



**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.

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SUBJECT: Senate Bill 9

DATE: September 23, 2022

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 an urban lot split;

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

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

- a. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;
- b. A limitation restricting the properties to residential uses only; and
- c. A requirement that any dwelling units on the property may 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 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.

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

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 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.

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 (MWEL0);

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 covenant 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 Lot 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 and 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 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 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 Lot 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 and 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 covenant 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 Lot 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 and 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. XXXX¹

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 [--] Official⁴ 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 located⁸; 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 space¹¹ 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.

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 Affidavit¹². 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 [--] Official¹³ 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 located¹⁷; 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 required¹⁹ 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,

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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](#).

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 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. **Location 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 Design 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.

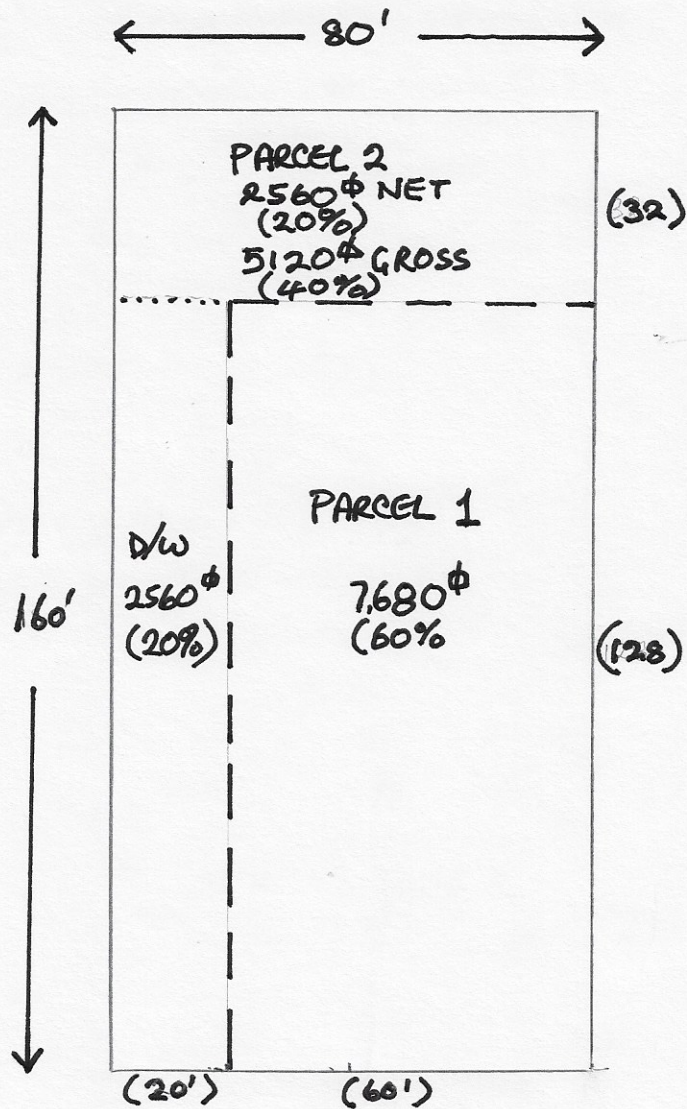
Question 5: The Discretionary Process

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 = 5,120' PARCEL 2

BUT 1/2 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 signature block]

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 ($6200 \times 1.1 = 6820$, 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 accommodate 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 VHSZ 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 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 waste 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

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.

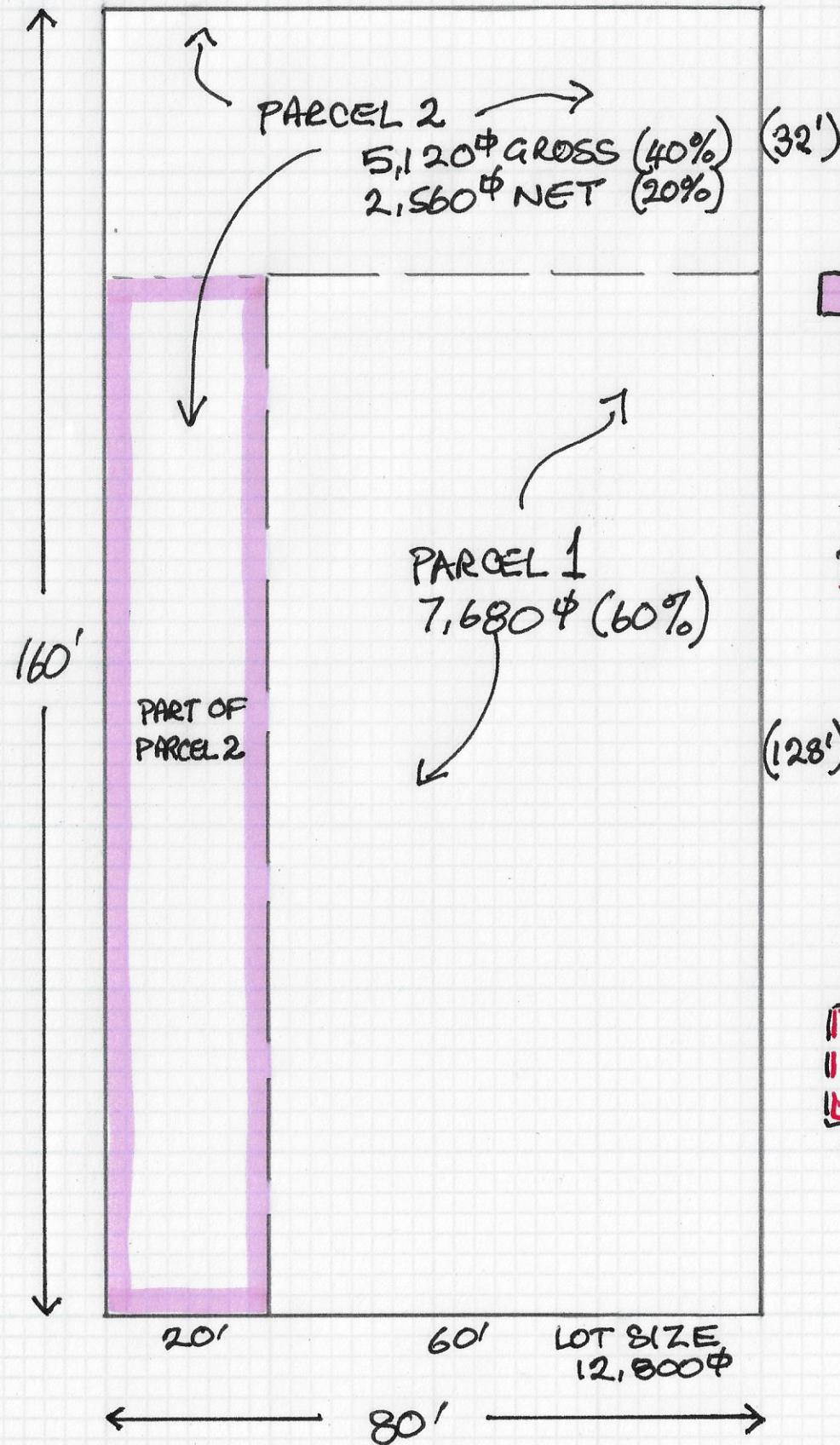
With the existing Ordinance you can get some really stupid lot configurations, not intended by SB-9 and not desirable in the Town. This is your chance to correct it.

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)



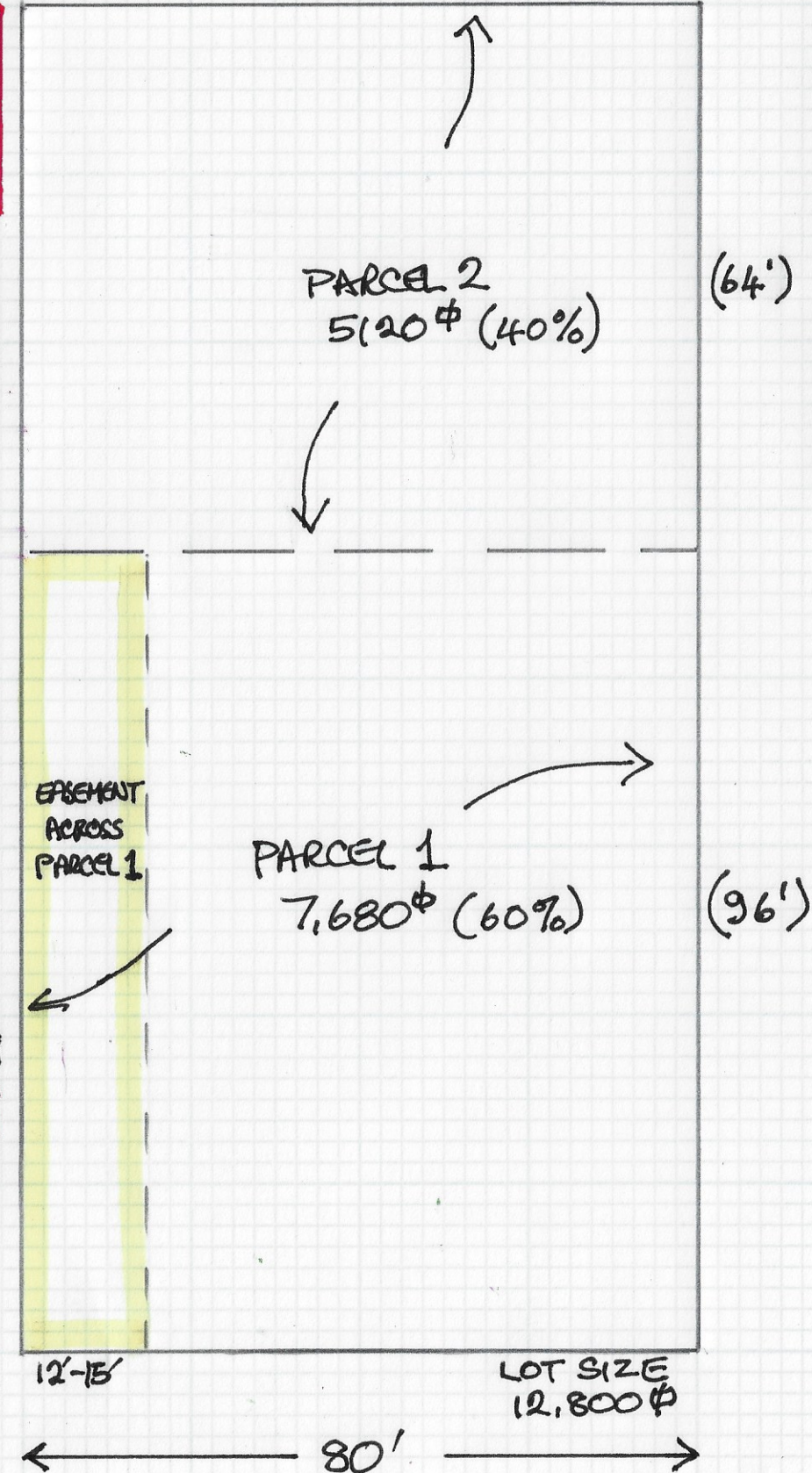
WHICH IS THE BEST WAY TO SPLIT A PROPERTY AND CREATE A FLAG LOT?

PANHANDLE IS PART OF PARCEL 2 AND MUST BE 20' WIDE (+ FRONTAGE)

PROBLEM 1: THIS CAUSES SOME VERY BAD LOT DESIGNS 160'

(128') 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 ALSO THIS:

MONTE SERENO
SARATOGA
COUNTY OF SANTA CLARA
CITY OF SAN JOSE

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