

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING HERCULES MUNICIPAL CODE TITLE 10 (“LAND USE”), CHAPTER 2 (“SUBDIVISIONS”) ESTABLISHING REGULATIONS FOR THE SUBDIVISION AND DEVELOPMENT OF QUALIFIED SENATE BILL 9 (SB 9) PROPERTIES AND AMENDING TITLE 13 (“ZONING ORDINANCE”) TO COMPLY WITH SB 9.

WHEREAS, the State of California has declared that a severe housing crisis exists in the state with the demand for housing exceeding the supply; and

WHEREAS, on September 16, 2021, Senate Bill 9 was approved by the Governor of the State of California and filed with the Secretary of State, amending Section 66452.6 of the California Government Code and adding to the Government Code Sections 65852.21 and 66411.7, allowing additional housing units on properties within single family zones and providing for parcel map approval of an urban lot split; and

WHEREAS, the changes made to the Government Code by Senate Bill 9 took effect January 1, 2022; and

WHEREAS, Senate Bill 9 requires cities and counties, including the City of Hercules, to ministerially approve a parcel map for an urban lot split and/or a proposed housing development containing a maximum of two residential units within a single-family residential zone, if the two-unit or subdivision project meets certain statutory criteria; and

WHEREAS, state law allows a local agency to adopt an ordinance to implement the provisions in Senate Bill 9; and

WHEREAS, Senate Bill 9 specifically authorizes local agencies to impose objective zoning, subdivision, and design standards consistent with the bill’s provisions, and to adopt an ordinance implementing its provisions and Senate Bill 9.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The above recitals are true and correct. The City Council hereby incorporates the above recitals into this Ordinance by this reference.

SECTION 2. ENVIRONMENTAL REVIEW. Under California Government Code Sections 65852.21(j) and 66411.7(n), the adoption of an ordinance implementing the provisions of SB 9 is

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statutorily exempt from the requirements of the California Environmental Quality Act.

SECTION 3. AMENDMENTS.

Chapter 10-2.900 “Urban Lot Splits” is hereby added to the Hercules Municipal Code to read in its entirety as follows:

Sec. 10-2.901 Purpose

This Chapter establishes exceptions to the Subdivision Ordinance and Zoning Ordinance and provides permit procedures to allow urban lot splits allowed by Senate Bill No. 9 (2021), as codified in Government Code Section Sections 66452.6 and 66411.7. The provisions of this Chapter shall supersede any other provision to the contrary in the Subdivision Ordinance or the Zoning Organization. Subdivision standards provided for in the Subdivision Ordinance that are not affected by this Chapter shall remain in effect.

Sec. 10-2.902 Definitions

Unless otherwise specifically provided, or required by the context, the following terms have the meanings set forth for the purposes of this Section and Section 13-36.

“A person acting in concert with the owner” means a person that has a common ownership or control of the subject parcel with the owner of the adjacent parcel, 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.

“Adjacent parcel” means any parcel of land that is (1) touching the parcel at any point; (2) separated from the parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property which is in common ownership or control of the applicant.

“Sufficient for separate conveyance” means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project) or into any other ownership type in which the dwelling units may be sold individually.

“Two-Unit Development” means a development that proposes no more than two units or proposes to add one new unit to one existing unit and that meets all the criteria and standards set forth in Chapter 13-36.

“Urban lot split” means a ministerial application for a parcel map to subdivide an existing parcel located within a single-family residential zone into two parcels, as authorized by Section 66411.7 of the Government Code.

Sec. 10-2.902 Applicability

A parcel map for an urban lot split shall be considered ministerially on parcels satisfying all of the

following general requirements:

- (a) **Zoning District.** A parcel that is located within a single-family residential zone.
- (b) **Historic Property.** A parcel that is not listed on the City of Hercules Historic Resource Inventory or located in a Historic District.
- (c) **Legal Parcel.** A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and Subdivision Ordinance, as applicable at the time the parcel was created. The Community Development Department may require a certificate of compliance to verify conformance with this requirement.
- (d) **Hazardous Waste Site.** A parcel that is not identified as a hazardous waste site pursuant to Government Code 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.
- (e) **Flood Zone.** A parcel that is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) on the official maps published by the Federal Emergency Management Agency, unless a Letter of Map Revision prepared by the Federal Emergency Management Agency has been issued or if the proposed primary dwelling unit(s) is constructed in compliance with the provisions of Chapter 21.22 (Flood Damage Prevention) as determined by the floodplain administrator.
- (f) **Earthquake Fault Zone.** A parcel that is not located within a delineated earthquake fault zone as determined by the State Geologist on any official maps published by the State Geologist, unless the proposed housing 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).
- (g) **Natural Habitat.** A parcel that is not recognized by the City as a 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)

Sec. 10-2.904 Subdivision Standards

The following objective subdivision standards supersede any other standards to the contrary that may be provided in the Subdivision Ordinance, Zoning Ordinance, or applicable Planned Unit Development as they pertain to creation of an urban lot split under Section 66411.7 of the Government Code.

- (a) **Subdivision Map Act.** The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.
- (b) **Flag Lots.** The access corridor of a flag lot parcel shall be in fee as part of the parcel and shall be of a minimum width of 12-feet and a maximum width of 15-feet and be entirely

paved with either concrete or pavers, consistent with the Fire Code as determined by the fire chief.

- (c) **Lot Lines.** The side lines of all parcels, so far as possible, shall be at right angles to streets or radial or approximately radial to curved streets and to center points of cul-de-sac turning circles.
- (d) **Minimum Lot Size.** Each new parcel shall be approximately equal in lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In no event shall a new parcel be less than 1,200 square feet in lot area.
- (e) **Minimum lot width.** Each new parcel shall maintain a minimum lot width of 30-feet. The calculation of lot width for a flag lot shall exclude the access corridor.
- (f) **Minimum Public Frontage.** Each new parcel shall have frontage upon a street dedicated as a public street with a minimum frontage dimension of 30-feet, except for flag-lots which shall have a minimum frontage dimension of 12-feet.
- (g) **Number of Lots.** The parcel map to subdivide an existing parcel shall create no more than two new parcels.
- (h) **Utilities.** Parcels created through an urban lot split shall provide for separate utilities.
- (i) **Accessory Dwelling Unit.** Accessory Dwelling Units and Junior Accessory Dwelling Units shall not be permitted on parcels resulting from an urban lot split created under the authority contained within this section. Parcels created through an urban lot split which have the effect of separating an existing accessory dwelling unit from the primary dwelling, shall submit concurrently for a new SB 9 primary dwelling unit on the parcel containing only an accessory dwelling unit.

Sec. 10-2.905 General Requirements and Restrictions

The following requirements and restrictions apply to all proposed urban lot splits allowed by this Chapter:

- (a) **Adjacent Parcels.** Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously conducted an urban lot split to create an adjacent parcel as provided for in this Chapter.
- (b) **Dedication and Easements.** The Community Development Department shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may require recording of easements necessary for the provision of public services and facilities.
- (c) **Existing Structures.** Existing structures or structures constructed in the same location and to the same dimensions as an existing structure, located on a parcel subject to an urban lot split shall not be subject to a setback requirement. However, any such existing structures shall not be located across the shared property line resulting from an urban lot split, unless the structure is converted to an attached townhome so long as the structures comply with applicable building codes and are sufficient to allow separate conveyance. All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map.
- (d) **Intent to Occupy.** The owner shall sign and record an affidavit provided by the Community Development Director placing a covenant that will run with the parcel attesting that the applicant intends to occupy one of the newly created parcels as their principal residence for

a minimum of three years from the date of the approval of the urban lot split. The affidavit shall be recorded on the title of the parcel concurrently with recordation of the parcel map. This requirement shall not apply to an applicant that is “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

- (e) **Non-Conforming Conditions.** The City shall not require, as a condition of approval, the correction of nonconforming zoning conditions. However, no new nonconforming conditions may result from the urban lot split other than as specified by Section 10-2.905(c).
- (f) **Number of Remaining Units.** No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map.
- (g) **Prior Subdivision.** A parcel created through a prior urban lot split may not be further subdivided under the provisions of this Chapter. The subdivider shall sign a covenant provided by the Community Development Director documenting this restriction. The covenant shall be recorded on the title of each parcel concurrent with recordation of the parcel map.
- (h) **Restrictions on Demolition.** The proposed urban lot split shall not require the demolition or alteration involving removal of more than 25 percent of the existing exterior structural walls of any of the following types of housing:
 - 1. 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;
 - 2. Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power;
 - 3. Housing that has been occupied by a tenant in the last three years.
- (i) **Stormwater Management.** The subdivision shall comply with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) Permit as implemented by Sec. 5-8.050 and as demonstrated by a grading and drainage plan prepared by a registered civil engineer.

Sec. 10-2.906 Approval Process

Applications for urban lot splits shall be submitted and processed in compliance with the following requirements:

- A. Application Type.** An urban lot split shall be submitted to the Community Development Department as a ministerial application for a tentative parcel map.
- B. Application Filing.** An application for a parcel map for an urban lot split, including the required application materials and filing fee, shall be filed with the Community Development Department in compliance with Sec. 10-2.501 (Form and Content of Parcel Map).
- C. Referral.** The Community Development Director shall refer the parcel map application to the Public Works Director, Fire Chief, and utility agencies for review prior to recordation.

- D. **Denial.** The Community Development Director may deny an urban lot split only if the building official makes a written finding, based upon a preponderance of the evidence, that a proposed housing development located on the proposed new parcels 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.
- E. **Appeals.** A decision of the Community Development Director on a parcel map for an urban lot split is a ministerial action and not appealable.

Chapter 13-36 “Two-Unit Development” is hereby added to the Hercules Municipal Code to read in its entirety as follows:

Sec. 13-36.100 Purpose

This Chapter establishes exceptions to the Zoning Ordinance and provides permit procedures to allow Two-Unit Developments within single-family residential zone districts allowed by Senate Bill No. 9 (2021), as codified in Government Code Section Sections 66452.6 and 66411.7.

Sec. 13-36.200 Definitions

Unless otherwise specifically provided, or required by the context, the following terms have the meanings set forth for the purposes of this Section and Section 10-2.

“A person acting in concert with the owner” means a person that has a common ownership or control of the subject parcel with the owner of the adjacent parcel, 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.

“Adjacent parcel” means any parcel of land that is (1) touching the parcel at any point; (2) separated from the parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property which is in common ownership or control of the applicant.

“Sufficient for separate conveyance” means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project) or into any other ownership type in which the dwelling units may be sold individually.

“Two-Unit Development” means a development that proposes no more than two units or proposes to add one new unit to one existing unit and that meets all the criteria and standards set forth in Chapter 13-36.

“Urban lot split” means a ministerial application for a parcel map to subdivide an existing parcel located within a single-family residential zone into two parcels, as authorized by Section 66411.7 of the Government Code.

Sec. 13-36.300 Applicability

A proposed housing development may only be created on parcels satisfying all of the following general requirements:

- 1. Zoning District.** A parcel that is located within a single-family residential zone.
- 2. Historic Property.** A parcel that is not listed on the City of Hercules Historic Resource Inventory or located in a Historic District.
- 3. Legal Parcel.** A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and Subdivision Ordinance, as applicable at the time the parcel was created. The Community Development Department may require a certificate of compliance to verify conformance with this requirement.
- 4. Hazardous Waste Site.** A parcel that is not identified as a hazardous waste site pursuant to Government Code 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.
- 5. Flood Zone.** A parcel that is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) on the official maps published by the Federal Emergency Management Agency unless a Letter of Map Revision prepared by the Federal Emergency Management Agency has been issued or if the proposed primary dwelling unit(s) is constructed in compliance with the provisions of Sec. 10-7 (Flood Damage Prevention) as determined by the floodplain administrator.
- 6. Earthquake Fault Zone.** A parcel that is not located within a delineated earthquake fault zone as determined by the State Geologist on any official maps published by the State Geologist, unless the proposed housing 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).
- 7. Natural Habitat.** A parcel that is not recognized by the City as a 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)

Sec. 13-36.400 Objective Zoning Standards

The following objective zoning standards supersede any other standards to the contrary that may be provided in the Zoning Ordinance as they pertain to a proposed housing development under Government Code Section 65852.21. Proposed housing developments shall be constructed only in accordance with the following objective zoning standards.

- 1. Building Height/Number of Stories.** The maximum building height and maximum number of stories shall be as specified by the applicable zoning district.

2. **Lot Coverage.** The maximum lot coverage shall be as specified by the applicable zoning district, except if this standard would have the effect of physically precluding the construction of two units or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modifications necessary to avoid physically precluding two units of 800 square feet on each parcel.
3. **Minimum Living Area.** The minimum living area of a primary dwelling unit shall be 150 square feet, subject to the restrictions specified by Health and Safety Code Section 17958.1.
4. **Parking.** One (1) parking stall per primary dwelling unit shall be required, except for proposed housing developments located on parcels 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 within one block of a car share vehicle operating in accordance with California Vehicle Code section 22507.1. Parking stalls may either be uncovered or covered (garage or carport) in compliance with the development standards of the applicable zoning district and Sec. 13-32. (Off-Street Parking and Loading Facilities)
5. **Usable Open Space.** Each parcel shall maintain a minimum of 500 square feet of private open space per primary dwelling unit except if this standard would have the effect of physically precluding the construction of two units or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modifications necessary to avoid physically precluding two units of 800 square feet on each parcel.
6. **Setbacks.** Proposed housing developments shall be subject to the setback and building separation requirements specified by Table 13-6.1 (Land Use Regulations: Residential District), except no more than 4 feet is required for rear and interior side setbacks. No setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.
7. **Paving.** Proposed paving shall be as specified by Sec. 13-30.750 (Paving Within Residential Front, Rear, and Side Yard Areas.), except to allow a driveway with a width dimension not exceeding ten feet.

Sec 13-36.500 Objective Design Review Standards

The following objective design review standards apply to construction of new primary dwelling units and to any addition and/or alteration to existing primary dwelling units as part of a proposed housing development. Existing features inconsistent with these standards may remain provided they are not altered or removed.

1. **Existing Unit Conformity.** If the proposed project contains an existing primary dwelling unit, new units shall conform to the design characteristics of the existing residence. A determination of conformity shall be made if the new unit utilizes all of the following features of the existing residence: architectural features, building materials, and paint color.
2. **Balconies/Decks.** Rooftop terraces and decks are prohibited. Balconies shall only be permitted on the front elevation of a primary dwelling unit(s).

3. **Front Doors.** Front door openings shall not exceed a width of 6 feet or a height of 9 feet. Front entry doors for duplex units in a side-by-side configuration shall be separated by a distance equal to half the linear length of the structure's front elevation.
4. **Front Step-back.** Second-story wall(s) that front a public street shall be recessed by 5 feet from the first-story exterior walls, as measured wall to wall.
5. **Garages.** Garages placed on the front elevation of a primary dwelling unit shall not exceed 50% of the linear extent of the front elevation.
6. **Stairways.** Exposed exterior stairways are prohibited. Stairways necessary to access a dwelling unit located on a second floor shall be entirely enclosed within the structure and shall be included in the allowable floor area of the dwelling unit that it serves.
7. **Windows.** All second-story windows less than eight feet from rear and interior-side property lines shall be clerestory with the bottom of the glass at least six feet above the finished floor. All other second-story windows shall be limited to the minimum number and minimum size as necessary for egress purposes as required by the Building Code.
8. **Landscaping.** A hedge, consisting of 15-gallon minimum evergreen shrubs at maximum 5-foot intervals, shall be planted along the parcel line (and outside of any easement) adjacent to the wall of the SB 9 dwelling unit that is closest to the parcel line.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be deleted.

SECTION 5. EFFECTIVE DATE AND PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 28th day of June, 2022, and was passed and adopted at a regular meeting of the Hercules City Council on the day of , 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dion Bailey, Mayor

Lauren Berges
City Clerk

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