

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 5, 2026

Sean Mullin, Planning Manager
Planning Department
Town of Los Gatos
110 E. Main St
Los Gatos, CA 95030

Dear Sean Mullin:

RE: Los Gatos Senate Bill (SB) 9 Ordinance-Technical Assistance Letter

HCD has reviewed the Town's Municipal Code for SB 9 Governance and submits these written findings pursuant to Government Code section 65585, subdivision (j). HCD finds that the Municipal Code fails to comply with SB 9 in the manner noted below. Accordingly, the Town must provide a written response to these findings no later than June 5, 2026.

The Municipal Code addresses many statutory requirements; however, HCD finds that the Municipal Code is inconsistent with state law in the following ways:

1. Section 29.10.610 – *Definition of Two-Unit Development* – The Municipal Code defines a two unit housing development as "... either the construction of no more than two (2) new primary dwelling units, one (1) new primary dwelling unit and retention of one (1) existing primary dwelling unit, or retention of two (2) existing legal non-conforming primary dwelling units where one (1) or both units are subject to a proposed addition or alteration." However, this applies SB 9 law only in the case that two units are created and/or retained.

SB 9 states, "[a] proposed housing development *containing no more than* two residential units within a single-family residential zone shall be considered ministerially, if the proposed housing development meets all of the following requirements..."¹ [emphasis added]. Therefore, SB 9 is applicable in a scenario where construction results in the construction of either one or two primary dwelling units on a lot. Both the first and the second primary dwelling unit constructed on a lot are eligible for SB 9. An applicant can choose to utilize SB 9 to construct a single primary structure on a lot even if there are no existing units on the site. The Municipal Code must be modified to clarify that both first and second primary dwelling units are eligible for SB 9 processes and applicable development standards.

¹ Gov. Code § 65852.21, subd. (a).

2. Section 29.10.620 (3) – *Historic Property* – The municipal code contains outdated historic exclusion language under Section 29.10.620(3). Pursuant to Assembly Bill 1061 of 2025, the historic exclusions under SB 9 were amended as detailed in Government Code Sections 65852.21(a)(5) and 66411.7(a)(3)(E). The municipal code must be amended to reflect SB 9’s current historic exclusion language.
3. Section 29.10.630 (1)(a) – *Height in Setbacks* – The Municipal Code states, “[b]uildings located within the required side or rear setbacks of the applicable zoning district, and those located in the Hillside Residential (HR) zones, shall not exceed sixteen (16) feet in height.” However, Government Code section 65852.21, subdivision (b)(3) states, “[a] local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.” There is no generally applicable height limitation imposed on other structures within rear and side setbacks, and section 29.40.275 sets height maximums in the Hillside Residential at 30 feet. The limit of 16 feet for SB 9 units is more restrictive than the underlying zoning and is therefore inconsistent with state SB 9 law. The Town must amend the municipal code to remove this height limitation.
4. Section 29.10.630(1)(f)(2) – *Grading* – The Municipal Code states “Grading activity associated with a two-unit housing development shall not exceed fifty (50) cubic yards, cut plus fill...”. However, this is a restriction that is exclusive to SB 9 development, and which does not appear in the underlying zoning. Government Code section 65852.21, subdivision (b)(3) prohibits “objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.” The Town must remove this limitation.
5. Section 29.10.630 (3) and (4) – *Maximum Size* – The Municipal Code states, “[t]he maximum size of the first new residential unit shall not exceed one thousand two hundred (1,200) square feet.” It later states, “[w]hen a two-unit housing development is proposed and the existing structures are at or below the maximum allowed floor area, a ten (10) percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an accessory dwelling unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed one thousand two hundred (1,200) square feet.” In both cases, the Town is restricting SB 9-unit size below the allowances provided to conventional single-family residential development in the underlying zoning. Government Code section 65852.21, subdivision (b)(3) prohibits “objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.” Therefore, the Town must remove these SB 9-specific size maximums.

6. Table 1-2 – *Setback Requirements* – The Municipal Code appears to omit reference to rear yard setbacks. Per Government Code section 65852.21, subdivision (c)(3)(B) states that, “a local agency may require a setback of up to four feet from the side and rear lot lines.” While the Town is not required to apply setback requirements, please note that new construction SB 9 units may not be subject to rear setbacks larger than four feet.
7. Table 1-2 – *Street Side Yard Setback* – The Municipal Code requires “street side” setbacks “per the applicable zoning district” for corner lots. However, state SB 9 law does not refer to “street side” setbacks, and Government Code section 65852.21, subdivision (c)(3)(B) requires side and rear setbacks of no more than four feet. The Town must remove requirements for underlying setbacks that exceed four feet for street-facing sides of corner lots.
8. Section 29.10.630 (e) – *Second Story Setback* – The Municipal Code states, “[t]he interior side and rear elevations of the second story of a two-story primary dwelling unit shall have a minimum setback of nine (9) feet.” However, this second story setback does not appear in the underlying zoning. Government Code section 65852.21, subdivision (b)(3) prohibits the application of development standards that do not appear in the underlying zoning to units subject to state SB 9 law. The Town must amend the Municipal Code to remove this second story setback requirement.
9. Section 29.10.630 (g) – *Plate Height* – The Municipal Code states “[t]he plate height of each story shall be limited to a maximum of ten (10) feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight (8) feet...” However, this height restriction does not appear in the underlying zoning. Government Code section 65852.21, subdivision (b)(3) prohibits the application of development standards that do not appear in the underlying zoning to units subject to state SB 9 law. The Town must amend the Municipal Code to remove more restrictive height requirements.
10. Section 29.10.630 (h) and (i) – *Development Standards* – The Municipal Code requires clerestory windows and prohibits vinyl siding and plywood as external materials. Neither of these requirements appear to apply to conventional residential development in the underlying zoning, which is inconsistent with Government Code section 65852.21, subdivision (b)(3). The Town must remove these requirements.
11. Section 29.10.630 (3)(a) and (3)(b) – *Duplex Unit Cap* – The Municipal Code allows “[a] maximum of four (4) units, with a maximum of two (2) primary dwelling units, on lots that have not undergone an urban lot split... In addition to the two (2) residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, Accessory Dwelling Units,” of the Municipal Code, one (1) accessory dwelling unit and one (1) junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.”

Government Code section 65852.21, subdivision (f) states, “[n]otwithstanding Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.” Thus, in instances where a property has only utilized SB 9 duplex law (Government Code 65852.21), the number of ADUs or JADUs allowed is to be consistent with what is allowed by State ADU Law. The Town must amend the code to reflect this allowance. In some instances, the creation of more than two ADUs may be possible.

12. Section 29.10.630 (3)(c) – *Building Code* – The Municipal Code states, “[T]he International Building Code (“Building Code”), and the California Fire Code and International Fire Code (together, “Fire Code”), as adopted by Chapter 6 of the Town Code, respectively, apply to all two-unit housing developments.” However, this would apply current building/fire codes to all SB 9 units, including existing dwellings on a site. For example, if an existing site contains one primary dwelling and a second, detached primary dwelling is proposed pursuant to SB 9, this Town code provision could result in the application of building/fire code requirements for the existing dwelling (such as building sprinkler systems) above and beyond what the building/fire codes would typically require for an existing detached unit. Per Government Code section 65852.21, subdivision (b)(3), “A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.” The Town must remove this language or clarify that existing structures are not subject to additional building/fire code requirements above and beyond what the building and fire codes would ordinarily require of residential development in single-family zones.
13. Section 29.10.630 (e) – The Municipal Code states, “[t]he two-unit housing development shall not require either demolition of more than twenty-five (25) percent of the exterior walls”. However, SB 450 removed language requiring a demolition cap of 25 percent from State SB 9 Law in 2021; therefore, the Town must remove this language.
14. Section 29.10.630 (4) – *Exceptions* – The Municipal Code exempts zoning standards that would preclude a two-unit development but omits a necessary reference to split lots. Government Code section 66411.7, subdivision (c)(2) states, “[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.” The Town must add language to include split lots in this exception clause.
15. Section 29.10.640 (3) and 29.10.660 (3) – *Neighbor Notification* – The Municipal Code states, “[i]n addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to

neighboring residents and property owners” in the case of either a two-unit development or a lot split. However, this does not appear to apply to conventional residential development in the underlying zoning, which would conflict with Government Code section 65852.21, subdivision (b)(3).

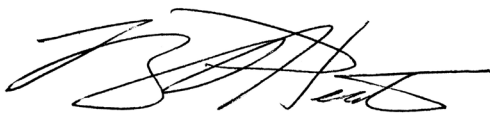
Furthermore, this requirement is not related to “the design or to improvements of a parcel”, which are the only standards that may be applied to split lots. The Town must remove these sections.

16. Section 29.10.640(5) and 29.10.660(6) – *Denial* – The Municipal Code refers to “the physical environment” in the sections describing denial conditions. However, SB 450 removed references to “the physical environment” from Government Code section 66411.7, subdivision (d) and section 65852.21, subdivision (d), which now refer to an “...adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.” The Town must remove the reference.
17. Section 29.10.640 (I) – *Utility Providers* – The Municipal Code states, “[t]he requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map.” However, SB 9 states, “Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.” Neither the Town nor utility provider may require offsite improvements to approve or record an urban lot split and the Town must modify the zoning code to clarify this.

HCD looks forward to assisting the Town in its compliance with state housing laws and reminds the Town that HCD has enforcement authority over SB 9, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a Town’s actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.’

HCD appreciates the Town’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the Town in fully complying with state law. Please feel free to contact Mindy Wilcox at Mindy.Wilcox@hcd.ca.gov if you have any questions.

Sincerely,



Brian Heaton
Section Chief, Land Use Policy
Housing Accountability Unit

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