

From: Terence J. Szewczyk

Sent: Tuesday, December 21, 2021 9:04 PM

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

Cc: Laurel Prevetti; Jennifer Armer

Subject: SB9- Urgency Ordinance

Dear Mayor & Town Council.

Thank you for the opportunity to participate in the hearing on this matter. There are answers to many of your questions and concerns that were readily available:

- 1) The 3 years is currently noted "from the date of approval of the Urban Lot Split" in the CA law.
- 2) The restriction for affordability was not intended by the law.
- 3) SB9 is for R1 only -- not applicable to high-density zoning.
- 4) There is no loss of tax revenue with a lot split. The original owner may retain the property tax basis based on their age at that house. The new lot would be taxed at market rate as a new lot and assessed for the new house if it is built.
- 5) This is ministerial.

Thanks again.

Best regards, Terry

Terence J. Szewczyk. P.E.

TS/Civil Engineering, Inc

From: Phil Koen
Sent: Tuesday, December 28, 2021 11:42 AM
To: Joel Paulson; Laurel Prevetti
Cc: jvannada; Rick Van Hoesen; David Weissman
Subject: SB 9 subdivision object standards

Hello Joel,

Happy Holidays to you.

I was able to watch the Council meeting regarding the SB 9 urgency ordinance. I was curious about your comment that there was language in SB 9 which precluded local governments from adopting objective zoning standards or subdivision standards which would “render a project economically unfeasible” (reference about 1:15:30 in the video).

I have searched SB 9 and am unable to find any such language. What I did find under 66411.7 (b) (3) (c) (2) was language which stated objective standards that had the “effect of **physically** precluding the construction” of additional units were prohibited. The word “physically” as a qualifier to construction seemingly does not prevent the adoption of objective standards which would have economic or financial impacts, especially if these standards furthered access to affordable housing. Requiring affordable housing to be built on a lot split under SB 9 does not preclude the “physical” construction of the new unit. Rather it helps ensure the development of affordable housing. It does have an economic/financial impact for sure **on the subdivision decision** (as opposed to the physical construction). Presumably if the State wanted to include financial or economic effects on SB 9 construction, they would have added language which specifically included financial or economic effects which would preclude construction.

SB 9 is focused on “ensuring access to affordable housing”, not market rate housing. It is hard to imagine anyone being successful in a legal challenge to an objective zoning and/or subdivision standard which ensured access to affordable housing on a subdivision under SB 9. That is why a deed restriction on a lot created by a SB 9 subdivision which would require the development of affordable housing makes sense. To allow lot splits under SB 9 simply so more market rate housing can be built, makes no sense and is inconsistent with SB 9. The ability to split a lot and build market rate housing already exists under the current zoning laws. But to do that, you must comply with those zoning rules which are more stringent than SB 9.

Can you point me to the language in SB 9 that supports your statement? What am I missing? The Council needs to be fully informed on this matter.

All the best,

Phil Koen

From: Joel Paulson
Sent: Friday, January 21, 2022 3:44 PM
To: Phil Koen; Laurel Prevetti
Cc: jvannada; Rick Van Hoesen; David Weissman; Robert Schultz
Subject: RE: SB 9 subdivision object standards

Phil – Thank you for your email. I am aware of Los Altos Hills language. Town staff’s understanding of State law remains that an objective standard requiring deed restricted affordable housing would not be a valid objective standard. Hopefully, the State will provide further guidance on this matter soon.

I understand your concern with the minimum unit square footage requirement of 150 square feet. The Town is considering whether to remove this requirement as it is probably not necessary for our local ordinance.

As previously mentioned, I encourage you to provide comments, on these items and any other topics you have, on the Urgency Ordinance for Council consideration at the February 1, 2022 meeting when the Council will discuss this matter again.

Thanks.



Joel Paulson • Community Development Director

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6879 • jpaulson@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>



General Plan update, learn more at www.losgatos2040.com



Housing Element update, learn more at <https://engagelosgatoshousing.com>

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

From: Phil Koen
Sent: Wednesday, January 12, 2022 5:41 PM
To: Joel Paulson; Laurel Prevetti
Cc: jvannada; Rick Van Hoesen; David Weissman
Subject: RE: SB 9 subdivision object standards

Joel,

Thank you for your reply. I greatly appreciate you taking the time to do so.

I am obviously not a land use attorney, so these are my opinions based on my reading of SB 9. SB 9 does not address the implementation of rules or restrictions including covenants, conditions, or deed restrictions. SB 9 is totally silent on this. To this point, I have attached a draft urgency ordinance from Los Altos Hills, which included the following requirement on lots subdivided under SB 9:

In addition, the deed restriction shall stipulate that all new units developed on the new parcels shall be income restricted to low and very low-income households based on the most recent Santa Clara County Area Median Income (AMI) levels.

Based on this, there is evidence to support that a deed restriction on new units developed from a lot split might be legal. The City Attorney for Los Altos Hills certainly believes that these deed restrictions are legal. Simply because SB 9 does not state that deed restrictions which require affordability are permissible, does not mean that such restrictions are prohibited. Here is the language from SB 9 that controls what a local agency can and can not do:

2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

A deed restriction requiring affordability does not physically prevent the construction of such units. They can be physically constructed. And it is certainly an objective standard since the affordable income levels are defined and published annually by the State.

SB 9 never mentions the words “economically infeasible” or remotely even suggests that there is some type of “economic” test in determining the construction of units or subdivision of lots. The reason is that these are subject terms. Based on this, I would suggest that the Town seek the advice from HCD and/or consult an independent land use attorney so the Staff can become further informed regarding SB 9. I am reminded of our conversation regarding building in high fire hazard areas and how the Staff thinking evolved over time.

Regarding the minimum square footage requirement of 150 feet, I fail to understand why this was included. SB 9 already precludes units from being less than 800 sq. ft. So why establish a minimum of 150 sq ft when such minimum would be illegal under SB 9? Perhaps I am missing the point and welcome your input on this.

One last point – I am unclear as to your distinction between a lower and upper “a” case “affordable housing law”. Section 4 of SB 9 states:

The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

One can only conclude that the Legislature believes affordable housing is a major issue and as such has taken a major step in approving SB 9. I can see how this is a lower case "a" law.

Thank you.

Phil Koen



January 12, 2022

Job No: 22-200

Mayor Rob Rennie & Town Council Members
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Subject: Comments on SB9 Urban Lot Split – Urgency Ordinance

Honorable Mayor & Town Council,

Thank you for allowing us to participate in the December 21, 2021 public hearing for the Town consideration of an Urgency Ordinance to implement the Urban Lot Split element of SB9. Our small Planning & Civil Engineering firm was founded in 1972, the same year that California adopted the Subdivision Map Act (SMA). We have worked with these rules within multiple cities in Santa Clara County for 50 years now

One of the underlying principles that we've always respected is that local ordinance can't be more restrictive than CA law as per the provision below

66421. "Local ordinance refers to a local ordinance regulating the design and improvement of subdivisions, enacted by the legislative body of any local agency under the provisions of this division or any prior statute, regulating the design and improvements of subdivisions, insofar as the provisions of the ordinance are consistent with and not in conflict with provisions of this division.

This principle has been a guide for issues of exactions, dedications, public improvements and vesting tentative map rights. subdivision law is simply much more legalistic than the subjectivity and discretionary authority allowed under zoning law So, fortunately we normally don't need to advise clients & commissions on the bulk of buildings potential privacy impacts on neighbors.

Our request of you, is that you remain cognizant of the distinction between subdivision law and zoning code, during your deliberations. It seems that the building maximum area & grading permit disqualification are zoning matters that should not be within the local SB9 Ordinance.

1) 1200 SF Maximum Structure

The CA law specifies only a minimum of 800 SF and no maximum. Although other cities may have adopted a maximum. We have submitted a query to the CA Attorney General – Housing Task Force via State Senator Cortese. We will await the AG’s advice on the matter

2) 3 Year Occupancy after Certificate of Occupancy of the Building

This is stated in the CA law as 3 years from the date of approval of the Urban Lot Split. We disagree the Town has the ability to impose a different milestone

3) Grading Shall Not Exceed 50 CY.

The Urban Lot Split is supposed to be a MINISTERIAL PERMIT. The definition of objective standards for ministerial applications in CA law is;

The Housing Accountability Act, states that the term; “objective is defined as involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”

The problem here is that full topographic survey, preliminary site plan with driveways & buildings must be designed to assess the 50 CY limit. That is contrary to the objective standards allowed for a **ministerial** application. It also adds significant cost and review time to the application that was not intended by SB9

The intent of SB9 was to create an expedited process for a property owner to more easily draw a lot line to create a new building site and to provide additional housing opportunities. If a punitive floor area restriction and grading disqualifications are imposed, SB9 fails to realize the goal. We look forward to your continuing careful consideration of the matter on February 1, 2022.

Sincerely,



TS/CIVIL ENGINEERING, INC
Terence J. Szewczyk, P.E. C35527
Principal Engineer

January 12, 2022

Mayor Rob Rennie & Town Council
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Subject: CA Senate Bill 9
Town of Los Gatos Ordinance

Honorable Mayor & Town Council:

I am a 43 year South Bay resident with 2 years living in Town at [REDACTED] Kennedy Road (cross street Gem). My wife (Cindy) and I have our kids enrolled in the excellent Los Gatos Schools and I have my business office in downtown. We have a deteriorating house that has been cleared for demolition by the Town Historical Commission. It is our goal to replace the house with 2 new houses initially for my mother (Sui) and our immediate family, then ultimately one house for each child.

Our lot is 16,800 SF and readily divides into 2-8,000 SF lots. The preferred subdivision application is that allowed by SB9. It is simple and cost effective without complications that might result from a standard subdivision application.

We are concerned that the 1200 SF building size will destroy our estate planning goals. The allowable floor area under Town FAR code is approximately 2750 SF per lot or a total of 5500SF. If we are limited to 2 @ 1200 = 2400 SF, then we are deprived of 3100 SF of building area and the associated real estate value.

We respectfully request that you reconsider the 1200 SF building size limit as it has the unintended consequence of jeopardizing our project. We look forward to you deliberations on February 1, 2022.

Sincerely,
Patrick, Cindy & Sui Mock
[REDACTED] Kennedy Rd, Los Gatos

SUMMARY:

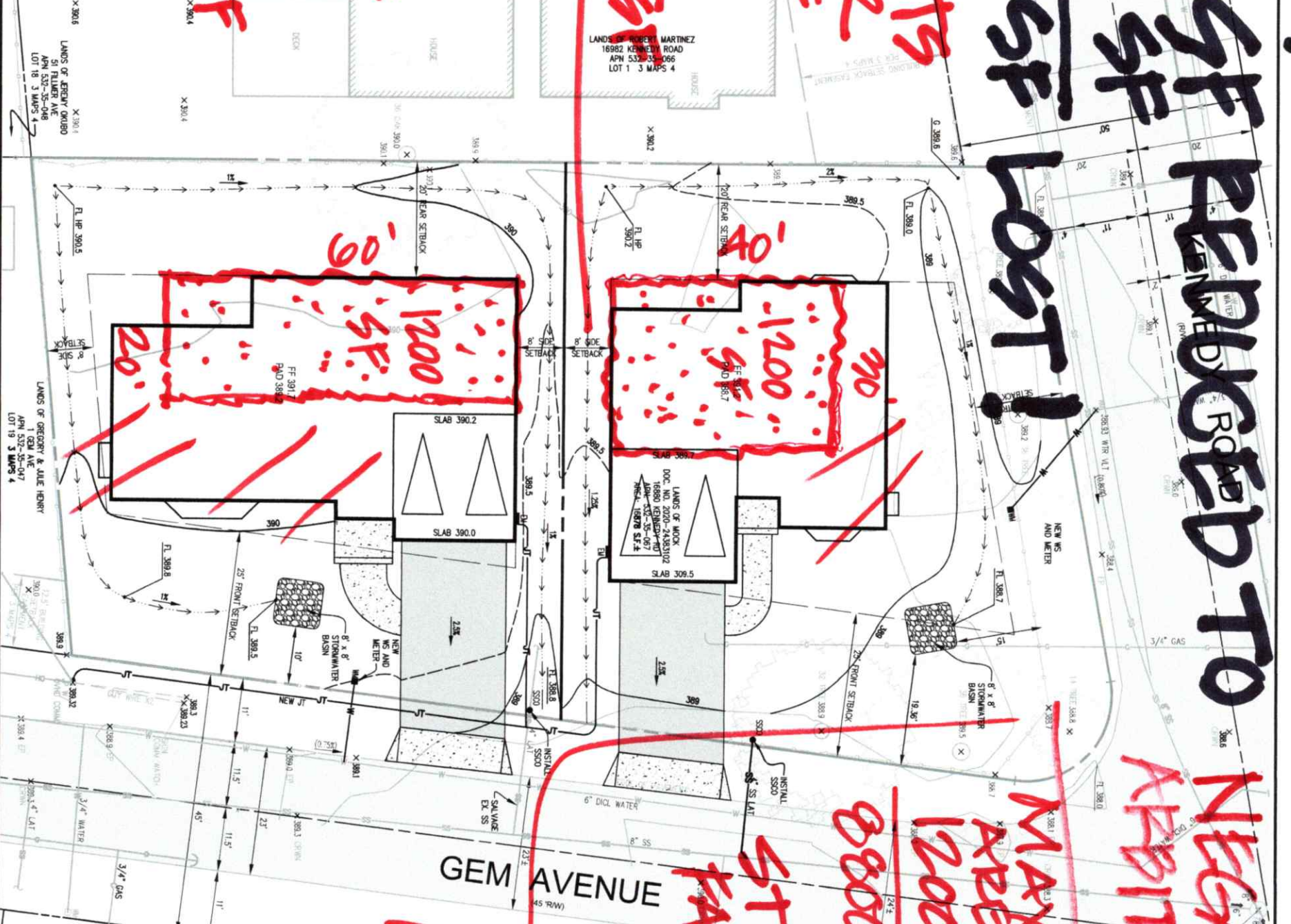
5424 SF REDUCED TO 2400 SF
2400 SF
2024 SF **LOST!**

NEGATIVE IMPACT OF ARBITRARY FLOOR AREA LIMITS

CHEATS OWNER OUT OF 2608 - 1200 = 1408 SF

CHEATS OWNER OUT OF 2816 - 1200 = 1616 SF

408 10-22



MAY MAX AREA 1200 - 8800 = 0.136 FAR

STD FAR = 0.35

0.35 (10.8-5) (20) = 0.920

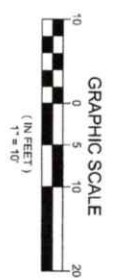
MAY AREA 1200 - 8800 = 0.15 FAR

2816 SF ALLOWED

STD FAR = 0.35 - (10-5) (20) = 0.920

8800 x 0.920 = 2608 ALLOWED

LEGEND	
DESCRIPTION	EXISTING
PROPERTY LINE	---
ADJACENT PROPERTY LINE	---
STREET CENTER LINE	---
BUILDING SETBACK LINES	---
EASEMENT	---
DRY ROAD	---
PAVEMENT	---
CONCRETE	---
CONTOUR MAJOR	---
CONTOUR MINOR	---
DAYLIGHT LINE	---
BLOCK RETAINING WALL	---
ROCK RETAINING WALL	---
BUILDING	---
AC BEAM	---
TOP OF BANK	---
TOE OF BANK	---
OPEN FLOWLINE	---
CHAIN LINK FENCE	---
WOOD FENCE	---
SHARPLY SLOPED LINE	---
PERFORATED CERTEC LINE	---
ELECTRIC LINE	---
GAS LINE	---
STORM DRAIN	---
WATER MAIN	---
OVERHEAD LINE	---
OPEN DRAIN	---
PROF. DRAINAGE SWALE	---



PRELIMINARY GRADING & UTILITY PLAN 16880 KENNEDY RD LOS GATOS CA 95032 APN 532-35-067		SB-9 URBAN LOT SPLIT	TS CIVIL ENGINEERING 1776 TECHNOLOGY DRIVE SAN JOSE, CA 95110 PH: 408.452.9300 FAX: 408.837.7550
SHEET NO. C-2 OF 2 SHEETS JOB NO. 19-248	DATE: 1-7-22 SCALE: 1"=10' DRAWN BY: DMH SURVEYED BY: JMS PROJ ENGR: TJS CHECK BY: TJS	REVISIONS BY: _____ DATE: _____	TS CIVIL ENGINEERING, INC. ONLY ACKNOWLEDGES ORIGINAL SIGNED AND STAMPED PLANS AND DRAWINGS. NO RESPONSIBILITY OR LIABILITY IS EXPRESSED OR IMPLIED FOR ELECTRONIC DATA AND/OR REPRODUCED PLANS AND DRAWINGS.



ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REIFON
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
JOLIE HOUSTON
BRIAN L. SHETLER
HARRY A. LOPEZ
CHARLES W. VOLPE
CHRISTINE H. LONG

AARON M. VALENTI
CHRISTIAN E. PICONE
SUSAN E. BISHOP
SANDRA G. SEPÚLVEDA
MICHAEL B. UAMS
KIMBERLY G. FLORES
DAWN C. SWEATT
TYLER A. SHEWEY
JAMES F. LANDRUM JR.
MICHAEL J. CHENG
EILEEN P. KENNEDY
JOSHUA BORGER
BENJAMIN M. JOHNSON
STEPHEN C. SCORDELIS
C. DAVID SPENCE

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com
Branch Offices
Merced CA • Modesto CA

THOMAS P. MURPHY
ALESHIA M. WHITE
DENNIS CHIN
ALEXANDRIA N. NGUYEN
ANDREW J. DIGNAN
ERIK RAMAKRISHNAN
LEILA N. SOCKOLOV
BEAU C. CORREIA
TIMOTHY K. BOONE
ANGELA SHAW
DAVID A. BELLUMORI
MARY T. NGUYEN

ELLEN M. TAYLOR
NATHAN C. BRADY
BRANDON L. REBBOAH
LINDSAY I. WALCZAK
LEA M. NEMETH
IRIS C. CHIU
MAKAYLA A. WHITNEY
MARISA J. MARTINSON
MARIA I. PALOMARES
BENJAMIN H. WOHLFORD
CHRISTIAN D. WICK
JENNIFER N. WISE
DIANA E. FLORES

FOUNDERS

SANFORD A. BERLINER (d. 2020)
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON
FRANK R. UBHAUS
RALPH J. SWANSON
NANCY L. BRANDT
LESUE KALIM MCHUGH

BRADLEY HEBERT
ERIC D. CAPRON
BRUCE J. HENDRICKS
STUART B. SPENCER

January 20, 2022

VIA EMAIL ONLY

Mayor Rob Rennie & Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Urgency SB9 Ordinance

Dear Mayor Rennie & Town Councilmembers:

This letter is written on behalf of Donald and Cheryl Wimberly, who reside at 15971 Quail Hill Road in Los Gatos, in respect to the SB 9 urgency ordinance recently adopted by the Town (the “Ordinance”). Their house along with the adjacent house at 15961 Quail Hill Road are both on the same parcel of land, which the Wimberlys own (the “Wimberly Property”). The Wimberly Property is on a street improved with single-family residences. It is zoned HR-1 (“Hillside Residential”) and is right at the boundary of that zone, lying literally across the street (Short Road) from single-family residential properties in an R-1 zone.

The Wimberly Property measures about 1.5 acres in size. With two houses, each with separate access to Quail Hill Road, the property would be an ideal candidate for an SB 9 lot split. It is in the least restrictive HR zone (HR-1) and already contains two residences (one an ADU) on level house pads.

However, as adopted the Ordinance would not allow the Wimberlys to proceed with an SB 9 lot split. The Ordinance puts two roadblocks in their path to utilize SB 9 – both of which appear to violate State law: first the exclusion of the Hillside Residential zone from the scope of

the Ordinance, and second the limitation on all new houses to 1200 square feet. We will discuss each of these provisions in turn.

1. The HR Zone should be included in the Ordinance. SB 9 applies to any “single family residential zone.” See Govt. Code §§ 65852.21(a), 66411.7(a)(3)(A). The Ordinance as adopted applies only to R-1 and R-1D zones. However, the HR zone is as much a single-family residential zone as are the R-1 and R-1D zones. This is made very clear in the Town Zoning Code.

Here are the uses allowed as a matter of right in the R-1 zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Raising of trees, vegetables and horticultural specialties, but not including commercial greenhouses, retail nurseries, or storage of landscaping equipment, products or supplies for commercial uses.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.385, emphasis added).

Here are the uses allowed as a matter of right in the R-1D zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Two-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.725, emphasis added).

And here are the uses allowed as a matter of right in the HR zone:

(1)Single-family dwelling, provided that there is not more than one (1) principal residential structure on a lot.(2)Agriculture, except dairying.(3)Family daycare home.(4)Residential care facility, small family home. (Zoning Code § 29.40.235, emphasis added).

The words used to describe the single-family residential use in the R-1, R-1D and HR zone are absolutely identical. This use is unequivocally for single-family residences. As far as uses allowed, the only difference in the Zoning Code for the three zones relates to the second use described (agriculture for HR and R-1, duplexes for R-1D). But as to single-family residential use they are the same. The obvious conclusion is that the R-1, R-1D, and HR districts are single-family residential zones.

It is thus absolutely clear that the HR zone is a single-family residential zone. Excluding it from the Ordinance is an arbitrary and capricious decision that violates both the intent and the letter of SB 9.

2. The 1200 square foot limitation on all new residential structures is invalid. As proposed by Staff, the Ordinance contained no size limitation on SB 9 houses, nor any

Mayor Rob Rennie
January 20, 2022

affordability constraints. During the hearing, both Staff and Council members correctly noted that SB 9 is not aimed particularly at affordable housing, and, unlike some other recent legislation, contains no affordability restrictions on owners seeking to take advantage of its provisions.

Staff correctly advised the Council that the Town's existing BMP ordinance applies only to projects of five units or more, and that it could not be modified without (a) preparing a nexus study to show that a property owner's use of SB 9 would create a need for more affordable housing, and (b) showing that applying affordability constraints to SB 9 projects would not make them infeasible for the applicant.

Notwithstanding this advice, however, the Council decided at the hearing to add an arbitrary "affordability by design" criterion to the Ordinance by limiting all structures on SB 9 lots to no more than 1200 square feet in size. After discussion, the Council adopted this limit for all such structures, not just for secondary structures incidental to a primary housing use. Thus, if someone had a bare lot and tried to use SB 9, all resulting residential structures would be limited to 1200 square feet in size.

In effect, the Ordinance imposes a 100% affordability requirement on all residential structures to be built pursuant to SB 9 (in contrast to the existing BMP ordinance that imposes only a 10% to 20% requirement, depending on the number of units). And this affordability requirement was imposed by the Council at the hearing without the benefit of a nexus study nor any analysis of the feasibility of such an arbitrary limitation. We believe this is an invalid attempt to restrict the application of SB 9 in violation of the statute itself. The restriction is arbitrary and capricious and could result in a taking of private property without compensation in violation of both Federal and State constitutional and statutory law.

The Wimberlys respectfully request that the temporary Ordinance be modified to add the HR zone, and remove the 1200 square foot limitation on the use of SB 9. We ask that this letter be entered into the administrative record of this action. Please contact me if you have any questions or need additional information.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF:jl

cc: Donald C. & Cheryl G. Wimberly
Laurel Prevetti, Town Manager
Robert Schultz, Town Attorney
Joel Paulson, Community Development Director
Jennifer Armer, Planning Manager

████████ Kennedy Road, Los Gatos, CA95032

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

January 24th, 2022

Dear Councilmembers

I listened with interest to the hearing in December when you discussed the new California SB-9 law. I agreed with the original Ordinance proposed by staff for the hearing and was surprised when it was radically amended after the public hearing was closed.

The change to make all SB-9 units “affordable-by-design” by restricting them to 1,200 sq ft maximum is clearly not the intent of SB-9 and will not work for most people, including myself and would appear to be an attempt to stop people from taking advantage of the law. I suspect that this is not a legal amendment and should be reconsidered at your upcoming meeting next week. Real estate prices are determined by supply and demand. And we have seen the extreme case of this during the pandemic. SB-9 will lead to a large increase in new homes being built and hence increase affordability. Limiting the square footage will hurt the affordability as there will still be a large number of buyers for the mid-sized homes without sufficient supply to meet that demand.

From my own standpoint I live on a property, which in all other respects, would comply with your ordinance. There is plenty of room for a lot split and the creation of a small (2,500-3,000 sq ft) house, which I would like to build for my family and then sell the existing home. That way I can afford to stay in Los Gatos. Building 2 rental units does not make any logical or financial sense.

I am sure that I am not the only person in this position. I would ask that you reconsider this aspect of the ordinance to make SB-9 work the way in which it is intended.

Thank you
Fevzi Karavelioglu
████████ Kennedy Rd.

From: Phil Koen

Sent: Tuesday, January 25, 2022 6:23 PM

To: Joel Paulson

Cc: Laurel Prevetti; jvannada; Rick Van Hoesen; David Weissman; Jennifer Armer

Subject: Re: SB 9 subdivision object standards

Joel,

Thanks for the reply.

Regarding deed restrictions on the enhanced second unit program on residential non-confirming lots, the 2015-2023 Housing Element says (reference page 6-8 in technical appendix) “as a pre-requisite for obtaining approvals in the second unit program, participating homeowners would be required to record a deed restriction on the title record of properties specifying that the second unit shall be offered at a reduced rent that is affordable.....”

There is no mention of this being voluntary. Is the HE wrong?

Regarding deed restrictions on lots split under SB 9, I would request that you make it clear that this area is on clear at this time and you are waiting on more detail from the State.

Thanks

Phil

Sent from my iPhone

On Jan 25, 2022, at 5:29 PM, Joel Paulson wrote:

Phil – Thank you for your email. Deed restrictions for ADUs are not required. The Town has a provision in the Town Code that includes an Incentive Program [Town Code Section 29.10.320 (a)], but this is voluntary not required. Currently, the Town will cover the ADU Planning Application fee (\$1,527.60) if an applicant is willing to voluntarily deed restrict their unit as a “low” income unit. Hopefully, the State will provide further guidance on this matter soon, but it is not likely to occur prior to the Town Council’s consideration of this matter on February 1, 2022.

You are welcome to suggest that the Town obtain a third-party legal opinion. If the Council agrees, we will pursue that during the consideration of the permanent Ordinance amendment process for the implementation of SB 9 which will likely begin in the next couple months.

Thanks.



Joel Paulson • Community Development Director

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6879 • jpaulson@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>



General Plan update, learn more at www.losgatos2040.com



Housing Element update, learn more at <https://engagelosgatoshousing.com>

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

From: Phil Koen

Sent: Thursday, January 13, 2022 12:15 PM

To: Joel Paulson; Laurel Prevetti

Cc: jvannada; Rick Van Hoesen; David Weissman

Subject: RE: SB 9 subdivision object standards

Joel,

I am sure you are aware of this, but the Town currently requires deed restrictions on certain affordable housing. This was done for ADU's on non-conforming lots over 10,000 sq. ft and in the Hillside Residential Zone. Please see the attached documents. What the Town has adopted regarding the construction of ADU's in the Hillside, appears to have the same economic considerations as to what I am proposing for a lot split under SB 9. How is it legal in the case of an ADU constructed on a lot in the Hillside, but illegal for affordable housing constructed on a SB 9 lot split?

That leaves open the "economic" test question. Again, there is no language in SB 9 that remotely suggests such a test is required.

Given this is such an important issue, obtaining a third party legal opinion or ruling from HCD before the Council revisits the urgency ordinance would be very constructive.

Thank you.

Phil

From: Joel Paulson
Sent: Wednesday, January 12, 2022 9:44 AM
To: Phil Koen; Laurel Prevetti
Cc: jvannada; Rick Van Hoesen; David Weissman
Subject: RE: SB 9 subdivision object standards

Phil – Thank you for your email and I hope you enjoyed the holidays. Staff’s current understanding is that if the Town includes an objective standard requiring deed restricted affordable housing and that requirement renders the construction of additional units economically infeasible, then it would not be a valid objective standard.

SB 9 is a lowercase “a” affordable housing law not an upper case “A” affordable housing law where deed restrictions are required for below market price housing. If the Legislature’s intent was to create deed restricted affordable housing then they would have included that allowance in the law, but they did not.

Additionally, I understand you had concerns with the minimum unit square footage requirement of 150 square feet. This was in the City of Campbell’s Ordinance and was included in the Town’s Urgency Ordinance. If you believe this should not be included, you can provide that comment or any other additional comments you have on the Urgency Ordinance for Council consideration at the February 1, 2022 meeting when the Council will discuss this matter again.

Thanks.



Joel Paulson • Community Development Director

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6879 • jpaulson@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>



General Plan update, learn more at www.losgatos2040.com



Housing Element update, learn more at <https://engagelosgatoshousing.com>

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.

From: Phil Koen
Sent: Tuesday, December 28, 2021 11:42 AM
To: Joel Paulson; Laurel Prevetti
Cc: jvannada; Rick Van Hoesen; David Weissman
Subject: SB 9 subdivision object standards

Hello Joel,

Happy Holidays to you.

I was able to watch the Council meeting regarding the SB 9 urgency ordinance. I was curious about your comment that there was language in SB 9 which precluded local governments from adopting objective zoning standards or subdivision standards which would “render a project economically unfeasible” (reference about 1:15:30 in the video).

I have searched SB 9 and am unable to find any such language. What I did find under 66411.7 (b) (3) (c) (2) was language which stated objective standards that had the “effect of **physically** precluding the construction” of additional units were prohibited. The word “physically” as a qualifier to construction seemingly does not prevent the adoption of objective standards which would have economic or financial impacts, especially if these standards furthered access to affordable housing. Requiring affordable housing to be built on a lot split under SB 9 does not preclude the “physical” construction of the new unit. Rather it helps ensure the development of affordable housing. It does have an economic/financial impact for sure **on the subdivision decision** (as opposed to the physical construction). Presumably if the State wanted to include financial or economic effects on SB 9 construction, they would have added language which specifically included financial or economic effects which would preclude construction.

SB 9 is focused on “ensuring access to affordable housing”, not market rate housing. It is hard to imagine anyone being successful in a legal challenge to an objective zoning and/or subdivision standard which ensured access to affordable housing on a subdivision under SB 9. That is why a deed restriction on a lot created by a SB 9 subdivision which would require the development of affordable housing makes sense. To allow lot splits under SB 9 simply so more market rate housing can be built, makes no sense and is inconsistent with SB 9. The ability to split a lot and build market rate housing already exists under the current zoning laws. But to do that, you must comply with those zoning rules which are more stringent than SB 9.

Can you point me to the language in SB 9 that supports your statement? What am I missing? The Council needs to be fully informed on this matter.

All the best,

Phil Koen

February 1, 2022

Mayor and Town Council
Town of Los Gatos

RE: Urgency Ordinance 2326

Mayor Rene and Councilmembers:

This letter is to ask that you amend Urgency Ordinance 2326, adopted as an urgency measure on December 21, 2021.

We respectfully request the Town Council revise these three provisions of the ordinance as we understand it, for reasons stated:

1. **Allow Urban Lot Splits in the HR Zone.** SB-9, Section 66411.7 (a) (3) (A) provides that a local agency shall ministerially approve a parcel map for an urban lot split if, amongst other requirements, the development is “**located within a single-family residential zone**”. As you know, the Hillside Residential Zone is a “single family residential zone”.
2. **Allow dwellings larger than 1200 square feet in size on lots created by SB-9 processes.** The limitation on the size of **ALL** dwelling units built on parcels resulting from an SB-9 process places undue and unfair burden for the provision of low-cost housing on parcels created by SB-9. By comparison to the Town’s low-income housing which only requires a small percentage of units to be low-income housing, this requirement is unreasonable. Further, requiring both units on a parcel to be no more than 1200 SF creates an out-of-character, “ghetto” lot in the neighborhoods. This harms the owner of the parcel and the neighboring parcels.
3. **Eliminate the Prohibition of ADU’s:** State law and Town Ordinance allow for ADU’s on lots throughout the Town by a ministerial process as a means of providing lower cost housing. To prohibit ADU’s on lots created by SB-9 processes is contrary to the Town ADU regulations, is not reasonable, and is punitive toward lots created by the SB-9 process and their owners. ADU’s create lower cost housing.

SB-9 is a very important law, both in creating additional housing without intrusive high-density projects, and also by creating important opportunities for residents. After 46 years of living on Quail Hill Road, SB 9 will provide us with affordable housing.

Retirement is now at hand, and we face the likelihood of having to sell our home, pay the stinging capital gains, and then find another community where we can afford to live but in which we will likely know no one. When SB-9 was passed and was signed by the Governor in September last year, we were overjoyed to see a means whereby we would be able to continue living in Los Gatos.

Following adoption of SB 9, I studied its provisions, and researched various provisions such as the exception to the Very High Fire Hazard prohibition. Santa Clara County Fire Department was helpful in providing information regarding "State fire mitigations"; in particular, requirements of Public Resources Code Section 4290, which we appear to meet. In anticipation of SB 9 becoming effective 1/1/22, we hired a land surveyor to perform boundary and topographic surveys so we would be ready to apply early on.

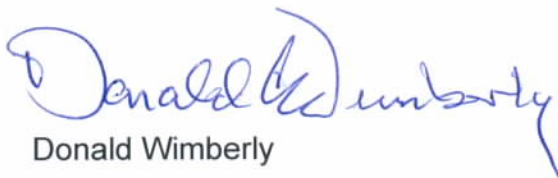
We propose an urban lot split (see attached) that would create one new primary residence on parcel 1 along with our existing ADU (in which we live) and a new ADU on parcel 2 along with the existing primary residence. We believe this is consistent with SB 9 and yet maintains the character of the neighborhood.


We have spoken with several of our neighbors about the SB 9 urgency ordinance and they agree with our view. Not all lots in our neighborhood are suited to use of SB-9, but for some, it's an opportunity of a lifetime.

Given the Town's housing deficiency according to ABAG, we thought SB 9 would be seen by Council as a timely vehicle to add to the Town's housing supply, without high density, high impact developments (witness The Hacienda development).

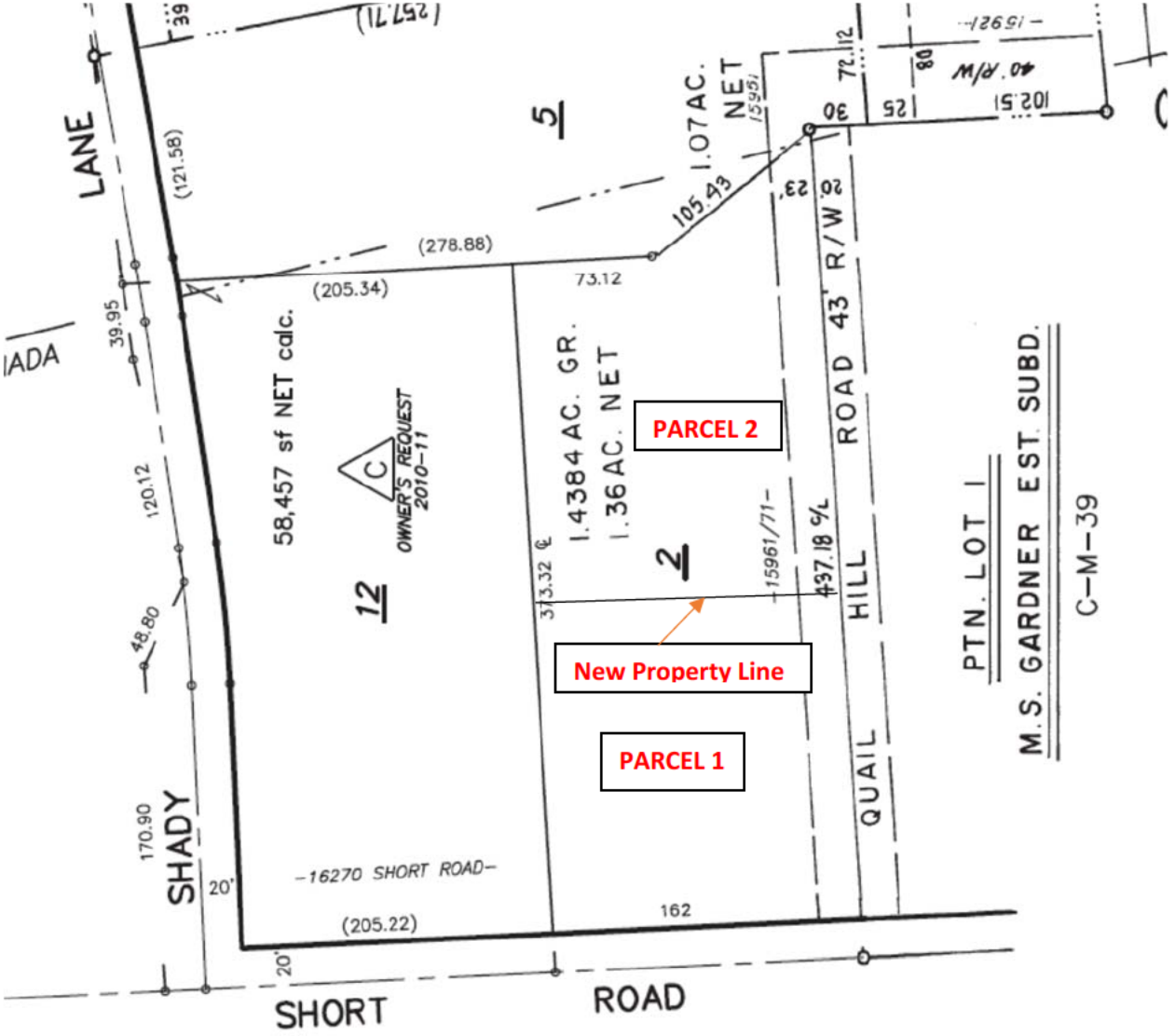
I watched the 12/21/21 Council discussion of the proposed ordinance and was surprised at the additional measures added by Council and the apparent focus on how to thwart the intent of SB 9. Research to find communities elsewhere in the State that had adopted extreme and potentially illegal measures to defeat the intent of SB 9, was not what we hoped for nor expected. To us, Urgency Ordinance 2326 has major flaws and should be amended as we suggest above.

Given the extraordinary importance of an SB 9 urban lot split to us, we have sought help from Andrew Faber of Berliner Cohen to analyze Ordinance 2326 and to assist us in making the case for its amendment. We strongly urge you to consider his recommendations.


Donald Wimberly


Cheryl Wimberly

Project Description for an Urban Lot Split of
15961 Quail Hill Road, Los Gatos



Proposed Urban Lot Split of APN 527-02-002

15961 Quail Hill Rd, Los Gatos, CA 95032, USA

© 2013 Google

Google earth

1993

37°13'52.26" N 121°56'57.69" W elev 412 ft eye alt 823 ft

Memorandum: SB-9 Questions and Comments

To: Mayor Renne & Los Gatos Town Council Members
From: Tony Jeans
Date: January 27th, 2022

The following provisions appear to be in direct contravention of the Law or a direct attempt to frustrate it and invite litigation. They can be fixed simply as shown below.

1. HR zoning districts have not been classified as "Single Family".
Comment: In fact this is the only residential use on a HR parcel. The Town Code identifies the residential *Permitted Use* - "Single-Family dwelling, provided that there is not more than one (1) principal residential structure on a lot." This is IDENTICAL to the wording for R1 and RD zoning districts.
Resolution: This can be resolved by adding HR to "Ordinance Definitions"
2. 20 ft of "Street Frontage" is required for a "Flag Lot" situation.
Comment: SB-9 says a jurisdiction may require a new parcel "adjoin, have access to or provide access to" a Right of Way. This includes the provision for an "easement", which should satisfy Fire Code Access provisions.
Resolution: This can be resolved by replacing the '20 ft frontage' call-out with "*an Access Corridor in 'Fee Title' or as an 'Ingress/Egress Easement' that satisfies the provisions of SCCFD*".
3. Grading: No more than 50 yards of grading is permitted.
Comment: The Town requires a 'Grading Permit' for more than 50 yards [*except at the house pad*] of combined cut/fill and a Grading Permit is not ministerial.
Resolution: For SB-9 projects the limit can be left at 50 yards, but the 'exception' made for the *'house pad and driveway'*. Thus restricting gratuitous grading, while still permitting a house and access.
4. The explicit restriction to max. 1,200 sq ft homes for SB-9 units under the pretext of "affordability" is arbitrary and not based on any rational analysis.
Comment: This afterthought was added by Council against the recommendations of staff and was not in the original draft ordinance. It makes use of SB-9 urban lot splits unviable for most/all homeowners.
Resolution: **For Discussion - see below.**

Discussion of the 1,200 Sq Ft Home Size Limitation Issue:

As the concept the limitation of 1,200 sq ft was not in the original ordinance and came up only after Public Comment had been closed, it is difficult to determine what the intent was. Discussion revolved around two distinct premises.

1. Create the most restrictive Ordinance possible (to thwart SB-9 use).
2. Make SB-9 units "affordable by design" to create more affordable housing.

If the former: then the council has succeeded and there is no point in continuing a dialogue. The loss of the option to use SB-9 as intended in a reasonable manner might be considered 'a taking' of private property and should be of concern.

If the latter: then the idea might be good, but the result will not be successful. It is also debatable whether "affordability" was at the root of SB-9.

I see two options at this point in time [in extending the Urgency Ordinance].

1. Revert to the original draft ordinance proposed by staff [as to this point].
This would allow time to consider what you want for the final ordinance.
2. Revert to the original draft ordinance, but require: "At least one of the permitted units on any urban lot created ministerially shall have a maximum size of 1,200 sq ft". This will encourage 'affordable-by-design' and permit owners to build reasonable homes as well. It might also pass legal muster.

Additionally: There is no provision in the wording of the ordinance for a homeowner to use the A&S process after a ministerial urban lot split to build a home, with neighbor input and DRC and PC approval. This, as a minimum, must be allowed - so that the Town Design Guidelines can continue to play a part in the development of properties in the Town.

What are the Housing Implications of an Urban Lot Split in the Town?

Public Comment was 'Closed' on December 22nd before the Council made a radical change [1,200 sq ft max] to the Urgency Ordinance. This did not give enough time to 'think through' what staff originally proposed in its draft.

If we take a 'real world example', in the original draft an Urban Lot Split on a 20,000 sq ft lot in the R1:20 zone would create 2 x 10,000 sq ft lots +/- with the following consequences [new lot sizes and house sizes shown in red]:

	Lot Size	Max FAR	Main Home	ADU/#2
Existing :	20,000 sq ft	4,600	3,750	1,200
Urban Lot 1:	11,000 sq ft *	3,322	3,750	800 *
Urban Lot 2:	9,000 sq ft *	2,862	1,662 *	1,200

*Indicates Ministerial Review of Project.

- An 800 sq ft limit [per SB-9] because the FAR is exceeded.
- A 1,662 limit for the main house so as not to exceed the FAR

The reduction in lot size resulting from an Urban Lot Split would have the effect of reducing the allowable house sizes to an 'intermediate house size', which is what SB-9 is trying to achieve. Why did the Council try to 'fix this'?!

I would further propose that one further change be made to the Ordinance: After an Urban Lot Split- that the subsequent house application be allowed, either as Ministerial [SB-9 with its restrictions and Objective Design Guidelines] or Conventional [A&S with neighbor input, story poles and Design Review]. In this instance the Conventional FAR rules would apply and the FAR would be allowed at $2,862 + 900 = 3,762$. With a well designed house.

	Lot Size	Max FAR	Main Home	ADU/#2
Urban Lot 2:	9,000 sq ft *	2,862	1,662 *	1,200
Urban Lot 2:	9,000 sq ft *	3,762	2,562 A&S	1,200

A homeowner might choose to use this law to add housing for their children or family, or to sell of a portion of their property so that they can afford to stay in Los Gatos or to give them some money for retirement. As such, the consequences for those individuals are huge.

From: Phil Koen

Sent: Thursday, January 27, 2022 4:22 PM

To: Joel Paulson

Cc: Laurel Prevetti; Rick Van Hoesen; David Weissman; Jennifer Armer;

Subject: Re: SB 9 subdivision object standards

EXTERNAL SENDER

Joel,

Can you point me to information on the “incentive program” you mentioned. I’ve read the TC and it does mention Incentive Program established by Resolution. Where can I read about this?

On the surface, it appears to me what was stated in the 2015-2023 HE under action HOU 1.2 is not what was done.

Let’s discuss when you have some time.

Phil

*This Page
Intentionally
Left Blank*