

ORDINANCE NO. 2021-10

**AN ORDINANCE OF THE CITY OF NEVADA CITY, CALIFORNIA
ADOPTING CHANGES TO TITLE 16 (SUBDIVISIONS) AND TITLE 17
(ZONING) RELATING TO THE IMPLEMENTATION OF SENATE BILL 9
FOR THE CREATION OF TWO (2) RESIDENTIAL UNITS PER LOT**

WHEREAS, on September 16, 2021 Governor Gavin Newsom approved Senate Bill 9 (SB 9, Chapter 162) relating to the creation of two residential units per lot which requires local agencies to ministerially approve housing development containing no more than two residential units per lot and ministerially approve an urban lot split; and

WHEREAS, SB 9 takes effect on January 1, 2021; and

WHEREAS, SB 9 allows local agencies to impose objective zoning, subdivision, and design review standards; and

WHEREAS, on November 18, 2021 the Planning Commission held a duly noticed public hearing on the Zoning Code text amendment, and at which time, recommended approval of the proposed text amendment to the City Council of the City of Nevada City; and

WHEREAS, on December 1, 2021 the City Council held a duly noticed public hearing on the Zoning Code text amendment at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, the public is already beginning to express interest in developing under this new law and it is necessary to have standards in place by the time SB 9 becomes effective.

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

SECTION 1. Chapter 16.05 is hereby added to the Nevada city Municipal Code to read as follows:

Chapter 16.05 - Parcel Maps for Urban Lot Splits.

16.05.010 - Title and Authority of Provisions

16.04.020 – Definitions: For purposes of this Section, the following definition shall apply:

- A. “Urban lot split” means a lot split of a single-family residential lot into two parcels that meets the requirements of this section.

16.04.020 – Urban Lot Split Regulations

A. The city shall ministerially approve a parcel map for a lot split that meets the following requirements:

1. The parcel is located within a single-family residential zone.
2. The parcel is located at least partially in an urbanized area or urban cluster as designated by the United States Census Bureau.
3. The parcel map divides 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.
4. Both newly created parcels are no smaller than 1,200 square feet.
5. The parcel is not located in any of the following areas and does not fall within any of the following categories:
 - a. A historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city landmark or historic property or district pursuant to a city ordinance.
 - b. Wetlands as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - c. A very high fire hazard severity zone as further defined in Government Code section 65913.4(a)(6)(D). This does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of 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.
 - d. 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.
 - e. 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 (FEMA) in any official maps published by FEMA.

If an applicant 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, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city 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 FEMA and issued to the city; or
 - ii. The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the Nation Flood Insurance Program as further spelled out in Government Code section 65913.4(a)(6)(G)(ii);
- f. A regulatory floodway as determined by FEMA in any of its official maps, published by FEMA 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 an applicant 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, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site.
- g. 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).
- h. Lands under a conservation easement.
6. The proposed lot split would not require demolition or alteration of any of the following types of housing:

- a. 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;
 - b. Housing that is subject to any form of rent or price control by the city;
 - c. A parcel or parcels on which an owner of residential real property exercised rights under Government Code section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date of the application; or
 - d. Housing that has been occupied by a tenant in the last three years.
7. The lot split does not create more than two units on a parcel, including any accessory dwelling units or junior accessory dwelling units.

B. Standards and Requirements. The following requirements shall apply:

- 1. The lot split conforms to all applicable objective requirements of the Subdivision Map Act and Title 16 of the Nevada City Municipal Code, except as the same are modified by this section.
- 2. 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.
- 3. Except for those circumstances described in section B.2 above, the setback for side and rear lot lines shall be four feet. The front setback shall be as set forth in the single-family residential zone.
- 4. The applicant shall provide easements for the provision of public services and facilities as required.
- 5. All lots shall have a minimum street frontage of twelve feet to provide for vehicular access, or an equivalent access provided by a duly recorded access easement.
- 6. Off-street parking shall be limited to one space per unit, except that no parking requirements shall be imposed in either of the following circumstances:
 - a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined by Public Resources Code section

21155(b) or a major transit stop as defined in Public Resources Code section 21064.3; or

b. There is a car share vehicle located within one block of the parcel.

7. Environmental resources shall be delineated and building shall be prohibited on the Parcel Map as non-disturbance areas including the following:

a. 100-feet along both sides of a waterway with perennial flow as depicted on a USGS 7-minute quadrangle map

b. 25-feet along both sides of a waterway with intermittent flow as depicted on a USGS 7-minute quadrangle map

c. Slopes in excess of 30% as depicted on a topographic map showing 2-foot contours

C. The city shall not require or deny an application based on any of the following:

1. The city shall not require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map.

2. The city shall not impose any objective zoning, subdivision, or design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

3. The city shall not require the correction of nonconforming zoning provisions as a condition for the lot split.

4. The city shall not deny an application solely because it proposes adjacent or connected structure provided that that all building code safety standards are met and they are sufficient to allow a separate conveyance.

D. An applicant for an urban lot split shall be required to sign an affidavit in a form approved by the City Attorney to be recorded against the property stating the following:

1. That applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval. This requirement does not apply when the applicant is a "community land trust"

or a “qualified nonprofit corporation” as the same are defined in the Revenue and Taxation Code.

2. That the uses shall be limited to residential uses.
 3. That any rental of any unit created by the lot split shall be for a minimum of thirty-one days.
 4. That the maximum number of units to be allowed on the parcels is two, including but not limited to units otherwise allowed pursuant to density bonus provisions, accessory dwelling units, or junior accessory dwelling units allowed pursuant to Section 17.72.020 through 17.72.038 of the City Municipal Code
- E. The city may deny the lot split if 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 Government Code section 65589.5(d)(2), upon the 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.
- F. This section shall not apply to:
1. Any parcel which has been established pursuant to a lot split in accordance with this section; or
 2. Any parcel where the owner of the parcel being subdivided or any person acting in concert with the owner has previously subdivided an adjacent parcel in accordance with this section. For purposes of this section, it will be assumed that where a lot owner purchased the property from an adjacent property owner who subdivided his property pursuant to this division within five years of the lot split, the owner is acting in concert with the then owner of the adjacent lot. However, acting in concert is not limited to this situation.
- G. The provisions of this section supersede any contrary provisions of the Nevada City Municipal Code to the contrary.

SECTION 2. Section 17.74 is hereby added to the Nevada City Municipal Code to read as follows:

Section 17.74 Two-unit Housing Development

- A. For purposes of this section, the following definition shall apply:
1. "Housing development" shall mean no more than two residential units within a single-family zone that meets the requirements of this section. The two units may consist of two new units or one new unit and one existing unit.
- B. The city shall ministerially approve a housing development containing no more than two residential units if it meets the following requirements:
1. The parcel is located within a single-family residential zone.
 2. The parcel is located at least partially in an urbanized area or urban cluster as designated by the United States Census Bureau.
 3. The parcel is not located in any of the following areas and does not fall within any of the following categories:
 - a. A historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city landmark or historic property or district pursuant to a city ordinance.
 - b. Wetlands as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - c. A very high fire hazard severity zone as further defined in Government Code section 65913.4(a)(6)(D). This does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of 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.
 - d. 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.
 - e. 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 (FEMA) in any official maps published by FEMA. If an applicant 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, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city 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 FEMA and issued to the city; or
 - ii. The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the Nation Flood Insurance Program as further spelled out in Government Code section 65913.4(a)(6)(G)(ii);
 - f. A regulatory floodway as determined by FEMA in any of its official maps, published by FEMA 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 an applicant 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, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site.
 - g. 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).
 - h. Lands under a conservation easement.
4. The proposed housing development would not require demolition or alteration of any of the following types of housing:
- a. 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;

- b. Housing that is subject to any form of rent or price control by the city;
 - c. A parcel or parcels on which an owner of residential real property exercised rights under Government Code section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date of the application; or
 - d. Housing that has been occupied by a tenant in the last three years.
5. Demolition of an existing unit shall not exceed 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. Standards and Requirements. The following requirements shall apply in addition to all other objective standards pertaining to the single-family residential zone:
- 1. 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.
 - 2. Except for those circumstances described in section B.1 above, the setback for side and rear lot lines shall be four feet. The front setback shall be as set forth in the single-family residential zone.
 - 3. The applicant shall provide easements for the provision of public services and facilities as required.
 - 4. All lots shall have a minimum street frontage of twelve feet to provide for vehicular access, or an equivalent access provided by a duly recorded access easement.
 - 5. Off-street parking shall be limited to one space per unit, except that no parking requirements shall be imposed in either of the following circumstances:
 - a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined by Public Resources Code section 21155(b) or a major transit stop as defined in Public Resources Code section 21064.3; or
 - b. There is a car share vehicle located within one block of the parcel.
 - 6. For residential units connected to an onsite wastewater treatment system (septic tank), the applicant provides a percolation test completed within the

last 5 years, or if the percolation test has been recertified, within the last 10 years, which shows that the system meets acceptable infiltration rates.

- D. The city shall not require or deny an application based on any of the following:
1. The city shall not impose any objective zoning, subdivision, or design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.
 2. The city shall not deny an application solely because it proposes adjacent or connected structure provided that that all building code safety standards are met and they are sufficient to allow a separate conveyance.
- E. An applicant for an urban lot split shall be required to sign an affidavit in a form approved by the City Attorney to be recorded against the property stating the following:
1. That the uses shall be limited to residential uses.
 2. That the rental of any unit created pursuant to this section shall be for a minimum of thirty-one days.
 3. That the maximum number of units to be allowed on the parcels is two, including but not limited to units otherwise allowed pursuant to density bonus provisions, accessory dwelling units, junior accessory dwelling units, or units allowed pursuant to Section 17.72.020 through 17.72.038.
- F. The city may deny the housing development if 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 Government Code section 65589.5(d)(2), upon the 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. The provisions of this section supersede any contrary provisions in the Nevada City Municipal Code to the contrary.

SECTION 3. This adoption of this Ordinance is not a project under CEQA pursuant to SB 9.

SECTION 4. Effective Date and Publishing Requirement. This Ordinance shall become effective thirty (30) days after the adoption date thereof and within fifteen (15) days of the passage of this Ordinance, the City Clerk shall publish a summary of this Ordinance in The Union, a newspaper of general circulation.

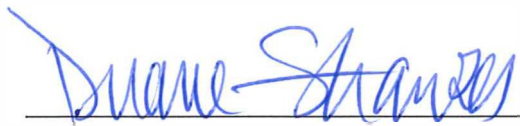
PASSED AND ADOPTED at a regularly scheduled meeting of the City Council of Nevada City held this 8th day of December, 2021 by the following vote:

AYES: STRAWSER, FLEMING, MINETT, PETERSEN

NOES:

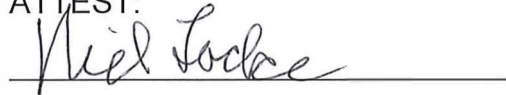
ABSTAIN:

ABSENT: FERNÁNDEZ



Duane Strawser, Mayor

ATTEST:



Niel Locke, City Clerk