

**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
<p>Exceptions:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) Except for primary dwellings constructed as a duplex or attached single-family residences.</p>		

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 1<sup>st</sup> 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 (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: \_\_\_\_\_

ATTEST:

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

DATE: \_\_\_\_\_

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