

**ORDINANCE NO. 2022-03**

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA ENACTED PURSUANT TO GOVERNMENT CODE SECTION 65858 ESTABLISHING EMERGENCY REGULATIONS RELATED TO URBAN LOT SPLITS AND HOUSING UNITS BUILT IN ACCORDANCE WITH SENATE BILL 9, DECLARING THE URGENCY THEREOF AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15061(B)(3) AND GOVERNMENT CODE SECTION 65852.21(J)**

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1. Legislative Findings.** The City Council of the City of Temecula does find, determine and declare that:

A. California state law allows a City to adopt an interim ordinance that imposes temporary restrictions on the approval of land use entitlements that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body or planning commission intends to study within a reasonable time. Pursuant to California Government Code Section 65858, this interim urgency zoning Ordinance must be adopted by not less than a four-fifths vote of the City Council and will be in effect for forty-five (45) days from the date of its adoption. The City Council may consider an extension of this interim Ordinance pursuant to the legal requirements provided in Government Code Section 65858.

B. On September 16, 2021 California Governor Gavin Newsom signed SB 9, entitled the “California Home Act”, into law, which establishes a series of new regulations to allow for ministerial approval of two units on parcels located in single-family residential zones as outlined in Government Code Sections 65852.21 and 66411.7. SB 9 took effect on January 1, 2022.

C. 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, if the two-unit or subdivision project meets certain statutory criteria. 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.

D. SB 9 further restricts the standards and regulations that local agencies may impose on qualifying two-unit or subdivision projects. In addition, SB 9 permits a local agency to deny a proposed two-unit or subdivision project only if the agency 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.

E. The City of Temecula's natural beauty, high quality of life, and diverse residential communities are uniquely valuable public resources. Some parcels within the City are also within high fire hazard severity zones, or other locations where increased density may cause safety concerns. The City has substantial interests in protecting the community against these hazards. Unregulated or disorderly development represents an ever-increasing and true threat to the health, welfare and safety of the community.

F. 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. The default standards contained in the new state law lack sufficient objective zoning, subdivision, and design standards to preserve the health, welfare and safety of the community. The City of Temecula desires to clarify the objective zoning and design standards that will apply to the ministerial review of qualifying urban lot splits and residential developments in the City's single-family residential zones.

G. The City Council is concerned that under the City's current zoning standards and current general plan policies, the approval of qualifying urban lot splits and residential developments pursuant to SB 9 might cause a disproportionate public health, safety and welfare impact to the City of Temecula community and to its residents - including potential detrimental impacts on vehicular and pedestrian safety, emergency response, and housing affordability - without compensating benefits to the community.

H. The City Council finds that studies need to be conducted to determine the proper location, concentration, regulations, and other land use regulatory controls that need to be in place in order to ensure that the approval of qualifying urban lot splits and residential developments pursuant to SB 9 does not burden the City and its residents and that the procedures for allowing such uses need to be studied to enable the City to address and mitigate potential burdens on the communities affected by these developments.

I. The City Council finds that in order to best protect the immediate threat to the public health, safety, and welfare, it is necessary for the City to immediately study and analyze the implications of approving qualifying urban lot splits and residential developments pursuant to SB 9 in the City.

J. To accomplish this, the City Council intends to impose, on an urgency basis, emergency regulations related to urban lot splits and residential developments proposed pursuant to SB 9.

K. These emergency regulations will allow City staff, the City Council, property owners, and the people of the City of Temecula sufficient time to analyze the burdens that urban lot splits and residential developments proposed pursuant to SB 9 will have on the City so that the appropriate land use regulatory controls and zone changes can be adopted if needed. During this period, the City will be able to analyze their potential impacts on the public health. The City Council finds that these studies will help the City Council and the City's Planning Department

determine how best to prevent impacts to the public health, safety and welfare. The City Council further finds that these emergency regulations will allow time to evaluate the City's General Plan designations and policies, Housing Element programs, zoning measures or development standards and develop appropriate regulations for qualifying urban lot splits and residential developments in the City to achieve a reasonable level of assurance that there will not be serious negative impacts to the overall community and ensure positive outcomes for the City's residents, business community, property owners, and developers.

L. The City Council finds that it is necessary that this interim Ordinance take effect immediately as there is a current and immediate threat to the public health, safety and welfare. Without this interim Ordinance, urban lot splits and residential developments proposed pursuant to SB 9 may be established in the City that may be in conflict with regulations ultimately adopted. Without this interim Ordinance, such urban lot splits and residential developments may be allowed to develop within the City that are incompatible with surrounding neighborhoods. Therefore, a current and immediate threat to the public safety, health and welfare exists.

M. For the reasons specified above and all the evidence in the record, the City Council finds that there is a current and immediate threat to the public health, safety and welfare caused by the approval of qualifying urban lot splits and residential developments pursuant to SB 9 in the City, and that the approval of any entitlement to allow such type of use would constitute a current and immediate threat to the public health, safety, and welfare of the residents of the City.

**SECTION 2. Adoption as an Urgency Interim Zoning Ordinance.** This interim Ordinance is adopted as an urgency zoning ordinance pursuant to the provisions of Government Code Section 65858(a), and shall be effective immediately upon its adoption. Based upon the findings set forth in Section 1 of this interim Ordinance, the City Council finds and determines that the adoption of this interim Ordinance as an urgency ordinance is necessary for the immediate preservation of public health, safety and welfare pursuant to the requirements of Government Code Sections 65858(a) and 36937(b).

**SECTION 3. Prohibition on SB 9 Projects that Fail to Comply with Certain Standards.** Notwithstanding any other ordinance or provision of the Temecula Municipal Code, SB 9 Development Projects, as defined herein, are prohibited unless the project complies with the following requirements:

A. **Definitions.** For the purposes of this interim Ordinance, certain words and phrases are defined as follows:

1. "Accessory Dwelling Unit" has the same meaning ascribed in California Government Code Section 65852.2, as the same may be amended from time to time.
2. "Junior Accessory Dwelling Unit" has the same meaning ascribed in California Government Code Section 65852.22, as the same may be amended from time to time.
3. "Primary Residence" means the original dwelling on the property.

4. “SB 9” means a state law passed by the California state senate and approved by the Governor on September 16, 2021. The bill amends Government Code section 66452.6 and adds Government Code sections 65852.21 and 66411.7.
5. “SB 9 Development Project” consists of an Urban Lot Split or development project proposed pursuant to the regulations set forth in SB 9.
6. “Urban Lot Split” means a parcel map subdivision permitted pursuant to the regulations set forth in SB 9 that creates no more than two parcels of approximately equal size.

B. Applicability: Ministerial Compliance Review.

1. Notwithstanding any other provision of the Temecula Municipal Code, the provisions of this interim Ordinance shall apply to SB 9 Development Projects and Urban Lot Splits that are proposed for lots in the Hillside Residential (HR), Rural Residential (RR), Very Low Density Residential (VL), Low Density Residential (L-1 and L-2), and Low Medium Density Residential (LM) zoning districts, as well as areas within Specific Plans and Planned Development Overlay Areas that are limited to single family residential uses. Except as expressly provided in this interim Ordinance or SB 9, all other regulations of the underlying zone of a property developed pursuant to SB 9 shall apply, along with all other applicable regulations from the Temecula Municipal Code.
2. Proposed SB 9 Development Projects shall be subject to ministerial review by the Community Development Director or his designee to determine whether the criteria for approval have been met. An Urban Lot Split shall be processed as a parcel map, but no discretionary review or public hearing shall be conducted if all required criteria have been met.
3. Notwithstanding Government Code Section 66411.1, 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 for an Urban Lot Split.
4. Applicants are required to submit an application, including any maps, records, or other documents required by the Community Development Director. Applicants must provide a sworn statement affirming eligibility with SB 9 regulations.
5. The City may, at the applicant’s expense, conduct independent inquiries and investigation to ascertain the veracity of any or all portions of the sworn statement.

C. General Requirements. A property owner seeking approval of an SB 9 Development Project shall comply with the following general requirements:

1. SB 9 and all objective requirements of other applicable state law including the Subdivision Map Act.
2. The Temecula Municipal Code, including Titles 16 (Subdivisions), 15 (Buildings and Construction) and 17 (Zoning), except as expressly provided in SB 9 or in this interim Ordinance.
3. Execution and recording of a covenant, supplied by the City and subject to the approval of the City Attorney, that contains the following provisions:
  - a. Non-residential uses on the site shall be prohibited;
  - b. The short term rental for periods less than 30 days of any units on the site shall be prohibited as provided in Section 17.06.030;
  - c. Any subsequent Urban Lot Split of land that was previously subdivided with an Urban Lot Split shall be prohibited;
  - d. Except as provided in Government Code Section 66411.7 for community land trusts and qualified nonprofit corporations, the owner of the property for which an Urban Lot Split is proposed shall sign an affidavit stating that the owner intends to occupy one of the housing units as their principal residence for at least three years from the date of the approval of the Urban Lot Split;
  - e. Ongoing compliance with all SB 9 requirements and restrictions shall be required;
  - f. Access to the public right-of-way shall be maintained in perpetuity; and
  - g. All required parking shall be maintained.
4. If the SB 9 Development Project involves an Urban Lot Split, one of the two parcels created shall include a deed restriction for one income restricted dwelling unit that shall be rented or leased at an affordable rent for very low, low or moderate-income households (as defined in Health and Safety Code Section 50053). The deed restriction shall remain in place for a period of not less than fifty-five years. Upon request from the City, the property owner shall furnish a copy of the rental or lease agreement for the deed restricted unit.

D. Objective Standards. All SB 9 Development Projects shall comply with the following objective standards:

1. All new development resulting from an urban lot split must comply with the City's Objective Design Standards adopted by City Council (Ordinance 2022-02, and City Council Resolution 2022-08 and their successor

ordinances and resolutions), to the extent those standards are consistent with SB 9 and this Interim Ordinance.

2. One enclosed or partially enclosed parking space is required for each unit created pursuant to the regulations in SB 9 and this interim Ordinance, unless the parcel upon which the unit is created is within one-half mile walking distance of a high quality transit corridor or a major transit stop or there is a car share vehicle located within one block of the project. Required parking for an Urban Lot Split lot shall be accessed via an alley, if there is an alley adjacent to the lot.
3. The new lot line must be a straight line starting from the front property line to the rear property line, or side if it is a corner lot. There shall be no curves or angles when subdividing a lot.
4. Non-public utility electrical elements such as wires, conduits, junction boxes, transformers, ballasts, and switch and panel boxes shall be concealed from view from adjacent public rights-of-way.
5. All flashing, sheet metal vents, and pipe stacks shall be painted to match the adjacent roof or wall material.
6. Pedestrian access to a public street or alley shall be provided with an exterior pedestrian pathway from the primary entrances of each unit to the adjoining sidewalk, street, or alley.
7. More than 25 percent of the exterior structural walls of a Primary Residence shall not be demolished if the Primary Residence has been occupied by a tenant in the three years prior to the submission of an SB 9 Development Project application.
8. No unit created pursuant to the regulations in SB 9 and this interim Ordinance shall exceed 16 feet and one story in height.
9. No unit created pursuant to the regulations in SB 9 and this interim Ordinance shall be more than 1,200 square feet in floor area. For the purposes of this interim Ordinance, basements shall count as floor area.
10. Any units created pursuant to the regulations in SB 9 and this interim Ordinance shall have a minimum four foot setback from all side and rear lot lines except as allowed by Government Code Section 65852.21.
11. Any units created pursuant to the regulations in SB 9 and this interim Ordinance shall be separated from any other units on the same lot by at least 10 feet.
12. An SB 9 Development Project shall not require the demolition or alteration of any of the following:

- 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 through a public entity's valid exercise of its police power.
  - c. Housing that has been occupied by a tenant in the three years prior to the submission of an SB 9 Development Project application.
  - d. Housing units removed from the rental market under the Ellis Act within the 15 years prior to the submission of an SB 9 Development Project application.
13. A SB 9 Development Project shall not be permitted on a parcel located in:
- a. 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 State Department of Conservation.
  - 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 determined by the State 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 State Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code 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 Government Code Section 65962.5 or a hazardous waste site designated by the State Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, unless the State Department of Public Health, State Water Resources Control Board, or State Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
  - e. 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 of the Government Code.

- f. 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, unless either of the following are met: (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the City, or (2) 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. A regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, 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.
- 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.
- k. A historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public



Resources Code, or a site that is designated or listed as a local landmark or historic property or district by the City.

14. SB 9 projects shall comply with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), the MSHCP implementing agreement, and pay any applicable fees including any local development mitigation fee.
15. An Urban Lot Split shall comply with SB 9, the standards set forth above, and the following standards:
  - a. No lot resulting from an Urban Lot Split shall be smaller than 1,200 square feet.
  - b. No lot resulting from an Urban Lot Split shall have more than two residential units inclusive of any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.
  - c. The two lots resulting from an Urban Lot Split shall be approximately equal in size, and no smaller than 40 percent or larger than 60 percent of the lot area of the original parcel.
  - d. No flag lots shall be created as a result of an Urban Lot Split if the subject property is adjacent to an alley, located on a corner, or on a through lot.
  - e. The width of any lot resulting from an Urban Lot Split shall not be less than 20 feet wide.
  - f. The proposed parcel map shall demonstrate the ability to access the public right-of-way in perpetuity.

E. Exceptions. The Community Development Director shall approve an exception to any of the standards specified in this interim Ordinance upon determining that complying with the standard would physically preclude the construction of up to two residential units per lot or would physically preclude either of the two residential units from being 800 square feet in floor area.

F. Denial. The Building Official may deny an application for an SB 9 Development Project upon making both of the following findings in writing based upon a preponderance of evidence:

1. The proposal would have a specific, adverse impact upon the public health and safety or the physical environment as defined and determined in Government Code Section 65589.5(d)(2).
2. There is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

**SECTION 4. CEQA Finding.** The City Council hereby finds, in the exercise of its independent judgment and analysis, that this interim Ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that this interim Ordinance has no likelihood of causing a significant negative effect on the environment and accordingly both the City Council’s action of adopting this interim Ordinance and the effects derivative from that adoption are exempt from the application of CEQA pursuant to State CEQA Guideline Section 15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)). This interim Ordinance will provide temporary emergency regulations related to SB 9 Development Projects and Urban Lot Splits in the City in order to protect the public health, safety, and general welfare, and will thereby serve to avoid potentially significant adverse environmental impacts during the term of the emergency regulations. There is no possibility that adopting this interim Ordinance will have a significant effect on the environment. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations and no environmental analysis is required. Furthermore, this interim Ordinance is exempt from the CEQA pursuant to Government Code Section 65852.21(j). The Community Development Director shall prepare and file a Notice of Exemption for this interim Ordinance.

**SECTION 5. Planning Studies.** City staff shall promptly commence the studies they may deem necessary and appropriate to make a recommendation to this City Council regarding the structuring of the General Plan, zoning and other necessary regulatory controls over SB 9 Development Projects within the City of Temecula. Pursuant to Government Code Section 65858(d), City staff shall prepare and submit for City Council adoption, at least ten (10) days prior to the expiration of this interim Ordinance, or any extension hereof, a written report describing the measures taken to alleviate the conditions which led to the adoption of this interim Ordinance.

**SECTION 6. Extension of Time.** The Community Development Director and the City Clerk’s office shall undertake all actions legally necessary to extend this interim Ordinance in the event the studies desired by this City Council will not be concluded on or before the forty-fifth (45th) day subsequent to the adoption of this interim Ordinance.

**SECTION 7. Effect of Ordinance.** This interim Ordinance is intended to supersede any ordinance or resolution of the City of Temecula in conflict with the terms of this interim Ordinance; provided, however, that nothing contained in this interim Ordinance is intended to nor shall be construed to impair the prosecution or other enforcement action for violations of such ordinances.

**SECTION 8. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this interim Ordinance, 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 portions of this interim Ordinance. The City Council hereby declares that it would have adopted this interim Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

**SECTION 9. Effective Date.** This interim Ordinance shall take effect immediately upon its passage. It shall be of no further force or effect forty-five (45) days from the date of its adoption unless extended pursuant to the legal requirements contained in Government Code Section 65858.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Temecula  
this 22<sup>nd</sup> day of February, 2022.



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Matt Rahn, Mayor

ATTEST:



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Randi John, City Clerk

[SEAL]

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss  
CITY OF TEMECULA         )

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2022-03 was duly adopted and passed as an interim urgency ordinance at a meeting of the City Council of the City of Temecula on the 22<sup>nd</sup> day of February, 2022, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Alexander, Edwards, Rahn, Schwank, Stewart
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

  
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Randi Johl, City Clerk