

**DRAFT ORDINANCE**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE  
REGARDING ACCESSORY DWELLING UNITS AND CORRECTING OUTDATED  
REFERENCES IN TOWN CODE SECTIONS PERTAINING TO TERMINATION  
OF NONCONFORMING USE STATUS, REQUIREMENTS FOR A TWO-UNIT  
DEVELOPMENT UNDER SENATE BILL 9 (SB 9), AND CIVIL PENALTIES**

**WHEREAS**, from 2016 through 2022, the Governor signed a number of bills intended to address the State's housing crisis by creating new housing opportunities through accessory dwelling units and junior accessory dwelling units; and

**WHEREAS**, in 2017 and 2020, the Town updated the Town Code regarding accessory dwelling units and junior accessory dwelling units to comply with State laws; and

**WHEREAS**, effective January 1, 2023, Senate Bill 897 and Assembly Bill 2221 amended Government Code Section 65852 to continue to address barriers to the development of accessory dwelling units and junior accessory dwelling units; and

**WHEREAS**, these bills made substantial changes in the development standards applicable to accessory dwelling units and junior accessory dwelling units, including height, front yard setbacks, owner-occupancy, permit review time limits, and fire sprinklers; and

**WHEREAS**, the Town Council of the Town of Los Gatos adopted the 2023-2031 Housing Element on January 30, 2023, which includes policies that promote accessory dwelling units as a means to increase access to opportunity for lower-income households by encouraging infill of smaller units in single-family neighborhoods (Policy HE-1.7); ensure that at least 30 percent of the housing stock is rental units and continue to support the development of ADUs as a means of affordable rental housing (Policy HE-2.4); and Encourage homeowners to construct detached rental ADUs in order to increase the housing stock of smaller rental units (Policy HE-2.6); and

**WHEREAS**, the Town Council wishes to amend the Town Code to comply with State law and to implement Policies HE-1.7, HE-2.4, and HE-2.6 of the Town of Los Gatos 2023-2031 Housing Element; and

**WHEREAS**, the Town reviewed the changes in State law regarding accessory dwelling units and junior accessory dwelling units that have taken plan since the 2020 update to the Town Code and determined that a complete overhaul of the Town's accessory dwelling units and junior accessory dwelling units regulations was necessary; and

ATTACHMENT 2

**WHEREAS**, in drafting the revised accessory dwelling unit and junior accessory dwelling unit regulations, the Town considered changes in State law, feedback and clarification from the California Department of Housing and Community Development, and feedback from Town residents regarding privacy impacts caused by new accessory dwelling units on neighboring properties; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on September 13, 2023; and

**WHEREAS**, on September 13, 2023, the Planning Commission reviewed and commented on the proposed amendments regarding accessory dwelling units and forwarded a recommendation to the Town Council for approval of the proposed amendments with the recommendation that parking requirements for all accessory dwelling units be eliminated; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on November 7, 2023; and

**WHEREAS**, on November 7, 2023, the Town Council reviewed and commented on the proposed amendments regarding accessory dwelling units and the Town Council voted to introduce the Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Los Gatos as follows:

**SECTION I.** Division 7, "Accessory Dwelling Units," of Chapter 29, "Zoning Regulations," is replaced with the following:

### ***DIVISION 7. ACCESSORY DWELLING UNITS***

#### **Sec. 29.10.305. Intent and authority.**

This Division is adopted to comply with amendments to Government Code §§ 65852.2, 65852.22, 65852.23, and 65852.26, which mandate that applications for accessory dwelling units be considered ministerially without a public hearing; and sets Town standards for the development of accessory dwelling units in order to increase the supply of affordable housing in a manner that is compatible with existing neighborhoods.

#### **Sec. 29.10.310. Definitions.**

The following words, terms, and phrases, when used in these accessory dwelling unit regulations, shall have the meanings ascribed to them in this section:

*Accessory dwelling unit* means a detached or attached residential dwelling unit that is located on the same parcel as a proposed or existing primary dwelling. It shall provide complete independent living facilities for one or more persons with permanent provisions for living,

sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes efficiency units and manufactured homes.

- (1) A detached accessory dwelling unit is physically separate from a primary dwelling.
- (2) An attached accessory dwelling unit is contained within the space of and/or physically attached to a proposed or existing primary dwelling.

*Efficiency kitchen* means a limited kitchen that includes a cooking facility with appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. Examples of cooking appliances that may be used are: microwave ovens, hot plates, and similar appliances intended for use on top of a countertop. Refrigerator size is not limited.

*Efficiency unit* has the meaning set forth in Section 17958.1 of the Health and Safety Code.

*High-quality transit corridor* has the meaning set forth in Section 21155 of the Public Resources Code.

*Junior accessory dwelling unit* means a dwelling unit that does not exceed a floor area of five hundred (500) square feet and is entirely contained within the space of a proposed or existing single-family residence. For the purposes of this definition, enclosed spaces within the single-family residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

*Kitchen* means a cooking facility that includes a permanently installed cooking appliance, sink, refrigerator, food preparation counter, and storage cabinets that are of reasonable size in relation to the size of the dwelling unit.

*Legal nonconforming zoning condition* means a physical improvement on a property that was lawful when it was constructed but does not conform with current zoning standards.

*Living area* means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

*Major transit stop* has the meaning set forth in Section 21155 of the Public Resources Code.

*Manufactured home* has the meaning set forth in Section 18007 of the Health and Safety Code.

*Nonconforming accessory dwelling unit* means a unit that exists under the following circumstances:

- (1) A unit which was created or converted lawfully but, due to a zone change or an amendment to the zoning ordinance, became nonconforming; or
- (2) A unit which was created lawfully while within the County but, upon annexation to the Town, became nonconforming.

*Objective design standards* means 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 or proponent and the public official prior to submittal.

*Passageway* means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit and/or junior accessory dwelling unit.

*Proposed dwelling* means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

*Public transit* means a location, such as a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

*Tandem parking* means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

*Unpermitted accessory dwelling unit* means a dwelling unit that was created through the construction of a new structure or expansion of an existing structure without the benefit of a Building Permit (at a time when a Building Permit was required) and that cannot be otherwise legalized because it does not comply with development standards provided in this Chapter.

#### **Sec. 29.10.315. Review process.**

- (a) Development of an accessory dwelling unit and/or junior accessory dwelling unit consistent with this Division shall be reviewed ministerially as a Building Permit and the Town shall take final action within sixty (60) days of submittal of a complete application.
  - (1) When an accessory dwelling unit and/or junior accessory dwelling unit is proposed in conjunction with a permit application to create a new single-family or multi-family dwelling, the Town shall not take final action on the accessory dwelling unit and/or junior accessory dwelling unit until the application for the new single-family or multi-family dwelling is approved.
  - (2) The Town shall not issue a Certificate of Occupancy for an accessory dwelling and/or junior accessory dwelling unit before the Town issues a Certificate of Occupancy for the primary dwelling.
- (b) *Notification.* The Town shall not require, and the applicant shall not be otherwise required to provide written notice or post a placard for construction of an accessory dwelling unit and/or junior accessory dwelling unit. No noticing shall be required for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.
- (c) *Denial.* An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made:
  - (1) Adverse impacts on health, safety, and/or welfare of the public.
- (d) *Appeals.* Accessory dwelling units and junior accessory dwelling units that are consistent with this Division are ministerial and are not subject to an appeal.

#### **Sec. 29.10.320. General requirements and restrictions.**

- (a) *Incentive program.* Any accessory dwelling unit or junior accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council

shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A Deed Restriction shall be recorded specifying that the accessory dwelling unit or junior accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling.

- (b) *Parcel requirements.* An accessory dwelling unit and/or junior accessory dwelling unit may only be created on parcels satisfying all the following general requirements:
  - (1) *Permitted zones.* A parcel zoned to allow single-family or multi-family residential use.
  - (2) *Dwelling unit.* A parcel that includes a proposed or existing primary dwelling.
- (c) *Number.* Accessory dwelling units and/or a junior accessory dwelling unit may be permitted on a residential parcel as follows:
  - (1) *Single-family development.* Not more than one (1) junior accessory dwelling unit contained within the space of a proposed or existing single-family dwelling, and one (1) accessory dwelling unit, may be permitted on a lot with a proposed or existing primary dwelling.
  - (2) *Multi-family development.* Not more than a number equal to twenty-five (25) percent of the existing multi-family dwelling units rounded-up to the next whole number, within the portions of an existing multi-family dwelling not used as livable space (such as storage rooms, boiler rooms, passageways, attics, basements, or garages), and two (2) detached accessory dwelling units, may be permitted on a lot with a proposed or existing multi-family dwelling.
- (d) *Floor area ratio (FAR) standards.*
  - (1) *Accessory dwelling units.* Accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages. Exception: Up to eight hundred (800) square feet of gross floor area of an accessory dwelling unit shall be exempt from the applicable FAR standards. This subsection does not apply to junior accessory dwelling units.
  - (2) *Junior accessory dwelling units.* Junior accessory dwelling units are subject to the floor area ratio standards for all structures, excluding garages.
- (e) *Lot coverage.* Accessory dwelling units and junior accessory dwelling units are exempt from the lot coverage standards applicable to the zone and the accessory structure lot coverage limitations included in Section 29.40.015 (A)(5).
- (f) *Parking.* No parking shall be required for a new accessory dwelling unit and/or junior accessory dwelling unit.
- (g) *Design standards.* The purpose of these objective design standards is to ensure that the residential appearance of a property is maintained and that an accessory dwelling unit and/or junior accessory dwelling unit are compatible with the primary dwelling and the neighborhood. The following objective design standards apply to the construction of an accessory dwelling unit and/or junior accessory dwelling unit:

- (1) *Front entryway.* A front entryway framing a front door shall have a roof eave that matches or connects at the level of the adjacent eave line.
- (2) *Front porch.* If proposed, front porches shall have a minimum depth of six (6) feet and a minimum width equal to twenty-five (25) percent of the linear width of the front elevation.
- (3) *Windows.* All second-story windows less than ten (10) feet from rear and/or side property lines shall be clerestory with the bottom of the glass at least six (6) feet above the finished floor, except as necessary for egress purposes as required by the Building Code.
- (4) *Balconies and Decks.* Balconies, rooftop terraces, and second-story decks are prohibited for all accessory dwelling units and junior accessory dwelling units.

(h) *Grading.*

- (1) To the extent required by Chapter 12, Article II and Section 29.10.09045 (b) of the Town Code, the grading activities set forth in subsection (2) below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application.
- (2) Grading activities associated with the construction of an accessory dwelling unit and/or junior accessory dwelling unit shall not exceed fifty (50) cubic yards, cut plus fill, except:
  - a. Light wells that do not exceed the minimum required by the Building Code shall not count as grading activity for the purpose of this section.
  - b. Excavation within the footprint of a proposed accessory dwelling unit shall not count as grading activity for the purpose of this section.

- (i) *Cut and fill.* Construction of an accessory dwelling unit and/or a junior accessory dwelling unit shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units) below:

| <b>Table 1-1 – Cut and Fill Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units</b>                         |             |              |
|---|-------------|--------------|
| <b>Site Element</b>   | <b>Cut*</b> | <b>Fill*</b> |
| Accessory dwelling unit/junior accessory dwelling unit  | 4 feet      | 3 feet       |
| Driveways**   | 4 feet      | 3 feet       |
| Other (decks, yards)*   | 4 feet      | 3 feet       |
| * Combined depths of cut plus fill for an accessory dwelling unit or junior accessory dwelling unit shall be limited to six (6) feet. |             |              |
| ** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.    |             |              |

- (j) *Retaining walls.* Retaining walls shall not exceed five (5) feet in height and shall not run in a continuous direction for more than fifty (50) feet without a break, offset, or planting pocket. Retaining walls shall have a five (5) foot landscape buffer adjacent to the street.
- (k) *Light reflectivity value.* Exterior materials for accessory dwelling units and/or junior accessory dwelling units in the Hillside Overlay shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines.
- (l) *Landscaping.* All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO).
- (m) *Lighting.* New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill onto neighboring parcels consistent with Section 29.10.09015 of the Town Code.
- (n) *Trees.* Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article I, Division 2, "Tree Protection," of the Town Code.
- (o) *Stormwater management.* The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer.
- (p) *Conveyance.* Except as provided in CA Government Code Section 65852.26, an accessory dwelling unit may be rented separate from the primary dwelling but may not be sold or otherwise conveyed separate from the primary dwelling.
- (q) *Town codes and ordinances.* All accessory dwelling units and junior accessory dwelling units shall comply with all the provisions of this Chapter and other applicable Town Codes.

- (r) *Building codes.* All accessory dwelling units and junior accessory dwelling units shall comply with applicable building, health, and fire codes, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the Building Official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety.
- (s) *Rentals longer than 30 days.* Rentals for durations of less than thirty (30) days, including short-term rentals (as defined by the California Government Code), are prohibited.
- (t) *Maximum number of dogs, cats, or litters.* All accessory dwelling units shall comply with Section 4.40.010 of the Town Code.

**Sec. 29.10.325. Accessory dwelling unit development standards.**

An accessory dwelling unit must comply with the following objective development standards:

- (a) *Location.*
  - (1) No detached accessory dwelling unit may be constructed in front of the primary dwelling except in the HR zones.
  - (2) No accessory dwelling unit may be constructed in front of a primary dwelling or added to an existing second story of a primary dwelling that is any of the following:
    - a. A Historic Structure, as defined in Section 29.10.020 of the Zoning Code;
    - b. Listed in the Town of Los Gatos Historic Resource Inventory, as defined by Town Code Chapter 29, Article VII, Division 3, "Historic Preservation and LHP or Landmark and Historic Preservation Overlay Zone;" or
    - c. Listed in the California Register of Historical Resources.

- (b) *Setbacks.* Accessory dwelling units shall be subject to the setback requirements specified in Table 1-2 (Accessory Dwelling Unit Setback Requirements) below:

| <b>Table 1-2. Accessory Dwelling Unit Setback Requirements<sup>(1)</sup></b>   |   |   |   |   |  |   |
|--|---|---|---|---|--|---|
|  | <b>Single-Family</b>                              |   |   | <b>Multi-Family</b>                               |  |   |
|  | New construction detached ADU                     | New attached ADU within the <u>existing</u> space of the primary dwelling <sup>(2)</sup> or accessory structure | New attached ADU within the <u>proposed</u> space of the primary dwelling | New construction detached ADU                     | Conversion of portions existing multi-family dwelling not used as livable space <sup>(3)</sup> | Conversion of existing accessory structure(s) |
| Front  | Per the applicable zoning district <sup>(4)</sup> | N/A   | Per the applicable zoning district <sup>(4)</sup>                         | Per the applicable zoning district <sup>(4)</sup> | N/A  | N/A   |
| Rear   | 4 feet minimum                                    | Sufficient for fire and safety  | 4 feet minimum  | 4 feet minimum                                    |  |   |
| Side (including street-side)   | 4 feet minimum                                    |   | 4 feet minimum  | 4 feet minimum                                    |  |   |
| From any other structure located on the same lot <sup>(5)</sup>  | 5 feet minimum                                    | N/A   | 5 feet minimum  | 5 feet minimum                                    | N/A  | N/A   |
| <p>(1) Cornices, eaves, belt courses, sills, canopies, bay windows, chimneys, or other similar architectural features may extend into required setbacks as specified in Section 29.40.070 (b) of the Zoning Code.</p> <p>(2) Includes attached garages.</p> <p>(3) Such as storage rooms, boiler rooms, passageways, attics, basements, or garages.</p> <p>(4) Front setback requirements shall not preclude construction of an 800 square-foot accessory dwelling unit.</p> <p>(5) Measured from the exterior wall surface and/or supporting posts.</p> |   |   |   |   |  |   |

- (c) *Maximum unit size.*

- (1) The maximum floor area of an accessory dwelling unit is one thousand two hundred (1,200) square feet.
- (2) An attached accessory dwelling unit that is not created through conversion of existing space shall not exceed fifty (50) percent of the size of the existing primary dwelling. Exception: Up to eight hundred (800) square feet of gross floor area of an attached accessory dwelling unit shall be exempt from this subsection.
- (3) Detached accessory dwelling units exceeding a combined square footage of four hundred fifty (450) square feet in the R-1, R-D, R-M, RMH, and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of six hundred (600) or one thousand (1,000) square feet in the HR and RC zones shall not be subject to Development Review Committee or Planning Commission approval.

- (d) *Maximum number of bedrooms.* There is no limit on the number of bedrooms in an accessory dwelling unit.

- (e) *Stories.* Accessory dwelling units shall be contained within one (1) story.

- (f) *Height.* Accessory dwelling units shall be subject to the height requirements below:
- (1) A height of sixteen (16) feet for a detached accessory dwelling unit on a lot with a proposed or existing single-family or multi-family dwelling.
  - (2) A height of eighteen (18) feet for a detached accessory dwelling unit on a lot with a proposed or existing single-family or multi-family dwelling that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor. An additional two feet in height shall be provided to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.
  - (3) A height of eighteen (18) feet for a detached accessory dwelling unit on a lot with a proposed or existing multi-family, multi-story dwelling.
  - (4) A height of twenty-five (25) feet or the height limitation of the applicable zoning district that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a proposed or existing two-story primary dwelling.
  - (5) Accessory dwelling units may be added directly above an existing one-story accessory structure on a property with a proposed or existing two-story primary dwelling in the R-1, R-D, R-M, RMH, and R-1D zones. These second-story accessory dwelling units may not be internally connected to the accessory structure below by an interior staircase.
- (g) *Entrances.* Attached accessory dwelling units shall include a separate entrance from the main entrance to the proposed or existing primary dwelling. An accessory dwelling unit contained on a second story shall be served by a separate, dedicated interior or exterior stairway. A passageway from the accessory dwelling unit to a public street may be created but shall not be required by the Town.
- (h) *Interior connection.* An attached accessory dwelling unit may, but shall not be required to, contain an interior doorway connection between the primary dwelling and the accessory dwelling unit.
- (i) *Conversion of existing floor area.* An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of, or constructed in the same location and manner as, an existing primary dwelling or accessory structure. The following provisions shall apply:
- (1) The accessory dwelling unit shall be located on a lot zoned to allow single-family, two-family, or multi-family residential use.
  - (2) The accessory dwelling unit shall have a separate entrance from the primary dwelling.
  - (3) The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.
  - (4) An expansion of one hundred fifty (150) square feet beyond the physical dimensions of an existing structure, limited to accommodating ingress and egress, shall be permitted.

- (5) When an existing structure is nonconforming as to setback standards and converted to an accessory dwelling unit, any expansion of that structure may not be nearer to a property line than the existing building in accordance with Section 29.10.245.
- (j) *Density.* Accessory dwelling units that conform to California Government Code Section 65852.2 shall be deemed an accessory use and shall not be considered to exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing General Plan and zoning designation for the lot.
- (k) *Fire sprinklers.* Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

**Sec. 29.10.330. Junior dwelling unit development standards.**

- (a) *Location.* A junior accessory dwelling unit shall be constructed entirely within the walls of the proposed or existing single-family residence. For the purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence. Junior accessory dwelling units may not be located within the space of, or attached to, a detached accessory structure of any type.
- (b) *Setbacks.* A junior accessory dwelling unit shall be subject to the setback requirements of the applicable zoning district for a single-family residence, or the setbacks established by the existing single-family residence within which the junior accessory dwelling unit is located, whichever is less and sufficient for fire safety.
- (c) *Maximum unit size.* The maximum floor area of a junior accessory dwelling unit is five hundred (500) square feet, measured from the outer face of exterior walls and the centerline of shared interior walls.
- (d) *Entrances.* A junior accessory dwelling unit shall include a separate entrance from the main entrance to the proposed or existing single-family residence. When separate sanitation facilities are not included within the space of the junior accessory dwelling unit, an interior entry into the main living area of the primary dwelling shall be provided in addition to the separate entrance from the main entrance to the proposed or existing single-family residence. A junior accessory dwelling unit contained on a second story shall be served by a separate, dedicated interior or exterior stairway. A passageway from the accessory dwelling unit to a public street may be created but shall not be required by the Town.
- (e) *Kitchen.* A junior accessory dwelling unit shall contain a kitchen or an efficiency kitchen.
- (f) *Sanitation facilities.* A junior accessory dwelling unit may include separate sanitation facilities, or it may share sanitation facilities with the single-family residence. If sanitation facilities are not provided within the space of the junior accessory dwelling unit, an interior doorway shall be provided between the junior accessory dwelling unit and the living area of the single-family dwelling.

- (g) *Owner-occupancy.* The property owner shall reside in the single-family residence in which the junior accessory dwelling unit will be located. The property owner may reside in either the remaining portion of the single-family residence or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
- (h) *Deed Restriction.* Prior to Building Permit issuance, the applicant shall record a Deed Restriction in the form prescribed by the Town, which shall run with the land and provide for all the following:
  - (1) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
  - (2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
  - (3) Owner-occupancy consistent with this section.
- (i) *Fire or life protection.* For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

**Sec. 29.10.335. Unpermitted units.**

This section provides a mechanism to legalize unpermitted accessory dwelling in compliance with Government Code Section 65852.23.

- (a) *Applicability.* This section applies to accessory dwelling units that were unlawfully constructed prior to January 1, 2018, and that have not been deemed substandard pursuant to Section 17920.3 of the Health and Safety Code by the building official. The Community Development Director may determine construction date by any credible means warranted, including use of aerial photography, county records, photographs, and signed affidavits.
- (b) *Relief.* The Town shall not deny a permit to legalize an unpermitted accessory dwelling solely due to either of the following:
  - (1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code; or
  - (2) The accessory dwelling unit does not comply with Government Code Section 65852.2; or
  - (3) The accessory dwelling unit does not comply with this Chapter.
- (c) *Approval.* An unpermitted accessory dwelling unit may be legalized in compliance with Section 29.10.315 (Review Process).
- (d) *Enforcement.* A property owner who makes known to the Town the existence of an unpermitted accessory dwelling unit but who fails to obtain and finalize a Building Permit, shall be subject to enforcement and penalties as specified by Division 9 of this Chapter.

- (e) *Exception.* The Town may deny a permit to legalize an unpermitted accessory dwelling unit and instead require correction of the violation(s) if the Building Official makes a finding that correcting the violation(s) is necessary to protect the health and safety of the public or occupants of the structure.

**Sec. 29.10.340. Nonconforming accessory dwelling units and junior accessory dwelling units.**

- (a) *Permits.* The owner of a nonconforming accessory dwelling unit and/or junior accessory dwelling unit, as defined in Section 29.10.310, must obtain a permit in compliance with Section 29.10.315 (Review Process).

Where an application has been submitted for a nonconforming accessory dwelling unit and/or junior accessory dwelling unit and Town records do not establish its nonconforming status, the property owner will have sixty (60) days from the date the Town provides notice of its findings to submit any facts and evidence to support a claim that the unit is nonconforming as defined in this Article. If at the end of sixty (60) days evidence has not been submitted by the property owner to establish the accessory dwelling unit and/or junior accessory dwelling unit is nonconforming to the satisfaction of the Community Development Director, the unit shall be determined to be an unpermitted accessory dwelling unit pursuant to section 29.10.335 and subject to its regulations.

- (b) *Units existing at time of annexation.* Upon annexation a lawful accessory dwelling unit and/or junior accessory dwelling unit shall become nonconforming and the owner must either apply for a permit pursuant to Section 29.10.315 (Review Process) within one (1) year of the date of annexation. A property owner who makes known to the Town the existence of a nonconforming accessory dwelling unit and/or junior accessory dwelling unit but who fails to obtain and finalize a Building Permit, shall be subject to enforcement and penalties as specified by Division 9 of this chapter.

**Sec. 29.10.350. Elimination and/or demolition of existing accessory dwelling units and/or junior accessory dwelling units.**

In order to eliminate and/or demolish, without replacement, an approved accessory dwelling unit and/or junior accessory dwelling unit, the Development Review Committee shall make the finding that the proposed elimination and/or demolition, (without replacement), is consistent with the Town's Housing Element of the General Plan. In order to eliminate and/or demolish an existing accessory dwelling unit, the Development Review Committee must make the demolition findings pursuant to Section 29.10.09030.

**Sec. 29.10.355. Nonconforming zoning conditions.**

The Town shall not deny an application for a permit to create an accessory dwelling unit and/or junior accessory dwelling unit based on a need for the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the accessory dwelling unit and/or junior accessory dwelling unit.

#### **Sec. 29.10.360. Utilities.**

(a) An accessory dwelling unit may be required to have a new or separate utility connection, including a separate sewer lateral, between the accessory dwelling unit and the utility. A connection fee or capacity charge may be charged that is proportionate to the size in square feet of the accessory dwelling unit or its drainage fixture unit (DFU) values.

(1) Exceptions: Junior accessory dwelling units, accessory dwelling units within the proposed space of a single-family dwelling, or accessory dwelling units within the existing space of a single-family dwelling or accessory structure are exempt from any requirement to install a new or separate utility connection and to pay any associated connection or capacity fees or charges, unless the accessory dwelling unit was constructed with a new single-family dwelling.

#### **Sec. 29.10.365. Fees.**

(a) *Connection fees and capacity charges.* An accessory dwelling unit shall not be considered by the Town, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(b) *Impact fees.* An accessory dwelling unit less than seven hundred fifty (750) square feet or a junior accessory dwelling unit is exempt from impact fees imposed by the Town, special district, or water corporation. An accessory dwelling seven hundred fifty (750) square feet or greater is subject to the Traffic Impact Fee requirements of the Town's Traffic Impact Policy (Policy 1-08), as may be amended from time to time. Any impact fees charged for an accessory dwelling unit of seven hundred fifty (750) square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit. For purposes of this subparagraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of CA Government Code Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

**SECTION II.** Section 29.10.195, "Termination of nonconforming use status," of Chapter 29, "Zoning Regulations," is amended to read as follows:

**Sec. 29.10.195. - Termination of legal nonconforming use status.**

- (a) Unless this Division is amended to provide otherwise, the following legal nonconforming uses may continue interminably so long as they conform to the other requirements of this Division:
  - (1) Legal nonconforming residential uses.
  - (2) Schools.
  - (3) Church uses.
  - (4) Nonresidential uses in the downtown which would otherwise be nonconforming due to zone changes and ordinance amendments which occurred after July 1, 1982.
  - (5) Residential care facilities for the elderly that existed as of January 1, 1988 and are nonconforming only as to parking.
  - (6) Hotels/motels located in residential zones which were converted to multiple-family dwelling units prior to March 22, 1986, if a conditional use permit is obtained.
  - (7) Commercial uses that are nonconforming as to parking if parking has been provided on-site by July 1, 1992, or twenty (20) years from the date the use became legal nonconforming, whichever is later.
- (b) The following legal nonconforming uses shall cease at the end of the following time periods:
  - (1) A junkyard shall cease ninety (90) days from the date it becomes nonconforming.
  - (2) Where there are improvements on land, but of a type for which no Building Permit would currently be required, the legal nonconforming use shall cease three (3) years from the date the use becomes legal nonconforming.
  - (3) Where the land is improved with one (1) or more structures of a type for which a Building Permit would currently be required and the structure(s) are utilized in connection with the legal nonconforming use, the legal nonconforming use shall cease twenty (20) years from March 23, 1966, or twenty (20) years from the date the use became legal nonconforming, whichever is later.
  - (4) When a zoning amendment is adopted after 1981 that causes a use to be legal nonconforming solely by subjecting it to the requirement of obtaining a conditional use permit, all uses affected by the amendment shall apply for a use permit within sixty (60) days after the amendment becomes effective. Failure to make such application within that time shall make the subject use immediately unlawful.
  - (5) A business engaged in the retail sales [of] firearms and/or destructive devices shall cease four (4) years from the date it becomes legal nonconforming.
- (c) If any period of authorized duration is held by a court to be too short and therefore unconstitutional or unlawful on its face or as applied, the period of duration shall be extended to such time as the court determines is lawful.

**SECTION III.** Subsection (e) of Section 29.10.630, “Requirements,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

(e) Floor Area Ratio and Lot Coverage.

- (1) The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
- (2) For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
  - i. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
  - ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
- (3) The maximum size of the first new residential unit shall not exceed one thousand two hundred (1,200) square feet.
- (4) When a two-unit housing development is proposed, a 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.
- (5) Notwithstanding the floor area ratio standards in this subsection, a new two-unit housing development with unit sizes of eight hundred (800) square feet or less shall be permitted.

**SECTION IV.** Section 29.20.960, “Civil penalties,” of Chapter 29, “Zoning Regulations,” is amended to read as follows:

Notwithstanding section 29.20.950 relating to criminal penalty, any person found to have violated section 29.10.0965 shall be liable to pay the Town a civil penalty as prescribed in subsections (1) through (3). Any person found to have violated section 29.10.340(a) shall be liable to pay the Town a civil penalty as prescribed in subsection (4):

- (1) Replacing the unlawfully removed tree with a new tree as similar thereto as reasonably feasible, or if such replacement is not feasible because of size or age of tree, with such number of similar trees as will provide reasonably equivalent aesthetic quality based on the determination of the Director of Parks, Forestry and Maintenance Services. Where similar replacement trees will not provide reasonably equivalent aesthetic quality, the Director of Parks, Forestry and Maintenance Services shall calculate the value of the removed tree in accordance with The Guide for Establishing Values of Trees and Other Plants by the International Society of Arboriculture and

such value will be the civil penalty for violation of section 29.10.0965 in addition to subsection (2). Where replanting cannot be accomplished to the satisfaction of the Director of Parks, Forestry and Maintenance Services, the amount of the value of the removed tree shall be deposited into the street tree deposit account.

- (2) The cost of enforcing this Chapter, which shall include all costs, staff time, and attorneys' fees.
- (3) All replacement trees planted as required by subsection (1) shall be maintained by the property owner under a two-year written maintenance agreement with the Town.
- (4) A five thousand dollar (\$5,000.00) civil penalty shall be imposed against any property owner found in violation of section 29.10.340(a) in addition to any application fees required and the cost of bringing the property into compliance with the California Building Code Standards (CA Code of Regulations, Title 24).

#### **SECTION V. Severability.**

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

#### **SECTION VI. CEQA.**

The Environmental Impacts of this Ordinance were Analyzed in the Environmental Impact Report for the 2040 General Plan. Additionally, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3).

#### **SECTION VII. GENERAL PLAN.**

The amendments to Chapter 29 of the Town Code regarding accessory dwelling units are consistent with the General Plan.

**SECTION VIII. Publication.**

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the Town Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 pf the Government Code of the State of California.

**SECTION IX. Effective Date.**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the \_\_\_\_ day of \_\_\_\_\_ 2023, and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the \_\_\_\_ day of \_\_\_\_\_ 2023, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

\_\_\_\_\_  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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

ATTEST:

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

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