

## URGENCY ORDINANCE NO. 3132

AN URGENCY ORDINANCE OF THE CITY OF WHITTIER, CALIFORNIA AMENDING TITLE 18 (ZONING) OF THE WHITTIER MUNICIPAL CODE TO CREATE TWO RESIDENTIAL UNITS PER LOT AND AMENDING TITLE 17 (SUBDIVISIONS) OF THE WHITTIER MUNICIPAL CODE TO CREATE AN URBAN LOT SPLIT, ALL PURSUANT TO SENATE BILL 9

### RECITALS

- A. On September 16, 2021, Governor Gavin Newsom approved Senate Bill 9 (SB 9), which provided for the creation of two residential units per lot.
- B. SB 9 requires local agencies to ministerially approve a housing development containing no more than two residential units per lot and to ministerially approve an urban lot split creating two residential lots.
- C. SB 9 takes effect on January 1, 2022.
- D. SB 9 allows local agencies to impose objective zoning, subdivision, and design review standards.
- E. 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 the Ordinance in place by January 1, 2022.
- F. 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.

THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**SECTION 1. New Subsection (iii) within Section 18.10.020(I)(5)(A).** A new subsection (iii) is added to the Whittier Municipal Code section to read as follows:

*“Notwithstanding anything else in this section to the contrary, if the lot was previously involved in a subdivision pursuant to Municipal Code section 17.06.100 et seq. (Urban Lot Split – Approval Process), then an ADU or JADU is allowed if, after construction, there would be no more than two housing units on the lot, including, but not limited to units otherwise allowed pursuant to density bonus provisions, ADUs, and JADUs.”*

**SECTION 2. New Chapter 18.57.** Title 18 of the Whittier Municipal Code is hereby amended to added new Chapter 18.57 to read as follows:

**Chapter 18.57 Two-Unit Housing Development**

**Section 18.57.010 Definitions.**

*“Housing Development” shall mean no more than two residential units within a single-family residential zone (R-1 and R-E) that meets the requirements of this Chapter. The two units may consist of two new units or one new unit and one existing unit.*

**Section 18.57.020 Approval Process.**

A housing development shall be administratively approved if it meets the following requirements:

1. *Zoned Single Family.* The property is located within a single-family residential zone. Single-family residential zones include R-1 (single-family residential zone) and R-E (single-family residential estate zone),.
2. *Not on Prohibited Land.* The property is not located in any of the following areas and does not fall within any of the following categories:
  - a. *Historic.* Designated Historic District or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code as it may be amended from time to time, or within a site that is designated or listed as a city landmark or historic property or district pursuant to a city ordinance.
  - b. *Farmland.* Prime farmland or farmland of statewide importance as further defined in Government Code section 65913.4(a)(6)(B) as it may be amended from time to time.
  - c. *Wetlands.* “Wetlands” as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
  - d. *Fire Zone.* A very high fire hazard severity zone, as further defined in Government Code section 65913.4(a)(6)(D) it may be amended from time to time. This does not apply to sites excluded from the specified hazard zones 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. *Hazardous Waste Site.* 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. *Earthquake Fault Zone.* 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. *Flood Zone.* A special flood hazard area subject to inundation by the 1 percent annual chance of 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) as that section may be amended from time to time;
- h. *Floodway.* 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. *Planned for Habitat Conservation.* 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) as that section may be amended from time to time.
  - j. *Habitat for Protected Species.* 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 USC 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. *Conservation Easement.* Lands under a conservation easement.
3. *Not Affordable Housing or Rental Property.* 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; or
  - b. Housing that has been occupied by a tenant in the last three years.
4. *Does Not Demolish 25%.* 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.

### **Section 18.57.030 Standards and Requirements.**

- A. The following requirements shall apply in addition to all other objective standards pertaining to the single-family residential zone:
- 1. *Zero Setback.* 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. *Four Foot Setback.* Except for those circumstances described in section A.1 above, the setback for side and rear lot lines shall be four feet. The front setback shall be as set forth in the single-family residential zone in which the property is located.
  - 3. *Easements.* The applicant shall provide easements for the provision of public services and facilities as required.



4. *Access.* All lots shall have access to, provide access to, or adjoin the public right-of-way with the minimum width as required under Section 18.48.070 D of this code.
  5. *Parking.* Off-street parking shall be one space per unit per parcel created, except that no parking requirements shall be imposed in either of the following circumstances:
    - a. The property 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 property.
  6. *Additional Unit.* Any unit constructed must be compatible in design to the existing primary structure and must also comply with the existing accessory dwelling unit standards and requirements set forth in section 18.10.020(l) of this Code unless those standards and requirements conflict with this section or state law, in which case this section and state law apply.
- B. *800 Square Foot Units.* 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.
- C. *Connected Structures.* The city shall not reject an application solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow a separate conveyance.
- D. *Affidavit.* 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, and junior accessory dwelling units.

**Section 18.57.040 Building Official determinations.**

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.

**SECTION 3. New Section 17.06.100.** Section 17.06.100 of the Whittier Municipal Code is hereby added as follows:

**Section 17.06.100 Urban Lot Split –Approval Process.**

The city shall ministerially approve a parcel map for the split of a single-family residential lot into two parcels if the following requirements are met, in addition to the requirements of section 17.06.110:

- A. *Zoned Single Family.* The property is located within a single-family residential zone. Single-family residential zones include R-1 (single-family residential zone) and R-E (single-family residential estate zone).
- B. *Two Parcels Maximum.* 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.
- C. *Lots at Least 1,200 square feet.* Both newly created parcels are no smaller than 1,200 square feet.
- D. *Not on Prohibited Land.* The property is not located in any of the following areas and does not fall within any of the following categories:
  1. *Historic.* Designated 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.
  2. *Farmland.* Prime farmland or farmland of statewide importance as further defined in Government Code section 65913.4(a)(6)(B).
  3. *Wetlands.* Wetlands as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

4. *Fire Zone.* 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.
5. *Hazardous Waste Site.* 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.
6. *Flood Zone.* 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:
  - a. The site has been subject to a Letter of Map Revision prepared by FEMA and issued to the city; or
  - b. 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).
7. *Floodway.* 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.

8. *Planned for Habitat Conservation.* 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).
  9. *Habitat for Protected Species.* 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 USC 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).
  10. *Conservation Easement.* Lands under a conservation easement.
- E. *Prohibitions.* The proposed lot split shall not:
1. *Affordable Housing.* Require demolition or alteration of any 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;
  2. *Rental Units.* Require demolition or alteration of any housing that has been occupied by a tenant in the last three years.
  3. *Two Units.* Create more than two units on a parcel, including any accessory dwelling units or junior accessory dwelling units.

**SECTION 4. New Section 17.06.110.** Section 17.06.110 of the Whittier Municipal Code is hereby added as follows:

**Section 17.06.110 Urban Lot Split – Standards and Requirements.**

An urban lot split pursuant to section 17.06.100 shall comply with the following requirements:

- A. *Map Compliance.* The lot split shall conform to all applicable objective requirements of the Subdivision Map Act and Title 17 of the Municipal Code, except as the same are modified by this section.
- B. *Setbacks.*
  1. No setback is 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 subsection 1 above, the required minimum setback for side and rear lot lines shall be four feet. The required minimum front setback shall be as set forth in the applicable single-family residential zone.
- C. *Easements.* The applicant shall provide easements for the provision of public services and facilities as required. However, the city shall not require dedications of rights-of-way or the construction of off-site improvements for the parcels being created as a condition of issuing a parcel map.
  - D. *Street Access.* All lots shall have access to, provide access to, or adjoin the public right-of-way with the minimum width as required under Section 18.48.070 D of this code.
  - E. *Parking.* One off-street parking space shall be required per unit on each parcel created, except that no such parking requirements shall be imposed in either of the following circumstances:
    1. The property 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
    2. There is a car share vehicle located within one block of the property.
  - F. *800 square foot units.* 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.
  - G. *Non-Conforming.* The city shall not require the correction of non-conforming zoning provisions as a condition for the urban lot split.
  - H. *Connected Structures.* The city shall not reject an application solely because it proposes adjacent or connected structure provided that the structures meet building code safety standards and are sufficient to allow a separate conveyance.
  - I. An applicant for an urban lot split under 17.06.100 and this section 17.06.110 shall 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, and junior accessory dwelling units.
- J. 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.
- K. *Additional Unit.* Any unit constructed must be compatible in design to the existing primary structure and must also comply with the existing accessory dwelling unit standards and requirements set forth in section 18.10.020(I) of this Code unless those standards and requirements conflict with this section or state law, in which case this section and state law apply

**SECTION 5. New Section 17.06.120.** Section 17.06.120 of the Whittier Municipal Code is hereby added as follows:

**Section 17.06.120 Urban Lot Split - Exceptions.** No urban lot split shall be approved if either of the following:

- A. Any involved parcel has been established pursuant to an urban lot split in accordance with section 17.06.100.
- B. 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 pursuant to section 17.06.100. For purposes of this section, it will be assumed that where a lot owner purchased the property from an adjacent owner who subdivided their 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.

**SECTION 6. CEQA.** This adoption of this Ordinance is not a project under CEQA pursuant to SB 9.

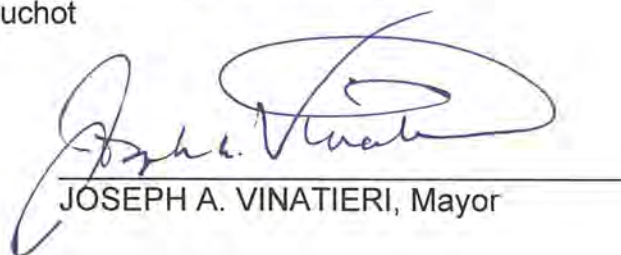
**SECTION 7. Code Change January 1, 2022.** This Ordinance shall take effect immediately because of the need for the preservation of the public peace, health, and safety for the reasons set forth in the Whereas clauses in the beginning of this Ordinance. However, the Municipal Code provisions affected by this Ordinance shall not be revised until January 1, 2022.

**SECTION 8. Fees.** The City Council finds that the applications set forth in this Ordinance are the same as the existing applications for accessory dwelling units and parcel maps and as such, the fee for two-unit housing development and the urban lot split parcel maps applications shall be the same as the accessory dwelling unit and parcel map applications. The City Council may revise the fees from time to time, by adoption of a resolution.


**SECTION 9. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

APPROVED AND ADOPTED this 14<sup>th</sup> day of December 2021 by the following 4/5 roll call vote:

AYES: 4 Council Members: Vinatieri, Warner, Martinez, Dutra  
NOES: 1 Council Member: Bouchot  
ABSENT:  
ABSTAIN:

  
\_\_\_\_\_  
JOSEPH A. VINATIERI, Mayor

ATTEST:

  
\_\_\_\_\_  
RIGOBERTO GARCIA JR., City Clerk  
(seal)

Date: 12/16/2021

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Jones, City Attorney



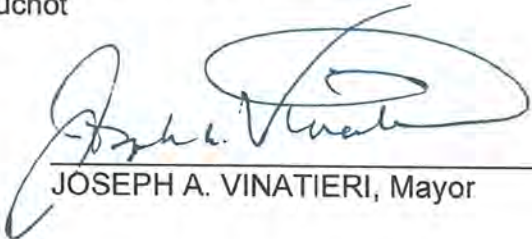
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ABSENT:  
ABSTAIN:

  
JOSEPH A. VINATIERI, Mayor

ATTEST:

  
RIGOBERTO GARCIA JR., City Clerk  
(seal)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
Richard D. Jones, City Attorney