



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/1/2022

ITEM NO: 11

DATE: October 27, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Introduce an Ordinance, by Title Only, Amending Chapter 29 (Zoning Regulations) of the Town Code to Regulate Urban Lot Splits and Two-Unit Housing Developments in Compliance with Senate Bill 9. Town Code Amendment Application A-22-002. Location: Town-wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Introduce an ordinance, by title only, amending Chapter 29 (Zoning Regulations) of the Town Code to regulate urban lot splits and two-unit housing developments in compliance with Senate Bill 9.

BACKGROUND:

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

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

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

PREPARED BY: Ryan Safty
Associate Planner

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

BACKGROUND (continued):

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

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

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

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

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

DISCUSSION:

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

DISCUSSION (continued):

A. No Modifications Recommended

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

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

DISCUSSION (continued):

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

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

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

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

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

DISCUSSION (continued):

- Although this would not be included in the Ordinance, Planning Commission recommended that this be implemented in the project review process, if possible.
- **Affordability Incentives.** During Planning Commission discussion on size limitations and affordability, the Commission requested that consideration be given for incentives and benefits if a unit is deed restricted for affordability. Similar to what is included in Town Code Section 29.10.320 for Accessory Dwelling Units (provided below), certain incentives such as reduced permit fees or no-interest construction loans could be provided for SB 9 units that are made affordable via a deed restriction.
 - *Town Code Section 29.10.320(a): "Incentive program. Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling."*

C. Recommended Modifications

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

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

DISCUSSION (continued):

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

DISCUSSION (continued):

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

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

DISCUSSION (continued):

D. Additional Topics

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

PUBLIC OUTREACH:

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

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

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

PUBLIC COMMENT:

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

CONCLUSION:

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

ALTERNATIVES:

Alternatively, the Council may:

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

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SUBJECT: Town Code Amendment Application A-22-002 - Senate Bill 9

DATE: October 27, 2022

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

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