

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

December 18th, 2021

SB-9 Rule Changes for Consideration.
[REVISED AFTER READING THE DRAFT ORDINANCE]

Council Members: **[Please ignore my previous thoughts on the subject]**

I have read the SB-9 Law, together with the associated Code Sections that it refers to. I have also read the draft Ordinance that you will be deliberating on December 21st and am impressed with the thoroughness of the analysis by staff and the Town Attorney in putting this together (compared with other jurisdictions). As such I will limit my comments to the Ordinance where I see some (minor) areas that I think could/should be addressed. I have referenced the Ordinance Sections Directly:

1. **Section III: Definitions:** "Single-family residential zone" should consider including HR (Hillside Residential) - as this zone is clearly "single-family.
2. **Section IV: Exclusions:** "Very High Fire Hazard Severity Zone" should permit a project which adopts "65913.4(a)(6)(D) - fire hazard mitigation measures pursuant to existing building standards" and can hence satisfy SCCFD approval for the project. The failure to satisfy SCCFD requirements (including access, turnouts, turnarounds, fire sprinklers and other measures), as well as Building Code construction techniques and building materials should disqualify a project.
3. **Section V.A.5: Floor Area Ratio and Lot Coverage:** This should clarify FAR With or Without the ADU sq ft allowance. [I suggest "Without" for some restriction on the FAR for "2 homes" if SB-9 ministerial approval is requested]. Additionally it must allow one 800 sq ft additional residence to be built, even if the Existing home is already at the allowable FAR.
4. **Section V.A.11 Table 1-1: Setback Requirements:** A distinction should be made for Front Setback for the "rear parcel" of a Flag Lot. Assuming SB-9 does allow the creation of some flag lots a reduction of the rear parcel front setback might give more room at the rear of the property - which would be better. Perhaps "front and rear setbacks combined must not exceed front setback for the zoning district with neither being less than 4 ft" [or something similar].
5. **Section V.C.4c: Tenant Occupancy:** A 'Homeowner Exemption' identifies only a 'Primary Residence', which might be too limiting. Perhaps evidence by utility statements or something similar could be used as a second option?
6. **Section V.D.4: Denial:** Strike the word "~~only~~" if the Building Official", as they can also be denied if an applicant fails to abide by "Objective Standards".

7. **Section VI.A.1: Flag/Corridor Lots:** SB-9 - 66411.7(e)(2) allows a jurisdiction to require a parcel to "have access to, provide access to, or adjoin the Public RoW". It is not clear that this eliminates the use of an easement to access the "rear" parcel in a flag lot. As required by the proposed 20 ft fee title corridor, this would require a distance of 20 ft + side setback adjacent to a building, which might provoke litigation. An alternative such as "an access corridor or easement necessary to satisfy SCCFD fire standards shall be provided to the rear parcel of any flag lot".
8. **Section VI.A.2. Lot Lines:** ". . . . or Parallel to Existing Lot Lines". Not all lots are regular in shape and even this will not satisfy all situations, but it helps and will give the Community Development Director some more flexibility.
9. **Section VI.A.3. Min Lot Size:** ". . . . exclusive of **any** access corridor **<30 ft in width.**" [at what point does an "access corridor" become part of the size calc?]
10. **Section VI.A.5. Min Frontage:** You might not require a Min Frontage if you allow an easement to access the rear parcel of a flag lot.
11. **Section VI.B. Intent to Occupy:** There is a problem in SB-9. The 3-year limitation should commence from the Recordation of the Lot "OR Certificate of Occupancy" in case a construction project is proposed.
12. **Section VI.C.5. Denial:** Strike the word "~~only~~ if the Building Official", as they can also be denied if an applicant fails to abide by "Objective Standards".

My original concern was that the Town should:

1. Make ministerial approval reasonably restrictive so as to encourage owners to elect to use the existing A&S process where possible but allow some flexibility for smaller projects. The draft Ordinance does this in some measure if the FAR rule does not include the ADU allowance for ministerial projects.

The (modified) matrix shows what I believe you would be approving with this draft Ordinance. I think that it is fair, but would encourage you to look carefully at the minor amendments that I have suggested. I believe that these would clarify a couple of issues and remove (some) areas of potential future litigation from the picture.

I hope that my comments are clear enough for you to grasp the gist of what I am suggesting. SB-9 is tantamount to 'spot zoning' and needs to be addressed carefully so as to not cause the Town to change too radically. Can ministerial approval allow reasonable projects to proceed, with objective standards as the measure? I suspect that it can.

The Ordinance you approve on December 21st will be interesting to discuss. I would like to commend staff for their work on this matter. There was a lot of thought put into it.

Thank you

Tony Jeans

TABLE OF OPTIONS FOR MINISTERIAL APPROVAL - SB-9 BASIS FOR DISCUSSION

What is There Now?	Main House	ADU	JADU	House #2	Total Units
Single Lot Now					
Vacant	[Zoning Std]	[ADU Limit]	[JADU Limit]	0	3
House	0	[ADU Limit]	[JADU Limit]	0	3
House + ADU	0	0	[JADU Limit]	0	3
House + ADU + JADU	0	0	0	0	3
Single Lot post SB-9					
Vacant	TBD	10% - 1200	500	TBD	4
House	0	10% - 1200	500	TBD	4
House + ADU	0	0	500	TBD	4
House + ADU + JADU	0	0	0	TBD	4
Urban Lot Split -The 2 Smaller Lots will fall into the next zoning district standard below.					
<u>Urban Split - Parcel 1</u>					
Vacant	TBD	0	0	TBD	2
House	0	0	0	TBD	2
House + ADU	0	0	0	0	2
House + ADU + JADU	0	0	TBD	0	3-Feb
<u>Urban Split - Parcel 2</u>					
Vacant	TBD	0	0	TBD	2
ADU	0	0	0	TBD	2
ADU + JADU	0	0	0	0	2

Comments: This is all Subject to Legal Commentary

Rules for the items shown as **TBD** [to be defined] need to be set for Ministerial Projects
 The following Table suggests what is proposed in the draft Ordinance.

TABLE OF OPTIONS FOR MINISTERIAL APPROVAL - LOS GATOS ORDINANCE

What is There Now?	Main House	ADU	JADU	House #2	Total Units
Single Lot Now					
Vacant	[Zoning Std]	[ADU Limit]	[JADU Limit]	O	3
House	O	[ADU Limit]	[JADU Limit]	O	3
House + ADU	O	O	[JADU Limit]	O	3
House + ADU + JADU	O	O	O	O	3
Single Lot post SB-9					
Vacant	FAR Split w/ #2	10% - 1200	500	FAR Split w/ Main	4
House	O	10% - 1200	500	FAR - Main or 800	4
House + ADU	O	O	500	FAR - Main or 800	4
House + ADU + JADU	O	O	O	FAR - Main or 800	4
Urban Lot Split -The 2 Smaller Lots will fall into the next zoning district standard below.					
<u>Urban Split - Parcel 1</u>					
Vacant	FAR Split w/ #2	O	O	FAR Split w/ Main	2
House	O	O	O	FAR - Main or 800	2
House + ADU	O	O	O	O	2
House + ADU + JADU	O	O	Demolish	O	2
<u>Urban Split - Parcel 2</u>					
Vacant	FAR Split w/ #2	O	O	FAR Split w/ Main	2
ADU	O	O	O	FAR - Main or 800	2
ADU + JADU	O	O	O	O	2

Comments: This is all Subject to Legal Commentary

The Ministerial Option would split the FAR between 2 homes on a Vacant Lot

The Second Unit would be restricted to 800 ft if the existing Main Residence is at FAR or greater.

From: Phil Koen

Sent: Sunday, December 19, 2021 6:09 PM

To: Rob Rennie; Matthew Hudes; Mary Badame; Maria Ristow; Marico Sayoc

Cc: Laurel Prevetti; Shelley Neis; jvannada; Rick Van Hoesen

Subject: Agenda Item #20

Dear Council Members,

We would suggest the following requirements be included in the SB 9 urgency ordinance being considered by the Town Council. These provisions have been included in other cities SB 9 urgency ordinances. They further the purpose of SB 9 which is to promote the development of affordable housing in a thoughtful manner.

Thank you.

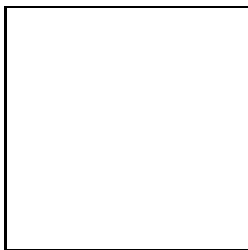
Los Gatos Community Alliance

Objective standards and requirements for new dwelling units on a parcel that is not being subdivided.

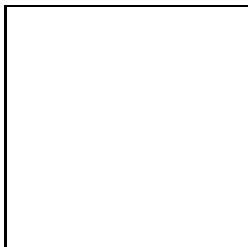
- 1) The subdivision is subject to all impact or development fees related to the creation of a new parcel.
- 2) Upon receipt of a subdivision application using the provisions of this article, the Town shall notify all owners and occupants within a 500-foot radius from the subject parcel that a parcel map has been filed with the Town
- 3) A note on the parcel map and a recorded deed restriction in a form approved by the Town's Attorney's Office shall be applied to all newly created parcels indicating that the parcel was split using the provision of this article and that no further subdivision of the parcels is permitted. In addition, the deed restriction shall stipulate that all new units developed on the new parcels shall be income restricted to low and very low-income households based on the most recent Santa Clara County Area Median Income (AMI) levels.
- 4) Prior to the recordation of the parcel map, the applicant shall sign and record an affidavit stating that the applicant intends to reside in one of the proposed or existing primary dwelling units or SB 9 units for three years from the date of the approval of the subdivision. This requirement shall not apply if the applicant is a community land trust or a qualified nonprofit corporation as provided in Sections 402.1 and 214.15 of the Revenue and Taxation Code.

Objective standards and requirements for new dwelling units on a parcel that is not being subdivided.

- 1) The maximum floor area of an SB 9 unit shall be 800 square feet. Basements and bunkers are not permitted.



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