



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
FEBRUARY 01, 2022
TELECONFERENCE
7:00 P.M.**

*Rob Rennie, Mayor
Maria Ristow, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Marico Sayoc, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject. Disruption of the meeting may result in a violation of Penal Code 403.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.LosGatosCA.gov/TownYouTube***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

**COUNCIL MEETING AGENDA
FEBRUARY 01, 2022
TELECONFERENCE
7:00 PM**

IMPORTANT NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join.
<https://us06web.zoom.us/j/82060529545?pwd=R3l4TkovZnpDRVhBQzV6Ukc1VWpJZz09>. Passcode: 783899. You can also type in 820 6052 9545 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636-651-0008 US Toll. Conference code: 969184

When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

When called to speak, you will be asked to provide your full name and your town/city of residence. This identifying information is optional and not a requirement for participation. Please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting. If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

RULES OF DECORUM AND CIVILITY

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- addressing the town Council without first being recognized;
- interrupting speakers, Town Council, or Town staff;
- continuing to speak after the allotted time has expired;
- failing to relinquish the microphone when directed to do so;
- repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker. Disruption of the meeting may result in a violation of Penal Code 403.

REMOTE LOCATION PARTICIPANTS *The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR ROB RENNIE, VICE MAYOR MARIA RISTOW, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARICO SAYOC. All votes during the teleconferencing session will be conducted by roll call vote.*

MEETING CALL TO ORDER

ROLL CALL

CLOSED SESSION REPORT

COUNCIL / MANAGER MATTERS

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Mayor asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 2 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)*

1. Approve Draft Minutes of the January 18, 2022 Town Council Meeting.
2. Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID -19 Pandemic.
3. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Public Right-of-Way Improvements Completed by Cashmere Bouquet 1031, LLC, for 258 Union Avenue, and Authorize the Town Clerk to Submit for Recordation.
4. Approval of Cannabis Consultant Services Proposal Submitted by Hinderliter, deLlamas & Associates (HdL) Companies and Authorization for the Town Manager to Execute Agreement.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

PUBLIC HEARINGS *(Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

5. Adopt an Extension of an Urgency Ordinance for a Period of Ten Months and 15 Days to Implement Senate Bill 9 to Allow for Two-Unit Housing Developments and Urban Lot Splits in All Single-Family Residential Zoning Districts.

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time).*

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/01/2022

ITEM NO: 1

**DRAFT
Minutes of the Town Council Meeting
January 18, 2022**

The Town Council of the Town of Los Gatos conducted a regular meeting utilizing teleconference and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, January 18, 2022, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Mayor Rob Rennie, Vice Mayor Maria Ristow, Council Member Mary Badame, Council Member Matthew Hudes, Council Member Marico Sayoc (all participating remotely).

Absent: None.

PRESENTATIONS

Mayor Rennie thanked the outgoing Commissioners and read the Commendation each will receive.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Sayoc stated she attended the Cities Association City Selection Committee meeting and is working with the Peninsula Division to curate a series of webinars, the first of which will be on housing.
- Vice Mayor Ristow stated she attended the West Valley Sanitation District (WVSD) Board of Directors meeting; observed the Finance Commission and Complete Streets and Transportation Commission (CSTC) meetings; attended community meetings for Together We Will (TWW), Los Gatos Meadows, Democracy Tent, Shannon Road Community Outreach with Council Member Hudes, Safe Routes to School (SR2S), and North 40 with a Harmonie Park representative; participated in a Silicon Valley Bike Coalition Bicycle Champion training; met with residents and a cannabis business owner; and toured Airfield Cannabis Supply Collective.
- Council Member Badame stated she observed the Finance Commission meeting and met with residents.
- Council Member Hudes stated he attended the Finance Commission, Santa Clara County Cities Association City Selection Committee, and Shannon Road Community Outreach meetings, State and Local Officials Use of Infrastructure Funds webinar, and observed the Planning Commission meeting.

Council Matters – continued

- Mayor Rennie attended the Finance Commission, Bay Area Air Quality Management District (BAAQMD) Mobile Source, Valley Transportation Authority (VTA) Board and Policy Advisory Committee (PAC) meetings, Silicon Valley Clean Energy Authority (SVCEA) Board, Santa Clara County Cities Association Legislative Action Committee and Board meetings, New Commissioner Orientation, and a Ribbon Cutting for Teleferic Barcelona.

Manager Matters

- Introduced newly appointed Police Chief Jamie Field.
- Announced free COVID testing will be held at the Adult Recreation Center (ARC) on January 28; appointments are recommended and will be available beginning Friday, January 21.
- Announced the Youth Commission is hosting an event to welcome new residents to the Town of Los Gatos on January 29, 2022, at 12:00 p.m. at Oak Meadow Park.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Draft Minutes of the December 14, 2021 Special Town Council Meeting - Commissioner Interviews.
2. Approve Draft Minutes of the December 14, 2021 Special Meeting of the Town Council.
3. Approve Draft Minutes of the December 21, 2021 Town Council Meeting.
4. Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID -19 Pandemic. **RESOLUTION 2022-001**
5. Adopt a Resolution to Rescind the Los Gatos Boulevard Plan. **RESOLUTION 2022-002**
6. Actuarial Services Agreement:
 - a. Authorize the Town Manager to Execute a Five-Year Agreement with Bartel Associates, LLC to Provide Actuarial Services for the Town of Los Gatos in Amount of \$170,400, Plus an Additional \$20,000 for Other Services as Required for a Total Agreement Amount Not to Exceed \$190,400; and,
 - b. Approve an Expenditure Budget Adjustment in the Amount of \$11,000 from Available Capital/Special Projects Reserve.

Council Member Hudes pulled item #5.

Opened public comment.

Kim Hastings

- Did not speak due to technical difficulties.

Closed public comment.

Consent Items – continued

MOTION: Motion by Vice Mayor Ristow to approve consent items 1-6, exclusive of item 5.
Seconded by Council Member Sayoc.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Kim Hastings

- Did not speak due to technical difficulties.

PUBLIC HEARINGS

7. Weed Abatement Program Public Hearing to Consider Objections to the Proposed Abatement of Hazardous Vegetation (Weeds) for Properties Listed on the 2022 Weed Abatement Program Commencement Report and Order the Abatement.

Matt Morley, Parks and Public Workers Director, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Badame to order the abatement of hazardous vegetation (weeds) for properties listed on the 2022 Weed Abatement Program Commencement Report (Attachment 1). **Seconded by Vice Mayor Ristow.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

8. Discuss and Provide Direction on the Following Actions to Continue the Town's Support of Economic Recovery and Community Vitality in Response to the Ongoing COVID-19 Pandemic, Including:
 - a. Extend the Temporary Krail from January 31, 2022 until May 1, 2022 to Allow for Construction to Begin on the Semi-Permanent Parklets;
 - b. Authorize an Expenditure Budget Adjustment in the Amount of \$28,000 from ARPA funding for Krail Rental;

Other Business Item #8 – continued

- c. Consider Delaying the Decision to Program Some of the Identified Public Parklet Locations until the Completion of the Semi-Permanent Parklet Program; and
- d. Receive update on Grays Lane Plans and Provide Additional Direction on Programming the Public Areas for Placemaking.

Monica Renn, Economic Vitality Manager, presented the staff report.

Opened public comment.

Catherine Somers, Chamber of Commerce Executive Director

- Inquired if a survey can be administered to Downtown retailers to determine if they support or oppose parklets; requested the Town receive commitments from the restaurants who would like to build semi-permanent parklets.

John Keller, Hero's Ranch

- Suggested a survey be done on how the retailers view the parklets, and that the long-term vision of the streetscape design of the parklet design on Grays Lane be decided before spending more funds on temporary measures.

Kristina Taroni

- Inquired if there will be any assistance available from the Town to help the businesses build the parklets.

Sandy O

- Requested outreach to the residents of Grays Lane.

Donna Novi, Pastaria

- Commented in support of the temporary krail extension and requested approval of an extension for fire safe shelters over the temporary parklets.

Closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Ristow to extend the temporary krail until May 1, 2022 for businesses that commit to build a semi-permanent parklet by January 31, allowing for the application fee payment and engagement with the architect by May 1 and remove the temporary krail by January 31, 2022 from those businesses who have not committed to a semi-permanent parklet. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

Other Business Item #8 – continued

MOTION: Motion by **Council Member Badame** to authorize an expenditure budget adjustment in the amount of \$28,000 from American Rescue Plan Act (ARPA) funding for krail rental. **Seconded by Vice Mayor Ristow.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Vice Mayor Ristow** to move forward with programming parklet locations 1 and 5 and delay any action on parklet locations 2, 3, and 4 as outlined in the staff report until completion of the semi-permanent parklets. **Seconded by Council Member Badame.**

VOTE: Motion passed unanimously.

MOTION: Motion by **Council Member Hudes** to direct staff to work collaboratively with the businesses on Grays Lane to present Council with three conceptual design options that would include the possibility of existing parklet designs, excluding areas that already have building permits or designs approved. **Motion failed for lack of a second.**

MOTION: Motion by **Council Member Sayoc** to receive update on Grays Lane plans that include what has been proposed and is in process, staff to continue the discussion with those on Grays Lane, including residents, if there are opportunities to program the public space in a way that does not impede or delay Hero Ranch's building permits. **Seconded By Vice Mayor Ristow.**

VOTE: Motion passed 4/1. Council Member Hudes voting no.

MOTION: Motion by **Vice Mayor Ristow** to permit fire safe roofing with no sides during the rainy season for the parklets and with approval from the Fire Department prior to installation. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

Recess 9:23 p.m.

Reconvene 9:30 p.m.

9. Reconfirm Prior Music in the Park (MIP) Council Action.

Arn Andrews, Assistant Town Manager, presented the staff report.

Opened public comment.

Other Business Item #9 – continued

Kim Hastings

- Did not speak due to technical difficulties.

Catherine Somers, Chamber of Commerce Executive Director

- Commented on sponsorships for Music in the Park and other summer events and requested Council consider analyzing and allocating resources appropriately.

Closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Badame to reconfirm prior Music in the Park (MIP) Council action. Seconded by Council Member Hudes.

VOTE: Motion passed unanimously.

10. Cannabis Consultant Services:

- a. Authorize the Town Manager to Engage the Services of a Cannabis Consultant to Evaluate the Potential Taxation of Cannabis and Potential Amendments to the Town's Cannabis Ordinance in an Amount not to exceed \$50,000; and,
- b. Approve an Expenditure Budget Adjustment in the Amount of \$50,000 from Available Capital/Special Projects Reserve.

Rob Schultz, Interim Town Attorney, presented the staff report.

Opened public comment.

Christopher Lane, Airfield Supply Company

- Commented on modern cannabis retail and described commercial cannabis operations.

Joanne Rodgers

- Commented in opposition of the item.

Joe Rodgers

- Commented in opposition of the item.

Rob Moore

- Commented in support of the item.

Diana Pleasant

- Commented in opposition of the item.

Other Business Item #10 – continued

Natasha Cougoule

- Commented in support of the item.

Lee Quintana

- Commented in support of the item.

Kristina Taroni

- Commented in support of the item.

Donna McCurrie

- Commented in support of the item.

Celine Leroy

- Commented in opposition of the item.

Closed public comment.

Recess 11:07 p.m.

Reconvened at 11:11 p.m.

Council discussed the item.

MOTION: Motion by **Vice Mayor Ristow** to authorize the Town Manager to engage the services of a cannabis consultant to evaluate the potential taxation of cannabis and potential amendments to the Town's Cannabis Ordinance in an amount not to exceed \$50,000; approve an expenditure budget adjustment in the amount of \$50,000 from available Capital/Special Projects Reserve. **AMENDMENT:** Staff to bring a more focused consultant scope back to Council, including community outreach and surveying, the potential taxation of cannabis, revenue estimates, and the potential parameters for a cannabis ordinance. **Seconded** by **Mayor Rennie**.

VOTE: Motion passed 4/1. Council Member Badame voting no.

MOTION: Motion by **Council Member Sayoc** to continue the meeting until 12:15 a.m. or until pulled consent item 5 is finished, whichever is earlier. **Seconded** by **Council Member Hudes**.

VOTE: Motion passed unanimously.

PULLED CONSENT ITEM

5. Adopt a Resolution to Rescind the Los Gatos Boulevard Plan. **RESOLUTION 2022-002**

Jennifer Armer, Planning Manager, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Ristow to adopt a resolution to rescind the Los Gatos Boulevard Plan as stated in Attachment 2. **Seconded** by Council Member Sayoc.

VOTE: Motion passed 4/1. Council Member Hudes voting no.

ADJOURNMENT

The meeting adjourned at 12:01 a.m.

Respectfully submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/01/2022

ITEM NO: 2

DATE: January 25, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID -19 Pandemic

RECOMMENDATION:

Adopt a Resolution reaffirming Resolution 2021-044 and making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings due to health and safety concerns for the public.

BACKGROUND:

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which allowed for relaxed provisions of the Ralph M. Brown Act (Brown Act) that allowed legislative bodies to conduct meetings through teleconferencing without having to meet the strict compliance of the Brown Act. All provisions of Executive Order N-29-20 concerning the conduct of public meetings expired on September 30, 2021.

DISCUSSION:

AB 361 was signed into law by the Governor on September 16, 2021, and went into effect immediately upon signing. It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021, expiration of the current Brown Act exemptions as long as there is a "proclaimed state of emergency" by the Governor. This allowance also depends on State or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees.

PREPARED BY: Shelley Neis
Town Clerk

Reviewed by: Town Manager, Assistant Town Manager, and Town Attorney

DISCUSSION (Cont) :

AB 361 requires Public agencies to make findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter that a state of emergency still exists and continues to directly impact the ability of the members to meet safely in person, or that officials continue to impose or recommend measures to promote social distancing.

Town Council adopted Resolution 2021-044 on October 5, 2021 regarding Brown Act compliance and teleconferencing pursuant to Government Code Section 54953, as amended by AB 361, on November 2, 2021 adopted Resolution 2021-046 reaffirming Resolution 2021-044, on November 16, 2021 adopted Resolution 2021-048 reaffirming Resolution 2021-044, on December 7, 2021 adopted Resolution 2021-054 reaffirming Resolution 2021-044, on December 21, 2021 adopted Resolution 2021-059 reaffirming Resolution 2021-044, and on January 18, 2022 adopted Resolution 2022-001.

CONCLUSION:

Adopt a Resolution reaffirming Resolution 2021-044 making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings. If adopted, virtual meetings may continue for all Town Boards, Commissions, and Committees.

COORDINATION:

This report was coordinated with the Town Attorney and Town Manager's office.

FISCAL IMPACT:

There will be no fiscal impact to the Town at this time.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft Resolution

RESOLUTION 2022-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS REAFFIRMING RESOLUTION 2021-044 REGARDING BROWN ACT COMPLIANCE AND TELECONFERENCING PURSUANT TO GOVERNMENT CODE SECTION 54953, AS AMENDED BY ASSEMBLY BILL 361, DURING THE COVID-19 PANDEMIC

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 12, 2020, the Town Manager of Los Gatos acting in the capacity of Town of Director of Emergency Services, issued a Proclamation of Local Emergency; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended and modified the teleconferencing requirements under the Brown Act (California Government Code Section 54950 et seq.) so that local legislative bodies can hold public meetings via teleconference (with audio or video communications, without a physical meeting location), as long as the meeting agenda identifies the teleconferencing procedures to be used; and

WHEREAS, on March 17, 2020, the Town Council of the Town of Los Gatos ratified the Proclamation of Local Emergency as set forth in Resolution 2020-008 and remains in full force and effect to date; and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended the provision of N-29-20 concerning the conduct of public meetings through September 30, 2021, and the Governor subsequently signed legislation revising Brown Act requirements for teleconferenced public meetings (Assembly Bill 361, referred to hereinafter as “AB 361”); and

WHEREAS, on September 16, 2021 Governor Newsom signed AB 361, which added subsection (e) to Government Code section 54953 of the Brown Act, and makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

ATTACHMENT 1

WHEREAS, the Town Council of the Town of Los Gatos approved Resolution No. 2021-044 on October 5, 2021 declaring the need for the Town Council, Committees, and Commissions to continue to meet remotely in order to ensure the health and safety of the public; and

WHEREAS, the Town Council has considered all information related to this matter, including the associated staff report and other information relating to COVID-19 provided at prior public meetings of the Town Council; and

WHEREAS, the Town Council now desires to adopt a Resolution finding that the requisite conditions continue to exist for the legislative bodies of the Town of Los Gatos, as defined in the Brown Act, to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY RESOLVE:

1. The Town Council hereby finds that the fact set forth in the above recitals and as contained in Resolution 2021-044 are true and correct, and establish the factual basis for the adoption of this Resolution;

2. There is an ongoing proclaimed state of emergency relating to the novel coronavirus causing the disease known as COVID-19 and as a result of that emergency, meeting in person would present imminent risks to the health or safety of attendees of in-person meetings of this legislative body and all Town advisory bodies within the meaning of California Government Code section 54953(e)(1).

3. Under the present circumstances, including the risks mentioned in the preceding paragraph, the Town Council determines that authorizing teleconferenced public meetings consistent with Assembly Bill 361 is necessary and appropriate.

4. Staff are directed to take all actions necessary to implement this Resolution for all Town meetings in accordance with the foregoing provisions and the requirements of Government Code section 54953, as amended by Assembly Bill 361, including but not limited to returning for ratification of this Resolution every 30 days after teleconferencing for the first time pursuant to Assembly Bill 361 for so long as either of the following circumstances exists: (a) the state of emergency continues to directly impact the ability of this legislative body to meet in person; and/or (b) state or local officials, including but not limited to the County Health Officer, continue to impose or recommend measures to promote social distancing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 1st day of February 2022, 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: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/1/2022

ITEM NO: 3

DATE: January 21, 2022

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Public Right-of-Way Improvements Completed by Cashmere Bouquet 1031, LLC, for 258 Union Avenue, and Authorize the Town Clerk to Submit for Recordation

RECOMMENDATION:

Staff recommends that the Town Council authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion (Attachment 1) for the public right-of-way (ROW) improvements completed by Cashmere Bouquet 1031, LLC, for 258 Union Avenue, and authorize the Town Clerk to submit for recordation.

BACKGROUND:

On March 27, 2019, the Planning Commission approved Architecture and Site Application S-18-033, Conditional Use Permit Application U-18-010, Subdivision Application M-18-004, and Mitigated Negative Declaration ND-19-001 to construct a mixed-use commercial building with three attached multi-family condominiums, six detached single-family condominiums, and alternating use of parking on a 0.75-acre property zoned C-1.

On November 19, 2019, the Town Council approved the final map for Tract No. 10514, accepting the dedications of easements.

DISCUSSION:

The public right-of-way improvements included pavement, curb, gutter, detached sidewalk with landscaped park strip, and reservation of width for a future Class II bike lane. On December 17, 2019, Cashmere Bouquet 1031, LLC, and the Town entered into a Subdivision Improvement

PREPARED BY: Mike Weisz
Senior Civil Engineer

Reviewed by: Town Manager, Assistant Town Manager, Parks and Public Works Director, Town Engineer, and Town Attorney

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Public Right-of-Way Improvements Completed by Cashmere Bouquet 1031, LLC, for 258 Union Avenue, and Authorize the Town Clerk to Submit for Recordation

DATE: January 21, 2022

DISCUSSION (continued):

Agreement for the construction and completion of the off-site public improvements. Faithful performance and labor and materials bonds were collected from Cashmere Bouquet 1031, LLC, to ensure completion of the improvements.

Cashmere Bouquet 1031, LLC, has now completed the work for the public improvements per the conditions of the agreement, and staff is recommending project acceptance. Ten percent of the faithful performance bond shall be retained for a period of two years as a guaranty from any defective materials and workmanship. The execution and recordation of the Certificate of Acceptance and Notice of Completion is required to finalize the Town's acceptance of the public right-of-way improvements.

CONCLUSION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the Public ROW improvements completed by Cashmere Bouquet 1031, LLC, for 258 Union Avenue, and authorize the Town Clerk to submit the documents to the County for recordation.

FISCAL IMPACT:

The improvements are within the public right-of-way and will become part of the Town's infrastructure to be maintained after the expiration of the two-year warranty period.

ENVIRONMENTAL ASSESSMENT:

An Initial Study and Mitigated Negative Declaration were prepared for the project by the Town's Environmental Consultant, EMC Planning Group Inc.

Attachment:

1. Certificate of Acceptance and Notice of Completion

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

TOWN CLERK
TOWN OF LOS GATOS
110 E MAIN ST
LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

TYPE OF RECORDING

CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION

258 UNION AVENUE, LOS GATOS, CA

APNs 527-59-001 through -007

TO WHOM IT MAY CONCERN:

I do hereby certify that **Cashmere Bouquet 1031, LLC**, completed the work called for in the Subdivision Improvement Agreement located in the TOWN OF LOS GATOS, County of Santa Clara, State of California dated December 17, 2019. The work was completed in December 2021, and approved and accepted on **February 1, 2022**.

Bond No.: 070210038

Date: December 20, 2018

THE OHIO CASUALTY INSURANCE COMPANY

9450 Seward Road, Fairfield, Ohio, 45014

TOWN OF LOS GATOS

By: _____

Laurel Prevetti, Town Manager

Acknowledgement Required

AFFIDAVIT
To Accompany Certificate of Acceptance and Notice of Completion
258 Union Avenue, Los Gatos, CA
APNs 527-59-001 through -007

I, **LAUREL PREVETTI**, the Town Manager of the Town of Los Gatos, have read the foregoing CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein alleged on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on _____, 2022 at Los Gatos, California.

LAUREL PREVETTI, TOWN MANAGER
Town of Los Gatos

RECOMMENDED BY:

Matt Morley
Director of Parks and Public Works

Date: _____

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Date: _____

Notary Jurat Required



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 01/18/2022

ITEM NO: 4

DATE: January 26, 2022
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Approval of Cannabis Consultant Services Proposal Submitted by Hinderliter, deLlamas & Associates (HdL) Companies and Authorization for the Town Manager to the Execute Agreement

RECOMMENDATION:

Staff recommends that the Town Council approve the Cannabis Consultant Services Proposal submitted by Hinderliter, deLlamas & Associates (HdL) Companies and authorize the Town Manager to the execute agreement.

BACKGROUND:

At the January 18, 2022 Council meeting, the Town Council directed staff to hire a consultant to assist with understanding potential options the Town has for commercial cannabis activities in the Town. The Council direction was to bring back a cannabis consultant proposal for approval that provides for Council and community input, survey, the preparation of a fiscal analysis, the development of a potential regulatory cannabis ordinance, and the development of a potential cannabis tax ordinance and accompanying ballot measure for the possibility of a tax measure on the 2022 ballot.

DISCUSSION:

Staff recommends approval of the attached proposal submitted by Hinderliter, deLlamas & Associates (HdL) Companies for consulting services for cannabis management services. The Town has no current contract for such services, nor does the Town have the in-house capacity or expertise for the development and implementation of such tasks. Based on staff's research, HdL is one of the leading firms offering cannabis regulatory and taxation programs and services. Their consultant team headed up by David McPherson, Compliance Director, has more than 65 years of combined direct experience implementing such programs. Their team has completed over 18,000 cannabis compliance inspections and financial audits in California, Colorado, and Nevada. HdL has also reviewed more than 3,500 cannabis business applications within the last

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

SUBJECT: Approval of Cannabis Consultant Services Proposal Submitted by Hinderliter, deLlamas & Associates (HdL) Companies

DATE: January 26, 2022

DISCUSSION (continued):

six years. HdL Companies works solely with public agencies and has no private-sector clients in the cannabis industry. Staff also researched other consulting firms and numerous local governments and no other consultants were identified that provided comparable services.

The proposed scope of work for cannabis consultant services submitted by HdL is set forth in Attachment 1. The proposal is comprised of five primary objectives, each of which are summarized as:

- A series of meetings with individual Town Council Members to provide a common baseline understanding of the legal cannabis industry and to address questions or concerns they may have.
- Attendance or presentations at up to four public meetings or workshops to explore issues or concerns from the community.
- Conducting an online community survey to gauge overall support or opposition.
- A fiscal study to analyze the impacts and potential revenues that could be generated by cannabis businesses, as well as sales tax revenues that are currently being lost through leakage to deliveries from nearby communities.
- Developing a draft cannabis tax ordinance and associated ballot measure to be placed before the voters in November.
- Developing a draft cannabis regulatory ordinance to provide a regulatory program, should the tax measure be approved by the voters.
- Additional hours of general subject matter expertise to be used as needed.

Each of these service objectives is described in greater detail in the attached proposal.

CONCLUSION:

Staff seeks approval of the proposal submitted by HdL for cannabis consultant services.

ALTERNATIVES:

Direct staff to discontinue research and related work on potential regulation and taxation of commercial cannabis.

COORDINATION:

This report was coordinated with the Town Manager's Office.

PAGE 3 OF 4

SUBJECT: Approval of Cannabis Consultant Services Proposal Submitted by Hinderliter,
deLlamas & Associates (HdL) Companies

DATE: January 26, 2022

FISCAL IMPACT:

Cannabis Consultant services will cost approximately \$50,000 and the Council previously authorized payment from the available Capital/Special Projects Reserve account.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Proposal from HdL

Town of Los Gatos

Cannabis Management Services

January 24, 2022

HdL  Companies

SUBMITTED BY

HdL Companies
120 S. State College Blvd., Ste 200
Brea, CA 92821
hdlcompanies.com

CONTACT

David McPherson
T: 714.879.5000
E: dmcpherson@hdlcompanies.com

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I. COVER LETTER

January 24, 2022

Robert Schultz
Town Attorney
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Proposal for Cannabis Outreach and Policy Development

Dear Mr. Schultz,

Thank you for the opportunity to submit this proposal for cannabis management services for the Town of Los Gatos. The enclosed scope of services provides a comprehensive program to assist the City with presentations at meetings and workshops, a community survey, an analysis of the potential impacts and revenues that may be generated by cannabis businesses, development of a draft regulatory ordinance and a tax ordinance, and additional hours of general subject matter expertise to be used as needed by the Town.

HdL is recognized as the industry leader in the development, implementation and enforcement of cannabis management programs for local governments in California. We have partnered with over 175 California cities and counties on cannabis-related programs, including ordinance development and review, community outreach and education, merit-based application and permitting processes, cost recovery studies, compliance inspections, financial audits, fiscal analyses and law enforcement training.

Our cannabis team has unmatched expertise, with more than 65 years' combined experience in the development, implementation and enforcement of cannabis regulatory and tax programs. Our team members have conducted over 18,000 cannabis compliance inspections and financial audits in California, Colorado and Nevada, and have reviewed, scored and processed over 3,500 cannabis business applications in the last six years in California. HdL Companies works solely with public agencies and has no private-sector clients in the cannabis industry.

We look forward to the opportunity to partner with the Town of Los Gatos in developing a strategy which meets your program needs. If you have any questions or require additional information, please feel free to contact me by email at anickerson@hdlcompanies.com or David McPherson at dmcpherson@hdlcompanies.com or by phone at 714.879.5000.

Sincerely,



Andy Nickerson
President, HdL Companies

II. PROPOSED SCOPE OF SERVICES

The Town of Los Gatos currently prohibits any and all commercial cannabis businesses. In January of 2021, the Los Gatos Town Council gave direction to staff to explore possibilities for allowing licensed cannabis business within the town limits.

In response to this direction, the Town Attorney held a series of 10 meetings with various community groups to gather input from the public. The majority of the public in attendance expressed an interest in allowing cannabis businesses within the Town as a means of generating revenue, but also expressed concerns about potential health and safety impacts. Staff also conducted an online survey to gauge the community's interest, opposition or concerns.

On January 18th, staff provided an update and report to the Council outlining the responses from the community and requesting authorization to engage the services of a cannabis consultant to evaluate potential amendments to the Town's cannabis ordinance and the development of a cannabis tax ordinance to be placed before the voters at the November general election. The Council approved this request on a 4 to 1 vote and approved a budget adjustment of \$50,000 for this work.

It is anticipated the selected consultant will conduct further outreach to the community and will develop information to help inform the Council's decision making on the issue. This may include preparation of a fiscal analysis to provide projections for the impacts and potential revenues that may be generated from a cannabis tax, as well as presentations to the Council, Planning Commission, Finance Commission or other boards or committees, along with public workshops and an online community survey.

The consultant would also assist the Town in developing a new or amended cannabis regulatory ordinance and a commercial cannabis business tax ordinance to be placed before the voters at the November ballot. It is anticipated that approval and implementation of the regulatory ordinance would likely be dependent upon voter approval of the tax measure. It is also understood that approval of any cannabis regulatory ordinance would require some level of CEQA review, which would likely not occur until the voters have provided their concurrence.

It's anticipated that the Town may allow up to 3 cannabis retailers, but that there is likely not demand or support for cultivation, manufacturing or distribution businesses. Direction regarding the number and type of businesses to allow will ultimately be up to the Town Council.

To assist with this endeavor, the town is now requesting that HdL provide a proposal with the following scope of services:

- A series of meetings with individual Town Council Members to provide a common baseline understanding of the legal cannabis industry and to address questions or concerns they may have.
- Attendance or presentations at up to 4 public meetings or workshops to explore issues or concerns from the community.
- Conducting an online community survey to gauge overall support or opposition.

- A fiscal study to analyze the impacts and potential revenues that could be generated by cannabis businesses, as well as sales tax revenues that are currently being lost through leakage to deliveries from nearby communities.
- Developing a draft cannabis tax ordinance and associated ballot measure to be placed before the voters in November.
- Developing a draft cannabis regulatory ordinance to provide a regulatory program, should the tax measure be approved by the voters.
- Additional hours of general subject matter expertise to be used as needed.

Each of these service objectives is described in greater detail below.

Objective 1: Attendance, Support or Presentations at Meetings or Workshops

HdL shall provide attendance or presentations at up to 5 meetings or workshops to help inform discussion and development of a potential cannabis ordinance and associated regulatory program. It is anticipated that this objective may include a series of individual meetings with each Council Member, a public meeting of the Town Council to provide policy direction, attendance at meetings of the Planning Commission, Finance Commission or other boards or committees, and the first reading of the draft regulatory ordinance. These meetings are described below.

- A series of meetings with individual members of the Town Council to discuss issues and to address potential questions or concerns from the community. This series of meetings would count as a single meeting for purposes of this proposal.
- A presentation at a public meeting or workshop to provide an overview of what a regulated cannabis industry might look like for the Town, including revenue projections. This meeting would also provide an opportunity for the Town Council to provide policy direction to staff for development of a regulatory ordinance.
- Attendance and support at a Planning Commission hearing for consideration of the draft cannabis regulatory ordinance.
- Attendance and support at a meeting of the Finance Commission or other boards or committees as needed or requested
- Attendance and support at the first reading of the cannabis regulatory ordinance before the Town Council.

The cost for this objective includes planning and coordination with staff, preparation of a presentation or materials as necessary, meetings attendance, and any follow up. The actual use and scheduling of these meetings would be determined in consultation with Town staff. This objective assumes that all meeting attendance would be virtual. Physical attendance would incur an additional travel charge.

Objective 2: Conduct a Community Survey

HdL shall design and conduct an online community survey that will gather input from residents to gauge their level of support, opposition, interest or specific areas of concern regarding possible commercial cannabis businesses in the Town of Los Gatos. The survey will be designed so that responses can be keyed to the demographics of the Town to ensure they accurately reflect the sentiments of Los Gatos residents and to minimize the potential for intentionally skewing the results.

HdL will prepare a list of questions and any other content for the survey. The Town will host the survey on its website using a readily-available service such as Survey Monkey or OpenGov. Surveys may also be circulated in hard-copy at in-person community meetings, if so desired by the Town. HdL shall compile all survey responses and shall provide a written report summarizing the results.

Objective 3: Conduct a Fiscal Analysis

Consultant HdL shall conduct a fiscal analysis of the potential cannabis industry in the Town of Los Gatos to help inform development of a commercial cannabis business tax ordinance and associated ballot measure. The analysis would seek to develop estimates for the number and size of each type of commercial cannabis business that may seek to locate in the Town, as well as estimates for the gross receipts and tax revenue that may be generated from each type of business under a variety of tax structures and rates.

The analysis would focus primarily on cannabis storefront retailers as the most likely business type to establish itself within the Town. The analysis would discuss both the potential for collecting new revenue through a cannabis business tax and the potential to recapture existing retail taxes that are currently being lost through leakage to deliveries made into the Town by cannabis retailers from nearby communities.

This proposal assumes that HdL will provide one initial draft report for staff to review and critique plus one iterative draft that will incorporate any requested revisions prior to providing the final report. Any additional drafts, iterations or documentation that may be requested by the City would be in addition to the costs shown in the table below and shall be billed at HdL's hourly rate. HdL will advise the Town in advance if additional requested revisions may result in potential exceedances.

Objective 4: Develop Draft Cannabis Regulatory Ordinance

HdL shall develop a draft commercial cannabis regulatory ordinance that is consistent with State laws and reflects industry best practices. HdL will work with Town staff to identify local concerns and priorities, including land use issues and sensitive uses, and to design appropriate regulatory processes and mitigations as necessary to protect the health, safety and welfare of the community. The ordinance will allow the Town to specify the number and types of businesses to be permitted, application and renewal procedures, location requirements, site security measures, inspections and enforcement protocols, operational procedures, and other requirements specific to each allowable type of cannabis business.

Objective 5: Develop Draft Cannabis Tax Ordinance

HdL shall develop a draft commercial cannabis tax ordinance to generate Town revenues from licensed cannabis businesses. The ordinance will set maximum tax rates for each type of cannabis business permitted by the Town and will allow the Town Council to set the rates as desired up to the maximum rate. The ordinance shall also specify the schedule and procedures for remitting taxes and shall allow the Town to conduct audits of cannabis businesses to ensure they are reporting and remitting the proper amounts.

HdL shall also provide the ballot resolution as necessary to place the tax measure on the ballot and shall provide revenue projections as required for the ballot statement.

Objective 5: Technical Assistance and Subject Matter Expertise

HdL will provide up to 20 hours of general consulting to be utilized on an as-needed basis at the Town's request. Such assistance may include technical assistance, subject matter expertise, education, monitoring of changes to State laws and regulations, participation in conference calls, responding to staff inquiries via phone and email, reviewing staff reports to the Town Council, assisting with responses to inquiries from the public, or other issues yet to be determined as requested by the Town.

III. COST

The proposed services are broken down into specific line items in the cost table below. This proposal does not include any additional items that are not contemplated by this scope of services. Any additional services requested by the City will be billed at HdL's hourly rate.

Prices are valid for 90 days from the date of this proposal to allow time for consideration and negotiating a service agreement. Once under contract, prices shall be honored for the first full year, with successive years subject to an annual increase based upon the Consumer Price Index for the Los Angeles-Long Beach-Anaheim region.

Scope of Service Objectives	Estimated Cost
Objective 1: Attendance or Presentations at Meetings or Workshops Assumes 5 remote meetings @ \$2,000 each	\$10,000
Objective 2: Conduct a Community Survey	\$9,000
Objective 3: Conduct a Fiscal Analysis Generally \$10,000 to \$20,000; depends on specifics	\$10,000
Objective 4: Develop a Draft Cannabis Regulatory Ordinance	\$8,000
Objective 5: Develop a Draft Cannabis Tax Ordinance	\$8,000
Objective 6: Technical Assistance and Subject Matter Expertise Assumes 20 hours at \$250/hr	\$5,000
Travel (if and as needed for meeting attendance)	\$100 per day
TOTAL NOT TO EXCEED	\$50,000
All City costs other than those associated with development of the cannabis tax measure may be fully recoverable from applicants or permittees.	

Conflicts of Interest and Non-Disclosure

HdL Companies works solely with public agencies and has no private-sector clients in the cannabis industry.

Drafts and Final Work Products

All work products assume one initial draft for review and comment, one iterative draft to incorporate any desired changes, and one final draft for presentation or publication. Additional drafts requested by the client may result in additional charges at HdL's hourly rate.

IV. OPTIONAL SERVICES

Cost Recovery Fee Analysis

HdL will conduct a fiscal analysis to determine appropriate application and permitting fees. The analysis shall consider the costs of all Town staff time, overhead, fringe benefits, consultants and any other services associated with each step of the cannabis permitting and regulatory process, including both initial application processing and annual permit renewals. HdL staff has experience developing cannabis regulatory fees and doing a “fit gap” analysis of staff responsibilities and time allotted to this program to establish appropriate fees for the Town’s level of oversight and enforcement of the regulatory process.

Application Process Development

HdL shall design an application process that includes review, scoring, ranking, interviews and assistance with final selection of cannabis business permittees. The process shall be tailored to provide merit-based ranking or a lottery where appropriate or required for awarding a specified number of permits and to provide a quality assurance standard for those business types where there is no such limit. The process shall include evaluation criteria consistent with state law and the Town’s ordinance, to ensure that applicants have addressed all requirements before being allowed to move forward to the permitting process.

HdL will advise the Town on the most appropriate process for its needs, depending upon the number of permits available and the anticipated number of applicants. HdL shall provide all necessary application forms, as well as procedures, guidelines, indemnification forms, background information releases, and other required documents and shall ensure that all information desired by the Town is incorporated into the application form and procedures.

Application Reviews, Ranking and Interviews

HdL staff will conduct an initial screening of all applications for completeness based upon an objective checklist of required documentation. Applications which have been deemed complete will move forward for a full review, including scoring and ranking. Applicants must provide detailed information on how they plan to meet the required criteria. An applicant’s point score shall be based on their demonstrated ability to meet or exceed minimum requirements in each category.

Reviews shall include narrative comments that identify both strengths and weaknesses of each application as well as any deficiencies or areas of concern. Reviews shall be adequately detailed to inform the subsequent interview process but shall not contain any recommendations for approval or denial, other than a numerical score.

HdL will design and conduct an interview panel for all applicants that receive passing scores. The interview panel shall consist of designated Town staff, assisted by a subject-matter expert from HdL serving as facilitator. Interviews shall be one hour long, with a half hour between to allow for reaction, discussion and note taking by the panel.

Supplemental Background Checks

HdL is qualified to provide background checks of all owners, principals, managers and employees of cannabis businesses to supplement the State-required Live Scan fingerprint check, which will only disclose Department of Justice (DOJ) records regarding arrests or convictions. Our supplemental background process expands upon the Live Scan information by checking the subject's social security number and up to 5 variations of their name or aliases against over 200 million databases nationwide.

Our supplemental background checks can identify other factors that local governments may wish to consider before granting discretionary business licenses or permits, including other felony offenses, misdemeanor convictions, arrest records, civil judgements, restraining orders, the terrorist screening database, the national sex offender registry, delinquent child support payments, bankruptcies, employment and credit records, and more.

HdL provides an online portal for applicants to submit their application and authorization for background checks and all necessary documentation. Applicants provide their payment directly to HdL through the portal, so there is no cost to the City.

V. EXPERIENCE AND RESOURCES

Company Profile

Founded in 1983, HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Its audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Cannabis Management Program. The firm also provides a variety of enterprise software processing tools for business licensing, code enforcement, animal control, building permits and tracking/billing of false alarms. HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 500 agencies in six states. The firm currently serves 49 counties, 311 cities and 132 transactions tax districts in California.

HdL's key staff has extensive experience serving local government and many have previously held positions in city management, finance, planning, economic development or revenue collection. HdL is a Corporate Partner of the League of California Cities and California State Association of Counties and works extensively with the County Auditor's Association of California, California Society of Municipal Finance Officers (CSMFO) and California Municipal Revenue and Tax Association (CMRTA) on anticipation and planning of programs to strengthen local government revenues.

This close understanding of local government needs coupled with extensive databases and advanced methodology provides for the most relevant, productive and responsive revenue recovery; forecasting; and economic services available.

Our team of professionals has over 65 years of direct experience establishing and implementing cannabis regulatory and taxation programs, including establishing land-use regulations, permit processes, staffing plans, and cost recovery fees; structuring cannabis business tax fees; regulatory compliance; financial audits; and law enforcement training. Our team has conducted over 18,000 cannabis compliance inspections and investigations in California, Colorado and Nevada.

Key Personnel

David McPherson, Compliance Director

David McPherson works with local agencies to prepare them to mitigate regulatory issues surrounding Proposition 64 and SB 94. Prior to joining HdL, David served 28 years in local government for the County of Orange and the cities of Newport Beach, San Jose and Oakland. David's experience as a law enforcement officer, compliance auditor, and tax administrator has provided him a wealth of experience that makes him uniquely qualified to manage HdL's Cannabis Management Program. While working for the City of Oakland, he became the first Tax Administrator in the country to successfully tax, regulate and audit medical marijuana businesses. David has over 10 years of experience working with cannabis regulatory programs.

David is one of the state's most recognized experts in cannabis regulatory policies, compliance implementation and tax policies. His unique knowledge in horticulture, processing and dispensary operations while working for the City of Oakland has made him one of the pioneers in creating a Cannabis Management Program. He uses his experience to assist local and state agencies in developing cannabis policies for regulation, compliance, auditing and economic development. He worked closely with the League of Cities on the development of the Medical Cannabis Regulation and Safety Act (MCRSA) and helped shape SB 94, the Medicinal Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

David provides technical support on cannabis-related matters to the League of Cities, the Police Chief's Association, Rural County Representatives of California and the California State Association of Counties. In addition, David is working collaboratively with the Department of Consumers Affairs, Department of Food & Agriculture, Department of Health Services and the California Department of Tax and Fee Administration on the implementation of best practices for regulating the cannabis industry for local agencies.

David received his Bachelor's Degree in History from California State University, Fullerton and his Master's Degree in Public Administration from California State University, Long Beach. While at Long Beach, he was named "Future Urban Administrator of the Year".

Matt Eaton, Deputy Compliance Director

Matt Eaton is the Deputy Compliance Director at HdL and plays a critical role in implementing the Cannabis Compliance Program for local agencies. Prior to joining the firm, he was a progressive law enforcement professional with 30 years' experience conducting criminal/regulatory investigations, and corporate/individual background investigations.

While working as a Supervisory Investigator at the Colorado Department of Revenue in the Marijuana Enforcement Division (MED), Matt managed criminal investigators and civilian staff in the Denver Metro and Longmont field offices. During his six-year tenure at the MED, he conducted approximately 10,000 criminal investigations and compliance reviews, including regulatory and financial investigations. He is a subject matter expert on track and trace systems and understands the complexity of reviewing data to ensure businesses are in compliance with state and local regulations. Matt was responsible for planning, developing and implementing report and field inspection protocols for the agency. He also played an instrumental role in recommending changes to current regulations and identifying essential language for new legislation in Colorado. Matt is well known for his ability to maintain working relationships with cannabis industry leaders and external stakeholders in resolving issues.

Matt received his Bachelor of Science Degree from Biola University and maintained Police Officer Service Training (POST) certification for over 30 years in California and Colorado. He has also served as an adjunct instructor teaching law enforcement principle related to criminology, correctional processes, procedural law, interviews, interrogations and criminal evidence at AIMS Community College in Greeley, Colorado.

Ajay Kolluri, Deputy Director of Policy and Audits

Ajay Kolluri is the Deputy Director of Audits and Operations for HdL's Cannabis Division. Ajay is responsible for overseeing the cannabis audit team and the daily operations of the division, which includes special projects such as community outreach, surveys, grant solicitation, revenue analysis, cost recovery fee studies, contracts, budgeting, and marketing. Ajay previously served as Program Manager for the Office of Cannabis Oversight (OCO) at City of Long Beach. Working within the City Manager's Office, Ajay was responsible for the licensing, regulation and enforcement of all commercial cannabis activity in the City, with one of the largest legal cannabis markets in the state. During his tenure with the OCO, Ajay oversaw the issuance over 200 cannabis business licenses, generating over \$10 million in annual revenue for the City. Ajay has experience in all aspects of cannabis oversight, including public health and education, planning and zoning, building inspections, enforcement, social equity, fee development, economic analysis and revenue projections.

Prior to overseeing the OCO, Ajay worked in public finance, serving as Budget Analyst for the Department of Financial Management in the City of Long Beach. Ajay holds a Bachelor's degree in business economics from the University of California, Santa Barbara, and a Master's degree in public policy from the University of Michigan.

Mark Lovelace, Senior Policy Advisor

Mark Lovelace has 16 years of broad experience in public policy, community engagement and advocacy and is recognized as a leader in advancing the statewide discussion of medical and recreational cannabis as a policy issue in California.

Mark served on the Humboldt County Board of Supervisors from 2009 through 2016 where he was instrumental in developing a comprehensive approach to regulating cannabis, including a voter-approved tax on commercial cultivation and an innovative track and trace pilot program. Mark established and co-chaired the Medical Marijuana Working Group for the California State Association of Counties (CSAC) and helped draft CSAC's legislative platform for cannabis issues. Mark pioneered the first regional summit on cannabis issues in 2015 which helped guide the development of SB 643 and AB 243, two components of the Medical Cannabis Regulation and Safety Act (MCRSA).

Mark has worked extensively with public agencies and statewide associations on cannabis issues, including CSAC, Rural County Representatives of California, the Association of California Water Agencies, the North Coast Resource Partnership, California Department of Fish and Wildlife, the State Water Board, the North Coast Regional Water Board, the Bureau of Cannabis Control, State legislators, and others. He has led numerous presentations, workshops and panel discussions on cannabis issues and has been a sought-after speaker on the topic for government agencies, community organizations and industry groups.

Mark received his Bachelor of Science degree in Industrial Design from San Jose State University. Prior to his time on the Board, he worked for many years as a respected advocate on land use, planning, development and environmental issues.

David Ross, Senior Compliance Inspector

David Ross is a Certified Fraud Examiner with 7 years of experience conducting gaming and non-gaming audits and investigations of tribal gaming facilities. David's experience includes conducting forensic accounting investigations into cash larceny, expense reimbursement fraud, check fraud, credit card fraud, payroll fraud, wire fraud, insider trading, construction fraud in addition to litigation support.

David previously worked as Surveillance Officer and Internal Auditor for the Shingle Springs Tribal Gaming Commission, where he was responsible for analyzing financial statements for a facility with revenues exceeding \$20 million per month. David also analyzed internal controls and established policies and procedures to ensure compliance with federal, state and local regulations. In addition, David conducted surveillance reviews and investigations into criminal activity including check and credit card fraud, skimming, money laundering, drug activity and other violations.

David holds a Bachelor's Degree in Business Administration from Vanguard University in Costa Mesa and a Master's Degree in Finance from California State University San Bernardino. He is a member of the Association of Certified Fraud Examiners.

Michelle Shaw, Compliance Inspector

Michelle conducts onsite inspections, examinations and other actions to monitor compliance with established standards for local licensed cannabis businesses. Prior to joining HdL, she was a Compliance Specialist Officer at a large, multinational bank where she managed, validated and oversaw the effectiveness and accuracy of numerous compliance issues within the consumer retail space. Throughout her eight years of experience at the bank, she performed assessments of affiliate businesses to determine compliance/non-compliance of their processes and procedures pursuant to bank standards and state regulations.

A graduate of Cypress College, Michelle holds a Foundations of Banking Risk certificate from the Global Association of Risk Professionals and a paralegal certificate from the Southern California College of Business and Law.

Jeff Burris, Background Investigator / Compliance Inspector

Jeff Burris has over 28 years' experience as a Law Enforcement Professional. Jeff began his career with the Orange County Sheriff's Office before moving to the Ontario Police Department, where he advanced to Corporal, Police Detective and Sergeant before retiring as a Lieutenant.

Jeff worked various investigative assignments during his career, including both criminal and non-criminal investigations. While working as a Police Detective Jeff conducted personnel background investigations for sworn, non-sworn, administrative, and confidential employees. These investigations included criminal checks, credit checks, prior employment verification, personal reference verification, driving records, pre-polygraph questioning, neighborhood canvassing, and oral interviews. His assignments also included annual State audits for regulatory compliance.

Jeff received his Bachelor of Science degree in Occupational Management from the California State University in Long Beach. Jeff has completed numerous specialized training courses in investigative techniques, including a course in background investigations by the California Commission on Peace Officer Standards and Training (CA POST), and is a former member of the California Background Investigators Association (CBIA).

Elizabeth Eumurian, Senior Auditor

Elizabeth Eumurian is a Senior Auditor at HdL. Her primary role is to conduct financial audits, evaluate cannabis applications and conduct background checks. As part of the audit program, she will be conducting and preparing analytical information through the CATS™ program to prepare Tax Analytical Remittance Reports (TARR) summaries to evaluate under reporting or anomalies in the remittance of tax payments to local jurisdictions.

Elizabeth previously worked as a senior auditor in the entertainment industry. In this role, she executed testing procedures for targeted audit programs, analyzed findings and prepared audit and compliance reports. She also has experience working for a large financial institution analyzing data for reporting anomalies and performing internal audits. Elizabeth has recently done work for Blythe, California City, Coachella, Cotati, Desert Hot Springs, Long Beach, Mammoth Lakes, Moreno Valley, Perris, San Bernardino, and Vallejo.

Elizabeth earned her Bachelor of Arts degree in History from California State University and holds a certificate in CannaBusiness from Oaksterdam University.

Odette Mikhail, Auditor

Odette Mikhail conducts cannabis revenue audits at HdL. Odette previously worked as a senior auditor at public accounting firms. In this role, she executed testing procedures for audit and review engagements, identified accounting issues, reviewed internal controls, and prepared financial reports and statements. Odette earned her Bachelor of Science degree in Accounting and Business Administration from Ain Shams University in Cairo, Egypt.

Tao Lu, Auditor

Tao Lu works as an Auditor for HdL's Cannabis Management Team. Tao has two and a half years' experience as an accountant with an emphasis in information technology and food manufacturing industries. He also has public audit work experience at RSM China. Tao was born and raised in China. He earned a Bachelor's Degree in Accounting and Finance from Syracuse University in New York before relocating to Southern California with his family.

Valerie Carter, Auditor

Valerie Carter works as an Auditor for HdL's Cannabis Management Team. Valerie has over 5 years of public sector work experience focusing on public policy, auditing and revenue tax implementation. She was a Tax Auditor II for the City of Oakland's Revenue Management Bureau and an Assistant Management Analyst for the City of Berkeley's Transportation division. Valerie earned a Bachelor's Degree in Business Administration from Cal Poly Pomona, with an emphasis on Finance, Real Estate, and Law.

Eric Magana, Auditor

Eric Magana works as an Auditor for HdL's Cannabis Management Team, conducting revenue audits of licensed cannabis businesses to ensure they are accurately reporting their revenues and remitting the proper amount of fees or taxes. Prior to joining HdL, Eric worked as a Loan Specialist for the U.S. Small Business Administration, where he processed over 5,000 business loans and grant applications. Eric holds a Bachelor's Degree in Economics and Administrative Studies from University of California at Riverside.

Teresa Schneider, Background Investigator / Compliance Inspector

Teresa Schneider served for 28 years with the Montclair Police Department, including 12 years in the Background Investigations Unit. In this capacity, Teresa was responsible for conducting background investigations of all City business license applicants, as well as all sworn and non-sworn positions within the police and fire departments and of civilians requesting access to police department records.

Theresa previously served 4 years in the U.S. Army's nursing program at Fort Campbell, Kentucky. During this time she attended college at the University of Kentucky and Austin Peay State University. After receiving an Honorable Discharge in 1990, Teresa was hired by the Montclair Police Department. During her 28-year career, she worked numerous assignments, including patrol, K9, detective bureau, court liaison, volunteer coordinator, and red-light automated enforcement. Teresa received many awards throughout her career, including Officer of the Year.

Cheryl Lee-Steele, Business Application Reviewer

Cheryl Lee-Steele is a Business Application Reviewer at HdL whose primary role is to evaluate cannabis business applications for compliance with State law, local ordinance and industry best practices. A small business owner and bookkeeper for over 30 years, she has direct knowledge of best business practices and how to comply with regulatory requirements.

Cheryl attended Chaffee College for accounting and is a Certified Public Bookkeeper through the National Association of Certified Public Bookkeepers.

Lisa Davis, Business Application Reviewer

Lisa Davis is a Business Application Reviewer at HdL whose primary role is to evaluate cannabis business applications for compliance with State law, local ordinance and industry best practices. A small business owner and operator for 20 years prior to joining the firm, she is familiar with operational best practices, inventory control measures and compliance with government and industry regulations and standards.

Kristi Lervold, Administrative Assistant

Kristi is the Administrative Assistant for cannabis team. In this role she supports individual team members, coordinates internal processes, and assists with client requests, contracts, billing reconciliation and invoicing. Kristi's 18-year career includes ten years as the administrative assistant to HdL's CFO, handling various operational responsibilities and supporting financial functions, as well as experience in the occupational health industry, facilitating services for federal, state, and local government clients.

Kristi holds a Bachelor's of Science degree in Business Management with a minor in Business Administration.

VI. REFERENCES

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/1/2022

ITEM NO: 5

DATE: January 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Extension of an Urgency Ordinance for a Period of 10 Months and 15 Days to Implement Senate Bill 9 to Allow for Two-Unit Housing Developments and Urban Lot Splits in All Single-Family Residential Zoning Districts

RECOMMENDATION:

Adopt an extension of an Urgency Ordinance (Attachment 1) by title only for a period of 10 months and 15 days to implement Senate Bill 9 to allow for two-unit housing developments and urban lot splits in all single-family residential zoning districts.

BACKGROUND:

California Senate Bill 9 (SB 9) requires ministerial (staff-level) approval of certain housing development projects and lot splits on a single-family zoned parcel. SB 9 was passed by the California Legislature on September 1, 2021, signed into law by Governor Newsom on September 16, 2021, and took effect January 1, 2022.

On December 21, 2021, Town Council adopted an Urgency Ordinance to implement SB 9 with local objective standards. This Ordinance is in effect for 45 days. The extension of the Urgency Ordinance is coming to Town Council prior to the expiration (February 4, 2022) for consideration and possible minor modifications. More extensive changes would require staff to return with a revised Urgency Ordinance for Council consideration. Consistent with State law, the proposed extension has been noticed and published.

If the Urgency Ordinance is not extended, then the Town will be implementing State law without local considerations or objective standards included in the Urgency Ordinance (Attachment 1).

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Assistant Town Manager, Town Attorney, and Public Works Director

BACKGROUND (continued):

In December, the Council requested additional information for this next discussion. This report includes options related to the specific topics identified by the Council. The information may be useful for consideration in the Urgency Ordinance extension if the modifications are minor in nature, for a new Urgency Ordinance if the Council directs more extensive changes, and/or for a future permanent Ordinance.

DISCUSSION:

The following information is provided in response to the Town Council's request for additional information. Sections A through G are in direct response to information requests at the December 21, 2021 Town Council meeting. Sections H through K are in response to public comments that a Council Member specifically asked staff to address.

A. Affordable Housing Restrictions

The Town's Below Market Price (BMP) program applies to residential or mixed-use projects that include five or more residential units, and would therefore not apply to projects developed under SB 9. The Urgency Ordinance was developed based on the Town's current BMP regulations and interpretation of SB 9. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with additional language restricting new units to certain levels of affordability.

The Town of Los Altos Hills included the following language in their Ordinance:

A note on the parcel map and a recorded deed restriction in a form approved by the City Attorney's Office shall be applied to all newly created parcels indicating that the parcel Ordinance 598 - Exhibit A Page 5 was split using the provision of this article and that no further subdivision of the parcels is permitted. In addition, the deed restriction shall stipulate that all new units developed on the new parcels shall be income restricted to low and very low-income households based on the most recent Santa Clara County Area Median Income (AMI) levels.

The City of Sonoma included the following language in their Ordinance:

Affordable Housing.

- a. A complete application for a Two Unit Residential Permit shall include a separate statement, signed by the applicant or owner of the parcel for which the two-unit residential project is proposed stating whether each new dwelling unit will be an ownership or rental unit.*

DISCUSSION (continued):

- b. *The owner of each newly created unit in a two-unit residential project shall enter into an Affordable Housing Agreement (AHA), in a form approved by the Planning Director and City Attorney, assuring the continued affordability of each unit in perpetuity.*

Affordable rental units shall include a management and maintenance plan (addressing issues including but not limited to tenant screening; warning and eviction procedures; use and maintenance of patios, decks and other outdoor areas; quiet time; and the long-term maintenance of buildings and landscaping). The AHA must be executed and recorded prior to the issuance of any building permits pertinent to the two-unit residential project.

- i. *Units held out for rent shall be affordable to households in the low-income category based upon the Sonoma County area median income levels.*
- ii. *Units that are proposed to be owned shall be affordable to households in the moderate-income category based upon the Sonoma County area median income levels.*

The City of Santa Barbara included the following language in their ordinance:

AFFORDABLE HOUSING. Allowable residential densities must conform to the underlying land use density for the lot, and may only be increased for specific affordable housing projects as outlined in the policies of the City's Coastal Land Use Plan. Therefore, at least one of the units in a two-residential unit development must include an affordability restriction consistent with the City's density bonus program.

...

Affordability Requirement. At least one of the units in each two-unit residential development, or at least one unit on any lot created pursuant to an Urban Lot Split, must be constructed and offered for sale or for rent as a moderate, low, or very low-income unit, restricted for occupancy by a moderate, low or very low-income household, as defined in and pursuant to the procedures in the City's Affordable Housing Policies and Procedures.

The Town Council can include additional language into the Ordinance (Attachment 1); however, staff is concerned that requiring deed restricted affordable housing could lead to a legal challenge.

B. Single-Family Residential Downtown (R-1D)

Of the 799 properties currently within the R-1D zoning designation, an estimated 626

DISCUSSION (continued):

properties are located within a historic district and/or constructed prior to 1941, leaving approximately 173 properties that could potentially qualify for an SB 9 project. These parcels are predominately along Los Gatos Boulevard between Loma Alta Avenue and Pine Avenue, and in the residential neighborhoods between Los Gatos-Saratoga Road and Mariposa Avenue.

SB 9 includes language which specifically allows the exclusion of development located “within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.”

Town Code defines Historic structures as:

- (1) Any structure that is located within an historic district; or
- (2) Any structure that is historically designated; or
- (3) Any primary structure constructed prior to 1941, unless the deciding body has determined that the structure has no historic significance and should not be included in the Town Historic Resources Inventory.

The Urgency Ordinance was developed using this definition to implement the portion of SB 9 quoted above which allows the Town to exclude historic properties designated by the Town’s Ordinance. As described above, many of the R-1D parcels are either within one of the Town’s historic districts or defined as historic due to construction prior to 1941.

The Town Council can include additional language in the Ordinance (Attachment 1); however, staff is concerned that a modification to not allow SB 9 to be used in all R-1D parcels would go beyond the definition in our Town Code and adopted by Ordinance, and therefore could lead to a legal challenge.

C. Occupancy Affidavit

SB 9 includes specific language that states, “A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.” Because of the specificity of this language in State law the Urgency Ordinance was developed with the same requirement. The Ordinance was modified prior to adoption to add that the three years would begin at the approval of the urban lot split, or at the Certificate of Occupancy, whichever was later. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with more restrictive language requiring a covenant to run with the parcel to confirm that the

DISCUSSION (continued):

owner will reside in one of the dwellings.

The Town of Los Altos Hills included the following language in their Ordinance:

The owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner will reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

...

If the proposed dwelling units are developed subsequent to a subdivision completed pursuant to this Article, the owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner intends to reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

D. Fire Hazard Mitigation

SB 9 includes specific language that states that an SB 9 project cannot be located within "high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection"; however, this does not apply to, "sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development." Because of the specificity of this language in State law, the Urgency Ordinance was developed with the same language. As discussed at the December 21, 2021 Town Council meeting, other communities have implemented SB 9 with more restrictive language.

The City of Monte Sereno included the following language in their Ordinance for new lots proposed within an application for an urban lot split with reference to California Fire Code section 503 pertaining to fire apparatus access roads:

Has at least 10 percent of the lot frontage of the original parcel, unless the applicant can demonstrate that this would have the effect of the effect of physically precluding the construction of two units on either of the resulting parcels or would necessarily result in a unit size of less than 800 square feet, in which case the applicant shall demonstrate the parcel has sufficient frontage to comply with any property access road requirements under the California Fire Code section 503.

DISCUSSION (continued):

The City of Santa Barbara included the following language in their Ordinance to prohibit two-unit residential development in their High Fire Hazard Areas:

HIGH FIRE HAZARD AREA. Two-residential unit development shall not be permitted within High Fire Hazard Zones, unless the existing and proposed buildings are designed to meet the high fire construction standards adopted through Title 8 and Title 22 of the Municipal Code, and the proposed development is not located in the Foothill or Extreme Foothill High Fire Hazard Zones identified in Figure 14 of the City's Community Wildfire Protection Plan dated February 2021. No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.

The Town Council can include additional language into the Draft Ordinance (Attachment 1); however, staff is concerned that these modifications could lead to a legal challenge because it is a more restrictive requirement than allowed by State law.

E. Building Heights

The Urgency Ordinance adopted by Town Council on December 21, 2021, states that "Maximum building height shall be as specified by the applicable zoning district for the main structure. Buildings located within the required side or rear setbacks of the applicable zoning district shall not exceed 16 feet in height." There are a variety of different techniques being used by different agencies for addressing the height of new structures. For example, height has been limited only when a new structure is within the underlying setbacks, while other agencies apply it to any dwelling unit, or just the second dwelling unit developed under the provisions of SB 9.

In Los Altos Hills, the requirement is:

The maximum height of the SB 9 dwelling unit shall be 16 feet.

In Monte Sereno, the requirement is:

Building Height at Side and Rear Yard Setbacks. Where a new building is constructed where the side yard and rear yard setbacks do not meet the zoning district standards (the State statute allows side yard and rear yard setbacks to be no more than four feet), the maximum building height shall be 16 feet.

DISCUSSION (continued):

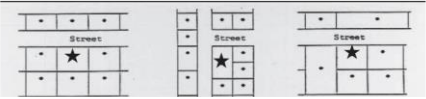
In Sonoma, the requirement is:

Each unit of a two-unit residential development shall have only one story. The maximum height of the one-story unit shall be 18 feet above finished grade, measured from finished grade to the highest point of the roof. If application of an objective standard would have the effect of physically precluding a unit from being built on the parcel as a one-story structure, a two-story unit shall be allowed. The height of that two-story structure shall not exceed 25 feet measured from the finished grade to the highest point of the roof. Additionally, the plate height on any new second story shall not exceed 8 feet.

The Town Council can include additional language into the Ordinance (Attachment 1); however, staff is concerned that these modifications could lead to liability because it is a more restrictive requirement than allowed by State law. It is also possible that once there is further direction from the State, it may be determined that these restrictions cannot be enforced.

F. Neighbor Notification

While some agencies have chosen to include notification to neighbors of a proposed SB 9 project, the Town's Urgency Ordinance was developed without this provision because it would be inconsistent with other ministerial processes within Town Code, for example Accessory Dwelling Unit Permits and Building Permits. Because these are ministerial permits there is no ability to require changes to the proposed project based on neighbor input. Current noticing requirements for discretionary permits include:

Minor Residential Development	Neighboring residents and property owners.	Sec. 29.20.480(c)
Large protected tree removal		Sec. 29.10.0994(4)
Hillside Areas	500 feet or 30 properties (whichever is greater)	Staff Policy
All other Town Areas	300 feet	Sec. 29.20.565(a)

The Town Council can include additional language in the Ordinance (Attachment 1); however, staff is concerned that implementing a neighbor notification requirement would not be beneficial as neighborhood input cannot be considered when reviewing ministerial permits, and would result in significantly increased staff time to respond to neighbor comments.

DISCUSSION (continued):

G. Minimum Unit Size

At the December 21, 2021 Town Council meeting, the Council adopted the Urgency Ordinance with a requirement of a Minimum Living Area of 150 square feet, based on sample Ordinance language from another agency. Upon further evaluation, staff recommends removal of this requirement currently listed as item 9 under Zoning Standards in Section V of the Urgency Ordinance because the minimum unit size would be guided by Building Code requirements.

H. Floor Area

The Urgency Ordinance relies on the Town's existing Floor Area Ratio (FAR) regulations with an additional provision added by Town Council on December 21, 2021, to restrict the size of any new dwelling unit developed under SB 9 to 1,200 square feet. Public comments included as Attachment 3 include discussion of specific projects within Town and how this regulation would affect their property.

If the Town Council is interested in considering modifications to this aspect of the Urgency Ordinance, the following are examples that could be considered:

1. Apply the 1,200-square foot limit to only the second dwelling unit in instances where two dwelling units are proposed on the same lot;
2. Apply a 1,200-square foot limitation to new homes developed under the two-unit residential development application process, and maintain the Architecture and Site application review process with the standard FAR limitations based on lot size as an option for proposals that include only a single home on each parcel when proposed to exceed 1,200 square feet; or
3. Apply the process described in option 2, and require that the maximum allowed FAR on that lot be reduced by 800 square feet to ensure that a future second home could be developed without exceeding the maximum FAR.

The Town Council can include modified language in the Ordinance (Attachment 1) to provide additional options including those interested in choosing a discretionary process for a new home on a lot created through the urban lot split process, as is allowed on other single-family residential parcels in Town.

DISCUSSION (continued):

I. Grading

The Urgency Ordinance adopted by Town Council on December 21, 2021 included requirements that both the two-unit housing development and urban lot split applications not result in grading of more than 50 cubic yards, or other activities requiring a grading permit. Standard practice is to require a grading plan to verify compliance with this recommendation. In consideration of comments received expressing concerns about this requirement (Attachment 3), the Town Council could propose adding the following clarification to the Ordinance: “for sites with an average slope of less than 10 percent, a signed statement from the applicant confirming that a grading permit will not be required.”

J. Hillside Residential

The Urgency Ordinance adopted by Town Council on December 21, 2021 included only “Single Family Residential (R-1)” and “Single-Family Residential Downtown (R-1D)” zoned properties in the definition of Single-Family Residential Zone. SB 9 states that these new processes must be allowed on a parcel “located within a single-family residential zone.” It does not require this new process be permitted in all zones that allow single-family residential uses by right, which in the Town of Los Gatos would include Resource Conversation, Hillside Residential, Single-Family Residential, Residential Duplex, Multiple-Family Residential, Single-Family Residential Downtown, Residential Mobile Home, and Central Business District (when in conjunction with other permitted use).

If Town Council were considering including the Hillside Residential zones as part of the Single-Family Residential zones included within this Ordinance, then staff would recommend additional language to ensure that new subdivisions only occur where adequate emergency access exists. Possible language might be, “For subdivisions in the Wildland Urban Interface (WUI), development will only be allowed where existing roads provide adequate emergency ingress and egress. For subdivisions under consideration where roads only provide one-way in/one-way out access, subdivisions will only be considered if the roadway clearance meets the current legal standard of 20 feet of clear horizontal width and 13 feet of vertical clearance.”

Public comments included as Attachment 3 include discussion of specific projects within Town and how this regulation would affect their property.

DISCUSSION (continued):

K. Accessory Dwelling Units

The Urgency Ordinance adopted by Town Council on December 21, 2021, prohibits new Accessory Dwelling Units (ADU) on any site with a two-unit housing development or created by an urban lot split. Other agencies have allowed ADUs in their implementation of SB 9 in various ways, but in most cases limit the number so that the final result is no more than four units on any existing single-family residential property. Some options include:

1. Allow new ADUs on properties with two homes developed through the two-unit housing development process, but not on lots created by urban lot splits, and limit the total number of dwelling units to either three or four, including ADUs and Junior ADUs;
2. Allow new ADUs on parcels created by an urban lot split, but limit the number of units (including ADUs) on each new parcel to no more than two; and
3. Allow new ADUs along with either type of SB 9 application, but combine the two options above to set limits that new urban lot split parcels can only have two units each, and that the overall number of units cannot be more than four.

The Town Council can include additional language into the Ordinance (Attachment 1), staff does not have any concerns about these changes conflicting with State law.

PUBLIC COMMENT:

Attachment 3 includes additional public comment received between 11:01 a.m., Tuesday, December 21, 2021, and 11:00 a.m., Friday, January 28, 2022.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Town Council adopt the extension of Urgency Ordinance 2326 (Attachment 1) as it provides a process and regulatory framework that includes local objective standards and process guidelines.

As a next step, the Town would develop a permanent ordinance for future Council consideration to implement SB 9, consistent with any future direction received from the State. The Council is welcome to identify items from this report for consideration in the permanent Ordinance.

ALTERNATIVES:

Alternatively, the Town Council may:

1. Adopt an Urgency Ordinance Extension (Attachment 1) with minor, specific modifications; or
2. Direct more extensive modifications and return to the Council with a new Urgency Ordinance for consideration; or
3. Not adopt the Urgency Ordinance Extension, resulting in the expiration of Urgency Ordinance 2326 on February 4, 2022 and staff implementing SB 9 without local standards.

Attachments:

Received with this Staff Report:

1. Draft Urgency Ordinance Extension with Exhibit A Urgency Ordinance Number 2326
2. Senate Bill 9
3. Public Comments received between 11:01 a.m., Tuesday, December 21, 2021 and 11:00 a.m., Friday, January 28, 2022

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**DRAFT
ORDINANCE**

**EXTENSION OF AN URGENCY ORDINANCE OF THE TOWN OF LOS GATOS FOR A PERIOD OF
TEN MONTHS AND FIFTEEN DAYS
IMPLEMENTING SENATE BILL 9 TO ALLOW FOR TWO-UNIT HOUSING DEVELOPMENTS
AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES**

WHEREAS, the Town of Los Gatos (Town) has adopted a General Plan to ensure a well-planned and safe community; and

WHEREAS, protection of public health, safety, and welfare is fully articulated in the General Plan; and

WHEREAS, State law requires that the Town's Zoning Code conform with the General Plan's goals and policies; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 (SB 9), which among other things, adds Government Code Sections 65852.21 and 66411.7 to impose new limits on local authority to regulate two-unit housing developments and urban lot splits; and

WHEREAS, SB 9 requires the Town to provide for the ministerial (or “by right”) approval of a housing development containing no more than two residential units of at least 800 square feet in floor area (two-unit housing development) and a parcel map dividing one existing lot into two approximately equal parts (urban lot split) within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of the proposed subdivision of one lot into two parcels by removing public notice and hearings by the Development Review Committee or Planning Commission, by requiring only administrative review of the project, and by providing ministerial approval of an urban lot split, and also offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map; and

WHEREAS, SB 9 exempts SB 9 projects from environmental review as required by the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing, thereby undermining community participation and appropriate environmental impact vetting by local decision making bodies; and

WHEREAS, SB 9 allows the Town to adopt objective design, development, and subdivision standards for two-unit housing developments and urban lot splits; and

WHEREAS, the Town desires to amend its local regulatory scheme to comply with and implement Government Code Sections 65852.21 and 66411.7 and to appropriately regulate projects under SB 9; and

ATTACHMENT 1

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of SB 9 because if the Town does not adopt appropriate objective standards for two-unit housing developments and urban lot splits under SB 9, the Town would thereafter be limited to applying only the objective standards that are already in its code, which did not anticipate and were not enacted with ministerial two-unit housing developments and urban lot splits in mind; and

WHEREAS, the approval of two-unit housing developments and urban lot splits based solely on the Town's default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural form, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this Ordinance as an Urgency Ordinance in accordance with Government Code Sections 36934, 36937, and 65858 and to be effective immediately upon adoption by a four-fifths vote of the Town Council; and

WHEREAS, to protect the public safety, health, and welfare, the Town Council may adopt this ordinance as an urgency measure in accordance with Government Code Sections 36934, 36937, and 65858 in order to regulate any uses that may be in conflict with a contemplated General Plan or zoning proposal that the Town intends to study within a reasonable time; and

WHEREAS, on December 21, 2021, in accordance with Government Code Sections 36934, 36937, and 65858, the Town Council at a duly noticed public meeting took testimony and adopted Urgency Ordinance 2326, (a copy of which is attached hereto as Exhibit "A" and incorporated herein) an Urgency Ordinance implementing SB 9, for a period of 45 days; and

WHEREAS, Urgency Ordinance 2326 was necessary to address the danger to public health, safety, and general welfare articulated by the State related to the housing crisis and immediately provide the provisions to implement SB 9 related development in a manner that protects the Town's interest in orderly planning and aesthetics; and

WHEREAS, on February 1, 2022, in accordance with Government Code Section 36934 and 36937 and 65858, the Town Council held a duly noticed public hearing and took testimony regarding this urgency ordinance to extend Urgency Ordinance 2326 ("Extension Ordinance"); and

WHEREAS, the Town Council has considered, and by adopting this Extension Ordinance ratifies and adopts, the report, which is incorporated in the Staff Report dated February 1, 2022, describing the continued need for regulations to implement SB 9 which led to the adoption of Ordinance 2326; and

WHEREAS, because the conditions justifying the adoption of Urgency Ordinance 2326 have not been alleviated, and the Town Council desires to extend the regulations established by Urgency Ordinance 2326 for an additional ten (10) months and fifteen (15) days, as permitted by Government Code Sections 36934, 36937, and 65858, to allow for the development of regulations for incorporation into the Town Code.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS FINDS AND ORDAINS:

SECTION I

The Town Council finds and declares that this Urgency Ordinance establishes interim exceptions to the Zoning Code to allow two-unit housing developments and urban lot splits as specified by California Government Code Sections 66452.6, 65852.21, and 66411.7, as adopted and amended by SB 9. The provisions of this Urgency Ordinance shall supersede any other provision to the contrary in the Zoning Code or Subdivision Code. Zoning standards and design review standards provided for in the Zoning Code that are not affected by this Urgency Ordinance shall remain in effect. It is not the intent of this Urgency Ordinance to override any lawful use restrictions as may be set forth in Conditions, Covenants, and Restrictions (CC&Rs) of a common interest development.

SECTION II

The Town Council finds and determines that this Urgency Ordinance is applicable only to voluntary applications for two-unit housing developments and urban lot splits. Owners of real property or their representatives may continue to exercise rights for property development in conformance with the Zoning Code and Subdivision Code. Development applications that do not satisfy the definitions for a two-unit housing development or an urban lot split provided in Section III (Definitions) shall not be subject to this Urgency Ordinance.

SECTION III

In addition to the terms defined by Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following terms shall have the following meanings as used in this Urgency Ordinance. Where a conflict may exist, this Section shall prevail over any definition provided in the Zoning Code:

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on the date of the adoption of this Urgency Ordinance, acting jointly to pursue development of real property whether or not pursuant to a written agreement and irrespective of individual financial interest;

Addition means any construction which increases the size of a building or facility in terms of site coverage, height, length, width, or gross floor area;

Alteration means any construction or physical change in the arrangement of rooms or the supporting members of a building or structure or change in the relative position of buildings or structures on a site, or substantial change in appearances of any building or structure;

Entry feature means a structural element, which leads to an entry door;

Existing structure means a lawfully constructed building that received final building permit clearance prior to January 1, 2022, and which has not been expanded on or after January 1, 2022;

Nonconforming zoning condition means a physical improvement on a property that does not conform with current zoning standards;

Two-unit housing development means an application proposing no more than two primary dwelling units on a single parcel located within a single-family residential zone as authorized by

Government Code Section 65852.21. A two-unit housing development shall consist of either the construction of no more than two new primary dwelling units, one new primary dwelling unit and retention of one existing primary dwelling unit, or retention of two existing legal non-conforming primary dwelling units where one or both units are subject to a proposed addition or alteration;

Public transportation means a high-quality transit corridor, as defined in subdivision (b) of Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Section 21064.3;

Single-family residential zone means a “R-1 OR SINGLE-FAMILY RESIDENTIAL ZONE” and “R-1D OR SINGLE-FAMILY RESIDENTIAL DOWNTOWN ZONE” Zoning districts as specified by Article IV (RESIDENTIAL ZONES) of the Zoning Code;

Subdivision code means Title 24 of the Los Gatos Municipal Code;

Urban lot split means a ministerial application for a parcel map to subdivide an existing parcel located within a single-family residential zone into two parcels, as authorized by Government Code Section 66411.7; and

Zoning code means Title 29 of the Los Gatos Municipal Code.

SECTION IV

The Council finds and declares that an urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- A. Zoning District. A parcel that is located within a single-family residential zone;
- B. Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and Subdivision Regulations, as applicable at the time the parcel was created. The Town Engineer may require a certificate of compliance to verify conformance with this requirement;
- C. Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is listed on 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);
- D. Excluding Very High Fire Hazard Severity Zone. A parcel that is not within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202, or if the site has been excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or has adopted fire hazard mitigation measures pursuant to existing building standards or State fire mitigation measures applicable to the development.
- E. Excluding Hazardous Waste Sites. A parcel that is not identified as a hazardous waste site pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use;
- F. Excluding Earthquake Fault Zone. A parcel that is not located within a delineated earthquake fault zone as determined by the State Geologist on any official maps published by the State Geologist, unless the two-unit housing development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of

Health and Safety Code Division 13), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2;

G. Excluding Flood Zone. A parcel that is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) on the official maps published by the Federal Emergency Management Agency unless a Letter of Map Revision prepared by the Federal Emergency Management Agency has been issued or if the proposed primary dwelling unit(s) is constructed in compliance with the provisions of Town Code Chapter 29, Article XI (FLOODPLAIN MANAGEMENT) as determined by the floodplain administrator;

H. Excluding Natural Habitat. A parcel that is not recognized by the Town as a habitat for protected species identified as a candidate, sensitive, or species of special status by State or Federal agencies, fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

SECTION V

The Council finds and declares that two-unit housing developments shall comply with the following objective zoning standards, design review standards, and general requirements and restrictions.

A. Zoning Standards

The following objective zoning standards supersede any other standards to the contrary that may be provided in the Zoning Code, as they pertain to a two-unit housing development under Government Code Section 65852.21. Two-unit housing developments shall be constructed only in accordance with the following objective zoning standards, except as provided by Section E (Exceptions):

1. Building Height. Maximum building height shall be as specified by the applicable zoning district for the main structure. Buildings located within the required side or rear setbacks of the applicable zoning district shall not exceed 16 feet in height.

2. Driveways. Each parcel shall include a single driveway satisfying the following requirements:

- a. A minimum width of 10 feet up to a maximum width of 18 feet;
- b. A minimum depth of 25 feet measured from the front property line;
- c. Surfacing shall comply with Town Code Section 29.10.155(e); and
- d. Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction.

3. Dwelling Unit Type. The primary dwelling units comprising a two-unit housing development may take the form of detached single-family dwellings, attached units, and/or duplexes. A duplex may consist of two dwelling units in a side-by-side or front-to-back configuration within the same structure or one dwelling unit located atop another dwelling unit within the same structure;

4. Fencing. All new fencing shall comply with the requirements of Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations, but no new residential unit shall have a floor area greater than 1,200 square feet;

6. Grading. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

7. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);

8. Lighting. New exterior lighting fixtures shall be down-shielded and oriented away from adjacent properties consistent with Section 29.10.09015 of the Zoning Code;

9. Minimum Living Area. The minimum living area of a primary dwelling unit shall be 150 square feet, subject to the restrictions specified by Health and Safety Code Section 17958.1;

10. Parking. One parking stall per primary dwelling unit shall be required, except for two-unit housing developments located on parcels within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

Parking stalls may either be uncovered or covered (garage or carport) in compliance with applicable developments standards of the Zoning Code, including Chapter 29, Article I, Division 4 (PARKING), except that uncovered parking spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking;

11. Setbacks. Two-unit housing developments shall be subject to the setback and building separation requirements specified by Table 1-1 (Setback Requirements), below:

Table 1-1 – Setback Requirements		
Setback		Requirement (2)
Property Line Setbacks (1)	Front	Per the applicable zoning district.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		5 feet
Exceptions: (1) Cornices, eaves, belt courses, sills, canopies, bay windows, chimneys, or other similar architectural features may extend into required setbacks as specified Section 29.40.070(b) of the Zoning Code. (2) No setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure. (3) No interior side setback shall be required for two-unit housing development units constructed as attached units, provided that the structures meet building code safety standards and are sufficient to allow conveyance as a separate fee parcel. (4) Except for primary dwellings constructed as a duplex or attached single-family residences.		

15. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer.

B. Design Review Standards

The following objective design review standards apply to construction of new primary dwelling units and to any addition and/or alteration to an existing primary dwelling units as part of a two-unit housing development, except as provided by Section E (Exceptions):

1. Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front elevation of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building footprint.
2. Finished Floor. The finished floor of the first-story shall not exceed 18 inches in height as measured from finished grade;
3. 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;
4. Front Porch. If proposed, porches shall have a minimum depth of 6 feet and a minimum width equal to 25 percent of the linear width of the front elevation. Porch columns shall not overhang the porch floor;
5. Step-back. All 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;
6. Garages. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
7. Plate Height. The plate height of each story shall be limited to 10 feet as measured from finished floor and when above the first floor the plate height shall be limited to 8 feet; and
8. Windows. All second-story windows less than eight feet from rear and interior side property lines shall be clerestory with the bottom of the glass at least six feet above the finished floor. All other second-story windows shall be limited to the minimum number and minimum size as necessary for egress purposes as required by the Building Code.

C. General Requirements and Restrictions

The following requirements and restrictions apply to all two-unit housing developments, inclusive of existing and new primary dwelling units, except as provided by Section E (Exceptions):

1. Accessory Dwelling Units. New accessory dwelling units are not allowed on parcels that either include a two-unit housing development or that are created by an urban lot split;
2. Building and Fire Codes. The International Building Code (Building Code), and the California Fire Code and International Fire Code (together, Fire Code), as adopted by Chapter 6 of the Los Gatos Municipal Code, respectively, apply to all two-unit housing developments;
3. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve a two-unit housing developments. Applicants shall apply for and pay all necessary fees for utility permits for sanitary sewer, gas, water, electric, and all other utility work;
4. Restrictions on Demolition. The two-unit housing development shall not require demolition of more than 25 percent of the exterior walls or alteration of any of the following types of housing:
 - a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by claiming of the Homeowners' Exemption on the Santa Clara County assessment roll;

5. Short-Term Rentals. Leases for durations of less than 30 days, including short term rentals are prohibited. The Community Development Director shall require recordation of a deed restriction documenting this requirement prior to issuance of a building permit; and

6. Subdivision and Sales. Except for the allowance for an urban lot split provided in Section VI (Urban Lot Splits), no subdivision of land or air rights shall be allowed in association with a two-unit housing development, including creation of a stock cooperative or similar common interest ownership arrangement. In no instance shall a single primary dwelling unit be sold or otherwise conveyed separate from the other primary dwelling unit.

D. Approval Process

Applications for two-unit housing developments shall be submitted and processed in compliance with the following requirements:

1. Application Type. Two-unit housing developments shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. The permitting provisions of Town Code Sections 29.20.135 through 29.20.160 (Architecture and Site Approval), shall not be applied;

2. Application Filing. An application for a two-unit housing development, including the required application materials and fees, shall be filed with the Community Development Department;

3. Building Permits. Approval of a two-unit housing development permit shall be required prior to acceptance of an application for a building permit(s) for the new and/or modified primary dwelling units comprising the two-unit housing development;

4. Denial. The Community Development Director may deny a two-unit housing development project only if the Building Official makes a written finding, based upon a preponderance of the evidence, that the two-unit housing development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

5. Appeals. Two-unit housing applications are ministerial and are not subject to an appeal.

E. Exceptions

If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two primary dwelling units or physically preclude either of the two primary dwelling units from being at least 800 square feet in floor area, the Community Development Director shall grant an exception to the applicable standard(s) to the minimum extent necessary as specified by this section. An exception request shall be explicitly made on the application for a two-unit housing development.

1. Determination. In order to retain adequate open space to allow for recreational enjoyment, protection of the urban forest, preservation of the community character, reduction of the ambient air temperature, and to allow for the percolation of rainfall into the groundwater system, when considering an exception request, the Community Development Director shall first determine that a reduction in any other zoning and/or design review

standard(s) will not allow the construction of the two-unit housing development as specified by this section prior to allowing an exception(s) to the landscaping requirement, front-yard setback, or street-side setbacks standards.

SECTION VI

The Council finds and declares that urban lot splits shall comply with the following subdivision standards, and general requirements and restrictions:

A. Subdivision Standards

The following objective subdivision standards supersede any other standards to the contrary that may be provided in the Zoning Code or Subdivision Code, as they pertain to creation of an urban lot split under Government Code Section 66411.7:

1. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;
2. Lot Lines. The side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;
3. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In no event shall a new parcel be less than 1,200 square feet in lot area. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;
4. Minimum Lot Width. Each new parcel shall maintain a minimum lot width of 20 feet;
5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet; and
6. Number of Lots. The parcel map to subdivide an existing parcel shall result in no more than two parcels.

B. General Requirements and Restrictions

The following requirements and restrictions apply to all proposed urban lot splits:

1. Adjacent Parcels. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously conducted an urban lot split to create an adjacent parcel as provided for in this section;
2. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may require recording of easements necessary for the provision of private services, facilities, and future public improvements or future public services, facilities, and future public improvements;
3. Existing Structures. Existing structures located on a parcel subject to an urban lot split shall not be subject to a setback requirement. However, any such existing structures shall not be located across the shared property line resulting from an urban lot split, unless the structure is converted to an attached unit as provided for in Table 1-1 (Setback Requirements, Exception No. 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
4. Grading. Grading activity shall not result in the summation of 50 cubic yards, cut plus fill, of grading or require a grading permit per Town Code Chapter 12, Article II;
5. Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one of the newly created parcels as their principal residence for a minimum of three years from the date of the approval

of the urban lot split or certificate of occupancy, whichever is later.

This requirement shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code;

6. Non-Conforming Conditions. The Town shall not require, as a condition of approval, the correction of nonconforming zoning conditions. However, no new nonconforming conditions may result from the urban lot split other than interior side and rear setbacks as specified by Table 1-1 (Setback Requirements, Exception No. 2);

7. Number of Remaining Units. No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code Section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

8. Prior Subdivision. A parcel created through a prior urban lot split may not be further subdivided. The subdivider shall submit a signed deed restriction to the Community Development Director documenting this restriction. The deed restriction shall be recorded on the title of each parcel concurrent with recordation of the parcel map;

9. Restrictions on Demolition. The proposed urban lot split shall not require the demolition of more than 25 percent of the exterior walls of or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years;

10. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;

11. Utility Providers. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and

12. Maximum Floor Area. The maximum floor area for any new residential unit shall be 1,200 square feet.

C. Approval Process

Applications for urban lot splits shall be submitted and processed in compliance with the following requirements:

1. Application Type. Urban lot splits shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. A tentative parcel map shall not be required;

2. Application Filing. An urban lot split application, including the required application materials and fees, shall be filed with the Community Development Department;

3. Parcel Map. Approval of an urban lot split permit shall be required prior to acceptance of an application for a parcel map for an urban lot split. Applicants shall apply for an Urban Lot Split Parcel Map and pay all fees;

4. Development. Development on the resulting parcels is limited to the project approved by the two-unit housing development process;

5. Denial. The Community Development Director may deny an urban lot split only if the

Building Official makes a written finding, based upon a preponderance of the evidence, that an urban lot split or two-unit housing development located on the proposed new parcels would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

6. Appeals. Urban lot split applications are ministerial and are not subject to an appeal.

SECTION VII

The Council finds and declares that any provision of this Urgency Ordinance which is inconsistent with SB 9 shall be interpreted in a manner which is the most limiting on the ability to create a two-unit housing development or urban lot split, but which is consistent with State law. The provisions of this Urgency Ordinance shall supersede and take precedence over any inconsistent provision of the Los Gatos Municipal Code to that extent necessary to effect the provisions of this Urgency Ordinance for the duration of its effectiveness.

SECTION VIII

The Council finds and declares that if SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Urgency Ordinance shall cease to be in effect.

SECTION IX

The Council finds and declares that this Ordinance is not subject to environmental review under the California Environmental Quality Act ("CEQA"). SB 9 (Atkins) states that an ordinance adopted to implement the rules of SB 9 is not considered a project under Public Resources Code Division 13 (commencing with Section 21000) (See Government Code Sections 65858.210 and 66411.7(n)).

SECTION X

If any section, subsection, sentence, clause, phrase, or portion of this Urgency Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance. The Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this Urgency Ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION XI

The Council finds and declares that the foregoing is an Urgency Ordinance necessary for the immediate preservation of the public peace, health, and safety of the Town of Los Gatos and its residents as articulated above and at the hearing and to immediately provide provisions to implement SB 9, which takes effect on January 1, 2022. The Town Council therefore finds and determines that this Ordinance be enacted as an Urgency Ordinance pursuant to Government Code Sections 36934, 36937, and 65858 and takes effect immediately upon

adoption by four-fifths of the Town Council.

SECTION XII

This ordinance shall take effect upon adoption and shall remain in effect for a period of 10 months and 15 days from the date of adoption, in accordance with California Government Code Section 65858.

SECTION XIII

The Town Clerk is directed to certify this Ordinance and cause it to be published in the manner required by law.

SECTION XIV

This Urgency Ordinance was passed and adopted at a regular meeting of the Town Council of the Town of Los Gatos on February 1, 2022.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

ORDINANCE 2326

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS IMPLEMENTING SENATE BILL 9 TO ALLOW FOR TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS IN ALL SINGLE-FAMILY RESIDENTIAL ZONES

WHEREAS, on September 16, 2021, the Governor of the State California signed into law Senate Bill 9 (Atkins), "An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the California Government Code, relating to land use," which requires ministerial approval of a housing development of no more than two units in a single-family zone (two-unit housing development), the subdivision of a parcel zoned for residential use into two parcels (urban lot split), or both; and

WHEREAS, certain zoning and subdivision standards of the Town of Los Gatos Municipal Code and their permitting procedures are inconsistent with the two-unit housing developments and urban lot splits authorized by Senate Bill 9 (SB 9); and

WHEREAS, the provisions of SB 9 shall be in effect on January 1, 2022, and without locally codified objective design standards and implementation procedures, the law presents a current and immediate threat to the public peace, health, safety, and welfare, in that certain existing zoning and subdivision standards are in conflict with SB 9 and could create confusion and hinder the development of the additional residential units enabled under SB 9; and

WHEREAS, pursuant to Section 65858 of the Government Code and Section 29.20.545 of the Town of Los Gatos Municipal Code, the Town Council may take appropriate action to adopt urgency measures as an Urgency Ordinance; and

WHEREAS, pursuant to Section 65852.21(j) and Section 66411.7(n) of the Government Code, a local agency may adopt an Ordinance to implement SB 9; and

WHEREAS, this Urgency Ordinance adopts interim urgency objective zoning standards, objective subdivision standards, and objective residential design standards to allow for orderly housing development and subdivision of land as authorized by SB 9 while protecting the public peace, health, safety, or welfare in the Town of Los Gatos; and

WHEREAS, it is not the intent of this Urgency Ordinance to adopt permanent standards to govern the development of single-family zoned properties. The Town Council reserves the right to adopt permanent standards consistent with SB 9 that will supersede those contained in this Urgency Ordinance; and

WHEREAS, in light of the foregoing findings, the Town Council further finds that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, building permits, or any other applicable entitlement for use which is in conflict with this Ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, adoption of this Urgency Ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to implementation of SB 9.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS FINDS AND ORDAINS:

SECTION I

The Town Council finds and declares that this Urgency Ordinance establishes interim exceptions to the Zoning Code to allow two-unit housing developments and urban lot splits as specified by California Government Code Sections 66452.6, 65852.21, and 66411.7, as adopted and amended by SB 9. The provisions of this Urgency Ordinance shall supersede any other provision to the contrary in the Zoning Code or Subdivision Code. Zoning standards and design review standards provided for in the Zoning Code that are not affected by this Urgency Ordinance shall remain in effect. It is not the intent of this Urgency Ordinance to override any lawful use restrictions as may be set forth in Conditions, Covenants, and Restrictions (CC&Rs) of a common interest development.

SECTION II

The Town Council finds and determines that this Urgency Ordinance is applicable only to voluntary applications for two-unit housing developments and urban lot splits. Owners of real property or their representatives may continue to exercise rights for property development in conformance with the Zoning Code and Subdivision Code. Development applications that do not satisfy the definitions for a two-unit housing development or an urban lot split provided in Section III (Definitions) shall not be subject to this Urgency Ordinance.

SECTION III

In addition to the terms defined by Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following terms shall have the following meanings as used in this Urgency Ordinance. Where a conflict may exist, this Section shall prevail over any definition provided in the Zoning Code:

Acting in concert means persons, as defined by Section 82047 of the Government Code as that section existed on the date of the adoption of this Urgency Ordinance, acting jointly to pursue development of real property whether or not pursuant to a written agreement and irrespective of individual financial interest;

Addition means any construction which increases the size of a building or facility in terms of site coverage, height, length, width, or gross floor area;

Alteration means any construction or physical change in the arrangement of rooms or the supporting members of a building or structure or change in the relative position of buildings or structures on a site, or substantial change in appearances of any building or structure;

Entry feature means a structural element, which leads to an entry door;

Existing structure means a lawfully constructed building that received final building permit clearance prior to January 1, 2022, and which has not been expanded on or after January 1, 2022;

Nonconforming zoning condition means a physical improvement on a property that does not conform with current zoning standards;

Two-unit housing development means an application proposing no more than two primary dwelling units on a single parcel located within a single-family residential zone as authorized by Section 65852.21 of the California Government Code. A two-unit housing development shall consist of either the construction of two new primary dwelling units, one new primary dwelling unit and

retention of one existing primary dwelling unit, or retention of two existing legal non-conforming primary dwelling units where one or both units are subject to a proposed addition or alteration;

Public transportation means a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code;

Single-family residential zone means a “R-1 OR SINGLE-FAMILY RESIDENTIAL ZONE” and “R-1D OR SINGLE-FAMILY RESIDENTIAL DOWNTOWN ZONE” Zoning districts as specified by Article IV (RESIDENTIAL ZONES) of the Zoning Code;

Subdivision code means Title 24 of the Los Gatos Municipal Code;

Urban lot split means a ministerial application for a parcel map to subdivide an existing parcel located within a single-family residential zone into two parcels, as authorized by Section 66411.7 of the Government Code; and

Zoning code means Title 29 of the Los Gatos Municipal Code.

SECTION IV

The Council finds and declares that an urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- A. Zoning District. A parcel that is located within a single-family residential zone;
- B. Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and Subdivision Regulations, as applicable at the time the parcel was created. The Town Engineer may require a certificate of compliance to verify conformance with this requirement;
- C. Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is listed on 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);
- D. Excluding Very High Fire Hazard Severity Zone. A parcel that is not within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code, or if the site has been excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or has adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
- E. Excluding Hazardous Waste Sites. A parcel that is not identified as a hazardous waste site pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use;
- F. Excluding Earthquake Fault Zone. A parcel that is not located within a delineated earthquake fault zone as determined by the State Geologist on any official maps published by the State Geologist, unless the two-unit housing development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2;

G. Excluding Flood Zone. A parcel that is not located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) on the official maps published by the Federal Emergency Management Agency unless a Letter of Map Revision prepared by the Federal Emergency Management Agency has been issued or if the proposed primary dwelling unit(s) is constructed in compliance with the provisions of Town Code Chapter 29, Article XI (FLOODPLAIN MANAGEMENT) as determined by the floodplain administrator;

H. Excluding Natural Habitat. A parcel that is not recognized by the Town as a habitat for protected species identified as a candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

SECTION V

The Council finds and declares that two-unit housing developments shall comply with the following objective zoning standards, design review standards, and general requirements and restrictions.

A. Zoning Standards

The following objective zoning standards supersede any other standards to the contrary that may be provided in the Zoning Code, as they pertain to a two-unit housing development under Section 65852.21 of the Government Code. Two-unit housing developments shall be constructed only in accordance with the following objective zoning standards, except as provided by Section E (Exceptions):

1. Building Height. Maximum building height shall be as specified by the applicable zoning district for the main structure. Buildings located within the required side or rear setbacks of the applicable zoning district shall not exceed 16 feet in height.

2. Driveways. Each parcel shall include a single driveway satisfying the following requirements:

- a. A minimum width of 10 feet up to a maximum width of 18 feet;
- b. A minimum depth of 25 feet measured from the front property line;
- c. Surfacing shall comply with Town Code Section 29.10.155(e); and
- d. Only a single driveway curb-cut shall be permitted per parcel designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction.

3. Dwelling Unit Type. The primary dwelling units comprising a two-unit housing development may take the form of detached single-family dwellings, attached units, and/or duplexes. A duplex may consist of two dwelling units in a side-by-side or front-to-back configuration within the same structure or one dwelling unit located atop of another dwelling unit within the same structure;

4. Fencing. All new fencing shall comply with the requirements of Section 29.40.030 of the Zoning Code;

5. Floor Area Ratio and Lot Coverage. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations, but no new residential unit shall have a floor area greater than 1,200 square feet;

6. Grading. Grading activity shall not exceed the summation of 50 cubic yards, cut plus fill, or require a grading permit per Town Code Chapter 12, Article II;

7. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWEL0);

8. Lighting. New exterior lighting fixtures shall be down-shielded and oriented away from adjacent properties consistent with Section 29.10.09015 of the Zoning Code;

9. Minimum Living Area. The minimum living area of a primary dwelling unit shall be 150 square feet, subject to the restrictions specified by Health and Safety Code Section 17958.1;

10. Parking. One parking stall per primary dwelling unit shall be required, except for two-unit housing developments located on parcels within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

Parking stalls may either be uncovered or covered (garage or carport) in compliance with applicable developments standards of the Zoning Code, including Chapter 29, Article I, Division 4 (PARKING), except that uncovered parking spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking;

11. Setbacks. Two-unit housing developments shall be subject to the setback and building separation requirements specified by Table 1-1 (Setback Requirements), below:

Table 1-1 – Setback Requirements		
Setback		Requirement (2)
Property Line Setbacks (1)	Front	Per the applicable zoning district.
	Garage Entry	18 feet
	Interior Sides	4 feet (3)
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures (4)		5 feet
Exceptions:		
(1) Cornices, eaves, belt courses, sills, canopies, bay windows, chimneys, or other similar architectural features may extend into required setbacks as specified Section 29.40.070(b) of the Zoning Code.		
(2) No setback shall be required for an existing structure, or a structure constructed in the same location and to the same dimensions as an existing structure.		
(3) No interior side setback shall be required for two-unit housing development units constructed as attached units, provided that the structures meet building code safety standards and are sufficient to allow conveyance as a separate fee parcel.		
(4) Except for primary dwellings constructed as a duplex or attached single-family residences constructed as units.		

15. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage

plan prepared by a registered civil engineer.

B. Design Review Standards

The following objective design review standards apply to construction of new primary dwelling units and to any addition and/or alteration to an existing primary dwelling units as part of a two-unit housing development, except as provided by Section E (Exceptions):

1. Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front elevation of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building.
2. Finished Floor. The finished floor of the first-story shall not exceed 18 inches in height as measured from finished grade;
3. 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;
4. Front Porch. If proposed, porches shall have a minimum depth of 6 feet and a minimum width equal to 25 percent of the linear width of the front elevation. Porch columns shall not overhang the porch floor;
5. Step-back. All 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;
6. Garages. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
7. Plate Height. The plate height of each story shall be limited to 10 feet as measured from finished floor; and
8. Windows. All second-story windows less than eight feet from rear and interior side property lines shall be clerestory with the bottom of the glass at least six feet above the finished floor. All other second-story windows shall be limited to the minimum number and minimum size as necessary for egress purposes as required by the Building Code.

C. General Requirements and Restrictions

The following requirements and restrictions apply to all two-unit housing developments, inclusive of existing and new primary dwelling units, as applicable:

1. Accessory Dwelling Units. New accessory dwelling units are not allowed on parcels that either include a two-unit housing development or that are created by an urban lot split;
2. Building and Fire Codes. The International Building Code (Building Code), and the 2019 California Fire Code and 2018 International Fire Code (together, Fire Code), as adopted by Chapter 6 of the Los Gatos Municipal Code, respectively, apply to all two-unit housing developments;
3. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve a two-unit housing developments. Applicants shall apply for and pay all necessary fees for utility permits for sanitary sewer, gas, water, electric, and all other utility work;
4. Restrictions on Demolition. The two-unit housing development shall not require demolition or alteration of any of the following types of housing:
 - a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
 - b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;
 - c. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by claiming of the Homeowners' Exemption on the Santa Clara County assessment

roll;

5. Short-Term Rentals. Leases for durations of less than 30 days, including short term rentals are prohibited. The Community Development Director shall require recordation of a deed restriction documenting this requirement prior to issuance of a building permit; and

6. Subdivision and Sales. Except for the allowance for an urban lot split provided in Section VI (Urban Lot Splits), no subdivision of land or air rights shall be allowed in association with a two-unit housing development, including creation of a stock cooperative or similar common interest ownership arrangement. In no instance shall a single primary dwelling unit be sold or otherwise conveyed separate from the other primary dwelling unit.

D. Approval Process

Applications for two-unit housing developments shall be submitted and processed in compliance with the following requirements:

1. Application Type. Two-unit housing developments shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. The permitting provisions of Town Code Sections 29.20.135 through 29.20.160 (Architecture and Site Approval), shall not be applied;

2. Application Filing. An application for a two-unit housing development, including the required application materials and fees, shall be filed with the Community Development Department;

3. Building Permits. Approval of a two-unit housing development permit shall be required prior to acceptance of an application for a building permit(s) for the new and/or modified primary dwelling units comprising the two-unit housing development;

4. Denial. The Community Development Director may deny a two-unit housing development project only if the Building Official makes a written finding, based upon a preponderance of the evidence, that the two-unit housing development would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

5. Appeals. Two-unit housing applications are ministerial and are not subject to an appeal.

E. Exceptions

If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two primary dwelling units or physically preclude either of the two primary dwelling units from being at least 800 square feet in floor area, the Community Development Director shall grant an exception to the applicable standard(s) to the minimum extent necessary as specified by this section. An exception request shall be explicitly made on the application for a two-unit housing development.

1. Determination. In order to retain adequate open space to allow for recreational enjoyment, protection of the urban forest, preservation of the community character, reduction of the ambient air temperature, and to allow for the percolation of rainfall into the groundwater system, when considering an exception request, the Community Development Director shall first determine that a reduction in any other zoning and/or design review standard(s) will not allow the construction of the two-unit housing development as specified by this section prior to allowing an exception(s) landscaping requirement, front-yard setback, or street-side setbacks standards.

SECTION VI

The Council finds and declares that urban lot splits shall comply with the following subdivision standards, and general requirements and restrictions:

A. Subdivision Standards

The following objective subdivision standards supersede any other standards to the contrary that may be provided in the Zoning Code, Subdivision Code, as they pertain to creation of an urban lot split under Section 66411.7 of the Government Code:

1. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) parcel shall be in fee as part of the parcel and not as an easement and shall be a minimum width of 20 feet;
2. Lot Lines. The side lines of all lots shall be at right angles to streets or radial to the centerline of curved streets;
3. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In no event shall a new parcel be less than 1,200 square feet in lot area. The minimum lot area for a flag/corridor lot shall be exclusive of the access corridor;
4. Minimum Lot Width. Each new parcel shall maintain a minimum lot width of 20 feet;
5. Minimum Public Frontage. Each new parcel shall have frontage upon a street with a minimum frontage dimension of 20 feet; and
6. Number of Lots. The parcel map to subdivide an existing parcel shall create no more than two new parcels.

B. General Requirements and Restrictions

The following requirements and restrictions apply to all proposed urban lot splits:

1. Adjacent Parcels. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously conducted an urban lot split to create an adjacent parcel as provided for in this section;
2. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements, however, may require recording of easements necessary for the provision of future public services, facilities, and future public improvements;
3. Existing Structures. Existing structures located on a parcel subject to an urban lot split shall not be subject to a setback requirement. However, any such existing structures shall not be located across the shared property line resulting from an urban lot split, unless the structure is converted to an attached unit as provided for in Table 1-1 (Setback Requirements, Exception No. 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
4. Grading. Grading activity shall not result in the summation of 50 cubic yards, cut plus fill, of grading or require a grading permit per Town Code Chapter 12, Article II;
5. Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one of the newly created parcels as their principal residence for a minimum of three years from the date of the approval of the urban lot split or certificate of occupancy, whichever is later.

This requirement shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of

the Revenue and Taxation Code, or a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code;

6. Non-Conforming Conditions. The Town shall not require, as a condition of approval, the correction of nonconforming zoning conditions. However, no new nonconforming conditions may result from the urban lot split other than interior-side and rear setbacks as specified by Table 1-1 (Setback Requirements, Exception No. 2);

7. Number of Remaining Units. No parcel created through an urban lot split shall be allowed to include more than two existing dwelling units as defined by Government Code section 66411.7(j)(2). Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;

8. Prior Subdivision. A parcel created through a prior urban lot split may not be further subdivided under the provisions of this Urgency Ordinance. The subdivider shall submit a signed covenant to the Community Development Director documenting this restriction. The covenant shall be recorded on the title of each parcel concurrent with recordation of the parcel map;

9. Restrictions on Demolition. The proposed urban lot split shall not require the demolition or alteration of any of the following types of housing:

a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

c. Housing that has been occupied by a tenant in the last three years;

10. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System (NPDES) Permit as implemented by Chapter 22 of the Los Gatos Municipal Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and

11. Utility Providers. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map.

12. Maximum Floor Area. The maximum floor area for any new residential unit shall be 1,200 square feet;

C. Approval Process

Applications for urban lot splits shall be submitted and processed in compliance with the following requirements:

1. Application Type. Urban lot splits shall be reviewed ministerially by the Community Development Director for compliance with the applicable regulations. A tentative parcel map shall not be required;

2. Application Filing. An urban lot split application, including the required application materials and fees, shall be filed with the Community Development Department;

3. Parcel Map. Approval of an urban lot split permit shall be required prior to acceptance of an application for a parcel map for an urban lot split. Applicants shall apply for an Urban Lot Split Parcel Map and pay all fees;

4. Development. Development on the resulting parcels is limited to the project approved by the two-unit housing development process.

5. Denial. The Community Development Director may deny an urban lot split only if the Building Official makes a written finding, based upon a preponderance of the evidence, that an urban lot split or two-unit housing development located on the proposed new parcels would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of

Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; and

6. Appeals. Urban lot split applications are ministerial and are not subject to an appeal.

SECTION VII

The Council finds and declares that any provision of this Urgency Ordinance which is inconsistent with SB 9 shall be interpreted in a manner which is the most limiting on the ability to create a two-unit housing development or urban lot split, but which is consistent with State law. The provisions of this Urgency Ordinance shall supersede and take precedence over any inconsistent provision of the Los Gatos Municipal Code to that extent necessary to effect the provisions of this Urgency Ordinance for the duration of its effectiveness.

SECTION VIII

The Council finds and declares that if SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Urgency Ordinance shall cease to be in effect.

SECTION IX

If any section, subsection, sentence, clause, phrase, or portion of this Urgency Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance. The Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this Urgency Ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION X

The Council hereby declares that the foregoing is an Urgency Ordinance necessary for the immediate preservation of the public peace, health, and safety of the Town of Los Gatos and its residents and shall take effect on January 1, 2022, upon passage by a four-fifths majority of the Town Council.

This Urgency Ordinance was passed and adopted at a regular meeting of the Town Council of the Town of Los Gatos on December 21, 2021.

COUNCIL MEMBERS:

AYES: Matthew Hudes, Maria Ristow, Marico Sayoc, Mayor Rob Rennie

NAYS: None

ABSENT: Mary Badame

ABSTAIN: None

SIGNED:

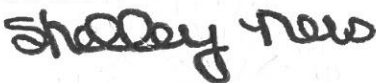


MAYOR OF THE TOWN OF LOS GATOS

LOS GATOS, CALIFORNIA

DATE: 12/23/21

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS

LOS GATOS, CALIFORNIA

DATE: 1/3/2022

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Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with
Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24

months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is

no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, 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.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) 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 or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) “Local agency” means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) 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.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

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

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) “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 or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

From: Terence J. Szewczyk
Sent: Tuesday, December 21, 2021 9:04 PM
To: Rob Rennie; Maria Ristow; Mary Badame; Matthew Hudes; Marico Sayoc
Cc: Laurel Prevetti; Jennifer Armer
Subject: SB9- Urgency Ordinance

Dear Mayor & Town Council.

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

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

Thanks again.

Best regards, Terry

Terence J. Szewczyk. P.E.

TS/Civil Engineering, Inc

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

Hello Joel,

Happy Holidays to you.

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

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

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

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

All the best,

Phil Koen

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

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

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

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

Thanks.



Joel Paulson • Community Development Director

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

Ph: 408.354.6879 • jpaulson@losgatosca.gov

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



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



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

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

Joel,

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

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

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

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

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

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

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

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

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

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

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

Thank you.

Phil Koen



January 12, 2022

Job No: 22-200

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

Subject: Comments on SB9 Urban Lot Split – Urgency Ordinance

Honorable Mayor & Town Council,

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

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

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

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

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

1) 1200 SF Maximum Structure

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

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

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

3) Grading Shall Not Exceed 50 CY.

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

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

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

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

Sincerely,



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

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January 12, 2022

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

Subject: CA Senate Bill 9
Town of Los Gatos Ordinance

Honorable Mayor & Town Council:

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

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

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

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

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

SUMMARY:

5424 SF REDUCED TO 2400 SF 2024 SF LOT!

NEGATIVE IMPACT OF ARBITRARY FLOOR AREA LIMITS

MAX AREA
1200
8800
= 0.136 FAR

STD FAR = 0.35 (10.8-5) 25

MAX AREA ALLOWED
1200
8800 = 0.15 FAR

STD FAR = 0.35 - (10-5) 15
= 0.326
8800
2608
ALLOWED

CHEATS OWNER OUT OF 2608 - 1200 1408 SF

CHEATS OWNER OUT OF 2816 - 1200 1616 SF

TS 10-22





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PEGGY L. SPRINGGAY
SAMUEL L. FARB
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STEVEN J. CASAD
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STUART B. SPENCER

January 20, 2022

VIA EMAIL ONLY

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

Re: Urgency SB9 Ordinance

Dear Mayor Rennie & Town Councilmembers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mayor Rob Rennie
January 20, 2022

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

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

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

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

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

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF:jl

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

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

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

January 24th, 2022

Dear Councilmembers

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

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

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

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

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

From: Phil Koen

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

To: Joel Paulson

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

Subject: Re: SB 9 subdivision object standards

Joel,

Thanks for the reply.

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

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

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

Thanks

Phil

Sent from my iPhone

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

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

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

Thanks.



Joel Paulson • Community Development Director

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

Ph: 408.354.6879 • jpaulson@losgatosca.gov

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



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



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

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From: Phil Koen

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

To: Joel Paulson; Laurel Prevetti

Cc: jvannada; Rick Van Hoesen; David Weissman

Subject: RE: SB 9 subdivision object standards

Joel,

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

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

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

Thank you.

Phil

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

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

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

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

Thanks.



Joel Paulson • Community Development Director

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

Ph: 408.354.6879 • jpaulson@losgatosca.gov

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



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



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

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

Hello Joel,

Happy Holidays to you.

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

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

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

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

All the best,

Phil Koen

February 1, 2022

Mayor and Town Council
Town of Los Gatos

RE: Urgency Ordinance 2326

Mayor Rene and Councilmembers:

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

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

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

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

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

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

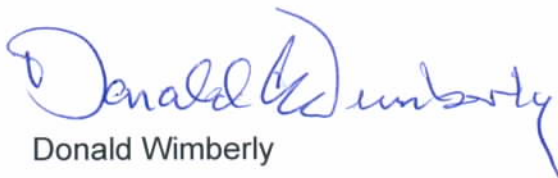
We propose an urban lot split (see attached) that would create one new primary residence on parcel 1 along with our existing ADU (in which we live) and a new ADU on parcel 2 along with the existing primary residence. We believe this is consistent with SB 9 and yet maintains the character of the neighborhood.

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

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

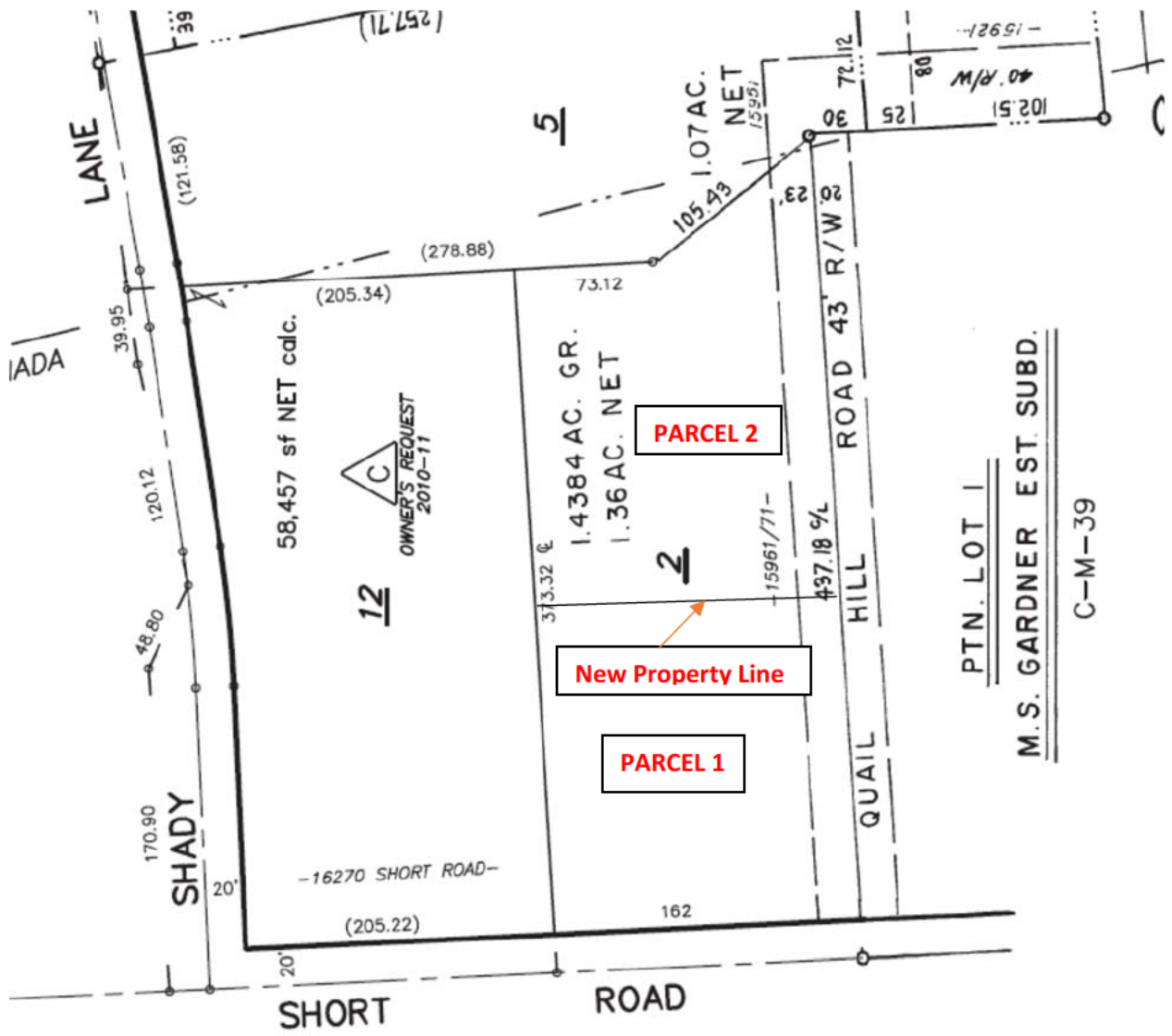
I watched the 12/21/21 Council discussion of the proposed ordinance and was surprised at the additional measures added by Council and the apparent focus on how to thwart the intent of SB 9. Research to find communities elsewhere in the State that had adopted extreme and potentially illegal measures to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

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

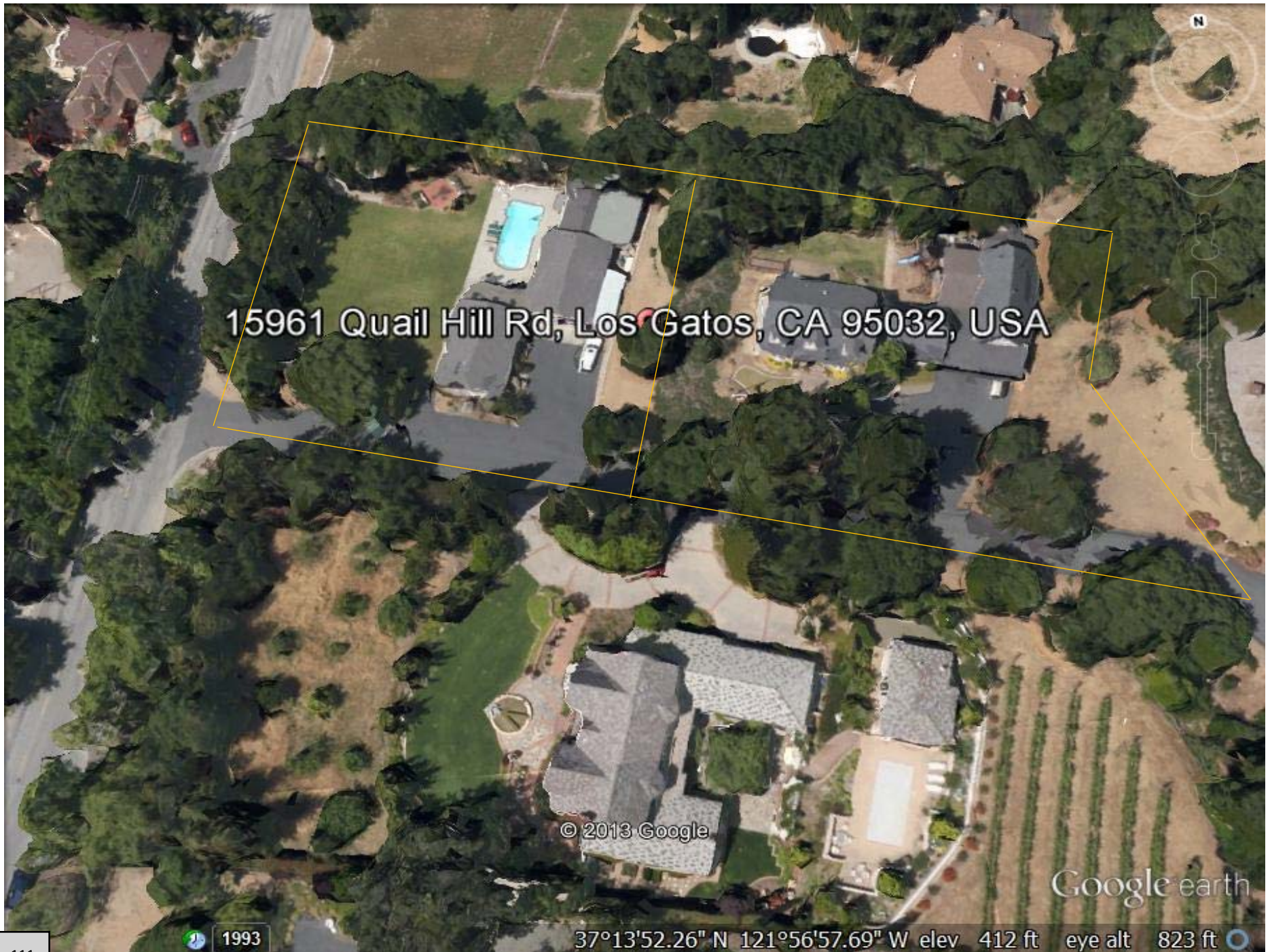

Donald Wimberly


Cheryl Wimberly

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



Proposed Urban Lot Split of APN 527-02-002



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

© 2013 Google

Google earth

1993

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

Memorandum: SB-9 Questions and Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Indicates Ministerial Review of Project.

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

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

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

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

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

From: Phil Koen
Sent: Thursday, January 27, 2022 4:22 PM
To: Joel Paulson
Cc: Laurel Prevetti; Rick Van Hoesen; David Weissman; Jennifer Armer;
Subject: Re: SB 9 subdivision object standards

EXTERNAL SENDER

Joel,

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

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

Let’s discuss when you have some time.

Phil

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/1/2022

ITEM NO: 5

ADDENDUM

DATE: January 31, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Extension of an Urgency Ordinance for a Period of 10 Months and 15 Days to Implement Senate Bill 9 to Allow for Two-Unit Housing Developments and Urban Lot Splits in All Single-Family Residential Zoning Districts

REMARKS:

Attachment 4 includes additional public comment received between 11:01 a.m., Friday, January 28, 2022 and 11:00 a.m., Monday, January 31, 2022, including one public comment that was accidentally omitted from the staff report packet.

Additional information, in response to Council Member questions, will be provided in a Desk Item report.

Attachments:

Previously received with the February 1, 2022 Staff Report:

1. Draft Urgency Ordinance Extension with Exhibit A Urgency Ordinance Number 2326
2. Senate Bill 9
3. Public Comments received between 11:01 a.m., Tuesday, December 21, 2021 and 11:00 a.m., Friday, January 28, 2022

Received with this Addendum Report:

4. Public Comments received between 11:01 a.m., Friday, January 28, 2022 and 11:00 a.m., Monday, January 31, 2022

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Assistant Town Manager, Town Attorney, and Public Works Director

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Matt Brennan
Los Gatos, CA 95030

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

January 24th, 2022

Subject: SB-9 Emergency Ordinance

Dear Council-members

We own a property in the R1-20 zoning district and would like to consider SB-9 to develop it properly. But there are a couple of clauses in the Ordinance that you approved in December that seem to go against the intent of the law that would make it impossible for us [and many other homeowners] to do so.

The 1,200 sq ft limitation on all SB-9 homes will make it unviable for almost anyone to consider. We would be OK if you choose to require a smaller unit as one of the two homes, but an owner must be able to build the other based on the FAR.

The 20 ft frontage requirement is difficult in our instance also, and SB-9 seems not to allow this restriction. We would like to use an easement.

Without these changes the town will lose the chance to add any housing at all, let alone the affordable housing you say you want.

We hope that you will fix these next week.

Thank you for your consideration

Matt Brennan

From: Terence J. Szewczyk [REDACTED]
Sent: Saturday, January 29, 2022 2:18 PM
To: Laurel Prevetti <LPrevetti@losgatosca.gov>; Matt Morley <MMorley@losgatosca.gov>
Cc: Jennifer Armer <JArmer@losgatosca.gov>; Jocelyn Shoopman <jshoopman@losgatosca.gov>; Mike Weisz <MWeisz@losgatosca.gov>
Subject: Fwd: Request for Action on SB9 Ministerial Application

EXTERNAL SENDER

Dear Town Staff, Here is our response to the comments on our first SB9 Urban Lot Split. I would like to get a revised letter or acknowledgment that I can trust you will make the requested revisions before the Feb 1, 2022 Council Meeting. While I realize that the grading disqualification was created by staff (and is in the current ordinance) please withdraw it completely. It makes no sense whatsoever. I don't want to have to present this info as a "bad faith" attempt of the CA law to the Council.

Best regards, Terry

Terence J. Szewczyk. P.E.

TS/Civil Engineering, Inc

[REDACTED]

San Jose, CA 95110

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: Terence J. Szewczyk [REDACTED]
Date: Sat, Jan 29, 2022 at 12:42 PM
Subject: Fwd: Request for Action on SB9 Ministerial Application
To: <lprevetti@losgatosca.gov>, Matt Morley <MMorley@losgatosca.gov>

Laurel, Time to break these very bad habits of endless over-discretionary review. PPW just can't help themselves with citing endless deficiencies when in fact their process is the problem.

I don't know how this Town will ever revert to Ministerial Review after decades of discretionary abuse in the application of planning and zoning law and CEQA. Recall that a 10 lot subdivision has taken more than 10 years and a 4 lot subdivision on flat land needed a full EIR.

Best regards, Terry

Terence J. Szewczyk. P.E.

TS/Civil Engineering, Inc

[REDACTED]

San Jose, CA 95110

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: **Terence J. Szewczyk** [REDACTED]

Date: Fri, Jan 28, 2022 at 5:14 PM

Subject: Fwd: Request for Action on SB9 Ministerial Application

To: Matt Morley <MMorley@losgatosca.gov>

Mr. Morley, We are all trying to navigate through the SB9 process and this Engineering check print is frankly unwelcomed. The nature of a ministerial permit does not invite discretionary comments of this nature. Besides, there should be no grading permit trigger.

I have just read the staff report for the SB9 Urgency Ordinance and it seems that the staff direction is correct toward watering down the current foolishness. However, it should be fully eliminated. How can anyone believe that the need for a grading permit preempts the ability to subdivide a lot? We'll see what the Council does on Tuesday. However, we will resubmit and expect a Planning Approval on Monday, Jan 31, 2022.

Best regards, Terry

Terence J. Szewczyk. P.E.

TS/Civil Engineering, Inc

[REDACTED]

San Jose, CA 95110

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: **Jocelyn Shoopman** <jshoopman@losgatosca.gov>

Date: Fri, Jan 28, 2022 at 3:58 PM

Subject: RE: Request for Action on SB9 Ministerial Application

To: Terence J. Szewczyk [REDACTED]
Cc: Mike Weisz <MWeisz@losgatosca.gov>, Jennifer Armer <JArmer@losgatosca.gov>

Hi Terry,

Please find the comment letter for Urban Lot Split application ULS22-001 attached to this email for your review. Two additional attachments, 1.) Owner Declaration and 2.) Engineering mark-ups have also been attached to this email. The revised plans and supporting materials can be submitted to the Town's online permit portal under application number ULS22-001.

If you have any questions, please do not hesitate to reach out.

Thank you,



Jocelyn Shoopman • Associate Planner

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

Ph: 408.354.6875 • JShoopman@losgatosca.gov

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



**TOWN OF LOS GATOS
STAFF REVIEW COMMENTS**

**PLANNING DIVISION AND
ENGINEERING DIVISION
January 28, 2022**

**16880 Kennedy Road
Urban Lot Split Application ULS22-001**

Requesting Approval for a Subdivision of One Lot into Two Lots on Property Zoned R-1:8.
APN 532-35-067.

PROPERTY OWNER: Terence J. Szewczyk

APPLICANT: Patrick Mock

NOTE: This Urban Lot Split (ULS) Application submittal is **INCOMPLETE** and requires resubmittal of plans to address deficiencies noted.

PLANNING PROJECT DEFICIENCIES:

- 1) Per the Requirements for Submittal of an Urban Lot Split Application, please provide a grading and drainage plan with grading quantities identified or provide verification that the future housing will not require a Grading Permit or grading in excess of 50 cubic yards.
- 2) Has the existing single-family home been occupied by a tenant in the last three years? If so, pursuant to the Urgency Ordinance, the proposed urban lot split shall not require the demolition or alteration to the existing residence that has been occupied by a tenant within the last three years. Review and submit the attached *Owner Declaration* form as part of the resubmittal.
- 3) The applicant shall submit a signed *Owner Declaration* to the Community Development Department Director attesting that the applicant intends to occupy one of the newly created parcels as their principal residence for a minimum of three years from the date of the approval of the Urban Lot Split or Certificate of Occupancy, whichever is later. See attachment.
- 4) The applicant shall submit a signed *Owner Declaration* to the Community Development Department Director attesting that that parcel has not previously been subdivided using an Urban Lot Split application. See attachment.

PLANNING GENERAL COMMENTS:

- 5) A demolition permit shall be obtained from the Building Division for the existing building crossing a new property line prior to the recordation of the parcel map.



**TOWN OF LOS GATOS
STAFF REVIEW COMMENTS**

- 6) Development on the resulting parcels is limited to the project approved by the Two-Unit Housing Development Application process. Please refer to Section V of Ordinance 2326 for the objective zoning standards which pertain to a Two-Unit Housing Development project. The Two-Unit Housing Development Application form can be found on the Town's website at: <https://www.losgatosca.gov/2703/Senate-Bill-9>.
- 7) The subdivider shall submit a signed deed restriction to the Community Development Director documenting that the parcels resulting from the Urban Lot Split application may not be further subdivided under the provisions of this Urgency Ordinance. The deed restriction shall be recorded on the title of each parcel concurrent with the recordation of the parcel map.

ENGINEERING PROJECT DEFICIENCIES:

- 8) Dedication of 10-foot Public Service Easement/Public Access Easement along the Kennedy Road frontage of Parcel 1, with a 10-foot radius at the intersection of Kennedy Road and Gem Avenue is required.
- 9) Relocate the joint trench facilities outside of the Town's Gem Avenue right-of-way. Dedication of a five-foot utility easement granted for Parcel 1 across Parcel 2 is required.
- 10) A curb and sidewalk in-lieu fee of **\$16,380.00** shall be paid prior to recordation of the parcel map. This fee is based on 117 linear feet of curb at \$68.00 per linear foot and 526.5 square feet of 4.5-foot-wide sidewalk at \$16.00 per square foot in accordance with Town policy and the Town's Comprehensive Fee Schedule.

Please resubmit plans and supporting material and provide a compliance memorandum showing how all of the deficiencies and general comments have been addressed to the online permitting system (ULS22-001).

Jocelyn Shoopman
Associate Planner
JShoopman@losgatosca.gov
408-354-6875

Mike Weisz
Senior Civil Engineer
MWeisz@losgatosca.gov
408-354-5236

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OWNER DECLARATION – URBAN LOT SPLIT APPLICATION

Community Development Department

Planning Division – 110 East Main Street, CA 95030 – Phone 408-354-6872

Property Address: _____ APN: _____

Applicant/Property Owner Information

Name: _____ City: _____
Address: _____ State: _____ Zip: _____
Email: _____ Phone: _____

Declaration

I, [insert name] _____, declare and state:

1. I am the owner of record of the property described above.
2. The housing unit(s) proposed to be demolished or altered in connection with the above application for an Urban Lot Split have not been occupied by a tenant at any time within the last three years [insert date of application] _____.
3. I intend to occupy one of the proposed housing units as my principal residence for a minimum of three years from the date of the approval of the Urban Lot Split or Certificate of Occupancy, whichever is later.
4. I have not previously subdivided an adjacent parcel using an Urban Lot Split.
5. Neither I, nor any person acting as my agent or representative, have or has acted in concert with another person to subdivide an adjacent parcel using an Urban Lot Split.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on (date): _____

Name (Print): _____

Signature: _____

OFFICE USE ONLY

Application Number: _____

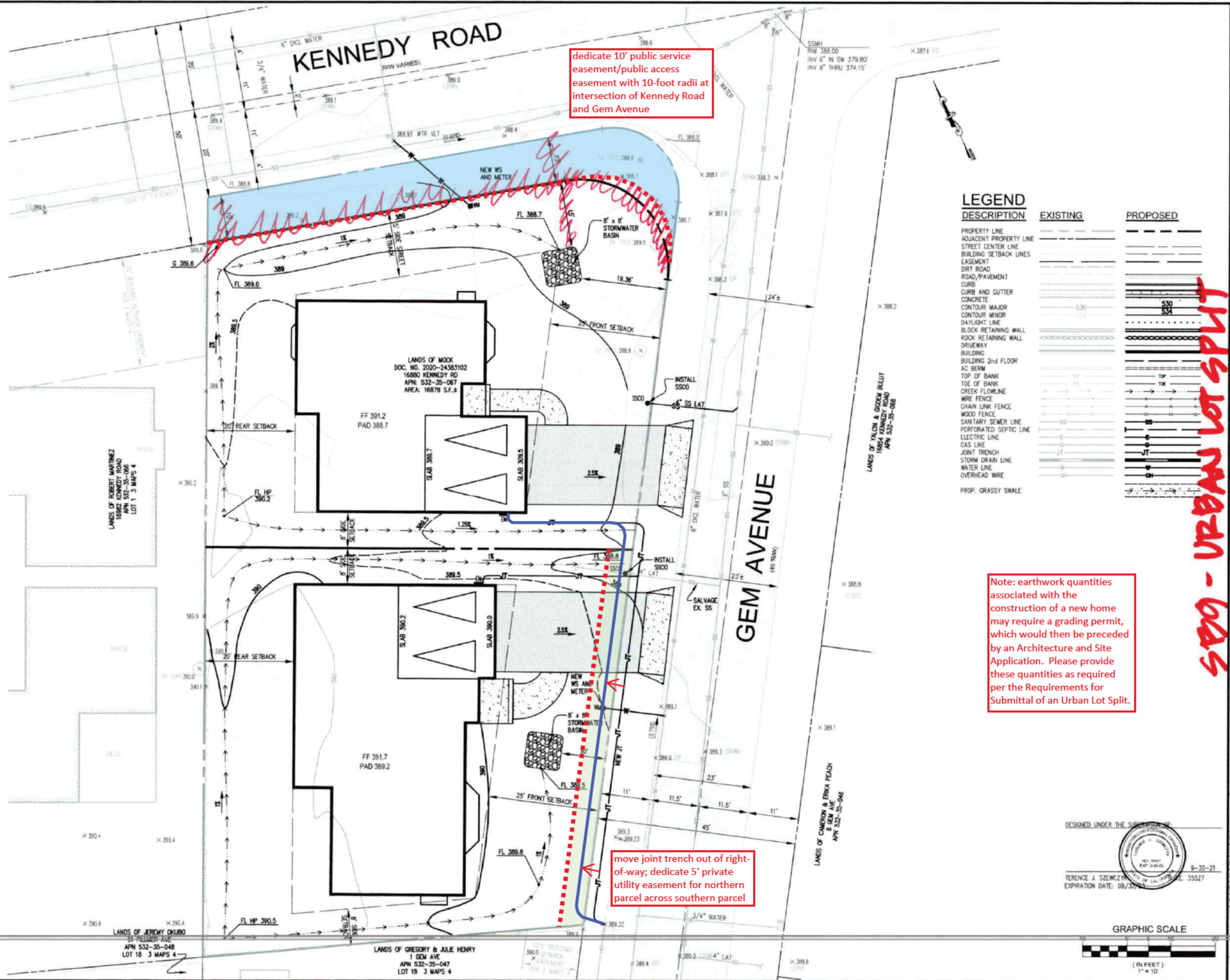
Accepted By

Filing Date

By

For the Director of Community Development

Date





TOWN OF LOS GATOS
STAFF REVIEW COMMENTS

PLANNING DIVISION AND
ENGINEERING DIVISION
January 28, 2022

16880 Kennedy Road
Urban Lot Split Application ULS22-001

Requesting Approval for a Subdivision of One Lot into Two Lots on Property Zoned R-1:8.
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PROPERTY OWNER: Terence J. Szewczyk
APPLICANT: Patrick Mock

NOTE: This Urban Lot Split (ULS) Application submittal is **INCOMPLETE** and requires resubmittal of plans to address deficiencies noted.

PLANNING PROJECT DEFICIENCIES:

- 1) Per the Requirements for Submittal of an Urban Lot Split Application, please provide a grading and drainage plan with grading quantities identified or provide verification that the future housing will not require a Grading Permit or grading in excess of 50 cubic yards.
This requirement is found nowhere in SB9 and is prohibited as an attempt to circumvent the new law. It is puzzling as to whom at the Town even imagined this and what minimal grading has to do with drawing a lot line. Furthermore, it is disturbing how the Town stigmatizes 50 CY of grading (about 2" deep across and 8,000 SF lot- comparable to mulching) as if it were a significant impact under CEQA. Please withdraw this comment.
- 2) Has the existing single-family home been occupied by a tenant in the last three years?
If so, pursuant to the Urgency Ordinance, the proposed urban lot split shall not require the demolition or alteration to the existing residence that has been occupied by a tenant within the last three years. Review and submit the attached *Owner Declaration* form as part of the resubmittal. **Will do.**
- 3) The applicant shall submit a signed *Owner Declaration* to the Community Development Department Director attesting that the applicant intends to occupy one of the newly created parcels as their principal residence for a minimum of three years from the date of the approval of the Urban Lot Split or Certificate of Occupancy, whichever is later. See **Will do**
- 4) The applicant shall submit a signed *Owner Declaration* to the Community Development Department Director attesting that that parcel has not previously been subdivided using an Urban Lot Split application. See attachment. **Will do**

PLANNING GENERAL COMMENTS:

- 5) A demolition permit shall be obtained from the Building Division for the existing building crossing a new property line prior to the recordation of the parcel map. **Yes, will do.**



**TOWN OF LOS GATOS
STAFF REVIEW COMMENTS**

- 6) Development on the resulting parcels is limited to the project approved by the Two-Unit Housing Development Application process. Please refer to Section V of Ordinance 2326 for the objective zoning standards which pertain to a Two-Unit Housing Development project. The Two-Unit Housing Development Application form can be found on the Town's website at: <https://www.losgatosca.gov/2703/Senate-Bill-9>. **Thank you. Not currently applicable**
- 7) The subdivider shall submit a signed deed restriction to the Community Development Director documenting that the parcels resulting from the Urban Lot Split application may not be further subdivided under the provisions of this Urgency Ordinance. The deed restriction shall be recorded on the title of each parcel concurrent with the recordation of the parcel map. **OK, will do.**

ENGINEERING PROJECT DEFICIENCIES:

- 8) Dedication of 10-foot Public Service Easement/Public Access Easement along the Kennedy Road frontage of Parcel 1, with a 10-foot radius at the intersection of Kennedy Road and Gem Avenue is required. **We will do the PSE but not the PAE. The PAE is not allowed under SB9.**
- 9) Relocate the joint trench facilities outside of the Town's Gem Avenue right-of-way. Dedication of a five-foot utility easement granted for Parcel 1 across Parcel 2 is required. **OK.**
- 10) A curb and sidewalk in-lieu fee of **\$16,380.00** shall be paid prior to recordation of the parcel map. This fee is based on 117 linear feet of curb at \$68.00 per linear foot and 526.5 square feet of 4.5-foot-wide sidewalk at \$16.00 per square foot in accordance with Town policy and the Town's Comprehensive Fee Schedule. **Please remove this comment until A&S (see attached).**

Please resubmit plans and supporting material and provide a compliance memorandum showing how all of the deficiencies and general comments have been addressed to the online permitting system (ULS22-001).

Jocelyn Shoopman
Associate Planner
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408-354-6875

Mike Weisz
Senior Civil Engineer
MWeisz@losgatosca.gov
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ENGINEERING PROJECT DEFICIENCIES:

- 8) Dedication of 10-foot Public Service Easement/~~Public Access Easement~~ along the Kennedy Road frontage of Parcel 1, with a 10-foot radius at the intersection of Kennedy Road and Gem Avenue is required.
- 9) Relocate the joint trench facilities outside of the Town's Gem Avenue right-of-way. Dedication of a five-foot utility easement granted for Parcel 1 across Parcel 2 is required.
- 10) A curb and sidewalk in-lieu fee of ~~\$16,380.00~~ shall be paid prior to recordation of the parcel map. This fee is based on 117 linear feet of curb at \$68.00 per linear foot and 526.5 square feet of 4.5-foot-wide sidewalk at \$16.00 per square foot in accordance with Town policy and the Town's Comprehensive Fee Schedule.

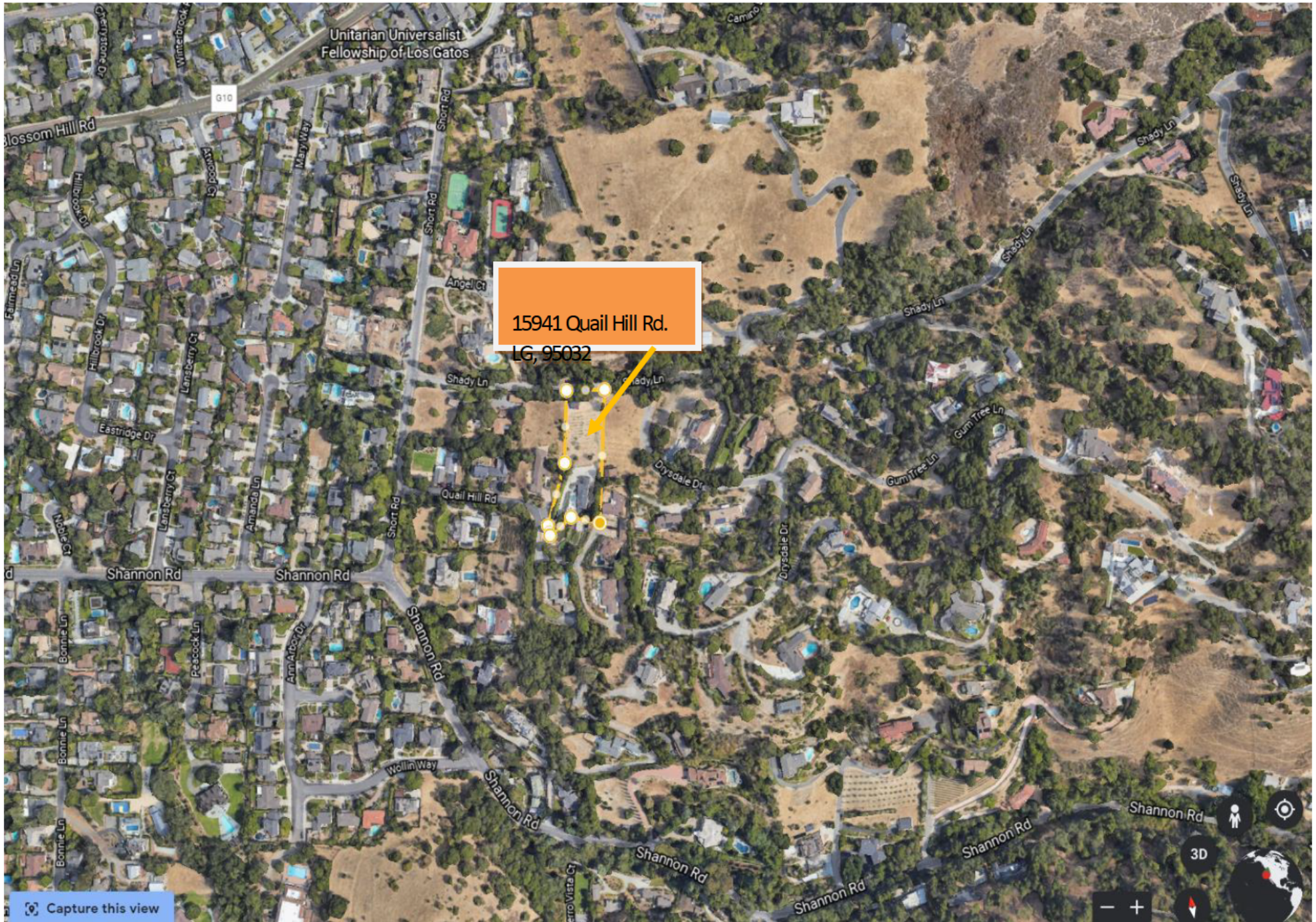
We are not sure what the public access esmt is for in regard to what public facility. This seems like a false pretense to create street right of way, which is not allowed.

We are not sure that this is a legitimate request under SB9 and believe it should be deferred when the proper nexus exists at the time of A&S and residence building permit.

CA Law - SB9

- **Easements, Access, and Dedications.** A local agency may require an application for a parcel map for an urban lot split to include easements necessary for the provision of public services and facilities. The local agency may also require that the resulting parcels have access to, provide access to, or adjoin the public right-of-way. The local agency may not require dedications of rights-of-way or construction of offsite improvements.

Request for an urban lot split for a parcel of land at
15941 Quail Hill Rd, LG, CA 95032





15941 Quail Hill Rd,
LG 95032

Notice distance and elevation
b/w the Main House and ADU

Proposed Lot Split

Sub-lot 1 – 15941 Quail Rd. (~60%)

Sub-lot 2 – 15840 Shady Lane (~40%)



Our Requests:

- 1- HR Zone to be included in the adaptation of SB9 by Town of LG. Section 66411.7 (a) (3) (A) of SB9 states that a local agency shall ministerially approve map for an urban lot split if, amongst other requirements, the development is “located within a **single family residential zone**”. Clearly, **Hillside Residential Zone** is a “**single family residential zone**”.
- 2- Allow the current parcel of land be split into 2 sub-lots.
 - a. Sub-lot 1 where the main building resides
 - b. Sub-lot 2 where a fully permitted 1200 sf ADU is located at
- 3- While every lot is unique in its terrain, conditions, accessibility and privacy features, we feel that our parcel of land lends itself nicely to be split in two sub-lots due to the following conditions:
 - a. The two dwellings are on separate roads. Main house on Quail Hill Rd and the sub-lot on Shady Lane
 - b. The two dwellings have separate addresses: 15941 Quail Hill Rd and 15840 Shady Lane
 - c. The two dwellings are separated by more than 200 linear feet and are on very different elevations separated by more than 67 vertical feet.
 - d. The above linear/vertical separations allow for full privacy of each dwelling.
 - e. There is enough land in around each dwelling that will not adversely affect the natural look, wildlife or environmental conditions.
 - f. The two dwellings are on separate and independent utilities connection for sewer, water, electricity and gas.
 - g. Both dwellings are protected by fire sprinklers that have been approved and signed off by the SC Fire Department
 - h. There are separate fire hydrants within approved proximity of each dwelling
 - i. Both dwellings have automated gates with an approved Knox Box for fire department access
- 4- Allow the dwelling at 15840 Shady Lane on the sub-lot created by SB9 to be larger than the current 1,200sf limit.

THANK YOU

From: Don Wimberly
Sent: Saturday, January 29, 2022 10:00 PM
To: Jennifer Armer
Cc: 'Faber, Andrew L.'; Janette Judd; Joel Paulson
Subject: Urgency SB9 Ordinance - February 1, 2022 Town Council Meeting

Jennifer - Please submit a copy of this email to the Town Council as a desk item for Item 5 of the 2/1/22 Town Council meeting.

Mayor Rene and Town Council

I am submitting this email as an addition to our letter after reading the Staff Report for extension of the Urgency Ordinance; in particular, **Section J. Hillside Residential.**

The following statement in Section J of the Staff Report confuses the issue addressed by Mr. Faber, my wife and I, and other correspondents to the Town Council.

“It (SB-9) does not require this process be permitted in all zones that allow single family residential by right, which in the Town of Los Gatos would include Resource Conservation, Hillside Residential, Single Family Residential, Residential Duplex, Multiple Family Residential, Single Family Residential Downtown, Residential Mobile Home, and Central Business District (when in conjunction with other permitted use)”

Our contention is that the HR Zone is a single family residential zone and therefor SB-9 applies within it. Urgency Ordinance 2326 should also include the HR zone. Adequate roadway clearance for emergency access is and should be required as the staff report states.

To emphasize - according to the Town Zoning Code, Hillside Residential **IS** a **single family residential zone**, just as R-1 & R-1D are. HR **IS NOT THE SAME** as those zoning districts that allow single family dwellings by right such as R-D (Residential Duplex), R-M (Residential Multifamily) and C-2 (Central Business District). As you and staff know, in those districts, single family dwellings are, amongst other uses, permitted. These districts allow other nonresidential uses, unlike R-1, R-1D and HR.

The following excerpts from the Town Zoning Code make it clear that the **PRIMARY PERMITTED USE IN THE HR ZONE IS SINGLE FAMILY RESIDENTIAL.**

ARTICLE IV. RESIDENTIAL ZONES

DIVISION 1. - GENERALLY

- **Sec. 29.40.010. - Residential zones established.**

Residential zones of the Town are the RC, HR, R-1, RD, R-M, RMH and R-1D zones.
(Ord. No. 1316, § 4.05.010, 6-7-76; Ord. No. 1344, 1-17-77; Ord. No. 1493, 3-17-81; Ord. No. 1571, 3-7-83; Ord. No. 2024, § III, 12-2-96)

DIVISION 3. - HR OR HILLSIDE RESIDENTIAL ZONE

- **Sec. 29.40.235. - Permitted uses.**

The following uses are permitted in the HR zone in the Town:

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

(Ord. No. 1316, § 4.24.020, 6-7-76; Ord. No. 1363, 8-1-77; [Ord. No. 2306](#), § I, 4-21-20)

Don & Cheryl Wimberly

From: Tony Jeans
Sent: Sunday, January 30, 2022 3:15 PM
To: Jennifer Armer; Joel Paulson
Cc: Rob Rennie; Marico Sayoc; Maria Ristow; Matthew Hudes; Mary Badame
Subject: SB-9 Final Comments for the Hearing

Joel/Jennifer:

I read the Final Staff Report, thank-you for all the work you put into it.

Based on it I have put on one page my recommendations as to what I feel needs to happen, now that you have decided to "Extend the Urgency Ordinance" to the maximum allowed by law. I have followed your thoughts and limited the changes to "Only Minor Adjustments" to the ordinance so that these points can be considered by council on Tuesday.

My goal was to limit them to the ones necessary to reduce the expectation for litigation in such a critical area. As such I have retained the concept of "affordability" suggested by the Council in the original ordinance and just addressed points that I feel necessary for now. Objective Design Standards are best left to the Planning Commission to consider at a later date [but soon, if possible].

Please include this in an 'addendum' report to the Council. [Copied here for the sake of time].

Thanks

Tony

Memo: **SR-9 Final Suggestions Following Review of the Staff Report**
To: Mayor Rennie & Los Gatos Town Council-Members
From: Tony Jeans
Date: January 30th, 2022

[FLOOR AREA] OPTIONS FOR PARCEL DEVELOPMENT AFTER AN URBAN LOT SPLIT:

(I highly recommend a hybrid version of 2 suggestions made by staff).

1. **MINISTERIAL REVIEW:** Objective Standards would apply to both homes and the FAR would be capped at the Standard FAR limit – exactly as proposed by the original draft ordinance but requiring one house to be built at a max of 1,200 ft per Council's suggestion at the Dec 22nd hearing.

"Apply the 1,200 square ft limit to only the **first** dwelling unit of a 2-unit residential development. The 2 units together may not exceed the Standard FAR for the lot."

2. **ARCHITECTURE AND SITE REVIEW:** Design Review Standards and Guidelines would apply for the first house at Standard FAR rules with the second house following existing ADU rules [with an 800 sq ft minimum per SB-9].

"Maintain the A&S review process with FAR limitations based on Lot Size as an option for the development of an Urban Lot. A second home would be limited by the larger of the ADU size constraints for the lot or 800sq ft."

If the Council so chooses, the ADU could also be required to be built.

The reason that I like this hybrid approach is that the "Second Story" Objective Design Standards would create UGLY houses that do not belong in the town. So a homeowner could go to A&S to get the home reviewed. The smaller ADU size limit would replace the 1,200 sq ft second home and retain more consistency within the town.

HILLSIDE RESIDENTIAL

HR is 'single family'. Resource Conservation, Residential Duplex, Multi-Family Residential, Residential Mobil Home and Central Business District is not.

Staff's proposed caveat is good and should be added, but it could be better – such as:

" subdivisions will only be considered if the roadway meets SCCFD access standards as to width and vertical clearance."

Note: that this is currently 20 ft width and 13 ft height, per the Staff Report; but this would allow future flexibility if the Fire Requirements change.

GRADING LIMITATIONS

A 'Grading Permit' is not Ministerial. The Town already allows an exception of 50 Cubic Yards plus any cut/fill under the house. This exception should be extended to the 'Driveway' as well as the house for Ministerial Review, so that a driveway to the house can be built.

FRONTAGE REQUIREMENT

The 20 ft frontage requirement, with any access corridor to the rear half of a flag lot being held in 'Fee Title' is contrary to the law. The Town may only require that a Parcel: ***"Has access to, provides access to or adjoins the public right-of-way"***.

"An ingress/egress easement necessary to satisfy SCCFD" is all that is required and should be an alternative to 'Fee Title'. Please note that Saratoga's ordinance is worded that way and Monte Sereno modified their Final Ordinance to comply with SB-9 for legal reasons.

From: Terence J. Szewczyk

Sent: Monday, January 31, 2022 9:26 AM

To: Rob Rennie; Mary Badame; Matthew Hudes; Marico Sayoc; Maria Ristow **Cc:** Laurel Prevetti; Jennifer Armer; Shelley Neis

Subject: Feb1- SB9. Please:1)delete 50CY, 2)delete 1200 SF

Honorable Mayor & Town Council:

Just 2 simple requests:

1) Delete the disqualification for exceeding grading over 50 CY. This is absurd and has nothing to do with drawing a new lot line. If you had an 8,000 SF lot and covered it with mulch 2" deep that would be 50 cubic yards (or a 5,000 SF lot 3"deep). That is an inconsequential amount of grading and CEQA generally doesn't engage until 500 CY of grading.

2) I'd suggest that you can rely upon the Andrew Faber letter (in the public comments) on the 1200 SF and use the current FAR stds already in place under Town Zoning.

Best regards, Terry

Terence J. Szewczyk, P.E.

TS/Civil Engineering, Inc

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 2/1/2022

ITEM NO: 5

DESK ITEM

DATE: February 1, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Extension of an Urgency Ordinance for a Period of 10 Months and 15 Days to Implement Senate Bill 9 to Allow for Two-Unit Housing Developments and Urban Lot Splits in All Single-Family Residential Zoning Districts

REMARKS:

The following information is provided in response to Council Member questions:

- *Do we know what, if any, Ordinance the County has passed or is considering?*

Santa Clara County has not adopted an Urgency Ordinance or Ordinance addressing Senate Bill (SB) 9 and is currently implementing SB 9 based on State law for parcels in the unincorporated areas of Santa Clara County. They are targeting April for adoption of an Ordinance to implement the provisions of SB 9.

- *Can we have a map that shows the locations of the Hillside Residential (HR), Single-Family Residential (R-1), and Single-Family Residential Downtown (R-1D)?*

Maps for these zones are included as Attachment 5. Please note that the map of the HR zone also includes the Town boundary and the boundary of the Hillside Area, and the map of the R-1D zone provides additional details, including the boundaries of the Historic Districts, the parcels that are considered pre-1941, and the estimated 626 parcels that could qualify for a SB 9 permit.

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Assistant Town Manager, Town Attorney, and Public Works Director

REMARKS (continued):

- *Provide some language that could be used to prohibit an Urban Lot Split in High or Very High Fire Hazard Severity Zones where there is a single egress route. Can we view a map of what areas might qualify for SB 9?*

As stated in the Hillside Residential discussion in Section J of the staff report, one possible option is, "For subdivisions in the Wildland Urban Interface (WUI), development will only be allowed where existing roads provide adequate emergency ingress and egress. For subdivisions under consideration where roads only provide one-way ingress/egress access, subdivisions will only be considered if the roadway clearance meets the current legal standard of 20 feet of clear horizontal width and 13 feet of vertical clearance."

Creation of a map to show where the hillside roads comply with this requirement would require verification of the data included in the Town's StreetSaver database. While there was not enough time to prepare the map for tonight's meeting, this is work that could be done as part of the development of a permanent ordinance for future Council consideration to implement SB 9.

Attachment 6 includes additional public comment received between 11:01 a.m., Monday, January 31, 2022, and 11:00 a.m., Tuesday, February 1, 2022.

Attachments:

Previously received with the Staff Report:

1. Draft Urgency Ordinance Extension with Exhibit A Urgency Ordinance Number 2326
2. Senate Bill 9
3. Public Comments received between 11:01 a.m., Tuesday, December 21, 2021 and 11:00 a.m., Friday, January 28, 2022

Previously received with the Addendum Report:

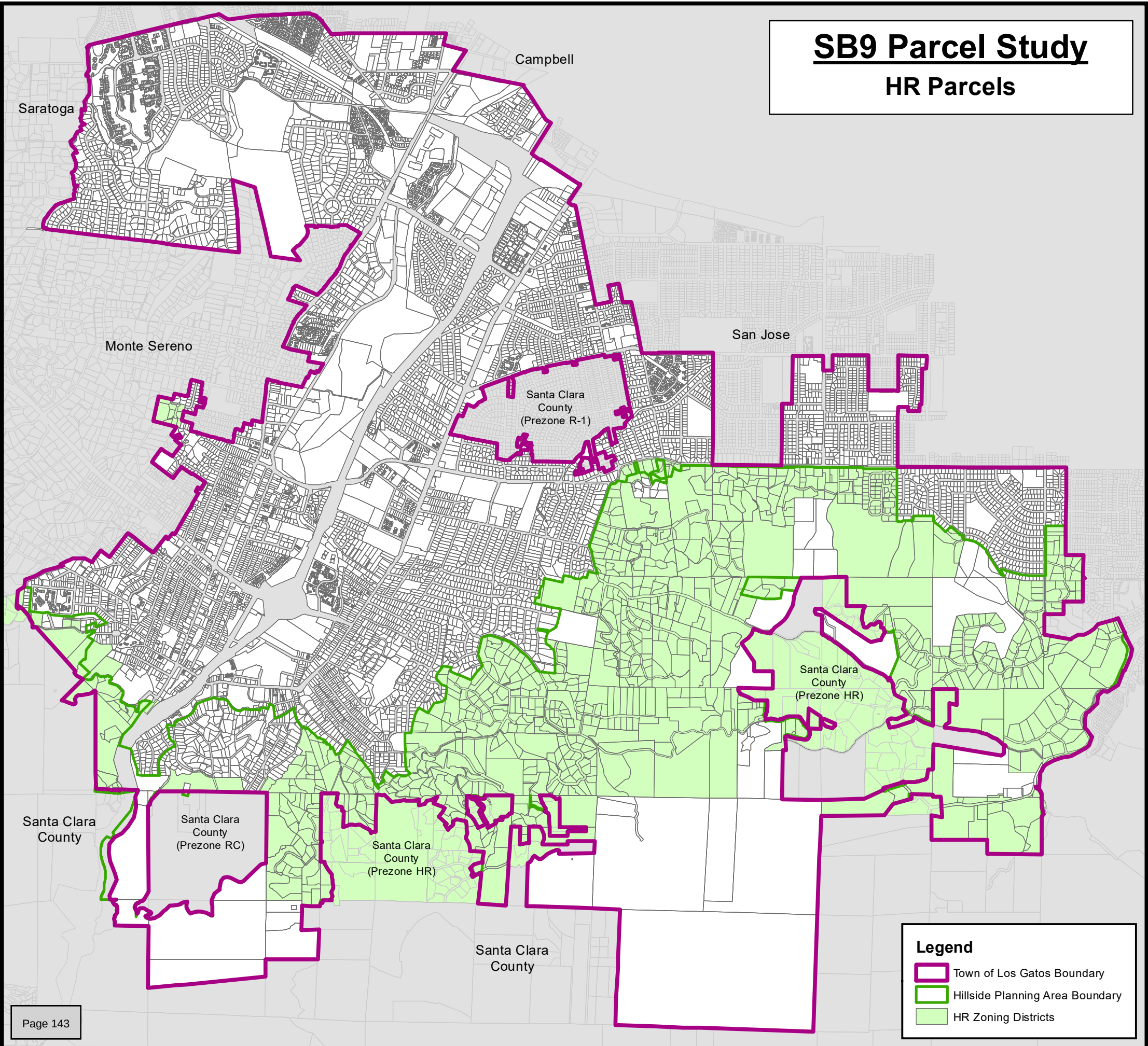
4. Public Comments received between 11:01 a.m., Friday, January 28, 2022 and 11:00 a.m., Monday, January 31, 2022

Received with this Desk Item:

5. Maps of Hillside Residential, Single-Family Residential, and Single-Family Residential Downtown
6. Public Comments received between 11:01 a.m., Monday, January 31, 2022 and 11:00 a.m., Tuesday, February 1, 2022

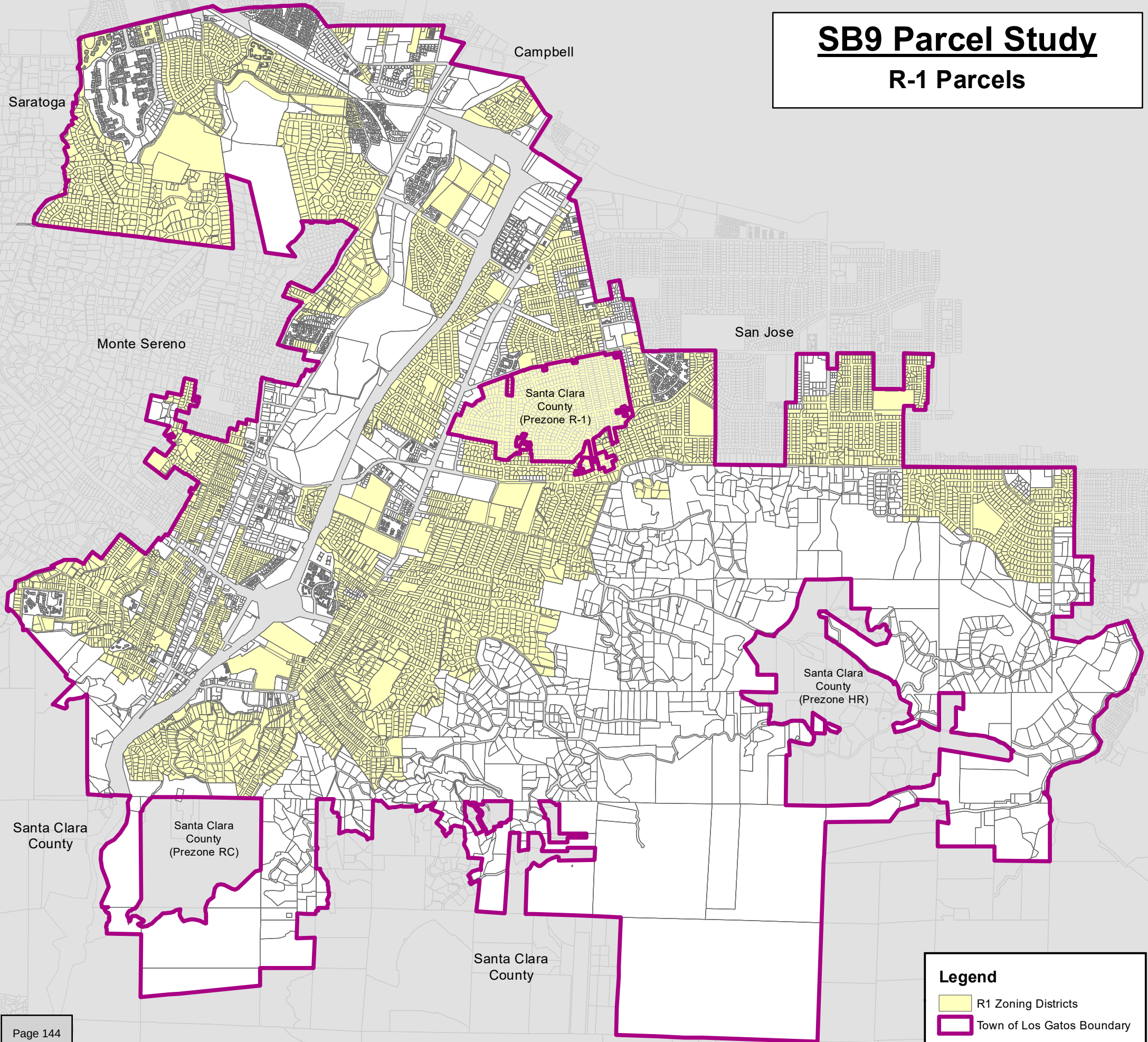
SB9 Parcel Study

HR Parcels



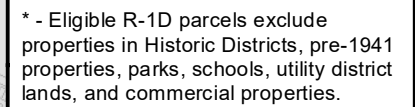
SB9 Parcel Study

R-1 Parcels



SB9 Parcel Study

R-1D Parcels



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ANDREW L. FABER
PEGGY L. SPRINGGAY
SAMUEL L. FARB
JAMES P. CASHMAN
STEVEN J. CASAD
NANCY J. JOHNSON
JEROLD A. REITON
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DIANA E. FLORES

FOUNDERS

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

OF COUNSEL

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

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

January 31 2022

VIA EMAIL ONLY

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

Re: Urgency SB9 Ordinance
Council Agenda Item #5, Feb. 1, 2022

Dear Mayor Rennie & Town Councilmembers:

This letter is written on behalf of Arvin Khosravi and Firouzeh Jahanshahi, who reside at 15941 Quail Hill Road in Los Gatos, in respect to the SB 9 urgency ordinance recently adopted by the Town (the "Ordinance"). Their lot (the "Khosravi Lot") contains two dwellings: a main residence at the address above, and an Accessory Dwelling Unit that is just being completed in compliance with the Town's ADU procedures. The ADU is located several hundred feet away and downhill from the main residence and has a separate address on Shady Lane. The Lot is zoned HR-1 ("Hillside Residential") just a short distance from R-1 zoned single-family residences across Short Road.

The two dwellings on the Khosravi Lot are virtually out of sight of each other and have totally separate entrances on different streets. The Lot would be an ideal candidate for an SB 9 lot split. As stated above, it is in the least restrictive HR zone (HR-1) and already contains two residences on widely separated house pads.

However, as adopted the Ordinance would not allow them to proceed with an SB 9 lot split. The problem is that the Ordinance only allows for a lot split in the R-1 and R1-D zones.

Although it is also a single-family zone, the Ordinance inexplicably excludes the HR zone. For the reasons stated below, the HR zone must also be included in the Ordinance.

By its own terms, binding upon all cities in the state, SB 9 applies to any “single family residential zone.” See Govt. Code §§ 65852.21(a), 66411.7(a)(3)(A). The Ordinance as adopted applies only to R-1 and R-1D zones. However, the HR zone is as much a single-family residential zone as are the R-1 and R-1D zones. This is made very clear in the Town Zoning Code.

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

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

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

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

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

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

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

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

Finally, although my clients have no present intention to modify either residence, a future lot owner may want to. In that regard, there are two elements of the Ordinance that we would

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ask to be modified. Both of these are arbitrary conditions that appear to be in violation not only of SB 9, but also of statutory and constitutional protections that prevent cities from enforcing regulations that would effect a taking of private property. These two conditions are (a) the 1200 square foot limitation on all new residential structures, and (b) the prohibition on grading in excess of 50 cubic yards, even though normally such grading is allowed with a grading permit.

My analysis of the 1200-square foot size limitation is contained in my letter to you of January 20, 2022, on behalf of the Wimberlys, and that letter is incorporated herein by this reference. We ask that this letter be entered into the administrative record of this action. Please contact me if you have any questions or need additional information.

Very truly yours,

BERLINER COHEN, LLP



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