

URGENCY ORDINANCE NO. 2021-21

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADOPTING CHANGES TO TITLE 13 (ZONING) RELATING TO THE IMPLEMENTATION OF SENATE BILL 9 FOR THE CREATION OF TWO (2) RESIDENTIAL UNITS PER LOT AND URBAN LOT SPLITS IN SINGLE FAMILY RESIDENTIAL ZONES; AND DECLARING THE ORDINANCE TO BE AN URGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

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

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

WHEREAS, SB 9 takes effect on January 1, 2022; and

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; and

WHEREAS, given that SB 9 was not signed until mid-September, 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; and

WHEREAS, the public is already beginning to express interest in developing under this new law and it is necessary to have standards in place by the time SB 9 becomes effective for the benefit of the public health, safety and welfare of the City; and

WHEREAS, the City of Costa Mesa, 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 and it can be seen with certainty that this Ordinance will not have an effect on the environment pursuant to Section 15061.

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

SECTION 1. Article 7., Urban Lot Splits, hereby added to Chapter XI., Subdivisions, Title 13, Planning, Zoning and Development, of the Costa Mesa Municipal Code to read as follows:

Article 7. URBAN LOT SPLITS

Section 13-265.5 Parcel Maps for Urban Lot Splits.

- A. Definitions. For purposes of this section, the following definition shall apply:
1. "Urban lot split" means a lot split of a single-family residential lot into two parcels that meets the requirements of this section.
- B. The city shall ministerially approve a parcel map for a lot split that meets the following applicable requirements:
1. The parcel is located within a single-family residential zone.
 2. The parcel is located at least partially in an urbanized area or urban cluster as designated by the United States Census Bureau.
 3. The parcel map divides an existing parcel to create no more than two new parcels of approximately equal lot area, provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel.
 4. Both newly created parcels are no smaller than 1,200 square feet.
 5. The parcel is not located in any of the following areas and does not fall within any of the following categories:
 - a. A historic district or property included on the State Historic Resources Inventory, as defined in section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city landmark or historic property or district pursuant to a city ordinance.
 - b. Prime farmland or farmland of statewide importance as further defined in Government Code section 65913.4(a)(6)(B).
 - c. Wetlands as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2(June 21, 1993).

- d. A very high fire hazard severity zone as further defined in Government Code section 65913.4(a)(6)(D). This does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
- e. 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.
- f. 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 and by the city's building department.
- g. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency (FEMA) in any official maps published by FEMA. If an applicant is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:
 - i. The site has been subject to a Letter of Map Revision prepared by FEMA and issued to the city; or
 - ii. The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the Nation Flood Insurance Program as further spelled out in Government Code section 65913.4(a)(6)(G)(ii);
- h. A regulatory floodway as determined by FEMA in any of its official maps, published by FEMA unless the development has received a no-rise

certification in accordance with section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If an applicant is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site.

- i. Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan as further spelled out in Government Code section 65913.4(a)(6)(l).
 - j. 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).
 - k. Lands under a conservation easement.
6. The proposed lot split would not require demolition or alteration of any of the following types of housing:
- a. Housing that is subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
 - b. Housing that is subject to any form of rent or price control by the city;
 - c. A parcel or parcels on which an owner of residential real property exercised rights under Government Code section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date of the application; or
 - d. Housing that has been occupied by a tenant in the last three years.
7. The lot split does not create more than two units on a parcel, including any accessory dwelling units or junior accessory dwelling units.

- C. Standards and Requirements. Except where superseded by the following provisions or state law, Parcel Maps for Urban Lot Splits pursuant to Government Code Section 66411.7 shall comply with the development standards applicable to the R1 Single-Family Residential District including but not limited to Section 13-32 of this code:
1. The lot split conforms to all applicable objective requirements of the Subdivision Map Act and Title 13 of this code, except as the same are modified by this section.
 2. No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
 3. Except for those circumstances described in section C2 above, the setback for side and rear lot lines shall be four feet. The front setback shall be as set forth in the R-1 Single-Family Residential District standards.
 4. The applicant shall provide easements for the provision of public services and facilities as required.
 5. Units constructed on sites created pursuant to Government Code Section 66411.7 shall adhere to the following:
 - a) All new development shall be constructed, in accordance with code standards and design guidelines applicable to the R1 Single-Family Residential District.
 - b) Each unit which is attached to an existing or proposed dwelling shall have the same design, materials, finishes, and colors as the attached dwelling and shall be in accordance with code standards and design guidelines applicable to the R1 Single-Family Residential District.
 - c) Any proposed detached units on the same lot shall be compatible in exterior appearance with an existing unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code standards and design guidelines applicable to the R1 Single-Family Residential District.
 6. All lots shall have a minimum street frontage of ten feet to provide for vehicular access, or 16-foot frontage if the driveway serves two units. For a lot without physical street frontage, access to street frontage shall be

provided by the granting of a duly recorded permanent easement for ingress and egress purposes in favor of the lot without physical street frontage.

7. In order to preserve the City's inventory of on-street parking, existing and proposed development pursuant to Government Code section 66411.7 shall be limited to one driveway ingress/egress.
8. Required off-street parking shall be limited to one garage parking space per unit and the location and configuration of such parking shall be in compliance with the standards set forth in this code, except that no parking requirements shall be imposed in either of the following circumstances:
 - a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined by Public Resources Code section 21155(b) or a major transit stop as defined in Public Resources Code section 21064.3; or
 - b. There is a car share vehicle located within one block of the parcel.

D. The city shall not deny an application based on any of the following:

1. The city shall not require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map.
2. The city shall not impose any objective zoning, subdivision, or design standards that would have the effect of physically precluding the creation of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet. If the city determines that the strict application of objective zoning, subdivisions or design standards would physically preclude the development of two units on a lot each with a minimum unit size of 800 square feet, the city may ministerially allow deviations from development standards generally applicable to the R-1 zoning district pursuant to city policies and/or regulations implementing this section if such deviation is in compliance with applicable building and fire code standards and regulations and if there are no other feasible means of complying with state law.
3. The city shall not require the correction of nonconforming zoning provisions as a condition for the lot split.

4. The city shall not deny an application solely because it proposes an adjacent or connected structure provided that all building code safety standards are met and they are sufficient to allow a separate conveyance.
- E. An applicant for an urban lot split shall be required to sign an affidavit in a form approved by the City Attorney to be recorded against the property stating the following:
1. That applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval. This requirement does not apply when the applicant is a "community land trust" or a "qualified nonprofit corporation" as the same are defined in the Revenue and Taxation Code.
 2. That the uses shall be limited to residential uses.
 3. That any rental of any unit created by the lot split shall be for a minimum of thirty-one days.
 4. That the maximum number of units to be allowed on the parcels is two, including but not limited to units otherwise allowed pursuant to density bonus provisions, accessory dwelling units, junior accessory dwelling units, or units allowed pursuant to section 13-36.
- F. The city may deny the lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in Government Code section 65589.5(d)(2), upon the public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- G. This section shall not apply to:
1. Any parcel which has been established pursuant to a lot split in accordance with this section; or
 2. Any parcel where the owner of the parcel being subdivided or any person acting in concert with the owner has previously subdivided an adjacent parcel in accordance with this section. For purposes of this section, it will be assumed that where a lot owner purchased the property from an adjacent owner who subdivided his property pursuant to this division within five years

of the lot split, the owner is acting in concert with the then owner of the adjacent lot. However, acting in concert is not limited to this situation.

- H. The provisions of this section supersede any contrary provisions contained elsewhere in this code.

SECTION 2. Section 13-36 is hereby added to Article 1., Residential Districts, Chapter V., Development Standards, Title 13, Planning, Zoning and Development, of the Costa Mesa Municipal Code, to read as follows:

Section 13-36 Two-unit Housing Development

- A. For purposes of this section, the following definition shall apply:

1. "Housing development" shall mean no more than two residential units within a single-family zone that meets the requirements of this section. The two units may consist of two new units or one new unit and one existing unit.

- B. The city shall ministerially approve a housing development containing no more than two residential units if it meets the following requirements:

1. The parcel is located within a single-family residential zone.
2. The parcel is located at least partially in an urbanized area or urban cluster as designated by the United States Census Bureau.
3. The parcel is not located in any of the following areas and does not fall within any of the following categories:
 - a. A historic district or property included on the State Historic Resources Inventory, as defined in section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city landmark or historic property or district pursuant to a city ordinance.
 - b. Prime farmland or farmland of statewide importance as further defined in Government Code section 65913.4(a)(6)(B).
 - c. Wetlands as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2(June 21, 1993).
 - d. A hazardous waste site that is listed pursuant to section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water

Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

- e. A 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 and by the city's building department.
- 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 (FEMA) in any official maps published by FEMA. If an applicant is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:
 - i. The site has been subject to a Letter of Map Revision prepared by FEMA and issued to the city; or
 - ii. The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the Nation Flood Insurance Program as further spelled out in Government Code section 65913.4(a)(6)(G)(ii);
- g. A regulatory floodway as determined by FEMA in any of its official maps, published by FEMA unless the development has received a no-rise certification in accordance with section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If an applicant is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the city shall not deny the application on the basis that the applicant did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site.
- h. Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan as further spelled out in Government Code section 65913.4(a)(6)(I).

- 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 a conservation easement.
 - 4. The proposed housing development would not require demolition or alteration of any of the following types of housing:
 - a. Housing that is subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
 - b. Housing that is subject to any form of rent or price control by the city;
 - c. A parcel or parcels on which an owner of residential real property exercised rights under Government Code section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date of the application; or
 - d. Housing that has been occupied by a tenant in the last three years.
 - 5. Demolition of an existing unit shall not exceed more than 25 percent of the existing exterior structural walls unless the site has not been occupied by a tenant in the last three years.
- C. Standards and Requirements. Except where superseded by the following provisions, two-unit housing development pursuant to Government Code Section 65852.21 shall comply with development standards applicable to the R1 Single-Family Residential District including but not limited to Section 13-32 of this code:
 - 1. No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
 - 2. Except for those circumstances described in section C1 above, the setback for side and rear lot lines shall be four feet. The front setback shall be as set forth in the R-1 Single-Family Residential District standards.

3. The applicant shall provide easements for the provision of public services and facilities as required.
 4. All lots shall have a minimum street frontage of ten feet to provide for vehicular access, or 16-foot if the driveway serves two units. For a lot without physical street frontage, access to street frontage shall be provided by the granting of a duly recorded permanent easement for ingress and egress purposes in favor of the lot without physical street frontage.
 5. In order to preserve the City's inventory of on-street parking, existing and proposed development pursuant to Government Code section 65852.21 shall be limited to one driveway ingress/egress.
 6. Required off-street parking shall be limited to one garage space per unit and the location and configuration of such parking shall be in compliance with the provisions of this code, except that no parking requirements shall be imposed in either of the following circumstances:
 - a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined by Public Resources Code section 21155(b) or a major transit stop as defined in Public Resources Code section 21064.3; or
 - b. There is a car share vehicle located within one block of the parcel.
 7. For residential units connected to an onsite wastewater treatment system (septic tank), the applicant provides a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last 10 years, which shows that the system meets acceptable infiltration rates.
- D. The city shall not require or deny an application based on any of the following:
1. The city shall not impose any objective zoning, subdivision, or design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet. If the city determines that the strict application of objective zoning, subdivisions or design standards would physically preclude the development of two units on a lot each with a minimum unit size of 800 square feet, the city may ministerially allow deviations from development standards generally applicable to the R-1 zoning district pursuant to city policies and/or regulations implementing this section if such deviation is in compliance with applicable building and fire code

standards and regulations and if there are no other feasible means of complying with state law.

2. The city shall not deny an application solely because it proposes adjacent or connected structure provided that that all building code safety standards are met and they are sufficient to allow a separate conveyance.
- E. An applicant shall be required to sign an affidavit in a form approved by the City Attorney to be recorded against the property stating the following:
1. That the uses shall be limited to residential uses.
 2. That the rental of any unit created pursuant to this section shall be for a minimum of thirty-one days.
 3. That the maximum number of units to be allowed on the parcels is two, including but not limited to units otherwise allowed pursuant to density bonus provisions, accessory dwelling units, junior accessory dwelling units, or units allowed pursuant to section 13-35.
- F. The city may deny the housing development if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in Government Code section 65589.5(d)(2), upon the public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- G. The provisions of this section supersede any contrary provisions contained elsewhere in this code.

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: On September 16, 2021 Governor Gavin Newsom approved Senate Bill 9 (SB 9, Chapter 162) relating to the creation of two residential units per lot which requires local agencies to ministerially approve housing development containing no more than two residential units per lot and ministerially approve an urban lot split. SB 9 takes effect on January 1, 2022. SB 9 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, an urgency measure 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 SB without regard to the land use regulations set forth in this Ordinance.

SECTION 4. Effective Date. This Ordinance shall be effective upon the date of adoption.

SECTION 5. Uncodified Ordinance. This Ordinance shall not be codified in the Costa Mesa Municipal Code unless and until the City Council so ordains.

Section 6. Inconsistencies. Any provision of the Costa Mesa 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 7. 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 8. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance as required by law.



Brenda Green

Forbes Hall Barlow

Brenda Green

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