



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/15/2022

ITEM NO: 5

DATE: November 10, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Ordinance Effecting Amendments to Chapter 29 (Zoning Regulations) of the Town Code to Regulate Urban Lot Splits and Two-Unit Housing Developments in Compliance with Senate Bill 9. Town Code Amendment Application A-22-002. Location: Town-wide. Applicant: Town of Los Gatos

RECOMMENDATION:

Adopt an Ordinance effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code to regulate urban lot splits and two-unit housing developments in compliance with Senate Bill 9.

DISCUSSION:

On November 1, 2022, the Town Council considered and voted unanimously to introduce an Ordinance amending Chapter 29 (Zoning Regulations) of the Town Code to regulate urban lot splits and two-unit housing developments in compliance with Senate Bill 9 (SB 9), with specific modifications. Adoption of the attached Ordinance (Attachment 1) would finalize this decision and includes the modifications requested by the Town Council described below.

The Town Council motion included four specific modifications to the Draft Ordinance, which are reflected in Attachment 1:

1. Removal of the front setback requirement for flag/corridor lots (Table 1-2, Exception (5) of Section 29.10.630);
2. Reduction of the driveway depth requirement from 25 feet to 18 feet to match the garage entry setback requirement in Table 1-2 (Section 29.10.630(a)(2)b);

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Director, and Finance Director

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DISCUSSION (continued):

3. Removal of second-floor step-back requirement for two-unit developments facing a street (Section 29.10.630 (b)(5)); and
4. Inclusion of neighborhood notification requirements consistent with those specified in Town Code Section 29.20.480 for Minor Residential Planning Applications [Sections 29.10.640(a)(3) and 29.10.660(a)(3)].

The Town Council also provided the following direction to staff:

1. Revise the Occupancy Affidavit for SB 9 Urban Lot Split applications to be modeled on those used by the Town of Atherton and Santa Clara County;
2. Return to Council in three months with information regarding Very High Fire Hazard Severity Zone exclusions; applicability of Hillside Residential zones; and affordability models; and
3. Return to Council in one year to report on and receive direction on continuation of the new public noticing provision.

Attachment 2 contains public comments received following the November 1, 2022 Town Council hearing.

ENVIRONMENTAL ASSESSMENT:

In accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 ordinances are not a project subject to CEQA.

Attachments:

1. Draft Ordinance
2. Public comments received between 11:01 a.m., Tuesday, November 1, 2022, and 11:00 a.m., Thursday, November 10, 2022

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29 (ZONING REGULATIONS) REGARDING TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES

WHEREAS, the Town of Los Gatos (Town) has adopted a General Plan to ensure a well-planned and safe community; and

WHEREAS, protection of public health, safety, and welfare is fully articulated in the General Plan; and

WHEREAS, State law requires that the Town's Zoning Code conform with the General Plan's goals and policies; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 (SB 9), which among other things, adds Government Code Sections 65852.21 and 66411.7 to impose new limits on local authority to regulate two-unit housing developments and urban lot splits; and

WHEREAS, SB 9 requires the Town to provide for the ministerial (or "by right") approval of a housing development containing no more than two residential units of at least 800 square feet in floor area (two-unit housing development) and a parcel map dividing one existing lot into two approximately equal parts (urban lot split) within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of proposed housing developments containing no more than two residential units by removing public notice and hearings by the Development Review Committee or Planning Commission, by authorizing only administrative review of the project, and by requiring ministerial approval of a two-unit housing development that meets objective standards; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of the proposed subdivision of one lot into two parcels by removing public notice and hearings by the Development Review Committee or Planning Commission, by requiring only administrative review of the project, and by providing ministerial approval of an urban lot split; and

WHEREAS, SB 9 exempts SB 9 projects from environmental review as required by the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing; and

WHEREAS, SB 9 allows the Town to adopt objective zoning and subdivision standards for two-unit housing developments and urban lot splits; and

ATTACHMENT 1

WHEREAS, the Town desires to amend its local regulatory scheme to comply with and implement Government Code Sections 65852.21 and 66411.7 and to appropriately regulate projects under SB 9; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on September 28, 2022; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on November 1, 2022.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS FINDS AND ORDAINS:

Section 1. The Town Council finds and declares that this Ordinance establishes regulations in the Zoning Code to allow two-unit housing developments and urban lot splits as specified by California Government Code Sections 66452.6, 65852.21, and 66411.7, as adopted and amended by SB 9.

Section 2. A new Division 10, "Two-Unit Housing Developments and Urban Lot Splits," is added to Article I, "In General," of Chapter 29, "Zoning Regulations," to read as follows:

"Section 29.10.600. Purpose and Applicability. The Town Council finds and determines that this Ordinance is applicable only to voluntary applications for two-unit housing developments and urban lot splits. Owners of real property or their representatives may continue to exercise rights for property development in conformance with the Zoning Code and Subdivision Code. Development applications that do not satisfy the definitions for a two-unit housing development or an urban lot split provided in Section III (Definitions) shall not be subject to this Ordinance. Any provision of this Division which is inconsistent with SB 9 shall be interpreted in a manner which is the most limiting on the ability to create a two-unit housing development or urban lot split, but which is consistent with State law. The provisions of this Division shall supersede and take precedence over any inconsistent provision of the Town Code to the extent necessary to effect the provisions of this Division.

Section 29.10.610. Definitions. In addition to definitions contained in Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following definitions apply for purposes of this Division. Where a conflict may exist, the definitions in this Division shall apply.

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on January 1, 2022, acting jointly to pursue development of real property whether or not pursuant to a written agreement and irrespective of individual financial interest.

Addition means any construction which increases the size of a building or facility in terms of site coverage, height, length, width, or gross floor area.

Adjacent parcel means any parcel of land that is: touching the parcel at any point; separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or separate from another parcel only by other real property which is in common ownership or control of the applicant.

Alteration means any construction or physical change in the arrangement of rooms or the supporting members of a building or structure or change in the relative position of buildings or structures on a site, or substantial change in appearances of any building or structure.

Car-share vehicle means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

Common ownership or control means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

Entry feature means a structural element, which leads to an entry door;

Existing structure means a lawfully constructed building that received final building permit clearance prior to January 1, 2022, and which has not been expanded on or after January 1, 2022.

First residential unit means one of two primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200-square foot floor area limitation on first residential units.

Flag lot means “lot, corridor” as defined in Section 29.10.020 of Town Code.

Nonconforming zoning condition means a physical improvement on a property that does not conform with current zoning standards.

Two-unit housing development means an application proposing no more than two primary dwelling units on a single parcel located within a single-family residential zone as authorized by Government Code Section 65852.21. A two-unit housing development shall consist of either the construction of no more than two new primary dwelling units, one new primary dwelling unit and retention of one existing primary dwelling unit, or retention of two existing legal non-conforming primary dwelling units where one or both units are subject to a proposed addition or alteration.

Public transportation means a high-quality transit corridor, as defined in subdivision (b) of Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Section 21064.3.

Single-family residential zone means a “R-1 or Single-Family residential Zone”, “R-1D or Single-Family Residential Downtown Zone”, or “HR or Hillside Residential Zone” as specified in Article IV, “Residential Zones,” of the Zoning Code.

Subdivision Code means Chapter 24 of the Los Gatos Town Code.

Sufficient for separate conveyance means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential

condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

Urban lot split means a ministerial application for a parcel map to subdivide an existing parcel located within a single-family residential zone into two parcels, as authorized by Government Code Section 66411.7.

Zoning Code means Chapter 29 of the Los Gatos Town Code.

Section 29.10.620. Eligibility. An urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- (a) Zoning District. A parcel that is located within a single-family residential zone.
- (b) Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and the Town's Subdivision Regulations in effect at the time the parcel was created. Applications for an urban lot split or two-unit housing development will only be accepted on proposed parcels with either a recorded parcel map or certificate of compliance.
- (c) Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is not listed on the Town of Los Gatos Historic Resource Inventory, as defined by Town Code Chapter 29, Article VII, Division 3, "Historic Preservation and LHP or Landmark and Historic Preservation Overlay Zone."
- (d) Excluding Very High Fire Hazard Severity Zone. A parcel that is not within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code 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) Excluding Hazardous Waste Sites. A parcel that is not identified as a hazardous waste site pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, 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.
- (f) Excluding Earthquake Fault Zone. A parcel that is not located within a delineated earthquake fault zone as determined by the State Geologist on any official maps published by the State Geologist, unless the two-unit housing development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Health and Safety Code Division 13), and by any local building department under Chapter 12.2 (commencing with Section 8875)

of Division 1 of Title 2.

(g) Excluding Flood Zone. A parcel that is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) on the official maps published by the Federal Emergency Management Agency unless a Letter of Map Revision prepared by the Federal Emergency Management Agency has been issued or if the proposed two-unit housing development is constructed in compliance with the provisions of Town Code Chapter 29, Article XI, "Floodplain Management," as determined by the floodplain administrator.

(h) Excluding Natural Habitat. A parcel that is not recognized by the Town as a habitat for protected species identified as a 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).

(i) Excluding Prime Farmland and Wetlands. A parcel that contains either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; or wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

Section 29.10.630. Requirements. Two-unit housing developments must comply with the following objective zoning standards, design review standards, and general requirements and restrictions:

(a) Zoning Standards. The following objective zoning standards supersede any other standards to the contrary that may be provided elsewhere in the Zoning Code, as they pertain to a two-unit housing development under Government Code Section 65852.21. Two-unit housing developments shall be constructed only in accordance with the following objective zoning standards, except as provided by Section (d), "Exceptions:"

(1) Building Height. Maximum building height shall be as specified by the applicable zoning district for the main structure. Buildings located within the required side or rear setbacks of the applicable zoning district, and those located in the Hillside Residential (HR) zones, shall not exceed 16 feet in height;

(2) Driveways. Each parcel shall include no more than a single driveway unless the parcel has more than 100 feet of contiguous street frontage, and any new driveway shall satisfy the following requirements:

a. A minimum width of 10 feet up to a maximum width of 18 feet. Driveways in the Hillside Residential (HR) zones shall have a minimum width of 12 feet;

b. A minimum depth of 18 feet measured from the front or street side property line;

- c. Surfacing shall comply with Town Code Section 29.10.155(e);
- d. Only a single driveway curb-cut shall be permitted per parcel unless the parcel has more than 100 feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and
- e. A maximum slope of 15 percent.

(3) Dwelling Unit Type. The primary dwelling units comprising a two-unit housing development may take the form of detached single-family dwellings, attached units, and/or duplexes. A duplex may consist of two dwelling units in a side-by-side or front-to-back configuration within the same structure or one dwelling unit located atop another dwelling unit within the same structure;

(4) Fencing. All new fencing shall comply with the requirements of Sections 29.40.030 through 29.40.0325 of the Zoning Code;

(5) Floor Area Ratio and Lot Coverage.

- a. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
- b. For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
 1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 2. When the access corridor is owned in-fief and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
- c. The maximum size of the first new residential unit shall not exceed 1,200 square feet.
- d. When a two-unit housing development is proposed, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.
- e. Notwithstanding the floor area ratio standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

(6) Grading.

- a. To the extent required by Chapter 12, Article II and Section 29.10.09045(b) of the Town Code, the grading activities set forth in subsection (b.) below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application;
- b. Grading activity associated with a two-unit housing development shall not exceed 50 cubic yards, cut plus fill, except:
 1. Light wells that do not exceed the minimum required per Building Code shall not count as grading activity for the purpose of this section;
 2. Grading activities required to provide the minimum driveway and fire access as required by the Santa Clara County Fire Department shall not count as grading activity for the purpose of this section; and
 3. Excavation within the footprint of a primary dwelling unit or garage shall not count as grading activity for the purpose of this section.

(7) Cut and Fill. Two-unit housing developments shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements) below:

Table 1-1 – Cut and Fill Requirements		
Site Element	Cut *	Fill *
House and attached garage	8' **	3'
Detached accessory building *	4'	3'
Driveways ***	4'	3'
Other (decks, yards) *	4'	3'

* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

** Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code and light-wells that do not exceed the minimum required per Building Code.

*** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.

(8) Building Sites. The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with an average slope exceeding 30 percent. This provision applies only to the building site, not the property as a whole;

(9) Retaining Walls. Retaining walls shall not exceed five feet in height and shall not run in a straight continuous direction for more than 50 feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer adjacent to the street;

(10) Light Reflectivity Value. Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;

(11) Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);

(12) Lighting. New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill light onto neighboring parcels consistent with Section 29.10.09015 of the Zoning Code;

(13) Trees. Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article 1, Division 2, "Tree Protection," of Town Code;

(14) Minimum Living Area. The minimum living area of a primary dwelling unit shall be 150 square feet, subject to the restrictions specified by Health and Safety Code Section 17958.1;

(15) Parking.

a. One parking stall per primary dwelling unit shall be required, except for two-unit housing developments located on parcels within one-half mile walking distance of

public transportation; or where there is a designated parking area for one or more car-share vehicles within one block of the parcel.

b. Parking stalls may either be uncovered or covered (garage or carport) in compliance with applicable developments standards of the Zoning Code, including Chapter 29, Article I, Division 4, "Parking," except that uncovered parking spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking;

(16) Setbacks. Two-unit housing developments shall be subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below:

Table 1-2 – Setback Requirements	
Setback	Requirement (2)
Property Line Setbacks (1)	Front
	Per the applicable zoning district. (5)
	Garage Entry
	18 feet
	Interior Sides
Separation Between Detached Structures (4)	Rear
	4 feet (3)
	Street Side
Separation Between Detached Structures (4)	Per the applicable zoning district.
	5 feet
Exceptions:	
(1) Cornices, eaves, belt courses, sills, canopies, bay windows, chimneys, or other similar architectural features may extend into required setbacks as specified Section 29.40.070(b) of the Zoning Code.	
(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) No interior side setback shall be required for two-unit housing development units constructed as attached units on separate lots, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance as a separate fee parcel.	
(4) Except for primary dwellings constructed as a duplex or attached single-family residences.	
(5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.	

(17) Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and

(18) New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.

(b) Design Review Standards

The following objective design review standards apply to construction of new primary dwelling units and to any addition and/or alteration to existing primary dwelling units as part of a two-unit housing development, except as provided by Subsection (d) below, "Exceptions:"

(1) Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front- and street-side elevations of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building footprint;

(2) Finished Floor. The finished floor of the first story shall not exceed three feet in height as measured from finished grade;

(3) Front Entryway. A front entryway framing a front door shall have a roof eave that matches or connects at the level of the adjacent eave line;

(4) Front Porch. If proposed, porches shall have a minimum depth of six feet and a minimum width equal to 25 percent of the linear width of the front elevation;

(5) Step-back. The interior side and rear elevations of the second story of a two-story primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall;

(6) Garages. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;

(7) Plate Height. The plate height of each story shall be limited to a maximum of 10 feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight feet; and

(8) Windows. All second story windows less than 10 feet from rear and interior side property lines shall be clerestory with the bottom of the glass at least six feet above the finished floor except as necessary for egress purposes as required by the Building Code.

(c) General Requirements and Restrictions

The following requirements and restrictions apply to all two-unit housing developments, inclusive of existing and new primary dwelling units, except as provided by Subsection (d) below, "Exceptions:"

(1) Number of Units. A maximum of four units, with a maximum of two primary dwelling units, on lots that have not undergone an urban lot split.

(2) Accessory Dwelling Units. In addition to the two residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.

(3) Building and Fire Codes. The International Building Code ("Building Code"), and the California Fire Code and International Fire Code (together, "Fire Code"), as adopted by Chapter 6 of the Town Code, respectively, apply to all two-unit housing developments.

(4) Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to

serve two-unit housing developments. Applicants shall apply for and pay all necessary fees for utility permits for sanitary sewer, gas, water, electric, and all other utility work.

(5) **Restrictions on Demolition.** The two-unit housing development shall not require either demolition of more than 25 percent of the exterior walls 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. This shall be evidenced by an attestation from the property owner;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner.

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for a two-unit housing development shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town.

If any existing dwelling unit is proposed to be demolished, the applicant shall comply with the replacement housing provisions of Government Code Section 66300(d).

(6) **Recorded Covenant.** Prior to building permit issuance, the applicant shall record a restrictive covenant in the form prescribed by the Town, which shall run with the land and provide for the following:

a. A limitation restricting the property to residential uses only; and

b. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.

(d) Exceptions

If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two primary dwelling units or physically preclude either of the two primary dwelling units from being at least 800 square feet in floor area, the Community Development Director shall grant an exception to the applicable standard(s) to the minimum extent necessary as specified by this section. An exception request shall be explicitly made on the application for a two-unit housing development.

(1) **Determination.** In order to retain adequate open space to allow for recreational enjoyment, protection of the urban forest, preservation of the community character, reduction of the ambient air temperature, and to allow for the percolation of rainfall into the groundwater system, when considering an exception request, the Community Development Director shall first determine that a reduction in any other zoning and/or design review standard(s) will not allow the construction of the two-unit housing development as specified by this section prior to allowing an exception(s) to the landscaping requirement, front-yard setback, or street-side setbacks standards.

Section 29.10.640. Application Process for Two-Unit Housing Development.

(a) Applications for two-unit housing developments shall be submitted and processed in compliance with the following requirements:

(1) Application Type. Two-unit housing developments shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. The permitting provisions of Town Code Sections 29.20.135 through 29.20.160, "Architecture and Site Approval," shall not be applied;

(2) Application Filing. An application for a two-unit housing development, including the required application materials and fees, shall be filed with the Community Development Department;

(3) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the applicant's parcel).

(4) Building Permits. Approval of a two-unit housing development application shall be required prior to acceptance of an application for building permit(s) for the new and/or modified primary dwelling unit(s) comprising the two-unit housing development;

(5) Denial. The Community Development Director may deny a two-unit housing development project only if the Building Official makes a written finding, based upon a preponderance of the evidence, that the two-unit housing development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon 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; and

(6) Appeals. Two-unit housing application decisions are ministerial and are not subject to an appeal.

Section 29.10.650. Subdivision Standards. Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

(a) Subdivision Standards

The following objective subdivision standards supersede any other standards to the contrary that may be provided in the Zoning Code or Subdivision Code, as they pertain to creation of an urban lot split under Government Code Section 66411.7:

(1) Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;

(2) Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In no event shall a new parcel be less than 1,200 square feet in lot area. If one of the proposed lots is a flag/corridor lot, the area

of the access corridor shall count toward the lot area as follows:

1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and

2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.

(3) Minimum Lot Width. Each new parcel shall maintain a minimum lot width of 20 feet;

(4) Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet, except as allowed above for flag/corridor lots;

(5) Number of Lots. The parcel map to subdivide an existing parcel shall result in no more than two parcels; and

(6) Lot Merger. Lots resulting from an urban lot split shall not be merged unless that lot merger can be done without loss of housing units and without causing a non-conforming building, lot, or use.

(b) General Requirements and Restrictions

The following requirements and restrictions apply to all proposed urban lot splits:

(1) Adjacent Parcels. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously conducted an urban lot split to create an adjacent parcel as provided for in this Division;

(2) Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements but may, however, require recording of easements necessary for the provision of private services, facilities, and future public improvements or future public services, facilities, and future public improvements;

(3) Existing Structures. Existing structures located on a parcel subject to an urban lot split shall not be subject to a setback requirement. However, any such existing structures shall not be located across the shared property line resulting from an urban lot split, unless the structure is converted to an attached unit as provided for in Table 1-2 (Setback Requirements, Exception Number 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;

(4) Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one of the housing units on the newly created parcels as their principal residence for a minimum of three years from either:

a. The date of the approval of the urban lot split when the intent is to live in an existing residence; or

b. Certificate of occupancy when the intent is to occupy a newly constructed residential unit.

This requirement shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code;

(5) Non-Conforming Conditions. The Town shall not require, as a condition of approval, the correction of nonconforming zoning conditions. However, no new nonconforming conditions may result from the urban lot split other than interior side and rear setbacks as specified by Table 1-2 (Setback Requirements, Exception Number 2);

(6) Number of Units. No more than two dwelling units may be located on any lot created through an urban lot split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as two-unit developments. Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

(7) Prior Subdivision. A parcel created through a prior urban lot split may not be further subdivided. The subdivider shall submit a signed deed restriction to the Community Development Director documenting this restriction. The deed restriction shall be recorded on the title of each parcel concurrent with recordation of the parcel map;

(8) Restrictions on Demolition. The proposed urban lot split shall not require either the demolition of more than 25 percent of the exterior walls 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. This shall be evidenced by an attestation from the property owner;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner;

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an urban lot split shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using an urban lot split;

(9) Replacement Units. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d);

(10) Recorded Covenant. Prior to approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Town, which shall run with the land and provide for the following:

a. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;

b. A limitation restricting the properties to residential uses only; and

c. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.

(11) Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;

(12) Utility Providers. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and

(13) Compliance with Subdivision Map Act. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410), except as otherwise expressly provided in Government Code Section 66411.7.

Section 29.10.660. Application Process for Urban Lot Splits.

(a) Applications for urban lot splits shall be submitted and processed in compliance with the following requirements:

(1) Application Type. Urban lot splits shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. A tentative parcel map shall not be required;

(2) Application Filing. An urban lot split application, including the required application materials and fees, shall be filed with the Community Development Department;

(3) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the applicant's parcel).

(4) Parcel Map. Approval of an urban lot split permit shall be required prior to acceptance of an application for a parcel map for an urban lot split. Applicants shall apply for an Urban Lot Split Parcel Map and pay all fees;

(5) Development. Development on the resulting parcels is limited to a project approved by the two-unit housing development process or through the Town's standard discretionary process;

(6) Denial. The Community Development Director may deny an urban lot split only if the Building Official makes a written finding, based upon a preponderance of the evidence, that an urban lot split or two-unit housing development located on the proposed new parcels would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon 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; and

(7) Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.

Section 29.10.670. Sunset Clause. If SB 9 is repealed or otherwise rescinded by

the California State Legislature or by the People of the State of California, this Division shall be repealed."

Section 3. CEQA. In accordance with Government Code Sections 66411.7(n) and 66452.21(g), adoption of this Ordinance is not a project subject to CEQA.

Section 4. Severability Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted the remainder of this Ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

Section 5. Publication. The Town Clerk is directed to publish this Ordinance in a newspaper of general circulation as required by State law. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

Section 6. Effective Date. This ordinance takes effect 30 days after adoption.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 1st day of November 2022 and adopted at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____ 20___, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

Councilmembers:

Thank you for your deliberation on this matter this last week. I think that a reasonable decision was made as to the final wording of the ordinance. I still have some reservations as to the 'Objective Design Restrictions', but can live with them for a while and will use the A&S proceed after an ULS where I cannot.

Now that I have gone through a few of these Urban Lot Splits in various jurisdictions, I just wanted to share with you some practical insights about a concern voiced at the hearing [and put in the motion for a 3-month review] that I think you should be aware of - specifically in the HR Zoning Districts. This might not prove to be such a concern in the long run.

Specifically, when a property is located in a VHFHZ the Fire Department looks at the projects very carefully! More specifically they apply a set of recently enacted state rules related to "Access". It is unlikely that they will approve a project if any of the following conditions occurs:

1. The property is on a dead-end street with no alternate egress. The length of street allowed varies by zoning district, but would not typically be over 1/4 mile.
2. The street used to access the property is less than 20 ft in width. [many roads/streets in HR are less than that].
3. There is no fire hydrant with adequate psi and flow rate within 600 ft of the rear of the residence.
4. There is no fire truck turnaround at the end of the street.

In a project in Monte Sereno in which I am involved there is a 950 ft long private dead-end street in the HR-1 zoning district [equivalent]. Based on Fire Department conditions [not the City's - as it cannot legally impose off-site improvements], the homeowner has elected to:

1. Widen the street, within the roadway easement, to satisfy fire truck access requirements.
2. Install a second fire hydrant on the street.
3. Improve the Emergency Vehicle turnaround at the end of the street.

So in the end we have a situation where - yes - a project was approved in a hillside VHFHZ. But the entire neighborhood has benefitted significantly with a widened street, a new hydrant, a new home which will have fire sprinklers, and generally-improved fire hazard security to the community. I contend that instead of finding some hyper-restrictive wording with which to justify denial of a project we let the fire department constraints dictate project feasibility. They have the true knowledge and expertise in this field and state law to back it up. Projects in "difficult to access" Hillside areas will not be feasible. This might not satisfy some homeowners in more remote areas, but it will put the brakes on indiscriminate hillside development in Fire Hazard Zones.

With that in mind, I would ask that the Planning Process should ask for a preliminary SCCFD Review for VHFHZ [or perhaps all] projects prior to asking a homeowner to invest tens of thousands of dollars to create detailed plans after Preliminary approval only to hit a 'Fire-wall' when they submit for a detailed ULS or 2UD.

Thank you for your consideration.

Tony Jeans

Tony-

I like your argument that often these projects improve the fire safety of the general neighborhood, by widening the street, adding hydrants, and adding turnarounds. Indeed I have a project that is doing exactly that in order to even be able to build. So being able to add units in fact improves fire safety in VHSFZ . We should all push this point.

Noel
Noel Cross+Architects

From: Ivy Chang
Sent: Monday, November 7, 2022 9:39 AM
To: Attorney <Attorney@losgatosca.gov>; Gabrielle Whelan <
Cc: Scott Watson <
Subject: SB9 Ordinance - 30% Slope Restriction

EXTERNAL SENDER

To: Town Attorney Ms. Whelan,

Congratulations on your appointment to Town Attorney in April. Since your service in the Town of Los Gatos is less than one year, I would like to provide some history regarding slope restriction in the Hillside Development Standards and Guideline, as well as Town Code.

The Hillside Development Standards and Guidelines was adopted by Council in January 2004.

In Chapter 2, Site Selection, page 12 - It says "LRDA - least restrictive development area. Topography, with emphasis on slopes over 30%.

In Chapter 6, Site Elements, page 53 - it says Swimming Pools and Sport Courts are prohibited on slope greater than 30 percent.

It only restricts 30% slope for swimming pool and sport courts, NOT for the development of a house. However, the Town added 30% slope restriction in the SB9 Ordinance to lessen the intensity of housing.

I've reached out to the Attorney General regarding this violation of the Housing Crisis Act of 2019. Rob Bonta's office encouraged me to continue to work with local government towards a resolution. I also reached out to Compliant Review @HCD. HCD told me that they do not have enforcement authority over SB9, however they will review the potential violation of the HCA. Per my conversation with a land use attorney, adding 30% slope restriction on SB9 will reduce the intensity of use, which is clearly a violation of HCA state law. I've attached SB9 factsheet regarding HCA at page 7. (Gov. Code, § 66300, subd. (b)(1)(A).)":

In the Nov 1, 2022 Town Council meeting, there were 4 hillside residents who expressed concerns on the SB9 30% slope restriction during the public hearing. However, there was zero feedback to address the 30% slope restriction by the Town Mayor, Town Council or Town Attorney.

Town of Los Gatos has used both Hillside Development Standards and Guideline and Town Code since 2004. For each development, the LRDA is reviewed by planning commission. For at least one development in 2017, the Town approved a building site with 55% slope – far greater than the 30% guidance. I provide more details below.

I'm writing my email to try again to get resolution as suggested by Attorney General Rob Bonta. Please investigate:

1. Why there is no 30% slope restriction for house development in the Town Code?

Town Code define 8' cut restriction, which is measurable by Town's inspector. The geotechnical, and geological reports are required for building permit. If the investigation and engineers confirmed the site is buildable, even it is 31% slope on average house site, it is still buildable. I believe it is the reason there is no 30% slope restriction language in Town Code.

2. Why Town Council approved a 55% slope development site, while restricting SB9 development by code to 30% slope?

Town Staff suggested to approve the application of 55% slope development (26 Alpine Ave) in July 2017. Town Council granted approval in Dec 2017. The house is under construction today at 55% average slope of house footprint.

During the Town Council meeting, Both Town Mayer Rob Rennie and Town Attorney Robert Schultz repeated Geotechnical's comment regarding it is buildable lot. The 55% slope did not stop the project in standard development per Town Code. There is no state law to allow the Town to add 30% slope restriction ONLY on SB9 development.

3. Town Staff told me that all of the restriction will be exempted for a minimum 800 sqft SB9 development. This statement might be correct under SB9 state law, however, adding 30% slope restriction ONLY on SB9 development still violates HCA state law by reducing the intensity of land use. I expect the Town Attorney to educate Town Staff.

I respectfully request the Town REMOVES the “30% slope restriction” in SB9 Ordinance, because it is not in Town's standard development code, and hence violates HCA state law. The SB9 ordinance page 7 Cut and Fill table can well control hillside development as defined by Town Code and Hillside Development Standards and Guideline.

Please advise if you conclude that the Town can legally add a 30% slope restriction to reduce the intensity of land use by SB9 ordinance. If so, please provide the code. I have also attached two public comments which we sent regarding slope restriction to staff before Nov 1 Town Council Meeting.

Below is more detailed information regarding 55% slope development I referred:

Address: 26 Alpine Avenue

Footprint of house average slope: 55%

Average slope of lot: 41%.

Planning commission hearing on July 26, 2017, time 40:49
<https://www.youtube.com/watch?v=CC7f48FsP5M&t=12s>.

Town staff explain the chapter 2 - “LRDA including many things beyond just slopes”, time 2:46:21:

Town Council hearing on Dec 19, 2017, time
1:45:55 <https://www.youtube.com/watch?v=GLCLgb4VIEM&t=6696s>

Town Attorney Robert Schultz commented “both the Geotech and it was peer-reviewed say it is a buildable lot”, time 2:42:00

Town Mayor Rob Rennie commented “geotechnical consultants that it is doable and safe, so I’m more on the side of accepting the project (55% slope project)”, time 2:50:48

[Item 04 - 26 Alpine Ave - Laserfiche WebLink \(losgatosca.gov\)](#) - Planning Commission July 26, 2017

[Item 19 - 26 Alpine Ave - Architecture and Site Application S-16-052 and Mitigated Negative Declaration ND-17-001 - Laserfiche WebLink \(losgatosca.gov\)](#) - Town Council, December 19, 2017

[Item 2 - 26 Alpine Ave - Time Extension - Laserfiche WebLink \(losgatosca.gov\)](#) – Planning Commission, November 13, 2019 for Time Extension

I look forward to hearing from you.

Beat Regards,
Ivy Chang and Scott Watson

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