Exhibit C

Approved by City Manager:

CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: APRIL 6, 2022

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: KINDON MEIK, CITY MANAGER
MATTHEW T. SUMMERS, CITY ATTORNEY

SUBJECT: DISCUSSION OF ORDINANCE NO. 2022-398, ADDING SECTIONS 17.82 (URBAN LOT SPLITS) AND 17.84 (MINISTERIAL DESIGN REVIEW PERMITS) TO TITLE 17 (LAND USE AND DEVELOPMENT) OF THE CALABASAS MUNICIPAL CODE PER SENATE BILLS 9 AND 10

MEETING DATE: APRIL 27, 2022

STAFF RECOMMENDATION:

Staff recommends that the City Council discuss Ordinance No. 2022- adding Sections 17.82 (Urban Lot Split) and 17.84 (Ministerial Design Review Permits) to Title 17 (Land Use and Development) of the Calabasas Municipal Code and provide direction whether to move forward with the proposed ordinance through public hearings at the Planning Commission and City Council.

BACKGROUND:

On September 16, 2021, the Governor signed into law Senate Bill (SB) 9, the "California Housing Opportunity and More Efficiency (HOME) Act." SB 9 adds Sections 65852.21 and 66411.7 to the Government Code. SB 9 requires cities 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. The law's net effect is to allow up to four units on one original

single-family residential parcel.

The purpose of this Ordinance is to establish objective zoning, subdivision, and design standards to promote the orderly subdivision of parcels and development of housing under SB 9. SB 9 took effect on January 1, 2022. The City has not received any applications for lots splits or to build units under SB as of April 5, 2022.

The proposed ordinance has not gone through the full public hearing process for the Planning Commission and City Council and will need to come before the Planning Commission before returning to the City Council if the City Council so directs.

Senate Bill 9 – Ministerial Design Review for Up to Two Units Per Parcel

SB 9 (Atkins, D-San Diego) amends the Subdivision map Act and the California Planning and Zoning Law to ministerially approve a housing development containing up to two residential units on a lot in single-family residential zones, and permitting a lot split of a single-family zoned lot, which effectively expands the potential density of the original single-family lot from three units (assuming a primary unit, JADU and detached ADU) to a new maximum of four units on two parcels.

<u>Application of SB 9:</u>

SB 9 requires local agencies to ministerially approve qualifying applications for a "housing development" with up to two residential units on one legal parcel within a single-family zoning district. The following structures qualify as a "housing development" under SB 9:

- Single-family home;
- Duplex;
- One existing unit and one new unit; or
- Two new units (one of which can be an ADU or a JADU).

The statute requires the City to ministerially review applications meeting certain standards without public notice, public hearing, or discretionary review.

<u>Anti-Displacement Prevention Measures:</u>

Senate Bill 9's protections do not apply if the proposed development would require the demolition or alteration of housing:

- Subject to rent or price control;
- Subject to recorded covenant, ordinance, or law that restrict rent to affordable housing levels;
- Occupied by tenants within the last 3 years from the date of application; or

- Taken out of the rental market pursuant to the Ellis Act within the last 15 years.

Default State Development Standards & Restrictions:

SB 9 imposes the following default development standards:

- 4-foot setbacks for side and rear yards; and
- One off-street parking space per unit.

SB 9 allows the City to adopt additional objective zoning, subdivision, and design review standards, unless those standards would physically preclude the construction of at least one of the two units that is at least 800 square feet in size.

It requires the City to ensure that these units cannot be rented for less than 30 days.

It allows the City to deny a ministerial design review permit 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, unmitigable, adverse impact upon public health and safety or the physical environment.

Senate Bill 9 - Urban Lot Splits – Two Parcels Out of One Existing Parcel By Right

Applicability:

SB 9 also requires local agencies to process urban lot splits on parcels zoned for single-family residential development if:

- The lot is split into two parcels of relatively equal size, where one of the lots is no less than 40% of the size of the original parcel;
- The parcel has not previously been subject to an urban lot split;
- Both lots are at least 1,200 square-feet after the lot split;

The statute requires the City to ministerially review such applications without public notice, public hearing, or discretionary review.

Density:

Under SB 9, up to two dwelling units may be constructed on each resulting lot, for a maximum of four new dwelling units across the two new lots, in place of the one original single-family lot with a maximum three units (primary, accessory dwelling unit, and junior accessory dwelling unit). A developer's application cannot seek to take advantage of the ADU law, the ministerial design review process, and urban lot splits to build more than two units per lot. In other words, if an applicant splits a lot

through the urban lot split and constructs one single-family dwelling unit on each, the applicant will be limited to one additional SB 9 unit, accessory dwelling unit, or junior accessory dwelling unit per lot for a total maximum of four units across the two lots.

Affidavits:

Cities may require applicants for lots splits to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of three years, but cannot impose any additional owner occupancy requirements on lot splits, such as an affordability covenant. This provision is intended to incentivize the development of market-rate units and disincentivize real estate speculation and corporate development of units in single-family residential zones.

Exceptions to Ministerial Design Review Permits and Urban Lot Splits

SB 9 does not apply to parcels located within an historic district or containing an historic landmark property (on a state or local register). The City currently has 7 properties listed as Designated Historical Landmarks, which are all exempt from SB 9. The City does not currently have any historic districts. If a neighborhood were to qualify as a historic district and be so designated by the City Council, then that new historic district would be exempt from SB 9.

SB 9 exempts environmentally sensitive areas as specified in Government Code Section 65913.4(a)(6)(B)-(K), such as coastal zones, wetlands, or high or very high fire hazard severity zones, unless the site meets adopted fire hazard mitigation measures required by existing building standards. Although Calabasas is located inside a very high fire severity zone, the City is not automatically exempt from SB 9 as every new structure in Calabasas must meet California State Building and Fire Code Standards and state and county fire mitigation measures.

Senate Bill 9 and Homeowners Associations

Senate Bill 9 does not address mandatory homeowners' associations ("HOAs"). Since SB 9 only limits the power of cities to impose "objective zoning standards" - its purposeful omission of private groups like HOAs still allows HOAs to enforce their covenants, conditions, and restrictions — including any prohibitions on lot splits or duplexes. This is akin to the old rule for ADUs, until AB 670 became law, which explicitly subjected HOAs to the State's ADU laws. In other words, because the legislation is framed as limiting the power of cities, it needs to also expressly limit the power of HOAs and SB 9 does not do so. Mandatory HOAs can exempt themselves from SB 9 – either through their current CC&Rs, or, if needed, by amending their current CC&Rs.

HOAs will need to, individually and through their own boards of directors and counsel, determine whether their existing CC&Rs prohibit lot splits, and if not, then determine whether and how to lawfully adopt a rule or bylaw prohibiting lot splits. As an example, if the CC&Rs contain a provision that no lot may be further subdivided, that should be sufficient, under SB 9 as it reads now, to prohibit SB 9-protected lot splits. CC&R Language that added that any new residential dwelling units are prohibited would also be sufficient to prohibit SB 9-protected duplexes. Both HOAs with existing language to that effect and those with no similar protections could also act to amend their CC&Rs, through the required procedures, to adopt an express prohibition on any lot splits or duplexes protected by SB 9, and even also SB 10, as a belt-and-suspenders there too.

Once confirmed as currently extent, or newly adopted, it would then be up to each HOA, not the City, to enforce that contractual prohibition on lot splits. The City has already, at the direction of Council, provided notice to each HOA of this exception to SB 9 and their power to prohibit lot splits, so each HOA is informed as to their options and powers.

Senate Bill 10: The Light Touch Density Act

Senate Bill 10 allows, but does not require, cities to pass an ordinance allowing for the zoning of any parcel for up to 10 units of residential density per parcel in urban infill or transit-rich sites.

PROPOSED SB 9 AND SB 10 ORDINANCE

The proposed ordinance would add two sections to the Municipal Code: Section 17.82 (Urban Lot Splits) and Section 17.84 (Ministerial Design Review). The proposed ordinance also adds a legislative declaration of policy that the City Council expressly declines to exercise the up-zoning authority provided by Senate Bill 10. Both ordinances would be automatically repealed if the enabling law is ever ruled unconstitutional by a court or repealed by the Legislature.

Urban Lot Splits:

The proposed ordinance states Senate Bill 9 lot splits are limited to single-family zones, namely the RS (Residential, Single-Family), RR (Rural Residential), and RC (Rural Community) districts. The proposed ordinance would also implement limiting provisions of SB 9, such as that a parcel is not eligible for a lot split if was previously subject to a lot split or would require the demolition of affordable or tenant-occupied housing. As stated above, one existing parcel could be subdivided into two parcels, and those two parcels developed with two units, for a total maximum of four units on one original lot.

The proposed ordinance imposes development standards on SB 9 lot splits, including lot size, unit size, and fire safety and access standards. The resulting lots would have to be approximately equal in size, would need access directly or by easement to a street, and would have to each be at least 1200 square feet in size. All of the units then developed on an SB 9 split lot could only be up to 800 square feet in size.

Under the terms of the proposed ordinance, the applicant is required to sign a covenant stating that all resulting parcels will be used for residential use, no short-term rentals are allowed, and the owner must occupy one of the housing units on the subdivided site for at least three years.

Finally, the proposed ordinance would allow decisions of the director to be appealed to the Planning Commission.

Ministerial Design Review for One or Two Unit Projects:

The proposed ordinance states Senate Bill 9 units can only be built in single-family zones, namely the RS (Residential, Single-Family), RR (Rural Residential), and RC (Rural Community) districts. The proposed ordinance would also implement limiting provisions of SB 9, such as that a parcel is not eligible for an SB 9 unit if it would require the demolition of affordable or tenant-occupied housing. As stated above, one existing parcel could be subdivided into two parcels, and those two parcels developed with two units, for a total maximum of four units on one original lot.

The proposed ordinance imposes development standards on new SB 9 unit applications, including fire safety standards, height and floor area standards consistent with the underlying zoning, open space area, parking, setback, and aesthetic standards. SB 9 units are limited to 800 square feet. Applicants are also required to comply with the City's historic preservation and oak tree ordinances.

Finally, the proposed ordinance would allow decisions of the director to be appealed to the Planning Commission.

CEQA / ENVIRONMENTAL

Pursuant to Government Code section 65852.21, subdivision (j), and Government Code section 66411.7, subdivision (n), adoption of this Ordinance is not a project for purposes of the California Environmental Quality Act (CEQA) and is statutorily exempt. Further, this Ordinance is not subject to CEQA because it does not involve exercise of a discretionary power under 14 CCR section 15060, subdivision (c)(1) as the ordinance is being adopted in response to a state mandate.

PENDING LEGAL CHALLENGE TO SB 9:

The charter cities of Redondo Beach, Torrance, Carson, and Whittier filed a lawsuit challenging the legality of SB 9.[1] A trial setting conference has been set for July 12, 2022 and the case is currently assigned to Judge Mary H. Strobel.

Despite receiving a letter from the Attorney General questioning the legality of its SB 9 ordinance, particularly its exemption of both historic and landmark districts, Pasadena declined to join the lawsuit. The charter cities allege that SB 9 is not reasonably related to its stated goal of ensuring access to affordable housing and, therefore, is unconstitutional. The cities also allege that the law is not narrowly tailored to avoid unnecessary interference in local governance. The cities point out that while a single SB 9 housing project may not have a significant public health or safety impact, the cumulative impacts of multiple SB 9 projects within a single neighborhood could be significant and SB 9 deprives cities of the ability to regulate these impacts along with parking and water and sewer capacity. The cities contend that SB 9 will strain their resources, lead to uninvent development, and disrupt housing element and planning. Although Calabasas is not a charter city, staff is monitoring the case and will keep the Council and community apprised as it develops. So too as other legal action proceeds, as the Attorney General has threatened a few cities with lawsuits over their SB 9 ordinances. The proposed ordinance contains an automatic repeal clause providing that, if SB 9 is ever repealed or held unconstitutional or unlawful, then the ordinance will be automatically repealed.

POTENTIAL FISCAL IMPACTS:

The City does not anticipate any direct fiscal impacts from adoption of this ordinance, as the costs of drafting and providing for public hearings on the ordinance can be accommodated within the existing budget. The larger fiscal impacts are difficult to estimate with precision. If Senate Bill 9 spurs additional development, then the City would benefit from limited additional property tax revenue. However, the City maintains a high level of services and is likely to thus incur more costs for providing services to new residents than it would recover through additional tax revenue. Estimating this state-mandated effective deficit is difficult, however, as it is not known how many projects are likely to come in for development through SB 9.

REQUESTED ACTION:

Discuss the proposed Ordinance No. 2022- and provide direction to staff regarding whether or not to move forward to public hearings on the proposed Ordinance at the Planning Commission and City Council

ATTACHMENTS:

[1] Case No. 22STCP01143 in the Los Angeles County Superior Court.

Attachment A: City Council Ordinance
Attachment B: Charter City SB 9 Lawsuit Verified Petition for Writ of Mandate And Complaint For Declaratory And Injunctive Relief