

**From:** Ivy Chang [REDACTED]  
**Sent:** Monday, November 14, 2022 3:32 PM  
**To:** Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Maria Ristow <[MRistow@losgatosca.gov](mailto:MRistow@losgatosca.gov)>; Mary Badame <[MBadame@losgatosca.gov](mailto:MBadame@losgatosca.gov)>; Matthew Hudes <[MHudes@losgatosca.gov](mailto:MHudes@losgatosca.gov)>; Marico Sayoc <[MSayoc@losgatosca.gov](mailto:MSayoc@losgatosca.gov)>  
**Cc:** Gabrielle Whelan <[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)>; Ryan Safty <[RSafty@losgatosca.gov](mailto:RSafty@losgatosca.gov)>; Jennifer Armer <[JArmer@losgatosca.gov](mailto:JArmer@losgatosca.gov)>  
**Subject:** SB9 Ordinance

EXTERNAL SENDER

Dear Town Mayor and Town Councils,  
This is Ivy Chang, a homeowner and resident of hillside Los Gatos.

I've reached out to the Attorney General regarding a SB9 violation. Rob Bonta's office encouraged me to continue to work with local government towards a resolution. Therefore, I'm writing you this email directly.

1. 30% slope restriction in SB9 Ordinance.

**It is not only violating State law, but also inviting violations!**

If a residence has a 30% slope building footprint, will they give up SB9 ministerial approval and go for 2+ years A&S application? Or they will ask topographic surveyor to adjust to 29.9%? How about if it's 31%, 33% or even 35% slope development? What will they do? What will you do?

SB9 law authorize cities to adopt SB9 ordinance locally. BUT the Code states that the ordinance needs to be "uniformly verifiable". If you measure the slope from different angle, the result will be slightly different. How can Town Inspector uniformly verify the slope?

The Town Council of 2004 controls the hillside development in a smart way and does not invite violations. **The spirit of Town Code is Measurable, Verifiable and Non-debatable, including sections such as:** HSD&G Chapter 2 - "LRDA - least restrictive development area, Topography, with emphasis on slopes over 30%, Chapter 3 - A cuts and fills table. There are designed to be "uniformly verifiable" by the Town Inspector.

Even you didn't mean to invite the violation on slope, it will happen in the real world, when an ordinance of 30% slope cannot be uniformly verifiable. I follow the rules and regulations, and that is why I speak out, because ordinance which is not uniformly verifiable may invite violations.

**In Summary regarding the addition of the 30% slope restriction in the Town's SB9 ordinance:**

**It violates 66300 - it lessens the intensity of land use.**

**It violates 65852.21 and 66411.7 - it's not uniformly verifiable.**

**And even worse.... It's inviting violation of 30%, 31% or even 35%+ development. And with ministerial approval at Staff Level, it puts hillside development at the risk.**

**Town staff did a great job to include HSD&G cuts and fill table in SB9 ordinance, as well as 15% slope driveway requirement to align fire dept regulation. Steep slope can't be developed by 8' cut restriction and 15% slope driveway requirement, which can well control the hillside development. Please remove to 30% slope restriction on the building site to avoid inviting violations.**

If you haven't thought of the 30% slope restriction will invite the violation as it's not uniformly verifiable by Town Inspector, please revisit and remove the restriction.

If you have thought of it, but still want to keep the 30% slope restriction. Please explain how can you prevent the violation of 30%, 31% or even 35%+ development? How can you address Town's violation of SB9 code 65852.21 and 66411.7? The code says the ordinance needs to be uniformly verifiable: No personal or subjective judgment. 29.9% slope vs. 30% slope, 0.1% slope gap will be inviting personal judgement, inviting violation.

2. 1,200 sqft max of 1<sup>st</sup> SB9 unit

I'm a landlord and familiar with real estate market. Most newer homes are 1,800 sqft and above. Only older homes are less than 1,500 sqft in Los Gatos. When rental pricing increased, renter will downsize the house to save rent. However, these smaller homes are old and ugly.

When people build a new house today, they normally build 1,800 sqft or more for better return on investment. Or build a less than 1,200 sqft ADU. With that, there will be limited new house in between 1,200 sqft – 1,700 sqft in coming years.

**With this SB9 first units, you have the power to fulfill the portfolio of affordable homes. An additional 100-200 sqft can add in a small office or bedroom. 10 years from now, you can be proud of yourself, because you enable the options for the affordable house market for your residence.**

If you haven't thought of the portfolio of affordable homes, please approve to increase the first SB9 unit limitation to 1,400 sqft.

If you have thought of it, but still keep 1,200 sqft max, please explain why you don't give those people option between 1,300 sqft to 1,400 sqft house, when you can enable it?

#### In Summary

**I sincerely ask your review:**

**1. Remove the 30% slope restriction, to make SB9 Ordinance Measurable, Verifiable and Non-debatable. It can be "uniformly verifiable" by Town Inspector, in the spirit of Town Code for hillside development.**

**2. Increase first SB9 unit to 1,400 sqft – give your residents some options in affordable house market. If you need more time to make right decision for your residences, please postpone Consent Agenda - Item 5 of Nov 15 Town Council meeting. I've also attached my email to Town Attorney regarding the violation of State Law in details.**

I look forward to hearing from you.

Best regards,  
Ivy Chang

From: Ivy Chang [REDACTED]  
Subject: Re: SB9 Ordinance - 30% Slope Restriction  
Date: November 14, 2022 at 3:26 PM  
To: Gabrielle Wheahan GWheahan@osgatosca.gov  
Cc: Ryan Safty RSafty@osgatosca.gov

IC

Dear Ms. Wheahan

Thank you for your response

I understand people interpret laws differently even among attorneys. I've consulted with a Land Use Attorney. Unfortunately, both of your interpretations of Gov. Code are different. So I am writing this email again to see if we can close the gap.

**In Summary regarding the addition of the 30% slope restriction in the Town's SB9 ordinance:**

**It violates 66300 - it lessens the intensity of land use.**

**It violates 65852.21 and 66411.7 - it's not uniformly verifiable.**

**And even worse.... It's inviting violation of 30%, 31% or even 35%+ development. And with ministerial approval at Staff Level, it puts hillside development at the risk.**

**I respectfully request Town Attorney to remove the 30% slope restriction and help Town Council to adopt the SB9 Ordinance with Measurable, Verifiable and Non-debatable ordinances, in line with the spirit of existing Town Code. I will also write an email to the Town Council members and copy you to highlight my concerns.**

**65852.21 and 66411.7 (SB9)**

There is no doubt that code authorizes towns to adopt SB9 ordinance locally. But the Code states that the ordinance needs to be "uniformly verifiable." If you measure the slope from different angles, the results will be slightly different.

(1) Please consult with Town Staff: how do they uniformly verify the 29%, 30% or 31% before approving the permit?

(2) Please consult with Town Inspector: how do they uniformly verify the slope of 29%, 30% or 31% On-Site?

I believe the Town Attorney was well involved when HDS&G was adopted in 2004 because the Town Code is Measurable, Verifiable and Non-debatable. It's "uniformly verifiable" by Town Inspector, which is in the spirit of Town Code.

As a Town Attorney today, please help the Town Council to make a "uniformly verifiable" SB9 ordinance. Adding a 30% restriction not only violates state law but also invites violation of 30%, 31% or even 35% development.

**66300, subd. (b)(1)(A) Housing Crisis Act**

Perhaps you are mixing the Housing Crisis Act vs. Housing Accountability Act. The state law I was referring to is under Housing Crisis Act, not Housing Accountability Act as in your email.

Code 66300 says effect on January 1, 2018, the town cannot make more restrictive ordinances to lessen the intensity of and use SB9 become law in 2021, which is applied under Code 66300. However, you interpreted SB9 law is not applied under Code 66300 because SB9 is after 2018. If that is the case, why is Code 66300 cited in SB9 factsheet?!

SB9 factsheet page 7 clearly states: "Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use."

Either the "existing development standard" refers to Town Code or SB9 800 sqft law, but neither of these have a 30% slope restriction. Therefore, adding a 30% slope restriction to lessen intensity of and use will violate Code 66300 subd. (b)(1)(A) Housing Crisis Act.

Here is the Code I referred to:

## Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they do not physically preclude either of the following:

**Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.

**Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified

**Housing Crisis Act of 2019.** An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. “Reducing intensity of land use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the single-family residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about [Design Jurisdictions Prohibited from Certain Zoning-Related Actions](#) on HCD’s website

I look forward to hearing from you

Best Regards  
Ivy Chang

On Nov 11 2022 at 8:55 AM Gabrielle Wheahan <[GWheahan@osgatosca.gov](mailto:GWheahan@osgatosca.gov)> wrote:

Hello, Ms. Chang.

Government Code Sections 65852.21 and 66411.7 (SB 9) authorize cities to adopt objective zoning, subdivision, and design standards that are applicable to SB 9 projects.

The state Housing Accountability Act does prohibit cities from reducing the intensity of land use below what was in effect on January 1, 2018. Since the Town's zoning ordinance did not authorize SB 9 projects until SB 9 became law, the Town is not reducing the intensity of this land use.

In addition, "intensity of land use" is defined to mean "residential development capacity." Since the Town's proposed ordinance authorizes "by right" units of 800 square feet or less, the ordinance does not limit "residential development capacity."

**Gabrielle Whelan • Town Attorney**

Town Attorney's Office • 110 E Main Street, Los Gatos, CA 95030

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**From:** Ivy Chang [REDACTED]  
**Sent:** Monday, November 7, 2022 9:39 AM  
**To:** Attorney <[Attorney@losgatosca.gov](mailto:Attorney@losgatosca.gov)>; Gabrielle Whelan <[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)>  
**Cc:** Scott Watson [REDACTED]  
**Subject:** SB9 Ordinance - 30% Slope Restriction  
<image003.jpg

EXTERNAL SENDER

To: Town Attorney Ms. Whelan,

Congratulations on your appointment to Town Attorney in April. Since your service in the Town of Los Gatos is less than one year, I would like to provide some history regarding slope restriction in the Hillside Development Standards and Guideline, as well as Town Code.

The Hillside Development Standards and Guidelines was adopted by Council in January 2004.

In Chapter 2, Site Selection, page 12 - It says "LRDA - least restrictive development area. Topography, with emphasis on slopes over 30%.

In Chapter 6, Site Elements, page 53 - it says Swimming Pools and Sport Courts are prohibited on slope greater than 30 percent.

It only restricts 30% slope for swimming pool and sport courts, NOT for the development of a house. However, the Town added 30% slope restriction in the SB9 Ordinance to lessen the intensity of housing.

I've reached out to the Attorney General regarding this violation of the Housing Crisis Act of 2019. Rob Bonta's office encouraged me to continue to work with local government towards a resolution. I also reached out to Compliant Review @HCD.



HCD told me that they do not have enforcement authority over SB9, however they will review the potential violation of the HCA. Per my conversation with a land use attorney, adding 30% slope restriction on SB9 will reduce the intensity of use, which is clearly a violation of HCA state law. I've attached SB9 factsheet regarding HCA [at page 7. \(Gov. Code, § 66300, subd. \(b\)\(1\)\(A\).\):](#)

In the Nov 1, 2022 Town Council meeting, there were 4 hillside residents who expressed concerns on the SB9 30% slope restriction during the public hearing. However, there was zero feedback to address the 30% slope restriction by the Town Mayor, Town Council or Town Attorney.

Town of Los Gatos has used both Hillside Development Standards and Guideline and Town Code since 2004. For each development, the LRDA is reviewed by planning commission. For at least one development in 2017, the Town approved a building site with 55% slope – far greater than the 30% guidance. I provide more details below.

**I'm writing my email to try again to get resolution as suggested by Attorney General Rob Bonta. Please investigate:**

1. Why there is no 30% slope restriction for house development in the Town Code?

Town Code define 8' cut restriction, which is measurable by Town's inspector. The geotechnical, and geological reports are required for building permit. If the investigation and engineers confirmed the site is buildable, even it is 31% slope on average house site, it is still buildable. I believe it is the reason there is no 30% slope restriction language in Town Code.

2. Why Town Council approved a 55% slope development site, while restricting SB9 development by code to 30% slope?

Town Staff suggested to approve the application of 55% slope development (26 Alpine Ave) in July 2017. Town Council granted approval in Dec 2017. The house is under construction today at 55% average slope of house footprint.

During the Town Council meeting, Both Town Mayor Rob Rennie and Town Attorney Robert Schultz repeated Geotechnical's comment regarding it is buildable lot. The 55% slope did not stop the project in standard development per Town Code. There is no state law to allow the Town to add 30% slope restriction ONLY on SB9 development.

3. Town Staff told me that all of the restriction will be exempted for a minimum 800 sqft SB9 development. This statement might be correct under SB9 state law, however, adding 30% slope restriction ONLY on SB9 development still violates HCA state law by reducing the intensity of land use. I expect the Town Attorney to educate Town Staff.

**I respectfully request the Town REMOVES the "30% slope restriction" in SB9 Ordinance, because it is not in Town's standard development code, and hence violates HCA state law. The SB9 ordinance page 7 Cut and Fill table can well control hillside development as defined by Town Code and Hillside Development Standards and Guideline.**

**Please advise if you conclude that the Town can legally add a 30% slope restriction to reduce the intensity of land use by SB9 ordinance. If so, please**

**provide the code. I have also attached two public comments which we sent regarding slope restriction to staff before Nov 1 Town Council Meeting.**

Below is more detailed information regarding 55% slope development I referred:

Address: 26 Alpine Avenue

Footprint of house average slope: 55%

Average slope of lot: 41%.

Planning commission hearing on July 26, 2017, time 40:49  
<https://www.youtube.com/watch?v=CC7f48FsP5M&t=12s>.

Town staff explain the chapter 2 - "LRDA including many things beyond just slopes", time 2:46:21:

Town Council hearing on Dec 19, 2017, time 1:45:55  
<https://www.youtube.com/watch?v=GLCLgb4VIEM&t=6696s>

Town Attorney Robert Schultz commented "both the Geotech and it was peer-reviewed say it is a buildable lot", time 2:42:00

Town Mayor Rob Rennie commented "geotechnical consultants that it is doable and safe, so I'm more on the side of accepting the project (55% slope project)", time 2:50:48

[Item 04 - 26 Alpine Ave - Laserfiche WebLink \(losgatosca.gov\)](#). - Planning Commission July 26, 2017

[Item 19 - 26 Alpine Ave - Architecture and Site Application S-16-052 and Mitigated Negative Declaration ND-17-001 - Laserfiche WebLink \(losgatosca.gov\)](#). - Town Council, December 19, 2017

[Item 2 - 26 Alpine Ave - Time Extension - Laserfiche WebLink \(losgatosca.gov\)](#). – Planning Commission, November 13, 2019 for Time Extension

**I look forward to hearing from you.**

**From:** Ivy Chang [REDACTED]

**Sent:** Tuesday, November 15, 2022 9:37 AM

**To:** Rob Rennie <RRennie@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>

**Cc:** Gabrielle Whelan <GWhelan@losgatosca.gov>; Ryan Safty <RSafty@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>

**Subject:** Re: SB9 Ordinance

EXTERNAL SENDER

Dear Town Attorney, Town Mayor and Town Councils,

I recommend the following resolution to eliminate the concerns of hillside development, as well as meet the state law as "uniformly verifiable":

1. Remove the \*\*below grade square footage as attached. Only allow 8' cut, instead of no limitation cut for below grade square footage. Along with the driveway requirement in current SB9 ordinance. It can well prevent the steep slope development as below:

- House: allow 8' cut only.

- Driveway: allow 4' cut 3' fill, minimum 12 feet width, and maximum 15% slope.

2. Remove (8) Building Site - 30% slope restriction, to avoid violation of state law or inviting violation.

**I look forward the SB9 Ordinance to be Measurable, Verifiable and Non-debatable. Uniformly verifiable per State Law. NOT inviting the violation!**

Also, please find the link of Planning Commission meeting on July 26, 2017.

During slope discussion of the 26 Alpine project, one of the Commissioner asked if Town verified the Applicant's slope. Staff commented that "We don't allow to do our own survey and do our own topo at every site".

Please check out the time 55:03. <https://www.youtube.com/watch?v=CC7f48FsP5M&t=13s>

The conversation of the slope verification from 52:38-55:21



(7) Cut and Fill. Two-unit housing developments shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements) below:

Table 1-1 – Cut and Fill Requirements		
Site Element	Cut *	Fill *
House and attached garage	8' **	3'
Detached accessory building *	4'	3'
Driveways ***	4'	3'
Other (decks, yards) *	4'	3'
* Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.		
<del>** Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code and light wells that do not exceed the minimum required per Building Code.</del>		
*** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.		

~~(8) Building Sites. The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with an average slope exceeding 30 percent. This provision applies only to the building site, not the property as a whole;~~

Best Regards,

Ivy Chang

-----Original Message-----

From: quintana

Sent: Tuesday, November 15, 2022 9:59 AM

To: Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>

Subject: SB 9 Ordinance

EXTERNAL SENDER

Hi Laurel,

A follow up to our recent discussion: Please refer to Sec. 29.10.660(a)(5)

I had started comments for a desk item on the tonight's Consent Agenda Item #5 (Draft SB 9 Ordinance) Item #5. It started with a discussion of at least two ways that Sec. 29.10.660 might be interpreted:

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- 1) Once a choice is made to use the ministerial review and approval process under the SB 9 Ordinance then any subsequent development resulting from that approval would be required to use the ministerial review and approval process established by The Ordinance (my interpretation) or
- 2) An applicant may choose to use the SB 9 Ordinance ministerial process for an initial approval subject to SB 9 but may then choose to Town's discretionary A&S process for subsequent development on the site. (Tony Gene's interpretation, as stated in the first paragraph of Attachment 2' letter from Tony Gene)

This came to an abrupt halt when I reach the following on page 14 of the 15 page text:

Sec. 29.10.660 Application Process for an Urban Lot Split (a)(5) Development. Development on the resulting parcel is limited to a project approval by the two-unit housing development process or through the Town's standard discretionary process.

My immediate reaction was Really! You Have To Be Joking! Is this really the intent of the Ordinance! and then:

- 1) This relates more to the Two-Unit Development Process than to the application process for an Urban Lot Split.
- 2) Why is it buried at on the 14th page Ordinance that has 15 pages of text? -
- 3) Was this intentional?
- 3) Is this really the intention of the Town and Town Council?

I will toss my all old draft comments and instead only wish to speak to this at the meeting tonight. Do I ask to speak under Public Communication or under the Consent Calendar? Please acknowledge receipt of this e-mail. And please forward to others, if appropriate.

Thanks, Lee