

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Luke Watson, Deputy City Manager

DATE: February 22, 2022

SUBJECT: Adopt 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)

PREPARED BY: Matt Peters, Senior Planner

RECOMMENDATION: That the City Council adopt by a 4/5 vote the urgency ordinance entitled:

ORDINANCE NO. 2022-

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 SECTIONS 15061(B)(3) AND GOVERNMENT CODE SECTION 65852.21(J)

SUMMARY OF

ORDINANCE: 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.

BACKGROUND:

Current zoning regulations permit up to three units on a parcel zoned for a single-family dwelling: one primary dwelling; one Accessory Dwelling Unit (ADU); and one Junior Accessory Dwelling Unit (JADU).

Senate Bill 9 (SB 9) was signed by Governor Newsom on September 16, 2021 and became effective January 1, 2022 (see Attachment 1). It requires that a local jurisdiction allow ministerial approval (no discretionary review) of two units on parcels zoned for single family dwellings per lot and/or the subdivision of a single-family zoned parcel into two equal sized parcels (a 40 to 60 percent split of lot size is allowed). This type of subdivision (“urban lot split”) may result in each lot containing a duplex or two detached residential units.

SB 9 allows cities to adopt objective development standards that regulate such projects provided they do not conflict with the Senate Bill. All new development resulting from an urban lot split must follow the City’s Objective Design Standards adopted by City Council (Ordinance 2022-02), and City Council (Resolution 2022-08).

ANALYSIS:

If the City Council adopts the proposed Interim Urgency Ordinance at the February 22, 2022 meeting and the City Council wishes to proceed with the first extension, such an extension can be scheduled for a Public Hearing at the March 22, 2022 City Council meeting. But to comply with the extension requirement, the City would have to take action on a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. This report would be scheduled for the March 8, 2022 City Council meeting.

The zones in the City where SB 9 projects would be permitted to develop include 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.

Subject to certain exceptions, properties that are identified in the General Plan as being in a “very high fire hazard severity zone” and/or are located within a federally designated 100-year floodplain are excluded from SB 9 projects. In addition, per SB 9, SB 9 projects are also not allowed in the several other areas, including but not limited to earthquake study zones, prime agricultural lands, hazardous waste sites, and historic districts and/or properties with historic resources.

Objective Development Standards – SB 9 Housing Development

Certain standards, regulations and provisions are established in SB 9 that the City must enforce. These features of the Senate Bill are listed below:

- **Housing.** The City must allow ministerial approval of two units in single-family zones per lot and/or the subdivision of an existing single-family zoned parcel into two approximately equal sized parcels (a 40 to 60 percent split of lot size is allowed).
- **Preservation of Certain Types of Housing.** The SB 9 project cannot require the demolition or alteration of any of the following: (1) rent controlled units, (2) affordable units, (3) units occupied by tenants within the last three years; or (4) units removed from the rental market under the Ellis Act within the last 15 years.
- **Setbacks.** The City must allow setbacks of up to 4 feet from side and rear lot lines. The City is allowed to impose front yards setbacks, provided that the front yard setback does not preclude the development of up to two units of at least 800 square feet of floor area each. The City cannot establish a setback to/for existing structures or structures constructed in the same location and to the same dimensions as an existing structure.
- **Parking.** The City can only require 1 off-street parking space per lot unless the parcel is located within ½ mile of a high-quality transit corridor or major transit stop or there is a car share within one block of the parcel.
- **Existing Unit Protections.** The City must not allow the demolition of more than 25 percent of an existing unit's exterior structural walls, unless permitted by local ordinance or the site has not been occupied by a tenant in the last three years. The interim urgency ordinance includes a provision that prohibits demolishing more than 25 percent of an existing unit as a means of preserving existing housing stock and maintaining current neighborhood appearances as much as possible.
- **Use Restrictions.** The City must prohibit any non-residential uses, short-term rentals (less than 30-day tenancy), and subsequent urban lot splits. The City already prohibits short term rentals in the City. The City must require an applicant for an urban lot split to 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. The City must also mandate continual access to public rights-of-way.
- **Housing Element Report.** The City must report the number of units developed pursuant to SB 9 in its Annual Housing Report.

As discussed previously, the City may adopt objective development standards as long as they do not preclude the development of up to two units of at least 800 square feet of floor area each. The City recently adopted Objective Design Standards that apply to multi-family residential projects and could apply to SB 9 projects. Since the City has some authority to adopt objective development standards, it is considered prudent to apply any provisions that could increase community aesthetics as well as promote vehicular and pedestrian safety, emergency response, housing affordability, and compatibility with existing neighborhoods.

The following are recommended development standards that have been included in the attached Interim Urgency Ordinance as supplemental to those standards established in SB 9:

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, if the development meets the definition of a multi-unit residential development.
2. 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.
3. All flashing, sheet metal vents, and pipe stacks shall be painted to match the adjacent roof or wall material.
4. 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.
5. The maximum unit size for any proposed development on an urban lot split shall be 1,200 square feet. Establishing a maximum unit size will promote the intent and purpose of the law (to increase the number of affordable housing units) since smaller homes are considered more affordable.
6. Dwellings proposed in accordance with SB 9 shall be limited to 16 feet of height and consist of no more than one story. It is presumed that single story dwellings will have fewer potential impacts to the existing views and have less construction costs resulting in more affordable housing.
7. Any duplex or other dwelling unit built per the provisions of SB 9 shall provide a 10-foot separation between other dwelling units on the same lot. (Note: this will promote usable open space areas, and reduce architectural mass and bulk).
8. If the 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). This means that if there is urban lot split that results in four units (two on each lot), one of the four units will be subject to a deed restriction. 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 of the deed restricted unit. Execution and recording of a covenant, supplied by the City and subject to approval by the City Attorney shall be required. This requirement is being recommended to ensure that the new units meet the intention of State law to increase the supply of affordable housing, and to help the City meet its assigned Regional Housing Need Assessment (RHNA) of 4,193 units to be accommodated during the next eight-year housing cycle from 2021-2029.

Subdivision/Urban Lot Split Provisions of SB 9

The following list identifies the major parameters pertaining to “urban lot splits” found in SB 9:

- **Parcel Map.** The City is required to ministerially approve an urban lot split through a parcel map for property that is located in a single family zone.
- **Parcel size.** No more than two parcels can be created. The new parcels must be approximately equal in size, with one parcel being no smaller than 40 percent of the original parcel’s size and each new parcel containing at least 1,200 square feet.
- **Further Subdivisions.** A City can deny further subdivision of the new parcels or if the owner or someone is acting in concert with the owner has subdivided an adjacent parcel using an urban lot split.
- **Objective Standards.** The urban lot split must conform to all objective requirements of the subdivision map act unless exempted by SB 9. A City is not allowed to apply findings to an SB 9 tentative map or the parcel map.
- **Public Improvements.** The City cannot require dedications of right-of-way or offsite public improvements but can require utility easements and right-of-way access.
- **Use Restrictions.** The City must restrict the newly created parcels to residential uses and require the owner to sign an affidavit committing to occupy one of the units as a principal residence for at least three years. These restrictions may be implemented through an ordinance applicable to urban lot splits or a requirement to record a restrictive covenant.
- **Preservation of Certain Type of Housing.** The SB 9 urban lot split is not allowed if it would require the demolition or alteration of any of the following: (1) rent controlled units, (2) affordable units, (3) units occupied by tenants within the last three years, or (4) units removed from the rental market under the Ellis Act within the last 15 years.
- **Correction of Non-conforming Zoning.** The City cannot require the correction of non-conforming zoning conditions as a condition of parcel map approval.
- **Housing Element Report.** The City must report the number of applications for urban lot splits in its annual Housing Element report.

In addition to the above mandates of SB 9, it is recommended that the City adopt the following objective development standards (included in the attached Interim Urgency Ordinance) for urban lot splits to promote logical land development:

1. 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.
2. The width of any lot resulting from an urban lot split shall not be less than 20 feet wide.
3. A proposed parcel map shall demonstrate ability to access the public right-of-way in perpetuity.
4. 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.

It is important to note that SB 9 allows local Building Officials to deny a two-unit development project or urban lot split only by making a written finding, based on a preponderance of evidence, that the project would have a specific adverse impact on public health and safety or the physical environment, and that there is no feasible method to mitigate or avoid such an impact. A “specific adverse impact” must be significant, quantifiable, and direct, based on an objective written public health or safety standard that existed at the time of the project application was deemed complete. Inconsistency with a City’s General Plan or zoning ordinance does constitute a specific adverse impact. Staff will be reviewing these projects on a case by case basis to determine whether or not a specific adverse impact finding can be made.

URGENCY ORDINANCE:

Adoption of the attached Interim Urgency Ordinance means that the added protection developed by the City will be in place immediately and apply to any applications the City may receive for SB 9 projects for 45 days. State Urgency Ordinance provisions are structured so the during the 45-day period, further studies may be conducted to determine if additional standards or regulations are warranted. After 45 days, the City Council can extend the ordinance for another 320 days and another one-year extension of the ordinance is allowed after the 320-day extension. In summary, the City will have a total of up to two years to develop a permanent SB 9 ordinance.

ENVIRONMENTAL REVIEW:

The Interim Urgency Ordinance is exempted from the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that it 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)). Furthermore, this Interim Ordinance is exempt from CEQA pursuant to Government Code Section 65852.21(j).

FISCAL IMPACT:

Costs associated with the code amendment are covered by the General Fund.

ALTERNATIVES:

1. Recommended Action: That the City Council adopt, by at least a four-fifths vote, Interim Urgency Ordinance No. 2022-xx, establishing emergency regulations for SB 9 development projects.
2. Provide alternative direction to staff.
3. Council may elect not to adopt Interim Urgency Ordinance No. 2022-xx.

ATTACHMENTS:

1. Interim Urgency Ordinance 2022-xx
2. Senate Bill 9