of June 28, 2022

**TO:** Members of the City Council

**VIA:** Dante G. Hall, City Manager

**SUBMITTED BY:** Tim Rood, Community Development Director  
Larissa Alchin, Contract Assistant Planner

**SUBJECT:** Ordinance to amend the Hercules Municipal Code, adding Title 10 Chapter 2 Article 9 Urban Lot Split and Title 13 Chapter 36-36 Two Unit Development

### **RECOMMENDED ACTION:**

Adopt proposed amendments to the Hercules Municipal Code, Land Use and Zoning Code sections to establish regulations for subdivision and two-unit developments to comply with SB 9.

### **FISCAL IMPACT OF RECOMMENDATION:**

There are no direct fiscal impacts associated with this item.

### **BACKGROUND:**

Senate Bill (SB) 9 (Atkins), signed into law by Governor Newsom on September 16, 2021, and became effective January 1, 2022, allows a single-family zoned parcel (including single-family Planned Unit Developments) to be subdivided into two parcels and/ or two residences to be constructed on each parcel lot.

The bill requires approval of the following development activities:

- Two-unit development – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).
- Urban lot split - A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (unless a jurisdiction decides to allow additional units).

Following a discussion by City Council on April 12, 2022, staff was directed to draft an ordinance to amend Hercules Municipal Code, implementing Urban Lot Splits and Two Unit Developments in accordance with SB 9.

At its regular meeting on May 16, 2022, the Planning Commission reviewed and voted to recommend for Council adoption a draft ordinance with the following modification:

- a. Clarify that landscaping shrubs shall be placed a maximum of 5-feet apart.

## **WHAT CAN BE BUILT WITH SB 9**

### Lots Not Being Subdivided

The statute reads “A proposed development containing not more than two residential units within a single-family residential zone shall be considered ministerially” therefore staff understands this to mean no more than two units may be proposed as part of one SB 9 project.

Homeowners may use SB 9 to build two new homes on a vacant lot. If there is an existing home, they can add one primary dwelling unit. If there is an existing Single-family home and ADU the project could propose one new single-family home. However, if the project proposes two new single-family homes and two new ADUs the project could not be considered ministerially as it proposes more than the allowed two residential units. It’s likely ADU/JADUs could be added later if they meet the existing ADU standards, however not with the SB 9 project.

### Lots Being Subdivided

Homeowners that split a vacant lot will be allowed to build two new units on each of the two lots, allowing for a total of four units. If there are existing units on the lot, new homes can be added, also resulting in a total of four potential units. Similarly, to lots not being subdivided, each new lot may propose one or two residential units. The homes must conform to local objective rules, as long as those rules allow two 800 sf units on each property.

SB 9 applies in all single-family zoned parcels in Urban Areas, as defined by the US Census Bureau, except for the following:

- **Environmental Sensitivity/Environmental Hazards** - Properties designated as:
  - o Prime farmland or farmland of statewide importance
  - o Wetlands
  - o Within a very high fire hazard severity zone (with exceptions)
  - o A hazardous waste site (with exceptions)
  - o Within a delineated earthquake fault zone (with exceptions)
  - o Within a flood zone (with exceptions)
  - o Identified for conservation or under conservation easement
  - o Habitat for protected species
- **Ellis Act** Properties where the Ellis Act was used to evict tenants at any time in the last 15 years.
- **Historic Properties** - Properties located in a state or local historic district, or properties designated historic landmarks.

### Other restrictions

- **Deed restricted affordable housing and rental housing** – SB 9 projects may not demolish 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. Nor is it allowed for housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power. Demolition is also not permitted for housing that has been occupied by a tenant in the last three years.
- **No short-term rentals** – Rental terms less than 30 days are not allowed.

- **Limits on demolition** - Projects may not demolish more than 25 percent of existing exterior structural walls unless (a) the property has not been occupied by a tenant for 3 years or (b) otherwise allowed by the jurisdiction.

#### Urban Lot Split-Specific Rules

- **One use** - Only one lot split allowed under SB 9, however further splits may be possible under regular subdivision procedures.
- **Residential only** - The uses on the resulting lots are limited to residential uses.
- **Approximately equal size** - Each new parcel must be "approximately equal" in lot area provided that one parcel shall not be smaller than 40 percent the size of the original parcel
- **Minimum 1,200 sf parcel** - No parcel shall be less than 1,200 square feet. Jurisdictions may by ordinance adopt a smaller minimum lot size subject to ministerial approval.
- **Intention to occupy** - The subdivider must sign an affidavit stating they intend to occupy one of the units for a minimum of three years. The local jurisdiction cannot impose additional owner occupancy standards. Community land trusts and qualified nonprofits are exempted from this requirement.
- **Limits on adjacent urban lot splits** - Neither the subdivider nor any person "acting in concert" with the subdivider has previously subdivided an adjacent parcel using an urban lot split. SB 9 does not define what "acting in concert" means or how it would be proven.

#### Local Agency Criteria

Local agencies may **not** impose the following:

- Regulation that require right-of-way dedications or construction of off-site improvements
- Impose any other owner occupancy in addition to required owner-occupancy affidavit with a lot split.
- Require the correction of nonconforming zoning conditions as a condition of approval
- Deny an application solely because it proposes adjacent or connected structures so long as structures meet building code safety standards and are sufficient to allow separate conveyance.

The City may deny a proposed SB 9 project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project (1) would have a specific, adverse impact upon public health and safety or the physical environment and (2) there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. Hercules would rely on Contra Costa County building officials to determine if a project could be denied.

## **DISCUSSION**

The Planning Commission requested that staff provide to City Council additional clarification on the following items:

- The minimum living area requirement of 150 square feet is as specified for "Efficiency units" by Health and Safety Code Section 17958.1 and is the minimum floor area allowed for occupancy by no more than two persons. While staff believes it unlikely that efficiency units would be created under SB 9 provisions, this provision is included in the ordinance because the Health and Safety Code requires that cities not limit the number of efficiency units in an area zoned for residential use and located within one-half mile of public transit.
- "High-quality transit corridor" is defined in SB 9 as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. The bus routes

serving the Hercules Transit Center currently run at approximately 40-minute intervals during peak commute hours and thus do not qualify as “high-quality transit corridors”.

- “Major transit stop” means a site containing any of the following:
  - An existing rail or bus rapid transit station.
  - A ferry terminal served by either a bus or rail transit service.
  - 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.

There are currently no such transit stops in Hercules.

A draft Ordinance (Attachment 1) based on the Planning Commission’s resolution (Attachment 2) is provided for the City Council’s review and consideration.

**ATTACHMENTS:**

1. Draft Ordinance – Senate Bill 9
2. Planning Commission Resolution No. 22-07