



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 04/10/2024

ITEM NO: 2

DATE: April 5, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code for Senate Bill 9 Regarding a Change to Required Second-Story Step-Backs and Other Clarifying Revisions. The Proposed Amendments to the Town Code Are Not Considered a Project Under Section 15378 of the California Environmental Quality Act, and in Accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 Ordinances Are Not a Project Subject to the California Environmental Quality Act. Town Code Amendment Application A-24-003.
Project Location: Town Wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council on amendments to Chapter 29 (Zoning Regulations) of the Town Code for Senate Bill 9 regarding a change to required second-story step-backs and other clarifying revisions.

CEQA:

In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15378, these proposed ordinance amendments are not a “project” subject to CEQA because the proposed amendments affect processing of applications only and will not impact the physical environment. Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 ordinances are not a project subject to CEQA.

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

FINDINGS:

- In accordance with CEQA Guidelines Section 15378, these proposed ordinance amendments are not a “project” subject to CEQA because the proposed amendments affect processing of applications only and will not impact the physical environment. Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 ordinances are not a project subject to CEQA; and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

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

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

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

On December 21, 2021, Town Council adopted an Urgency Ordinance to implement local objective standards for SB 9 applications. On November 15, 2022, Town Council approved Ordinance 2334, which established the permanent SB 9 Ordinance within Chapter 29 (Zoning Regulations) of the Town Code (Exhibit 2). No modifications have occurred since the adoption of the permanent Ordinance at the end of 2022.

At the February 13, 2024 Strategic Priorities meeting, Town Council provided guidance to Town staff on workload prioritization for the next three years. A local architect presented at this meeting, requesting that the SB 9 Ordinance be amended to allow flexibility with the second-story step-back rule (Exhibit 3). Town Council voted to include this request within the Strategic Priorities and listed the change as the first priority for ordinance amendments.

DISCUSSION:

The draft amendments in Exhibit 4 includes a track-changes version (with removed text shown in strike-through text and new text shown underlined) of the current SB 9 Ordinance, including the requested SB 9 second-story step-back modification, as well a number of clean-up amendments that staff has identified since the permanent Ordinance was adopted at the end of 2022.

A. Second-Story Step-Back Modification

The current SB 9 Ordinance [Town Code Section 29.10.630(2)(e)] requires the following for second-story step-backs:

(e) Step-back. The interior side and rear elevations of the second story of a two-story primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall;

The five-foot step-back rule was included in the SB 9 Ordinance in an attempt to limit potential second-story privacy impacts associated with an SB 9 development project since SB 9 units can be placed as close as four feet from a side or rear property line. Additionally, the five-foot step-back decreases the mass of a two-story SB 9 in accordance with the Residential Design Guidelines since only objective standards can be used to review SB 9 applications.

At the February 13, 2024 Strategic Priorities meeting, a local architect spoke on a possible modification to the SB 9 Ordinance regarding the required five-foot second-story step-back requirement for two-unit developments (Exhibit 3). Specifically, the recommendation was to allow the five-foot step-back to be measured from a covered porch projection on the first floor, and not just the wall of the first floor below. As highlighted in Exhibit 3, measuring to the post of a covered porch below would meet the intent of the step-back rule. Staff's recommended amendment is shown below and is also included in Exhibit 4.

(e) Step-back. The interior side and rear elevations of the second story of a two-story primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall. In the case of a covered porch on the first floor below, the step-back is measured from the structural post of the covered porch to the wall above;

B. Ordinance Clean-Ups

The following is a summary of all other draft amendments to the SB 9 Ordinance, either for consistency with State law or items identified by staff as needing clarification. The following items are listed in the order that they appear in Exhibit 4:

DISCUSSION (continued):

- **Legal Parcel Eligibility [Section 29.10.620(2)].** This amendment is to provide clarification on when an urban lot split and two-unit housing development applications may be submitted. The current SB 9 Ordinance requires that applications for either SB 9 application type, “only be accepted on proposed parcels with either a recorded parcel map or certificate of compliance.” This created a situation where if an owner wanted to do both an urban lot split and a two-unit housing development on the resulting parcels, they must wait until the urban lot split is approved, the corresponding Parcel Map Application is approved, and the parcels are recorded with the County prior to acceptance of a two-unit housing development application. Staff’s proposed edits in Exhibit 4 would allow both applications to be submitted simultaneously, but that the construction and building permits would not be issued until the parcel map is recorded with the County.
- **Historic Property Exclusion [Section 29.10.620(3)].** For consistency with State law, a line is being added to also include properties within the State Historic Resources Inventory.
- **Very High Fire Hazard Severity Zone Exclusion [Section 29.10.620(4)].** For consistency with State law, the language was updated to reflect updates to the Government Code Sections. This would not result in changes to the way the current SB 9 Ordinance is implemented.
- **New Exclusion Area – Conservation Easements [Section 29.10.620(10)].** A new exclusion area to prohibit SB 9 applications on parcels with a conservation easement is being added for consistency with State law.
- **New Driveways [Section 29.10.630(1)(b)].** Clarification to the two-unit development driveway standards was added to specify that the rule only applies to new driveways.
- **Floor Area Increase [Section 29.10.630(1)(e)].** Clarification to the ten percent floor area ratio increase was added to specify that the ten percent increase only applies to properties where the existing floor area on site is at or below the maximum allowed.
- **Building Site Slopes [Section 29.10.630(1)(h)].** The word “average” is proposed to be removed from this section so that the original intent is met. The goal of this section was to ensure that new units are not constructed on lands exceeding 30 percent slope, consistent with the provisions of the Hillside Development Standards and Guidelines. The section currently refers to, “lands with an average slope exceeding 30 percent”, which implies that a home can be sited on lands with a slope much higher than 30 percent as long as the average of this area and the rest of the building site equals 30 percent slope or below. This is not consistent with the Hillside Development Standards and Guidelines.

DISCUSSION (continued):

- **Garage Setbacks [Section 29.10.630(1)(p)].** Clarification to the setback section was added to specify that only garages attached to the SB 9 primary unit can use the reduced SB 9 setbacks, and that detached garages are subject to the standard Town Code setbacks for accessory buildings.
- **Interior Side Setback for Attached Units [Table 1-2, Exception (3)].** Clarification to the setback table was added to specify that the allowance in Exception 3 for, “no interior side setbacks for two-unit housing development units constructed as attached units on separate lots,” is only applicable to parcels created through an urban lot split which are still under the same ownership, and not for neighboring properties under different ownership. Additionally, a new clause was added for flag-lots in this scenario; where similarly to the internal side setback on side-by-side lots, no rear setback (for the front property in a flag lot configuration) and no front setback (for the rear property in a flag lot configuration) are required for two-unit housing development units constructed as attached units in a flag-lot configuration where the parcels are still under the same ownership.
- **Non-Conforming Conditions [Section 29.10.650(2)(e)].** Clarification was added to this section to better reflect how the Town addresses non-conforming situations created through an urban lot split and for consistency with item (c) of this subsection regarding existing structures. Specifically, the Town allows an urban lot split to create non-conforming setbacks, floor area ratio, and lot coverage as long as the existing structure is not modified.
- **Future Development [Section 29.10.660(a)(5)].** Reference to the Town’s Accessory Dwelling Unit process was added to the types of ways an owner can develop parcels resulting from an urban lot split.
- **Additional Minor Edits.** Additional minor grammatical and reference corrections have been made in the following sections: 29.10.600; 29.10.610 (existing structure definition); 29.10.630(1)(e)(5); 29.10.630(1)(i); 29.10.640(a)(3); and 29.10.660.

PUBLIC COMMENTS:

At time of publication of this report, no public comments have been received.

CEQA DETERMINATION:

In accordance with CEQA Guidelines Section 15378, these proposed ordinance amendments are not a “project” subject to CEQA because the proposed amendments affect processing of applications only and will not impact the physical environment. Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 ordinances are not a project subject to CEQA.

CONCLUSION:

A. Summary

The draft amendments in Exhibit 4 proposes amendments to Chapter 29 (Zoning Regulations) of the Town Code for Senate Bill 9 regarding an amended second-floor step-back requirement, amendments to align the Town's SB 9 regulations with State law, and amendments to clarify existing standards as identified by staff over the past few years.

B. Recommendation

Staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the draft amendments (Exhibit 4) by taking the following actions:

1. Make the finding that in accordance with CEQA Guidelines Section 15378, these proposed ordinance amendments are not a "project" subject to CEQA because the proposed amendments affect processing of applications only and will not impact the physical environment. Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 ordinances are not a project subject to CEQA;
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the draft amendments are consistent with the General Plan (Exhibit 1); and
3. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the draft amendments (Exhibit 4).

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the draft amendments with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. Current Senate Bill 9 Ordinance 2334
3. Covered Porch Step-Back Diagram
4. Draft Senate Bill 9 Ordinance Amendments