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URGENCY ORDINANCE NO. 2022-19

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, TO PROVIDE OBJECTIVE STANDARDS PERTAINING TO DEVELOPMENT REGULATIONS FOR URBAN LOT SPLITS AND TWO-UNIT RESIDENTIAL DEVELOPMENT IN SINGLE-FAMILY ZONES TO IMPLEMENT SENATE BILL 9 AND DECLARING THE ORDINANCE TO BE AN URGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, the City of Encinitas, pursuant to its police power, may enact regulations for the public peace, morals, and welfare of the City;

WHEREAS, in 2019 the State of California Legislature declared that "California has a housing supply and affordability crisis of historic proportions;"

WHEREAS, on September 16, 2021, Governor Newsom signed into law Senate Bill 9 ("SB 9"), entitled the "California Home Act". Among other provisions, this bill adds Sections 65852.21 and 66411.7 to the Government Code and becomes effective on January 1, 2022;

WHEREAS, SB 9 requires cities and counties 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;

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

WHEREAS, The City of Encinitas has implemented land use policies based on the City's General Plan, which provide an overall vision for the community and balance important community needs, and the City seeks to ensure that SB9 projects are consistent with those policies;

WHEREAS, during the effective term of Urgency Ordinance No. 2021-25, City staff prepared the application forms and checklists for SB9 project submittals and developed a website and FAQ with information on SB 9;

WHEREAS, on January 26, 2022, the City Council adopted Urgency Ordinance No. 2022-04, which extended Urgency Ordinance No. 2021-25 to December 15, 2022;

WHEREAS, on December 15, 2021, the City Council of the City of Encinitas, conducted a public hearing and adopted Resolution No. 2021-120, initiating amendments to the Encinitas Municipal Code, Specific Plans and Local Coastal Program ("LCP") pertaining to Two-Unit Development and Urban Lot Split regulations;

WHEREAS, on March 9, 2022, a Joint Session of the City Council and Planning Commission was held to discuss development of objective design and development regulations related to the implementation of SB9;

WHEREAS, on June 16 and June 29, 2002 Planning Commission Study Sessions were held staff presented additional information and gathered additional input on draft objective design and

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development regulations related to the implementation of SB9;

WHEREAS, on September 15 and October 6, 2022, the Planning Commission conducted a duly noticed public hearing to discuss and consider proposed amendments to Title 30 of the Encinitas Municipal Code to develop implementation regulations for Two-Unit Development and Urban Lot Splits and made a recommendation to City Council and adopted Resolution No. PC 2022-23 recommending approval of Draft Ordinance No. 2022-17, as amended;

WHEREAS, the City Council conducted public hearings on October 26, 2022, and November 9, 2022, for the purpose of considering the Encinitas Municipal Code, Encinitas Ranch Specific Plan and Local Coastal Program amendments;

WHEREAS, the City Council has duly considered the totality of the record and all evidence submitted into the record, including public testimony and the evaluation and recommendations by staff, presented at said hearing;

WHEREAS, notices of said public hearings were made at the time and in the manner required by law;

WHEREAS, this Ordinance is an urgency ordinance pursuant to Government Code Section 36934.

WHEREAS, SB 9 specifically authorizes local agencies to impose objective zoning, subdivision, and design standards consistent with the bill's provisions, and to adopt an ordinance to implement its provisions. SB 9 further provides that such ordinances are not considered a "project" under the California Environmental Quality Act (CEQA). The ordinance is further exempt from CEQA under CEQA Guidelines Sections 15301 and 15303;

WHEREAS, SB 9 allows local agencies to impose limited objective zoning, subdivision, and design review standards in compliance with Government Code Sections 65852.21 and 66411.7;

WHEREAS, given that SB 9 was not signed until mid-September of 2021, there was insufficient time to process this Ordinance through noticed hearings before the Planning Commission and City Council and have an ordinance (Zoning Code amendment) in place by January 1, 2022;

WHEREAS, the City is further subject to the provisions of the California Coastal Act, which require any changes to the City's Local Coastal Program and its Implementation Plan to be further reviewed and considered by the California Coastal Commission before a permanent Ordinance can be enacted by the City;

WHEREAS, the public has expressed interest in developing under this new law and it is necessary to have objective development and design standards in place by the time SB9 becomes effective and further applications for development under this law are submitted to the City for the benefit of the public health, safety and welfare of the City;

WHEREAS, the City of Encinitas, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq., Title 14 the California Code of Regulations) has determined that this Ordinance is statutorily exempt from the provisions of CEQA because this Ordinance is not considered a "project" pursuant to Government Code Section 65852.21(j) and because it can be seen with certainty that this Ordinance will not have an effect on the environment pursuant to Section 15061. Further, CEQA Guidelines Section 15301 exempts from environmental review the addition

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of up to 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the City's General Plan. All of Encinitas single-family residential areas eligible for SB 9 approval meet these two criteria, and it is anticipated that each project undertaken pursuant to SB 9 will not add more than 10,000 square feet of new development; and

WHEREAS, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36934 and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

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

SECTION 2: The City Council hereby finds that this Ordinance is adopted under the authority of SB 9 to apply provisions, including objective development and design standards for an urban lot split and/or a proposed housing development containing two residential units within a single-family residential zone when the project meets certain statutory criteria as further detailed in EXHIBIT 1.

SECTION 3: **Urgency Declaration/Effective Date**. The City Council declares this Ordinance to be an urgency measure, to take effect immediately upon adoption pursuant to California Government Code Sections 36934 and 36937. The facts constituting the urgency are as follows:

a. On September 16, 2021, Governor Gavin Newsom approved Senate Bill 9 (SB9, 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. SB9 was in effect on January 1, 2022.
b. SB 9 specifies that proposed projects and subdivisions cannot be proposed in prohibited locations under Government Code Section 65913.4(a)(6)(B)-(K), such as in an earthquake fault zone, lands under conservation easement, a federally designated flood plain, and high fire hazard severity zones as defined under state law unless specified mitigation measures are imposed to reduce the hazards.
c. SB 9 further restricts the standards and regulations that local agencies, including the City, may impose on qualifying two-unit or subdivision projects. For example, SB 9 specifies that local agencies may impose only objective zoning, subdivision, and design standards that do not conflict with the statutes, but such standards must not physically preclude a unit size of 800 square feet. In addition, SB 9 permits a local agency to deny a proposed qualifying two-unit or subdivision project only if the agency's Building Official makes a written finding based on preponderance of the evidence that the proposed project would have a specific, adverse impact upon public health and safety or the physical environment, which is a very high standard for municipalities to meet under the statute.
d. A number of parcels within the City are within high fire hazard severity zones, floodplains and/or covered by conservation/open space easements. The City has substantial interests in protecting the community against these hazards and restrictions in promoting development projects. In order to protect the health safety

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and welfare of the community it is necessary to ensure that all SB 9 projects comply with existing local fire hazard mitigation measures.

e. The standards contained in the new state law include no objective zoning, subdivision, or design standards. In order to protect the public health safety and welfare of the Encinitas community, it is necessary to ensure that all SB 9 projects comply with the City's existing objective standards which do not conflict with the provisions of SB 9.
f. The City has received multiple public inquiries from architects, developers, and residents regarding SB 9 development projects and the new state law, underscoring the need for the City to develop guidance on the implementation of the requirements of the bill.
g. SB9 allows local agencies to impose objective zoning, subdivision, and design review standards. Because SB 9 was not signed until mid-September, there was insufficient time to process an ordinance as a Zoning Code amendment through noticed hearings before the Planning Commission and City Council and have such ordinance in place by January 1, 2022. Accordingly, the City Council adopted Urgency Ordinance No. 2021-25 and Ordinance No. 2022-04 to extend Urgency Ordinance No. 2021-25. That ordinance is due to expire on December 15, 2022.
h. This Urgency Ordinance will supersede that ordinance and will be in effect until Ordinance No. 2022-17 is in effect after approval by the California Coastal Commission.
i. An urgencymeasure is necessary to protect the public, health, safety, and welfare that would otherwise be threatened by the unrestricted ability to develop property in the City as a matter of right under SB9 without regard to the land use regulations set forth in this Ordinance.
j. The interim urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety because the subdivision of lots and design and construction of single-family residences, duplexes and accessory dwelling units pursuant to Senate Bill 9 (SB9) without adequate standards can cause: land use and site development conflicts and incompatibilities including public safety, visual, privacy, acoustic and aesthetic impacts which would negatively impact the public welfare and the unique quality and character of the City.

SECTION 4: Uncodified Ordinance. This Ordinance shall not be codified in the Encinitas Municipal Code unless and until the City Council so ordains.

SECTION 5: Inconsistencies. Any provision of the Encinitas Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

SECTION 7: Effective Date. This Ordinance will be effective upon adoption and will be in effect until Ordinance No. 2022-17 becomes effective after approval by the California Coastal

Commission.

SECTION 8: Certification. The City Clerk shall certify to the passage and adoption of this Ordinance as required by law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 14th day of December 2022, by the following roll call vote:

AYES: **Ehlers, Hinze, Kranz, Lyndes**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

APPROVED:

DocuSigned by:
A.J. Kranz
DEA18C6BB88E438...
Tony Kranz, Mayor

ATTEST:

DocuSigned by:
Kathy Hollywood
43EC63D34D2448C...
Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Tarquin Preziosi
160D99693D9741D...
Tarquin Preziosi, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly adopted at a meeting of the City Council on this 14th day of December 2022, by the following vote, to wit:

AYES: **Ehlers, Hinze, Kranz, Lyndes**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 14th day of December, 2022.

DocuSigned by:
Kathy Hollywood
43EC63D34D2448C...
Kathy Hollywood, City Clerk

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EXHIBIT 1

TWO UNIT DEVELOPMENT AND URBAN LOT SPLIT REGULATIONS

Purpose.

The purpose of this article is to establish objective standards and regulations to govern the development of qualified Senate Bill 9 subdivisions and development projects on residential zoned properties within the City of Encinitas. The establishment of these regulations will result in the orderly subdivision and development of qualified Senate Bill No. 9 (2021) ("SB 9") projects while ensuring that the new units do not create any significant impacts with regards to public infrastructure or public safety. The regulations are established to implement the requirements under California Government Code Sections 65852.21 and 66411.7.

Definitions.

For purposes of this Chapter, the following definitions shall apply:

ACTING IN CONCERT WITH THE OWNER shall mean a person that has 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 shall mean 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.

COMMON OWNERSHIP OR CONTROL shall mean property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

LOW INCOME HOUSEHOLD has the meaning set forth in Health & Safety Code Section 50079.5.

MINISTERIAL shall mean no discretionary review or public hearing.

SUFFICIENT FOR SEPARATE CONVEYANCE shall mean 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.

SINGLE FAMILY ZONE shall mean any zone in the City's Municipal Code and Specific Plans that only allows one-family dwelling units.

TWO-UNIT RESIDENTIAL DEVELOPMENT shall mean two primary residential units located on a single lot. The residential units may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings.

URBAN LOT SPLIT shall mean a subdivision of an existing parcel into no more than two separate parcels that meets all the criteria and standards set forth in this Chapter.

VERY LOW-INCOME HOUSEHOLD has the meaning set forth in Health & Safety Code Section 50105.

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Applicability.

A. Qualifying Two-Unit Residential Developments. Qualifying two-unit residential developments are as defined in Government Code Section 65852.21. The reductions and exceptions in this section apply only to two-unit residential developments in single-family zones and any development on a lot approved pursuant to Urban Lot Splits provisions described in this Ordinance.

Two-Unit residential developments in single family zones shall be located, developed, and used in compliance with this Chapter.

Prohibitions.

A. Prohibited Development. Two-unit residential development or urban lot split, as specified in state law, shall be prohibited in the following locations and circumstances, pursuant to state law and as further specified below:

1. Historic Resources. Shall not be permitted on a lot located within property included on the State Historic Resources Inventory or the National Register.

2. Rental Units. Shall not include the demolition, substantial redevelopment, 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 subject to any form of rent or price control through a public entity's valid exercise of its police power.
   c. Housing that has been occupied by a tenant in the last three years.
   d. A parcel or parcels 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 of the application submittal.

3. Replacement Housing. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d).

4. Substantial Redevelopment. Shall not include the demolition of 25 percent of the existing exterior walls, unless the replacement building conforms to current development standards in the zoning district, or the replacement of a nonconforming structure is reconstructed in the same location and with the same dimensions and floor area as the existing building.

5. Nonconforming Development. RS11 zoned lots already developed with two or more existing residential units, nonresidential uses, or mixed-use, shall not use the provisions of this section to add floor area, add residential units, or make any other alterations to the buildings or site otherwise prohibited by this Chapter, unless the development complies with all of the standards of this Chapter.

6. Not permitted on a parcel that is any of the following , as identified in Government Code Sections 65913.4(a)(6)(B) to (K), or as amended:

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a. 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.
b. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
c. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code 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 Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development. Two-unit residential development shall not be permitted within the Very High Fire Hazard Severity Zones, unless existing building standards within Very High Fire Hazard Zones include the high fire construction standards adopted or enforced by the City, as determined by the Building Official or the Fire Marshall. No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.
d. A hazardous waste site that is listed 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 or residential mixed uses.
e. 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.
f. 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; or (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.
g. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency

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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.

h. 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.

i. 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).

j. Lands under conservation easement.

B. For urban lot splits, the following criteria must also be met:

1. Parcel has not been established through exercise of an urban lot split, as provided for in this Chapter.

2. 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 as provided for in this Chapter. For the purposes of this criterion, “adjacent parcel” means a parcel sharing any portion of its property line(s) with the parcel being subdivided using the provisions of the urban lot split.

C. Director Finding. The Director, or designee, finds that the proposed development would have a specific, adverse impact on public health and safety or the physical environment that cannot be feasibly mitigated or avoided.

General Requirements.

A. A proposed two-unit residential development shall comply with the following:

1. The development and use of dwelling units in two-unit residential developments shall only be valid if in conformance with this Chapter and permitted under this Chapter.

2. Except where indicated in this Chapter, primary development units shall comply with other zoning and building requirements generally applicable to residential construction in the applicable zone where the property is located.

3. Development standards set forth in a planned unit development or specific plan shall apply to any housing development except that any such planned unit development or specific plan standard cannot be applied if it would either: (1) result in a conflict with standards set forth

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by state law for a housing development; or (2) preclude a housing development that meets the applicable requirements of state law or this Chapter.

4. All local and state building code provisions applicable to dwelling units shall apply to two-unit residential developments. A two-unit residential development shall meet all building code provisions necessary to accommodate separate conveyance of the subject dwelling units.

5. Any owner wishing to modify the number of primary units on a single lot in an approved two-unit residential development must request termination of the use of one of the primary dwelling units and satisfy all zoning and development standards such as floor area and lot coverage.

6. Two-unit residential developments shall be subject to paying development impact fees.

7. Dwellings in a two-unit residential development shall not encroach on any easement.

8. The correction of nonconforming zoning conditions may not be required as a condition of approval.

9. All easements required for the provision of public services and facilities shall be dedicated or conveyed by an instrument in a form acceptable to the Director of the Development Services Department.

10. The City shall not impose regulations that 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 for an urban lot split.

11. Each unit located on a parcel created pursuant to this Chapter shall have vehicular ingress and egress to the public right-of-way, which shall be either through access over land that is part of the parcel or evidenced by a recorded easement in favor of the parcel requiring right-of-way access. Access and provisions for fire protection (including turnouts) consistent with the California Fire Code shall be provided for all structures served by an access easement.

12. The proposed Two-Unit Development shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

13. For a two-unit residential development connected to an onsite wastewater treatment system, the applicant shall provide a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

Number of Units Allowed.

A. When not located on a site subject to an approved or proposed urban lot split: (1) a maximum of two primary units per parcel meeting the requirements of this Chapter are permitted; and (2) either one accessory dwelling unit or junior accessory dwelling unit per primary unit meeting the requirements in Section 30.48.040 of this title is permitted, for a total of up to four units on the subject property.

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B. When located on a site subject to an approved or proposed urban lot split, a maximum of two primary units meeting the requirements of this Chapter are permitted per parcel resulting from the urban lot split, for a total of two primary units on each of the two resulting parcels.

1. Either one accessory dwelling unit or junior accessory dwelling unit per primary unit is permitted, provided all objective development and design standards applicable to the underlying zone in which the project is located are met, including but not limited to lot coverage inclusive of the proposed accessory dwelling units. These proposed accessory dwelling units are not subject to the minimum floor area requirement identified in Section 30.48.040.

2. Should a resulting parcel include only one primary development unit, either one accessory dwelling unit or junior accessory dwelling unit meeting the requirements of Section 30.48.040 of this title is permitted.

Affordable Housing Requirements.

A. All development proposed shall comply with Chapter 30.41 Affordable Housing.

B. When a total of four dwelling units, inclusive of accessory dwelling units, are proposed on a single lot, one of the two accessory dwelling units shall be affordable to a low or very low-income household in perpetuity. The development shall not be permitted to pay in-lieu fees as an alternative to satisfying the affordable housing requirements of Chapter 30.41. This provision shall provide compliance with Section 30.41.050 Inclusionary Housing Requirements. An affordable housing agreement shall be recorded against the residential development prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first.

Objective Development and Design Standards.

A. Two-unit residential developments and Urban Lot Splits are subject to the development standards in this section as adopted and amended from time to time. In addition, the proposed project shall conform to all objective zoning, subdivision, and design standards applicable to the respective residential zoning district in which the project is located, except as expressly provided in this Chapter. Notwithstanding the above, if the application of an objective standard would have the effect of physically precluding the construction of up to two units (each possessing no greater than 800 square feet of floor area) on a single parcel, compliance with that objective standard shall be waived but only to allow up two units 800 square feet each.

1. Allowed Uses. The only uses allowed on parcels on which two-unit residential development is permitted and in the units created under a two-unit residential development shall be residential uses and may not be used for rentals of less than 30 days, and rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.

2. Minimum Lot Size. The minimum size of any newly created parcel through an Urban Lot Split is 1,200 square feet. Both newly created parcels shall be of approximately equal lot area, which for purposes of this paragraph shall mean that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. The following areas are excluded from the calculation of lot area for the purposes of an urban lot split:

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a. Areas of a lot that are a watercourse, which consists of that portion of the creek, stream or watercourse located within the tops of its banks.
b. Areas of lots that contain slopes greater than 25%.
c. Areas of lots that contain flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future rights-of-way and easements for public or private streets/roads.

3. Setbacks. A minimum setback of four feet, or the applicable setback for the zoning district, whichever is less, is allowed from the rear and side property lines, except:
   a. 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.
   b. On parcels with a lot width of 40 feet or less that proposes both a Two-Unit Residential Development and an Urban Lot Split, a zero-side yard setback shall be allowed along the proposed lot line only.
   c. On parcels with a lot depth of 100 feet or less with alley access that proposes both a Two-Unit Residential Development and an Urban Lot Split, parcels are allowed up to zero rear yard setback provided that, if parking is proposed it meets the standards for parking off an alley as outlined in the Off-street Parking Design Manual.

4. Height. Maximum height for a two-unit residential development shall be that specified for the zoning district, however any portion of a new dwelling unit constructed within a reduced setback from the underlying zone shall be permitted to build to a maximum 16-feet in height. In no case shall the building exceed the height of the underlying zone to allow the development of two 800 square foot units, when it is feasible to modify other development standards to allow the development.

5. Lot Coverage. Maximum site coverage for a two-unit residential development shall be that specified for the zoning district in which the two-unit residential development is located. On parcels where the proposed two-unit development exceeds the maximum lot coverage to allow the minimum two 800 square feet residential units, the pervious coverage shall be at least 75 percent of the remaining lot area.

6. Trash and Storage. Areas for trash and outdoor storage shall be provided on each property. Such areas shall be designed to conceal all trash and stored material from public view.

7. Unit Configuration. The new units in a two-unit residential development may be permitted in the following configurations. For the purpose of this section, “unit” means any primary dwelling unit, not including accessory dwelling units or junior accessory dwelling units.
   a. One new unit incorporated entirely within an existing residential unit.
   b. One new unit incorporated entirely within an existing accessory building, including garages.
   c. One new unit attached to and increasing the size of an existing residential unit or an existing accessory building.
   d. One new unit detached from and located on the same lot as an existing unit. A unit that is attached to another detached accessory building, but not another residential unit, or is attached by a breezeway or porch, is considered detached.
   e. Two newly constructed attached units or two detached residential units on a vacant lot.
   f. A two-unit residential development in any of the configurations described above may be added to a newly created lot concurrently with an approval of a parcel map for an urban lot split.

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8. Addressing. All addresses for residential lots using a shared driveway or pedestrian pathway must be displayed at their closest point of access to a public street for emergency responders to the satisfaction of the City Fire Marshal.

9. Pathways. Pedestrian pathways of a minimum width of 3 feet shall be provided from the right-of-way to all primary entryways and common areas, such as common open space areas, guest parking, mailboxes, and centralized trash enclosures.

10. Parking.

    a. One off-street parking space, which may be covered or uncovered, is required for each unit in a two-unit residential development, except as exempted below.
        i. No parking is required if the parcel is located within a half (1/2) a 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 if there is a designated parking space for a car share vehicle located within one block of the parcel.
    b. When an existing garage, carport, or other covered parking structure is converted or demolished in order to construct a new unit, at least one replacement parking space, which may be covered or uncovered, must be provided for each unit, unless the project is exempt from parking requirements.
    c. The location of the required parking space(s) shall not obstruct the required parking of another dwelling unit. Each unit must have its own parking space which can be accessed without crossing over or encroaching upon the other unit's parking space. Tandem parking shall only be allowed on lots with a width less than 40 feet.

11. Access to a Public Street. Every dwelling unit shall have permanent means of access to a public street. When automobile parking is required or proposed, vehicular access to a public street or alley shall be provided by a driveway that complies with the minimum width, slope, materials, and other standards consistent with the California Fire Code and the City's Off-street Parking and Street Design Standards.

12. Storm Water Management. Two-residential unit development must comply with the City's Storm Water Runoff Requirements pursuant to Title 20 Stormwater Management.

13. Landscaping.

    a. A complete application for a Two Unit Residential Development shall include a landscape plan which must comply with the City's Water Efficient Landscaping Ordinance (EMC §23.26) and all other applicable objective development and design standards.
    b. Front and side yard setbacks shall be at least 60 percent pervious coverage.

14. Privacy Standards. The construction of a new unit where any portion of the proposed construction is either: two stories tall or 16 feet or taller in building height, shall comply with the following:
    a. Upper story unenclosed landings, decks, and balconies greater than 20 square feet, that face or overlook an adjoining property, shall be located a minimum of 15 feet from the interior lot lines.

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b. Upper story unenclosed landings, decks, and balconies, that do not face or overlook an adjoining property due to orientation or topography, may be located at the minimum base zone interior setback line.

15. Private Open Space. Each primary unit shall include a minimum of 100 square feet of private exterior open space per dwelling unit for both ground floor units and units contained wholly on the second floor. For units wholly on the second floor this open space may be provided by outdoor decks.

16. Utilities. Private underground utility services shall be available for extension to and connection with all units in a two-unit residential development. All dwelling units in a two-unit residential development shall connect to services. All existing and proposed utility distribution facilities (including electric, telecommunications and cable television lines) installed in and for the purpose of supplying service to any dwelling unit(s) proposed as part of a two-unit residential development shall be installed underground. Equipment appurtenant to underground facilities, including surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts, shall also be underground.

17. Subdivision Map Act. The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410)), except as otherwise expressly provided in Government Code Section 66411.7. Notwithstanding Government Code Section 66411.1, no dedications of rights-of-way or the construction of offsite improvements may be required as a condition of approval for an Urban Lot Split, although easements may be required for the provision of public services and facilities.

Permits Required.

A. A proposal to construct a two-unit residential development shall be subject to first obtaining all applicable permits. The Director or his/her designee shall review the application for completeness pursuant to the requirements of Government Code Section 65943. After determination of completeness, the Director or designee shall provide the applicant with written documentation identifying any inconsistencies with the objective standards applicable to two-unit residential developments. The Director or designee shall render a ministerial decision without a public hearing on a Two-Unit Development application upon such application being deemed complete. Notwithstanding anything to the contrary set forth in this code, the Director's or designee's action to grant or deny an application for a Two-Unit Development application is final and not subject to appeal, except as identified below for a Coastal Development Permit.

B. Design Review. All two-unit residential developments shall be subject to the adopted objective design standards (Chapter 23.08) in effect at the time a complete application is submitted, as applicable to either new construction or exterior alterations, which shall be reviewed ministerially by the Development Services Director, or designee.

C. Urban Lot Split Map. An urban lot split shall require the submittal of an application for a parcel map prepared in accordance with the provisions of the Subdivision Map Act (Government Code Section 66410 et. seq.) and Title 24 Subdivisions. Within 60 calendar days after a complete application for an urban lot split map is filed with the City, the Development Services Director, or designee, shall ministerially approve or disapprove such map. The time limit specified in this paragraph may be extended by mutual consent of the applicant and the city. If the urban lot split

map is denied, the reasons therefore shall be stated in the notice of denial. Notwithstanding anything to the contrary set forth in this code, the Director's or designee's action to grant or deny an application for an urban lot split map is final and not subject to appeal, except as identified below for a Coastal Development Permit.

D. Coastal Development Permit. Where a Coastal Development Permit is required pursuant to EMC Chapter 30.80 for Two-Unit Residential Developments and Urban Lot Splits, the following process shall apply:

   1. Applications shall be reviewed by the Director of Development Services, or designee, without a public hearing in accordance with Government Code Sections 65852.21 and 66411.7.When a proposed development only involves the addition of a Two-Unit Residential Development or an Urban Lot Split pursuant to the sections above, the Director of Development Services Department, or designee, shall not issue a decision on the application until at least 10 calendar days after notice having been given pursuant to EMC Section 30.80.080(C). The Director of Development Services, or designee, may receive written comments regarding the application and consider such written comments during the review of the application, but the Director of Development Services, or designee, shall not conduct a public hearing on the application. The decision of the Director of Development Services, or designee, concerning an application for a Coastal Development Permit pursuant to this Section shall constitute the final action of the City.

   2. Following final action on a coastal development permit by the Director, a notice of final action shall be prepared pursuant to 30.80.140. In the coastal zone areas appealable to the California Coastal Commission, the decisions of the Director of Development Services, or designee, made pursuant to this Section may be appealed to the California Coastal Commission in accordance with EMC Section 30.80.160.

   3. Actions on applications shall be consistent with the provisions of the applicable zone and the policies and development standards of the City of Encinitas certified Local Coastal Program and Chapter 3 of the California Coastal Act. Review of a coastal development permit application for a Two-Unit Residential Development and/or an Urban Lot Split consistent with the Sections above, shall comply with all procedures and development standards of EMC Chapter 30.80 (Coastal Development Permit), aside from the requirements to conduct a public hearing and City appeals process.

E. A development is not eligible for a ministerial approval as a two-unit residential project if it includes a request for an exception to any objective standards, beyond those necessary to obtain an 800-square foot unit, by applying for a variance, modification, exception, waiver, or other discretionary approval for height, density, setbacks, open yard, land use, or similar design or development standard.

Covenant.

Prior to the issuance of a building permit for a two-unit residential development dwelling unit, the property owner shall record a covenant with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The covenant shall notify future owners of the approved size and attributes of the units and minimum rental period restrictions. The covenant shall also reflect the number of units approved and provide that no more than two primary residential units and two accessory dwelling units, for a total of four units, may be created on any single parcel or on any two

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parcels created using urban lot split subdivision procedures. If an urban lot split subdivision was approved, the covenant shall provide that the parcels may not be further subdivided using the urban lot split provisions, and no variances shall be permitted other than those code deviations expressly allowed by this Chapter. This covenant shall remain in effect so long as a two-unit residential development exists on the parcel.

Affidavit.

Prior to issuance of a parcel map approval for Urban Lot Split, the applicant shall provide a signed 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 approval of the lot split, the form and content of which is satisfactory to the City Attorney. This subsection shall not apply to an applicant that is a "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 is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

Building Permit Required.

Two-unit residential developments shall comply with applicable state and local building codes and shall require approval of a building permit. The City shall ministerially approve or disapprove a complete building permit application for a two-unit residential development in compliance with state law and this section. Building Permits are not appealable for Two-Unit Residential Developments.

Denial.

A. Denial of a Two-Unit Residential Development. The Development Services Director, or designee, shall not approve a Two-Unit Residential Development under any of the following circumstances:

   1. The project proposes creation of more than two units total as described in Section 30.18.060 of Two-Unit Residential Development.

   2. The urban lot split does not meet the requirements of Title 30 Zoning.

   3. Based on a preponderance of the evidence, the building official finds that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Government Code 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.

   4. The Two-Unit Residential Development does not comply with applicable, objective requirements imposed by Title 30 Zoning, City's Design Guidelines, and this title. Any decision to disapprove a Two-Unit Residential Development shall be accompanied by a finding identifying the applicable, objective requirements imposed.

B. Denial of an Urban Lot Split Map. The Development Services Director, or designee, shall not approve an urban lot split map under any of the following circumstances:

   1. The land proposed for division is a lot or parcel which was part of an urban lot split that the City previously approved.

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2. The subdivision proposes creation of more than two lots, or more than four units total among the two lots as described in Section C of Two-Unit Residential Development described above.

3. The urban lot split does not meet the requirements of Chapter 24 Subdivisions.

4. Based on a preponderance of the evidence, the building official finds that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Government Code 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.

5. The urban lot split does not comply with applicable, objective requirements imposed by the Subdivision Map Act, Chapter 24 Subdivisions, and this title. Any decision to disapprove an urban lot split map shall be accompanied by a finding identifying the applicable, objective requirements imposed by the Subdivision Map Act, Chapter 24 Subdivisions, and this title.