

**RESOLUTION NO. PC 13-23**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ORANGE RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF ORANGE ADOPT AN ORDINANCE AMENDING TITLE 16 AND TITLE 17 OF THE ORANGE MUNICIPAL CODE ENACTING MINISTERIAL STANDARDS APPLICABLE TO LOT SPLITS IN SINGLE-FAMILY RESIDENTIAL ZONES ALLOWED AS A RESULT OF SB 9, ENACTING MINISTERIAL STANDARDS APPLICABLE TO THE LOCATION, ACCESS SIZE AND SETBACK OF SECOND DWELLING UNITS IN SINGLE-FAMILY RESIDENTIAL ZONES AND REVISING DEFINITIONS TO CLARIFY SAID DEVELOPMENT STANDARDS.**

**APPLICANT: CITY OF ORANGE**

**WHEREAS**, Orange Municipal Code (OMC) Table 17.08.020, Section 17.08.020B.2.b.i., and Section 17.10.020B. authorizes the Planning Commission to review and make recommendations to the City Council on amendments to the Zoning Ordinance; and

**WHEREAS**, the Planning Commission of the City of Orange, pursuant to its police powers afforded under the California Constitution, Article XI, Section 7, California Government Code 37100, et seq., may recommend regulations to protect the peace, health, safety and welfare of the community, and may recommend that certain uses and conditions constitute a public nuisance; and

**WHEREAS**, SB 9 also requires the City to ministerially approve certain applications to build a second unit on a single-family residentially-zoned property, which allows two residential dwellings on a single-family (R-1) lot where there was previously only one dwelling permitted; and

**WHEREAS**, these two provisions of SB 9 – allowing a lot split and allowing a second unit on a single-family lot - may be combined, resulting in the transformation of a single-family residential lot with one dwelling unit becoming two lots with two dwelling units each for a total of four dwelling units on the same-sized piece of property; and

**WHEREAS**, the single-family residential (R-1) zones in the City, which include neighborhoods with lots ranging from 6,000 to 20,000 square feet, one acre, and one-and-a-half acres and up, were thoughtfully planned based on the goals of the General Plan of the City, the quality of life in single-family residential neighborhoods, the public safety resources, the utility

and transportation infrastructure, City recreational resources, including parks and libraries, school district considerations, and many other elements associated with sound and established planning practices; and

**WHEREAS**, the City's Zoning Code and General Plan also designate numerous duplex and multi-family residential zones allowing higher density housing opportunities, that were also carefully planned to ensure a high quality of life in multi-family residential neighborhoods, access to public safety resources, an efficient utility and transportation infrastructure, and an appropriate level of City recreational, park and library resources; and

**WHEREAS**, SB 9 has the effect of a wholesale conversion of each of the carefully designed single-family residential zones in the City into residential zones with double, triple and up to quadruple the anticipated density of those zones, creating incompatibility with the City's single-family neighborhood development standards for those zones, among other City resource concerns; and

**WHEREAS**, if unrestricted and left unregulated, the increase in potential density in the City's single-family zones would cause numerous deleterious effects on the City's infrastructure as well as the families residing therein, including parking and traffic problems, overuse of existing utility systems, loss of privacy, application of development standards not designed for higher density housing, fire safety and other public safety concerns, all of which effects constitute a public nuisance to the community; and

**WHEREAS**, SB 9 allows the City to impose certain objective requirements regulating said applications to split and/or to build additional residential units on a single-family residentially-zoned property; and

**WHEREAS**, the Orange Municipal Code (OMC) does not currently contain a permanent process or objective development standards for ministerially processing lot split applications; and

**WHEREAS**, the OMC does not currently contain a permanent process or objective development standards for ministerially processing applications to build non-ADU second dwelling units in single-family zones; and

**WHEREAS**, on December 14, 2021, the City Council adopted interim Ordinance No. 18-21, imposing development standards on lot split and second dwelling unit development projects submitted pursuant to SB 9, which Ordinance was effective for forty-five days; and on January 11, 2022, the City Council extended interim Ordinance No. 18-21 for an additional ten months and fifteen days, until December 13, 2022; and

**WHEREAS**, on November 15, 2022, the City Council extended interim Ordinance No. 18-21 with the adoption of interim Ordinance 18-21-B, continuing the imposition of development standards on lot split and second dwelling unit development projects submitted pursuant to SB 9, for an additional year, until December 13, 2023; and

**WHEREAS**, pursuant to Government Code Section 65858(a), no further extension of the interim Ordinance imposing development standards on lot split and second dwelling unit development projects submitted pursuant to SB 9, is available; and

**WHEREAS**, During the effective period of interim Ordinance Nos. 18-21 and 18-21-B no applications were received for either lot splits or second dwelling units on single family lots pursuant to SB 9 and staff has had no difficulty conveying or interpreting the interim ordinances for the public; and

**WHEREAS**, notice of a public hearing on the subject matter was published in a newspaper of general circulation in accordance with Government Code Section 65090; and

**WHEREAS**, the Planning Commission of the City of Orange finds:

1. That the ministerial approval of lot splits and second dwelling units on single-family residentially-zoned properties is not permanently addressed by the current Subdivision Code or Zoning Code and without appropriate standards, would result in a threat to public peace, health, safety or welfare; and
2. That in the absence of objective standards applicable to lot splits and second dwelling units created by SB 9, there would be a current and immediate threat to the public peace, health, safety and welfare; and
3. That adoption of proposed permanent Ordinance No. XX-23 as set forth herein is necessary to mitigate and avoid the specific adverse impacts stated herein and will help preserve the public peace, health, safety and welfare; and
4. That there is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impacts stated herein as well or better, with a less burdensome or restrictive effect, than adoption of Ordinance No. XX-23; and

**WHEREAS**, the Planning Commission of the City of Orange recommends that the City Council of the City of Orange finds that the provisions of this Ordinance are consistent with the City of Orange General Plan; and

**WHEREAS**, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt, consistent with the findings in Section 2 of Planning Commission Resolution No. PC 13-23; and

**WHEREAS**, the Planning Commission, having considered the proposed revisions to the Orange Municipal Code (OMC) at a public hearing held on October 2, 2023, including review of the staff report, and having received public testimony on the item, has determined the proposed Ordinance incorporates reasonable development standards for lot split and second dwelling unit development projects submitted pursuant to SB 9, and the Ordinance would promote orderly development in the City, and recommends approval thereof; and

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission recommends that the City Council adopt the Ordinance attached hereto as Attachment A, based on the following:

### **SECTION 1- FINDINGS**

Given the effectiveness of interim Ordinance Nos. 18-21 and 18-21-B for deterring deleterious effects of SB 9, the Planning Commission of the City of Orange finds that a permanent ordinance, with the standards of interim Ordinance Nos. 18-21 and 18-21-B, to impose reasonable and objective regulations and development standards on lot split and second dwelling unit development projects submitted pursuant to SB 9 is necessary to protect and preserve the public peace, health, safety and welfare of the public.

Proposed Ordinance No. XX-23 would amend existing provisions of the OMC in support of the goals and policies outlined in the General Plan Land Use, Public Safety, Infrastructure, Urban Design, and Housing Elements. Specific anticipated General Plan goal and policy-related accomplishments of the SB 9 Ordinance include:

- Maintain a land use structure that balances jobs and housing with available infrastructure and public and human services.
- Balance economic gains from new development while preserving the character and densities of residential neighborhoods.
- Ensure that new development reflects existing design standards, qualities, and features that are in context with nearby development.
- Minimize effects of new development on the privacy and character of surrounding neighborhoods.
- Ensure that new development is compatible with the style and design of established structures and the surrounding environment.
- Encourage consistent high quality design of development projects, and provide development standards that ensure building and site design that is well integrated with infrastructure and circulation systems.
- Restrict development in areas where exposure to hazards such as flood, erosion, liquefaction, dam failure, hazardous materials, and toxic gases cannot be mitigated to reduce risk to residents and liability to the City.
- Establish and maintain optimal emergency response times for fire safety. Require new development to ensure that City response times and service standards are maintained.
- Ensure that the Fire Department has sufficient capacity, stations, personnel, and equipment to meet growth needs in the City for fire protection and related emergency services.
- Provide the Police Department with adequate personnel, equipment and state-of-the-art technology to effectively combat crime, meet existing and projected service demands, and provide crime prevention programs. These resources should be provided prior to anticipated needs.
- Promote and integrate crime-preventive characteristics and design features into all phases of the planning and development process.

- Provide sufficient levels of water, sewer, and storm drain service throughout the community.
- Require that new developments fund fair-share costs associated with City provision of water, sewer, and storm drain service and are consistent with City and service provider plans to complete needed improvements and funding capacity for such improvements.
- Require that new developments fund fair-share costs associated with City provision of right-of-way maintenance services and are consistent with City and service provider plans to complete needed improvements and funding capacity for such improvements.
- Encourage consistent high quality design of development projects, and provide development standards that ensure building and site design that is well integrated with infrastructure and circulation systems.
- Ensure that new infill development contributes positively to the quality of the surrounding corridor or neighborhood, including the potential to provide additional park space, and minimize the visibility of on-site parking.
- Promote housing opportunities for all persons regardless of race, religion, sex, ancestry, national origin, or color.

## **SECTION 2-ENVIRONMENTAL REVIEW**

As stated in the California Department of Housing and Community Development SB 9 Fact Sheet: "...the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA." The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15060(c)(2), 15060(c)(3) and 15061(b)(3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility it will have a significant effect on the environment, and it is not a "project", as defined in Section 15378 of the State CEQA Guidelines. In the unlikely event the Ordinance would constitute a project under CEQA, it is exempt from the provisions of CEQA per State CEQA Guideline 15321 (Class 21, Enforcement Actions by Regulatory Agencies) because it is an action taken by the City as a regulatory agency, as authorized by local ordinance, to regulate as authorized by SB 9, the processing of lot splits and applications for construction of second dwelling units in single-family residential zones in order to prevent a public nuisance. As such, no further analysis is warranted or required. The proposed Ordinance is exempt from CEQA per Guideline 15061(b)(3) because it can be seen with certainty, after review and evaluation of the facts regarding parking standards in the City of Orange, that there is substantial evidence that adoption of this Ordinance would not have a significant effect on the environment and the common sense exemption applies.

**ADOPTED** this 2nd day of October 2023.

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Rick Martinez, Planning Commission Vice Chair

I hereby certify that the foregoing Resolution was adopted by the Planning Commission of the City of Orange at a regular meeting thereof held on the 2nd day of October 2023, by the following vote:

AYES: Commissioner's Martinez, Simpson, Vejar, Maldonado, Tucker, and McCormack

NOES: None

ABSENT: Vazquez

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Anna Pehoushek  
Assistant Community Development Director