

DIVISION 10. TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

Sec. 29.10.600. Purpose and applicability.

The Town Council finds and determines that this division is applicable only to voluntary applications for two-unit housing developments and urban lot splits consistent with Senate Bill (SB) 9. 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 29.10.610 (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.

Sec. 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 (10) percent or more of the interest in the property.

Demolition means any act or process that may cause partial or total razing, removal, destruction, or dismantling of a structure, whether or not permitted by the Town.

~~*Entry feature* means a structural element, which leads to an entry door.~~

Existing structure means a lawfully constructed building that has received final building permit clearance.

~~*First residential unit* means one (1) of two (2) primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200 square foot floor area limitation on first residential units.~~

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

Hillside Area means all properties located within the Hillside Area Map of the Town's Hillside Development Standards and Guidelines.

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

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.

Street means any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements.

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.

Two-unit housing development means an application proposing no more than two (2) 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 (2) new primary dwelling units, one (1) new primary dwelling unit and retention of one (1) existing primary dwelling unit, or retention of two (2) existing legal non-conforming primary dwelling units where one (1) or both units are subject to a proposed addition or alteration.

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 (2) parcels, as authorized by Government Code Section 66411.7.

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

Sec. 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:

- (1) *Zoning district.* A parcel that is located within a single-family residential zone.
- (2) *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 parcels with either a recorded parcel map or certificate of compliance. When both an urban lot split and two-unit housing development application are submitted simultaneously, no construction or building permits for new construction or grading activities may be issued until the new parcel map for the urban lot split approval has been recorded.
- (3) *Excluding historic property.* A parcel that 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 a parcel that does not contain a Historic Structure, as defined in 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."

- (4) *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 state responsibility area, as defined in Section 4102 of the Public Resources Code. This subparagraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development, including, but not limited to, standards established under all of the following or their successor provisions: (i) Section 4291 of the Public Resources Code or Section 51182, as applicable; (ii) Section 4290 of the Public Resources Code; and (iii) Section 7A of the California Building Code (Title 24 of the California Code of Regulations).
- (5) *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.
- (6) *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.
- (7) *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.
- (8) *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).
- (9) *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).
- (10) *Excluding conservation easements.* A parcel subject to a recorded conservation easement.

Sec. 29.10.630. Requirements.

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

- (1) *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 subsection (4), "Exceptions:"
 - a. *Building height.* Maximum building height shall be as specified by the applicable zoning district for the main structure. ~~Buildings located in the Hillside Area are limited to 25 feet in height, and the building's tallest elevation shall not exceed 35 feet measured from the lowest part of the building to the highest part; 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 sixteen (16) feet in height;~~
 - b. *New driveways.* Each parcel shall ~~be connected to an adjacent street with a driveway. include no more than a single driveway unless the parcel has more than one hundred (100) feet of contiguous street frontage or more than one (1) existing driveway.~~ Any new driveway shall satisfy the following requirements:
 1. A minimum paved width of ten (10) feet ~~up to a maximum width of eighteen (18) feet. Driveways in the Hillside Residential (HR) zones shall have a minimum width of twelve (12) feet; and~~
 2. ~~A minimum depth of eighteen (18) feet measured from the front or street side property line;~~
 3. Surfacing shall comply with Town Code Section 29.10.155(e);
 4. ~~Only a single driveway curb cut shall be permitted per parcel unless the parcel has more than one hundred (100) feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and~~
 5. ~~A maximum slope of fifteen (15) percent.~~
 - c. *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 (2) dwelling units in a side-by-side or front-to-back configuration within the same structure or one (1) dwelling unit located atop another dwelling unit within the same structure. Proposed adjacent or attached dwelling units shall meet all applicable building code standards and be designed sufficient to allow separate conveyance;
 - d. *Fencing.* All new ~~fences, walls, and gates~~ shall comply with the requirements of sections 29.40.030 through 29.40.0325 of the Zoning Code;
 - e. *Floor area ratio and lot coverage.*
 1. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
 2. 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:

- i. 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
- ii. 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. The maximum size of the first new residential unit shall not exceed one thousand two hundred (1,200) square feet.~~

~~34. When two new primary dwelling units are proposed, or one new primary dwelling unit and the retention of an existing primary dwelling is proposed, as part of a two-unit housing development is proposed and the existing structures are at or below the maximum allowed floor area, a ten (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 one thousand two hundred (1,200) square feet.~~

~~4. Below-grade square footage, in accordance with Town Code Sections 29.10.020 and 29.40.072, is exempt from the floor area maximum.~~

~~5. Detached garages shall not exceed 450 square feet without obtaining a separate Minor Residential Planning Application in accordance with Town Code Section 29.20.480.~~

~~65. Notwithstanding the floor area ratio and lot coverage standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.~~

f. *Grading.*

~~1. To the extent as required by Chapter 12, Article II and Section 29.10.09045(b) of the Town Code, the grading activities shall not exceed 50 cubic yards, cut plus fill, unless exempted per subsection 2 below or unless first receiving approval of a discretionary Architecture and Site Application set forth in subsection 2. below may require a grading permit, but will not require discretionary review of an architecture and site application;~~

~~2. Grading exemptions activity associated with a two-unit housing development shall not exceed fifty (50) cubic yards, cut plus fill, except:~~

- i. Light wells that do not exceed the minimum required per Building Code ~~shall not count as grading activity for the purpose of this section;~~
- ii. Grading activities required to provide the minimum driveway requirements, 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
- iii. Excavation within the footprint of a primary dwelling unit or garage ~~shall not count as grading activity for the purpose of this section.~~

Note that these exemptions are only for the discretionary approval requirement listed in Town Code Section 29.10.09045(b) and not the Grading Permit requirement at building permit submittal per Town Code Chapter 12, Article II.

~~3. In the Hillside Area, graded areas shall not be larger than the area of the footprint of the house, plus that area necessary to accommodate access, guest parking, and turnaround areas.~~

- g. Cut and Fill. Two-unit housing developments in the Hillside Area 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.		

- h. *Building Sites.* For properties in the Hillside Area, The the footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with slopes exceeding thirty (30) percent. ~~This provision applies only to the building site, not the property as a whole;~~
- ~~i. *Retaining walls.* Retaining walls shall not exceed five (5) feet in height and shall not run in a straight continuous direction for more than fifty (50) feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer when adjacent to the street;~~
- ~~j. *Light reflectivity value.* Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;~~
- ~~jk. *Landscaping requirement.* All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);~~
- ~~l. *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;~~
- ~~jm. *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;~~
- ~~kn. *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;~~
- ~~le. *Parking.*~~
- One (1) parking stall per primary dwelling unit shall be required on-site, 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 (1) or more car-share vehicles within one (1) 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.

3. Parking space dimensions, whether uncovered or covered, shall comply with the size requirements in Town Code Section 29.10.155(d).

m. Setbacks.

1. Two-unit housing developments and attached garages shall be subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below. Detached garages and detached accessory structures other than a detached garage shall meet the setback-development requirements and follow the processing requirements specified in Town Code Section 29.40.015 (Accessory Buildings).

2. Development proposed adjacent to a protected waterway shall comply with the standards and provisions of the Santa Clara County Valley Water Resources Protection Collaborative Guidelines and Standards for Land Use Near Streams document.

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Table 1-2 - Setback Requirements		
Setback		Requirement ⁽³²⁾
Property Line Setbacks ⁽¹⁾	Front ⁽²⁾⁽⁷⁾	Per the applicable zoning district. ⁽⁶⁵⁾
	Garage Entry	18 feet, <u>when the required garage setback is less than 18 feet</u>
	Interior Sides	4 feet ⁽⁴³⁾
	Rear ⁽²⁾	4 feet ⁽⁴³⁾
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures ⁽⁴³⁾⁽⁵⁴⁾		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. <u>(2) The required front yard setback may be reduced as specified in Sections 29.40.050, 29.40.055, and 29.40.060 of the Zoning Code.</u> (32) 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. (43) For parcels created through an urban lot split where the parcels are under the same ownership, 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. Similarly, no rear setback (for the front property) or front setback (for the rear property) shall be required for two-unit housing development units constructed as attached units in a flag-lot configuration where the parcels are under the same ownership. (54) Except for primary dwellings constructed as a duplex or attached single-family residences. (65) Flag/corridor lots shall use the interior side setback requirement <u>listed above</u> for all property lines other than the rear.		

(7) Primary dwelling units on a through lot with frontage along two streets, and are not a corner lot, shall meet the front setback requirement along both street frontages.

nf. *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

of. *Utilities.* New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.

(2) *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 (4) below, "Exceptions:"

a. ~~*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;~~

a. *Glare.* Direct or reflected glare, such as that produced by floodlight, visible from outside any boundary line of a property on which the glare is produced, is prohibited;

b. *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. In the Hillside Area, decorative lighting, sports court lighting, and unshaded or non-recessed spotlights are prohibited;

cb. *Finished floor.* The finished floor of the first story in the Hillside Area shall not exceed three (3) feet in height as measured from finished grade;

d. *Retaining Walls.* Retaining walls for properties in the Hillside Area that are visible from a public street shall have a veneer of natural stone, stained concrete, or textured surface; and

e. *Light Reflectivity Value.* For properties in the Hillside Area, exterior material colors for primary dwelling units and garages shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;

c. ~~*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;~~

d. ~~*Front porch.* If proposed, porches shall have a minimum depth of six (6) feet and a minimum width equal to twenty five (25) percent of the linear width of the front elevation;~~

e. ~~*Second story setback.* The interior side and rear elevations of the second story of a two-story primary dwelling unit shall have a minimum setback of nine (9) feet;~~

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

g. ~~*Plate height.* The plate height of each story shall be limited to a maximum of ten (10) feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight (8) feet; and~~

h. ~~*Windows.* All second story windows less than ten (10) feet from rear and interior side property lines shall be clerestory with the bottom of the glass at least six (6) feet above the finished floor except as necessary for egress purposes as required by the Building Code.~~

i. ~~*Prohibited materials.* The following exterior materials are prohibited on all building exteriors:~~

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~~1. Vinyl siding; and~~

~~2. Plywood.~~

~~j. Mechanical equipment. Heating, ventilation, and air conditioning (HVAC) units, generators, energy storage systems (ESS), and other similar ground-mounted mechanical equipment shall be screened from view from any adjacent street if not already located out of view behind a building or solid fence.~~

(3) *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 (4) below, "Exceptions:"

- a. *Number of units.* A maximum of four (4) units, with a maximum of two (2) primary dwelling units, on lots that have not undergone an urban lot split.
- b. *Accessory dwelling units.* In addition to the two (2) residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one (1) accessory dwelling unit and one (1) junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.
- c. *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.
- d. *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.
- e. *Restrictions on demolition.* The two-unit housing development shall not require ~~either demolition of more than twenty-five (25) percent of the exterior walls~~ 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. This shall be evidenced by an attestation from the property owner;
 2. 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
 3. Housing that has been occupied by a tenant in the last three (3) 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 (3) years on a form prescribed by the Town.

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

~~f. Ellis Act. Parcels on which an owner of residential real property has exercised the owner's rights under state law (Government Code Section 7060) to withdraw accommodations from rent or lease within fifteen (15) years preceding the development application are not eligible for a two-unit housing development.~~

g.f. *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:

1. A limitation restricting the property to residential uses only; and
2. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.

(4) *Exceptions.* If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two (2) primary dwelling units or physically preclude either of the two (2) primary dwelling units from being at least eight hundred (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.

- a. *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.~~

Sec. 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) *Applicability.* When an application is submitted that includes both the construction of a two-unit development under this section and other redevelopment work that is not integral to the creation of a new dwelling unit and would generally require discretionary review, only the portions required for construction of the new dwelling unit shall be reviewed ministerially;
- (3) *Review Process.* The Community Development Director shall consider and approve or deny an application for a proposed two-unit housing development pursuant to this section within 60 days from the date the Town receives a completed application. If the Director has not approved or denied the completed application within 60 days, the application shall be deemed approved. A completed application must include all the submittal requirements listed in the associated SB 9 application packet, as well as the required processing fees;
- (4) *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;
- (5) *Neighbor notification.* In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across

the street and the two (2) parcels on each side of the properties directly across the street). This noticing is for informational purposes only and is not intended to create a discretionary review process.

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

- (7) *Expiration.* Approval of a two-unit housing development application shall expire two (2) years after the date of approval unless the approval is used and vested before expiration, per Town Code Sections 29.20.320 and 29.20.335;

- (85) *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~~.

If the Director denies an application for a proposed two-unit housing development pursuant to this section, the Director shall, within 60 days of receipt of the completed application, return in writing a full set of comments to the application with a list of items that are defective or deficient and a description of how the applicant can remedy the application; and

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

Sec. 29.10.650. Subdivision standards.

Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

- (1) *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:
- a. *Flag/corridor lots.* The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;
 - b. *Minimum lot size.* Each new parcel shall be approximately equal in lot area provided that one (1) parcel shall not be smaller than forty (40) percent of the lot area of the original parcel proposed for subdivision. In no event shall a new parcel be less than one thousand two hundred (1,200) square feet in lot area. If one (1) of the proposed lots is a flag/corridor lot, the area of the access corridor shall count toward the lot area as follows:
 1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - c. *Minimum lot width.* Each new parcel shall maintain a minimum lot width of twenty (20) feet;
 - d. *Minimum public frontage.* Each new parcel shall have frontage upon a street with a minimum frontage dimension of twenty (20) feet, except as allowed above for flag/corridor lots;
 - e. *Parking.* Each dwelling unit within an urban lot split shall contain adequate space for one on-site parking space, except for 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;

f. Sidewalks. Sidewalks shall be constructed on all streets and highways within an urban lot split; except, that in land being subdivided into lots twenty thousand (20,000) square feet or more in size in accordance with Town Code Section 29.10.06712. In Hillside Area lot splits, a walkway or path shall be constructed on one side of the street or highway;

g.e. Number of lots. The parcel map to subdivide an existing parcel shall result in no more than two (2) parcels; and

h.f. 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.

(2) *General requirements and restrictions.* The following requirements and restrictions apply to all proposed urban lot splits:

- a. *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;
- b. *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;
- c. *Existing structures.* Existing structures located on a parcel subject to an urban lot split shall not be subject to a setback requirement. However, any such existing structures shall not be located across the shared property line resulting from an urban lot split, unless the structure is converted to an attached unit as provided for in Table 1-2 (Setback Requirements, Exception Number ~~43~~). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
- d. *Intent to occupy.* The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one (1) of the housing units on the newly created parcels as their principal residence for a minimum of three (3) years from either:
 1. The date of the approval of the urban lot split when the intent is to live in an existing residence; or
 2. 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;
- e. *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 setbacks as specified by Table 1-2 (Setback Requirements, Exception Number 2), maximum allowed lot coverage, and maximum allowed floor area ratio;
- f. *Number of units.* No more than two (2) 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;

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g. *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;

h. *Restrictions on demolition.* The proposed urban lot split shall not require ~~either the demolition of more than twenty-five (25) percent of the exterior walls~~ 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. This shall be evidenced by an attestation from the property owner;
2. 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~~

~~3. Ellis Act. Parcels on which an owner of residential real property has exercised the owner's rights under state law (Government Code Section 7060) to withdraw accommodations from rent or lease within fifteen (15) years preceding the development application; or~~

~~4.~~ Housing that has been occupied by a tenant in the last three (3) 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 (3) years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using and urban lot split;

i. *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);

j. *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:

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 properties to residential uses only; and
3. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.

k. *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;

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

m. *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.

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Sec. 29.10.660. 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) *Review Process.* The Community Development Director shall consider and approve or deny an application for a proposed urban lot split pursuant to this section within 60 days from the date the Town receives a completed application. If the Director has not approved or denied the completed application within 60 days, the application shall be deemed approved. A completed application must include all the submittal requirements listed in the associated SB 9 application packet, as well as the required processing fees;
- (4) *Neighbor notification.* In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street). This noticing is for informational purposes only and is not intended to create a discretionary review process;
- (5) *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;
- (6) *Expiration.* Approval of an urban lot split permit shall expire two (2) years after the date of approval per Town Code Section 24.20.070 unless the Parcel Map is recorded;
- (7) *Development.* Development on the resulting parcels is limited to a project approved by the two-unit housing development process, the Town's Accessory Dwelling Unit process, or through the Town's standard discretionary process;
- (8) *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,~~
If the Director denies an application for a proposed urban lot split pursuant to this section, the Director shall, within 60 days of receipt of the completed application, return in writing a full set of comments to the application with a list of items that are defective or deficient and a description of how the applicant can remedy the application; and
- (9) *Appeals.* Urban lot split application decisions are ministerial and are not subject to an appeal.

Sec. 29.10.670. Sunset clause.

If SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this division shall be repealed."

(Ord. No. 2334, § 2, 11-15-22)

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