

ORDINANCE NO. 1523

AN ORDINANCE OF THE CITY OF TUSTIN, CALIFORNIA, AMENDING TUSTIN CITY CODE CHAPTER 2 (ZONING) AND CHAPTER 3 (SUBDIVISIONS) OF ARTICLE 9 (LAND USE) TO APPROPRIATELY REGULATE QUALIFYING SB 9 TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS WITHIN SINGLE-FAMILY RESIDENTIAL ZONES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTIONS 65852.21 AND 66411.7.

The City Council of the City of Tustin does hereby ordain as follows:

SECTION 1. The City Council finds and determines as follows:

- A. That on September 16, 2021, the Governor signed into law SB 9 (Atkins), which adds Section 65852.21 to the Government Code to require a ministerial review process for eligible development of up to two principal dwelling units on a parcel in a single-family residential zone and also adds Section 66411.7 to require a ministerial review process for eligible “urban lot splits,” to create two new parcels for residential uses in a single-family residential zone. SB 9 became effective on January 1, 2022.
- B. That a City initiated Code Amendment (CA) 2022-0001 has been prepared to amend Tustin City Code (TCC) Article 9 (Land Use) by adding Section 9280 within Part 7 (General Regulations) of Chapter 2 (Zoning) to regulate qualifying two-unit developments and is amending Chapter 3 (Subdivisions) to allow the ministerial approval for a parcel map for an urban lot split of up to two (2) lots.
- C. That the proposed amendments comply with California Government Code Section 65852.21 and 66411.7.
- D. That absent a locally adopted SB 9 Ordinance, the City is required to process any SB 9 development proposal by applying State law as described in Government Code Sections 65852.21 and 66411.7.
- E. That SB 9 allows local agencies to impose objective zoning, subdivision, and design standards.
- F. The public has already expressed interest in developing under this new law and it is necessary to have standards in place to protect the public health and safety.
- G. That on May 24, 2022, a public hearing was duly noticed, called, and held by the Planning Commission on CA 2022-001 relating to code requirements

applicable to SB 9 two-unit developments and urban lot splits within single-family residential zones.

- H. That on May 24, 2022, the Planning Commission adopted Resolution No. 4451 and recommended that the City Council adopt Ordinance No.1523, approving CA 2022-0001.
- I. That on _____2022, a public hearing was duly noticed, called, and held on CA 2022-0001 by the City Council.
- J. That the proposed SB 9 provisions are reasonably necessary to protect the health, safety, and welfare of the citizens of the City of Tustin.
- K. That SB 9 development is not applicable to and shall not cause a substantial adverse change in the significance of a real property that is listed in the California Register of Historic Places or the City of Tustin Historical Resources Survey.
- L. That the proposed amendments are consistent with the Tustin General Plan in that they comply with the following goals and policy:

Land Use Element Goal 4 to assure a safe, healthy, and aesthetically pleasing community for residents and businesses.

Housing Element Goal 1: to provide an adequate supply of housing to meet the need for a variety of housing types and the diverse socio-economic needs of all community residents commensurate with the City's identified housing needs in the RHNA allocation.

SECTION 2. Section 9280 is hereby added to Part 7 (General Regulations) of Chapter 2 (Zoning) of Article 9 (Land Use) of the TCC to read as follows:

9280 – REGULATION OF SB 9 TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS

- A. Purpose, Applicability, Definitions, Interpretation.
 - 1. Purpose. The purpose of this Section is to appropriately regulate qualifying SB 9 two-unit residential developments and urban lot splits within single-family residential zones in accordance with California Government Code Sections 65852.21 and 66411.7.
 - 2. Applicability. The standards and limitations set forth in this Section shall apply to urban lot splits and the development and use of SB 9 two-unit residential developments within a single-family residential zone in the City,

notwithstanding any other conflicting provisions of this code. In the event of a conflict between the provisions of this Section and any other provision of this code, the provisions of this Section shall prevail.

3. Definitions. As used in this Section, the following terms shall have the following meanings:

“ADU” and “JADU” shall have the meanings ascribed to these terms in Section 9297.

“Director” means the Community Development Department Director or their designee.

“Flag Lot” means a lot, the major portion of which has access to a road or street by means of a narrow strip of land called a "staff."

“Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, limited partnership, limited liability company, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Revenue and Taxation Code Section 214.15).

“New primary dwelling unit” means either a new, additional dwelling unit that is created or an existing dwelling unit that is expanded, but does not include an ADU or a JADU.

“Single-family residential zone” shall have the same meaning as in California Government Code Section 65852.21. A single-family residential zone includes the R1 (Single-Family Residential District), E4 (Residential Estate District), and RA (Residential Agricultural) zoning districts and any property within a Specific Plan area or PC District (Planned Community District) area where a single-family dwelling is a permitted use, but a duplex, triplex, or multiple-family dwelling is not a permitted or conditionally permitted use.

“SB 9 two-unit residential development” shall mean a housing development containing no more than two primary residential units within a single-family residential zone that qualifies for ministerial review pursuant to California Government Code Section 65852.21 and this Section. A housing development contains two residential units if the development proposes no more than two (2) new units or if it proposes to add one (1) new unit to one (1) existing primary unit.

“Urban lot split” shall mean the ministerial review of a tentative parcel map and the subsequent final parcel map to subdivide one (1) lot into two (2) lots within a single-family residential zone pursuant to California Government Code Section 66411.7.

4. Interpretation. The provisions of this Section shall be interpreted to be consistent with the provisions of California Government Code Sections 65852.21 and 66411.7 and shall be applied in a manner consistent with state law. The City shall not apply any requirement or development standard provided for in this Section to the extent prohibited by any provision of State law.

B. Permit Application and Review Procedures

1. Application. An applicant for an SB 9 two-unit residential development or an urban lot split shall submit an application on a form prepared by the City, along with all information and materials prescribed by such form. No application shall be accepted unless it is completed as prescribed and is accompanied by payment for all applicable fees.
2. Review. Consistent with State law, the Director will consider and approve or disapprove a complete application for an SB 9 two-unit residential development or an urban lot split ministerially, without discretionary review or public hearing.
3. Nonconforming Conditions. An SB 9 two-unit residential development may only be approved if all nonconforming zoning conditions are corrected. Any nonconforming conditions shall be corrected in conjunction with an application for an SB 9 two-unit residential development application. The correction of legal nonconforming zoning conditions is not a condition for ministerial approval of a parcel map for an urban lot split.
4. Effectiveness of Approval. The ministerial approval of an SB 9 two-unit residential development or a parcel map for an urban lot split does not take effect until the City has confirmed that all required documents have been recorded.
5. Hold Harmless. Approval of an SB 9 two-unit residential development or a parcel map for an urban lot split shall be conditioned on the applicant agreeing to defend, indemnify and hold harmless the City, its officers, agents, employees and/or consultants from all claims and damages (including attorney’s fees) related to the approval and its subject matter.
6. Specific, Adverse Impacts. Notwithstanding anything else in this Section, the Director may deny an application for an SB 9 two-unit residential development or a parcel map for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have

a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

C. Qualifying Requirements

A proposed SB 9 two-unit residential development or urban lot split shall meet all of the following requirements in order to qualify for ministerial review pursuant to the provisions of this Section. It shall be the responsibility of the applicant to demonstrate to the reasonable satisfaction of the Director that each of these requirements is satisfied. The applicant and each owner of the property shall provide a sworn statement, in a form approved by the Director, attesting to all facts necessary to establish that each requirement is met. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statements, including, but not limited to, interviewing prior owners and occupants of the subject property, interviewing owners and occupants of nearby properties, and reviewing tax records, and may require additional evidence necessary to support the sworn statements, as determined by the Director in their reasonable discretion.

1. The subject property shall be located within a single-family residential zone as defined in Section 9280(A)(3).
2. The proposed development shall not be located on any site identified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of California Government Code Section 65913.4, unless the development satisfies the requirements specified therein. Such sites include, but are not limited to, prime farmland, wetlands, high or very high fire hazard severity zones, special flood hazard areas, regulatory floodways, and lands identified for conservation or habitat preservation as specifically defined in Government Code Section 65913.4.
3. The proposed development shall not be located within a historic district or on property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the California Public Resources Code, or within a site that is designated or listed as a City landmark or historic property pursuant to a City ordinance and/or the City of Tustin Historical Resources Survey.
4. The proposed development shall not require the demolition or alteration of 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.
5. The proposed development shall not require the demolition or alteration of housing that is subject to any form of rent or price control.

6. The proposed development shall not require the demolition or alteration of housing that has been occupied by a tenant within the last three (3) years.
7. If any existing or previously demolished housing unit on the lot has been occupied by a tenant in the last three (3) years, the proposed development shall not involve the demolition of more than 25 percent of the existing exterior structural walls of any housing unit on the lot.
8. The subject property shall be owned solely by one or more individual property owners.
9. In the case of an urban lot split, the lot proposed to be subdivided shall not have been established through a prior urban lot split.
10. In the case of an urban lot split, the lot proposed to be subdivided ("subject lot") is not adjacent to any lot that was established through an urban lot split by the owner of the subject lot or by any person acting in concert with the owner of the subject lot.
11. No unpermitted construction or illegal nonconforming zoning conditions shall exist on the property.

D. Permitted Locations

A lot on which an urban lot split or SB 9 two-unit residential development is proposed shall be located within a Single-family residential zone. A lot located within a multiple-family or mixed-use zone shall not be eligible to be subdivided through an urban lot split or developed with an SB 9 two-unit residential development pursuant to this Section.

E. Number of Dwelling Units Permitted on a Lot

1. Notwithstanding any other provisions of this Code, State law requires the City to permit a lot located within a single-family residential zone to contain two (2) primary dwelling units, provided both units are developed and maintained in compliance with the standards and requirements set forth in this Section.
2. Provided the lot is not subdivided or created through an urban lot split, development of two (2) primary dwelling units on a lot through an SB 9 two-unit residential development in conformance with this Section does not preclude the development or maintenance of an ADU and/or JADUs on a lot to the extent permitted by Section 9279 and State law.
3. No more than two (2) dwelling units of any kind may be constructed or maintained on a lot that results from an urban lot split, inclusive of ADUs and

JADUs. For purposes of this subdivision, the two-unit limitation applies to any combination of primary dwelling units, ADUs, and JADUs.

F. Separate Conveyance

1. Primary dwelling units located on the same lot may not be owned or conveyed separately from one another. All fee interest in a lot and all dwellings shall be held equally and undivided by all individual owners of the lot.
2. Separate conveyance of the two (2) lots resulting from an urban lot split is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the urban lot split boundary may separate them for conveyance purposes if the structures meet building code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, or if the two (2) lots share a driveway pursuant to Subsection (J)(16)(b), appropriate covenants, easements or similar documentation allocating legal and financial rights and responsibilities between the owners of the two (2) lots ("CC&Rs") for construction, reconstruction, use, maintenance, and improvement of the attached structures and any related shared drive aisles, parking areas, or other portions of the lot shall be recorded before the City will approve a final parcel map for the urban lot split. Notwithstanding the provision of such CC&Rs, however, where attached structures and/or related shared facilities span a lot line resulting from an urban lot split, all owners of both lots shall be jointly and severally responsible for the use and maintenance of such structures and/or shared facilities in compliance with all provisions of this Code.
3. Condominium airspace divisions and common interest developments are not permitted on a lot created through an urban lot split or containing an SB 9 two-unit residential development.

G. Residential Use Only

No non-residential use is permitted on any lot created through an urban lot split or containing an SB 9 two-unit residential development.

H. No Short-Term Rentals Permitted

The rental of any dwelling unit on a lot created through an urban lot split or containing an SB 9 two-unit residential development shall be for a term longer than 30 consecutive days.

I. Housing Crisis Act Replacement Housing Obligations

If the proposed development will result in the demolition of protected housing, as defined in California Government Code Section 66300, the applicant shall replace

each demolished protected unit and comply with all applicable requirements imposed pursuant to subsection (d) of Government Code Section 66300.

J. Development Standards and Design Criteria

1. Development Standards. A qualifying SB 9 two-unit residential development and any development on a lot created through an urban lot split shall be subject to the standards and criteria set forth in this Section. In addition, except as modified or provided by this Section or State law, an SB 9 two-unit residential development and any development on a lot created through an urban lot split shall conform to all objective development standards applicable to the lot as set forth in this Section and/or in an applicable specific plan or resolution, along with all applicable objective standards and criteria contained in standard plans and specifications, policies, and/or standard conditions duly promulgated and/or adopted by City and any applicable agencies such as East Orange County Water District, Irvine Ranch Water District, and the Orange County Fire Authority.
2. Unit Size.
 - a) Minimum Size. Each new primary dwelling unit shall be at least the following minimum sizes based on the number of sleeping rooms provided:
 1. Studio or One (1) bedroom: 500 square feet.
 2. Two (2) or more bedrooms: 700 square feet.
 - b) Maximum Size.
 1. The total floor area of each new primary dwelling unit developed as part of an SB 9 two-unit residential development or on a lot created through an urban lot split shall not exceed 800 square feet.
 2. A primary dwelling that was legally established on the lot prior to the submittal of a complete application for an SB 9 two-unit development or an urban lot split and has a total floor area of 800 square feet or more shall be limited to its current lawful floor area and may not be expanded.
 3. A primary dwelling that was legally established prior to the submittal of a complete application for an urban lot split or an SB 9 two-unit residential development and that is smaller than 800 square feet may be expanded to 800 square feet.

3. Unit Height; Stories.

- a) New Primary Dwelling Unit(s). Shall comply with the height limits set forth in the respective zoning district.
- b) New garages and accessory structures, that are attached or detached, shall comply with the height limits set forth in the respective zoning district. ADU/JADU shall comply with Section 9279.

4. Setbacks.

- a) New Primary Dwelling Units. The following minimum setbacks from the property lines shall be observed for each new primary dwelling unit and any garages and accessory structures that are attached to a new primary dwelling unit. Detached garages and accessory structures shall comply with the setbacks contained in Subsection (b). The required setbacks shall be maintained open and unobstructed from the ground to the sky, except for the permitted intrusions.

- 1. Front Setback: 20 feet
- 2. Interior Side Setback: 4 feet
- 3. Street Side Setback: 10 feet
- 4. Rear Setback: 4 feet.

- b) Detached Garages and Accessory Structures. The following minimum setbacks from the property lines shall be observed for detached garages and accessory structures on a lot.

- 1. Front Setback: 20 feet
- 2. Interior Side Setback: 5 feet
- 3. Street Side Setback: 10 feet
- 4. Rear Setback: 5 feet.

- c) Flag Lot – Additional Standards

- 1. Front Yard. Shall be the side nearest the street frontage upon which the staff portion of the lot fronts.
- 2. All lot size and setback requirements shall be the same as required for two-unit residential developments, and applicable sections of

the underlying zone on which the lot is located. The staff portion of the lot shall not be included to determine setbacks or in computing lot size for zoning and building purposes.

- d) Any construction occurring on a lot that abuts a street that has not been fully improved shall observe all building setbacks from the ultimate right-of-way of the street.
- e) Exceptions. The above minimum setback requirements do not apply or shall be modified in the following circumstances
 - 1. No increased setback is required for an existing legally established structure or for a new primary dwelling unit that is constructed in the same dimensions as an existing legally established structure, provided that the new primary dwelling unit shall not be greater than 800 square feet.
 - 2. A required minimum setback may be reduced pursuant to Subsection (J)(22)(b) to the degree it would (i) physically preclude the development or maintenance of two (2) dwelling units on a lot or (ii) physically preclude any new primary dwelling unit from being 800 square feet in floor area; but in no event may any structure be less than four (4) feet from a side or rear property line.
 - 3. Permitted Intrusions. Permitted intrusions shall comply with provisions set forth in Subsections 9271(j) and 9271(l).
- 5. Building Separation. A minimum building separation shall be maintained between all detached structures on a lot, including all residential units, garages, and accessory structures as may be required by Building Code.
- 6. Lot Coverage. The maximum lot coverage shall not exceed fifty (50) percent. The lot coverage shall include all buildings and structures (primary and accessory), covered porches and patios, and covered parking areas.
- 7. Maximum Front Setback Coverage. The maximum front setback coverage shall comply with the provisions set forth in Section 9267.
- 8. Open Space. Each new primary dwelling unit shall provide, at a minimum, a continuous private recreation area of 225 square feet with minimum interior dimensions of ten (10) feet. The private recreation area shall be open and unobstructed from the ground to the sky. The private recreation area may be located within the interior side, street side, or rear setback areas.

9. Landscaping. All setback areas, and all areas not designated for walkways, parking, drive aisles, and private recreation areas, shall be fully landscaped and irrigated.

10. Off-Street Parking.

- a) Required Parking. One (1) off-street parking space shall be provided for each new primary dwelling unit unless one (1) of the following applies:
 - 1. The lot is located within one-half mile walking distance of either (i) a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the California Public Resources Code, or (ii) a major transit stop as defined in Section 21064.3 of the California Public Resources Code.
 - 2. The lot is located within one (1) block of a car-share vehicle location.
- b) Off-street parking spaces for an existing primary dwelling shall continue to be provided in accordance with the standards for the underlying zone.
- c) Required parking for new primary dwelling units may be provided within an enclosed garage or as open parking spaces on the lot, but not as tandem parking. Open parking spaces may be located within the side or rear setbacks, and in the front setback for driveways that are not shared by more than one (1) housing unit.
- d) All off-street parking space dimensions are subject to the provisions set forth in Section 9266.

11. Unit Design Standards.

- a) If there is an existing primary dwelling that was legally established on the lot prior to the filing of a complete application for a two-unit development or an urban lot split, any new additional primary dwelling unit shall match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- b) If two (2) new primary dwelling units are developed on the lot, the dwellings shall match with each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- c) All exterior lighting shall comply with Section 9271hh.

- d) Each new primary dwelling unit shall have a main entry that is clearly defined, and to the extent possible, be oriented directly toward the street(s) in order to provide consistency with the neighborhood. The main entry shall be covered, with a minimum depth of three feet. Each covered entry shall be in proportion with the building and shall incorporate architectural features that are used in the overall building design. All doors shall have standard door locks and dead bolts.

12. Storage Facilities.

Each new primary dwelling unit shall provide a minimum 144 cubic feet of private secure storage space. Normal closets and cupboard space located within the unit shall not count toward meeting the requirement.

13. Laundry Facilities.

Each new primary dwelling unit shall have a laundry space located within the unit or within a garage accessible from the unit that is equipped with washer and dryer hook-ups. If the laundry facilities are located within an enclosed garage, the laundry equipment shall not encroach into the interior garage parking area.

14. Water Heaters.

Each new primary dwelling unit shall have a separate hot water. The location of the water heater shall be incorporated into the design of each unit. No exterior water heater enclosures shall be permitted. Water heaters may be substituted with tankless water heaters provided all building codes are complied with.

15. Mechanical Equipment, Metering Devices.

All roof and ground mounted mechanical equipment and metering devices shall be completely screened from view from either on or off the property. All ground mounted equipment and above-ground utility meters, including, but not limited to, heating, cooling, or ventilating equipment, water meters, gas meters, and irrigation equipment, shall be shown on the site plan, and, to the extent possible, be placed outside of the required front setback area. If mechanical equipment or metering devices are to be located between a structure and the property line, an unobstructed path at least three feet wide shall be provided between the equipment and the property line.

16. Access and Circulation.

- a) Each development shall be designed to provide adequate on-site vehicular access, circulation, back-up, and turn-around areas that comply with all the applicable City standards.
- b) All units on the lot (or all units on both lots created through an urban lot split) shall share the same drive approach and driveway, unless the street frontage of the lot (or the combined street frontage of the two lots created through an urban lot split) is sufficient to allow for multiple driveways meeting the minimum dimensions specified in the Department of Public Works Standard Plans and Design Standards (latest edition).
- c) Driveways and site access shall comply with the provisions set forth in Section 9267.
- d) Adequate access to each residential unit on the lot for fire and emergency medical service personnel and vehicles shall be provided. The Orange County Fire Authority shall confirm that all applicable fire and emergency access requirements are met before the City will approve an application.

17. Refuse Storage Areas.

All developments shall provide each unit with the appropriate number of containers for recyclables, organics, and non-recyclable solid waste ("trash containers") as required by Article 4, Chapter 3 of the TCC and shall comply with the following:

- a) Trash containers shall be stored within designated storage areas only and not within the garage parking area.
- b) The placement of trash containers for pick-up, and the duration of time prior to and after trash collection of those trash containers, is subject to the Article 4, Chapter 3 requirements.
- c) The area required for each container shall be a minimum of 38 inches by 38 inches.
- d) The trash areas shall be paved and accessed by gates and a walkway for ease of taking trash containers to and from the street.

18. Utilities.

- a) Each primary dwelling unit on a lot shall have its own direct utility connection to the utility/public service provider.

- b) All necessary and/or required easements for the provision of electricity, gas, water, sewer, and other utility or public service to the lot and each primary dwelling unit shall be obtained by the property owner / applicant. The City may condition approval of an application under this Section upon the applicant providing evidence that such easements have been agreed to and/or recorded.
- c) Submitted plans shall show the location and dimension of all proposed above-ground and underground utility and public service facilities serving the lot and each dwelling unit and the location and dimensions of all related easements.

19. Building and Safety.

All structures built on the lot shall comply with all current local building standards.

20. Drainage and Stormwater Management.

Each lot shall detain stormwater on site or treat before draining to an approved storm drain facility. The design of parkway culverts and storm drain lateral pipe connections to City-maintained storm drains within the City right-of-way shall comply with applicable City standards.

21. Address Identification.

Each residential unit shall have a separate address and shall be provided with approved address identification that is visible from the street fronting the lot in accordance with Section R319 of the California Residential Code. Where the unit address on the building cannot be viewed from the street fronting the lot, a monument, pole, or other means consistent with City standards shall be used to identify the unit. Where required by the fire code official, address identification shall be provided in additional approved locations to facilitate emergency response.

22. Exceptions to Objective Standards.

- a) Any objective zoning, subdivision, or design standard that would have the effect of physically precluding the construction of up to two (2) primary residential units on a lot or that would physically preclude each new unit from being 800 square feet in floor area shall be modified or waived to the extent necessary to allow the development of two (2) primary residential units on a lot pursuant to this Section that are each 800 square feet in floor area. The City prioritizes some objective development standards over others, as provided in Subsection (b) below. In applying the exceptions required by this Subsection, a proposed project shall be designed such that

a development standard given a lower priority is modified or waived before a development standard given a higher priority. If a proposed project can be designed such that each lot can accommodate two (2) 800 square foot primary dwelling units by modifying or waiving a development standard with a lower priority, then an application that proposes a design requiring the modification or waiver of a development standard with a higher priority will be denied.

- b) Priority of Development Standards. The City prioritizes the following development standards in the following descending order of priority, with the first development standard listed having the highest priority:
1. Lot Size.
 2. Lot Width.
 3. Height; Stories.
 4. Front setback.
 5. Maximum front setback coverage (50%).
 6. Open space (225 square feet).
 7. Minimum unit size.
 8. Lot coverage (50%).
- c) This Subsection shall not be interpreted to permit the construction of new garages or accessory structures, or the maintenance of existing accessory structures not providing required parking, where the development or maintenance of two (2) 800 square foot dwelling units on the lot would not be physically precluded in the absence of such proposed or existing structures.
- d) Building standards, standards required by federal, state or local law or for sanitation or safety reasons, the off-site parking requirements in Subsection (J)(10), and the lot size, access, and frontage requirements set forth in Subsection (K) will not be waived or modified unless otherwise required by state law.
- e) As part of its application, the applicant shall provide a written explanation that (a) specifically describes every development standard the applicant seeks to modify and waive, and to what extent, (b) demonstrates why waiver or modification of each development standard is needed to prevent physically precluding the construction of up to two (2) primary residential

units on the lot and/or each new unit from being at least 800 square feet in floor area, and (c) demonstrates that the requested modifications and/or waivers are consistent with the priority set forth in this Subsection.

K. Additional Requirements for Urban Lot Splits

1. An urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act and Chapter 3 of Article 9 of the TCC, including implementing requirements in this Code, except as otherwise provided in this Section. Notwithstanding the foregoing, no dedication of rights-of-way or construction of offsite improvements is required solely for an urban lot split.

2. Lot Size.

The parcel map for an urban lot split shall subdivide an existing lot to create no more than two (2) new lots, provided that the resulting lot shall be a minimum of 1,200 square feet. One (1) of the resulting lots shall be at least forty (40) percent of the lot area of the original lot proposed for subdivision.

3. Easements.

a) The owner shall enter into an easement agreement with each utility / public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

b) Each easement shall be shown on the tentative parcel map and the final parcel map.

c) Copies of the unrecorded easement agreements shall be submitted with the application. The easement agreements shall be recorded against the property before the final parcel map may be approved.

4. Lot Access and Width.

a) Easements for purposes of pedestrian and/or vehicular access shall be of adequate width and depth to provide continuous and unobstructed access to the public right-of-way.

b) No building or construction, except driveways or pedestrian pathways and landscaping, shall be allowed on the easement.

c) Each resulting lot shall have frontage on the public right-of-way of at least twenty-five (25) feet when providing separate driveways and a minimum of twelve (12) feet when sharing a driveway for vehicular access and/or ingress/egress access, whether vehicular or for pedestrian pathways.

5. **Improvements Required.** Each resulting lot shall be developed in accordance with improvement plans processed concurrently with the parcel map application and approved by the City, showing the location and dimensions of all structures, drive aisles, parking areas, pedestrian pathways, and other improvements proposed to be constructed or to remain on each lot. Approval of a parcel map for an urban lot split shall be subject to the City's approval of such related improvement plans and all related entitlements or other approvals required by this Code. Any proposed development on one of the lots that is inconsistent with or not shown on the improvement plans approved concurrently with the urban lot split shall be subject to review and approval by the City in accordance with the applicable requirements of this Code.
6. **Required Affidavit.** The applicant for a parcel map for an urban lot split shall sign an affidavit provided by the City stating that the applicant intends to occupy one (1) of the dwelling units on one (1) of the resulting lots as the applicant's principal residence for a minimum of three (3) years after the final parcel map for the urban lot split is approved.

L. Compliance with Emergency Access and Service Requirements

Development of a lot pursuant to this Section shall comply with provisions set forth in Section 9280(J)(16)(d).

M. Deed Restriction

Prior to approval of a parcel map for an urban lot split and/or the issuance of a building permit for the development of an SB 9 two-unit residential development, the owner(s) of record of the property shall provide the Director a copy of a covenant agreement, declaration of restrictions, or similar deed restriction ("deed restriction") recorded against the property, which is in a form prepared by and/or acceptable to the Director, and that does each of the following:

1. Expressly requires the rental of any dwelling unit on the property be for a term longer than thirty (30) consecutive days.
2. Expressly prohibits any non-residential use of the lot.
3. Expressly prohibits primary dwelling units located on the same lot from being owned or conveyed separately from one another.
4. Expressly requires all fee interest in each lot and all dwellings to be held equally and undivided by all individual owners of the lot.
5. Expressly prohibits condominium airspace divisions and common interest developments on the property.

6. States that the property was formed and/or developed pursuant to the provisions of this Section and is therefore subject to the City regulations set forth in this Section, including all applicable limits on dwelling size and development.
7. Expressly prohibits more than two (2) dwelling units of any kind from being constructed or maintained on a lot that results from an urban lot split.
8. States (i) that the deed restriction is for the benefit of and is enforceable by the City, (ii) that the deed restriction shall run with the land and shall bind future owners, their heirs, and successors and assigns, (iii) that lack of compliance with the deed restriction shall be good cause for legal action against the owner(s) of the property; (iv) that, if the City is required to bring legal action to enforce the deed restriction, then the City shall be entitled to its attorneys' fees and court costs; and (v) that the deed restriction may not be modified or terminated without the prior written consent of the Director.

N. Fees

Development of lots pursuant to this Section shall be subject to all applicable fees, including development impact fees, and assessments, duly adopted by the City.

O. Objective Standard Conditions

The Director is authorized to promulgate objective standard conditions implementing this Section, which are consistent with this Code and State law, that shall apply to the application and development of two-unit developments and urban lot splits, and to publish such standard conditions on the City's internet website. Applicants shall comply with all standard conditions duly promulgated by the Director and published on the City's internet website.

P. Expiration of Approval

The approval of an SB 9 two-unit residential development shall become null and void if construction is not commenced within one (1) year of the approval and diligently advanced until completion of the project. In the event construction of the project is commenced, but not diligently advanced until completion, the rights granted pursuant to the approval shall expire if the building permits for the project expire.

SECTION 3. Section 9321(b), Table 2-1 (Review Authority) of Part 2 (Subdivision Processing) of Chapter 3 (Subdivisions) of Article 9 (Land Use) of the TCC to read as follows (new text underlined; deleted text in strikeout):

Type of Application	Decision Body	Appeal Body
Tentative Maps, including Vesting	Planning Commission ³	City Council

³ Tentative Parcel Maps for Urban Lot Splits shall be processed and approved ministerially per Government Code 66411.7 and Section 9329.

SECTION 4. Section 9323(c)(2) of Part 2 (Subdivision Processing) of Chapter 3 (Subdivisions) of Article 9 (Land Use) of the TCC is hereby amended to read as follows (new text underlined):

Tentative maps shall be considered by the Planning Commission in compliance with 9321.b (Authority for Subdivision Decisions), with a noticed public hearing, except Tentative Parcel Maps for Urban Lot Splits, which shall be considered ministerially per Government Code 66411.7 and Section 9329.

SECTION 5. Section 9329 is hereby added to Part 2 (Subdivision Processing) of Chapter 3 (Subdivisions) of Article 9 (Land Use) of the TCC to read as follows:

9329 – URBAN LOT SPLITS

a) The provisions of this Section apply to the processing of parcel maps for urban lot splits pursuant to California Government Code Section 66411.7 and Chapter 9280 of this Code.

b) Approval. Notwithstanding the Subdivision Map Act or any other provision of this Section, an application for a parcel map for an urban lot split is approved or denied ministerially, by the City’s Director of the Community Development Department, without discretionary review. A tentative parcel map for an urban lot split is approved ministerially if it complies with the applicable objective requirements of Section 9280 and the Subdivision Map Act. The tentative parcel map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements.

c) Guidance and Procedures. The Community Development Director has the authority to interpret and establish guidance and procedures for the processing, approving, and finalizing parcel maps for urban lot splits, which are consistent with state and local law.

SECTION 6. Effective Date. This Ordinance shall take effect on the 31st day after its adoption. The City Clerk or his or her duly appointed deputy shall certify to the adoption of the Ordinance and cause this Ordinance to be published as required by law.

SECTION 7. CEQA Exemption. This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA). The Legislature has declared that this ordinance, which implements the provisions of Government Code Sections 65852.21 and 66411.7, is not a project under CEQA or the CEQA Guidelines.

SECTION 8. Severability. If any section, sub-section, clause or phrase in this Ordinance or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Ordinance or the application of such provisions to other persons or circumstances shall not be affected.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Tustin on this ____ day of _____, 2022.

AUSTIN LUMBARD, Mayor

CARRIE WOODWARD, Acting City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF TUSTIN)

CERTIFICATION FOR ORDINANCE NO. 1523

CARRIE WOODWARD, Acting City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, do hereby certify that the whole number of the members of the City Council of the City of Tustin is five; that the above and foregoing Ordinance 1523 was duly passed and adopted at a regular meeting of the Tustin City Council held on the ____ day of _____, 2022, by the following vote:

COUNCILMEMBER AYES: _____
COUNCILMEMBER NOES: _____
COUNCILMEMBER ABSTAINED: _____
COUNCILMEMBER ABSENT: _____

CARRIE WOODWARD, Acting City Clerk

Published: _____