TOWN OF LOS GATOS

COUNCIL AGENDA REPORT

MEETING DATE: 11/1/2022

ITEM NO: 11

DATE: October 27, 2022

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Introduce Ordinance, by Title Only, 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. Town Code Amendment Application A-22-002. Location: Town-wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Introduce an ordinance, by tittle only, 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.

BACKGROUND:

In September 2021, Governor Newsom signed new State law, Senate Bill 9 (SB 9), which went into effect on January 1, 2022 (Exhibit 2 of Attachment 3). SB 9 requires ministerial approval of certain housing development projects and lot splits on a single-family zoned parcel, with the intent to increase residential densities within single-family neighborhoods across the State.

The law allows for two new types of development activities that must be reviewed ministerially without any discretionary action or public input:

- **Two-unit housing development** – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit on a parcel with an existing single-family residence).
- **Urban lot split** – A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (two units on each new parcel).

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Assistant Town Manager, Town Attorney, and Public Works Director

BACKGROUND (continued):

In most circumstances, SB 9 will result in the potential creation of four dwelling units on an existing single-family zoned parcel. Single-family zoned parcels are currently permitted three units throughout the State: a primary single-family dwelling; an Accessory Dwelling Unit (ADU); and a Junior ADU (JADU).

SB 9 also outlines how jurisdictions may regulate SB 9 projects. Jurisdictions may only apply objective zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct objective design review, but may not have hearings for units that meet the State rules (with limited exceptions).

On December 21, 2021, Town Council adopted an Urgency Ordinance (Exhibit 3 of Attachment 3) to implement local objective standards for SB 9 applications. This Urgency Ordinance was valid for a period of 45 days. On February 1, 2022, Town Council adopted an extension of the Urgency Ordinance (Exhibit 4 of Attachment 3), making it valid to the end of the calendar year. The current Urgency Ordinance 2327 is set to expire on December 31, 2022.

On September 21, 2022, the Town hosted a Community Meeting to discuss the development of a permanent SB 9 Ordinance and engage the public in the preparation of the Ordinance.

On September 28, 2022, the Planning Commission met to discuss the draft permanent SB 9 Ordinance and made a recommendation to the Town Council. The Planning Commission received and considered public comments on the draft permanent Ordinance, reviewed the proposed changes, and suggested edits in their recommendation of approval to Town Council (Attachment 5).

DISCUSSION:

The Draft Ordinance presented to Planning Commission (Exhibit 1 of Attachment 3) was based on the Urgency Ordinance adopted by Town Council in February 2022 and modified based on: State and Regional Agency direction; clarification of initial standards; and reformatted to integrate it within Chapter 29 of the Town Code (Zoning Regulations). On September 28, 2022, the Planning Commission conducted a public hearing, listened to testimony, and reviewed and discussed each of these proposed edits, as well as potential changes based on public input received in the previous year. The Planning Commission discussion points are organized below in three sections: modifications that Planning Commission did not recommend; items that Planning Commission supported, but that do not require modifications; and modifications that the Planning Commission recommended.

DISCUSSION (continued):

A. No Modifications Recommended

The Planning Commission reviewed and discussed the following items and recommended that no modifications be made to the Draft Ordinance. Each of these items were based on comments received from the public, either in writing or made verbally during the hearing.

- **Applicable Zoning Designations.** In addition to the requested inclusion of Hillside Residential Zones, which has been included based on State direction, members of the public requested that SB 9 applications be allowed on additional zoning designations, such as multi-family zones where single-family development is a principally permitted use, and any zone where the existing use is single-family. Planning Commission did not recommend expanding the allowed zones at this time, but felt it may be worth discussion during future iterations and amendments to this Ordinance.
- **Window Size Limitations.** Comments were received regarding the second-story window design standards, requesting that the clerestory and egress minimums be removed for two-story SB 9 units that meet the underlining zoning setback. Because of a desire to ensure privacy impacts are minimized, the Planning Commission did not recommend increasing allowed window sizes.
- **Second-Story Step-Back.** Similar to the topic above, comments were received regarding the second-story step-back requirement, requesting that this be removed for two-story SB 9 units that meet the underlining zoning setbacks. Planning Commission did not recommend this change as the step-back requirement helps to both ensure privacy impacts are minimized, and decrease the mass of a two-story building in accordance with the Residential Design Guidelines.
- **First Unit Size Limitation.** Comments were received in opposition to the 1,200-square foot size limitation for the first new SB 9 unit. During the Planning Commission hearing, staff described for the Commission that the size limitation was a specific recommendation of Town Council when adopting the Urgency Ordinance as one method to make one of the units affordable by design. Planning Commission did not recommend changes.
- **Hillside Zoning Height Limitation.** Comments were received regarding the 16-foot height limitations of SB 9 units in the HR zones. This standard was included in the Draft Ordinance following State direction to include HR zones. The Town's Hillside Development Standards and Guidelines (HDS&G) allows buildings to be a maximum of 18 feet tall when "visible" from the established viewing areas or when located along a significant ridgeline. To ensure that this standard is objective, and to avoid confusion with the existing 16-foot height limitation when a non-hillside zoned SB 9

DISCUSSION (continued):

building footprint is located within the required side or rear setbacks of the applicable zoning district, the Draft Ordinance includes a 16-foot height limit for all HR zoned properties. Planning Commission did not recommend changes.

- **Three-Foot Finished Floor.** Comments were received regarding the maximum height that a finished floor can project above finished grade, with a request to increase beyond what was already proposed in the Draft Ordinance. The current Urgency Ordinance limits this area to 18-inches. As SB 9 must now include HR zones, the Draft Ordinance was amended to limit this area to three feet instead of 18-inches for consistency with the HDS&G. The Planning Commission did not recommend any increase beyond what was already proposed in the Draft Ordinance to ensure that buildings are designed to follow grades.
- **50 Cubic Yards Grading Restriction.** Comments were received regarding the 50 cubic yard grading restriction. The Urgency Ordinance states that a SB 9 application shall not exceed the summation of 50 cubic yards, cut plus fill, or require a Grading Permit per Town Code Chapter 12, Article II. This was included for consistency with the Town Code where grading in excess of 50 cubic yards that is not used for building excavation requires a Grading Permit, and Grading Permits require an Architecture and Site application, which is a discretionary permit with a public hearing. As SB 9 requires ministerial review and approval of qualifying projects, the grading restriction was included to ensure SB 9 projects are processed ministerially. Although the Planning Commission did not remove this restriction, they did recommend that certain grading exemptions be added, which are discussed below.
- **Frontage Requirement.** During Planning Commission's discussion on flag/corridor lot access requirements, there were questions on how projects can comply with the Minimum Public Frontage requirement in Section 29.10.050(a)(4) of the Draft Ordinance when easements are used for access instead of public streets. Planning Commission requested clarification of this requirement. Per the definition of "street" in Town Code Section 29.10.020 (Definitions), "Street means any thoroughfare for the motor vehicle which affords the principal means of access to abutting property, including public and private rights-of-way and easements." Therefore, no amendments to the Draft Ordinance were made.

B. Planning Commission Support for Certain Suggestions Without Incorporation into the Draft Ordinance

The Planning Commission reviewed and discussed the following items and expressed support and did not recommend modifications to the Draft Ordinance to incorporate them.

- **Fire Department Review.** Comments were received requesting that Santa Clara County Fire Department be included in the review of SB 9 ministerial applications.

DISCUSSION (continued):

Although this would not be included in the Ordinance, Planning Commission recommended that this be implemented in the project review process, if possible.

- **Affordability Incentives.** During Planning Commission discussion on size limitations and affordability, the Commission requested that consideration be given for incentives and benefits if a unit is deed restricted for affordability. Similar to what is included in Town Code Section 29.10.320 for Accessory Dwelling Units (provided below), certain incentives such as reduced permit fees or no-interest construction loans could be provided for SB 9 units that are made affordable via a deed restriction.
    - *Town Code Section 29.10.320(a): "Incentive program. Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling."*

C. Recommended Modifications

The Planning Commission reviewed and discussed the following items and recommended modifications on the Draft Ordinance to Town Council. Each of these recommendations have been included in the Draft Ordinance provided as Attachment 2.

- **Flag-Lot Access Easement.** Several comments were received from the public regarding the access corridor requirement for flag/corridor lots. The Urgency Ordinance requires that the access corridor for flag/corridor lots be "in fee" as part of the parcel and not as an easement, for consistency with existing Town Code. Planning Commission recommended that the access corridor be allowed as either "in fee" or as an easement to allow maximum flexibility. This modification was incorporated in Section 29.10.050(a)(1) of the Draft Ordinance.
- **Flag-Lot Width Requirement.** Similar to above, several comments were received from the public regarding the access corridor width requirement for flag/corridor lots. The Urgency Ordinance requires a minimum of 20 feet for the access corridor width, which matches the minimum lot width and minimum street frontage requirements. This standard is consistent with the minimum width required for the "corridor" of corridor lots per Town Code Section 29.10.085. Planning Commission recommended reducing this standard to the minimum required by the Santa Clara County Fire Department, which is 12 feet. This modification was incorporated in Sections 29.10.050(a)(1) and (4) of the Draft Ordinance

DISCUSSION (continued):

- **Minimum Lot Size.** Comments were received from the public regarding the minimum lot size calculation in relation to the access corridor for flag/corridor lots. The Urgency Ordinance states that the minimum lot area for a flag/corridor lot shall be exclusive of the access corridor. This standard was originally included for consistency with Town Code Section 29.10.085, which states that the area of the corridor may not be applied toward satisfying the minimum lot area requirement. Planning Commission recommended that this standard be removed. If this standard were removed, whichever property owner owned a "fee interest" (as opposed to the "easement interest") in the access corridor would count the access corridor toward its lot area. This modification was incorporated in Section 29.10.050(a)(2) of the Draft Ordinance. Staff recommends that the Town Council consider the previous language in Exhibit 1 of Attachment 3, excluding the access corridor from the lot area calculation when implemented "in fee," for consistency with Town Code.
- **Floor Area Ratio and Lot Coverage.** Similar to the comment above, comments were received from the public regarding floor area ratio and lot coverage calculations based on lot size. The Urgency Ordinance does not specify, and the Town has not included access corridor owned either "in fee" or as an easement toward the lot area of the owner of the fee interest when calculating maximum allowed floor area ratio and lot coverage. As stated above, Planning Commission expanded the access corridor allowance for flag/corridor lots to include both "in fee" and easements when calculating minimum lot size. In order to provide additional flexibility, the Planning Commission recommended that access corridors owned in fee be counted towards the lot size of the fee owner when measuring floor area and lot coverage. This modification was incorporated in Section 29.10.630(a)(5) of the Draft Ordinance. Staff recommends that the Town Council consider the previous language in Exhibit 1 of Attachment 3, excluding the access corridor from the net lot area calculation of the flag/corridor lot (whether owned in fee or as an easement) for consistency with Town Code.
- **New Side Property Lines.** Comments were received from the public regarding the new lot line requirement. The Urgency Ordinance requires that the new side lines of all lots shall be at right-angles to streets or radial to the centerline of curved streets. The Planning Commission recommended removing this requirement as not all neighborhoods in the Town consist of standard rectangular lots. This modification was implemented by removing this standard from Section 29.10.050(a) of the Draft Ordinance reviewed by Planning Commission.
- **Average Slope Restriction.** Comments were received from the public regarding the average slope restriction. In response to the State's direction to include HR zones, the Draft Ordinance was amended to capture relevant hillside requirements from the HDS&G, including the building restriction on site slopes exceeding 30 percent.

DISCUSSION (continued):

The Planning Commission supported this restriction, and asked that clarification be included to specify that this restriction only applies to portions of the site where a building is proposed, and not the entire site if other portions of the site have slopes that exceed 30 percent. This clarification is provided in Section 29.10.630(a)(8) of the Draft Ordinance.

- **Grading Exemptions.** As discussed in Section A (50 Cubic Yards Grading Restriction) above, several comments were received from the public regarding the 50 cubic yard grading restriction. With the inclusion of HR zones, and increased driveway and fire truck access requirements from the Santa Clara County Fire Department, the 50 cubic yard limitation may be too restrictive. The Planning Commission recommended that grading associated with minimum driveway and fire access requirements be exempted from the 50 cubic yard limitation. Additionally, Planning Commission recommended that clarification be added that excavation within the footprint of the primary dwelling unit or garage, including light wells that do not exceed the minimum required per Building Code, also be exempt. These modifications were incorporated in Section 29.10.630(a)(5) and Table 1-1 of the Draft Ordinance.
- **Single Driveway Limitation.** Comments were received from the public regarding the single driveway requirement. The Urgency Ordinance requires that, "each parcel shall include a single driveway […]." There was concern about the total number of driveways and curb-cuts that could be built on a single parcel. Based on Planning Commission discussion and direction, Section 29.10.630(a)(2) of the Draft Ordinance was amended to state that each parcel shall include no more than a single driveway and curb-cut unless the parcel has more than 100 feet of contiguous street frontage. The 100-foot rule was derived from the 100-foot minimum frontage requirement in the HR zones and is consistent with what Los Altos Hills uses in their SB 9 Urgency Ordinance.
- **Primary Structure Definition.** During Planning Commission discussion, direction was provided to clarify the "first residential unit" definition in terms of how it relates to "primary dwelling units." Per the definition of "primary dwelling unit" in Town Code Section 29.10.020 (Definitions), "Primary dwelling unit means a single-family or two-family dwelling unit located on a lot with no other dwellings on the lot except for accessory dwelling units, whether attached or detached. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation located on the same parcel as the primary dwelling unit." The definition of "first residential unit" in the Definitions Section (29.10.610) of the Draft Ordinance was modified to replace the term "housing unit" with "primary dwelling unit" for consistency throughout the Draft Ordinance.

DISCUSSION (continued):

D. Additional Topics

- **"Intent to Occupy."** At its last meeting, the Town Council received public comment regarding a SB 9 subdivided lot that may no longer be occupied by the subdivider. SB 9 requires that SB 9 subdividers sign affidavits stating that they, "intend to occupy" one of the subdivided lots for three years. SB 9 prohibits local agencies from altering this requirement. As a result, the Town does not have the ability to impose a stricter requirement. In this instance, the Town obtained an affidavit from the subdivider stating that they "intended to occupy" one of the lots for three years. SB 9's legislative history provides that the remedy for falsely filling out an affidavit is prosecution for perjury. If the Town were to pursue prosecution for perjury, the Town would need to demonstrate that the property owner never intended to occupy the lot for three years. The Town would also need to contact the District Attorney to discuss prosecution or ask the County to delegate prosecutorial authority to the Town.
- **Application of Objective Standards.** At its last meeting, the Town Council received public comment questioning the applicability of the Town's discretionary approvals to parcels that have undergone a SB 9 urban lot split. Property owners have the right to invoke SB 9 and seek application of the Town's objective standards for SB 9 projects. Some property owners have expressed interest in having the ability to undergo the Town's discretionary approval process (Architecture and Site application) for development of a new residence after the parcel has undergone a SB 9 urban lot split. The proposed ordinance states that applicants invoking SB 9 are eligible for application of the Town's objective standards. Staff recommends also allowing applicants the ability to seek discretionary review if desired, instead of using the SB 9 two-unit residential development process.
- **Public Notice.** At its last meeting, the Town Council discussed the topic of public notice for SB 9 projects. SB 9 projects are "ministerial," and therefore there is no discretionary review (unless opted into) for applicants who invoke SB 9. Because there is no opportunity for public comment or changes to SB 9 projects, staff does not recommend sending public notices because doing so implies that changes can be made to the project. This is consistent with the Town's practice for building permits and ADU's. The Town does list pending SB 9 applications as "Pending Planning Projects" on the Town's website.

PUBLIC OUTREACH:

Public input has been requested through the following media and social media resources:

- An eighth-page public notice in the newspaper;
- A poster at the Planning counter at Town Hall and the Los Gatos Library;
- Email to interested parties;
- Community Meeting;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's NextDoor page.

Issues raised by the public are identified in the Discussion section of this report.

PUBLIC COMMENT:

Attachment 6 includes additional public comment received between 11:01 a.m., Wednesday, September 23, 2022, and 11:00 a.m., Thursday, October 27, 2022.

CONCLUSION:

Staff recommends that the Town Council introduce an Ordinance of the Town of Los Gatos, by title only, effecting the amendments to Chapter 29 of the Town Code (Attachment 2) to regulate SB 9 urban lot splits and two-unit housing developments, by title only, with any specific changes identified and agreed upon by the majority of the Town Council and make the findings set forth in Attachment 1.

ALTERNATIVES:

Alternatively, the Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer the item back to the Planning Commission with specific direction; or
3. Take no action, allowing the Urgency Ordinance to expire without adopting permanent regulations in Town Code.

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. Required Findings
2. Draft Ordinance
3. September 28, 2022 Planning Commission Staff Report with Exhibits 1-7
4. September 28, 2022 Planning Commission Desk Item Report with Exhibit 8
5. September 28, 2022 Planning Commission Verbatim Minutes
6. Public Comment received between 11:01 a.m., Wednesday, September 23, 2022, and 11:00 a.m., Thursday, October 27, 2022

TOWN COUNCIL – *November 1, 2022*
REQUIRED FINDINGS FOR:

Town Code Amendment Application A-22-002
Consider Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Permanent Regulations to Comply with the Requirements of Senate Bill 9.

FINDINGS

Required Findings for CEQA:

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

Required Findings for General Plan:

- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

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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 also authorizes local agencies to adopt an ordinance allowing for up to a 24-month additional map extension, for the use of an approved or conditionally approved Tentative Parcel Map; 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~~, thereby undermining community participation and appropriate environmental impact vetting by local decision-making bodies~~; and

ATTACHMENT 2

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

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~~; and~~.

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 ~~housing~~primary dwelling units developed under a two-unit housing development, and can be an existing ~~housing~~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~~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.~~(a) Zoning District. A parcel that is located within a single-family residential zone.

~~B.~~(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.~~(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.~~(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.~~(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.~~(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.~~(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.~~(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.~~(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.~~(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.~~(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 25 feet measured from the front 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 ~~Section~~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-fee 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 ~~the summation of~~ 50 cubic yards, cut plus fill, ~~or require a grading permit~~except:

1. Light wells that do not exceed the minimum required per ~~Town Code Chapter 12, Article II;~~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 ~~buildings~~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.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		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.		

~~(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.~~(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~~(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 ~~firststory~~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. All elevations of the ~~secondstory~~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.~~

(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~~(d) below, "Exceptions:"

(1) ~~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 ~~(five years if an existing unit is to be demolished)~~ 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.~~

(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.) 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 ~~units~~unit(s) comprising the two-unit housing development;

(4.) 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

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

Section 29.10.050. Subdivision Standards. Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

~~A.~~(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 ~~and not~~or as an easement, and shall be a minimum width of ~~20~~12 feet;

~~2. Lot Lines. The new side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;~~

~~3.~~(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. ~~The minimum lot area for~~If one of the proposed lots is a flag/corridor lot ~~shall be exclusive~~, the area of the access corridor~~;~~ shall count toward the lot area as follows:

~~4.~~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;

~~5.~~(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;

~~6.~~(5) Number of Lots. The parcel map to subdivide an existing parcel shall result in no more than two parcels; and

~~7.~~(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.~~(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 ~~No.~~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 ~~No.~~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 ~~(five years if an existing unit is to be demolished)~~ 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 and 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 ~~not~~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 29.10.060. 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.} 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;

{4.} 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;

{5.} 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

{6.} Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.".

Section 29.10.070. 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. ~~The Council finds and declares that this Ordinance is not subject to environmental review under the California Environmental Quality Act ("CEQA"). SB 9 (Atkins) states that an ordinance adopted to implement the rules of SB 9 is not considered a project under Public Resources Code Division 13 (commencing with Section 21000) (See Government Code Sections 65858.210 and 66411.7(n)).~~ 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 ~~lest~~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.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of May 2022, 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: _____

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TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT

MEETING DATE: 09/28/2022

ITEM NO: 3

DATE: September 23, 2022

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Consider Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Permanent Regulations to Comply with the Requirements of Senate Bill 9. Town Code Amendment Application A-22-002. Location: Townwide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Consider amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding permanent regulations to comply with the requirements of Senate Bill 9 (Exhibit 1) and forward a recommendation to the Town Council.

BACKGROUND:

In September 2021, Governor Newsom signed new State law, Senate Bill 9 (SB 9), which went into effect on January 1, 2022 (Exhibit 2). SB 9 requires ministerial approval of certain housing development projects and lot splits on a single-family zoned parcel, with the intent to increase residential densities within single-family neighborhoods across the State.

The law allows for two new types of development activities that must be reviewed ministerially without any discretionary action or public input:

- **Two-unit housing development** – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit on a parcel with an existing single-family residence).
- **Urban lot split** – A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (two units on each new parcel).

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

BACKGROUND (continued):

In most circumstances, SB 9 will result in the potential creation of four dwelling units on an existing single-family zoned parcel. Single-family zoned parcels are currently permitted three units throughout the State: a primary single-family dwelling, an Accessory Dwelling Unit (ADU), and a Junior ADU (JADU).

SB 9 also outlines how jurisdictions may regulate SB 9 projects. Jurisdictions may only apply objective zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct objective design review, but may not have hearings for units that meet the State rules (with limited exceptions).

On December 21, 2021, Town Council adopted an Urgency Ordinance (Exhibit 3) to implement local objective standards for SB 9 applications. This Urgency Ordinance was valid for a period of 45 days. On February 1, 2022, Town Council adopted an extension of the Urgency Ordinance (Exhibit 4), making it valid to the end of the calendar year. The current Urgency Ordinance 2327 is set to expire on December 31, 2022.

On September 21, 2022, the Town hosted a Community Meeting to discuss developing a permanent SB 9 Ordinance and foster public participation. A summary of topics discussed is available below.

DISCUSSION:

The Draft Ordinance (Exhibit 1) is based on the Urgency Ordinance adopted by Town Council in February 2022, and modified based on: State and Regional Agency direction; clarification of initial standards; and reformatted to integrate it within Chapter 29 of the Town Code (Zoning Regulations).

A. Amendments per State and Regional Agency Direction

The following is a summary of draft amendments in response to State direction and the Association of Bay Area Governments (ABAG) SB 9 model ordinance:

- **Amended Definitions.** The definition of *single-family residential zone* in the Draft Ordinance was amended to include Hillside Residential (HR) zones per the California Department of Housing and Community Development SB 9 Fact Sheet (Exhibit 5).

DISCUSSION (continued):

- **New Definitions.** The following definitions were added to the Draft Ordinance to comply with State law and per the direction of the of the ABAG SB 9 model ordinance (Exhibit 6):
    - Adjacent parcel;
    - Car-share vehicle;
    - Common ownership or control;
    - First residential unit; and
    - Sufficient for separate conveyance.
- **Hillside Standards.** Based on the amended definition (above) to include HR zoned properties, the following additional standards were added to ensure consistency with the Hillside Development Standards and Guidelines (HDS&G). No hillside standards were included in the Urgency Ordinance as the Town was not anticipating SB 9 projects in these zones.
    - Building height: A separate building height limitation of 16 feet has been included for HR zoned properties. The HDS&G allows buildings to be a maximum of 18 feet tall when "visible" from the viewing areas or located along a significant ridgeline. To ensure that this standard is objective, and to avoid confusion with the existing 16-foot height limitation when a non-hillside zoned building footprint is located within the required side or rear setbacks of the applicable zoning district, the Draft Ordinance includes a 16-foot height limit for all HR zoned properties.
    - Driveway width: Consistent with the HDS&G requirements, driveway width must be a minimum of 12 feet. This standard would also help ensure that the Santa Clara County Fire Department can approve of the driveway plans when reviewed at building permit stage.
    - Driveway slope: Consistent with the HDS&G requirements, driveways cannot exceed 15 percent in slope. This standard would also help ensure that the Santa Clara County Fire Department can approve of the driveway plans when reviewed at building permit stage.
    - Cut and fill depths: The maximum cut and fill table from Chapter III of the HDS&G was added for applicable SB 9 site elements to ensure that new construction retains the existing landform of the site and follows the natural contours.
    - Least Restrictive Development Area (LRDA): To ensure construction occurs in the most appropriate areas on a hillside parcel, the 30 percent slope restriction for LRDA was added from Chapter II of the HDS&G.
    - Retaining walls: Consistent with HDS&G requirements, retaining wall restrictions were added to ensure the use of retaining walls are limited and appropriate.

DISCUSSION (continued):

  - Light Reflectivity Value (LRV): Consistent with the HDS&G requirements, the LRV of materials used on HR zoned parcels would be limited to 30 to ensure the building colors blend with the natural vegetation of the hillsides.
  - Finished floor height: The maximum height that a finished floor can project above grade has been increased from 18-inches to three feet in all zones for better consistency with Chapter V of the HDS&G.

- **Exclusion Areas.** Prime Farmland and Wetlands are included as an area that is excluded from the SB 9 Ordinance per the ABAG SB 9 model ordinance.
- **Utility Connections.** Utility connection requirements were added per the ABAG SB 9 model ordinance.
- **Replacement Housing.** A reference to the replacement housing provisions of Government Code Section 66300(d) was added, per the ABAG SB 9 model ordinance, to ensure that existing housing units proposed to be demolished as a part of an SB 9 application will be replaced.
- **ADUs**. The existing Urgency Ordinance states that new ADUs are not allowed on parcels that have used either SB 9 application type. Based on State direction, ADUs must be allowed on parcels that have not undergone an urban lot split. The ADU references were amended to update this section.
- **Owner Attestation**. Per the direction of the of the ABAG SB 9 model ordinance, the owner attestation and recorded covenant requirements have been updated.

B. Draft Amendments to Clarify Existing Standards

The following is a summary of amendments recommended by staff to help clarify existing standards. These amendments are included in the Draft Ordinance. The majority of these changes are a result of questions asked by members of the public on the existing Urgency Ordinance.

- **Legal Parcel.** The legal parcel requirement was amended to specify that applications for any SB 9 application type will only be accepted on proposed parcels with either a recorded parcel map or certificate of compliance. Applicants would no longer be able to submit both a two-unit housing development and urban lot split application concurrently, as the two-unit housing development cannot be approved until the urban lot split is approved and the map is recorded.

DISCUSSION (continued):

- **Floor Area Ratio (FAR)**. The existing Urgency Ordinance does not specify a cap on the use of the 10 percent FAR increase and is not clear as to how the 10 percent FAR increases are allowed for both two-unit housing developments and ADUs. Clarification was added to specify that the maximum additional floor area allowed from the 10 percent increase must be used for the first dwelling unit, and is therefore no more than 1,200 square feet. This language is consistent with the use of an FAR bonus for ADUs in current Town Code, and also states that the FAR increase cannot be combined with the increase for an ADU in Town Code Section 29.10.320.
- **Trees**. Reference to Town Code Chapter 29, Article 1, Division 2 (Tree Protection) was added to ensure that any proposed work complies with the Town's existing protection, removal, and replacement requirements.
- **Windows**. The existing Urgency Ordinance states that all second-story windows less than eight feet from rear and interior side property lines shall be clerestory, and that all other second-story windows shall be limited to the minimum size and number required for egress. This effectively restricted all second-story windows to be no more than the minimum needed for egress. The revision increases the distance requirement from eight feet to 10 feet, and removes the "all other" statement so that all second-stories within 10 feet from the side property line can have clerestory windows and larger windows as needed for egress. The intent of this regulation is to reduce potential privacy impacts from new second story windows, while increasing flexibility when those windows have at least a 10-foot setback from the property line.
- **Number of Units**. A sentence was added to both the two-unit housing development and urban lot split sections of the Draft Ordinance to specify the maximum number of units allowed to be built under these regulations as required by State law. Up to four units (including two primary dwelling units, an ADU, and a JADU) can be built on parcels that have not undergone an urban lot split; and two units (regardless of the unit type) can be built on each of the parcels that result from an urban lot split.
- **Intent to Occupy**. Clarification to the Intent to Occupy requirement for urban lot splits has been added to specify when the three-year occupancy requirement begins, depending on whether an existing residence is retained.
- **Lot Merger**. A sentence was added to clarify that when an owner or applicant splits their parcel and builds additional units with the allowed 10 percent FAR increase, they will then be prohibited from merging the parcels back into a single parcel unless existing Town Code requirements can be met and no new non-conformities are created.

DISCUSSION (continued):

C. Potential Changes from Public Comment

In the public comment and feedback received by staff since the approval of the Urgency Ordinance (Exhibit 7), there were seven comments that were repeated by several members of the public, which are discussed below:

- **Applicable Zones**. Comments received requested that HR zones be included in the permanent SB 9 Ordinance. As detailed above, per State direction, the Draft Ordinance has been updated to include HR zones in the *single-family residential zone* definition. In addition to inclusion of the HR zone, the Planning Commission could consider allowing SB 9 permits within other zoning designations, possibilities could include multi-family zones or in any zone where the existing use is a single-family use.
- **Grading Limitation**. Comments were received related to the grading limitation. Both the existing Urgency Ordinance and drafted updates for the Draft Ordinance include the grading restriction: grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a Grading Permit per Town Code Chapter 12, Article II. The reason for this limitation is for consistency with the Town Code where grading in excess of 50 cubic yards that is not used for building excavation requires a Grading Permit, and Grading Permits require an Architecture and Site application, which is a discretionary permit with a public hearing. As SB 9 requires ministerial review and approval of qualifying applications, the grading restriction was included to ensure SB 9 projects are processed ministerially. Per the Urgency Ordinance and Draft Ordinance, if over 50 cubic yards of grading is needed to develop the site, excluding building excavation, the applicant would need approval of a separate, discretionary Grading Permit. The majority of comments received regarding the grading limitation requested that the excavation exception be expanded to include any grading necessary for driveway and Fire access and turnarounds. Additional clarification could be added to state that lightwells that do not exceed the size required by building code would also be considered excavation to ensure this requirement is implemented objectively.
- **Fire Review**. Comments were received requesting that Santa Clara County Fire Department be included in the review SB 9 ministerial applications. This would not need to be included in this Ordinance, but could be recommended as part of implementation of the project review process.
- **Windows**. Comments were received regarding the second-story window design standards, requesting that the clerestory and egress minimums be removed for two-story SB 9 units that meet the underlining zoning setbacks. The standards were originally included to minimize privacy impacts as State law limits setbacks to four feet on internal side and rear property lines. As stated above, the Draft Ordinance amends the window standards to decrease restrictions so that all second stories within 10 feet from the side and rear property lines can have clerestory windows and larger windows as needed for egress.

DISCUSSION (continued):

- **Second-Story Step-Back**. Similar to the comment above, comments were received regarding the second-story step-back requirement, requesting that this be removed for two-story SB 9 units that meet the underlining zoning setbacks. This standard provides both a reduction in potential privacy impacts, as well as preventing construction of walls that extend the full height of the new two-story residence. Modification of this standard or replacement with alternative objective standards could be included in Planning Commission's recommendation to Town Council.
- **Size Limit**. Comments have been received in opposition to the 1,200-square foot size limitation for the first new SB 9 unit. The original Urgency Ordinance included the 1,200-square foot size limitation for any SB 9 unit. When the Urgency Ordinance was extended, the Town Council modified this section to only apply to the first new unit. The 1,200-square foot size limitation is consistent with the maximum sizes of ADUs, and the second unit is allowed to use the remainder of the floor area allocated based on the lot's FAR.
- **Frontage Requirement**. Comments were received regarding the minimum width required for the access corridor of a flag/corridor lot, as well as the method of recordation of this access area. The Urgency Ordinance and Draft Ordinance require a minimum of 20 feet for the access corridor width, which matches the minimum lot width requirement. This standard is consistent with the minimum width required for the "corridor" of corridor lots per Town Code Section 29.10.085. The comments also raise concerns with the requirement that the access corridor be "in fee" as a part of the parcel and not as an easement; specifically, the feedback urges that the access corridor should count towards the proposed lot sizes. The original Urgency Ordinance and Draft Ordinance both state under the Minimum Lot Size requirement that the minimum lot area for a flag/corridor lot shall be exclusive of the access corridor. This standard is also consistent with Town Code Section 29.10.085, which states that the area of the corridor may not be applied toward satisfying the minimum lot area requirement. The Planning Commission could choose to modify these requirements in their recommendation to Town Council.

D. Public Outreach

Public input has been requested through the following media and social media resources:

- A poster at the Planning counter at Town Hall and the Town Library;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's Next Door page.

DISCUSSION (continued):

In addition to the outreach listed above, the Town held a Community Meeting on September 21, 2022 to foster public participation. Comments received during the meeting included: concerns regarding the grading limitation; the frontage requirement of corridor/flag lots; the 16-foot height limitation for HR zones; the 30 percent slope restriction for building footprints in the HR zones; the three-foot finished floor height limitation; and the right-angle requirement for new side property lines in the HR zones. Additionally, Town staff received questions regarding: what applicable zones are allowed to use SB 9; how the 40/60 lot split requirement is applied; what the minimum and maximum unit sizes are; whether SB 9 applications are ministerial or discretionary; why the Town was adopting a SB 9 Ordinance; and how many units could be built on residentially zoned parcels prior to SB 9.

PUBLIC COMMENTS:

Multiple public comments (Exhibit 7) have been received since Urgency Ordinance 2327 was adopted at the beginning of 2022. These comments were discussed in the previous section.

ENVIRONMENTAL REVIEW:

This Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to SB 9.

CONCLUSION:

A. Recommendation

Staff recommends that the Planning Commission receive and consider public comments, review the information included in the staff report, provide input on any additional recommended modifications to the Draft Ordinance (Exhibit 1), and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance.

B. Alternatives

Alternatively, the Commission can continue the matter to a date certain with specific direction.

EXHIBITS:

1. Draft Permanent SB 9 Ordinance
2. SB 9 Legislation
3. SB 9 Urgency Ordinance 2326
4. SB 9 Urgency Ordinance Extension 2327
5. California Department of Housing and Community Development SB 9 Fact Sheet
6. Association of Bay Area Governments SB 9 Model Ordinance
7. Public Comment received prior to 11:00 a.m., Friday, September 23, 2022

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DRAFT ORDINANCE XXXX

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 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 also authorizes local agencies to adopt an ordinance allowing for up to a 24-month additional map extension, for the use of an approved or conditionally approved Tentative Parcel Map; 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, thereby undermining community participation and appropriate environmental impact vetting by local decision making bodies; and

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

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 _____, 2022; and

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

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 a single driveway, 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 25 feet measured from the front 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 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 Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations. The maximum size of the first new residential unit shall not exceed 1,200 square feet. 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. 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. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

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.		

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;

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 buildings 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. 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. 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.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		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.

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 firststory 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. All elevations of the secondstory 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 (five years if an existing unit is to be demolished) 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.

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. 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 units comprising the two-unit housing development;

4. 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

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

Section 29.10.050. 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 in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;

2. Lot Lines. The new side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;

3. 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. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;

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

5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet;

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

7. 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 No. 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 No. 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 (five years if an existing unit is to be demolished) 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 and 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 not 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 29.10.060. Application Process for Urban Lot Splits.

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. 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;

4. 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;

5. 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

6. Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal."

Section 29.10.070. 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. The Council finds and declares that this Ordinance is not subject to environmental review under the California Environmental Quality Act ("CEQA"). SB 9 (Atkins) states that an ordinance adopted to implement the rules of SB 9 is not considered a project under Public Resources Code Division 13 (commencing with Section 21000) (See Government Code Sections 65858.210 and 66411.7(n)).

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 lest 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.

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: _____

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Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require 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, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24

EXHIBIT 2

months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would 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, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), 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.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project 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 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.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides 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 proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective 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.

(3) (A) Notwithstanding paragraph (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.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban 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 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.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision 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 is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

ORDINANCE 2326

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS IMPLEMENTING SENATE BILL 9 TO ALLOW FOR TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPILTS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES

WHEREAS, on September 16, 2021, the Governor of the State California signed into law Senate Bill 9 (Atkins), "An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the California Government Code, relating to land use," which requires ministerial approval of a housing development of no more than two units in a single-family zone (two-unit housing development), the subdivision of a parcel zoned for residential use into two parcels (urban lot split), or both; and

WHEREAS, certain zoning and subdivision standards of the Town of Los Gatos Municipal Code and their permitting procedures are inconsistent with the two-unit housing developments and urban lot splits authorized by Senate Bill 9 (SB 9); and

WHEREAS, the provisions of SB 9 shall be in effect on January 1, 2022, and without locally codified objective design standards and implementation procedures, the law presents a current and immediate threat to the public peace, health, safety, and welfare, in that certain existing zoning and subdivision standards are in conflict with SB 9 and could create confusion and hinder the development of the additional residential units enabled under SB 9; and

WHEREAS, pursuant to Section 65858 of the Government Code and Section 29.20.545 of the Town of Los Gatos Municipal Code, the Town Council may take appropriate action to adopt urgency measures as an Urgency Ordinance; and

WHEREAS, pursuant to Section 65852.21(j) and Section 66411.7(n) of the Government Code, a local agency may adopt an Ordinance to implement SB 9; and

WHEREAS, this Urgency Ordinance adopts interim urgency objective zoning standards, objective subdivision standards, and objective residential design standards to allow for orderly housing development and subdivision of land as authorized by SB 9 while protecting the public peace, health, safety, or welfare in the Town of Los Gatos; and

WHEREAS, it is not the intent of this Urgency Ordinance to adopt permanent standards to govern the development of single-family zoned properties. The Town Council reserves the right to adopt permanent standards consistent with SB 9 that will supersede those contained in this Urgency Ordinance; and

WHEREAS, in light of the foregoing findings, the Town Council further finds that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, building permits, or any other applicable entitlement for use which is in conflict with this Ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, adoption of this Urgency Ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to implementation of SB 9.

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

SECTION I

The Town Council finds and declares that this Urgency Ordinance establishes interim exceptions to 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. The provisions of this Urgency Ordinance shall supersede any other provision to the contrary in the Zoning Code or Subdivision Code. Zoning standards and design review standards provided for in the Zoning Code that are not affected by this Urgency Ordinance shall remain in effect. It is not the intent of this Urgency Ordinance to override any lawful use restrictions as may be set forth in Conditions, Covenants, and Restrictions (CC&Rs) of a common interest development.

SECTION II

The Town Council finds and determines that this Urgency 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 Urgency Ordinance.

SECTION III

In addition to the terms defined by Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following terms shall have the following meanings as used in this Urgency Ordinance. Where a conflict may exist, this Section shall prevail over any definition provided in the Zoning Code:

Acting in concert means persons, as defined by Section 82047 of the Government Code as that section existed on the date of the adoption of this Urgency Ordinance, 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;

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;

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;

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 Section 65852.21 of the California Government Code. A two-unit housing development shall consist of either the construction of 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 Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code;

Single-family residential zone means a "R-1 OR SINGLE-FAMILY RESIDENTIAL ZONE" and "R-1D OR SINGLE-FAMILY RESIDENTIAL DOWNTOWN ZONE" Zoning districts as specified by Article IV (RESIDENTIAL ZONES) of the Zoning Code;

Subdivision code means Title 24 of the Los Gatos Municipal Code;

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 Section 66411.7 of the Government Code; and

Zoning code means Title 29 of the Los Gatos Municipal Code.

SECTION IV

The Council finds and declares that 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 Subdivision Regulations, as applicable at the time the parcel was created. The Town Engineer may require a certificate of compliance to verify conformance with this requirement;

C. Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is 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 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 Section 4202 of the Public Resources Code, or if the site has been excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or has 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 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;

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 Division 13 of the Health and Safety Code), 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 primary dwelling unit(s) 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).

SECTION V

The Council finds and declares that two-unit housing developments shall 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 in the Zoning Code, as they pertain to a two-unit housing development under Section 65852.21 of the Government Code. Two-unit housing developments shall be constructed only in accordance with the following objective zoning standards, except as provided by Section E (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 shall not exceed 16 feet in height.

2. Driveways. Each parcel shall include a single driveway satisfying the following requirements:

a. A minimum width of 10 feet up to a maximum width of 18 feet;

b. A minimum depth of 25 feet measured from the front property line;

c. Surfacing shall comply with Town Code Section 29.10.155(e); and

d. Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction.

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 of another dwelling unit within the same structure;

4. Fencing. All new fencing shall comply with the requirements of Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations, but no new residential unit shall have a floor area greater than 1,200 square feet;

6. Grading. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

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

8. Lighting. New exterior lighting fixtures shall be down-shielded and oriented away from adjacent properties consistent with Section 29.10.09015 of the Zoning Code;

9. 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;

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

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;

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

Table 1-1 – Setback Requirements		
Setback		Requirement (2)
Property Line Setbacks (1)	Front	Per the applicable zoning district.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		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, provided that the structures meet building code safety standards and are sufficient to allow conveyance as a separate fee parcel. (4) Except for primary dwellings constructed as a duplex or attached single-family residences constructed as units.		

15. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage

plan prepared by a registered civil engineer.

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 an existing primary dwelling units as part of a two-unit housing development, except as provided by Section E (Exceptions):

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

2. Finished Floor. The finished floor of the first-story shall not exceed 18 inches 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 6 feet and a minimum width equal to 25 percent of the linear width of the front elevation. Porch columns shall not overhang the porch floor;

5. Step-back. All 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 10 feet as measured from finished floor; and

8. Windows. All second-story windows less than eight 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. All other second-story windows shall be limited to the minimum number and minimum size 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, as applicable:

1. Accessory Dwelling Units. New accessory dwelling units are not allowed on parcels that either include a two-unit housing development or that are created by an urban lot split;

2. Building and Fire Codes. The International Building Code (Building Code), and the 2019 California Fire Code and 2018 International Fire Code (together, Fire Code), as adopted by Chapter 6 of the Los Gatos Municipal Code, respectively, apply to all two-unit housing developments;

3. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve a 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;

4. Restrictions on Demolition. The two-unit housing development shall not require demolition or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by claiming of the Homeowners' Exemption on the Santa Clara County assessment

roll;

5. Short-Term Rentals. Leases for durations of less than 30 days, including short term rentals are prohibited. The Community Development Director shall require recordation of a deed restriction documenting this requirement prior to issuance of a building permit; and

6. Subdivision and Sales. Except for the allowance for an urban lot split provided in Section VI (Urban Lot Splits), no subdivision of land or air rights shall be allowed in association with a two-unit housing development, including creation of a stock cooperative or similar common interest ownership arrangement. In no instance shall a single primary dwelling unit be sold or otherwise conveyed separate from the other primary dwelling unit.

D. Approval Process

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

4. 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 Section 65589.5 of the Government Code, 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

5. Appeals. Two-unit housing applications are ministerial and are not subject to an appeal.

E. 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) landscaping requirement, front-yard setback, or street-side setbacks standards.

SECTION VI

The Council finds and declares that urban lot splits shall comply with the following 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, Subdivision Code, as they pertain to creation of an urban lot split under Section 66411.7 of the Government Code:

1. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) parcel shall be in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;

2. Lot Lines. The side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;

3. 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. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;

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

5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet; and

6. Number of Lots. The parcel map to subdivide an existing parcel shall create no more than two new parcels.

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 section;

2. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may require recording of easements necessary for the provision of 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 1-1 (Setback Requirements, Exception No. 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;

4. Grading. Grading activity shall not result in the summation of 50 cubic yards, cut plus fill, of grading or require a grading permit per Town Code Chapter 12, Article II;

5. 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 newly created parcels as their principal residence for a minimum of three years from the date of the approval of the urban lot split or certificate of occupancy, whichever is later.

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;

6. 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 1-1 (Setback Requirements, Exception No. 2);

7. Number of Remaining Units. No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

8. Prior Subdivision. A parcel created through a prior urban lot split may not be further subdivided under the provisions of this Urgency Ordinance. The subdivider shall submit a signed covenant to the Community Development Director documenting this restriction. The convent shall be recorded on the title of each parcel concurrent with recordation of the parcel map;

9. Restrictions on Demolition. The proposed urban lot split shall not require the demolition or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years;

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

11. Utility Providers. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map.

12. Maximum Floor Area. The maximum floor area for any new residential unit shall be 1,200 square feet;

C. Approval Process

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. 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 Lost Split Parcel Map and pay all fees;

4. Development. Development on the resulting parcels is limited to the project approved by the two-unit housing development process.

5. 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

6. Appeals. Urban lot split applications are ministerial and are not subject to an appeal.

SECTION VII

The Council finds and declares that any provision of this Urgency Ordinance 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 Urgency Ordinance shall supersede and take precedence over any inconsistent provision of the Los Gatos Municipal Code to that extent necessary to effect the provisions of this Urgency Ordinance for the duration of its effectiveness.

SECTION VIII

The Council finds and declares that if SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Urgency Ordinance shall cease to be in effect.

SECTION IX

If any section, subsection, sentence, clause, phrase, or portion of this Urgency 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 Urgency Ordinance. The Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this Urgency 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 X

The Council hereby declares that the foregoing is an Urgency Ordinance necessary for the immediate preservation of the public peace, health, and safety of the Town of Los Gatos and its residents and shall take effect on January 1, 2022, upon passage by a four-fifths majority of the Town Council.

This Urgency Ordinance was passed an adopted at a regular meeting of the Town Council of the Town of Los Gatos on December 21, 2021.

COUNCIL MEMBERS:

AYES: Matthew Hudes, Maria Ristow, Marico Sayoc, Mayor Rob Rennie

NAYS: None

ABSENT: Mary Badame

ABSTAIN: None

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA
DATE: 12/23/21

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA
DATE: 1/3/2022

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ORDINANCE 2327

AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS EXTENDING FOR A PERIOD OF TEN MONTHS AND FIFTEEN DAYS IMPLEMENTING SENATE BILL 9 TO ALLOW FOR TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPILTS 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 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 also offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map; 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, thereby undermining community participation and appropriate environmental impact vetting by local decision making bodies; and

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

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, there is a current and immediate threat to the public health, safety, or welfare based on the passage of SB 9 because if the Town does not adopt appropriate objective standards for two-unit housing developments and urban lot splits under SB 9, the Town would thereafter be limited to applying only the objective standards that are already in its code, which did not anticipate and were not enacted with ministerial two-unit housing developments and urban lot splits in mind; and

WHEREAS, the approval of two-unit housing developments and urban lot splits based solely on the Town's default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural form, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this Ordinance as an Urgency Ordinance in accordance with Government Code Sections 36934, 36937, and 65858 and to be effective immediately upon adoption by a four-fifths vote of the Town Council; and

WHEREAS, to protect the public safety, health, and welfare, the Town Council may adopt this ordinance as an urgency measure in accordance with Government Code Sections 36934, 36937, and 65858 in order to regulate any uses that may be in conflict with a contemplated General Plan or zoning proposal that the Town intends to study within a reasonable time; and

WHEREAS, on December 21, 2021, in accordance with Government Code Sections 36934, 36937, and 65858, the Town Council at a duly noticed public meeting took testimony and adopted Urgency Ordinance 2326, (a copy of which is attached hereto as Exhibit "A" and incorporated herein) an Urgency Ordinance implementing SB 9, for a period of 45 days; and

WHEREAS, Urgency Ordinance 2326 was necessary to address the danger to public health, safety, and general welfare articulated by the State related to the housing crisis and immediately provide the provisions to implement SB 9 related development in a manner that protects the Town's interest in orderly planning and aesthetics; and

WHEREAS, on February 1, 2022, in accordance with Government Code Section 36934 and 36937 and 65858, the Town Council held a duly noticed public hearing and took testimony regarding this urgency ordinance to extend Urgency Ordinance 2326 ("Extension Ordinance"); and

WHEREAS, the Town Council has considered, and by adopting this Extension Ordinance ratifies and adopts, the report, which is incorporated in the Staff Report dated February 1, 2022, describing the continued need for regulations to implement SB 9 which led to the adoption of Ordinance 2326; and

WHEREAS, because the conditions justifying the adoption of Urgency Ordinance 2326 have not been alleviated, and the Town Council desires to extend the regulations established by Urgency Ordinance 2326 for an additional ten (10) months and fifteen (15) days, as permitted by Government Code Sections 36934, 36937, and 65858, to allow for the development of regulations for incorporation into the Town Code.

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

SECTION I

The Town Council finds and declares that this Urgency Ordinance establishes interim exceptions to 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. The provisions of this Urgency Ordinance shall supersede any other provision to the contrary in the Zoning Code or Subdivision Code. Zoning standards and design review standards provided for in the Zoning Code that are not affected by this Urgency Ordinance shall remain in effect. It is not the intent of this Urgency Ordinance to override any lawful use restrictions as may be set forth in Conditions, Covenants, and Restrictions (CC&Rs) of a common interest development.

SECTION II

The Town Council finds and determines that this Urgency 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 Urgency Ordinance.

SECTION III

In addition to the terms defined by Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following terms shall have the following meanings as used in this Urgency Ordinance. Where a conflict may exist, this Section shall prevail over any definition provided in the Zoning Code:

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on the date of the adoption of this Urgency Ordinance, 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;

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;

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;

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" and "R-1D OR SINGLE-FAMILY RESIDENTIAL DOWNTOWN ZONE" Zoning districts as specified by Article IV (RESIDENTIAL ZONES) of the Zoning Code;

Subdivision code means Title 24 of the Los Gatos Municipal Code;

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; and

Zoning code means Title 29 of the Los Gatos Municipal Code.

SECTION IV

The Council finds and declares that 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 Subdivision Regulations, as applicable at the time the parcel was created. The Town Engineer may require a certificate of compliance to verify conformance with this requirement;

C. Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is 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, or if the site has been excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or has 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 primary dwelling unit(s) 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).

SECTION V

The Council finds and declares that two-unit housing developments shall 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 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 E (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 shall not exceed 16 feet in height.

2. Driveways. Each parcel shall include a single driveway satisfying the following requirements:

a. A minimum width of 10 feet up to a maximum width of 18 feet;

b. A minimum depth of 25 feet measured from the front property line;

c. Surfacing shall comply with Town Code Section 29.10.155(e); and

d. Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction.

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 Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations. When a two-unit housing development is proposed, a ten (10) percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, except that the first residential unit shall not have a floor area greater than 1,200 square feet;

6. Grading. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

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

8. Lighting. New exterior lighting fixtures shall be down-shielded and oriented away from adjacent properties consistent with Section 29.10.09015 of the Zoning

Code;

9. 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;

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

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;

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

Table 1-1 – Setback Requirements		
Setback		Requirement (2)
Property Line Setbacks (1)	Front	Per the applicable zoning district.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		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, provided that the structures meet building code safety standards and are sufficient to allow conveyance as a separate fee parcel. (4) Except for primary dwellings constructed as a duplex or attached single-family residences.		

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

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 an existing primary dwelling units as part of a two-unit housing development, except as provided by Section E (Exceptions):

1. Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front elevation 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 18 inches 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 6 feet and a minimum width equal to 25 percent of the linear width of the front elevation. Porch columns shall not overhang the porch floor;

5. Step-back. All 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 10 feet as measured from finished floor and when above the first floor the plate height shall be limited to 8 feet; and

8. Windows. All second-story windows less than eight 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. All other second-story windows shall be limited to the minimum number and minimum size 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 Section E (Exceptions):

1. Accessory Dwelling Units. New accessory dwelling units are not allowed on parcels that either include a two-unit housing development or that are created by an urban lot split;

2. 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 Los Gatos Municipal Code, respectively, apply to all two-unit housing developments;

3. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve a 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;

4. Restrictions on Demolition. The two-unit housing development shall not require 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;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by claiming of the Homeowners' Exemption on the Santa Clara County assessment roll;

5. Short-Term Rentals. Leases for durations of less than 30 days, including short term rentals are prohibited. The Community Development Director shall require recordation of a deed restriction documenting this requirement prior to issuance of a building permit; and

6. Subdivision and Sales. Except for the allowance for an urban lot split provided in Section VI (Urban Lot Splits), no subdivision of land or air rights shall be allowed in association with a two-unit housing development, including creation of a stock cooperative or similar common interest ownership arrangement. In no instance shall a single primary dwelling unit be sold or otherwise conveyed separate from the other primary dwelling unit.

D. Approval Process

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

4. 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

5. Appeals. Two-unit housing applications are ministerial and are not subject to an appeal.

E. 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 VI

The Council finds and declares that urban lot splits shall comply with the following 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 in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;

2. Lot Lines. The side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;

3. 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. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;

4. Minimum Lot Width. Each new parcel shall maintain a minimum lot width of

20 feet;

5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet; and

6. Number of Lots. The parcel map to subdivide an existing parcel shall result in no more than two parcels.

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 section;

2. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may 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 1-1 (Setback Requirements, Exception No. 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;

4. Grading. Grading activity shall not result in the summation of 50 cubic yards, cut plus fill, of grading or require a grading permit per Town Code Chapter 12, Article II;

5. 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 newly created parcels as their principal residence for a minimum of three years from the date of the approval of the urban lot split or certificate of occupancy, whichever is later.

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;

6. 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 1-1 (Setback Requirements, Exception No. 2);

7. Number of Remaining Units. No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code Section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

8. 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;

9. Restrictions on Demolition. The proposed urban lot split shall not require the demolition of more than 25 percent of the exterior walls of or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years;

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

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

C. Approval Process

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. 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 Lost Split Parcel Map and pay all fees;

4. Development. Development on the resulting parcels is limited to the project approved by the two-unit housing development process;

5. 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

6. Appeals. Urban lot split applications are ministerial and are not subject to an appeal.

SECTION VII

The Council finds and declares that any provision of this Urgency Ordinance 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 Urgency Ordinance shall supersede and take precedence over any inconsistent provision of the Los Gatos Municipal Code to that extent necessary to effect the provisions of this Urgency Ordinance for the duration of its effectiveness.

SECTION VIII

The Council finds and declares that if SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Urgency Ordinance shall cease to be in effect.

SECTION IX

The Council finds and declares that this Ordinance is not subject to environmental review under the California Environmental Quality Act ("CEQA"). SB 9 (Atkins) states that an ordinance adopted to implement the rules of SB 9 is not considered a project under Public Resources Code Division 13 (commencing with Section 21000) (See Government Code Sections 65858.210 and 66411.7(n)).

SECTION X

If any section, subsection, sentence, clause, phrase, or portion of this Urgency 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 Urgency Ordinance. The Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this Urgency 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 XI

The Council finds and declares that the foregoing is an Urgency Ordinance necessary for the immediate preservation of the public peace, health, and safety of the Town of Los Gatos and its residents as articulated above and at the hearing and to immediately provide provisions to implement SB 9, which takes effect on January 1, 2022. The Town Council therefore finds and determines that this Ordinance be enacted as an Urgency Ordinance pursuant to Government Code Sections 36934,

36937, and 65858 and takes effect immediately upon adoption by four-fifths of the Town Council.

SECTION XII

This ordinance shall take effect upon adoption and shall remain in effect for a period of 10 months and 15 days from the date of adoption, in accordance with California Government Code Section 65858.

SECTION XIII

The Town Clerk is directed to certify this Ordinance and cause it to be published in the manner required by law.

SECTION XIV

This Urgency Ordinance was passed an adopted at a regular meeting of the Town Council of the Town of Los Gatos on the 1st day of February 2022.

COUNCIL MEMBERS:

AYES: Mary Badame, Maria Ristow, Marico Sayoc, Mayor Rob Rennie

NAYS: Matthew Hudes

ABSENT: None

ABSTAIN: None

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 2/9/22

ATTEST:

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

DATE: 2/9/2022

ORDINANCE 2326

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS IMPLEMENTING SENATE BILL 9 TO ALLOW FOR TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES

WHEREAS, on September 16, 2021, the Governor of the State California signed into law Senate Bill 9 (Atkins), "An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the California Government Code, relating to land use," which requires ministerial approval of a housing development of no more than two units in a single-family zone (two-unit housing development), the subdivision of a parcel zoned for residential use into two parcels (urban lot split), or both; and

WHEREAS, certain zoning and subdivision standards of the Town of Los Gatos Municipal Code and their permitting procedures are inconsistent with the two-unit housing developments and urban lot splits authorized by Senate Bill 9 (SB 9); and

WHEREAS, the provisions of SB 9 shall be in effect on January 1, 2022, and without locally codified objective design standards and implementation procedures, the law presents a current and immediate threat to the public peace, health, safety, and welfare, in that certain existing zoning and subdivision standards are in conflict with SB 9 and could create confusion and hinder the development of the additional residential units enabled under SB 9; and

WHEREAS, pursuant to Section 65858 of the Government Code and Section 29.20.545 of the Town of Los Gatos Municipal Code, the Town Council may take appropriate action to adopt urgency measures as an Urgency Ordinance; and

WHEREAS, pursuant to Section 65852.21(j) and Section 66411.7(n) of the Government Code, a local agency may adopt an Ordinance to implement SB 9; and

WHEREAS, this Urgency Ordinance adopts interim urgency objective zoning standards, objective subdivision standards, and objective residential design standards to allow for orderly housing development and subdivision of land as authorized by SB 9 while protecting the public peace, health, safety, or welfare in the Town of Los Gatos; and

WHEREAS, it is not the intent of this Urgency Ordinance to adopt permanent standards to govern the development of single-family zoned properties. The Town Council reserves the right to adopt permanent standards consistent with SB 9 that will supersede those contained in this Urgency Ordinance; and

WHEREAS, in light of the foregoing findings, the Town Council further finds that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, building permits, or any other applicable entitlement for use which is in conflict with this Ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, adoption of this Urgency Ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to implementation of SB 9.

EXHIBIT A

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

SECTION I

The Town Council finds and declares that this Urgency Ordinance establishes interim exceptions to 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. The provisions of this Urgency Ordinance shall supersede any other provision to the contrary in the Zoning Code or Subdivision Code. Zoning standards and design review standards provided for in the Zoning Code that are not affected by this Urgency Ordinance shall remain in effect. It is not the intent of this Urgency Ordinance to override any lawful use restrictions as may be set forth in Conditions, Covenants, and Restrictions (CC&Rs) of a common interest development.

SECTION II

The Town Council finds and determines that this Urgency 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 Urgency Ordinance.

SECTION III

In addition to the terms defined by Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following terms shall have the following meanings as used in this Urgency Ordinance. Where a conflict may exist, this Section shall prevail over any definition provided in the Zoning Code:

Acting in concert means persons, as defined by Section 82047 of the Government Code as that section existed on the date of the adoption of this Urgency Ordinance, 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;

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;

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;

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 Section 65852.21 of the California Government Code. A two-unit housing development shall consist of either the construction of 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 Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code;

Single-family residential zone means a "R-1 OR SINGLE-FAMILY RESIDENTIAL ZONE" and "R-1D OR SINGLE-FAMILY RESIDENTIAL DOWNTOWN ZONE" Zoning districts as specified by Article IV (RESIDENTIAL ZONES) of the Zoning Code;

Subdivision code means Title 24 of the Los Gatos Municipal Code;

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 Section 66411.7 of the Government Code; and

Zoning code means Title 29 of the Los Gatos Municipal Code.

SECTION IV

The Council finds and declares that 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 Subdivision Regulations, as applicable at the time the parcel was created. The Town Engineer may require a certificate of compliance to verify conformance with this requirement;

C. Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is 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 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 Section 4202 of the Public Resources Code, or if the site has been excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or has 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 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;

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 Division 13 of the Health and Safety Code), 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 primary dwelling unit(s) 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).

SECTION V

The Council finds and declares that two-unit housing developments shall 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 in the Zoning Code, as they pertain to a two-unit housing development under Section 65852.21 of the Government Code. Two-unit housing developments shall be constructed only in accordance with the following objective zoning standards, except as provided by Section E (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 shall not exceed 16 feet in height.

2. Driveways. Each parcel shall include a single driveway satisfying the following requirements:

a. A minimum width of 10 feet up to a maximum width of 18 feet;

b. A minimum depth of 25 feet measured from the front property line;

c. Surfacing shall comply with Town Code Section 29.10.155(e); and

d. Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction.

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 of another dwelling unit within the same structure;

4. Fencing. All new fencing shall comply with the requirements of Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations, but no new residential unit shall have a floor area greater than 1,200 square feet;

6. Grading. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

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

8. Lighting. New exterior lighting fixtures shall be down-shielded and oriented away from adjacent properties consistent with Section 29.10.09015 of the Zoning Code;

9. 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;

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

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;

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

Table 1-1 – Setback Requirements		
Setback		Requirement (2)
Property Line Setbacks (1)	Front	Per the applicable zoning district.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		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, provided that the structures meet building code safety standards and are sufficient to allow conveyance as a separate fee parcel. (4) Except for primary dwellings constructed as a duplex or attached single-family residences constructed as units.		

15. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage

plan prepared by a registered civil engineer.

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 an existing primary dwelling units as part of a two-unit housing development, except as provided by Section E (Exceptions):

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

2. Finished Floor. The finished floor of the first-story shall not exceed 18 inches 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 6 feet and a minimum width equal to 25 percent of the linear width of the front elevation. Porch columns shall not overhang the porch floor;

5. Step-back. All 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 10 feet as measured from finished floor; and

8. Windows. All second-story windows less than eight 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. All other second-story windows shall be limited to the minimum number and minimum size 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, as applicable:

1. Accessory Dwelling Units. New accessory dwelling units are not allowed on parcels that either include a two-unit housing development or that are created by an urban lot split;

2. Building and Fire Codes. The International Building Code (Building Code), and the 2019 California Fire Code and 2018 International Fire Code (together, Fire Code), as adopted by Chapter 6 of the Los Gatos Municipal Code, respectively, apply to all two-unit housing developments;

3. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve a 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;

4. Restrictions on Demolition. The two-unit housing development shall not require demolition or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by claiming of the Homeowners' Exemption on the Santa Clara County assessment

roll;

5. Short-Term Rentals. Leases for durations of less than 30 days, including short term rentals are prohibited. The Community Development Director shall require recordation of a deed restriction documenting this requirement prior to issuance of a building permit; and

6. Subdivision and Sales. Except for the allowance for an urban lot split provided in Section VI (Urban Lot Splits), no subdivision of land or air rights shall be allowed in association with a two-unit housing development, including creation of a stock cooperative or similar common interest ownership arrangement. In no instance shall a single primary dwelling unit be sold or otherwise conveyed separate from the other primary dwelling unit.

D. Approval Process

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

4. 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 Section 65589.5 of the Government Code, 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

5. Appeals. Two-unit housing applications are ministerial and are not subject to an appeal.

E. 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) landscaping requirement, front-yard setback, or street-side setbacks standards.

SECTION VI

The Council finds and declares that urban lot splits shall comply with the following 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, Subdivision Code, as they pertain to creation of an urban lot split under Section 66411.7 of the Government Code:

1. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) parcel shall be in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;

2. Lot Lines. The side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;

3. 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. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;

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

5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet; and

6. Number of Lots. The parcel map to subdivide an existing parcel shall create no more than two new parcels.

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 section;

2. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may require recording of easements necessary for the provision of 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 1-1 (Setback Requirements, Exception No. 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;

4. Grading. Grading activity shall not result in the summation of 50 cubic yards, cut plus fill, of grading or require a grading permit per Town Code Chapter 12, Article II;

5. 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 newly created parcels as their principal residence for a minimum of three years from the date of the approval of the urban lot split or certificate of occupancy, whichever is later.

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;

6. 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 1-1 (Setback Requirements, Exception No. 2);

7. Number of Remaining Units. No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

8. Prior Subdivision. A parcel created through a prior urban lot split may not be further subdivided under the provisions of this Urgency Ordinance. The subdivider shall submit a signed covenant to the Community Development Director documenting this restriction. The convent shall be recorded on the title of each parcel concurrent with recordation of the parcel map;

9. Restrictions on Demolition. The proposed urban lot split shall not require the demolition or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years;

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

11. Utility Providers. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map.

12. Maximum Floor Area. The maximum floor area for any new residential unit shall be 1,200 square feet;

C. Approval Process

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. 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 Lost Split Parcel Map and pay all fees;

4. Development. Development on the resulting parcels is limited to the project approved by the two-unit housing development process.

5. 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

6. Appeals. Urban lot split applications are ministerial and are not subject to an appeal.

SECTION VII

The Council finds and declares that any provision of this Urgency Ordinance 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 Urgency Ordinance shall supersede and take precedence over any inconsistent provision of the Los Gatos Municipal Code to that extent necessary to effect the provisions of this Urgency Ordinance for the duration of its effectiveness.

SECTION VIII

The Council finds and declares that if SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Urgency Ordinance shall cease to be in effect.

SECTION IX

If any section, subsection, sentence, clause, phrase, or portion of this Urgency 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 Urgency Ordinance. The Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this Urgency 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 X

The Council hereby declares that the foregoing is an Urgency Ordinance necessary for the immediate preservation of the public peace, health, and safety of the Town of Los Gatos and its residents and shall take effect on January 1, 2022, upon passage by a four-fifths majority of the Town Council.

This Urgency Ordinance was passed an adopted at a regular meeting of the Town Council of the Town of Los Gatos on December 21, 2021.

COUNCIL MEMBERS:

AYES: Matthew Hudes, Maria Ristow, Marico Sayoc, Mayor Rob Rennie

NAYS: None

ABSENT: Mary Badame

ABSTAIN: None

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: _____

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California Department of Housing and Community Development

SB 9 Fact Sheet

On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)

Housing Policy Development Division
March 2022

This Fact Sheet is for informational purposes only and is not intended to implement or interpret SB 9. HCD does not have authority to enforce SB 9, although violations of SB 9 may concurrently violate other housing laws where HCD does have enforcement authority, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind. The Attorney General may also take independent action to enforce SB 9. For a full list of statutes over which HCD has enforcement authority, visit HCD's ***Accountability and Enforcement webpage****.*

Executive Summary of SB 9

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms "unit," "housing unit," "residential unit," and "housing development" mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

Single-Family Residential Zones Only

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 "Single-Family Residential"), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features such as hillsides, or the permissibility of keeping horses should not factor into the determination.

Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

> **Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.
>
> **Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or

waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

Setbacks for Existing Structures. The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

Four-Foot Side and Rear Setbacks. SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), 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. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Environmental Site Constraints

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's **Streamlined Ministerial Approval Process Guidelines** for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

California Environmental Quality Act (CEQA)

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

Anti-Displacement Measures

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) 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) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.

Lot Split Requirements

(Reference: Gov. Code, § 66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (f))

SB 9 and ADU Law (Gov. Code, §§ 65852.2 and 65858.22) are complementary. The requirements of each can be implemented in ways that result in developments with both "SB 9 Units" and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

"Units" Defined. The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

> *Primary Unit*. A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.
>
> *Accessory Dwelling Unit*. An ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.
>
> *Junior Accessory Dwelling Unit*. A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

Number of ADUs Allowed. ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

> *Lot Split*. When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.
>
> *No Lot Split*. When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s **ADU and JADU webpage** for more information and resources.

Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

Housing Element Law. To utilize projections based on SB 9 toward a jurisdiction’s regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees,

and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's **Housing Elements webpage**.

Housing Crisis Act of 2019. An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. "Reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about **Designated Jurisdictions Prohibited from Certain Zoning-Related Actions** on HCD's website.

Housing Accountability Act. Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of "housing development project" includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD's **Housing Accountability Act Technical Assistance Advisory**.

Rental Inclusionary Housing. Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD's **Rental Inclusionary Housing Memorandum**.

SB 9 Model Ordinance

Note: Unless otherwise noted, provisions in this document reflect the provisions in SB 9. "Recommended" Provisions are recommended to clarify ambiguities in the statute or assist in enforcement. "Policy" Provisions are optional provisions for local agencies to consider.

ORDINANCE NO. XXXX[1]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____ AMENDING SECTIONS ___ AND ADDING SECTIONS ___ TO THE CITY OF _____ MUNICIPAL CODE TO COMPLY WITH SENATE BILL 9

WHEREAS, on September 16, 2021, Senate Bill 9 (Chapter 162, Statutes of 2021) was approved by the Governor of the State of California and filed with the Secretary of State, amending Section 66452.6 of the California Government Code and adding to the Government Code Sections 65852.21 and 66411.7, allowing additional housing units on properties within single-family zones and providing for parcel map approval of an Urban Lot Split; and

WHEREAS, the changes made to the Government Code by Senate Bill 9 go into effect on January 1, 2022; and

WHEREAS, state law allows a local agency to adopt an ordinance to implement the provisions in Senate Bill 9; and

WHEREAS, the [City/County of _____ (the "City"/the "County")] has implemented land use policies based on the [City's/County's General Plan], which provide an overall vision for the community and balance important community needs, and the [City/County] seeks to ensure that Senate Bill 9 projects are consistent with those policies; and

WHEREAS, the proposed amendments to the [City of _____ Municipal Code/County of _____ County Code] implement requirements of state law and add local policies that are consistent with the state law and implement the [City's/County's General Plan]; and

[1] Local agencies should consult with their legal counsel prior to the use or implementation of this model ordinance, conformance with standard ordinance formats, and any provisions outlined herein. This ordinance is drafted as a regular ordinance, not an urgency ordinance, includes only substantive provisions to be considered, and does not include standard provisions such as a severability clause, publication, dates of introduction and adoption, and votes, which vary from agency to agency,

WHEREAS, the [City Council/Board of Supervisors] has found that the provisions of this ordinance are consistent with the goals and policies of the [City's/County's General Plan]; and

WHEREAS, the proposed code amendments are intended to implement Senate Bill 9 and are not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code, as provided in Government Code Sections 65852.21(j) and 66511.7(n).[2]

NOW, THEREFORE, THE [CITY COUNCIL OF THE CITY OF _____ /the BOARD OF SUPERVISORS OF THE COUNTY OF _____] DOES ORDAIN AS FOLLOWS:

Section 1. Purpose.

The purpose of this chapter is to provide objective zoning standards for Two-Unit Developments and Urban Lot Splits within single-family residential zones, to implement the provisions of state law as reflected in Government Code Section 65852.21 et seq. and Section 66411.7 et seq., and to facilitate the development of new residential housing units consistent with the [City's/County's General Plan] and ensure sound standards of public health and safety.

Section 2. Authority.

The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code Sections 65852.21 et seq. and 66411.7 et seq. [If a city.]

Section 3. Definitions.

A. [Recommended provision] A person "acting in concert with the owner," as used in Section 4(B)(8) below, means a person that has common ownership or control of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided.

B. [Recommended provision] "Adjacent parcel" means any parcel of land that is (1) touching the parcel at any point; (2) separated from the parcel at any point only by a

[2] Note that these Government Code Sections are not effective until January 1, 2022. Cities and counties adopting ordinances before that date should include additional exemptions. For instance, in urbanized areas, the proposed code amendments may be found to be categorically exempt from CEQA under Guidelines Section 15303, New Construction or Conversion of Small Structures, which provides an exemption for up to three single-family homes and to duplexes and apartments containing no more than six units.

public right-of-way, private street or way, or public or private utility, service, or access easement; or (3) separated from another parcel only by other real property which is in common ownership or control of the applicant.

C. [Recommended provision] "Car share vehicle" means a motor vehicle that is operated as part of a regional fleet by a public or private care sharing company or organization and provides hourly or daily service.

D. [Recommended provision] "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.

E. [Recommended provision] "Lower income household" has the meaning set forth in Health & Safety Code Section 50079.5.

F. [Recommended provision] "Moderate income household" has the meaning set forth in Health & Safety Code Section 50093.

G. [Recommended provision] "Sufficient for separate conveyance," as used in Sections 4(B)(11) and 5(B)(8) below, 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.

H. "Two-Unit Development" means a development that proposes no more than two new units or proposes to add one new unit to one existing unit.

I. "Urban Lot Split" means a subdivision of an existing parcel into no more than two separate parcels that meets all the criteria and standards set forth in this chapter.

J. [Recommended provision] "Very low income household" has the meaning set forth in Health & Safety Code Section 50105.

Section 4. Urban Lot Split.[3]

A. The [--] Official[4] shall ministerially review an application for a parcel map that subdivides an existing parcel to create no more than two new parcels in an Urban Lot Split, and shall approve the application if the criteria in Government Code Section 66411.7 and this section are satisfied.

B. Qualifying Criteria. Within the time required by the Subdivision Map Act, the [] shall determine if the parcel map for the Urban Lot Split meets all the following requirements:

1. The parcel is located within one of the following single-family residential zones: _____.

2. The parcel being subdivided is not located on a site that is any of the following:

   i. Either prime farmland or farmland of statewide importance, as defined pursuant to 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.

   ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, 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 Section 4202 of the Public Resources Code. This subparagraph does not

[3] Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text.

[4] Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, in addition to designating the applicable zoning districts.

apply to sites excluded from the specified hazard zones by the [city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.[5]

iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code 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.

v. Within 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 (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by the building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

vi. Within 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 in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] 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 (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

[5] The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, 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 a development proponent 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/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.

viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. Lands under conservation easement.

3. Both resulting parcels are no smaller than 1,200 square feet.[6]

4. Neither resulting parcel shall be smaller than 40 percent of the lot area of the parcel proposed for the subdivision.

5. The proposed lot split would not require demolition or alteration of any of the following types of housing:

i. 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.

ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

iii. A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

iv. Housing that has been occupied by a tenant in the last three years.

6. The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a [city/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.[7]

7. The parcel being subdivided was not created by an Urban Lot Split as provided in this section.

8. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split as provided in this section.

9. The development proposed on the parcels complies with all objective zoning standards, objective subdivision standards, and objective design review

[6] Agencies may allow smaller lots if desired.

[7] Local agencies may wish to specify which ordinance or code section designates historic properties.

standards applicable to the parcel as provided in the zoning district in which the parcel is located[8]; provided, however, that:

i. The [--] Official, or their designee, shall waive or modify any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.

ii. Notwithstanding subsection (9)(i) above, required rear and side yard setbacks shall equal four feet,[9] except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.

10. Each resulting parcel shall have access to, provide access to, or adjoin the public right-of-way.[10]

11. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed dwelling units shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

12. **Parking.** One parking space[11] shall be required per unit constructed on a parcel created pursuant to the procedures in this section, except that no parking may be required where:

i. The parcel is located within one-half mile walking distance of either a stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or

ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

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[8] Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.
[9] Localities may allow a smaller setback if desired.
[10] Local agencies may wish to impose frontage requirements or requirements for access to the public right of way, such as the required width of a driveway.
[11] Agencies may reduce parking standards if desired.

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. Notwithstanding Government Code Section 66411.1, no dedications of rights-of-way or the construction of offsite improvements may be required as a condition of approval for an Urban Lot Split, although easements may be required for the provision of public services and facilities.

14. The correction of nonconforming zoning conditions may not be required as a condition of approval.

15. Parcels created by an Urban Lot Split may be used for residential uses only and may not be used for rentals of less than 30 days.

16. [Recommended provision] 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).

C. Owner-Occupancy Affidavit. The applicant for an Urban Lot Split shall sign an affidavit, in the form approved by the [city attorney/county counsel], stating that the applicant intends to occupy one of the housing units on the newly created lots as its principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. This subsection 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 is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

D. [Recommended provision] **Additional Affidavit[12].** 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, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (4)(B)(5) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form prescribed by [ ]. 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.

[12] Local agencies may want to include a provision that indicates enforcement/legal remedies where there is evidence of fraudulent intent. misrepresentation, etc.

E. [Recommended provision] **Recorded Covenant.** Prior to the approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

1. A prohibition against further subdivision of the parcel using the Urban Lot Split procedures as provided for in this section;

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

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

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

F. **Specific Adverse Impacts.** In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A "specific adverse impact" is a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

G. **Enforcement.** The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

1. **Number of units to be allowed on each parcel.** If a parcel uses the Urban Lot Split provision, a local agency does not need to allow more than two units on each lot, including ADUs, JADUs, density bonus units, and two-unit developments. If an agency desires to take advantage of this provision, it should adopt the following:

> 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 a two-unit development.

Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

Another alternative is to consider allowing an ADU and JADU with a primary dwelling unit on one lot, rather than two primary dwelling units.

2. **Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

   These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018. Consequently, height, size, and similar restrictions on units created through Urban Lot Splits should be limited to units that do not meet existing zoning standards.

   Affordable units. There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.

Section 5. Two-Unit Development.

A. The [--] Official[13] shall ministerially review without a hearing an application for an application for a Two-Unit Development, and shall approve the application if all the criteria in Government Code Section 65852.21 and this section are satisfied.

B. Qualifying Criteria. The [] shall determine if the Two-Unit Development meets all the following requirements:

1. The Two-Unit Development is located within one of the following single-family residential zones: _____.[for counties: also must be located within the boundaries of an urbanized area or urban cluster].

2. The Two-Unit Development is not located on a site that is any of the following

   i. Either prime farmland or farmland of statewide importance, as defined pursuant to 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.[14]

   ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

   iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, 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 Section 4202 of the Public Resources Code. This subparagraph does not

[13] Local agencies may wish to change their use provisions in addition to, or as an alternative to, listing the zoning districts in the text. Counties may also wish to designate the specific areas that are designated as urbanized areas or urban clusters, or reference a website showing those areas, in addition to designating the applicable zoning districts.
[14] Would be best to specify the local ballot measure.

apply to sites excluded from the specified hazard zones by the[city/county], pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.[15]

iv. A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code 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.

v. Within 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 (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

vi. Within 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 in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph, the [city/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] 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 (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the [city/county]; or (2) the site meets Federal

[15] The local agency may wish to specify the relevant standards for very high fire hazard areas, hazardous waste sites, earthquake fault zones, flood hazard areas and floodways.

Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, 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 a development proponent 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/county] shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the [city/county] that is applicable to that site.

viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. Lands under conservation easement.

3. Notwithstanding any provision of this section or any local law, the proposed Two-Unit Development would not require the demolition or alteration of any of the following types of housing:

i. Housing that is subject to recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate-, low-, or very low-income.

ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

iii. Housing that has been occupied by a tenant in the last three years.

4. The parcel is not a parcel on which an owner of residential real property has exercised the owner's right under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within the last 15 years before the date that the development proponent submits an application.

5. The proposed Two-Unit Development does not include the demolition of 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.

6. The proposed Two-Unit Development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a [city/county] landmark or historic property or historic district pursuant to a [city/county] ordinance.[16]

7. The proposed Two-Unit Development complies with all objective zoning standards, objective subdivision standards, and objective design review standards applicable to the parcel as provided in the zoning district in which the parcel is located[17]; provided, however, that:

i. The [--] Official, or their designee, shall modify or waive any standard if the standard would have the effect of physically precluding the construction of two units on either of the resulting parcels created pursuant to this chapter or would result in a unit size of less than 800 square feet. Any modifications of

[16] Local agencies may wish to specify which ordinance or code section designates historic properties.
[17] Local agencies may wish to specify which ordinance(s) or code section(s) designate these objective standards.

development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on each parcel.

ii. Notwithstanding subsection (7)(i) above, required rear and side yard setbacks shall equal four feet, except that no setback shall be required for an existing legally created structure or a structure constructed in the same location and to the same dimensions as an existing legally created structure.

iii. For a Two-Unit Development connected to an onsite wastewater treatment system, the applicant must provide a percolation test completed within the last 5 years, or if the percolation test has been recertified, within the last 10 years.[18]

8. Proposed adjacent or connected dwelling units shall be permitted if they meet building code safety standards and are designed sufficient to allow separate conveyance. [Recommended provision] The proposed Two-Unit Development shall provide a separate gas, electric and water utility connection directly between each dwelling unit and the utility.

9. **Parking.** One parking space shall be required[19] per unit constructed via the procedures set forth in this section, except that the City shall not require any parking where:

i. The parcel is located within one-half mile walking distance of either a stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or

ii. There is a designated parking area for one or more car-share vehicles within one block of the parcel.

10. Dwelling units created by a Two-Unit Development may be used for residential uses only and may not be used for rentals of less than 30 days.

[18] A local agency may waive this requirement if desired.
[19] Agencies may elect to require fewer parking spaces.

11. [Recommended provision] 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).

C. [Recommended provision] **Declaration of Prior Tenancies.** 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, in the form approved by the [city attorney/county counsel], stating that none of the conditions listed in Section (5)(B)(3) and (B)(4) above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years (five years if an existing unit is to be demolished) on a form approved by [].

D. [Recommended provision] **Recorded Covenant.** Prior to the issuance of a building permit, the applicant shall record a restrictive covenant and agreement in the form prescribed by the [city attorney/county counsel], which shall run with the land and provide for the following:

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

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

The City Manager/County Administrator or designee is authorized to enter into the covenant and agreement on behalf of the City/County and to deliver any approvals or consents required by the covenant.

E. **Specific Adverse Impacts.** In addition to the criteria listed in this section, a proposed Urban Lot Split may be denied if the building official makes a written finding, based on a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact upon public health and safety or the physical environment, for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. A "specific adverse impact" is a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation and eligibility to claim a welfare exemption are not specific health or safety impacts.

F. **Enforcement.** The City Attorney/County Counsel shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing agreements and affidavits by civil action, injunctive relief, and any other proceeding or method

permitted by law. Remedies provided for in this chapter shall not preclude the City/County from any other remedy or relief to which it otherwise would be entitled under law or equity.

[POLICY CONSIDERATIONS]

1. **Number of units to be allowed on each parcel.** Local agencies are not required to allow ADUs or JADUs on parcels that utilize both the Urban Lot Split provision and the Two-Unit Development provision. If agencies desire to utilize this provision, they should adopt the following:

   > Two primary dwelling units only may be located on any lot created through an Urban Lot Split that utilized the Two-Unit Development provision. Accessory dwelling units and junior accessory dwelling units are not permitted on these lots.

   Jurisdictions do have the option of allowing additional units, likely ADUs or JADUs, on these lots. Agencies may wish to consider this for large lots, or in exchange for the applicant's agreement to record a covenant restricting sale or rental of the ADU to moderate- or lower-income households.

   Where a lot was not created through an Urban Lot Split, there is no limitation on the construction of ADUs and JADUs except that provided by existing ADU law.

2. **Owner-occupancy requirement.** Where there is no Urban Lot Split, the jurisdiction may adopt a provision requiring that one unit in a Two-Unit Development be owner-occupied, including a requirement to record a covenant notifying future owners of the owner-occupancy requirements.

3. **Design standards, such as standards for building size, height, materials, roof forms, etc.** Standards considered by some agencies include limits on dwelling unit size and height, distance between structures, and design requirements such as roof slope and materials matching existing structures.

   These standards cannot be imposed, however, if they would prevent the construction of units totaling 800 sf each. In addition, the Housing Crisis Act of 2019 (Government Code Section 66300) does not permit reductions in height, floor area ratio, lot coverage, or any other change that would reduce a site's residential development capacity below that existing on January 1, 2018.

Consequently, height, size, and similar restrictions on units created as Two-Unit Developments should be limited to units that do not meet existing zoning standards.

4. **Affordable units.** There is nothing in SB 9 that expressly prohibits the imposition of affordability requirements. One consideration prior to the imposition of such requirements would be whether the Urban Lot Splits would still be economically feasible if affordability were required. Ultimately, local agencies should consult with their legal counsel prior to imposing such requirements.

5. **Fire sprinklers.** If not already required, agencies may wish to consider requiring that units created through Two-Unit Developments be fire-sprinklered.

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Joel/Jennifer:

Please find attached for your review and discussion:

1. A marked-up version of HCD's recent SB-9 FactSheet with a couple of points noted. The key one in it that I would like to bring to your attention is: **HR. It Is Single Family.** You have to fix that one.

2. Please also remove the **20 ft Street Frontage requirement**. SB-9 specifically allows easements and a 20 ft width is ridiculous. I have attached San Jose's way of dealing with it - although it could be simplified. Monte Sereno, and Saratoga also allow easements. Los Gatos got this one wrong.

3. Please also remove the **50 yd grading limitation**. Grading (> 50 yds) for an Urban Lot Split can be reviewed by engineering simply from a safety/zoning regs standpoint. If you want to maintain it, then simply allow the exemption for the building pad to also include the driveway. Then you can stop gratuitous grading while still allowing a house to be built.

4. A marked-up version of Your **Urban Lot Split Application checklist** crossing out most of the items that are not needed for an initial CDD review. I am preparing an application for an Urban Lot Split in the R1:10 zoning district and when I reviewed what the "Simplified Planning Application" is asking for it is Way Overkill and requires a homeowner to spend tens of thousands of dollars up front, before getting a yes/no from CDD. Please look seriously at this. I do not want to instruct the Civil Engineer to do all this unnecessary work.

If you approve an Urban Lot Split. And the Parcel Map is recorded. And a residential development unit is proposed. Then you will need some of this for house construction. But don't hit the homeowner up front with all this. It is busy work and not useful in any decision being made.

For the Site Plan I will try to give you as much information as possible to let you know what we might intend to do [eventually], but more often than not, this information is not known at such an early stage.

As to the project that I am preparing to submit, I only plan to have the Survey crew complete what is needed for a realistic CDD evaluation. If I am missing something that is fundamental in the decision process, then we will add it. I plan to put **"N/A"** on the line items that are not needed.

For example:

I do not plan to ask a Title company for the Record Info for the names of all the neighbors.
I do not plan to do a arborist report, but will identify all large trees.
I do not think that you need lot area coverage details at this stage in the application. It is not part of the decision process.

Hope this helps let you know how I really feel.

Thanks

Tony

California Department of Housing and Community Development

SB 9 Fact Sheet

On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)

Housing Policy Development Division
March 2022

This Fact Sheet is for informational purposes only and is not intended to implement or interpret SB 9. HCD does not have authority to enforce SB 9, although violations of SB 9 may concurrently violate other housing laws where HCD does have enforcement authority, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind. The Attorney General may also take independent action to enforce SB 9. For a full list of statutes over which HCD has enforcement authority, visit HCD's ***Accountability and Enforcement webpage****.*

Executive Summary of SB 9

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms "unit," "housing unit," "residential unit," and "housing development" mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

Single-Family Residential Zones Only

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 "Single-Family Residential"), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features **such as hillsides**, or the permissibility of keeping horses should not factor into the determination.

Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

> **Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.
>
> **Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or

waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

Setbacks for Existing Structures. The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

Four-Foot Side and Rear Setbacks. SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), 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. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Environmental Site Constraints

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's **Streamlined Ministerial Approval Process Guidelines** for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

California Environmental Quality Act (CEQA)

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

Anti-Displacement Measures

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) 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) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.

Lot Split Requirements

(Reference: Gov. Code, §66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (f))

SB 9 and ADU Law (Gov. Code, §§ 65852.2 and 65858.22) are complementary. The requirements of each can be implemented in ways that result in developments with both "SB 9 Units" and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

"Units" Defined. The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

Primary Unit. A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.

Accessory Dwelling Unit. An ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.

Junior Accessory Dwelling Unit. A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

Number of ADUs Allowed. ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

> *Lot Split*. When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.
>
> *No Lot Split*. When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s **ADU and JADU webpage** for more information and resources.

Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

Housing Element Law. To utilize projections based on SB 9 toward a jurisdiction’s regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees,

and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's **Housing Elements webpage**.

Housing Crisis Act of 2019. An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. "Reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about **Designated Jurisdictions Prohibited from Certain Zoning-Related Actions**noHCD's website.

Housing Accountability Act. Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of "housing development project" includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD's **Housing Accountability Act Technical Assistance Advisory**.

Rental Inclusionary Housing. Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD's **Rental Inclusionary Housing Memorandum**.

20.30.810 Urban Lot Split Standards

A. Lot design requirements:

1. Lot frontage:

a. Where 55 feet of frontage on a public right-of-way is not proposed for both lots created by an Urban Lot Split, pursuant to Government Code Section 66411.7, each lot shall have a minimum of 30 feet of frontage on a public right-of-way and an average width of 30 feet, or

b. Where 30 feet of frontage on a public right-of-way is not proposed for both lots created by an Urban Lot Split, one of the lots shall be provided with access by a corridor with at least 12 feet but no more than 15 feet of frontage on a public street.

i. Said access corridor shall maintain a width of at least 12 feet but no more than 15 feet for the entire length of the corridor.

ii. The length of said access corridor shall be at minimum the required front setback of the zoning district in which the lot is situated.

iii. The access corridor shall be kept free and clear of building or structures of any kind except for lawful fences and underground or overhead utilities.

c. Where one of the lots created by an Urban Lot Split does not propose frontage on a public right-of-way, direct access to the public right of way must be provided through an easement for ingress and egress and emergency access.

i. Said easement shall be a minimum 12 feet but no more than 15 feet in width for the entire length of the easement.

ii. The length of said easement shall be at minimum the length of the required front setback of the zoning district in which the lot is situated.

iii. Said easement shall be recorded as a Covenant of Easement on the Parcel Map for the Urban Lot Split.

2. Maximum lot depth, as required by Section 19.36.230 of this Code, shall be waived for lots created by an Urban Lot Split.

B. Property line and setbacks:

1. For lots accessed by a corridor of 12 feet to 15 feet in width:

a. Front property line is the property line that abuts the public street.

b. The front setback area is the is the entire length of the 12 foot to 15 foot wide access corridor.

c. The rear property line is any property line that is generally parallel to the public right of way from which the lot gains access, and that abuts properties that are not a part of the Urban Lot Split.

d. The remaining property lines shall be considered side property lines.

2. For lots that do not abut a public street that are accessed by an easement:

a. There shall be no front property line.

b. The rear property line is any property line that is generally parallel to the public right of way from which the lot gains access, and that abuts properties that are not a part of the Urban Lot Split.

THIS SHOWS ONLY WHAT IS REALLY NEEDED

A. GENERAL REQUIREMENTS:

- ☐ 1. Scale on each sheet.
- ☐ 2. North arrow on each sheet as applicable.
- ☐ 3. Sheet size not to exceed 24" x 36" size.
- ☐ 4. Plans fully dimensioned.
- ☐ 5. Address on each sheet.
- ☐ 6. Zoning Designation on cover sheet.

B. PLAT OR SITE PLAN WITH THE FOLLOWING MINIMUM INFORMATION:

- ☐ 1. All property lines (existing and proposed).
- ☐ 2. All building setbacks (existing) ~~and proposed).~~
- ☐ 3. Use of all existing buildings.
- ☐ 4. Table including the following:
  - a. Lot area (existing and proposed);
  - b. Gross floor area of existing buildings;
  - ~~c. Lot area coverage (existing and proposed);~~
  - ~~d. Lot width (existing and proposed);~~
  - ~~e. Lot depth (existing and proposed); and~~
  - ~~f. Lot frontage (existing and proposed).~~
- ☐ 5. Conceptual Grading and drainage plan with grading quantities.
  The 50 yard Limit is Bogus and should not stop a project. See HCA for Grounds for Denial.

C. TENTATIVE MAP REQUIREMENTS:

- ☐ 1. ~~Tract name or designation and~~ property address.
- ☐ 2. Name and address of owner~~, subdivider~~, and registered civil engineer or licensed surveyor.
- ☐ 3. Locations, names, ~~and widths~~ of all adjoining highways, streets or ways, ~~the names of adjacent subdivisions, and the names of all owners of properties adjacent to proposed tract.~~
- ☐ 4. Widths and locations of all existing or proposed easements, whether public or private.
- ☐ 5. ~~Radius of all street curves.~~
- ☐ 6. ~~Total size of property before and after street and right-of-way dedication (gross and net land area calculation).~~ No Dedication – See 4a.
- ☐ 7. Lot layout, including the dimension of each lot line~~, and exact square footage of each lot.~~ Repeat of 4a.
- ☐ 8. Location of all water courses and natural drainage channels, locations of all areas covered by water or subject to inundation, and existing ~~and~~

~~proposed~~ storm drain facilities.

- ☐ 9. ~~Source of water supply, including conceptual design.~~
- ☐ 10. ~~Method of sewage disposal, including conceptual design.~~
- ☐ 11. ~~Location of all buildings in close proximity to the proposed tract.~~
- ☐ 12. Contour lines (existing ~~and proposed~~) ~~showing one (1) foot contours for ground slopes of less than five (5) percent, and five (5) feet horizontal distance, and five foot contours for ground slopes in excess thereof.~~
  (This information can typically be obtained from PPW in PDF form – and the level of detail is sufficient for CDD to approve/deny based on this.)
- ☐ 13. Location or vicinity map, date~~, north arrow, and scale~~. Requested A1,A2
- ☐ 14. Number or letter identification for each lot.
- ☐ 15. Location and outline of each existing building and an accompanying note as to whether or not it is to be removed.
- ☐ 16. ~~Each street shown by its actual street name or by a temporary name or symbol for the purpose of identification.~~
- ☐ 17. Locatlon of all trees shall be accurately ~~identified and~~ plotted ~~with base grade data, dripline, and finished grades within the dripline.~~
- ☐ 18. All fire hydrant locations.
- ☐ 19. ~~Required yards.~~
- ☐ 20. Name of utility providers and location of closest existing services shown, including water, gas, electricity, telephone, cable television, sewage disposal and storm drain.

  Roadways will not be required for SB-*9*
- ☐ 21. ~~If in the Hillside Area, show grading required for **roadway** construction, including location of all cuts and fills, volumes, retaining walls or reinforced earth slopes (with top and base elevations), and existing and proposed contours.~~
  You will be required to add HR to the allowable zones so this can stay.
- ☐ 22. If hillside, show conceptual driveways, building sites, drainage, and sanitary sewers.
- ☐ 23. ~~Interim erosion control measures.~~
- ☐ 24. If it is impossible or impracticable to place upon the tentative map any of the information required above, such information shall be furnished on a separate document, which shall be submitted with the map.

Jennifer [Joel]:

I understand that you are working on a revision to the SB-9 Ordinance to be debated on September 21st. On the whole - with the February revision to the Ordinance I think you got it pretty much right. I do, however, have a couple of questions/comments.

Question 1: The 20 ft Fee Title Corridor.

SB-9 does not really allow you to restrict a flag lot access corridor to being 'Fee Title'. No other Jurisdiction does so - all allow easements to a rear parcel. Additionally it should be in the 12-15 ft width range so as to allow IEE for fire requirements to be met - but no more.

Please look carefully at the attached example. From the existing Ordinance [Section VI.3] the corridor does not count in the 60/40 rule, but it diminishes the rear parcel in net lot size. So you can get some really stupid lots [not intended by SB-9]. This is your chance to fix it.

Question 2: HR Zoning

I assume that this has been fixed - and that you now are accepting HR applications [subject to Fire Access]. Can you confirm this?

Question 3: 50 Yards of Grading

Please tell me you have a better solution for this! Either up the quantities OR Allow the driveway and turnaround area to be 'exempted' in the same way that the area under the house is now.

Question 4: Objective Deign Standards

These should be pared back so that Front Elevation and Side-abutting-street elevations are not encumbered by the 'Privacy' window/deck/balcony restrictions. Additionally you should consider eliminating/easing these restrictions where the house placement is compliant with the setbacks for the zoning district. I do not want to design by 'paint by numbers' for Single Family Homes - in the same way there was concern for Multi-Family developments.

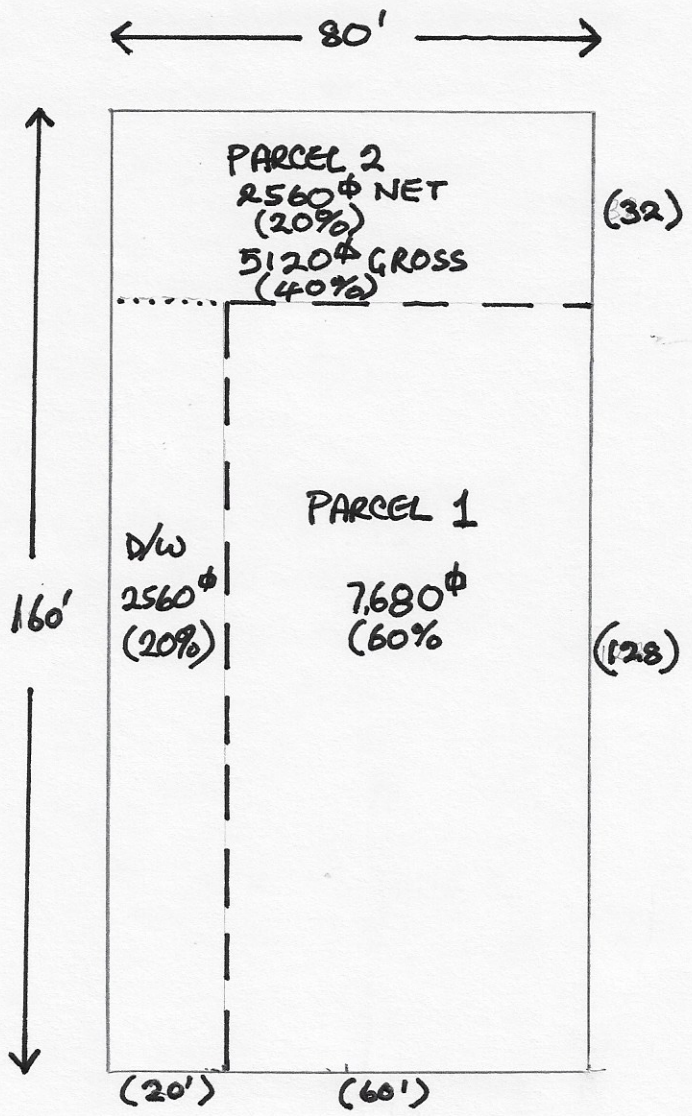
Question 5: The Discretionary Process

Please make it much more clear that this can be used as an alternative to the administrative review process for a lot that has been created by an ULS. I will use it to design a better home, because I do not like the Objective Design Standards in the Ordinance. Please consider eliminating the 'Tech Review' step in the discretionary process to allow me to 'sell' the discretionary process to my clients. This will shave weeks, if not months, off the process. Ray Davis is not with us any more. Also - please clarify whether the discretionary process can be used to bypass the '1,200 max sq ft first unit regulation'. This regulation does not concern me personally, but clarification would be useful.

I will have other comments, I am sure, when I see the Proposed new ordinance.

Thanks
Tony

THE 20' FEE TITLE CORRIDOR RULE.



DOES THIS REALLY MAKE SENSE?

TOTAL LOT SIZE = 12,800¢

60% LOT SIZE = 7,680¢ PARCEL 1

40% LOT SIZE = 5120¢ PARCEL 2

BUT ½ IS CORRIDOR

20% ACCESS CORRIDOR - 2,560

20% NET LOT SIZE - 2,560.

IF YOU INSIST ON THE 20' WIDE "FEE TITLE" THEN IT SHOULD BE DEDUCTED FROM THE 60/40 % CALCULATION OR YOU COULD HAVE STUPID LOTS.

BUT REALLY YOU SHOULD ALLOW/REQUIRE AN EASEMENT TO THE BACK LOT TO SOLVE THIS & MAKE THE EASEMENT WIDTH 12'-15'.

Gm Ryan,

Thanks for your time yesterday.
As discussed, please help to clarify with city attorney on the SB9 guideline - "Intent to Occupy' requirement for a SB9 lot split".

After the SB9 urban lot split, we will end up with an existing home on one lot and the second is a vacant lot.

Can we sell the original residence and keep the newly split vacant lot for three years to meet the SB9 requirement?
or do we have to build a new home on the vacant lot and keep it for three years?

Please help us clarify the 'Intent to Occupy' requirement for a SB9 lot split.

Thank you,
Satya

All:

Now that I have remained unscathed from my first SB-9/HPC dichotomy [16405 Kennedy - a pre-1941 house with no redeeming architectural or historic values], I would wonder whether there might be a way to allow HPC to consider the impact of the reduction in property size of an older/historic home. Not that it mattered here.

I guess it just depends on whether you need/want SB-9 projects to contribute to the housing element - because you do have a 2 for 1 rule?

If they feel that the yard and landscaping are not instrumental to the historic nature of a property then perhaps there might be a path to allowing a lot split while still retaining a home on the historic register?

When do you expect to go back for another bite at the SB-9 apple? [Hillside/50 yards/Easement access/anything else]?

Tony

Jocelyn [Joel/Jennifer added]:

Fire will not talk with applicants other than through a routed application from the Town. [Per Rob Campbell - see below]

Can we either route to fire or require them to talk to applicants once you feel an application is reasonably complete? I sent them exactly the plans you have but below is the response I received.

I specifically do not want to go too far [on any project] and spend client's money only to be turned down later.

Saratoga - for example - has routed a similar submission of mine to various entities [including fire]. They go too far - including routing to Caltrans and WVSD, plus requiring a geotechnical report - which should come later, because - why waste everyone's time before a project is realistic. San Jose also routes to Fire for comments - but they want the entire application complete [including the Parcel Map]. Planning just checks it for the obvious [a pre-screen] and then it is a PPW project. But most of their lots are simpler [and they allow 12-15 ft easements to a back lot, like most other jurisdictions so they screen for that too]

Los Gatos' staff has the knowledge and expertise to look at this and make a reasonable decision as to the best sequencing. I understand Rob's desire not to be inundated with scraps of paper with scribbles on them, so he might be right from that standpoint - but if you can talk with him again to resolve this disconnect, it would be helpful.

Tony

Tony,
I am not available today. I recommend discussing the SB-9 requirements with the city/town planning departments before coming to us. As you know SB-9 is primarily zoning focused legislation. My discussion with Los Gatos planning is that they will be the lead in any such decisions. Where fire concerns arise (e.g. VHFHSZ parcels) they will coordinate with us for requirements. If you have specific questions, please put those in writing so we can be clear on the information you seek.

Thank you,

Rob.

Robert L. Campbell, PE
Sr. Fire Protection Engineer
Santa Clara County Fire Department
[redacted]

Ryan,

I had previously provided public comment / input toward the next draft of Ord 2327. I have two further comments:

1)

a) Ord 2327 says that if SB9-reduced setbacks are used then windows must be clerestory. I think this is fine as in usual suburban neighborhoods you don't want them looking into a neighbor's yard, however clerestory window requirements *should only apply to exterior walls that are closer to the property line than the usual (non-SB9, base zoning) setbacks*. For the rest of the 2nd story walls, they are no closer to the property line as is already allowed today with the base zoning rules, so these walls should be allowed to have whatever window size and arrangement the base zoning district allows today.

b) Where an applicant is ***not*** using reduced SB9 setbacks but just respecting the base zoning's setbacks, Ord 2327 says that second story windows must be of the minimum number and size necessary for egress. That means one small window per room. This does not make sense to apply since it is more restrictive than most (or all?) base zoning districts. At least here in the hillside, without SB9 I could build a second story and put larger windows than that, but if I attempt to use SB9 then my window size and number are restricted -- *even if I still respect the base zoning's setbacks*. This doesn't make sense to me and I would request we just remove this entirely from Ord 2327 and rely on the base zoning's window requirements if the base zoning's setbacks are respected.

2) Ord 2327 says that if there's a roof over the entryway that its roofline must meet the adjacent roofline. This doesn't make sense to me, since today in most (or all?) base zoning districts as far as I know there is no restriction on how a roof over the entryway is supposed to look. Indeed, many high-value homes have a beautiful entryway with a high arch and roof. This can take many forms but here are two examples:


This tall entryway can be a beautiful architectural feature designed to bring value to the home and neighborhood, and as far as I know this entryway is not restricted other than in Ord 2327 (assuming other requirements like overall height are respected). Therefore I would request that we remove this from Ord 2327 and just rely on the base zoning's rules regarding roofs over entryways.

David

Ryan,

Thanks for our discussion today. For two of my questions you said the first step at providing input into a permanent ordinance was to email you.

1)

Ord. 2327 has two restrictions on architectural design: (a) No balconies/terraces on top of 1st floor. (b) 2nd stories must be stepped back 5' from 1st stories.

The restrictions are presumably intended to protect neighbor's privacy when SB9's reduced (4-foot) setbacks are used. Nobody wants a neighbor's 2nd story window or terrace/balcony looking over their fence.

However it is my feeling that the restriction should be waived if the regular zoning setbacks on that side of the house are respected.

To not do so violates state law and strongly limits architectural options. According to HCD's fact sheet on the implementation of SB9, "HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible." Accordingly, it is reasonable for the Town to require a 5' step-back from 1st story elevations if the proposed house is utilizing reduced SB9 setbacks, but no such architectural design restriction should be required if the proposed house utilizes the original zone's setbacks. This to me seems to resolve the concern in a way that leans on existing zoning guidelines.

Leaning on existing zoning guidelines wherever possible is more desirable, since these zoning guidelines are developed over decades of time and well-understood by everyone in the community.

2)

In Ord. 2327 Sec. V B 2, "The finished floor of the first-story shall not exceed 18 inches in height as measured from the finished grade."

Inasmuch as SB9 is (or will) apply to hillside zones, and inasmuch as basements in the hillsides are to be encouraged and incentivized (since they reduce massing), this restriction is overly restrictive and does not incentivize basements in the hillside zone. (For comparison, non-inclusion of basement floor area in FAR does correctly incentivize them.)

On flat land this restriction makes sense -- you don't want your first floor to be 4' out of the ground. On sloping land, very quickly your 18" protruding basement becomes 0" and then your 1st floor becomes below grade, and your original basement ends up buried very deep in the earth, which is expensive and not incentivizing, and the basement becomes very small or very expensive or both.

I think it makes sense to modify this to 4' at least in the hillsides, consistent with the existing definition of basement.

Ryan,

I understand Fire Dept doesn't review my ULS/TUD application until Building Permit phase.

I also understand that Fire will very likely reject my application based on 4290 since I'm in VHFSZ. Talking to friends who are working through this right now, a rejection letter is expected and an important step, as a starting point to petition for exemption from 4290 or discuss alternative methods and means.

So, if fire is going to reject my application I'd like to get to that phase before the Parcel is even split (since at that point there is a permanent change and I can no longer back-pedal on my plans).

I asked SCCFD, and they said they won't review my plans until they come across their desk through the regular procedure.

Can we (a) have Fire do a full review at the Planning stage, or (b) have Fire review at the Building Permit stage as usual, but I start the Building permit phase (submit my Building plans to Town of Los Gatos) even before the Parcel Map is fully recorded, with an at-risk letter saying the Building Permit won't be considered final until the parcels are fully created?

I'd prefer to do (b).
If we did (a) then I lose the advantages of SB9 ministerial review (it turns into a non-ministerial review, which I don't think is allowed).
If we do (b) then it follows the regular procedure, and allows us to finalize all other Planning details and get Planning approval before taking the plan to Fire. But the down-side is that my plans will be further along in time and money before getting the rejection letter -- but that's ok with me.

Thanks,
David

Hi Ryan,
Thanks for your time this afternoon. I'm summarizing below what we discussed along with a follow up question:
What are we looking for?

- To build a 2000-2400 sq feet dwelling at the back of our property.
- We do not want to go with public hearing given the experience in the recent past with our neighbors. Given this we have to go through SB9.

Options:

1. With Split (Not desired but solved our problem wrt building what we want)
    a. In the new lot above we can build a new Primary unit up to 5000 sq feet and an ADU on top (up to 1200 sq feet)
    b. Lot once split cannot be merged back later as there cannot be two Primary units in a Single-family Lot (@Ryan but with SB9 it is supported so that argument may not be valid)
2. Without Split, the Emergency Ordinance on SB9 from the Town of Los Gatos only supports the scenario of building up to 1200 sq feet ADU/Primary Unit. This is too restrictive IMO.

While our ideal and preferred scenario is to go with Option 2 (without split) and build a 2000-2400 sq feet dwelling, it is currently not supported by the Town of Los Gatos. Ryan can you please confirm this again. Based on the FAR ratio that we looked at this afternoon, my property (62000 sq feet with 17% grade) is allowed to have 6200 sq feet without a garage included (and not including 10% increase when you have 2 units). Just based on this I should be allowed to build up to 2700 sq feet for the 2nd unit (6200x1.1 = 6820, subtract existing unit 4120 which leaves 2700 sq feet). Ideally if Planning department can support this scenario as part of SB9 then our problem would be solved ☺

Thanks
Ani

Ryan, Our feedback is pretty simple:
1) Please remove the silly grading disqualification, and
2) The California Legislature did not intend the first unit size restriction to be under 1200 SF as adopted by the Town.

Otherwise, Town Staff has done a good job implementing SB9.
Best regards, Terry
Terence J. Szewczyk. P.E.

Hi Ryan - For the single family residences, I am opposed to the 2nd story setback as written as well as the window regs for the second story.

The regs as written will lead dreadful cookie cutter houses and dismal living spaces upstairs.

-Jay

Ryan,

Thanks for the email. I have to say that I agree with Terry, the grading requirement is in clear violation of the State's intent on these projects, it is an arbitrary restriction. That is a clear no-no. And the Town knows darn well that in even the mildest of sloped sites there will be more than 50 CY of dirt moved. If this is brought to the state it will surely be slapped down. It is a rather clumsy attempt to knock down the number of lots that would be eligible for a split.

It is a mystery to me why the town does not simply adopt the State standards and call it a day. Any number of developers in the town and in the surrounding area are much better funded than the town is and will surely bring provisions like this grading restriction to court or to the office of the State architect. They are not going to be able to just sneak this in.

I get that this is simply another case of 'the Town being the Town' and at some point, it just gets ridiculous. Anyway, thanks for the email and I will try to make the meeting. If nothing else it will be entertaining...

Regards,
David

Ryan,
Our request is the following three aspects of the Ordinance that violate state law:

(1) The Ordinance's exclusion of the Hillside Residential (HR) zoning district from the definition of a "single-family residential zone";
(2) Limitations on grading in connection with the development of residential units under SB 9; and (3) A 1,200 square foot size limitation on the first residential unit constructed on a lot pursuant to SB 9.

Thanks,
Arvin Khosravi

Subject: SB 9 comment from a long-time Los Gatos renter.

EXTERNAL SENDER

As someone who has been renting in Los Gatos for the last 7 years, I hope that SB9 will increase the acceptable amount of "family" housing available to families like mine (a single parent household with two children attending Los Gatos schools). We would love the option to live in a duplex or ADU and have some access to a backyard, instead of being restricted to apartments and townhouses.

To that end, the 1200 sqft MAXIMUM on the size of the ADU is too small for small families. I can understand not wanting to have a large ADU/Duplex on a lot that is too small, but there are many large homes/lots in this area that can indeed accomodate a larger 1600 sqft unit. So the max size of a detached ADU should be based on a percentage of the main house/lot size's area with a minimum of 1200sqft.

I hope that Los Gatos makes special outreach to the tenant/renter community with regard to this proposal, as well as to the land owners who seem to dominate town government meetings (probably because they have more time and are not working second jobs or caring for children during town meeting hours).

Sue Raisty
[redacted], Los Gatos, CA 95032

EXTERNAL SENDER

I have been a resident of Los Gatos for many years. I have watched the changes to the housing landscape change & not for the better. Take The North 40 development as

an example. If that isn't the ugliest over developed housing you ever seen, then I'm sorry for you. The only reason The Town is pushing this is because it needs more funds to handle the mismanaged Town budget that is in dire need of funds. Funds that would be gained from building permits, inspection fees and additional taxes on the land & buildings involved.

I vote no on the SB9 Ordinance.

Melanie Allen

Los Gatos Resident

EXTERNAL SENDER

Hi Los Gatos planning
I'd Like to have the issue of VHFHSZ addressed tonight

I am the first house of the hillside zone at 15 Highland at Jackson at the base of the hill.
I have a fire hydrant in front of my house and I'm about a block up from Main Street.
Is there any way to ask for a variance regarding being removed from the hillside one and high fire zone in order to do a sub division of my property?
If you could address the VHSHSZ tonight that would be very helpful.

Is it be possible to ask for a variance to be moved to a different zone and move out of the hillside high fire zone?

Thank you so much,

Teresa Spalding

Sent from my iPhone

To whom it may concern:

In general most of my concerns with the draft revolve around rules that are more restrictive than the base zone's rules.

- *Page 4, V, A, 1, Building height … in HR zone <16'.* This practically prohibits 2-story buildings in HR. Two-story buildings are often required in hillside, to keep the house footprint small so as not to spread across steep or difficult slopes. This is severely and unnecessarily limiting; there is no reason to effectively prohibit 2-story buildings in HR zones, and this is not consistent with State Law. (Limiting a building to 16' if it's located inside the setbacks of the base zone, however, is reasonable.)
- *Page 5, 5, Max size of first new res unit <1200 sf.* This is unnecessarily limiting and not consistent with State Law.
- *Page 5, 5, Grading 50 c.y.* Many members of the public are not happy with this since it is extremely limiting in HR zones. It's my understanding that grading > 50 c.y. will not only trigger a grading permit but also a full Architectural and Site Review and hearings. I understand that it's meant to avoid someone skipping comprehensive grading review via TUD process. Surely there can be a compromise wherein grading >50 c.y. **only triggers a standalone grading permit and not a full ASA**.
- *Page 5, 8, Building sites, not on lands with avg slope exceeding 30 percent.* It is not clear whether this applies to lots with average slope (over the whole lot) of 30%, or whether it means that a particular house that has some portion of its footprint on a 30% slope, is prohibited. In any case, this restriction is unnecessarily limiting and not consistent with State Law. If a geologist has done the investigation and engineered plans have been prepared, then a site can be buildable even if it is >30% slope in places or on average.
- *Page 7, B, 2, Finished floor: 1st story FF can't exceed 3' in height.* This is unnecessarily limiting in HR zones. On sloping ground you need to bury one side and have the other side of the house protrude, often by more than 3'. This also limits basement options since the basement will be super deep on the former side, in order to have the latter side <3' out of the ground. May I suggest to just remove this; this has already been given consideration in other Town Code, for example in Town Code a story and a basement are adequately defined. As written, Page 7, B, 2, Finished Floor, is unnecessarily limiting and not consistent with State Law or with the realities of building a reasonably-sized house on even slightly sloped ground.
- *Page 7, B, 3, Front Entryway…shall have a roof eave that matches or connects at the level of the adjacent eave line.* This unnecessarily limits architectural options. Often a raised roof over the entryway can be an elegant detail, and raise the value of the neighborhood.
- *Page 7, B, 4, Front Porch >=6' and width >=25% of linear width of front elevation.* This is unnecessarily limiting. Please just apply the porch restrictions (if any) of the base zone.
- *Page 7, B, 5, Step-back. ALL elevations of 2nd story must be stepped back 5'.* In my opinion this is the most architecturally limiting of any of the new TUD ordinance draft. This makes houses look like wedding cakes -- larger on 1st floor, smaller on 2nd floor. Please modify this to make a step-back only necessary on *walls that are closer to the property line than the base zoning district will allow*. I believe this will resolve concerns of people building tall 2-story buildings right up near a neighbor's fence. And it would not limit architectural options more than the base zone, if the applicant did not attempt to use reduced SB9 setbacks.
- *Page 7, B, 6, Garages. Street-facing attached garages not exceed 50% of linear width of front-/side-yard elevation.* This doesn't work well on all lots; I'm particularly thinking of irregular lots

such as in HR zone. Please do not limit the architectural options more than the base zone, unless the applicant is proposing to take advantage of reduced SB9 setbacks.

- *Page 10, A, 2, Lot Lines. New side lines of all lots shall be at right angles to streets.* This doesn't work on all lots; I'm particularly thinking of irregular lots such as in HR zone. Please do not institute a rule that cannot be followed by everyone.
- *Page 10, A, 5, Min Public Frontage, each new parcel shall have min frontage on street of 20'.* Again, this doesn't work on all lots, not only irregular lots, but lots that are on private streets. Putting into effect new rules that not every lot can follow will just lead to more work for Planning, as you will have to consider a number of exceptions, slowing down the permitting process.

To repeat the most important two points:
1) Please, do not limit Los Gatans' options more than the base zone, unless that Los Gatan is taking advantage of the reduced SB9 setbacks. Otherwise please just let us use the base zone's rules.
2) Please, do not institute laws that not every lot can follow (such as Page 10, A, 2)

David Hutchison

Ryan/Jennifer/Joel:

I am not exactly sure who is running 'point' on this, nor whether this meeting is a 'planning fact-finding' meeting or something more significant - such as a 'recommendation to the Council'. Can you you please enlighten me?

I read the new proposed 'draft SB-9 Ordinance' and you have made some good improvements which make sense - as well as a few that don't. But if I ignore those, I do have a couple of questions on items which are unclear. Could you please respond prior to the webinar so that I do not need to wast my time on these.

1A. Section V.A.6. - Grading: This is ambiguous.
"Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or [shall/shall not] require a grading permit. . . ." Does this mean if you need more than 50 yds that you have to get a grading permit OR that the project is not allowed a grading permit to exceed 50 yds?

This could be clarified by re-phrasing: Any Grading activity in excess of 50 yds, cut plus fill, shall require a grading permit. Would this grading permit be administrative if you follow paragraphs 7,8,9?

1B. Section V.A.7/8/9 - Cut and Fill, etc
Now that you have added these paragraphs do clarify allowable grading activities, Section V.A.6 is not longer needed.

2. Section VI.1/5. [and 3] - 20 ft frontage and 20 ft corridor.
I see that you have not modified this section. It is clearly in violation of the text of SB-9 which allows an ULS parcel to either "adjoin" or "have access to" the public right of way.

The problem I have with the way it is written is that moderately long and narrow lots [where a flag-lot would make sense] are pretty much eliminated [because so much of the rear lot is contained in the 20 ft wide flag-pole]. Just do the math on a 60 ft wide lot!

An IEE easement [as required by SCCFD of 12-15 ft would make more sense, in addition to being legal [SB-9], and would make the 40/60 split more reasonable in terms of lot configurations. An easement is probably going to be required by SCCFD anyway for EV access to the rear lot.

Why are you not addressing this issue?

3. Will it be possible to share a screen, or show a slide in some way at the webinar?

Thanks
Tony

T.H.I.S. DESIGN & DEVELOPMENT P.O.Box 1518, Los Gatos, CA 95031

Tel: 408.354.1863 Fax: 408.350.1823

Town of Los Gatos
110 E Main St
Los Gatos, CA 95030
Attn: Planning Commission

September 23rd, 2022

SB-9 DRAFT ORDINANCE

Commissioners:

I understand that you are reviewing the Draft [Permanent] SB-9 Ordinance which will subsequently be recommended to the Town Council for Adoption. I have been working with this Ordinance over the last year and have encountered several issues.

Luckily, staff has already proposed changes to the original Emergency Ordinance and, for the most part, these changes would appear to be going in the right direction. There are a few items that could be improved, but because the discretionary process [DRC/Planning Commission, etc] is retained as an option for the design of any house(s) on a resulting ULS parcel, I am less concerned about the objective design standards for a 'two residential housing unit' development of SB-9.

I do, however, want to draw your attention to the one aspect of the Urban Lot Split portion of SB-9, which I fear will result in very bad neighborhood design and which can easily be avoided if it is considered seriously.

The 20 ft Fee Title Corridor for a Flag Lot.

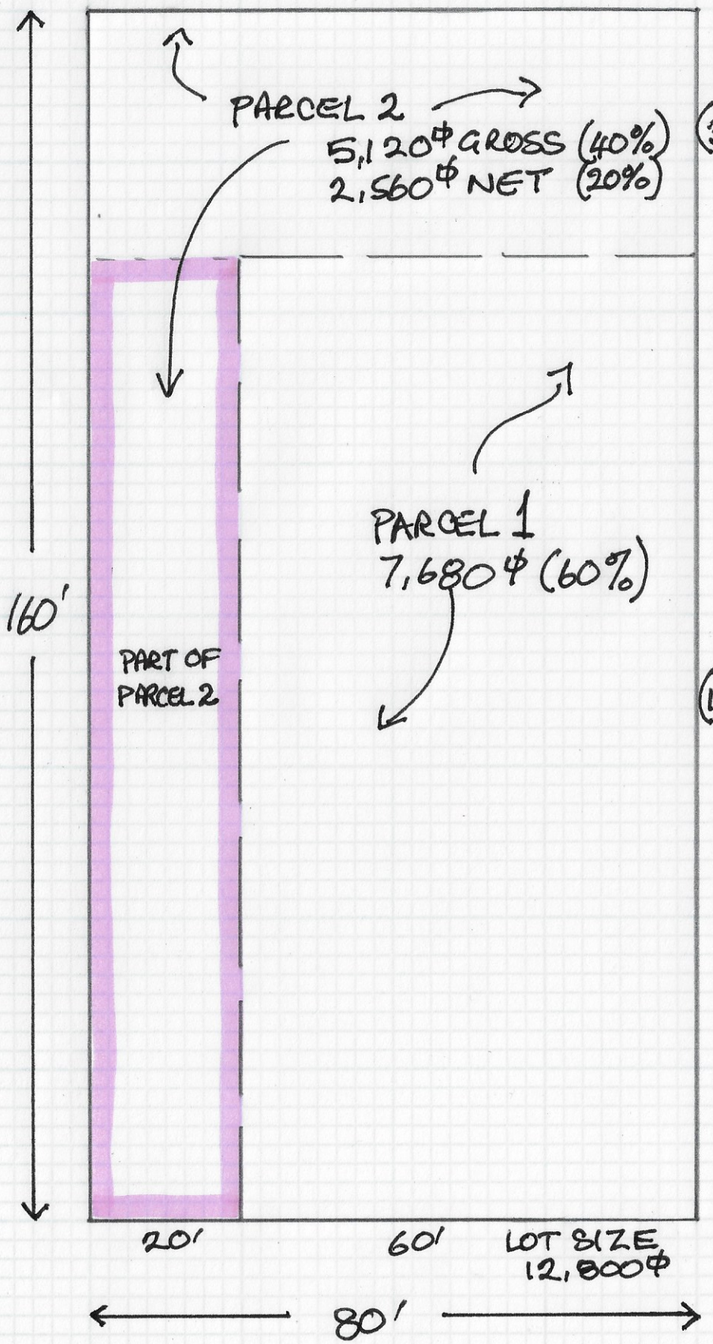
SB-9 does not really allow a jurisdiction to restrict a flag lot access corridor to being 'Fee Title', which the current ordinance does, so there will always be a risk of a legal challenge. All other local jurisdictions make provisions for an ingress/egress easement alternate access the rear parcel. Just because there is a "20 FT Street Frontage Rule" in the code now does not mean that is must stay for SB-9.

With the existing Ordinance you can get some really stupid lot configurations, not intended by SB-9 and not desirable in the Town. This is your chance to correct it. **THE EXAMPLE** shows what a homeowner could ask for "AS IS" and how you could "FIX IT" – 2 vastly different approaches to the same lot.

Thanks

Tony Jeans

CURRENT (DRAFT ORDINANCE)



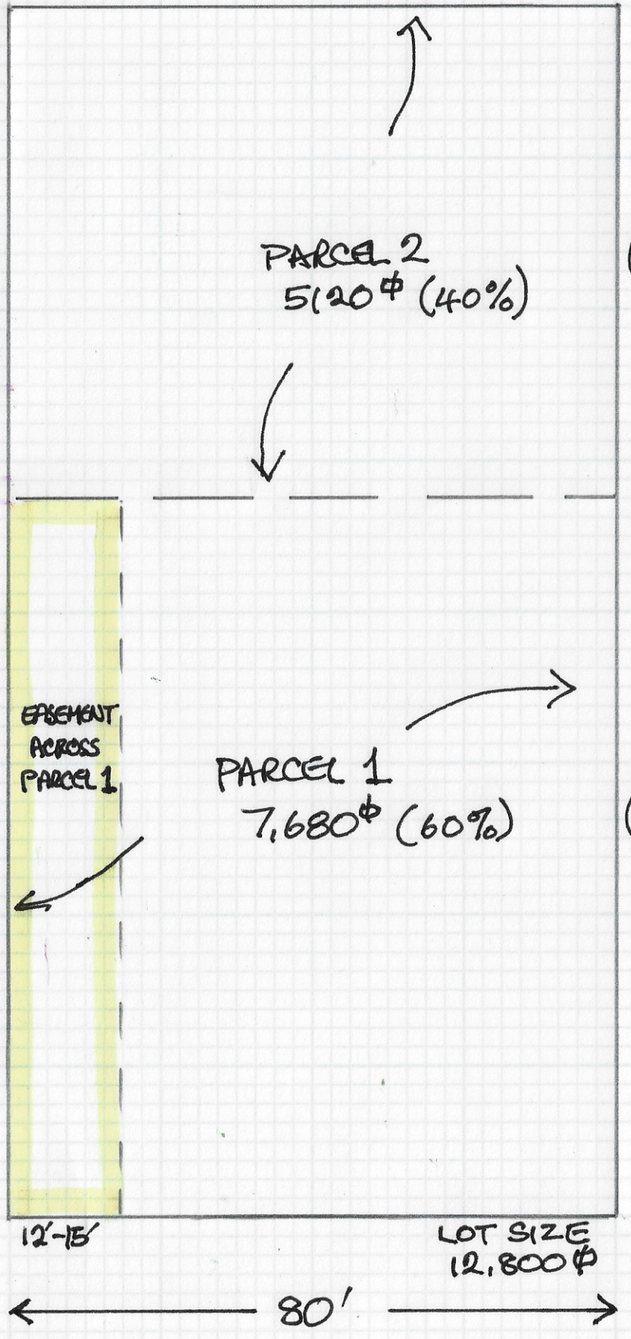
WHICH IS THE BEST WAY TO SPLIT A PROPERTY AND CREATE A FLAG LOT?

PANHANDLE IS PART OF PARCEL 2 AND MUST BE 20' WIDE (+ FRONTAGE)

PROBLEM 1: THIS CAUSES SOME VERY BAD LOT DESIGNS

PROBLEM 2: THIS IS IN VIOLATION OF SB-9 WHICH SAYS A (FLAG) PARCEL MAY ADJOIN OR HAVE ACCESS TO A PUBLIC RIGHT OF WAY

A BETTER SOLUTION



SECTION VI.A §§

1. THE ACCESS CORRIDOR TO A FLAG LOT MAY BE IN FEE OR AN EASEMENT & SHALL HAVE A MINIMUM WIDTH OF 12' OR AS REQUIRED BY SANTA CLARA COUNTY FIRE DISTRICT
5. ELIMINATE FRONTAGE REQUIREMENT OF 20' UPON A STREET.

PANHANDLE IS AN EASEMENT TO REAR LOT & COULD BE 12-15 WIDE FOR FIRE ACCESS + DRIVEWAY

ALL OTHER JURISDICTIONS ALLOW THIS:

MONTE SERENO
SARATOGA
COUNTY OF SANTA CLARA
CITY OF SAN JOSE
•
•
•

TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT

MEETING DATE: 09/28/2022

ITEM NO: 3

DESK ITEM

DATE: September 28, 2022

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Consider Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Permanent Regulations to Comply with the Requirements of Senate Bill 9. Town Code Amendment Application A-22-002. Location: Townwide. Applicant: Town of Los Gatos.

REMARKS:

Exhibit 8 includes public comment received between 11:01 a.m., September 23, 2022, and 11:00 a.m., September 28, 2022.

EXHIBITS:

Previously received with the September 28, 2022 Staff Report:
1. Draft Permanent SB 9 Ordinance
2. SB 9 Legislation
3. SB 9 Urgency Ordinance 2326
4. SB 9 Urgency Ordinance Extension 2327
5. California Department of Housing and Community Development SB 9 Fact Sheet
6. Association of Bay Area Governments SB 9 Model Ordinance
7. Public Comment received prior to 11:00 a.m., Friday, September 23, 2022

Received with this Desk Item Report:
8. Public Comment received between 11:01 a.m., September 23, 2022, and 11:00 a.m., September 28, 2022

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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From: Adam Mayer
Sent: Wednesday, September 28, 2022 12:15 AM
To: Planning <Planning@losgatosca.gov>
Subject: Comments on Draft SB9 Ordinance (Driveways & Street Frontage)

EXTERNAL SENDER

Hello Planning Staff,

I just have a few comments on the SB9 Draft Ordinance.

The first comment is in regard to **SECTION V - A (Zoning Standards) - 2 (Driveways)** on page 4:

"Driveways. Each parcel shall include a single driveway, and any new driveway shall satisfy the following requirements"

Can you please clarify if "each parcel" means each parcel after the lot split? In this case having two separate, 10 foot wide driveways (1 that serves each parcel) would take up and waste a lot of space (especially if the lot split is done in a way where one lot is at the rear of the site). I would strongly advise against this. Part 2d goes onto to say that :

"Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction"

It would make more sense if only a single curb-cut were permitted for BOTH parcels. I understand having a driveway shared by four units might not be an ideal arrangement for some, but limiting it to one single curb cut total for both parcels after the split would go a long way in preserving the character and walkability of single-family zoned neighborhoods.

To demonstrate both points, please see attached a conceptual proposal I designed for the City of Los Angeles. In this case, a fourplex is proposed on a 7,500 ft² (50' x 150') single-family lot. The "Courtyard Fourplex" consists of two buildings, each with one unit stacked upon another.

As you can see, the setbacks are respected but the four units share a single driveway to the parking carport in the rear of the lot. If two driveways were required it would eat up more of the lot, require another curb cut and probably make the project infeasible.

My second comment is in regard to **SECTION V1 - A (Subdivision Standards) - 5 (Minimum Public Frontage)** on page 10:

"Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet"

Why do both lots after the lot split require public frontage? I understand the intent probably has to do with access from the street, but what if one lot is in the rear of the site (as in my "Courtyard Fourplex" example)?

I suppose you could consider the shared driveway as part of the "rear" lot in this case, giving it frontage and access to the street. But then would this driveway be only able to be exclusively used by the rear lot? Again this goes back to the question about sharing a driveway for both lots after a split.

These are both open-ended questions that I think require some discussion. Making accommodations for split lots to share a driveway and street frontage is an important consideration. It is also going to lead to less visual disruption on the front (public facing) part of properties that opt to use SB9 and do a better job of preserving the aesthetic character of our single-family neighborhoods.

Regards,
Adam Mayer, Architect
Housing Element Board Member

--
STUDIO—AMA

Adam N. Mayer AIA, LEED AP BD+C, WELL AP

No other city in the world matches the rich diversity of Los Angeles.

Both in terms of its stunning geographic setting and the multitude of communities that call the city home, L.A. is not defined by a singular cultural marker. Instead, what unites Angelenos are often unfortunate shared experiences, such as sitting in traffic on the freeway together or, more recently, being unable to find an affordable place to live close to job centers.

Traffic & unaffordable housing are inextricably linked to the fundamental lack of variety in housing options.

While there are some beautiful apartment buildings and 'Missing Middle' housing built before WWII, from the 1950s on Los Angeles came to be defined by the relentless sprawl of single-family home development. This development pattern proliferated due to misguided (and often racist) zoning regulations, government policy, and economic/cultural attitudes that placed the nuclear family above multi-generational households.

Today, although single-family homes still dominate the Los Angeles cityscape, they are not the nuclear family containers as initially intended.

Generations of immigrants who moved to L.A. from Latin America, Asia, Africa, and the Middle East have not had the luxury of each extended family member living in their own separate household. Notwithstanding, there are advantages of having extended families living under one roof together such as childcare, elder care, shared living costs, etc .

But if one challenge is associated with multiple extended family members in a single household, it is the potential for problems related to overcrowding.

Los Angeles has had to confront this reality over the past year with the COVID-19 pandemic, which has disproportionally impacted working-class Black and Latino communities. According to a recent Los Angeles Times article:

"Poor Latino neighborhoods are highly susceptible to COVID-19 spread because of dense housing, crowded living conditions and the fact that many who live there are essential workers unable to work from home. Officials believe people get sick on the job and then spread the virus among family members at home."

There are no words to describe how devastating COVID-19 has been for so many Angelenos.

The City of Los Angeles must invest in alternative housing models to preserve the advantages of multi-generational households while avoiding the drawbacks of overcrowding. The 'Multi-Generational Courtyard Fourplex' housing concept looks to address this problem by proposing a four-unit development on a typical single-family lot.

The Multi-Generational Courtyard Fourplex consists of two buildings, united by a central courtyard that provides ample access to light and air.

The street-facing building consists of two 2 bed / 2 bath units, stacked upon one another, while the rear building consists of a 3 bed / 2 bath unit stacked on top of a 1 bed / 1 bath 'granny' unit as well as a carport with parking spaces for 3 vehicles (plus 2 additional vehicles if parked in tandem).

The courtyard, which opens toward the south to take advantage of the Southern California sun, is the project's main social gathering space.

With a shared outdoor electric grill, it is imagined that this space also functions as an outdoor dining room for family members or other residents to share a meal. The more 'public' functions of each unit (living/kitchen/dining) face inward toward the courtyard while the more 'private' bedrooms face outward. Aside from the bottom unit in the street-facing building, which is entered from the street side, the other three units are accessed from the courtyard, further activating the space.

The architecture is inspired by the spirit of several of the great Southern California architects.

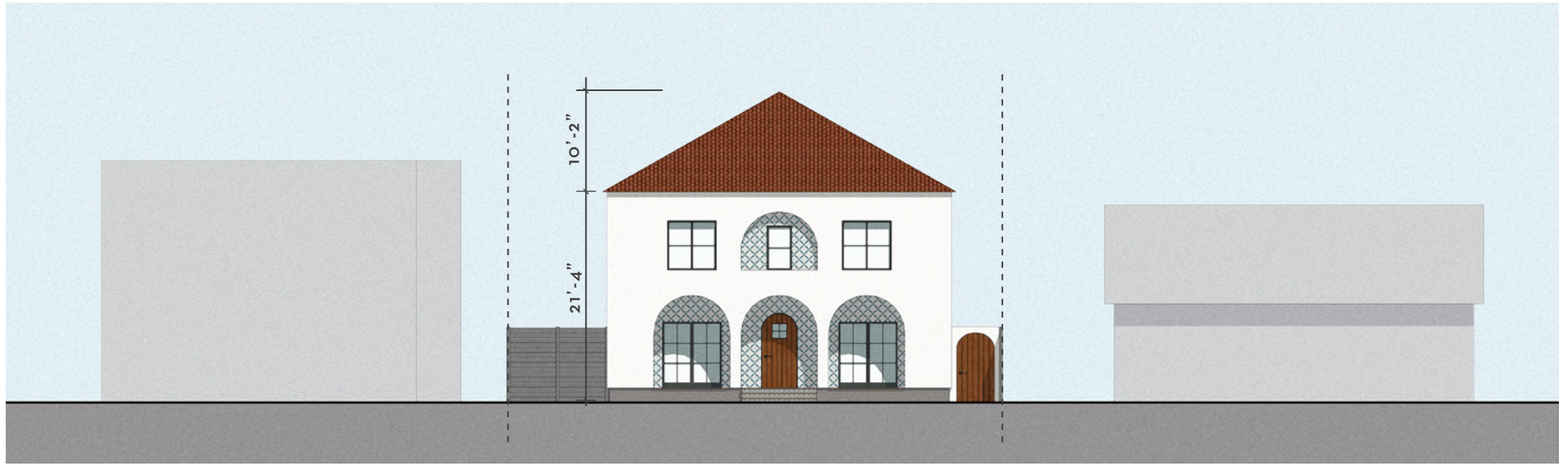
The communal living arrangements of Rudolph Schindler, the clean lines and health considerations of Richard Neutra and the hints of Spanish Colonial architecture with the modern sensibilities of Irving Gill all influence the design. Building upon this Southern California vernacular are the latest in sustainable and energy efficiency strategies including all-electric appliances, EV charging stations at the carport, bicycle storage, permeable pavers in the driveway, continuous insulation in all exterior walls and roofs, smart metering, a drinking water bottle fill station in the courtyard, rooftop solar panels and a 'solar garden' green roof on top of the rear building.

The front street-facing façade, set back 15 feet from the property line, is designed at 'house-scale', belying the fact that this property has four dwelling units.

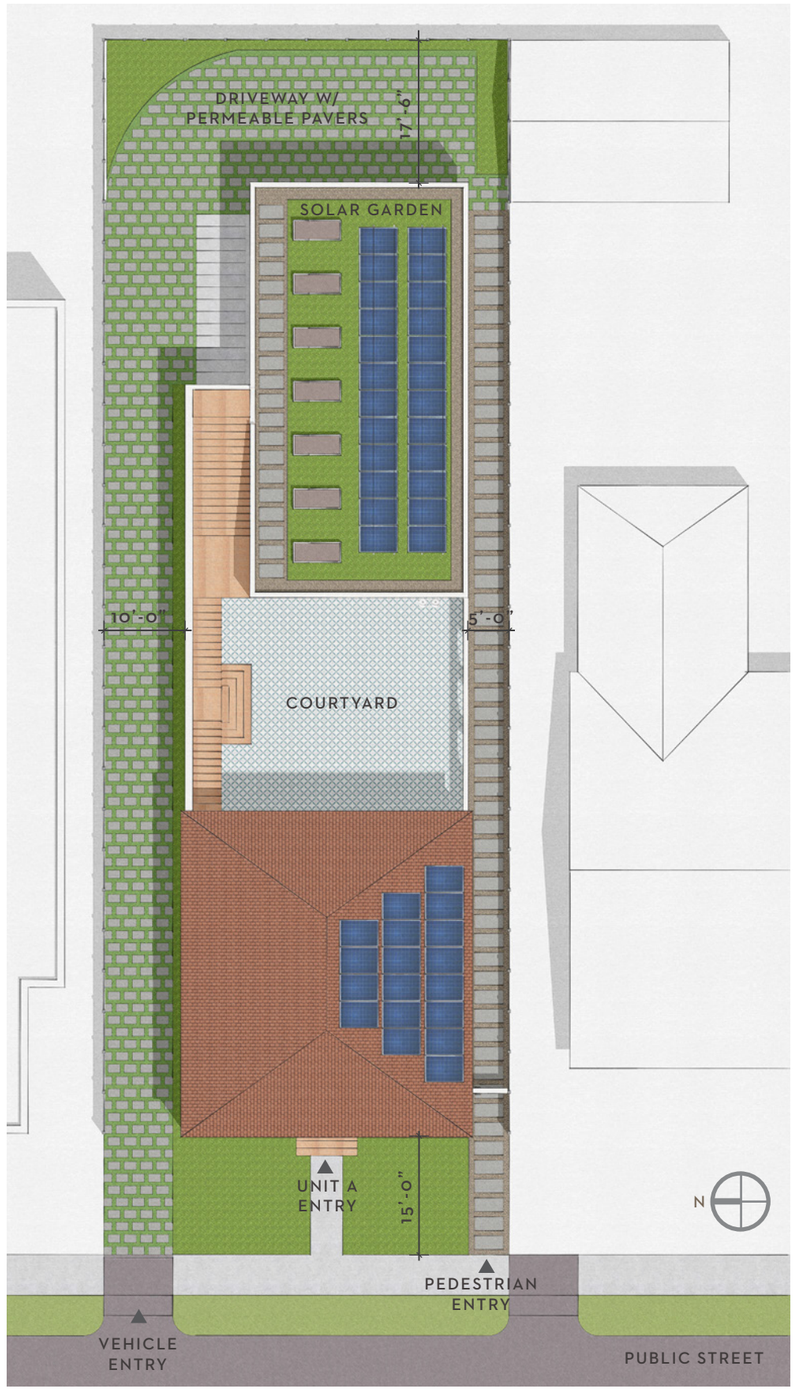
This is a deliberate attempt to make the proposal more amenable to neighbors in historically single-family neighborhoods who might be averse to the thought of higher density nearby. Drought-tolerant plantings in the front yard complement the front façade and add beauty to the transition between the public sidewalk and the building entry.

The simple material palette of smooth white stucco with clay tile accents over a typical wood-framed structure makes this an attractive yet affordable architectural language that can be replicated with slight modifications throughout Los Angeles.

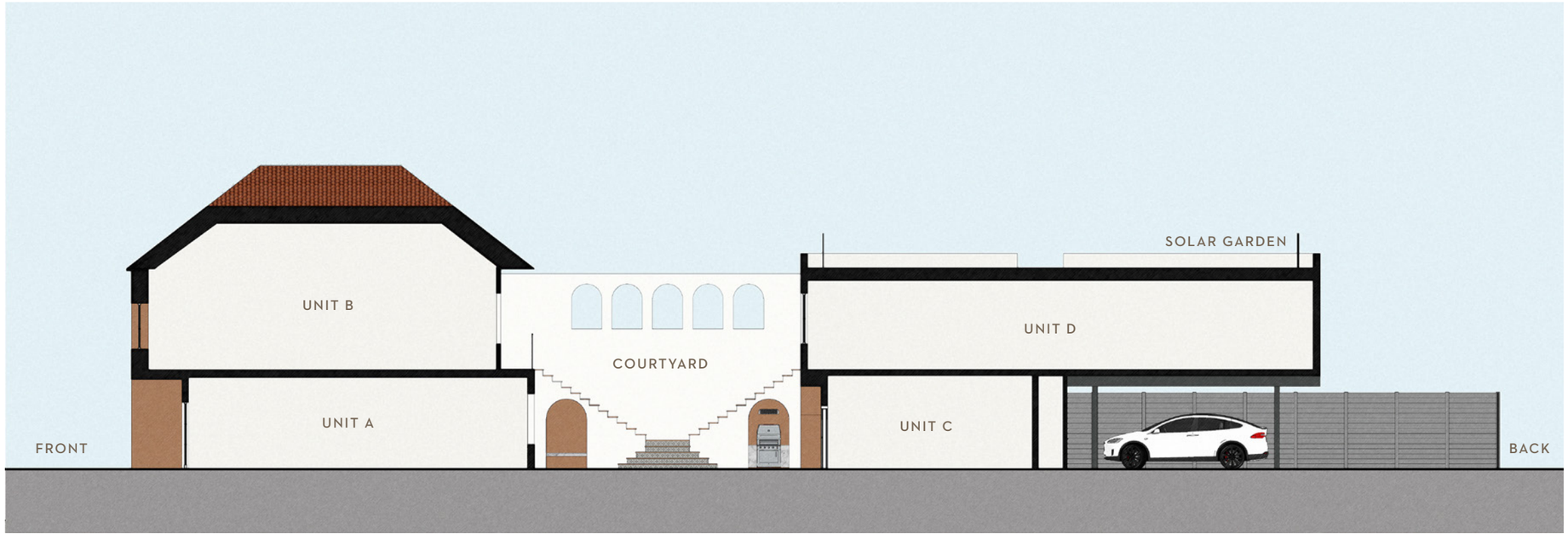
Furthermore, the design is intended to be a flexible approach that can be applied to a variety of ownership or rental models. The Multi-Generational Courtyard Fourplex offers a thoughtful yet straightforward development and management opportunity for both small non-profit affordable housing developers and local neighborhood-based community land trusts.



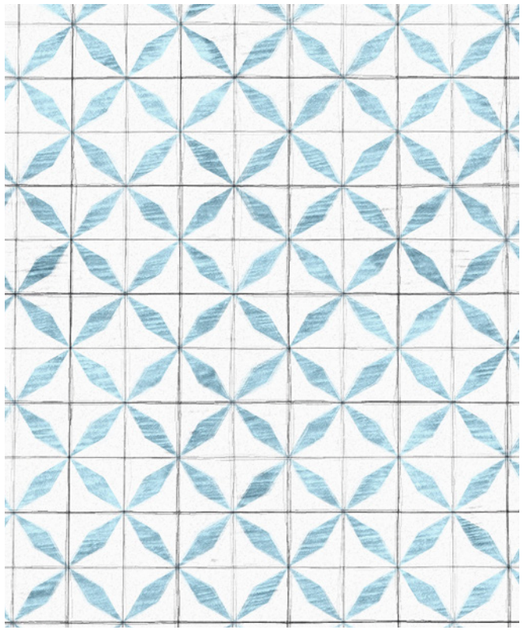
STREET ELEVATION

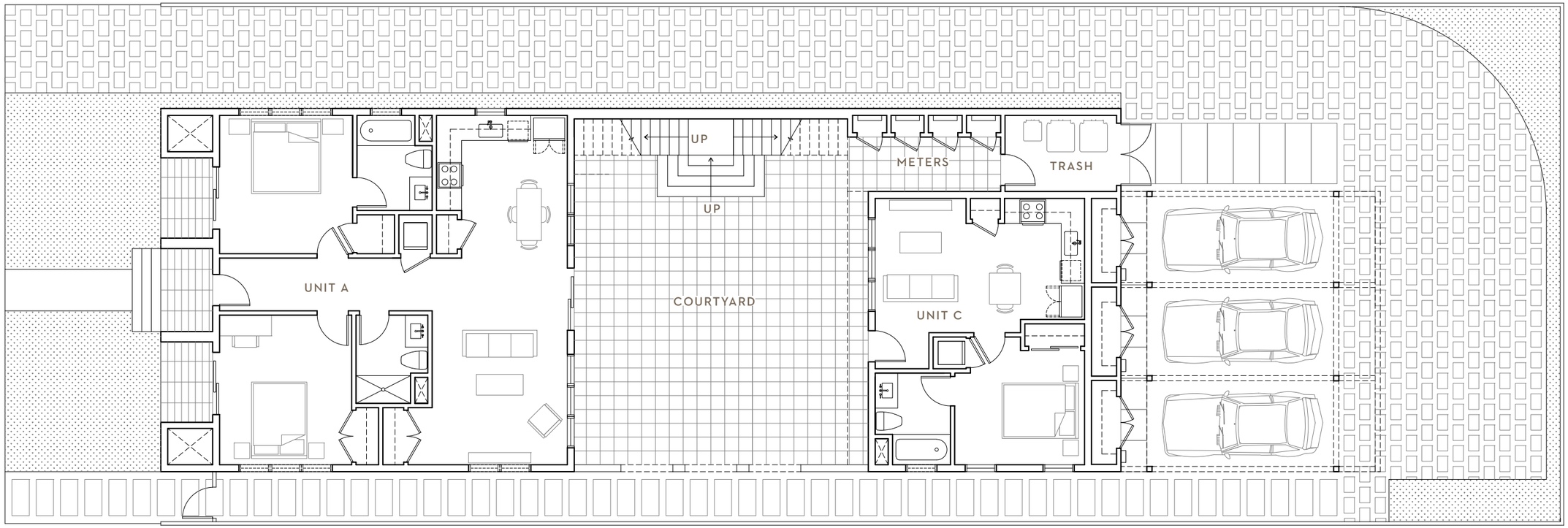


SITE PLAN

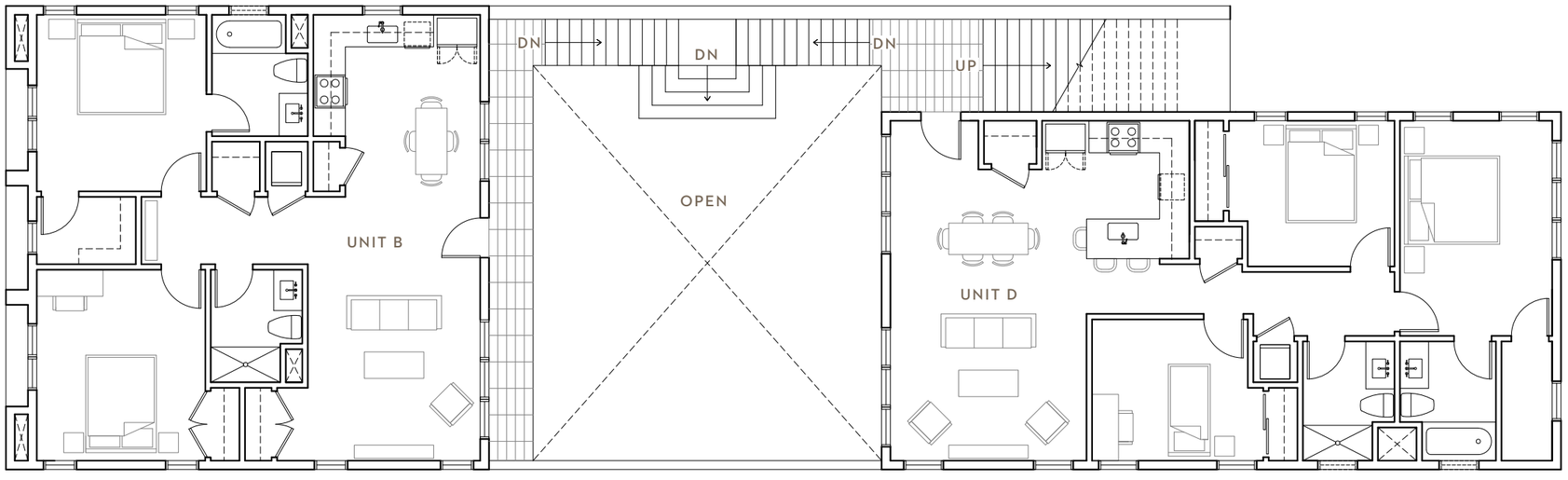


LONGITUDINAL SECTION THROUGH COURTYARD





GROUND FLOOR PLAN
SCALE: 3/32" = 1'-0"



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SECOND FLOOR PLAN
SCALE: 3/32" = 1'-0"

UNIT TABULATION

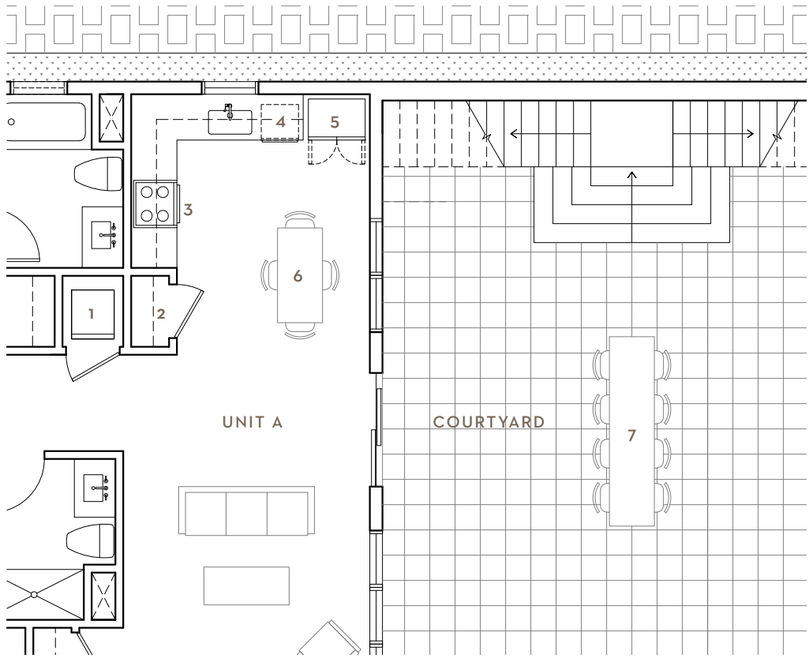
UNIT A: 2 BED/2 BA, 1125 SF

UNIT B: 2 BED/2 BA, 1125 SF

UNIT C: 1 BED/1 BA, 500 SF

UNIT D: 3 BED/2 BA, 1250 SF

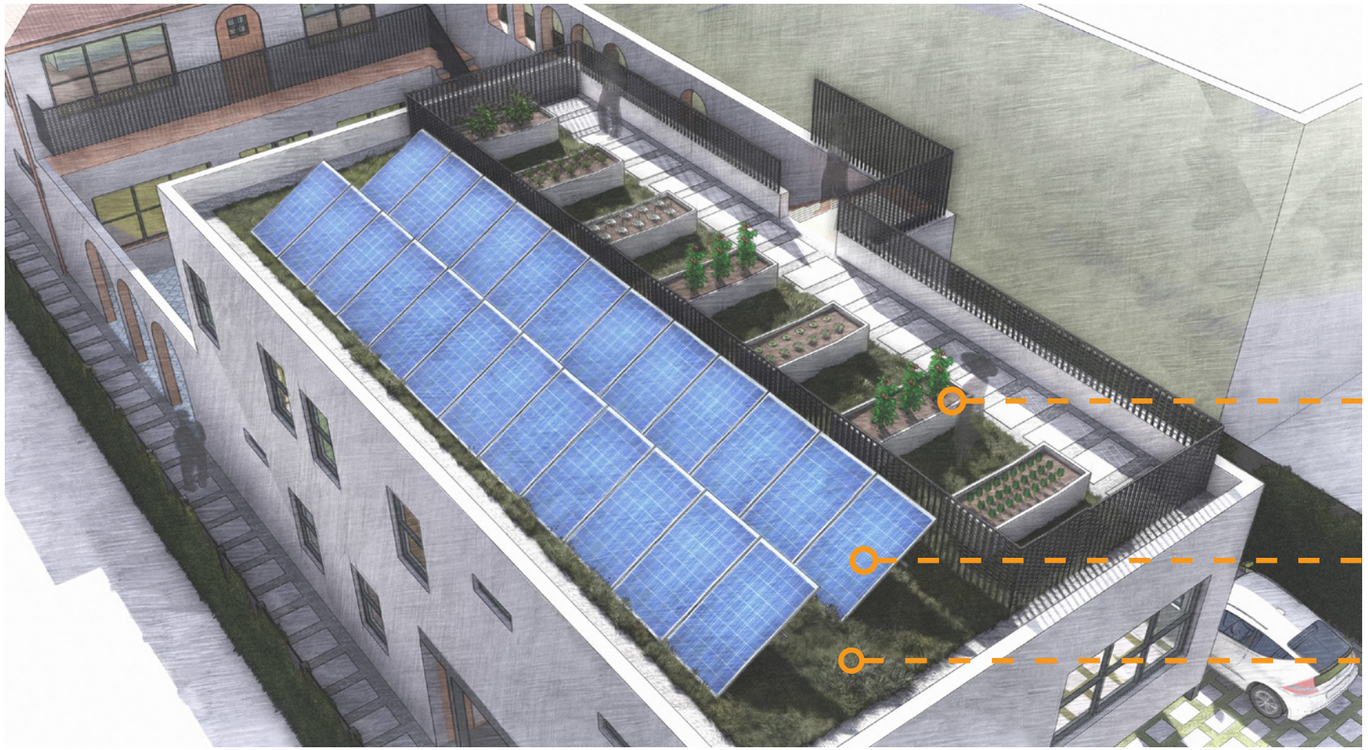
TOTAL RESIDENTIAL AREA: 4000 SF



1. SAMSUNG HIGH-EFFICIENCY STACKED WASHER & ELECTRIC DRYER
2. PANTRY
3. BOSCH BENCHMARK INDUCTION RANGE
4. BOSCH 300 SERIES DISHWASHER W/ LEAK PROTECTION
5. BOSCH 300 SERIES ENERGY STAR RATED REFRIGERATOR
6. DINING
7. OUTDOOR DINING

UNIT A/B KITCHEN & DINING

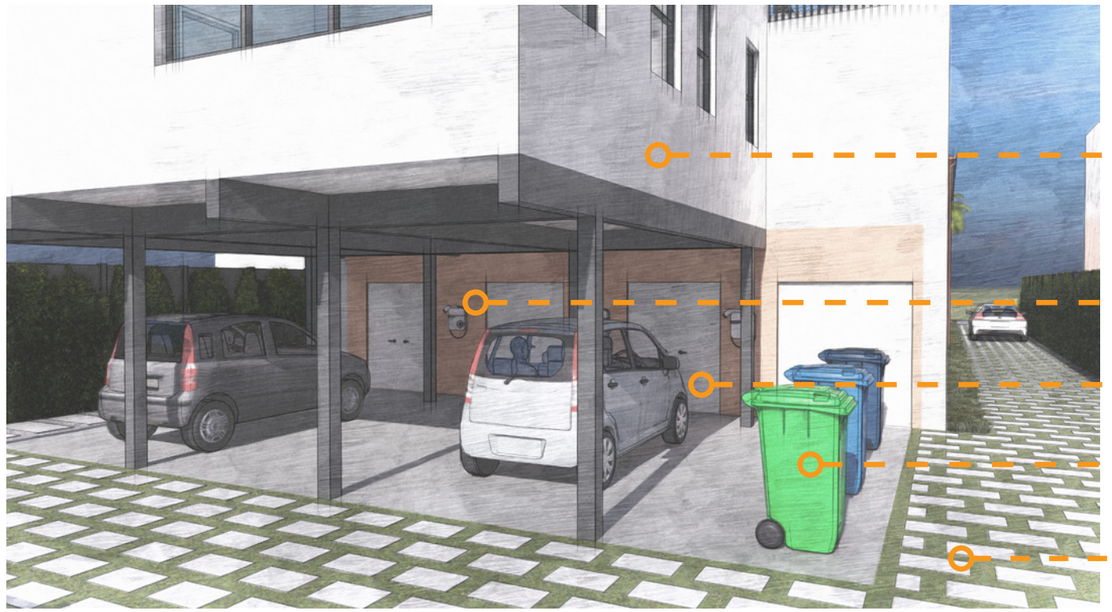
OUTDOOR COURTYARD DINING



SOLAR GARDEN W/RAISED PLANTERS FOR HERB & VEGETABLE CULTIVATION

ROOFTOP PHOTOVOLTAIC ARRAY

GREEN ROOF FOR STORMWATER MANAGEMENT



CONTINUOUS INSULATION INSIDE RESIDENTIAL UNIT WALL & LIGHT-COLORED EXTERIOR FINISH

ELECTRIC VEHICLE CHARGERS (3)

SECURE BICYCLE STORAGE

GREEN WASTE & RECYCLING PROGRAM

PERMEABLE PAVING FOR STORMWATER MANAGEMENT

SUSTAINABILITY STRATEGIES

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Melanie Hanssen, Chair Jeffrey Barnett, Vice Chair Kathryn Janoff Steve Raspe Reza Tavana Emily Thomas
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

P R O C E E D I N G S:

CHAIR HANSSEN: We will move on to the third item on the agenda, and that is we are going to be reviewing the proposed draft ordinance for SB 9, and the action requested from the Commission is to make a recommendation to Town Council who will ultimately make the deciding action on this.

Item 3 is considering amendments to Chapter 29, Zoning Regulations of the Town Code regarding regulations to comply with the requirements of Senate Bill 9. Town Code Amendment Application A-22-002. Location: Townwide, and our Applicant is the Town of Los Gatos.

I will turn to Staff to give us a Staff Report on behalf of the Town.

RYAN SAFTY: Thank you and good evening. Before you tonight is the draft permanent ordinance to implement the requirements of Senate Bill 9.

SB 9 went into effect on January 1, 2022 and requires ministerial approval of certain housing development projects and lot splits on a Single-Family zoned parcel with the intent to increase Residential densities within Single-Family neighborhoods across the

State. The law allows for two new types of development activities that must be reviewed ministerially without any discretionary action or public input.

First is a two-unit housing development, which includes two homes on an eligible Single-Family Residential parcel; and two, an urban lot split, which is a one-time subdivision of an existing Single-Family Residential parcel into two lots.

When used, SB 9 will result in the potential creation of four dwelling units on an existing Single-Family zoned parcel. In contrast, Single-Family zoned parcels are currently permitted three units throughout the State, including a primary Single-Family dwelling, an Accessory Dwelling Unit, and a Junior Accessory Dwelling Unit.

SB 9 also outlines how jurisdictions may regulate SB 9 projects. Jurisdictions may only apply objective zoning, subdivision, and design standards to these projects, and these standards may not preclude the construction of up to two units of at least 800 square feet each. Jurisdictions can conduct objective design review, but may not have hearings for units that meet the State rules.

On December 21st of last year Town Council adopted an Urgency Ordinance to implement local Objective Standards for SB 9 applications. This Urgency Ordinance was extended and is valid until the end of the calendar year. The draft ordinance, provided as Exhibit 1 with the Staff Report, includes amendments to the Urgency Ordinance in response to State feedback, such as inclusion of HR zones, additional definitions and exclusion areas, new Hillside Standards, utility connection requirements, replacement housing, relationship with ADUs, and owner attestation statements. Details on each of these are provided in Section A of the Staff Report.

Staff has also made edits to the draft ordinance in order to help clarify existing standards based on questions from the public that arose in this past year, which are described in detail in Section B of the report.

Last week the Town hosted a community meeting to discuss developing a permitted SB 9 Ordinance and foster public participation. The public comments gathered during this meeting, as well as all other written public comments that were submitted this year, are included in the packet and discussed in the Staff Report. Of the public comments received there are seven comments that were repeated, which

are described in Section C of the report. Additional public comments were forwarded with today's Desk Item report.

Staff looks for direction from the Planning Commission on the topic included in Sections C and D of the Staff Report, as well as any questions or comments on the drafted ordinance. This concludes Staff's presentation and we are happy to answer any questions.

CHAIR HANSSEN: Thank you for your presentation, and thank you for the thorough Staff Report. I'd like to find out if any Commissioners have questions for Staff before we go to public comments. And you will have another opportunity to ask questions after we take public comments.

I don't see any Commissioners raising their hands right now, so I will turn to Verbal Communications and offer this as an opportunity for any members of the public to speak on this item.

I would like to preface that by saying we're very thankful to all those who participated in the community meeting last week as well as sent in comments that were included in our Staff Report, and in addition we got additional comments from the public in the Desk Item today, and now would be an opportunity to speak in Verbal Communications on this item, and you will have up to three

minutes. Please raise your hand if you would like to speak on this item.

JENNIFER ARMER: If anyone would like to speak on this item, Senate Bill 9 permanent ordinance, please raise your hand now. We'll give them just a moment in case anyone wishes to speak. All right, we've got a couple of people who are interested in speaking. The first will be Lee Quintana. You should be able to unmute and speak now.

LEE QUINTANA: My most important question has to do with the fact that the ordinance contains a provision that once the lot split has occurred that the construction on the lots can be processed as a discretionary project. I don't understand that since I believe the bill says that you need to use Objective Standards when implementing SB 9, and SB 9 covers both the lot split and two-unit developments by only requiring the lot split to be objective or building up to four units on a parcel that is not a lot split, but allowing once the lot split has taken place. To allow the resulting projects to be discretionary doesn't seem consistent with my understanding of the law.

I have other questions, but I'm going to reserve them until I see the report that comes out for the Council.

CHAIR HANSSEN: Thank you for your comments. I wanted to find out if any Commissioners have questions for Ms. Quintana? I don't see any hands raised.

Staff, in terms of responding to the comments, we're just going to proceed as we normally do in a hearing and not directly address them, but I do have a question on her comment for Staff.

JENNIFER ARMER: That is correct, though if the comments and questions from the public bring up questions for the Commissioners, Staff is happy to provide clarification.

CHAIR HANSSEN: I will hold off on that for now, and we will ask if there's anyone else that would like to speak on this item?

JENNIFER ARMER: Yes, Tony Jeans. You may go ahead.

TONY JEANS: Yes, would it be possible to show the very last page on the public comments?

JENNIFER ARMER: Just a moment. Let me see if we can pull that up.

TONY JEANS: While that's being pulled up, I'd like to say that what I'd like to do is show you the dilemma that I have when I am asked by clients to consider a lot split on their property, and I would like you to

consider one change to the existing draft ordinance. Okay, if you could make that a little larger.

What you're seeing there is a lot on the left-hand side, and the same lot is on the right, and it's a 12,800 square foot lot. I just picked a lot that was 80'x160', a typical lot that you might find in an R-110 neighborhood.

The way I have to split that lot, if a client comes to me and says, "Could you split this lot for me and give me 60% for my main house on the front, and split a lot at the rear of 40% that I could sell?" what I have to do at the moment is first of all I do a calculation of 40% of the lot size, and 40% of 12,800 is 5,120. That is what I have to create at 40%.

The existing ordinance requires me to have a 20' wide right-of-way to the back lot on the left hand side that is shown in the purple color, and it is counted as part of the 5,120 square feet. So when you take the 5,120 square feet you can see what a small piece of property you end up with at the back, because the flagpole, the panhandle, whatever you want to call it, is 20' wide and it has to be part of the 40%.

I don't believe that that is a property that you want to create and subsequently have houses designed for. I

think it's a disaster waiting to happen, and I would ask you to change it to the way every other jurisdiction has it—go to the picture on the right hand side—which is you split it 60%/40%, that is the line through the middle, you are allowed an easement to the back lot, and SB 9 specifically requires the Town to give you either street frontage for the property or provide a means of access to the street, which every other jurisdiction—Monte Sereno, Saratoga, Santa Clara, San Jose—have all interpreted to mean an easement.

Furthermore, the width of that easement only needs to be wide enough for a fire truck ingress/egress easement to access the rear lot for safety. Twenty feet just happens to be what the current Town Code is and they haven't changed it. So what you have is a really, really difficult situation.

Also, the 20' width requirement means that it is incredibly difficult on most lots, unless they're very large, to not demolish the house, because it tends to go closer to the side property lines than 20'.

I would like you to look at changing that to the way every other jurisdiction does it, which is allow an easement to the back parcel and treat it that way. Thank you.

CHAIR HANSSEN: Thank you for your comments, and I would note that you made multiple comments through the process and we really appreciate that, including the drawings as well.

It looks like Commissioner Janoff has a question for you.

COMMISSIONER JANOFF: Thank you. Just briefly, Mr. Jeans, you indicate that every other jurisdiction has used the 12'-15' width. Is that something that they have done in conjunction with their SB 9 ordinance or with a different ordinance? Is their response to SB 9? And could you be specific, when you say every other, are they using 12', or are they using 15', or is it a mix?

TONY JEANS: In every case, as I see it, it is a specific response to SB 9 to implement it according to the literal terms of the law, which I believe requires the town to allow it. The choice of width varies from jurisdiction to jurisdiction. Some it is not defined, some it just says sufficient for fire access ingress/egress. The City of San Jose says anywhere between 12'-15' either as a fee title ownership to the rear lot, or as an easement. The City of Saratoga does not define the width, but it allows an easement.

So you have a wide range of options, but I think that if you were to put footage on it, 12'-15' is good, because the fire access requirement to a property is 12' wide, so if you provide a minimum of 12', you're okay.

CHAIR HANSSEN: I think that answered the question. I just wanted to clarify, because you had sent in multiple documents, and I have a couple of questions.

First of all, on this particular issue you're asking for multiple things and I just wanted to make sure that I'm clear about this. One is that you feel that the 20' is too wide, and it sounds like you're neutral to whether it's 12' or 15'; it just should be in that range. Then secondly, you are opposed to counting the driveway at the access as part of the square footage of either parcel, and by doing an easement that would solve that problem. Is that the right way to look at it, what you are asking for?

TONY JEANS: I think my primary concern is that an easement should be allowed. If you allow an easement you could choose to—I don't think you should, but you could choose to—take that square footage off the front lot. I don't think you should. I think an easement is an easement. I think it gives the simplest way to do a 60%/40% split and end up with reasonable lots so that you're not cramping a design of either house on the front or the back. I think if

you go away from 20' fee frontage, which is what the Town has in its code now, I think there's no rational basis for taking away that corridor from either lot. We're dealing with relatively small lots, I don't think that it's beneficial, so I think the main thing is allow an easement as an option instead of requiring it to be a 20' wide fee frontage.

CHAIR HANSSEN: Thank you. That clears up my question. Are there any other Commissioners that have questions for Mr. Jeans? I don't see any other hands raised, so I'd like to ask if any other members of the public would like to speak on this item?

JENNIFER ARMER: If anyone else would like to speak on this item, please raise your hand now. I'll give them just a moment in case there is anyone else who would like to share their thoughts on this. David, you should be able to unmute, and you have three minutes.

DAVID: Thank you. I'd like to just comment on two things.

The first is of course we all know the point of this is not to make everyone happy, the point of this is to provide an orderly rollout of the State law, so that makes a lot of sense to me.

Some of the provisions that don't make sense, for instance, Tony brought up a good example. Even if the ordinance goes through like this and it is required that you eat into the front lot and it's not an easement, then surely nobody would divide their lot that way. Well, this is attractive enough for some homeowners that they will divide the lot that way and you will get these non-optimal solutions and non-optimal results just for people trying to follow the letter of the law so that they can get what they see as a perceived benefit from this ministerial process in terms of their time and money.

I think with that in mind, and a couple of points I'm about to comment on, it makes sense actually to provide the fewest restrictions possible within reason for this orderly rollout of State law, because the more restrictions there are, the more sort of non-optimal results you'll get when people are attracted toward trying to follow this ordinance but they find a funny way around it that really no one is happy with, they're not happy with, the planners are not happy with, and perhaps the neighbors are not happy with.

If a proposed projects fails on any one point in this local ordinance it becomes ineligible, so some of the ways we might want it to fail is if they're trying to

create a very large house, so that fails because there's a square footage slide and we don't necessarily want anyone to build anything with this law, or if they're trying to build closer than 4'property line, of course that is not eligible. But it can also fail in other ways that are not intended, like the one that Tony Jeans has pointed out.

Another way I'd just point out is, for instance, with an urban lot split. Lot lines need to be right angles to the street. That's not practical. Not every lot in Los Gatos can be divided with lot lines that are at right angles to the street or radial to a curve. Consider the irregularly shaped lots, or if what Tony is saying is implemented by the Planning Commission, meaning that this becomes an easement and not actually part of the rear parcel, then that lot line, which Tony draw horizontal, would not be parallel to the street.

I would worry that implementing any rule in this that cannot be followed, is simply impossible for every lot in Los Gatos to follow, is a violation of State law, that requiring lot lines to be at right angles to the street is not always possible.

Another example is a minimum public frontage of, I think, 20' on public roads. There are many houses and lots that are not on a public road, they're on a private

road, so it's not clear how they comply without further clarification, or perhaps just reduced restriction. For instance, if this minimum public frontage requirement was deleted from the text, I wonder if that would solve this particular problem? That's all I have to say. Thank you.

CHAIR HANSSEN: Thank you very much for your comments, and also for the written comments that you sent in as well as part of our packet. I'd like to ask if any Commissioners have any questions for David? Vice Chair Barnett.

VICE CHAIR BARNETT: I'd also like to thank you for your written submission to the Commission in the attachment to the Staff Report that we received as a Desk Item, I believe.

Would it satisfy your concerns if an easement was used for access rather than a fee simple grant, and also if the requirement of right angles or radial was deleted?

DAVID: That would satisfy that aspect. I only had three minutes, so I didn't talk to some of the architectural points and concerns, but that certainly satisfies the particular point that I raised tonight, yes.

CHAIR HANSSEN: All right, thank you for that. Do any other Commissioners have questions for David? I don't see any additional hands up, so I will open it up to anyone

else from the public that would like to speak on this item, and this is the only opportunity to speak on this item, because I will be closing the public hearing and we will be having the discussion of our recommendations amongst the Commissioners.

JENNIFER ARMER: So one more opportunity if anyone wishes to speak on this item, share thoughts, or questions that have come up on Senate Bill 9 implementation. I'm not seeing any additional hands raised.

CHAIR HANSSEN: Very good. I will remind everyone that is watching from the public that there will be other opportunities to comment on this item. You can send your written comments into Staff following this meeting. When the Town Council hears this item you'll have an opportunity to send written comments as well, as well as speak at their meeting when they're actually making the deciding vote on going forward with this SB 9 Ordinance, so there will be multiple opportunities to speak going forward.

That being said, I will close public comments and we will go back to the Commission and to Commissioner Rasp.

COMMISSIONER RASPE: Thanks, Chair. Actually, I'm curious to hear from Staff as to their thoughts on the easement issue and then the perpendicular right angle issue for our streets, and why we're currently apparently the

outlier on it and if there's a rationale for using a different approach.

CHAIR HANSSEN: It looks like our Town Attorney has a comment for you.

ATTORNEY WHELAN: I'll address the easement question first. The proposed ordinance referenced the fee interest because the thought was that we would be consistent with what is required for other flag lots in town, but I do think that the speakers have raised a good issue with regard to the language of SB 9. They are correct that SB 9 simply requires that both parcels have access to right-of-way, and they are correct that access could be provided via either the fee or the easement interest, so that is a valid comment.

With regard to the line being parallel to the right-of-way, SB 9 does require that agencies ministerially approve lots that meet a set of criteria and none of those enumerated criteria include that the lot line is parallel to the right-of-way, however, there is a subsequent section of SB 9 that says, "A local agency may impose objective subdivision standards that do not conflict with this section."

It's kind of interesting, because the legislation is setting forth the criteria under which the lot split is

to be approved, yet it's also giving agencies the ability to impose objective subdivision standards, and there's really a question as to whether an extra requirement conflicts with the enumerated requirements in the statute, so if I don't have a definitive answer on that second issue regarding the parallel line, perhaps Jennifer has a thought on that.

JENNIFER ARMER: Yes, thank you, Town Attorney. I would just add the idea behind including that provision. The goal there really was just to keep things relatively orderly, trying to find an Objective Standard, something that could be put in place to try to make sure any subdivision is done in a relatively simple, straightforward, orderly way, but as with many of the Objective Standards that have been included in here, if that is something that the Planning Commission recommends modifying, that's definitely one that could be removed or modified.

COMMISSIONER RASPE: Thanks, that answers my question. Chair, one follow up question as long as I've got the lawyer close by.

Assuming that there would be use of easements, would we envision that we'd leave the terms of the easement up to the developer, for instance, who is responsible for

maintenance and payment, or would that be something we'd have to dictate as part of our SB 9 Town Code regulations?

ATTORNEY WHELAN: What I would recommend is that maintenance, and one Commissioner asked about requiring that the parties agree that attorney's fees will be paid in the event of a dispute, my recommendation would be that terms like that be negotiated between the two property owners, but I do think that it would make sense for the Town to impose as a condition of approval that access always has to be maintained so that the access can't be blocked.

JENNIFER ARMER: I would add to that that Staff does review the map and we do send it over to Parks and Public Works for a preliminary review as well, and generally they would be looking to make sure that there is an easement shown both for access and for any utilities to get to the rear walk.

COMMISSIONER RASPE: Thanks to you both for answering those questions.

CHAIR HANSSEN: Before I go to Commissioner Janoff or anyone else, I did want to say that what we decided for this meeting is to go through the issues that are outlined in the Staff Report starting on page 6 for this item, which is page 124 in the packet. They mention C

and D relative to public comments. I was going to bring up each and every one of those issues and get some resolution on that, but since we are on the subject of the easement, and it's fresh on our minds, as well as with the access, maybe we should take that issue first and see if we can get a recommendation that gels with the Commission that we can make to Town Council. So why don't we continue this particular discussion and see what other comments and suggestions we have from the Commission?

Commissioner Janoff.

COMMISSIONER JANOFF: Thank you. I did have a question about the minimum frontage comments, but if we're going to get to those as we proceed, then I'll hold off on that.

CHAIR HANSSEN: If you're talking about the 20', but there's also the minimum frontage for any portion to the street, right?

COMMISSIONER JANOFF: Right, and I was just curious what the Town Attorney might interpret along that particular issue.

ATTORNEY WHELAN: Is this a good time, Chair Hanssen?

CHAIR HANSSEN: Go ahead, since it was brought up.

ATTORNEY WHELAN: The only requirements that I see in SB 9 are the 40%/60% difference and that one lot can't be smaller than 1,200. I'm not recalling a portion of SB 9 that addresses minimum street frontage.

COMMISSIONER JANOFF: And I think minimum street frontage is in our code elsewhere, so SB 9 does not drive it.

I would be in favor of the developer having the choice of a fee, whatever that's called, or an easement. Different properties are shaped differently. The example that Mr. Jeans provided is a long lot. You could have a wide lot, you could have an oddly shaped lot, you just don't always have the same structure, so I would allow that to be a choice that the developer would make in the determination of the lot split. At least, I would be in favor of that.

Same issue with regard to right angles, and Ms. Armer, you talked about an organized split, and that probably means something to you. I can imagine what that means. I think what you're saying is you don't want something jury-rigged with a lot of angles and strange shapes in order to get to some percentage that isn't really useable. There's probably a better way to say that than the right angles. I know, for instance, in my neighborhood we

don't have any right angles. None of the plots have right angles, but they have angles, so I think moving away from the right angle terminology is a good thing, but talking about simplified shapes or something would maybe make more sense in trying to convey the idea that we want something organized.

CHAIR HANSSEN: Commissioner Janoff, since you have the floor, could you also comment on your thoughts about the width of the access.

COMMISSIONER JANOFF: As I said, as I recall from previous Planning Commission meetings when we talked about flag lots, I think the 20' access is related to the Flag Lot Ordinance that we have. I could be mistaken. But I would be in favor of reducing that for sure. I think the argument that it creates a potentially unworkable remaining shape for the structures is a good argument. If you're talking about between 5'-8', that makes a big difference, and so I would say if the Fire Department says 12' minimum, I think 12' minimum is fine.

The only comment I would say to that is elsewhere we say 12'-18' I can't remember what it is, a driveway or something, and then the hillsides it says 12' but no maximum, so whatever we use, if we're using a number or a range, we should be consistent with that in SB 9 and also

in the other guidelines, even if that means making some change to our code.

CHAIR HANSSEN: Okay, fair enough. Commissioner Tavana.

COMMISSIONER TAVANA: Thank you, Chair. I guess I'm a little bit confused in terms of the square footage requirements in parcels with respect to nonconforming conditions. On page 12 of the draft ordinance, I guess #5, it says, "Nonconforming conditions. The Town now requires as a condition of approval the correction of nonconforming zone conditions, however, no new nonconforming conditions may result from the urban lot split other than interior side or rear setbacks as specified in Table 1.2." So my question is are we creating many nonconforming lots by splitting these lots into smaller pieces? Because across town, at least in my neighborhood, every lot is nonconforming, so what controls do we have in place to prevent nonconforming lots or small flag lots? Just a general question, maybe surface level.

CHAIR HANSSEN: Staff, could you respond relative to what we have in the ordinance right now?

RYAN SAFTY: Yes, thank you for the question, and Ms. Armer, if there's anything else to add afterwards, please feel free.

Via SB 9 we are required to allow a 1,200 square foot minimum lot size. The terms nonconforming, we're no longer looking at the zoning requirements for minimum lot size, so generally an R-18 zone, 8,000 square foot is the minimum lot size. SB 9 does come in and say the minimum lot size we can require is 1,200, so it is a lot smaller than what we're used to.

JENNIFER ARMER: What I can add to that is that language about the Town shall not require a correction of nonconforming zoning conditions, that's actually directly from the State law that as part of an application if there's a nonconforming situation, we can't make them fix that as a condition of an SB 9 subdivision. There clearly are a number of components here where it is allowed under these regulations where it otherwise would not be allowed. Minimum lot size is an obvious example where a subdivision wouldn't be allowed through the standard process, because the lot isn't double the minimum lot size, but SB 9 would allow it.

CHAIR HANSSEN: Commissioner Tavana, does that help answer your question?

COMMISSIONER TAVANA: Yes, it does, thank you.

CHAIR HANSSEN: Just to keep things on track for the same subject that we're on, there will be an

opportunity to bring up whatever you want, but I do want to make sure we answer all the questions, so I would like to find out from any other Commissioners if you have comments on any of the things that have come up so far, which is the fee or easement discussion, the width of the access for the flag lots, whether or not it could be less than what's in the code, or should we revise the underlying code as well, and the issue about the right angles?

I just want to clarify with Staff, the issue of counting the access in the square footage is a separate issue, or does that get resolved if we use an easement?

JENNIFER ARMER: Thank you for that question. We would use the current standard practice, which is the area that is in the easement as he showed it. What was shown in that image was that the new rear parcel would gain access to the street through an easement over the front parcel, and so the area that easement goes over is still part of the front property and would still count as part of the area of the front property.

For example, the size of the house that would be allowed on that front property would be based on the full lot size, it would not be reduced based on that flagpole area, because it's an easement, whereas the standard practice right now for flag lots, if there is a flagpole

that is dedicated, that's part of the land for the rear lot, that area is actually removed from the lot size before you calculate the floor area, that's a net lot size, and so that, I think, is part of the component of what they were talking about with the benefits of having an easement being used.

I also did want to provide a little more clarification to the question of the perpendicular property lines. Since we have had to expand the application of this ordinance to include the hillside lots, it is correct, we've dealt with more irregularly shaped lots. The perpendicular, I think, was primarily focused on rectangular parcels, which is a lot of what we have in the flatlands. It does have a provision that if you have a curved front lot line, like at the end of a cul-de-sac, that it would be a radial, so it's kind of perpendicular to the curve, and we have successfully used that.

For example, on a hillside lot that came in recently, they have kind of, if you think of a pie slice, it's a quarter of a pizza, and they wanted to divide that in half. They basically cut that into two slices, and if the road is on the curved crust side of that pizza, then the line is cutting it into two similar sized pieces, and so the line was perpendicular to the curve of that lot, and

so it is possible even with irregular lots to find a way to use that requirement and make it function for that site. That is just additional context for your discussion.

CHAIR HANSSEN: Can I ask a question to respond to that to make sure I understand? Since it's not in the State's SB 9 ordinance, why are we including this in there? What are we worried would happen if we don't have it in there?

JENNIFER ARMER: As I said, it really was intended to not have oddly shaped, complex, kind of jury rigged shapes, to have something in there to provide guidance as to how to do a standard layout for the sites. That really was the goal. If it feels to the Planning Commission that it's overly restrictive, then it's not something that we have to have in there.

CHAIR HANSSEN: I was just asking the question, but thank you for that, and we'll see what the Commissioners think about that.

Just another question for Staff in terms of process that I should have asked yesterday, when we've done the General Plan and some other things we've voted on sections of things, but we have a lot of individual issues that are on the list to go through, what would be the best thing? Do you want us to try to vote on everything, or to

see if we have consensus and then hopefully we can put together a motion at the end?

JENNIFER ARMER: I think it would be fine if you wanted to do it either way. If somebody wants to keep track of the consensus items and make a final motion at the end of what additional changes should be made, that would work. But it also would be equally fine if you wanted to make interim motions of changes that are agreed upon. I will also defer to the Town Attorney if she has anything to add.

ATTORNEY WHELAN: I agree with those suggestions.

CHAIR HANSSEN: All right, so we're flexible. We are only making a recommendation; it's not a deciding vote that will go into law.

Vice Chair Barnett.

VICE CHAIR BARNETT: I have a question for the Town Attorney, which is whether you can articulate any benefits to using a simple access road versus having an easement. We talked about both, and I don't know if there would be a situation where the fee would be preferred.

ATTORNEY WHELAN: The only benefit that came to mind for me was consistency with what the Town requires for other flag lots, but other than that I can't think of a benefit of one versus the other.

CHAIR HANSSEN: I'm going to ask a follow up on the Vice Chair's question, which is since this is for specific kinds of projects is it problematic that we have things in the ordinance that are different than what's in our Zoning Code?

ATTORNEY WHELAN: No.

JENNIFER ARMER: And I would say that it's not a problem. If you think of the regulations that were adopted for Accessory Dwelling Units, there are situations there, for example, the setbacks that are allowed for those Accessory Dwelling Units, the floor area that is allowed for those additional Accessory Dwelling Units, and the fact that they can be a second story on a detached structure, those are all things that otherwise wouldn't be allowed, but are allowed for that specific type of use or process.

CHAIR HANSSEN: All right, that's helpful. So the issues that we're talking about right now, and I would like to hear more from the other Commissioners, is this issue about the fee simple or easement, or both, which is certainly an option, for how to provide access. The issue of the access and how it's counted, and then the issue of the right angles.

Commissioner Raspe.

COMMISSIONER RASPE: Thank you, Chair. My thoughts on the easement issue, I think we should make available to the developer either/or and give them the most amount of flexibility, because as we know in this town, every lot is different and I think any more flexibility also adds to supporting the general purpose of SB 9.

The only caveat to that is, as Town Council notes, if we are going to do an easement, at a minimum the user of the easement should be responsible for the maintenance of the easement so that at least there's always access, and no property can block another from use of that easement at any given time.

On the radial versus perpendicular line issue, again, I would counsel flexibility, because it seems to me that probably more than half of this town is nonconforming in its shapes and sizes, and so again, whatever allows us the greatest benefit and of use, let's use that standard, so I don't think we should have a hard and fast rule that it be 90% or any other. In my view, more flexibility in that regard is better.

Back to the easement issue, who owns and holds that, I think it's whoever owns the land, that portion of the land should be allotted to their interests. That's my thinking.

CHAIR HANSSEN: Very good. Oh, and the width of the access?

COMMISSIONER RASPE: It seems to me that 20' is entirely too large, so I would be happy with any number between 12'-15'. It should probably be a standard number, and I would defer to experts on that one if there were a standard in the industry that's more.

And again, I think the only issue is in the hillsides. They've recommended, I think, 18' because of fire reasons. Let's maintain that one, because I think the Fire Department has already opined that they need a wider access on the hillsides.

CHAIR HANSSEN: Can Staff clarify about the access in the hillsides? Is it 18'?

RYAN SAFTY: Thank you. The guideline says 12' for driveways in the hillsides.

COMMISSIONER RASPE: Okay, I stand corrected. Thanks.

CHAIR HANSSEN: All right, good. Vice Chair Barnett.

VICE CHAIR BARNETT: I agree with Commissioner Raspe in terms of giving a developer the option to use a fee interest or an easement, but I think we need to keep in the requirement that in the case of the fees means that the

lot size has to be considered without that fee interest. That's the way (inaudible) read.

CHAIR HANSSEN: Is that possible if they use the fee simple structure to not count that as a reduction of the square footage that they have available?

JENNIFER ARMER: Just to ask for some clarification, what you're saying is if the rear lot included the flagpole, so they own that area rather than having that as an access easement, that you are interested in having the rear lot being able to use the flagpole area in terms of calculating their maximum house size, is that what you want?

VICE CHAIR BARNETT: I read the current draft of the ordinance. In the case of the fee interest grant to establish the right-of-way to both parcels that there would be a reduction in the minimum parcel size. Maybe I had that wrong.

JENNIFER ARMER: My understanding of the way that it's written so far—and Mr. Safty, you can correct me if I'm wrong—is that when we are looking at the lot size for the rear parcel in terms of what maximum allowed floor area, we just calculate that rectangle in the rear; we do not include the purple area. I believe that's what we're talking about, or are you talking about the lot area in

terms of the 40%/60% split? I guess there are a couple of different components here.

VICE CHAIR BARNETT: My understanding from reading the ordinance, and perhaps I'm wrong, is that the fee grant as opposed to the easement would reduce the available square footage for the improvements with Parcel 1 or Parcel 2.

JENNIFER ARMER: That is correct, because when it's fee that is part of the lot area for the rear, but it doesn't count towards when they're calculating the maximum floor area, so that is correct, whereas if it was an easement, then the entire parcel size is divided between the two and can be used towards that calculation. My understanding then is what you're suggesting, that when the flagpole is fee rather than easement, that that would not be excluded from the net lot size of the rear parcel.

VICE CHAIR BARNETT: Correct. I think we've got it now.

JENNIFER ARMER: I think I understand what you're suggesting, hopefully.

CHAIR HANSSEN: Just to add on to this discussion, so the chart that you just had up from Mr. Jeans where he was showing that the back lot would only have half of what they thought they had because you're

including the flag, that's not what our ordinance says, is that what you're saying? Because counting it as part of the overall lot and then deciding that you could build less on account of it because of FAR, those are dramatically different things that we would be worried about, because you wouldn't be able to get the desired result?

JENNIFER ARMER: I think part of what is causing some confusion in this situation, if you look at the first example that he provided you can see that for Parcel 2 there is the gross lot area, which includes the purple, and then there's the net lot area, which does not include the purple area, and the reason that there is a net lot area in this case is that the Town's current regulations for flag lots say that when you calculate your floor area it needs to be based on that net lot area excluding the flagpole. So you still have the gross floor area that's the equal between these two examples, but because so much of that is for the 20' flagpole it ends up very uneven in terms of net lot size that can be used for the purposes of calculating the house size.

CHAIR HANSSEN: So I'm going to say, at least from my perspective, that that's an undesirable result, because they're sharing that for access and you shouldn't penalize them in terms of the square footage of the house

they should build, so is there a way we can make it so that that's to the case?

JENNIFER ARMER: I'll actually defer to Community Development Director Paulson to see if he has thoughts to add.

JOEL PAULSON: Thanks. Not to add more confusion to what's already seemingly confusing to folks here. The current code actually doesn't include the flag portion as part of the lot, so for meeting the minimum requirement, and as Ms. Armer mentioned, it also reduces the potential FAR. Obviously, the simplest way to deal with that is if someone chooses not to do a flag lot because the lot is small, as in Mr. Jeans' instance, but you could have much larger lots in the R-120 or the HR, for instance, where that's not going to be as much of an issue, but I think the easement really cleans that up.

Having the option, I think, is probably the best way to go, and that way if they do run into an issue where it is significantly restricting the FAR, for instance, or impacting the lot at the rear because it reduces the net lot area by so much, then that easement really is going to be the provision that allows them to have the most flexibility.

CHAIR HANSSEN: Okay. Commissioner Tavana.

COMMISSIONER TAVANA: Thank you. Just a quick question for Staff, and I would be remiss if I didn't ask this out loud actually tonight. Is there a minimum square foot size for the urban lot split in terms of the applicability in terms of how large a lot should be that's applicable?

ATTORNEY WHELAN: I can answer that one. There are two requirements. Neither of the two lots can be smaller than 1,200 square feet, and the ratio of the lots to one another needs to be 40%/60%, so you can't have one tiny lot and one huge lot.

COMMISSIONER TAVANA: So what you're saying is we can start with a 2,400 square foot lot, and divide it by two to have two 1,200 square foot lots?

ATTORNEY WHELAN: Yes.

COMMISSIONER TAVANA: And that's the requirement that's coming down from the State? We can't circumvent that anyway?

ATTORNEY WHELAN: Yes.

COMMISSIONER TAVANA: Okay. I just wanted to make sure. Thank you.

CHAIR HANSSEN: And the 40%/60% as well, so if the 40%/60% made it that the lot was bigger than you

described and their minimum lot size would go up for the 40% if the lot was big enough.

COMMISSIONER TAVANA: Got it.

CHAIR HANSSEN: Unless I misunderstood the Town Attorney. I think it would be (inaudible) the 1,200 square feet if it violated the 40%/60%.

ATTORNEY WHELAN: That's correct.

CHAIR HANSSEN: All right. I was just going to weigh in on the issues that we've been discussing so far. I would advocate for as much flexibility as possible to encourage production as long as we're not going to create unintended consequences.

On the issue of the fee simple or the easement, I think we should offer both, and if the fee simple does result in a reduced square footage I would want to make that go away if we can do that, because I think that should be on a level playing field based on whether or not they choose one access form or another, and I also agree that we should have something very specific in there that there's no way that access can be denied to that second lot, so I would say that.

Then on the issue of the width of the access, I think we should go with 12'. That's minimum required for Fire, and that's what we do in our hillsides. Whether or

not we adjust the Zoning Code as a follow up to this to reduce it from 20' is a subject that could be considered, but I think we want to make flexibility while still holding to our standards.

Then on the issue of the right angles, I would vote for more flexibility. I can't imagine what could go wrong, and there might be something that could go wrong, but since it's not in the SB 9 Ordinance from the State, or law from the State, we should probably just not discuss it here, because I think we would find that there are issues where it wouldn't apply and we wouldn't want to throw them in a discretionary review.

Do any others have comments on these issues so far before we move on? All right, I'm going to back to page 6 of 9 in the Staff Report and the issues that is titled, "Proposed Changes that Resulted from the Public Comment." We've been discussing some of that already, but there are some other items in here that we haven't discussed, and the first one that they have is applicable zones, and the issue is that it has to be a Single-Family Residential zone, but it might not be called that per se, so what Staff was asking is could we consider allowing SB 9 permits with other zoning designations? Possibilities could include Multi-Family zones, or in any zone where the existing use

is a Single-Family use. I was curious from Staff's perspective what other zones would that be specifically? Or are there too many to discuss?

JOEL PAULSON: I'm happy to jump in, and then if Mr. Safty or Ms. Armer has any other comments. This is a comment we received from a property that's in the RM:5-12, and so they were built as detached condos, so they're detached Single-Family homes in the Multi-Family zone but they're under condo ownership. There's an interest from at least one party who I have spoken to to be allowed to subdivide using SB 9, and we have those instances in the RM:5-12, probably not so much in the RM:12-20, although I could think of at least one. Those are the two that really came to mind.

We also have nonconforming uses where there are Single-Family homes in Commercial zones. I think that might be a bridge too far, but ultimately we wanted to at least get some input from the Planning Commission to see if there was any interest. Again, we're not obligated to allow that, but as with some of the other discussions this evening it's kind of that balance of do you want to be to the letter of the law or do you want to allow a little more flexibility? So that's really the question, whether they should be

allowed in any other zones, or none other than what we have currently proposed?

CHAIR HANSSEN: Let me just ask one clarifying question before I go to Mr. Safty. The law from the State basically excludes the Historic District, and I understand that some people have asked to get off the historic inventory on account of SB 9 so that they can do this kind of stuff, but since the State has said historic properties are not part of SB 9, if we wanted to go there, and I don't know that we do, are we allowed to be more lenient than the State on that issue of historic?

ATTORNEY WHELAN: Yes, SB 9 says that cities can be more expansive than SB 9 if they choose to.

CHAIR HANSSEN: So other zones, and it could include Historic, even though we're protected by the State to not include Historic if we want to go there?

ATTORNEY WHELAN: Yes.

JOEL PAULSON: Yes. Staff wasn't intending including Historic districts. The comment that you reference about other properties, as you all know we have (inaudible) levels of Historic, so it may be a pre-1941 home but it's not in the districts. Those are some of the ones that we will probably see asking to be removed so that they may be able to take advantage of these new

regulations. We don't envision opening up the Historic Districts, but of course that's something the Planning Commission could discuss if they feel that that's something.

CHAIR HANSSEN: I'm only asking the question. I wanted to ask about the condo example that you gave. If they have condo ownership and they did a lot split, what would happen with the land? Because the land is owned by the condo association, right? They would have their buildings, so would they just divide it amongst the individual condo owners? How would they handle the land and the access if they did a lot split on a condo?

JOEL PAULSON: Thank you. Vice Chair Barnett or Commissioner Raspe might have some additional comments, but technically the condos are just air space, so they would have to undo the condo map and simultaneously record an urban lot split, which would give them the land. Currently, as you mentioned, there is a one lot and then there are two air space condos that encompass their Single-Family homes, so now they would each have a portion of the existing underlying lot rather than just air space rights.

CHAIR HANSSEN: So Commissioner Raspe.

COMMISSIONER RASPE: Thank you, Chair. I think Director Paulson is essentially right. It's actually tough to envision how it's going to work mechanically.

Chair, you raised the question with respect to applicable zones and how it's currently applicable to HR zones and do we want to push that into other Multi-Family. My thought as we're talking tonight, I'm all for as much flexibility as we can, but we're kind of venturing into the unknown a little bit, and so my thinking is perhaps at our first cut at the SB 9 implementation we leave it to its current confines and not expand it into Multi-Family or condos, or certainly not Commercial. Then let's get our feet under us a little bit, and if we have to come back and revisit that issue, we can always do that, but I think as a first cut I would feel more comfortable limiting its scope to what it's currently drafted to be.

CHAIR HANSSEN: Thank you for that, Commissioner Raspe. By the way, that was my initial reaction as well reading through this, but we were asked by Staff to consider this, but I think it's still pretty new and I agree. I think a lot of studies should be done, or understanding of where this could go to add a bunch of other zones, because we're taking on the hillsides as it is.

Vice Chair Barnett.

VICE CHAIR BARNETT: I think in the case of a condo association where every owner has an undivided share or percentage in the project as a whole, the buildings, the land, it would probably take 100% of the owners and the lenders to approve a lot split under SB 9, so I would agree with Commissioner Raspe that we hold off on that as not being practical or certainly deserving of further investigation.

In the case of Planned Development forms of common interest developments where everyone owns their own home and the land under it but the association owns the common area, in that case there's usually very little common area space and building our buildings on that would certainly impair that open space, so I'm generally against it, but I think the Council could look at it and see if they would come to the same conclusion. Thank you.

CHAIR HANSSEN: Thank you for that. Any other thoughts on increasing or adding other applicable zones at this point with our first permanent ordinance? Commissioner Tavana.

COMMISSIONER TAVANA: I would just say I would highly advise against it. That's all. Thank you.

CHAIR HANSSEN: And as was said, this is a recommendation to Council, so I think what we're asked to do is discuss it and consider the issues around it, and what I'm hearing is don't go there on adding more applicable zones since we're adding on the hillsides and having to digest that, and let's see how it goes, because we can always do more later.

Let's move onto the grading limitation. We have the grading limitations from the hillsides. A lot of people have expressed objections to the 50 cubic yards grading limit, and there is also the cut and fill that was included from the Hillside Design Guidelines. The issue that was brought up is there are people that want to get rid of it entirely, and then there are some that would want a carve out for the driveway, or Staff also suggested the light well, so thoughts on that. Keep it in there? Modify it?

Commissioner Thomas.

COMMISSIONER THOMAS: I have a question for Staff about grading and I guess grading limitations and SB 9, if people take this route and how CEQA comes into this whole picture.

JENNIFER ARMER: I'll start with the CEQA question. SB 9 applications are explicitly exempt from CEQA, so there wouldn't be any CEQA review under this. If

somebody came in for a new two-unit development, they were building two units and they complied with the regulations that we had, then it would go through an exempt project under CEQA.

If you could clarify what other questions you had, I could describe what the current regulations are for grading and how it would work with SB 9 if that would be helpful, or if there's something else you wanted clarified.

COMMISSIONER THOMAS: Thank you. I think that sometimes we can pass ordinances and come up with some regulations surrounding them knowing that if projects are going to have to abide by CEQA then we have some safety with regard to environmental issues. Grading is not necessarily an area that I am an expert on, and I see Commissioner Janoff raise her hand, but I don't want grading to be limiting, because we want people to be able to use SB 9 in a productive way to create more housing that we need in town, but I also don't want us to be creating any major environmental consequences associated with it incidentally.

CHAIR HANSSEN: Thank you. Commissioner Janoff.

COMMISSIONER JANOFF: I had a couple questions on this section, but before I ask, we sort of left the question of Historic Districts unanswered, and I would be

an advocate of exempting Historic Districts from SB 9, just in case that was something that we needed to cover.

But back to the grading, my understanding is that if the grading is in excess of a 50 cubic yard net, then there's a grading permit required. There was an implication from the public that that would cause the whole thing to be taken out of the SB 9 queue and move it into the discretionary queue. That's not my understanding, but if Staff could comment about whether that is in fact what would happen. Is this one of those gotchas that if you're over the 50 cubic yards you're no longer eligible for SB 9?

RYAN SAFTY: Thank you for the question. As currently drafted, and this is also the same with the Urgency Ordinance, if you were triggering more than 50 cubic yards—again, we're not talking about excavation for the main house, but grading associated with the driveway or the yards—you would not be able to use an SB 9 two-unit development. That doesn't mean you can't use any of the provisions of SB 9. You could still go through the urban lot split, you could still theoretically get a discretionary permit for the grading permit and then proceed with the administrative two-unit development process. It's not saying that you can't use anything with SB 9, but if grading or 50 cubic yards is triggered you

would need that separate discretionary application as one part of the process.

COMMISSIONER JANOFF: So if they had that, then they could still continue with the SB 9 two-unit. Okay. I'm generally in favor of keeping the grading pretty low, because we've seen a lot of pretty crazy examples of people digging a whole ton of dirt out, not to be literal, so I'd be inclined to keep it low and let that grading permit be triggered, and then it can still go back into the SB 9 lane if they get that grading permit.

I had a question too about the light wells. As written in the Staff Report it seems to be the opposite of what we would want. It says, "Additional clarification could be added to state light wells that *do not* exceed the size required by the Building Code would also be considered excavation," and it seems to me that we would do just the opposite, light wells that *do* exceed the size required by Building Codes would be considered excavation if it's within the envelope of the Building Code it seems to me that that shouldn't be counted as excavation.

JENNIFER ARMER: And that is correct. Currently we don't count light wells as excavation, but we have seen situations where a light well becomes a below-grade patio, or it becomes a cut-out around the entire back perimeter of

an existing building, and so one thought was to try to have this be an Objective Standard that we could tie the limitation that it's exempt from the grading calculation, but only when it is just the minimum required for light and access by the Building Code.

COMMISSIONER JANOFF: So what you're stating is opposite of what this sentence reads, and it's what I would advocate, but if the light well is within the envelope required by the Building Code it does not count as excavation. Anything beyond that, and yes, we've seen all kinds of excessive grading to create patios and other things in various requests, and I think I would even be inclined to say once you go outside the Building Code it all counts. You can't say up to the Building Code doesn't count and anything beyond that does count. I'd say if it's within, it doesn't count, and if it's over, it all counts. I don't know if that's excessive, but it just seems to me that it flirts with a lot of it's within this but it's not there kind of arguments, and so that's my thinking.

RYAN SAFTY: Just to clarify, the reason it was written that way, excavation is actually exempt from a grading permit, so the light well we were saying would count as excavation for the house and therefore not trigger the 50 cubic yards.

COMMISSIONER JANOFF: That's a nuance. I would maybe write that differently. Thank you.

CHAIR HANSSEN: I'm going to weigh in and agree with Commissioner Janoff. In the years I've been on the Planning Commission people buy properties in the hillside and then they have big slopes and all that stuff and they wish it wasn't that way. They want it to be flat, and so they want to go put in a 20' retaining wall and excavate thousands of yards of soil. We've seen some of these things, and sometimes they've even come to us for code compliance issues, so the temptation is way too high for people to try to make the hillsides not be hillsides so that they can be fully usable by them for their property, which is understandable in terms of idea, but we should be trying to guard our hillsides and keep them the way they are.

I would be personally in favor of allowing the driveway and the minimum required for light wells and the house, but not the rest to make it completely flat for the purpose of (inaudible). I would definitely not take it out.

Vice Chair Barnett.

VICE CHAIR BARNETT: The comment from the public was that additional grading should be allowed for driveways, fire access, and turnarounds, and I wonder if

Staff could give some idea of how often permits are pulled for that kind of additional grading.

RYAN SAFTY: Thank you for the question. Ms. Armer, if you have a specific number, chime in as well. Fairly often in the hillsides, especially with the new fire requirements for driveway widths and turnarounds, a grading permit is triggered just solely based on the Fire Department requirements.

JENNIFER ARMER: I would agree.

CHAIR HANSSEN: We've seen a few in the last year where the grading for the driveway was the thing that threw it over the 50 cubic yards or the maximum cut and fill.

VICE CHAIR BARNETT: So my input would be that we perhaps submit a recommendation to the Council to at least consider adding additional grading for those specific purposes without getting a permit.

CHAIR HANSSEN: Any other comments? So what I heard is the support is there for keeping the grading limitation in there, but having exemptions for the building is already in there maybe to add the driveway, and then to make sure that the light well is limited to a light well. I think I captured that correctly, so does anyone see it differently than that?

All right, so then we can move on. The next is Fire review, and it was about requesting Santa Clara County Fire Department be included in the review. This would not need to be included in the ordinance but could be recommended as part of the implementation of the project review process.

Staff, if you could clarify, I saw one comment from one of the architects or developers that when they started going through the process Fire came in later, and then that might have been the thing that threw it out of the ministerial process, so they wanted them to be included earlier in the process, like at the beginning. Is that where this came from?

JENNIFER ARMER: Yes, I believe that is correct. We actually have a number of Accessory Dwelling Unit examples in the hillsides where they submitted an application for an Accessory Dwelling Unit, they received that permit, and then they came in for their building permit and during the building permit review there is review by Santa Clara County Fire Department, and at that time they were told they needed to have a fire truck turnaround, for example, on the site because of the new dwelling unit, and that was either infeasible or caused additional problems.

I believe we have an application in right now where they're going through the Architecture and Site review process because of site grading that's associated with an Accessory Dwelling Unit, so there is a desire by some applicants to get early pre-review or review by Fire during the SB 9 application process, and what we tried to convey in our Staff Report is that if you had review by Clara County Fire as part of an SB 9 application that that causes some real problems in terms of timelines and cost, and so that is not something that we would recommend, but that we are happy to work with Santa Clara County Fire to see if there's a possibility of setting up some sort of pre-review.

I believe at least one other agency in the area has as a requirement of the application's submittal for one of these SB 9 applications that they already have gone to Santa Clara County Fire, or whatever the applicable fire district is, for approval and have a letter saying that they can do this before the submittal is received. We would need to work further with the Fire District before establishing the details of that review. Hopefully that helps.

CHAIR HANSSEN: That helps. So what you're looking for is for the Planning Commission to say whether that is a good idea or not?

JENNIFER ARMER: We're bringing this up because this is an issue that has been brought up by the public and we want to make sure that the Planning Commission has an opportunity to weigh in on it, but we would not recommend that it include any modification to the ordinance.

CHAIR HANSSEN: Got it. But it could be as part of the process in our recommendation to Council that you ought to, or not, involve Fire early to make it more streamlined and to increase the ministerial part of this process.

Commissioner Janoff.

COMMISSIONER JANOFF: As I understand it that makes a lot of sense to have that step earlier in the process than later. It's a whole lot less redo, and if we're trying to make this as streamlined as possible I would be in favor of adding that as part of the implementation.

CHAIR HANSSEN: I think that makes a lot of sense as well. Any other thoughts on that? Okay, so consider that a recommendation from the Planning Commission, not to be in the ordinance, but to be part of the process.

The next one is windows. This was about the standards were originally included to minimize privacy impacts as State law limits setbacks to 4’ on the internal and rear property lines. The draft ordinance amends the windows standards to decrease restrictions so that all second stories within 10’ from the side and rear property lines can have clerestory windows and larger windows as needed for access. Some of the people were commenting that they wanted to just utilize the underlying zoning standards, so as it stands right now though it’s based on the 10’, is that right?

RYAN SAFTY: If you don’t mind clarifying 10’ in terms of what exactly?

CHAIR HANSSEN: Because there is some movement in this area. Maybe you could recap what’s in the draft ordinance right now, because people were complaining about that being too restrictive.

RYAN SAFTY: Currently in the draft ordinance you need a 4’ side and rear yard setback. If you build a second story, that then needs to step in an additional 5’, so we’re saying if you are a little bit beyond that… I’m sorry, all second stories within 10’ from the side and rear property lines can have both the clerestory and the larger windows. What a lot of the members of the public were

hoping to see is that if they meet the underlying zoning for setbacks, for example, there's one specific gentleman who lives in the Hillside zone, so if he incorporated a 20' side yard setback would they still need to meet those clerestory and minimum egress/egress size requirements?

CHAIR HANSSEN: And what is Staff's recommendation on this? What problem would it cause to use the underlying zoning versus what we have in there now?

RYAN SAFTY: I can start off, and Ms. Armer, if you see any other additional issues, let me know.

This was included originally just solely to protect privacy, because again, the setbacks are reduced so substantially, so we don't see any initial concerns with something like that. We would just be looking for recommendation from the Planning Commission to make that change.

JOEL PAULSON: I would just add that, for instance, in the R-1 rezone the minimum side setback is 5', so if you used just the underlying zoning that some people are requesting you could have a second story that's 5' from the property line with picture windows in it, but again, our recommendation currently carrying forward is in a similar vein to the Urgency Ordinance's, if it's 10' or

more, then you can have a little more freedom from a window size perspective.

CHAIR HANSSEN: Because the setback is only 4', so we're saying you have to get up to 10' to do that. Okay.

Commissioner Janoff.

COMMISSIONER JANOFF: I think that's a good change. Thinking about what this is going to do to add in terms of density, changing it from the underlying zone to have that 10', say if it's 5' underlying zone, makes good sense to me, so I think this is a good change and I'm in favor of it.

CHAIR HANSSEN: I wanted to ask the question as far as the Hillside since we do have bigger setbacks in the hillsides. Does this make it harder for them, because most of the lots are already more than 10' anyway, or are the setbacks going to be reduced to 4' for the Hillside?

RYAN SAFTY: The setbacks would be reduced for 4' in the Hillside. That is a standard requirement across all SB 9 applicable zones.

CHAIR HANSSEN: All right, so then that makes sense. Any other thoughts on this? Basically what the draft ordinance says now is that if you want more flexibility with the windows you have to have 10', and then automatically the setbacks for everybody under SB 9

applications will be 4', even including the hillsides. So this would be to help ensure privacy, and do we want to make it less restrictive is the thing that we were asked by some of the architects.

Vice Chair Barnett.

VICE CHAIR BARNETT: I don't see making it least restrictive, but I'm kind of concerned, and maybe Staff can help me on this. I think the proposal was that if the underlying zoning requirements in terms of setbacks were met that they could have the standard windows that are allowed by the code now, and they didn't want that changed by SB 9, so maybe I could get some clarification on that.

CHAIR HANSSEN: Did I hear this wrong, that if it's 20' in the hillsides it's not for SB 9, it's going to be 4'?

JENNIFER ARMER: That is correct. If you did a two-unit development, or an Accessory Dwelling Unit for that matter, in the hillsides, then the side and rear setbacks are only a 4' requirement. In a case where maybe there's a standard zoning setback of 5' we would still have it as requirement that the second story must be set back at least 10' from the property line before you could do a window that is greater than either clerestory or the minimum that's required for egress. We need to have that

minimum for egress allowance, but all other windows would have to be clerestory unless you move the second story wall back so that it's more than 10' from that side or rear property line. If it's more than 10', then whether it's complying with the underlying zone setback or not is not restricted.

CHAIR HANSSEN: So if the issue is that, let's just take the hillsides for example was an issue, we can't revert to the underlying zoning for the hillsides because it's now 4' instead of 20', so I would say what you guys put in there makes a lot of sense for anything that's part of SB 9, since we can't use the underlying zoning for the hillsides, unless I'm not hearing something right.

Any other thoughts on this? So what I'm hearing by lack of disagreement is that we should stay with the language that's in the ordinance right now, that we shouldn't change it.

Let's see, second story stepback was the next issue. Comments received regarding the stepback requirement requesting that this be removed for two-story SB 9 units that meet underlying zoning setbacks. This standard provides both the reduction in potential privacy impacts as well as providing construction (inaudible) that extend the full height of the new two-story residence. Some of the

architects were saying it's going to limit their design flexibility and whatnot.

Commissioner Raspe.

COMMISSIONER RASPE: Thank you, Chair. I just wanted to make sure I was reading it correctly. It's Section B-5 of the (inaudible) ordinance, which says, "All elevations of the second story of a two-story primary dwelling shall be recessed by 5' from the first story." If I read that correctly, if the building has four walls, or four sides, every side has to be recessed on the second floor, is that correct?

RYAN SAFTY: That is correct as currently drafted.

COMMISSIONER RASPE: I could just envision that. I understand that has certain privacy benefits to the neighbors and everybody, but I can see it resulting in some kind of odd architectural choices if every wall has to be recessed, and so I'm curious if maybe there's a way to limit it to those that are exposed or create privacy concerns?

JENNIFER ARMER: I would add that as we stated in the Staff Report, it's both for the privacy as well as we often see comments from the consulting architect about big, blank, tall, two-story walls, or the tall front of a

building in terms of compatibility with the surrounding neighborhood.

COMMISSIONER RASPE: Absolutely. I agree that breaking up a façade with stepbacks is in many cases desirable. It just seems to me difficult to make it a requirement for all four sides of a building. I can't envision it correctly in my mind perhaps.

JENNIFER ARMER: It is similar to the discussion we had about Objective Standards previously. It's hard to have Objective Standards and envision how to include those without going too far and causing odd architecture.

COMMISSIONER RASPE: Agreed.

CHAIR HANSSEN: Can you remind us—because we spent hours on the Objective Standards—where did we finally come out on the recommendation for the Objective Standards on the stepback?

JENNIFER ARMER: I don't know if Mr. Safty has specific memory on that, but I do believe we had stepback requirements above the second story, so if you had a three-story building that that was going to be required. But I think in some cases it also was part of modify the façade so it might not have been for the entire length of that third story. We are still in the process of taking the

comments from the Planning Commission and putting it together in a revised document for Town Council.

CHAIR HANSSEN: Fair enough. I'm going to agree with Commissioner Raspe. I'm having trouble envisioning a scenario where they would stepback, because most of the projects that we've seen here where they stepback the second story, it's not all four sides necessarily, it could be parts that are facing other things or where they really need to break up the wall. I could see it as problematic to require it of all four sides, but then I wouldn't want it to not be there, because we don't want the big, blank walls, and we've seen those in proposals as well.

That's why I was asking what we ultimately decided, but the Objective Standards are for Multi-Family and this is for Single-Family, and it sounds like there might not be a way to make this an Objective Standard if it had to have a discretionary review just to decide what else is it facing and everything; I'm not sure about that.

Commissioner Janoff.

COMMISSIONER JANOFF: You kind of get the image of a small block on top of a bigger block, and that kind of gets your design ethic stuck, and I'm not sure that that necessarily would drive this.

My recommendation would be to see if other jurisdictions have a stepback requirement. What's Monte Sereno doing? What's Saratoga doing? And if they have one that seems reasonable, great. And I think it's a good idea to have a stepback, I think it makes for more interesting design, but if we make it a requirement for two sides where you have the closest proximity to a neighboring structure or something, I don't know, maybe not all four sides so that there's some discretion about where you put that and taking into consideration the specific context, but I'd certainly want to see what other jurisdictions have tried.

CHAIR HANSSEN: Ms. Armer, and then Commissioner Tavana.

JENNIFER ARMER: Thank you, Chair. I just wanted to quickly answer the question that this was actually included based on the City of Campbell's interim ordinance, so this was something that was taken directly from what they were putting in place. We were definitely looking at other agencies and what they have and what they included in their ordinance.

CHAIR HANSSEN: So we've already gone through this process, and so what we're doing wouldn't be different than what others are doing is what you're saying?

JENNIFER ARMER: That it was drawn from another example in the area. The other caution that I would share is that we are hoping to keep these regulations simple so that it is a straightforward thing for applicants to come in with a proposal, and so getting too complex about proximity to other buildings or property lines can cause unintended consequences in that direction as well.

CHAIR HANSSEN: I had a thought on this, but I'm going to go to Commissioner Tavana and Commissioner Janoff first.

COMMISSIONER TAVANA: Thank you, Chair. I'll just quickly add that I agree with this second story stepback. I do think this is opportunity for us to shape how SB 9 projects are going to be seen in our town and I think a second story stepback, however that may look or may be feasible or not, will ultimately look better for these projects, so I would like to see this kept as is in the ordinance.

CHAIR HANSSEN: Thank you for that, Commissioner Tavana. Commissioner Janoff.

COMMISSIONER JANOFF: Given that Campbell is establishing something similar, I feel more confident that we could keep this. If we did any other benchmarking to verify that more than just Campbell is including something

along these lines, then that would be great if you've got time, but I'm comfortable leaving it as is.

CHAIR HANSSEN: I think now that I heard that, I am as well. Vice Chair Barnett.

VICE CHAIR BARNETT: I agree. I think having an Objective Standard on this particular subject would be the least worst solution. The double box structures are really unattractive in my personal opinion and I think we don't want to encourage that type of construction.

CHAIR HANSSEN: So you're saying to leave it as is, or to change it?

VICE CHAIR BARNETT: As is, yes, with (inaudible).

CHAIR HANSSEN: I just wanted to make sure I heard it correctly. I started thinking about what we talked about was Objective Standards, but the second story stepback here is not about breaking up the façade, it's about privacy, so if it's about breaking up the façade, then there are a lot of other things you can do besides the stepback like we were talking about in the earlier hearing. So if it's really about protecting privacy and we're going into uncharted territory with having a lot of properties closer together because they're splitting their lot or

adding additional buildings on their lot, I'm okay with leaving it as is. Any other comments on this one?

We only have a couple more to go through, but there might be other things that you want to bring up, in which case I'll do a check and see if we need to continue for the next meeting.

Size limit. Comments have been received in opposition to the 1,200 square foot size limitation for the first new SB 9 unit. The original Urgency Ordinance included the 1,200 square foot size limitation for any SB 9 unit versus the new one. When the Urgency Ordinance was extended the Council modified this to only apply to the first new unit. The 1,200 square foot size limitation is consistent with the maximum size of ADUs, and the second unit is allowed to use the remainder of the floor area allocated based on the lot's FAR.

There was an example from a potential applicant, or an actual applicant, about the way they saw it is they wanted to build a 2,400 square foot second building and they had around 4,000 and they wouldn't be allowed to do this because the limit would be 1,200 square feet for the additional building.

Commissioner Janoff.

COMMISSIONER JANOFF: This is really confusing to me, and I'll explain why. Throughout the ordinance we were talking about primary units and then the second unit, and so I was really confused about what's primary, and if you can demo the existing, then what's the primary, and what's the first new unit? It doesn't make any sense to me, so I think we should be clearer in our terms.

And I suggested that we might add a definition for primary, because if primary is intended to be the larger of the two, then that's one thing, but I'm under the understanding that you can have two primary units on a two-unit lot split, so that's unclear to me.

I understand the 1,200 square foot limit, because that's consistent with the ADU policy, but I'm wondering if we should just leave it at FAR and let the developer figure out whether they want a 3,000 square foot and a 1,200 square foot, or a 2,000 and a… I'm not sure that it makes sense to limit the… And I'm assuming that the first new unit means the existing stays and there's one new unit, and that's 1,200 square feet, but that whole terminology is very unclear to me, and I think I understand this pretty well. Anyway, I would think that we could do something different for the SB 9s and could make slightly larger units but stay within the FAR and FAR plus… I'm not sure if

the plus 10% applies to this or not, so there's just a lot of confusion around these things for me.

CHAIR HANSSEN: Thank you for that. I had the same reaction. I was listening to the example that was in our written comments about if you are in the hillsides and if you can go up to 6,000 square feet and you're not there with your current house, why couldn't you use the rest of your FAR for that? And I also am not 100% sure about how the 10% bonus applies to this, but to me they ought to be able to build whatever is within the FAR for the property. I'm not sure why to limit it, and I understand that we did it for ADUs, but if you're talking about a second dwelling unit, the comment that was made, a lot of people couldn't live in a 1,200 square foot unit.

Ms. Armer.

JENNIFER ARMER: Thank you, Chair. I wanted to offer some of the context based on the discussion with Town Council, which is where this requirement originated, and for exactly the reason that Commissioner Janoff was mentioning.

We did actually add a new definition in the ordinance that lays out that a first residential unit means one of two housing units developed under a two-unit housing development that can be an existing housing unit if it

meets or is modified to meet the 1,200 square foot floor area limitation on first residential units.

The way that I think of this requirement to try to envision how it works is that the idea is there's a goal that we heard from the Town Council to try to have one of the two units be affordable, and so affordable by design by not letting it be too large.

In addition to that then they said because with a two-unit housing development application under SB 9 you could submit an application on a vacant lot for a two-unit housing development going through this ministerial process but only propose a single housing unit, and so they wanted to make sure that if they're proposing only a single housing unit that it be one that is affordable by design. If they chose to do two, then they can actually make use of their full floor area, but by requiring it to be the first of the two, then it ensures that one of them is the smaller unit and therefore affordable by design.

In addition to that they then did decide that because they are putting this limitation they wanted to include the 10% additional floor area that is allowed for Accessory Dwelling Units. One of the things that we have discovered over these last few months is that it is important for us to have additional language like we have

for Accessory Dwelling Units, that that 10% is intended just for the use of that small unit. If you've got a large property, for example, say it's an acre sized lot in the hillsides, the intent was not to allow a 10% of that full lot size, it really was meant to allow this smaller unit to be built even if the existing house used the full floor area that was currently allowed. Hopefully that is helpful in understanding what was behind this regulation when Council put it in place.

CHAIR HANSSEN: That helped a lot, because honestly, if people are going to build a 2,500 square foot house as a second unit, it's going to be worth several million dollars, so it's not going to be affordable based on the way things are currently going here.

Commissioner Janoff.

COMMISSIONER JANOFF: Wow, that was a great explanation and completely changes my mind. Okay, yes, let's try to keep these as affordable as possible; so keep that 1,200 square foot.

I don't know whether there's any opportunity for any preamble around the SB 9 Ordinance introduction, but I think that explanation about why the 1,200 is a really important one, at least for me, and maybe it's not important once we put it in place or Town Council approves

it, then it will be what it is, but I think it's important for people to understand what we're trying to achieve in the way of more affordable housing, so yes, I'm in favor of leaving it at 1,200. Thank you.

CHAIR HANSSEN: I also wanted to ask a clarifying question, and then I'll go Vice Chair Barnett.

This was on another issue. It was about the occupancy, but I see that as applicable to this situation where they were talking about I go do a lot split, I sell the one lot, and then I want to build on the other, so then is it open territory or does that have to be 1,200 square feet?

JENNIFER ARMER: The way that we look at something like that is we're dealing with separate applications, so if they come in for an urban lot split, then we're just looking at the sizes of those two lots, making sure that it's meeting the 40%/60% split, all of those requirements for the urban lot split. Once that urban lot split is complete and recorded, then you have two legal lots and this actually does get to one of the questions that were asked by the member of the public.

On those lots you have a choice. Do you want to go through a discretionary process so that you can do a Single-Family home that uses the full floor area that is

allowed on that new lot size, or do you choose to use the two-unit housing development application, which is more limited. The first unit on that parcel would have to be 1,200 or less, but you could do two units at the same time and therefore use the full floor area.

CHAIR HANSSEN: So they could not go through this process, an urban lot split, and then build a Single-Family home and take advantage of a ministerial review?

JENNIFER ARMER: Not if they want it to be more than 1,200 square feet. However, if you think of a house with an attached Accessory Dwelling Unit, as long as those were designed as two separate units, we don't say that one has to be in front of the other, and because of this 1,200 square foot limit what we're considering the first Single-Family unit is actually effectively the same as an Accessory Dwelling Unit, so there are ways around it a little bit, but they would need to meet some of these Objective Standards included in the SB 9 if they want the more limited process.

CHAIR HANSSEN: Thanks for that clarification. Vice Chair Barnett.

VICE CHAIR BARNETT: Thank you. In the context that we're talking about I'm confused by paragraph 9 on 7 of 14 where it says, "The minimum living area of a primary

dwelling unit shall be 150 square feet subject to the Health and Safety Code."

JENNIFER ARMER: So that's the minimum size for any dwelling unit. It can be larger than that, but we're not going to count it as a dwelling unit if it's only 100 square feet. Does that help?

VICE CHAIR BARNETT: Yes, I'm trying to reconcile that with the 1,200 square feet limit.

JENNIFER ARMER: I was going to say that the 1,200 is a maximum. The 150 is a minimum.

VICE CHAIR BARNETT: Thank you. That's very helpful.

CHAIR HANSSEN: Other thoughts on this? Right now the current thinking, based on the Commissioners who have spoken, is to leave the additional unit at 1,200 square feet for all the reasons that went into the original ordinance to make more affordable housing. So are there any thoughts to change it from that? Okay, I'm going to say that's a leave it as is.

The last one that's in Section C is the frontage requirement. Comments received regarding the minimum width required for the… Oh no, we did this already, the 20'. We didn't have an additional comment about lot frontage if it's not a flag lot, or did we? I'm trying to remember.

JENNIFER ARMER: I believe we may have had a request that the lot frontage requirement be removed completely. It was often connected with the discussion of flag lots. Mr. Paulson, I don't know if you have additional thoughts on that.

JOEL PAULSON: I would just say with the discussion previously tonight that really was tied to the 20’ for a flag lot, which has already been decided. So now the new minimum width, I would say would be if you’re doing a flag lot it’s 12’, but you also could have no frontage and do an easement, so I think that we can clarify that component and/or remove it. We’ll look at that prior to going to Council.

CHAIR HANSSEN: All right, that sounds good. And was there anything else that we needed to consider, let’s see, you said in Section D?

JOEL PAULSON: I think, Chair, in Section D you’ve talked about most of it except for the 16’ height limitation in HR zones, the 30% slope, and then the 40’ (inaudible).

CHAIR HANSSEN: Thank you. I just wasn’t pulling up the right page. I have highlighted it here. So there are a couple of more things we need to talk about.

The 16' height limitation for HR zones. Some people have complained about it, because the way it goes in the Hillside Design Guidelines is it's 25' unless you're visible, in which case it's 18', but now for the sake of simplicity it's 16', period. Some people are saying that's not enough, so thoughts on that?

Commissioner Janoff.

COMMISSIONER JANOFF: We've struggled so much in the Planning Commission with these excessive heights or what's visible and what isn't visible. I'm thinking that the 16' is perfectly reasonable, especially since in theory it's a second unit on a property, so I think that's reasonable.

CHAIR HANSSEN: Commissioner Raspe.

COMMISSIONER RASPE: I would agree. It seems to me that 16' allows a two-story if you wanted to with 8' plates, so I think it probably gives you all the height you're going to need if you use it wisely, so I think 16' seems like the right number to me.

CHAIR HANSSEN: And going back to the discussion we just had on the 1,200 square feet, I'm sure there are some enterprising people that are thinking SB 9 is for building mega-houses, two on a lot, so we have to remember

the intent of SB 9 was not to do that, it was to make more housing, but affordable in smaller units.

The next one is we adopted, as you've read in the Staff Report, quite a number of things from the Hillside Design Guidelines. Well, we actually adjust the square footage available, but the 30% slope restriction for buildings in the HR zones. So what it's saying is if there's a 30% slope that you cannot do SB 9? Let me make sure I understand that ordinance. Staff, could you clarify?

RYAN SAFTY: That is correct. Specifically the building sites, it would prohibit a new two-unit development from being located in the area of the property where the slope is over 30%, and as you mentioned, that is to line it up with the Hillside Design Guidelines where that generally is a major exception or something that does Planning Commission approval whenever they are going beyond that 30%.

JENNIFER ARMER: A lot could have areas that are greater than 30% slope as long as the proposed housing units are not located in those areas.

CHAIR HANSSEN: So if there's an LRDA and it's not 30% on that property, let's just say that the average slope of the property is 30% but there are some parts of it that are reasonably flat, they can still do SB 9?

JENNIFER ARMER: Correct. The 30% is just the building site, not the whole property.

CHAIR HANSSEN: And we've had some submissions to the Planning Commission where they wanted to build on a huge thing, and I think what you guys are trying to avoid is having to do all these calculations to figure out the usable square feet, so just keep it simple and have it be if it's 30% you can build there, is that right?

JENNIFER ARMER: (Nods head yes.)

CHAIR HANSSEN: I just am trying to make sure I understand the intent.

JENNIFER ARMER: And reducing the grading involved. Right now the regulations say that the building should not be located in areas where there is a 30% slope or greater, and so we're working just to be consistent with that. I see that Director Paulson has his camera on. He may have something to add.

JOEL PAULSON: I'll wait for Vice Chair Barnett and then see if there's any additional. I think Ms. Armer covered it.

CHAIR HANSSEN: Vice Chair Barnett.

VICE CHAIR BARNETT: It was a comment from the public on this subject that the calculation of the 30% was

ambiguous as to what would be an average, for example, and maybe we could tighten that up in the proposed ordinance.

JOEL PAULSON: We can definitely add that clarification.

CHAIR HANSSEN: I definitely saw in a couple of the comments about if they have to do all kinds of different calculations before they even start on the SB 9 calculation, is it really a ministerial thing? But the idea of this for simplicity seems to make a lot of sense. Any other thoughts on the 30% slope?

Then we already talked about the right angle requirement. Oh, there was the 3' finished floor height limitation. It was increased from 18", is that correct?

RYAN SAFTY: That is correct.

CHAIR HANSSEN: So now it's 3', and some of the architects have said it's not enough for the hillsides, because you're building on a sloped lot and you would be varying part of the home more than you'd want to. How did we come up with the 3'?

RYAN SAFTY: Similar to the 30% that's also from the Hillside Design Guidelines, it's one of the guidelines that encourages you to step the building with the slope as opposed to building a flat pad.

CHAIR HANSSEN: Thoughts on whether or not to change this. I don't think they were asking to eliminate it, or were they?

RYAN SAFTY: The question was is 3' too limiting, so I'm not sure there is one specific recommendation with a recommended number or removing it, but it was just to revisit it.

CHAIR HANSSEN: Commissioner Janoff.

COMMISSIONER JANOFF: If we've got a 3' requirement for the Hillside Design Guidelines and this is the area that this is going to be problematic or not, it strikes me that we should be consistent. We've had the 3' requirement for some time, yes? Or is it new?

RYAN SAFTY: Correct, it's been in the document, I believe, since its adoption.

COMMISSIONER JANOFF: So if it's been working well enough in that sense that we haven't talked about needing to change it, then I would say that we could probably let the 3' stand.

CHAIR HANSSEN: My general thinking was the Hillside Design Guidelines have served us very well since they were created in 2004, and kudos to all the people that put those together, because they've been very, very helpful in so many hearings that we've had, and so if the 3' has

worked for us, I'd say (inaudible) that over a long list of the other requirements will serve us well as we go into this SB 9 territory without making it too onerous. I'm sure there will be exceptions, but you have to put a stake in the ground. Any other thoughts on this 3'?

I think we did the right angles. Then the rest of this says you've got questions and you can answer the questions. Town Attorney.

ATTORNEY WHELAN: Thank you. In my notes I unfortunately didn't write down where the Commission landed on the right angle issue.

CHAIR HANSSEN: My sense of where we were is that we should not put the right angle limitation in there to give people more flexibility, and any Commissioners speak up if I didn't get that right. I didn't miss anything that was in your notes, I don't think, because the other ones here were questions.

It is 10:00 o'clock, but I do want to see if there are more things that people are worried about that we should continue this to our next meeting, and if there's a lot of stuff that we haven't covered, then we should continue, but if not we can see if we feel like we've gone through enough to make a recommendation.

Vice Chair Barnett.

VICE CHAIR BARNETT: One of the commentators suggested that we might want to have affordability requirements for the SB 9 units, and I'm not sure where I stand on that, but since we're trying to mix low- and medium- and high-income residences throughout the town I think it might be worth discussion.

CHAIR HANSSEN: Our Town Attorney has her hand up.

ATTORNEY WHELAN: I think there was a discussion on that previously, and it's my opinion that SB 9 would preempt imposing an affordability requirement. I don't think SB 9 authorizes towns or cities to do that.

CHAIR HANSSEN: Director Paulson.

JOEL PAULSON: Yes, thank you, and to add onto that, because this obviously was an item of conversation throughout the Urgency Ordinance discussion through the Town Council, because our BMP requirements start at five units or more if we wanted to do something, as Town Attorney Whelan mentioned, I think it was mentioned previously that we would probably likely have to do a nexus study to bring that number down, since we're only talking about a maximum of four units here, but appreciate that input.

CHAIR HANSSEN: Question for Staff. Could we do the same thing that we do with AUDs and we give them some kind of benefit if they sign a deed restriction on the additional property?

ATTORNEY WHELAN: I do think that would be defensible.

CHAIR HANSSEN: And I would also add, since I worked on the last Housing Element and we're currently working on the current Housing Element, we tried to put affordability restrictions on the last Housing Element and it came back from HCD as no, because what they want is for stuff to get built and then the secondary goal is the affordability thing, and my sense is they would view that as trying to preempt SB 9 from being built by adding too many restrictions on it. Even though it's counterintuitive to what you really actually want to have happen, it comes out that way in terms of their thinking. Are there other thoughts on affordability restrictions? It sounds like we can't do it unless we offer a deed restriction. What would be the benefit to the applicants that were willing to sign a deed restriction?

ATTORNEY WHELAN: I'm just going to throw out some ideas. Maybe the permit is processed faster. Maybe there are different, more lenient FAR rules, or more

lenient height rules. Those are the thoughts that spring to mind for me.

JENNIFER ARMER: Or reduced fees.

CHAIR HANSSEN: That's what I recollect from the ADUs. I don't know the current state of it, but the fees seem to be an issue, because they do have to pay fees for SB 9, right? Even though that's ministerial the fees aren't any less than we have for other things, or are they?

JENNIFER ARMER: The fees currently align approximately with an Accessory Dwelling Unit application, but then they do still need to pay the fees for a building permit. If it's an urban lot split they still need to pay the fees to do the recordation of the map.

CHAIR HANSSEN: In terms of a recommendation from us, I don't know if the other Commissioners think that it might be worth exploring whether or not to offer a deed restriction and what benefits we could throw in with it, but I think it would require some more thought than the time that we have right now. Any other thoughts on this?

Are there other things that Commissioners saw in the comments from the public, including all the architects, that we need to discuss that we haven't? I think Staff did a great job of pulling these out and putting them in the Staff Report, and then they had the benefit of the

community meeting a week ago, so we have all that input as well. I feel like we're probably in pretty good shape, but I just want to make sure we haven't missed something.

Vice Chair Barnett.

VICE CHAIR BARNETT: I missed something when we were talking about driveways, which is the Desk Item from Adam Mayer that we received today, and he had thoughts about configurations of buildings that would require one driveway, for example, and then having two would preclude a viable architectural approach to Multi-Family use, so I would just suggest that we commend to the Town Council that they consider that.

CHAIR HANSSEN: Thank you for bringing that up. I have a question for Staff. I was thinking that was kind of related to this whole access corridor discussion, but maybe there's more to it, but he's doing a four-unit thing on the property and it doesn't sound like it was under SB 9. Should we consider this differently than the discussion we already had with the width of the access corridor and how to count the square footage and everything? I'm asking Staff.

JENNIFER ARMER: I believe there was some confusion in terms of the driveway requirements when you're talking about a two-unit development that's on a single

parcel versus the requirements if you do a subdivision and so then you have two separate lots. I don't know if Mr. Safty or Director Paulson has more to add to that.

JOEL PAULSON: I would just add that ultimately the example he has, as you mentioned, is a four-plex with one driveway, which would be on one lot. If we're going to have a flag lot or an easement to a second lot we have to have at least a minimum of one driveway to each of those lots. I think otherwise it would be too challenging on most configurations. The only thing that comes to mind if there's a big concern about that would be, from his comments, to limit the number of driveways to a maximum of one per lot. Again, that would be potentially restrictive for a large lot that maybe did a two-unit housing development where it might make sense to have different driveways, but that's something the Planning Commission and ultimately Council could consider.

CHAIR HANSSEN: So basically, thinking it through now that we've gone through this thing, Mr. Mayer's suggestion was related to a four-plex, which is not permitted under the current SB 9, because you would have to have done a lot split to have four units.

RYAN SAFTY: Unless of course there was an Accessory Dwelling Unit.

CHAIR HANSSEN: No, no, unless it was a Junior Accessory Dwelling Unit, yes. But what he showed us pictures of is not currently possible under SB 9 as written, is that right?

JENNIFER ARMER: Unless all of the units were similar in size. Three of those units would have to be 1,200 square feet or less, so there is potential, I guess, that it could be something like that, but they probably wouldn't be as large as was shown in his illustration.

CHAIR HANSSEN: But if we wanted to make it so to encourage people to have multiple units on a property and we wanted them to have only one driveway, what would we have to do differently?

JOEL PAULSON: As I mentioned earlier, you could impose a maximum of one driveway per lot and that would cover the scenario he has, which would be confined by our FAR ultimately, and then would also allow for access to a newly created lot if an urban lot split developed, so that would create a maximum of two with an urban lot split and a maximum of one if you decided to do a two-unit development and two Accessory Dwelling Units on one existing lot.

CHAIR HANSSEN: Good. It took me a couple tries to get it. I actually think that sounds pretty good. Vice Chair Barnett, what do you think, since you brought up the

thing? I thought Mr. Mayer's letter was great and I think that is the kind of thing that we'd like to see.

VICE CHAIR BARNETT: I guess the challenge would be making that an Objective Standard when we want to have other situations with two driveways. I'm not sure how we could carve that out, but maybe it could be.

CHAIR HANSSEN: Other thoughts on this? So maybe we could leave it at we think it's good idea but maybe it needs more research to see if it would be problematic to limit the number of driveways.

Are there other things that we missed in the comments or that are on peoples' minds relative to SB 9 before we make a recommendation to Town Council? I'm not seeing anyone. All right, does anyone feel brave enough to make a recommendation that we could vote on, a motion?

JENNIFER ARMER: If it would helpful for Staff to list out the modifications that have been discussed this evening, we could give that a try.

CHAIR HANSSEN: If you could do that, that would be helpful. I made notes, but yes.

JENNIFER ARMER: I'll put a list out there and we'll see if anyone has modifications or changes or additions to that. I heard nine items. Some were

modifications to the ordinance; some were just discussion items or recommendations.

Number 1 was support for access easement for flag lots in addition to the way that it's written right now.

Number 2 would be to remove the 20' requirement, reducing that to a 12' width for that access to the rear lot.

Number 3 was removal of the requirement of right angles for new lot lines.

Number 4 was about grading. It was to keep the limits on grading but to allow light wells as minimally required by the Building Code, and allow driveways per fire requirements to be exempt from grading, so not trigger a grading permit.

Number 5 was just a recommendation that Fire review early in the process would be good, but no modification to the ordinance.

Number 6 was to provide some clarification on the frontage requirement.

Number 7 was in regard to the 30% slope, again clarifying the language there that it just applies to where the homes would be located.

Number 8 would be to explore an optional affordability requirement, that there might be some

benefits, and provide some information on that for Town Council.

And number 9 was an additional discussion item about driveways, about whether restriction to one driveway per lot maximum or in some cases two, but no change to the ordinance.

Mr. Safty, did you have anything different?

RYAN SAFTY: Thank you. I did hear just one additional one, to be clearer in the definitions in terms of primary structure in relation to the Accessory Dwelling Units and Junior Accessory Dwelling Units.

CHAIR HANSSEN: These weren't actual changes, but things we decided not to change. Do we need to go over that as well? For example, we decided not to add any other zones. We didn't want to change anything with the windows.

JENNIFER ARMER: No, the motion can just be the changes that you want to recommend to the draft ordinance.

CHAIR HANSSEN: Good. Did we miss anything else? Commissioner Thomas, and then Commissioner Janoff.

COMMISSIONER THOMAS: Thank you, Chair. I just want to make sure, I think that we want to keep how the second story stepback is, but in looking at my notes I'm still a little bit confused about that one, so I just want

to confirm what we all agreed to was we didn't want to change that.

JENNIFER ARMER: That is what I heard.

CHAIR HANSSEN: That's what I heard too.

COMMISSIONER THOMAS: Okay, I just wanted to confirm.

CHAIR HANSSEN: Commissioner Janoff.

COMMISSIONER JANOFF: Back to the Historic Districts are exempted from SB 9 currently, or do we want to specifically say that?

JENNIFER ARMER: Historic Districts and properties that are built pre-1941 are designated by our ordinance to be considered historic, and therefore SB 9 would not apply to those properties.

COMMISSIONER JANOFF: That's clear now.

CHAIR HANSSEN: If you had a chance to read the actual SB 9, it clearly spells out that they intended to exclude Historic properties from this SB 9 law, as well as anything in an earthquake zone, although exceptions that were wetlands and stuff that were listed in our ordinance and listed in the SB 9 law.

COMMISSIONER JANOFF: Right, but we could be more lenient and include those if we wanted to, so I just wanted to be sure where we stand.

And to that point, I had a question. I think in the ordinance it talks about a limitation on excluding very high fire severity zones. I was under the impression that all of Los Gatos is in a high- or extremely-high zone, like even more extreme than Paradise, which burned, so can Staff just clarify, is this a relatively small area for Los Gatos, or is this a pretty large area?

JENNIFER ARMER: Thank you for that question. No, this is actually something that there was extensive discussion both for the Town of Los Gatos and other agencies when SB 9 first was put into place, and there is that section that says that it doesn't apply in those higher fire areas, but it basically says if you meet the Building Code and the Fire requirements for construction, then you can build. So in the end, because we've adopted the Fire regulations that they list there, and any new buildings have to comply with that, then they are allowed in those areas.

COMMISSIONER JANOFF: Right. Okay, thank you for that.

CHAIR HANSSEN: That was a great question to ask though, because that was such a big issue when we were working on our General Plan, and it's an ongoing issue for everybody, not just in Los Gatos but all through

California, but it sounds like it's not going to prevent SB 9.

So is anybody ready to make a motion to recommend this to Council with the changes that we have recommended so far? Vice Chair Barnett.

VICE CHAIR BARNETT: I move to recommend approval of Ordinance 2327 to the City Council together with the proposed amendments, changes, and recommendations that we have processed today.

JENNIFER ARMER: If I may, Chair? We don't actually have an ordinance number. What we would be recommending is that you are looking at Exhibit 1 to the Staff Report, which is the Draft Permanent Ordinance. It is based on the previous ordinance, but Exhibit 1 is what we would ask you include in your recommendation.

CHAIR HANSSEN: Is the maker of the motion okay with that?

VICE CHAIR BARNETT: I'd be happy to revise my motion to refer to Exhibit 4 instead of Ordinance 2327.

CHAIR HANSSEN: Okay, thank you. Is Commissioner Janoff making a second?

COMMISSIONER JANOFF: I'm making a second, but I think it's Exhibit 1, not Exhibit 4.

CHAIR HANSSEN: Maker of the motion, is Exhibit 1 okay?

VICE CHAIR BARNETT: Yes, that was my intention, Exhibit 1.

CHAIR HANSSEN: All right, and then your second is good for Exhibit 1, yes?

COMMISSIONER JANOFF: Yes, I second that.

CHAIR HANSSEN: Any further discussion? We'll do a roll call vote. Start with Commissioner Thomas.

COMMISSIONER THOMAS: Yes.

CHAIR HANSSEN: Commissioner Tavana.

COMMISSIONER TAVANA: Yes.

CHAIR HANSSEN: Commissioner Raspe.

COMMISSIONER RASPE: Yes.

CHAIR HANSSEN: Commissioner Janoff.

COMMISSIONER JANOFF: Yes.

CHAIR HANSSEN: Vice Chair Barnett.

VICE CHAIR BARNETT: Yes.

CHAIR HANSSEN: And I vote yes as well. I know the answer to this, but just for the sake of clarity, there are no appeal rights on this action by the Commission, correct?

JENNIFER ARMER: That is correct, because it is a recommendation to Town Council.

CHAIR HANSSEN: Good. Well, that was a great discussion.

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Mr. Ryan, Town Councils and Town Attorney,

Here is my recommendation regarding the draft SB9 ordinance, from a hillside resident.

- **Page 4, 1. Building Height:**

PROBLEM: 16' height limitation prohibits 2 story building at hillside.
SOLUTION: Apply the most restrictive town code at 18' height limitation at hillside.

- **Page 5, 5. Floor Area Ratio and Lot Coverage:**

PROBLEM: I understand the 1,200 sqft limitation is for affordable house; this is very nice consideration. However, it does not consider the options of marketable and affordable house beyond the current 1,200 sqft ADU.

SOLUTION: Please change to 1,400 sqft as maximum size of first SB9 unit. It can still be an affordable house, as well as differentiate from 1,200 sqft ADU. You can help to provide more options from 1,200 sqft ADU to 1,400 sqft SB9 in the affordable rental market. The additional 100 - 200 sqft matters for the people who live in the small house.

- **Page 5, 8. Building Sites:**

PROBLEM: Town Code does not have a 30% slope restriction for Hillside development. Adding 30% slope restriction in the Town's SB9 ordinance results in a reduction in intensity of the use, violate state law. Housing Crisis Act (Gov. Code 66300, subd. (b)(1)(A).

I have checked 4 jurisdictions regarding the slope restriction of SB9 ordinances:
Saratoga and Palo Alto simply applied the same standard development restriction to SB9.
Monte Serena does not apply density formula restriction to SB9.
Los Altos Hills has a loosened slope restriction in their SB9 ordinance.

None of them tighten the slope restriction on SB9 developments, because they follow state law to ensure it does not cause a reduction in the intensity of the use.

SOLUTION: **REMOVE "30% slope restriction"** in SB9 Ordinance, because page 5 Cut and Fill table already controls hillside development as defined by Town Code. **I expect the Town will not violate the state law, under the watch of the current Town Council and Town Attorney Gabrielle Whelan.**

- **Page 7, B. Design Review Standards**

PROBLEM: These standards are a nice consideration for privacy concern because SB9 setbacks are smaller than standard development. However, it does not motivate residents to meet standard zoning setback for SB9 developments.

SOLUTION: We should encourage residents to meet standard zoning setbacks. These additional SB9 design standards should only be required for development within the smaller SB9 setbacks. Please exempt these SB9 privacy related restrictions, if standard zoning setbacks are met on all 4 sides. See detailed comments below:

- **1 Balconies/Decks and 8 Windows.**

PROBLEM: This restriction is for privacy concern because SB9 setback is smaller. However, if there is no house around, and we meet all standard zoning setback, why can't we have a normal balconies/deck, normal windows?

SOLUTION: Please exempt 1 and 8 restrictions, if meet standard zoning setback on 4 sides.

- **5 Step-back:**

PROBLEM: At many the hillside locations, the 2nd floor can only be seen from the public road. The first floor is actually semi-buried, like a basement. In this case, why is the step-back required?

SOLUTION: Please exempt the step-back if (1) the building can only be seen one story from public road and (2) meet standard zoning setback on 4 sides.

- **7 Plate Height:**

PROBLEM: The plate height restriction is to ensure that a single-story building is not 25 feet tall, which is not applied to Hillside.

SOLUTION: Please exempt the plate height restriction from Hillside.

Best Regards,
Ivy

Mr. Ryan, Town Councils and Town Attorney,

Town Code does not have a 30% slope restriction for Hillside development. However, the Town of Los Gatos includes a 30% slope restriction in the draft SB9 ordinance, which makes SB9 development more restrictive than standard development. This will violate the state law Housing Crisis Act (Gov. Code 66300, subd. (b)(1)(A).). The Code states that any proposed modification to an existing development standard applicable in a single-family residential zone MUST demonstrate that it would NOT result in a reduction in the intensity of the use. (see SB9 factsheet, page 7)

The draft SB9 ordinance already contains the Cut and Fill table in page 5, item 7, which matches existing Town Code for standard developments. The 8-foot cut restriction limits house width in the uphill / downhill direction. For example, on a 30% slope, the 8-foot cut restriction limits the house width to only 27 feet. Lessor slopes allow a wider house, but steeper slopes result in much smaller widths, naturally limiting development. Therefore, the 8-foot cut restriction is sufficient to limit the developments on the Hillside. Please see the attached diagram which illustrates this.

Further, geotechnical, and geological reports are required for building permit. If the investigation and engineered confirmed the site is buildable, even it is 31% slope on average house pad, it is still buildable. I believe it is the reason there is no 30% slope restriction language in Town Code.

I respectfully request that the Town of Los Gatos remove the 30% slope restriction language in the SB9 ordinance, to eliminate the conflict with HCA state law. Please keep the Cut and Fill table in page 5, item 7 in ordinance. The 8-foot cut restriction can well control the hillside development, as defined in Town Code.

Best Regards,
Scott

Draft SB9 Ordinance - Section V

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.		

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;

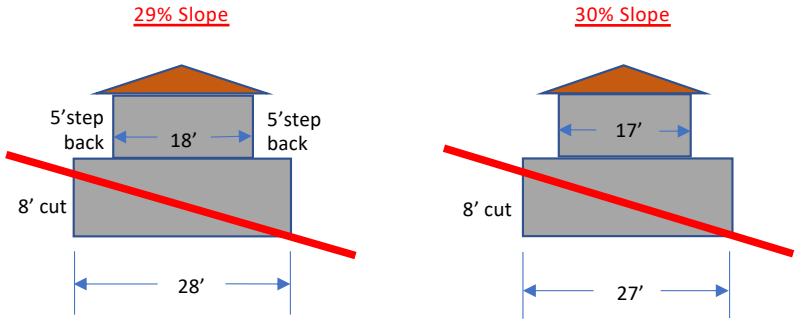
SB9 Recommendation

KEEP - 7. Cut and Fill: Sufficient to restrict the hillside development, matching Town Code.

REMOVE - ~~8. Building Site: 30% restriction~~. It is NOT in Town Code, and causes a reduction in the intensity of use, violating HCA state law.

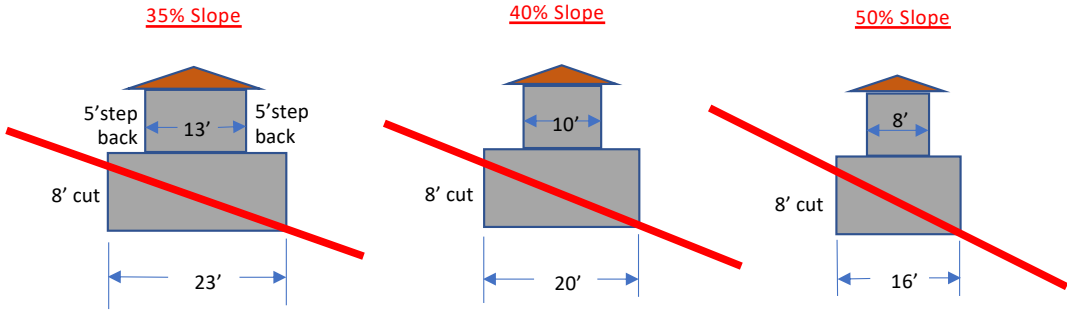
A **Housing Crisis Act of 2019.** (Gov. Code, § 66300, subd. (b)(1)(A).) Any proposed modification to an existing development standard applicable in the single-family residential zone **must** demonstrate that it would **not** result in a reduction in the intensity of the use. (SB9 factsheet p7)

Why 29% slope is allowed, but 30% slope is not?



Town Code 8' cut restriction is sufficient.

As slope increases, the house width decreases, limiting development.



California Department of Housing and Community Development

SB 9 Fact Sheet

On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)

Housing Policy Development Division
March 2022

This Fact Sheet is for informational purposes only and is not intended to implement or interpret SB 9. HCD does not have authority to enforce SB 9, although violations of SB 9 may concurrently violate other housing laws where HCD does have enforcement authority, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind. The Attorney General may also take independent action to enforce SB 9. For a full list of statutes over which HCD has enforcement authority, visit HCD's ***Accountability and Enforcement webpage****.*

Executive Summary of SB 9

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms "unit," "housing unit," "residential unit," and "housing development" mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

Single-Family Residential Zones Only

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 "Single-Family Residential"), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features such as hillsides, or the permissibility of keeping horses should not factor into the determination.

Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

> **Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.
>
> **Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or

waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

Setbacks for Existing Structures. The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

Four-Foot Side and Rear Setbacks. SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), 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. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

Environmental Site Constraints

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's **Streamlined Ministerial Approval Process Guidelines** for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

California Environmental Quality Act (CEQA)

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

Anti-Displacement Measures

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) 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) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.

Lot Split Requirements

(Reference: Gov. Code, § 66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (f))

SB 9 and ADU Law (Gov. Code, §§ 65852.2 and 65858.22) are complementary. The requirements of each can be implemented in ways that result in developments with both "SB 9 Units" and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

"Units" Defined. The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

> *Primary Unit*. A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.
>
> *Accessory Dwelling Unit*. An ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.
>
> *Junior Accessory Dwelling Unit*. A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

Number of ADUs Allowed. ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

> *Lot Split*. When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.
>
> *No Lot Split*. When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s **ADU and JADU webpage** for more information and resources.

Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

Housing Element Law. To utilize projections based on SB 9 toward a jurisdiction’s regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees,

and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's **Housing Elements webpage**.

Housing Crisis Act of 2019. An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. "Reducing the intensity of land use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about **Designated Jurisdictions Prohibited from Certain Zoning-Related Actions** on HCD's website.

Housing Accountability Act. Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of "housing development project" includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD's **Housing Accountability Act Technical Assistance Advisory**.

Rental Inclusionary Housing. Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD's **Rental Inclusionary Housing Memorandum**.

TOWN OF LOS GATOS

COUNCIL AGENDA REPORT

MEETING DATE: 11/01/2022

ITEM NO: 11

ADDENDUM

DATE: October 31, 2022

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Introduce an Ordinance, by Title Only, 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. Town Code Amendment Application A-22-002. Location: Town-wide. Applicant: Town of Los Gatos.

REMARKS:

Attachment 7 includes public comment received between 11:01 a.m., October 27, 2022, and 11:00 a.m., October 31, 2022.

Attachment previously received with the November 1, 2022 Staff Report:

1. Required Findings
2. Draft Ordinance
3. September 28, 2022 Planning Commission Staff Report with Exhibits 1-7
4. September 28, 2022 Planning Commission Desk Item Report with Exhibit 8
5. September 28, 2022 Planning Commission Verbatim Minutes
6. Public Comment received between 11:01 a.m., Wednesday, September 23, 2022, and 11:00 a.m., Thursday, October 27, 2022

Received with this Addendum Report:

7. Public Comment received between 11:01 a.m., October 27, 2022, and 11:00 a.m., October 31, 2022.

PREPARED BY: Ryan Safty
Associate Planner

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

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Sent: Saturday, October 29, 2022 10:45 AM
To: planning@losgatosca.gov
Subject: Intent to Occupy Clause of the SB 9 Ordinance

The purpose of this note is to express concern about enforcement of the Intent to Occupy (page 12) clause, clause (4) of the proposed ordinance. Without a meaningful enforcement process the goal of benefitting homeowners instead of institutional investors could be easily violated.

My concern is founded on a live case in my neighborhood where an absentee owner has rented out the principal residence but is claiming via a simple email to the Town to reside in it while dividing the property into two parcels. Occupancy or intent to occupy an SB 9 property should require more rigorous documentation than an email. This specific application should be frozen until the Town is able to independently verify owner occupancy of the property.

For purposes of this ordinance, absentee owners should be considered institutional investors and disqualified from dividing a property. I strongly believe the Town should require stronger evidence of occupancy or intent of occupancy than a simple email. Moreover, the Town should also spell out explicitly in this ordinance the penalty that would be imposed if a homeowner were to violate the aforementioned clause.

I raised this matter with the planner for this project as well as at the most recent Town Council meeting. The matter was referred to the Town Attorney for action. I see no evidence of such action in the latest draft of the ordinance.

I recommend the ordinance be strengthened to prevent its abuse by institutional investors.

Christopher Bajorek
Los Gatos

Sent from my iPad

EXTERNAL SENDER

Council Members and Planning:

I have just completed a review of the new Proposed Draft Ordinance, which on the whole looks good and is now substantially in compliance with the SB-9 State Law. I have only a few comments to make [see attached].

2 comments are of significance and the rest are minor - but should be fixed/clarified.

The 2 that I would ask you all to give serious consideration to are:

1. Front Setbacks on a Flag Lot.
   The standard concept of a Front Setback on a Flag Lot does not make sense.

2. Objective Design Standards.
   Designing a house by 'regulation' is inherently dangerous and way too restrictive.
   Please consider eliminating all 'Design Standards' that are not 'Privacy' related.

In my 3 minutes I will only have time to talk to one of these items, so please consider this email/memo in its entirety so that these issues can be addressed at your Council Meeting.

Thank you

Tony Jeans

T.H.I.S. DESIGN & DEVELOPMENT P.O.Box 1518, Los Gatos, CA 95031

Tel: 408.354.1863 Fax: 408.350.1823

Memo: Minor SB-9 Ordinance Corrections
From: Tony Jeans
To: Town Council and Planning Dept
Date: October 29th, 2022

The Proposed Draft Ordinance proposed by staff, incorporating Planning Commission recommendations is good and has come a long way from its [Emergency] inception.

I have only a few small suggestions:

1. Objective Zoning Standards: 29.10.630 (a) (1).
   The 16 ft height limit proposed in regular zoning districts works, but in HR zones will be too difficult [and unnecessary] to comply with. HS&DG has 2 max height limits for such homes: (1) 25 ft [down from 30 ft] and (2) 18 ft when visible from key vantage points.
   I think that the 18 ft height limit should be applied here.

2. Objective Zoning Standards: 29.10.630 (a) (2) b.
   The minimum driveway length of 25 ft from the Property Line is inconsistent with Table 1-2 – Setback Requirements for a Garage Entry of 18 ft.
   These should be reconciled.

3. Flag Lots will become more common as SB-9 properties are developed. The "Front Setback" for a Flag Lot should not be "Per the Applicable Zoning District" as is called out in Table 1-2. A front setback is trying to regulate how far a home is from the street to give some sense of uniformity to a neighborhood.
   A separate "Front – Flag Lot" should be added to Table 1-2 and be the same as "Interior Sides". Otherwise some Flag Lots will be unbuildable. [SEE ATTACHMENT]
   Other jurisdictions have addressed this and Los Gatos should too.

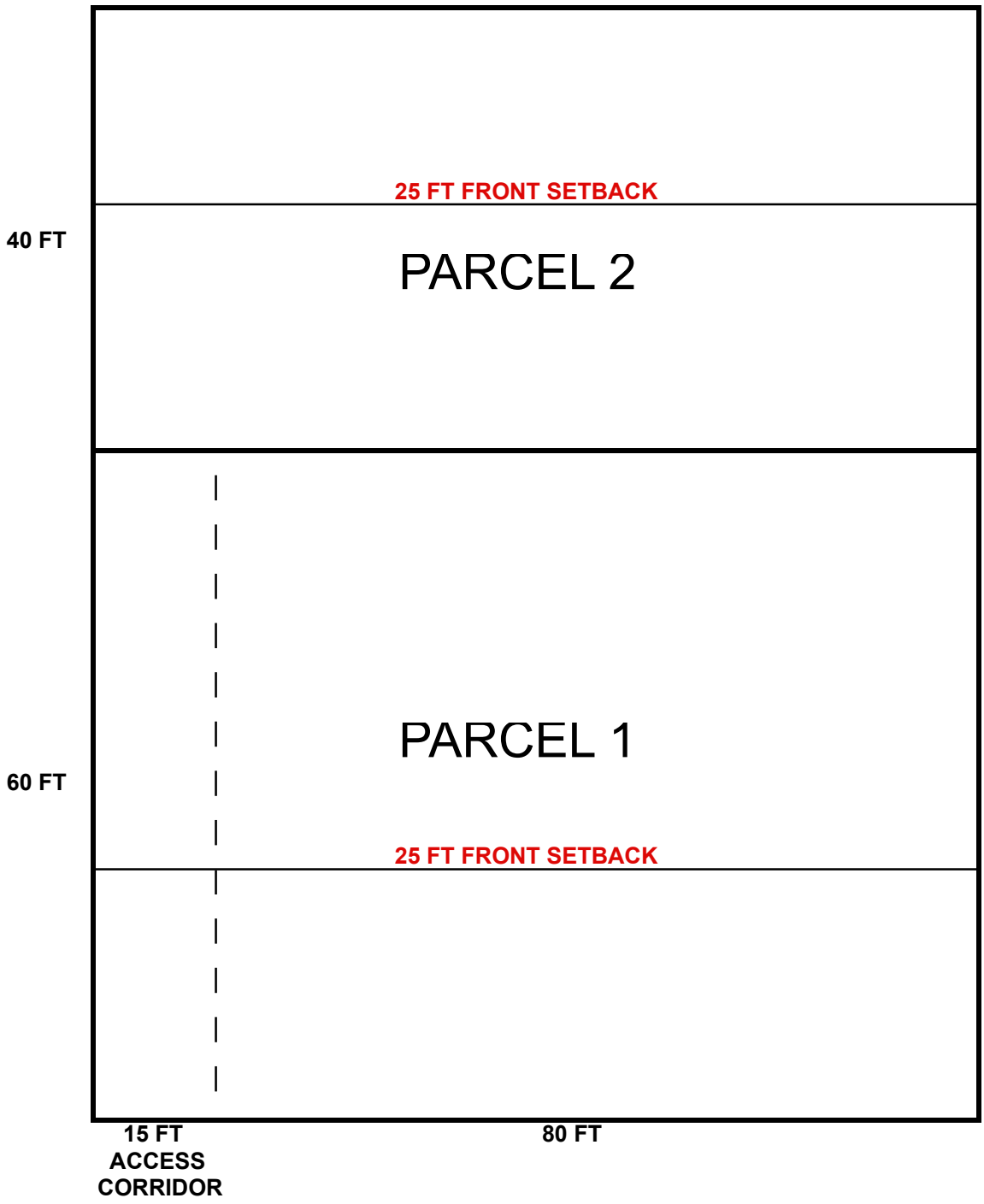
4. Design Review Standards that are not impacting privacy are over-reach and will 'dull' Architectural Creativity. Houses will become boring. A house designed by a committee is not the way Los Gatos should be moving towards.
   Specifically (2), (3), (4), **(5)**, (6), (7) should be eliminated.
   Assuming you disagree, then at least modify (5) to require the '5 ft 2nd floor step-back' to only be at the interior sides & rear and in any event not when the Zoning District setbacks are complied with.

5. Section 29.10.050 (a)(3).
   . . . . Minimum lot width of 20 ft **except access corridors to Flag Lots**.

The rest looks pretty good.

FRONT SETBACKS ON FLAG LOTS

[EXAMPLE R1:8 - 8,000 SF LOT]



A STANDARD FRONT SETBACK MAKES SENSE ON THE FRONT PARCEL 1 - BUT NOT ON A FLAG LOT.

An additional point:

As alternative to some of the above, remove the restriction on 2nd floor step-back, windows if the underlying/regular R-1/HR zoning setback standards are followed on that specific side(for eg: 8ft side setback)

Thanks
Sandeep

On Sun, Oct 30, 2022 at 8:31 PM sandeep venishetti wrote:
Dear Planning commission, respected officials,

I am Sandeep, a resident of Los Gatos Town.

Thanks for allowing public comments on SB-9 Draft ordinance:

Here are my comments, Please consider.

(1) **1st unit maximum 1200 sqft issue:** I request you to remove the Maximum of "1200 Sq Ft" restriction on the 1st unit built. I believe this is **not in compliance with the SB9 State law** that does not have any maximum number of square footage on any of the units as long as the FAR ratio is maintained. I believe the "Objective Standards" that SB9 law is a objective standards for entire single family Residential zones and does not allow City to define "SB9 specific Objective standards"

(2) **Building Height:** Will it be 30 ft for R-1 8? Regarding "Maximum building height shall be as specified by the applicable zoning district for the main structure." In a two-unit/duplex construction, please clarify the height of the **"main structure"**

(3) FAR Ratio: please clarify that the FAR ratio is based on **gross area of the lot size**.

(4) **FAR bonus ratio:** Please clarify that the 10% bonus is 10% of the lot size which is the same as ADU law.
"When a two-unit housing development is proposed, a 10 percent increase in the floor area ratio standards for residential structures is allowed,"

(5) **Front Set back for - Flag Lot:** Please clarify. 25 Sq Ft front setback for a Flag lot may be within the corridor area, which does not make sense. If it is in the lot excluding the access corridor, the 25 Sqft set back is too limiting and it should be similar to those of Side setbacks.

(6) **Design Review Standards: Step-Back:** Please remove the step back requirement. The second story 5 feet recession from the first floor is too limiting and the home looks super weird with box over the box looks, something that I have never seen in Los Gatos or elsewhere.

(7) **Design Review Standards: Plate Height: Please remove.** There is already a total **building height restriction.** This plate height is too restrictive in modern open space architectures which could typically have a 12 foot floor to room designs.

(8) **2nd story Clerestory Windows:** Please make the Clerestory window requirement for 8ft or 9ft from side/rear setbacks. The 10ft is inconsistent with side/rear(setback + step back) which is 9 ft. This essentially forces it to a 10 ft side setback for 2nd floor.

(9) **Application process and Appeals:** Please allow staff level appeal. If not, please allow the homeowner for corrective action for any noncompliance before denial of the application.

(10) **Flag lot access corridor minimum width:** Thanks for making it 12 ft. Other towns(Mountainview, San Jose e.t.c) have similar width.

(11) **Flag lot minimum width:** Please clarify exclusion of access corridor width in this 20ft minimum width

"Each new parcel shall maintain a minimum lot width of 20 feet;"

(12) Please provide an example application guidelines and example lot split and design suggestions.

Thanks
Sandeep