



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/28/2022

ITEM NO: 3

DATE: September 23, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Permanent Regulations to Comply with the Requirements of Senate Bill 9. Town Code Amendment Application A-22-002. Location: Townwide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Consider amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding permanent regulations to comply with the requirements of Senate Bill 9 (Exhibit 1) and forward a recommendation to the Town Council.

BACKGROUND:

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

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

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

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Associate Planner

Reviewed by: Planning Manager and Community Development Director

BACKGROUND (continued):

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

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

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

On September 21, 2022, the Town hosted a Community Meeting to discuss developing a permanent SB 9 Ordinance and foster public participation. A summary of topics discussed is available below.

DISCUSSION:

The Draft Ordinance (Exhibit 1) is based on the Urgency Ordinance adopted by Town Council in February 2022, and modified based on: State and Regional Agency direction; clarification of initial standards; and reformatted to integrate it within Chapter 29 of the Town Code (Zoning Regulations).

A. Amendments per State and Regional Agency Direction

The following is a summary of draft amendments in response to State direction and the Association of Bay Area Governments (ABAG) SB 9 model ordinance:

- **Amended Definitions.** The definition of *single-family residential zone* in the Draft Ordinance was amended to include Hillside Residential (HR) zones per the California Department of Housing and Community Development SB 9 Fact Sheet (Exhibit 5).

DISCUSSION (continued):

- **New Definitions.** The following definitions were added to the Draft Ordinance to comply with State law and per the direction of the of the ABAG SB 9 model ordinance (Exhibit 6):
 - Adjacent parcel;
 - Car-share vehicle;
 - Common ownership or control;
 - First residential unit; and
 - Sufficient for separate conveyance.
- **Hillside Standards.** Based on the amended definition (above) to include HR zoned properties, the following additional standards were added to ensure consistency with the Hillside Development Standards and Guidelines (HDS&G). No hillside standards were included in the Urgency Ordinance as the Town was not anticipating SB 9 projects in these zones.
 - Building height: A separate building height limitation of 16 feet has been included for HR zoned properties. The HDS&G allows buildings to be a maximum of 18 feet tall when “visible” from the viewing areas or located along a significant ridgeline. To ensure that this standard is objective, and to avoid confusion with the existing 16-foot height limitation when a non-hillside zoned building footprint is located within the required side or rear setbacks of the applicable zoning district, the Draft Ordinance includes a 16-foot height limit for all HR zoned properties.
 - Driveway width: Consistent with the HDS&G requirements, driveway width must be a minimum of 12 feet. This standard would also help ensure that the Santa Clara County Fire Department can approve of the driveway plans when reviewed at building permit stage.
 - Driveway slope: Consistent with the HDS&G requirements, driveways cannot exceed 15 percent in slope. This standard would also help ensure that the Santa Clara County Fire Department can approve of the driveway plans when reviewed at building permit stage.
 - Cut and fill depths: The maximum cut and fill table from Chapter III of the HDS&G was added for applicable SB 9 site elements to ensure that new construction retains the existing landform of the site and follows the natural contours.
 - Least Restrictive Development Area (LRDA): To ensure construction occurs in the most appropriate areas on a hillside parcel, the 30 percent slope restriction for LRDA was added from Chapter II of the HDS&G.
 - Retaining walls: Consistent with HDS&G requirements, retaining wall restrictions were added to ensure the use of retaining walls are limited and appropriate.

DISCUSSION (continued):

- Light Reflectivity Value (LRV): Consistent with the HDS&G requirements, the LRV of materials used on HR zoned parcels would be limited to 30 to ensure the building colors blend with the natural vegetation of the hillsides.
- Finished floor height: The maximum height that a finished floor can project above grade has been increased from 18-inches to three feet in all zones for better consistency with Chapter V of the HDS&G.
- **Exclusion Areas.** Prime Farmland and Wetlands are included as an area that is excluded from the SB 9 Ordinance per the ABAG SB 9 model ordinance.
- **Utility Connections.** Utility connection requirements were added per the ABAG SB 9 model ordinance.
- **Replacement Housing.** A reference to the replacement housing provisions of Government Code Section 66300(d) was added, per the ABAG SB 9 model ordinance, to ensure that existing housing units proposed to be demolished as a part of an SB 9 application will be replaced.
- **ADUs.** The existing Urgency Ordinance states that new ADUs are not allowed on parcels that have used either SB 9 application type. Based on State direction, ADUs must be allowed on parcels that have not undergone an urban lot split. The ADU references were amended to update this section.
- **Owner Attestation.** Per the direction of the of the ABAG SB 9 model ordinance, the owner attestation and recorded covenant requirements have been updated.

B. Draft Amendments to Clarify Existing Standards

The following is a summary of amendments recommended by staff to help clarify existing standards. These amendments are included in the Draft Ordinance. The majority of these changes are a result of questions asked by members of the public on the existing Urgency Ordinance.

- **Legal Parcel.** The legal parcel requirement was amended to specify that applications for any SB 9 application type will only be accepted on proposed parcels with either a recorded parcel map or certificate of compliance. Applicants would no longer be able to submit both a two-unit housing development and urban lot split application concurrently, as the two-unit housing development cannot be approved until the urban lot split is approved and the map is recorded.

DISCUSSION (continued):

- **Floor Area Ratio (FAR).** The existing Urgency Ordinance does not specify a cap on the use of the 10 percent FAR increase and is not clear as to how the 10 percent FAR increases are allowed for both two-unit housing developments and ADUs. Clarification was added to specify that the maximum additional floor area allowed from the 10 percent increase must be used for the first dwelling unit, and is therefore no more than 1,200 square feet. This language is consistent with the use of an FAR bonus for ADUs in current Town Code, and also states that the FAR increase cannot be combined with the increase for an ADU in Town Code Section 29.10.320.
- **Trees.** Reference to Town Code Chapter 29, Article 1, Division 2 (Tree Protection) was added to ensure that any proposed work complies with the Town's existing protection, removal, and replacement requirements.
- **Windows.** The existing Urgency Ordinance states that all second-story windows less than eight feet from rear and interior side property lines shall be clerestory, and that all other second-story windows shall be limited to the minimum size and number required for egress. This effectively restricted all second-story windows to be no more than the minimum needed for egress. The revision increases the distance requirement from eight feet to 10 feet, and removes the "all other" statement so that all second-stories within 10 feet from the side property line can have clerestory windows and larger windows as needed for egress. The intent of this regulation is to reduce potential privacy impacts from new second story windows, while increasing flexibility when those windows have at least a 10-foot setback from the property line.
- **Number of Units.** A sentence was added to both the two-unit housing development and urban lot split sections of the Draft Ordinance to specify the maximum number of units allowed to be built under these regulations as required by State law. Up to four units (including two primary dwelling units, an ADU, and a JADU) can be built on parcels that have not undergone an urban lot split; and two units (regardless of the unit type) can be built on each of the parcels that result from an urban lot split.
- **Intent to Occupy.** Clarification to the Intent to Occupy requirement for urban lot splits has been added to specify when the three-year occupancy requirement begins, depending on whether an existing residence is retained.
- **Lot Merger.** A sentence was added to clarify that when an owner or applicant splits their parcel and builds additional units with the allowed 10 percent FAR increase, they will then be prohibited from merging the parcels back into a single parcel unless existing Town Code requirements can be met and no new non-conformities are created.

DISCUSSION (continued):

C. Potential Changes from Public Comment

In the public comment and feedback received by staff since the approval of the Urgency Ordinance (Exhibit 7), there were seven comments that were repeated by several members of the public, which are discussed below:

- **Applicable Zones.** Comments received requested that HR zones be included in the permanent SB 9 Ordinance. As detailed above, per State direction, the Draft Ordinance has been updated to include HR zones in the *single-family residential zone* definition. In addition to inclusion of the HR zone, the Planning Commission could consider allowing SB 9 permits within other zoning designations, possibilities could include multi-family zones or in any zone where the existing use is a single-family use.
- **Grading Limitation.** Comments were received related to the grading limitation. Both the existing Urgency Ordinance and drafted updates for the Draft Ordinance include the grading restriction: grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a Grading Permit per Town Code Chapter 12, Article II. The reason for this limitation is for consistency with the Town Code where grading in excess of 50 cubic yards that is not used for building excavation requires a Grading Permit, and Grading Permits require an Architecture and Site application, which is a discretionary permit with a public hearing. As SB 9 requires ministerial review and approval of qualifying applications, the grading restriction was included to ensure SB 9 projects are processed ministerially. Per the Urgency Ordinance and Draft Ordinance, if over 50 cubic yards of grading is needed to develop the site, excluding building excavation, the applicant would need approval of a separate, discretionary Grading Permit. The majority of comments received regarding the grading limitation requested that the excavation exception be expanded to include any grading necessary for driveway and Fire access and turnarounds. Additional clarification could be added to state that lightwells that do not exceed the size required by building code would also be considered excavation to ensure this requirement is implemented objectively.
- **Fire Review.** Comments were received requesting that Santa Clara County Fire Department be included in the review SB 9 ministerial applications. This would not need to be included in this Ordinance, but could be recommended as part of implementation of the project review process.
- **Windows.** Comments were received regarding the second-story window design standards, requesting that the clerestory and egress minimums be removed for two-story SB 9 units that meet the underlining zoning setbacks. The standards were originally included to minimize privacy impacts as State law limits setbacks to four feet on internal side and rear property lines. As stated above, the Draft Ordinance amends the window standards to decrease restrictions so that all second stories within 10 feet from the side and rear property lines can have clerestory windows and larger windows as needed for egress.

DISCUSSION (continued):

- **Second-Story Step-Back.** Similar to the comment above, comments were received regarding the second-story step-back requirement, requesting that this be removed for two-story SB 9 units that meet the underlining zoning setbacks. This standard provides both a reduction in potential privacy impacts, as well as preventing construction of walls that extend the full height of the new two-story residence. Modification of this standard or replacement with alternative objective standards could be included in Planning Commission's recommendation to Town Council.
- **Size Limit.** Comments have been received in opposition to the 1,200-square foot size limitation for the first new SB 9 unit. The original Urgency Ordinance included the 1,200-square foot size limitation for any SB 9 unit. When the Urgency Ordinance was extended, the Town Council modified this section to only apply to the first new unit. The 1,200-square foot size limitation is consistent with the maximum sizes of ADUs, and the second unit is allowed to use the remainder of the floor area allocated based on the lot's FAR.
- **Frontage Requirement.** Comments were received regarding the minimum width required for the access corridor of a flag/corridor lot, as well as the method of recordation of this access area. The Urgency Ordinance and Draft Ordinance require a minimum of 20 feet for the access corridor width, which matches the minimum lot width requirement. This standard is consistent with the minimum width required for the "corridor" of corridor lots per Town Code Section 29.10.085. The comments also raise concerns with the requirement that the access corridor be "in fee" as a part of the parcel and not as an easement; specifically, the feedback urges that the access corridor should count towards the proposed lot sizes. The original Urgency Ordinance and Draft Ordinance both state under the Minimum Lot Size requirement that the minimum lot area for a flag/corridor lot shall be exclusive of the access corridor. This standard is also consistent with Town Code Section 29.10.085, which states that the area of the corridor may not be applied toward satisfying the minimum lot area requirement. The Planning Commission could choose to modify these requirements in their recommendation to Town Council.

D. Public Outreach

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

- A poster at the Planning counter at Town Hall and the Town Library;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's Next Door page.

DISCUSSION (continued):

In addition to the outreach listed above, the Town held a Community Meeting on September 21, 2022 to foster public participation. Comments received during the meeting included: concerns regarding the grading limitation; the frontage requirement of corridor/flag lots; the 16-foot height limitation for HR zones; the 30 percent slope restriction for building footprints in the HR zones; the three-foot finished floor height limitation; and the right-angle requirement for new side property lines in the HR zones. Additionally, Town staff received questions regarding: what applicable zones are allowed to use SB 9; how the 40/60 lot split requirement is applied; what the minimum and maximum unit sizes are; whether SB 9 applications are ministerial or discretionary; why the Town was adopting a SB 9 Ordinance; and how many units could be built on residentially zoned parcels prior to SB 9.

PUBLIC COMMENTS:

Multiple public comments (Exhibit 7) have been received since Urgency Ordinance 2327 was adopted at the beginning of 2022. These comments were discussed in the previous section.

ENVIRONMENTAL REVIEW:

This Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to SB 9.

CONCLUSION:

A. Recommendation

Staff recommends that the Planning Commission receive and consider public comments, review the information included in the staff report, provide input on any additional recommended modifications to the Draft Ordinance (Exhibit 1), and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance.

B. Alternatives

Alternatively, the Commission can continue the matter to a date certain with specific direction.

PAGE 9 OF 9

SUBJECT: Senate Bill 9

DATE: September 23, 2022

EXHIBITS:

1. Draft Permanent SB 9 Ordinance
2. SB 9 Legislation
3. SB 9 Urgency Ordinance 2326
4. SB 9 Urgency Ordinance Extension 2327
5. California Department of Housing and Community Development SB 9 Fact Sheet
6. Association of Bay Area Governments SB 9 Model Ordinance
7. Public Comment received prior to 11:00 a.m., Friday, September 23, 2022

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