

TOWN OF LOS GATOS COUNCIL MEETING AGENDA MAY 07, 2024

110 EAST MAIN STREET AND TELECONFERENCE TOWN COUNCIL CHAMBERS 7:00 PM

Mary Badame, Mayor Matthew Hudes, Vice Mayor Rob Moore, Council Member Rob Rennie, Council Member Maria Ristow, Council Member

IMPORTANT NOTICE

This is a hybrid meeting and will be held in-person at the Town Council Chambers at 110 E. Main Street and virtually through Zoom Webinar (log-in information provided below). Members of the public may provide public comments for agenda items in-person or virtually through the Zoom Webinar by following the instructions listed below. The live stream of the meeting may be viewed on television and/or online at www.LosGatosCA.gov/TownYouTube.

This meeting will be teleconferenced pursuant to Government Code Section 54953(b)(3). Council Member Rob Rennie will be participating from a teleconference location at Via dell'Opio Nel Corso, 3, 53045 Montepulciano, Italy. The teleconference locations shall be accessible to the public and the agenda will be posted at the teleconference location 72 hours before the meeting.

HOW TO PARTICIPATE

The public is welcome to provide oral comments in real-time during the meeting in three ways: **Zoom Webinar (Online)**: Join from a PC, Mac, iPad, iPhone or Android device. Please use this URL to join: https://losgatosca-

gov.zoom.us/j/82232739012?pwd=1zlbRu029_33oyBb9l3AyTZQ7D2MEQ.kN8FbuOklNsmz-Jj Passcode: 793054 You can also type in 822 3273 9012 in the "Join a Meeting" page on the Zoom website at and use passcode 793054.

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.

Telephone: Please dial (877) 336-1839 for US Toll-free or (636) 651-0008 for US Toll. (Conference code: 1052180)

If you are participating by calling in, press #2 on your telephone keypad to raise your hand. **In-Person**: Please complete a "speaker's card" located on the back of the chamber benches and return it to the Town Clerk before the meeting or when the Mayor announces the item for which you wish to speak.

NOTES: (1) Comments will be limited to three (3) minutes or less at the Mayor's discretion.

- (2) If you are unable to participate in real-time, you may email to Clerk@losgatosca.gov the subject line "Public Comment Item #___ " (insert the item number relevant to your comment). All comments received will become part of the record.
- (3) Deadlines to submit written comments are:
 - 11:00 a.m. the Thursday before the Council meeting for inclusion in the agenda packet.
 - 11:00 a.m. the Monday before the Council meeting for inclusion in an addendum.
 - 11:00 a.m. on the day of the Council meeting for inclusion in a desk item.
- (4) Persons wishing to make an audio/visual presentation must submit the presentation electronically to Clerk@losgatosca.gov no later than 3:00 p.m. on the day of the Council meeting.

CALL MEETING TO ORDER

ROLL CALL

APPROVE REMOTE PARTICIPATION (This item is listed on the agenda in the event there is an emergency circumstance requiring a Council Member to participate remotely under AB 2449 (Government Code 54953)).

PLEDGE OF ALLEGIANCE

PRESENTATIONS

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 1 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)

- 1. Approve Minutes of the April 16, 2024 Closed Session Town Council Meeting.
- 2. Approve Minutes of the April 16, 2024 Town Council Meeting.
- 3. Approve Minutes of the April 23, 2024 Closed Session Town Council Meeting.
- 4. Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 18, 2024 as a Public Hearing to Consider Objections to the Proposed Removal of Brush.
- 5. Parking Program Implementation Wayfinding and Signage Project (CIP No. 813-0242):
 - a. Award and Authorize the Town Manager to Execute a Construction Agreement with Square Signs LLC., Dba Front Signs in an Amount Not to Exceed \$191,908.13; and
 - Authorize the Staff to Execute Change Orders in an Amount Not to Exceed \$38,381.63 Which Represents a Twenty Percent (20%) Contingency of the Contract Award Amount.
- 6. Authorize the Town Manager to Execute Agreements with the County of Santa Clara for:
 - a. AB 939 Implementation Fee Collection and Distribution; and
 - b. Countywide Household Hazardous Waste (HHW) Collection Program to Augment Funding up to an Additional \$94,219 to the Countywide HHW Program During Fiscal Year (FY) 2024/25.
- 7. Authorize the Town Manager to Execute a Fourth Amendment to the Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services to Increase the Contract Amount for Fiscal Year 2023/24 in the Amount of \$55,000, for a Total Agreement Amount Not to Exceed \$1,008,948.
- 8. 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):
 - a. Award and Authorize the Town Manager to Execute a Public Works Contract with Villalobos and Associates in the Amount of \$409,480;
 - b. Authorize Town Manager to Execute Change Orders in an Amount Not to Exceed Ten Percent (10%) of the Contract Award Amount;
 - c. Authorize an Expenditure Budget Transfer in an Amount of \$185,331 from the Annual Street Repair and Resurfacing Project (CIP No. 811-9901); and
 - d. Approve the Project Construction Plans as required by Government Code 830.6 Design Immunity.

- 9. Authorize the Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2025.
- 10. Authorize the Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with AMS Electric LLC (dba Prime Electric LLC) for a Design-Build Project to Install a Battery Storage System at the Library (CIP 821-2505) to Extend the Term and Time of Performance through June 30, 2025.
- 11. Approve an Amendment to the Town Manager's Employment Agreement.
- 12. Approve and Authorize the Town Manager to Execute a Side Letter of Agreement Between the Town of Los Gatos and the American Federation of State, County, and Municipal Employees (AFSCME) to Contract Out Street Sweeping Services Effective July 1, 2024.

VERBAL COMMUNICATIONS (Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda and is within the subject matter jurisdiction of the Town Council. The law generally prohibits the Town Council from discussing or taking action on such items. However, the Council may instruct staff accordingly. To ensure all agenda items are heard, this portion of the agenda is limited to 30 minutes. 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. Each speaker is limited to no more than three (3) minutes or such time as authorized by the Mayor.)

OTHER BUSINESS (Up to three minutes may be allotted to each speaker on any of the following items.)

- 13. Review Polling Results, Authorize the Town Manager to Execute an Amendment to the NBS Agreement to Include Phase 2 in the Scope of Services to Prepare a 1/8th Cent Sales Tax Measure for the November 2024 Ballot and Increase the Not to Exceed Amount to \$105,000, and Authorize an Expenditure Budget Adjustment in an Amount of \$60,400 from the Available General Fund Capital/Special Projects Reserve.
- <u>14.</u> Receive an Update on the Downtown Restroom Feasibility Study (CIP No. 821-2011) and Provide Direction to Town Staff.
- 15. Authorize the Town Manager to Execute an Agreement for Services with the Los Gatos Chamber of Commerce to Manage the Los Gatos Visitors Information Center and the Visit Los Gatos Website, Social Media and Destination Marketing Services for FY 2024/2025, in an amount not to exceed \$55,000.
- 16. Approve West Valley Community Services, Counseling and Support Services for Youth, and AWO as Potential Community Service Partners to Provide their Respective Services at the Interim Community Center.
- <u>17.</u> Discuss and Provide Direction on Outreach and Noticing Options for Senate Bill (SB) 330 Projects.
- 18. Discuss and Provide Direction on Objective Design Standards.

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.)

- 19. Introduce an Ordinance Titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as Recommended by the Planning Commission. The proposed amendments to the Town Code are not a project subject to CEQA [CEQA Guidelines Section 15061(b)(3)]. Town Code Amendment Application A-24-002. **Project Location: Town Wide**. Applicant: Town of Los Gatos.
- 20. Introduce an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code Regarding Senate Bill (SB) 9 For Modified Design Review Standards and Other Clarifying Revisions." The Proposed Amendments to the Town Code are Not Considered a Project Under Section 15378 of the California Environmental Quality Act, and in Accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 Ordinances are Not a Project Subject to the California Environmental Quality Act. Town Code Amendment Application A-24-003. Project Location: Town Wide.

Applicant: Town of Los Gatos.

COUNCIL / MANAGER MATTERS

CLOSED SESSION REPORT

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

ADA NOTICE In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk's Office at (408) 354-6834. Notification at least two (2) business days prior to the meeting date will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR §35.102-35.104]

TOWN OF LOS GATOS COUNCIL CLOSED SESSION MINUTES

MEETING DATE: 05/07/2024

DRAFT Minutes of the Town Council Special Meeting - Closed Session Tuesday, April 16, 2024

The Town Council of the Town of Los Gatos conducted a Special Meeting in-person and utilizing teleconferencing means on Tuesday, April 16, 2024, at 5:30 p.m. to hold a Closed Session to discuss anticipated litigation and labor negotiations.

MEETING CALLED TO ORDER AT 5:35 P.M.

ROLL CALL

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore,

Council Member Rob Rennie, and Council Member Maria Ristow (teleconference).

Absent: None

VERBAL COMMUNICATIONS (ONLY ON ITEMS ON THE AGENDA)

None.

THE TOWN MOVED TO CLOSED SESSION ON THE FOLLOWING ITEM:

- CONFERENCE WITH LABOR NEGOTIATORS (Gov. Code Section 54957.6)
 Agency designated representatives: Town Council
 Unrepresented Employee: Town Manager
- 2. CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (d)(2) of Government Code Section 54956.9: 1 case

The Town Council reconvened in open session. The Town Attorney stated there was no reportable action.

ADJOURNMENT

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Attest:	Submitted by:
Wendy Wood, Town Clerk	Laurel Prevetti, Town Manager

MEETING DATE: 05/07/2024

DRAFT Minutes of the Town Council Meeting Tuesday, April 16, 2024

The Town Council of the Town of Los Gatos conducted a regular meeting in-person and utilizing teleconferencing means on Tuesday, April 16, 2024, at 7:00 p.m.

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

ROLL CALL

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

Absent: None

PLEDGE OF ALLEGIANCE

The Stratford School Student Council led the Pledge of Allegiance. The audience was invited to participate.

PRESENTATIONS

Mayor Badame presented proclamations to Parks and Public Works Director Nicolle Burnham for Arbor Day and Keep Los Gatos Beautiful Month, and a proclamation to Captain Clinton Tada and Dispatchers Christine Crosson and Brooke Smith for Nation Public Safety Telecommunications Week.

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

- 1. Approve Minutes of the April 2, 2024 Closed Session Town Council Meeting.
- 2. Approve Minutes of the April 2, 2024 Town Council Meeting.
- 3. Approve Minutes of the April 8, 2024 Special Town Council Meeting.
- 4. Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to Increase Compensation for Fiscal Year 2023/24 in an Amount of \$100,000 for a Total Annual Amount Not to Exceed \$300,000 and a Total Agreement Amount Not to Exceed \$1,100,000; and Authorize a Revenue and Expenditure Budget Adjustment in the Amount of \$100,000 from the Available Tree Replacement Deposit Account.
- 5. Authorize a Budget Transfer of Previously Allocated Measure B Funds in the Amount of \$1,734,250 from the Winchester Boulevard Complete Streets Project (CIP No. 813-0238) to the Kennedy Road Sidewalk Los Gatos Boulevard Project (CIP No. 813-0241).
- 6. Receive the Monthly Financial and Investment Report for February 2024.
- 7. Adopt a Resolution Describing Improvements and Directing the Preparation of the Town Engineer's Report for Fiscal Year 2024/25 for Landscape and Lighting Assessment Districts No. 1 and 2. **RESOLUTION 2024-014**

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

8. Authorize Revenue and Expenditure Budget Adjustments in the Amount of \$15,615.98 to Recognize Excess Insurance Reimbursement for Damage to Howes Play Lot Structure.

- 9. Approve the Following Action for the Shannon Road Pedestrian and Bikeway Improvement Project (CIP No. 813-0218):
 - a. Authorize the Town Manager to execute Program Supplement No. F0104 to the Administering Agency-State Agreement for Federal-Aid Project No. 04-5067F15 in the Amount of \$940,100 from the State of California Department of Transportation (Caltrans).
- 10. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for Construction of the Corporation Yard Building Replacement Completed by S&H Construction, Inc., and Authorize the Town Clerk to File for Recordation.
- 11. Approve and Authorize the Town Manager to Execute a Memorandum of Understanding Between the Town of Los Gatos and the Police Officers' Association, and Authorize an Expenditure Budget Adjustment in the Amount of \$154,376 from the Available General Fund Capital/Special Projects Reserve.
- 12. Adopt a Resolution Rescinding the Land Use and Community Design Elements of the 2040 General Plan. **RESOLUTION 2024-015**
- 13. Adopt a Resolution Rescinding Resolution Nos. 2024-003, 2024-004, and 2024-005 Regarding the Transportation Impact Fee. **RESOLUTION 2024-016**
- 14. Authorize the Town Manager to Execute the First Amendment to the Contract with DKS Associates to Modify the Scope of Services and Increase Compensation from \$160,505 to \$166,647.

Vice Mayor Hudes pulled item #14.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

MOTION: Motion by Council Member Rennie to approve consent items 1-13. Seconded by Council Member Moore.

VOTE: Motion passed unanimously by roll call vote.

VERBAL COMMUNICATIONS

Rich Stephens

Commented on concerns with a proposed development on Los Gatos Blvd.

Richard Sandigo

Commented on concerns with a proposed development on Los Gatos Blvd.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

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Rob Stump

- Commented on concerns with traffic and safety and made a request for a second access point to Los Gatos High School through the proposed Los Gatos Lodge development.

Carin Yamamoto

- Commented on concerns with a proposed development on Los Gatos Blvd.

Joe Enz, Friends of the Los Gatos Creek

- Commented on unhoused residents, creek cleanup, and safety concerns.

Allan Bayless

 Commented on safety concerns and requested accessory dwelling units (ADUs) as housing options for homeless individuals.

Lynley

- Commented on concerns and spoke about religion.

PUBLIC HEARINGS

15. Open the Public Hearing for an Appeal of a Planning Commission Decision to Deny a Request to Eliminate a Housing Unit from the Town's Housing Inventory on Property Zoned R-1D, Located at 501 Monterey Avenue, and Continue the Matter to May 7, 2024. APN 410-15-052. Categorically Exempt Pursuant to CEQA Guidelines Section 15301: Existing Facilities. Architecture and Site Application S-23-038. Property Owner/Applicant/Appellant: Katrina and Carlos Azucena. Project Planner: Sean Mullin

Jennifer Armer, Planning Manager, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Staff stated no further action is required because the appellant withdrew the appeal.

OTHER BUSINESS

16. Establish a Town Council Policy Governing Town Board, Commission, and Committee Budgets. **POLICY 5-03**

Laurel Prevetti, Town Manager, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Hudes to approve the Commission Budget Town Council Policy to establish the consistency and clear guidelines for the appropriate use of funds by Town Commissions. AMENDMENT: Add language to section [II. (A)(4)] stating "paying for the registration for a table or booth at a non-Town event in conformance with State law." Seconded by Council Member Ristow.

VOTE: Motion passed unanimously by roll call vote.

17. Discuss Future Adoption Development Agreement Procedures and Provide Direction to Staff.

Gabreille Whelan, Town Attorney, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by **Vice Mayor Hudes** to approve staff's verbal recommendation to allow the procedures for entering into development agreements to be broad and allow development agreements cover all land uses. **Seconded** by **Council Member Moore**.

VOTE: Motion passed unanimously by roll call vote.

MOTION: Motion by **Council Member Moore** to not put a limit on the project size for development agreements. **Seconded** by **Mayor Badame.**

VOTE: Motion passed unanimously by roll call vote.

MOTION: Motion by **Council Member Moore** to not set a minimum dollar amount for development agreements. **Seconded** by **Council Member Ristow.**

VOTE: Motion passed unanimously by roll call vote.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

18. Adopt a Resolution, Based on Planning Commission Recommendations, Modifying the Height Pole and Netting Policy for Additions and New Construction. The Proposed Modifications to Town Policy are Not Considered a Project Under the California Environmental Quality Act. Project Location: Town Wide. Applicant: Town of Los Gatos. **RESOLUTION 2024-017**

Jennifer Armer, Planning Manager, presented the staff report.

Mayor Badame opened public comment.

Rich Stevens

 Commented on the use of story poles as notification of a multi-story building being proposed.

Suma Warrier

- Commented on using social media as part of the notification process.

Lee Fagot

 Commented on the use of a three-dimensional video rendering as part of the notification process.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Hudes to amend the [Story Pole] Policy to state that whenever a formal application (including but not limited to SB 330 and Builder's Remedy applications) is received, that neighbors within 1,000 feet will be notified and provided access to information in the visual renderings, signs, and the application itself. Significant projects including pre-applications in excess of 100 units will be posted on social media, and information about the pre-application will be posted on the website which includes an elevation drawing. Seconded by Mayor Badame.

VOTE: Motion failed 2-3 by roll call vote. Council Members Ristow, Moore, and Rennie voted no.

MOTION: Motion by **Council Member Ristow** to adopt the resolution in Attachment 14 based on Planning Commission recommendations, modifying the height pole and netting policy for additional new construction. **Seconded** by **Council Member Moore.**

VOTE: Motion passed 3-2 by roll call vote. Vice Mayor Hudes and Mayor Badame voted no.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

Mayor Badame called a recess at 9:27 p.m.

The meeting reconvened at 9:40 p.m.

19. Discuss and Provide Direction Regarding the Finance Commission Recommendation to Issue a Request for Qualification (RFQ) for the Preparation of the Annual Comprehensive Financial Report (ACFR).

Gitta Ungvari, Finance Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Mayor Badame to approve the Finance Commission recommendation [which is to adopt a practice to hire a separate entity to perform work necessary for the preparation of the Town's Annual Comprehensive Financial Report] to issue a Request for Qualifications for the preparation for the Annual Comprehensive Financial Report. Seconded by Vice Mayor Hudes.

VOTE: Motion passed 3-2 by roll call vote. Council Members Ristow and Moore voted no.

20. Authorize the Town Manager to Negotiate an Animal Services Agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and Direct Staff to Bring Back an Agreement for the Town to Become a Member of the SVACA.

Clinton Tada, Police Captain, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Vice Mayor Hudes to approve authorization for the Town Manager to negotiate an Animal Services agreement between the Town of Los Gatos and the Silicon Valley Animal Control Authority (SVACA), and direct staff to bring back an

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

agreement for the Town to become a member of the SVACA Joint Powers Agency (JPA). **Seconded** by **Council Member Ristow.**

VOTE: Motion passed unanimously by roll call vote.

Pulled Consent Items

14. Authorize the Town Manager to Execute the First Amendment to the Contract with DKS Associates to Modify the Scope of Services and Increase Compensation from \$160,505 to \$166,647.

Nicolle Burnham, Parks and Public Works Director, presented the staff report.

Mayor Badame opened public comment.

No one spoke.

Mayor Badame closed public comment.

Council discussed the item.

MOTION: Motion by Council Member Ristow to authorize the Town Manager to execute the first amendment to the contract with DKS Associates to modify the scope of services and increase compensation from \$160,505 to \$166,647. **Seconded** by **Council Member Moore.**

VOTE: Motion passed 3-2 by roll call vote. Vice Mayor Hudes and Mayor Badame voted no.

COUNCIL/TOWN MANAGER REPORTS Council Matters

- Council Member Ristow stated she attended a community meeting regarding State Route
 Hwy 17 resiliency and adaptation plan, ribbon cutting for Time Out's 30th anniversary
 event, and community Iftar event hosted by West Valley Muslim Association; observed the
 Finance Commission meeting and the Diversity Equity and Inclusion (DEI) Commission
 meeting; and met with people on a variety of topics including housing, animals, and public
 health.
- Council Member Moore stated he held his happy hour and Council Member community
 coffee meetings; attended the community Iftar event hosted by West Valley Muslim
 Association; met with a Youth Commissioner regarding Special Needs Assistance Program
 (SNAP); met with Los Gatos Lions Club; attended a West Valley Sanitation District meeting
 and Cities Association Legislative Action Committee meeting; and completed a Community
 Emergency Response Team (CERT) Wilderness First Aid Class.
- Vice Mayor Hudes stated he received an update on North 40 Phase II from the developer;
 participated in the Los Gatos Foundation for Older Adults to Thrive Executive Committee

ITEM NO. 2.

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SUBJECT: Draft Minutes of the Town Council Meeting of April 16, 2024

DATE: April 17, 2024

meeting; attended Time Out 30th Anniversary and Beaute Bar ribbon cuttings, and community Iftar event hosted by West Valley Muslim Association; participated in the Finance Commission meeting, Community Center Committee (Foundation) meeting, and a Cities Association Board of Directors meeting.

- Council Member Rennie stated he met with Valley Transportation Authority (VTA) staff; attended a VTA Board meeting; met with his Finance Committee appointee; attended the community Iftar event hosted by West Valley Muslim Association; met with the Silicon Valley Clean Energy Authority (SVCEA) CEO; attended a SVCEA Board meeting and the Finance Commission meeting; and met with the Director of the Chamber of Commerce.
- Mayor Badame stated she attended Time Out 30th Anniversary and Beaute Bar ribbon cuttings; participated in the County Housing and Community Advisory Committee meeting; observed the Finance Commission meeting; met with the developer of a residential project located at the Mirassou school site; attended quarterly Chamber of Commerce meeting; met with former Mountain View Mayor Margaret Abe-Koga; and participated in a ceremonial acceptance of a gift to the Library.

Manager Matters

- Announced the Spring into Green event will be on April 21, 2024, from 10 a.m. to 1 p.m. at Plaza Park and invited all to attend.
- Announced the Youth Commission recruitment is underway, and applications are due May 1, 2024.

CLOSED SESSION REPORT

Gabrielle Whelan, Town Attorney, stated the Town Council met in closed session on to discuss labor negotiators pursuant to Government Code Section 54957.6 and anticipated litigation pursuant to Government Code 54956.9 and stated there was no reportable action.

ADIOURNMENT

The meeting adjourned at 10:48 p.m	1.
Respectfully Submitted:	
Jenna De Long, Deputy Town Clerk	

TOWN OF LOS GATOS COUNCIL CLOSED SESSION MINUTES

MEETING DATE: 05/07/2024

DRAFT Minutes of the Town Council Special Meeting - Closed Session Tuesday, April 23, 2024

The Town Council of the Town of Los Gatos conducted a Special Meeting in-person and utilizing teleconferencing means on Tuesday, April 23, 2024, at 12:00 p.m. to hold a Closed Session to discuss public employment.

MEETING CALLED TO ORDER AT 12:00 P.M.

ROLL CALL

Present: Mayor Mary Badame, Vice Mayor Matthew Hudes, Council Member Rob Moore, Council Member Rob Rennie (teleconference), and Council Member Maria Ristow (teleconference, joined at 12:02 p.m.).

Absent: None

VERBAL COMMUNICATIONS (ONLY ON ITEMS ON THE AGENDA)

None.

THE TOWN MOVED TO CLOSED SESSION ON THE FOLLOWING ITEM:

1. PUBLIC EMPLOYMENT (Gov. Code Section 54957(b)) Title: Town Manager

The Town Council reconvened in open session. The Town Attorney stated there was no reportable action.

ADJOURNMENT

The meeting adjourned at 1:58	p.m.
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Attest:	Submitted by:
Jenna De Long, Deputy Town Clerk	Laurel Prevetti, Town Manager

MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public

Nuisance, Ordering Abatement, and Setting June 18, 2024 as a Public Hearing

to Consider Objections to the Proposed Removal of Brush

RECOMMENDATION:

Adopt a resolution (Attachment 1) declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 18, 2024 as a public hearing to consider objections to the proposed removal of the brush.

BACKGROUND:

The Santa Clara County Fire Department implements and manages a hazardous brush abatement program for the Wildland Urban Interface (WUI) areas (hillside areas) within its jurisdictional boundaries, which includes the incorporated areas of Los Gatos, to ensure appropriate defensible space for structures.

The Town annually adopts the Hazardous Vegetation (Brush) Abatement Program and works with the County, which serves as the enforcement agent and conducts their own inspections.

In January of each year, homeowners are reminded that they must remove native brush and vegetation from around their home to create defensible space. The brush abatement program entails inspections of hillside properties by fire crews beginning in early April each year. If properties are found to be out of compliance with the regulations found in the California Fire Code relative to vegetation clearance, they are given notice of the violation. A contractor is authorized by the County to perform the necessary work if compliance is still not achieved by approximately the end of June each year.

PREPARED BY: Meredith Johnston

Administrative Technician

Reviewed by: Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

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SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance,

Ordering Abatement, and Setting June 18, 2024 as a Public Hearing to Consider

Objections to the Proposed Removal of Brush

DATE: May 1, 2024

BACKGROUND (continued):

The costs associated with the abatement work are then assessed on the property owner's tax bill for that parcel.

DISCUSSION:

In February of 2024, the Santa Clara County Fire Prevention Division notified property owners located within the designated Wildland Urban Interface (WUI) area of the requirement to comply with the safety regulations related to flammable vegetation abatement (Attachment 2).

At the time of the notice, property owners were given the option to complete the required work themselves, hire their own contractor, or elect to schedule the Town of Los Gatos' authorized contractor (Santa Clara County) to perform the work.

Below is the scheduled outline for the 2024 hazardous brush abatement program:

February 2024	The 2024 Brush Abatement Program letters were mailed to property
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owners.

April 1, 2024 Santa Clara County Fire Department (SCCFD) began conducting the first

property inspections. A door hanger describing the safety regulations is placed at the property and a copy is mailed to the property owner's

mailing address.

May 7, 2024 Town Council adopts a Resolution declaring hazardous vegetation (brush)

a public nuisance and sets June 18, 2024 as a public hearing to consider

objections to the proposed removal of brush.

May/June 2024 SCCFD begins re-inspecting the properties that were out of compliance at

the time of the first inspection. Property owners who are not in

compliance at the time of re-inspection will be identified and notice will be sent to the property owners providing information about the June 18th public hearing. The Town publishes notices of the public hearing at least

10 days prior to the hearing.

June 18, 2024 Town Council conducts a public hearing to consider objections to the

proposed removal of hazardous vegetation (brush) of parcels declared non-compliant and orders the abatement of the nuisance by the Town's

authorized contractor (Santa Clara County).

PAGE 3 OF 4

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance,

Ordering Abatement, and Setting June 18, 2024 as a Public Hearing to Consider

Objections to the Proposed Removal of Brush

DATE: May 1, 2024

DISCUSSION (continued):

June 2024 After the June 18th public hearing, an additional inspection of all

identified properties listed on the report will be conducted before the Town's authorized contractor performs any abatement work. If the property is found to be in compliance at the time of the re-inspection or upon the arrival of the abatement contractor, no work will be performed,

and no charges will be imposed.

July 2024 The County provides the Town with an assessment list of charges for

work that ultimately was performed by the contractor. If there are no

proposed charges, no additional public hearing is required.

August 5, 2024 In the event a list of assessed charges is provided to the Town in July, the

Town Council will conduct a public hearing on the hazardous vegetation

(brush) abatement charges and adopt a resolution confirming or

modifying assessments.

August 6, 2024 The Town submits a list of charges as a special assessment to the County

Tax Collector.

CONCLUSION:

Adopt a resolution (Attachment 1) declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 18, 2024 as a public hearing to consider objections to the proposed removal of the brush.

COORDINATION:

This program is coordinated with the Santa Clara County Fire Department.

FISCAL IMPACT:

The costs associated with abatement work are placed on the property tax bill for that parcel. Funds are provided in the FY 2023/24 Budget (Program 5101) to cover the cost of publishing the legal notice for the June public hearing.

ENVIRONMENTAL ASSESSMENT:

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

ITEM NO. 4.

PAGE **4** OF **4**

SUBJECT: Adopt a Resolution Declaring Hazardous Vegetation (Brush) a Public Nuisance, Ordering Abatement, and Setting June 18, 2024 as a Public Hearing to Consider

Objections to the Proposed Removal of Brush

DATE: May 1, 2024

Attachments:

1. Resolution declaring hazardous vegetation (brush) a public nuisance, ordering abatement, and setting June 18, 2024 as a public hearing to consider objections to the proposed removal of brush (includes Exhibit A).

2. Letters sent to property owners within the Wildland Urban Interface (WUI) area.

DRAFT RESOLUTION 2024-

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DECLARING HAZARDOUS VEGETATION (BRUSH) A PUBLIC NUISANCE, ORDERING ABATEMENT, AND SETTING JUNE 18, 2024 AS A PUBLIC HEARING TO CONSIDER OBJECTIONS TO THE PROPOSED REMOVAL OF BRUSH

WHEREAS, Sections 39560 and following of the Government Code of the State of California authorize the Town of Los Gatos to declare that hazardous vegetation (brush) growing to such size and such type and in such locations as to constitute a fire hazard to the community may be declared a public nuisance and to compel owners, lessees, or occupants of buildings, grounds, or lots to remove or abate the hazardous vegetation (brush) to mitigate the fire hazard from such buildings, grounds, or lots to remove or abate the hazardous vegetation (brush) to mitigate the fire hazard from such buildings, grounds, property, and adjacent sidewalks and parkways, and upon the person's failure to do so, to remove or abate such hazardous vegetation (brush) at the owner's expense, making the cost of that abatement a lien upon the property; and

WHEREAS, the Town of Los Gatos has entered into an agreement with the County of Santa Clara to provide hazardous vegetation (brush) abatement services; and

WHEREAS, the maintenance of hazardous vegetation (brush) in violation of the Uniform

Fire Code adopted by the Town of Los Gatos within the Wildland Urban Interface Fire areas

identified and shown on the map (Exhibit A) constitutes a public nuisance and should be abated

immediately; and

ATTACHMENT 1

WHEREAS, the Santa Clara County Fire Department has mailed notices to property owners within the Wildland Urban Interface areas notifying them of the need to abate hazardous vegetation (brush) violations and explaining the steps necessary to correct such violations.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Los Gatos, and the Town Council hereby finds that hazardous vegetation (brush) is a wood, perennial plant usually with multiple stems and trunks under ten feet in height and is indigenous to the hillside area. Hazardous vegetation (brush) is also known to have a high oil, high resin, or low moisture contention in their leaves and branches. Examples of this type of plant material include California Sagebrush, Greasewood or Chamise, Scotch Broom, and Toyon. Unabated growth of hazardous vegetation (brush) upon and adjacent to private property within the hillside hazardous fire area and adjacent parkways and sidewalks is a public nuisance and should be abated. The Director of Parks and Public Works shall act as the Superintendent for purposes of giving notice, supervising performance of the agreement with the County of Santa Clara, and evaluating the costs of abatement.

BE IT FURTHER RESOLVED that the Town Clerk is directed to mail notice of this resolution to the persons designated by the Superintendent in conformance with the Government Code and publish notice of this resolution as provided in the Government Code.

BE IT FURTHER RESOLVED that unless the hazardous vegetation (brush) violations are corrected within the time specified in a written agreement with the Superintendent or the Superintendent's representative, the Town of Los Gatos shall cause such nuisance to be abated, and the expense thereof assessed upon the lots or lands from which or on which the

abatement actions occur, such expense to constitute a lien upon such lots or lands until paid, and to be collected upon the next real property tax roll upon which general municipal taxes are collected.

BE IT FURTHER RESOLVED that on the 18th day of June 2024, at a meeting of the Town Council beginning at 7:00 p.m. in the Council Chambers of the Civic Center, 110 E. Main Street, Los Gatos, CA, a public hearing will be held during which all property owners within the Wildland Urban Interface areas in the Town of Los Gatos having any objections to the proposed abatement of hazardous vegetation (brush) will be heard and given due consideration.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 7th day of May 2024 by the following vote:

datos, camorma, neid on the 7	day of May 2024 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, CALIFORNIA	LOS GATOS
DATE:	

Town of Los Gatos

MILES

Exhibit "A"

LGA 100 / LRA Very High FHSZ

Local Responsibility Area Fire Hazard Severity Zones

January 2024

GA 100) / LRA Ver	y High F	HSZ						
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February 22, 2024

RE: << Property Address>> / APN: << APN>>

Dear Property Owner,

National Wildfire Community Preparedness Day will take place on Saturday, May 4th. Take action to protect your home and community against the threat of wildfire by attending one of several upcoming community wildfire preparedness workshops. Please see the enclosed flyer for more information and register today.

As a property owner in a designated Fire Hazard Severity Zone of the Wildland Urban Interface, you must comply with the minimum fire-safe regulations. Self-inspections are a key component in achieving fire resilience for residents and the community. Included in this packet is a property self-inspection card. Please complete this card and return by mail or online using the provided QR code.

Your property is in a **Very High Fire Hazard Severity Zone** of the Wildland Urban Interface Area and requires **100 feet** of defensible space from all structures. Defensible space is the necessary buffer created around a structure when combustible vegetation is removed or reduced. The enforced safety regulations for your property include:

Enforced Safety Regulations (Items A - F)

- A. Create **100 feet** of defensible space around your home. To accomplish this, you must clear flammable vegetation a **minimum of 30 feet** around structures. Additionally, create a reduced fuel zone for the **remaining 70 feet** (or to the property line).
- B. Remove pine needles, leaves, and other dead vegetation from roofs, eaves and rain gutters.
- C. Trim tree limbs 10 feet from chimneys and stove pipes; remove dead limbs that hang over rooftops.
- D. Remove all non-fire-resistive vegetation a minimum of 10 feet on each side of a fire apparatus access road or driveway.
- E. Cover chimney outlets or flues with a 1/2" mesh spark arrester.
- F. Post a clearly visible house address, using at least 4" high numbers, for easy identification. For homes located more than 50 feet from the street, post address numbers at the driveway entrance.

Additional Safety Recommendations (Municipal Code §9.30.005)

- New construction must create a noncombustible area a minimum of 5 feet from all structures.
- Remove flammable vegetation a minimum of 10 feet around liquified petroleum gas tanks/containers.
- Store woodpiles and combustible materials (e.g., woodpiles, lumber, and scrap) a minimum of 30 feet from all structures and separated from the crown of trees by a minimum horizontal distance of 15 feet.
- Firewood and combustible materials shall not be stored in unenclosed spaces beneath buildings or structures, or on decks or under eaves, canopies or other projections or overhangs.

<<Owner Name>> <<Owner Address>> <<Owner City>>, <<Owner State>> <<Owner ZIP Code>>

PLACE STAMP HERE

SANTA CLARA COUNTY FIRE DEPARTMENT ATTN: FIRE PREVENTION DIVISION 1315 DELL AVENUE CAMPBELL, CA 95008-6609

ITEM NO. 4.

Owner Responsibilities:

- Please ensure that your property satisfies the listed requirements. You have the option to complete the required work yourself or hire a contractor. For information about vegetation abatement services, visit WeedAbatement.SCCgov.org or call 408.282.3145.
- 2. Please either complete and return the attached property self-inspection card **OR** scan the QR Code below to report the current status of your property before April 1, 2024.

Inspection Schedule:

On April 1, 2024, SCCFD will begin conducting property inspections. Property owners not in compliance will be notified of what work needs to be completed to comply with the Enforced Safety Regulations. Please contact us if you are unable to complete the required work due to late season rains or other special circumstance.

On June 1, 2024, we will begin conducting re-inspections of the properties that were out of compliance at the time of the first property inspection. If your property fails to comply with Items A, B, C, or D of the Enforced Safety Regulations specified above, the compliance work will be completed by the Town of Los Gatos' authorized contractor, and the charges for this service will appear on your next property tax bill.

If you have concerns regarding the safety compliance of your property, courtesy property inspections will be available April 1st through April 12th. To schedule a courtesy property inspection provided by SCCFD or for more information, please contact the Fire Prevention Division at prevention@sccfd.org or call 408.341.4420.

Hector R. Estrada, Deputy Chief Fire Prevention Division

Resources and Information

California Department of Insurance: www.insurance.ca.gov • 800.927.4357

Provides information about all types of insurance, including insurance coverage and limits for high fire risk areas

Santa Clara County FireSafe Council: www.SCCFireSafe.org • 408.975.9591

Protects and educates communities at risk from wildfire through fuel reduction programs, outreach and community planning efforts

Santa Clara County Weed Abatement Program: WeedAbatement.SCCgov.org • 408.282.3145

Provides community education and hazard abatement services to protect communities from fire hazards

AlertSCC Emergency Alerts AlertSCC.org



Genasys Protect: Know Your Zone Spenasys Protect **Protect.Genasys.com**



Visit protect.genasys.com to view/verify your Evacuation ZONE#

Choose ONE:

- 1. Scan the QR code below with a smartphone camera to submit your response online **OR**
- 2. Complete and mail the attached information card below.

Option 1 - Respond Online

Evacuation Zone ID:<<ZoneID>> Private Access Key: << Access Key>>



Or Online: qrs.ly/syej73x

Option 2 - Respond by Mail

I have	received	the an	nnual `	Wildland	Urban	Interface	(WUI)	Enforced	Safety	Regulations	letter	related	to
flamma	able vegeta	tion ab	oateme	ent. The cu	ırrent st	tatus of my	proper	ty is as fol	lows (cl	hoose one):			

☐ I have inspe	ected my property for	flammable veg	etation clearan	ce and believe i	it complies wit	h the Enforced Safet	У
Regulations	s. I understand that a	n inspection of	my property ma	ay be conducte	d to verify con	npliance.	

I will remove flammable vegetation around all structures on my property in accordance with the Enforced Safety
Regulations no later than June 1, 2024. I understand that if the required work is not completed, the authorized
contractor may complete the work and the charges will appear on my next property tax bill.

☐ I am no longer the owner of this propert	y.
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There	are	no	structures	on	this	prop	erty	/.

Name (print clea	ırly) :		Date:		
Phone: ()	Fmail:			

MEETING DATE: 05/07/2024

DATE: April 24, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Parking Program Implementation – Wayfinding and Signage Project (CIP No.

813-0242):

a. Award and Authorize the Town Manager to Execute a Construction Agreement with Square Signs LLC., Dba Front Signs in an Amount Not to Exceed \$191,908.13; and

 Authorize the Staff to Execute Change Orders in an Amount Not to Exceed \$38,381.63 Which Represents a Twenty Percent (20%) Contingency of the

Contract Award Amount

RECOMMENDATION:

Parking Program Implementation – Wayfinding and Signage Project (CIP No. 813-0242):

- a. Award and Authorize the Town Manager to Execute a Construction Agreement with Square Signs LLC., Dba Front Signs in an amount not to exceed \$191,908.13; and
- b. Authorize the staff to execute change orders in an amount not to exceed \$38,381.63 which represents a twenty percent (20%) contingency of the contract award amount.

BACKGROUND:

On December 17, 2019, the Town Council received the Comprehensive Downtown Parking Study from Dixon Resources Unlimited (DIXON). The Parking Study identified wayfinding as a strategy to efficiently manage parking, improve the visitor experience, and enhance vehicle traffic flow.

On January 26, 2021, the Town Council reaffirmed the commitment to the Parking Roadmap with the adoption of the Strategic Priorities Fiscal Year 2021-2023. One of the initial Town Council priorities was to enhance wayfinding signage and new parking program branding to assist visitors in finding convenient parking.

PREPARED BY: Gary Heap

Town Engineer

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

PAGE 2 OF 3

SUBJECT: Award of Parking Program Implementation-Wayfinding and Signage Project (CIP 813-

0242)

DATE: April 24, 2024

BACKGROUND (continued):

In November 2021, work began with Hunt Design on the Downtown Wayfinding Master Plan, and on March 15, 2022, Town Council selected a design style which was used by Hunt to develop the final design for static signs throughout the downtown area. (See the Parks and Public Works Capital Improvement Program website for the Wayfinding Designs: https://www.losgatosca.gov/DocumentCenter/View/37039/Message-Schedule?bidId=.)

The Town Council authorized advertising the signage project for construction bidding on December 3, 2023. Bids were advertised on December 8, 2023, and opened on January 19, 2024. The Town received four bid proposals. Of the bids received, three out of four were deemed unresponsive due to non-compliance with bid requirements. The one remaining bid significantly exceeded the engineer's estimate. On February 20, 2024, the Town Council rejected all bids and authorized staff to re-bid the project.

DISCUSSION:

Staff re-bid the project on March 7, 2024, and bids were opened on April 3, 2024. The Town received bid proposals from three bidders: Fusion Sign & Design, Monarka Development Corporation, and Square Signs LLC dba Front Signs. Square Signs LLC dba Front Signs was the lowest responsive bidder. Table 1 is a summary of the bid totals.

Table 1. Summary of Bids Received for Wayfinding and Signage Project

	<u> </u>
Bid Summary	
Engineer's Estimate	\$287,200.00
Square Signs LLC dba Front Signs	\$191,908.13
Fusion Signs	\$238,201.52
Monarka Development Corporation	\$358,800.00

CONCLUSION:

This action allows work to proceed for the fabrication and installation of the Council approved wayfinding signs in downtown Los Gatos. Work is expected to be completed by the end of the calendar year.

PAGE **3** OF **3**

SUBJECT: Award of Parking Program Implementation-Wayfinding and Signage Project (CIP 813-

0242)

DATE: April 24, 2024

FISCAL IMPACT:

The engineer's cost estimate for this package of wayfinding signs is \$287,200. The adopted Fiscal Year 2023/24 – 2027/28 Capital Improvement Program (CIP) Budget for this project is shown in the table below:

Parking Program Implemenation CIP No. 813-0242					
	ı	Budget		Costs	
GFAR	\$	767,455			
Total Budget	\$	767,455			
				Costs	
Advertising			\$	1,341	
Misc. Project Costs			\$	1,433	
Temp Staff Salary Costs			\$	1,934	
Prior Consultant Agreement Services			\$	444,375	
Agreement with Square Signs (Requested with this Staff					
Report)			\$	191,908	
20% Contingency (Requested with this Staff Report)			\$	38,382	
Total Costs			\$	679,373	
Available Balance			\$	88,082	

Staff is requesting a 20% contingency for this project due to potential unforeseen issues that might arise during the sign installation process.

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15301, the installation of this signage in the downtown area is categorically exempt from CEQA because it is a minor alteration to the Town's existing public facilities.

Attachment:

1. Wayfinding Signage Construction Agreement with Bonds

CONSTRUCTION AGREEMENT

PREAMBLE

This Agreement is dated for identification this 7th day of May 2024, and is made by and between the TOWN OF LOS GATOS, a California municipal corporation, whose address is 110 East Main Street, Los Gatos, California 95030 (hereinafter "TOWN"), and Square Signs LLC dba Front Signs, identified as a Limited Liability Company and whose address is 3520 Valhalla Drive, Burbank, California 91505 (hereinafter "CONTRACTOR").

NOW, THEREFORE, the parties agree:

ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT.

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said TOWN, and under the conditions expressed in the two bonds hereunto annexed, the said CONTRACTOR agrees with the said TOWN, at his own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, under the supervision of the Town Engineer, or his, of the TOWN OF LOS GATOS, California, all the works and improvements described, mentioned and set forth in those plans and specifications on file in the Office of the Parks and Public Works of said TOWN, entitled:

""Plans and Specifications for Project #23-813-0242 Parking Program Implementation-Wayfinding Signage"

which said plans and specifications and all the documents therein contained, including the TOWN OF LOS GATOS's Standard Provisions, are hereby specially referred to and by such reference made part of this contract.

ARTICLE II: CONTRACTOR'S ACCEPTANCE

CONTRACTOR agrees to receive and accept the prices shown on Exhibit "A" \$191,908.13 which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work described in the contract documents; also for all loss or damage as provided in the contract documents in the prosecution of the work until its acceptance by the Town Council of the TOWN OF LOS GATOS, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the Town Engineer.

ATTACHMENT 1

ARTICLE III: ACCEPTANCE BY TOWN

The said TOWN hereby promises and agrees with the said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE IV: COMPLETION OF AGREEMENT

Reference is made to Part I – Page 7 through 9 of the TOWN's Project Specifications Invitation to Bid which are hereby made a part of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed one hundred and twenty (120) working days from Notice to Proceed.

ARTICLE V: HOURS OF LABOR

The CONTRACTOR shall forfeit, as a penalty, to the TOWN, Twenty-Five Dollars (\$25) for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

ARTICLE VI: APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any subcontractor under him. CONTRACTOR and any of his subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships alleged to exist.

Information relative to apprenticeship standards and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California or from the Division of Apprenticeship Standards at its branch offices.

ARTICLE VII: NONDISCRIMINATION

The CONTRACTOR sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR shall carry

out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

ARTICLE VIII: INDEPENDENT CONTRACTOR

It is agreed that CONTRACTOR is an independent contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of TOWN.

ARTICLE IX: OWNERSHIP OF DATA AND DOCUMENTS

CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of TOWN. CONTRACTOR shall regularly provide such documents to TOWN upon TOWN's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to TOWN forthwith.

ARTICLE X: INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, and hold harmless the TOWN, its elected and appointed officials, employees, and agents ("Indemnified Parties"), from and against any claims, allegations, damages, awards, judgments, and expenses of every kind or character, including, but not limited to, attorney fees and expert costs, which may arise out of or result from in whole or in part CONTRACTOR's performance of the work, except to the extent caused by the sole negligence or willful misconduct of Indemnified Parties. CONTRACTOR's obligation to defend Indemnified Parties shall be immediate upon written notice by TOWN to CONTRACTOR and CONTRACTOR shall, if requested by TOWN, defend Indemnified Parties using counsel approved by TOWN in its sole discretion.

ARTICLE XI: INSURANCE

a. <u>Commercial General Liability/Automobile Liability Insurance</u>:

CONTRACTOR shall obtain and maintain Commercial General Liability insurance in the amount of Two Million Dollars (\$2,000,000) and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit

shall be twice the required occurrence limit. CONTRACTOR's insurance coverage shall be written on an occurrence basis.

b. <u>Workers' Compensation Insurance</u>:

CONTRACTOR shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

CONTRACTOR is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and CONTRACTOR maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for TOWN under said agreement: (1) CONTRACTOR will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California, or (2) should CONTRACTOR become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, CONTRACTOR shall forthwith comply with those provisions and send evidence of financial compliance to TOWN.

- c. <u>Acceptability of Insurers</u>: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to TOWN.
- d. <u>Verification of Coverage</u>: Insurance, deductibles or self-insurance retentions shall be subject to TOWN's approval. Original Certificates of Insurance with endorsements shall be received and approved by TOWN before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to TOWN or increase the duration of the project.

e. Other Insurance Provisions:

- (1) The TOWN OF LOS GATOS, its elected and appointed officials, employees, and agents are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by Town Attorney for Commercial General and Automobile Liability coverage.
- (2) For any claims related to this project, CONTRACTOR's insurance coverage shall be primary and any insurance or self-insurance maintained by TOWN, its elected and appointed, officials, employees, and agents shall not contribute to it.

ITEM NO. 5.

- (3) Each insurance policy required shall be endorsed that a thirty (30) day notice be given to TOWN in the event of cancellation or modification to the stipulated insurance coverage.
- (4) In the event CONTRACTOR employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of CONTRACTOR to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.
- (5) Approval of the insurance by TOWN or acceptance of the Certificate of Insurance by TOWN shall not relieve or decrease the extent to which CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of TOWN's rights to insurance coverage hereunder.
- (6) If, for any reason, CONTRACTOR fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. TOWN, at its sole option, may terminate this contract and obtain damages from CONTRACTOR resulting from said breach. Alternately, TOWN may purchase such required insurance coverage, and without further notice to CONTRACTOR, TOWN may deduct from sums due to CONTRACTOR any premium costs advanced by TOWN for such insurance.

ARTICLE XII: BONDING REQUIREMENT

CONTRACTOR agrees to post a Faithful Performance Bond and a payment bond for Labor and Materials, or other guarantees, in the required amount of \$191,908.13 each upon bond forms provided by the TOWN, guarantying the performance of the terms of this Agreement. Surety issuing bonds for CONTRACTOR shall be approved by the U.S. Department of Treasury's Financial Management Service and shall be listed on the most current Treasury Circular 570 as contained in the Federal Register.

Contractor agrees to allow five percent of the faithful performance bond to remain in effect for a period of two years following Town Council project acceptance as guarantee for any needed repair or replacement caused by defective materials and workmanship.

ARTICLE XIII: MAINTENANCE AND GUARANTY

CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the TOWN may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a two (2) year period subsequent to the date of final acceptance.

This article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of the TOWN in respect to a latent defect, fraud or implied

warranties. CONTRACTOR shall furnish the TOWN all appropriate guaranties or warranty certificates upon completion of the project.

ARTICLE XIV: SHORING FOR TRENCHES

If the contract specifies an expenditure of Twenty-Five Thousand Dollars (\$25,000) or greater for trenching, and if the depth of the trench is five feet (5') or more, then Section 6705 of the Labor Code shall also be applicable.

ARTICLE XV: APPLICABLE LAWS AND ATTORNEY'S FEES

This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the TOWN Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

ARTICLE XVI: LIQUIDATED DAMAGES

It is mutually agreed by CONTRACTOR and TOWN that in the event that completion of the construction by CONTRACTOR under this Agreement is delayed beyond one hundred and twenty (120) working days from Notice to Proceed, TOWN will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, CONTRACTOR shall pay to TOWN the sum of Five Hundred Dollars (\$500.00) per day in liquidated damages for each and every calendar day such delay in completion of the services under this Agreement continues beyond one hundred and twenty (120) working days from Notice to Proceed. In the event that the liquidated damages are not paid, CONTRACTOR agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to CONTRACTOR under this Agreement.

ARTICLE XVII: INTERPRETATION OF CONTRACT

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE XVIII: AMENDMENTS AND CHANGE ORDERS

This Agreement may be amended from time to time as necessary by formal and written amendment or authorized change order executed by the Town Manager or designee and principal acting on behalf of the CONTRACTOR.

ARTICLE XIX: DBE RESPONSIBILITIES

For projects that are State or Federal funding; With respect to Disadvantaged Business Enterprises, CONTRACTOR shall do the following:

- (1) Pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from TOWN. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.
- (2) Release all retainage owed to a subcontractor for satisfactory completion of the accepted work within thirty (30) days after TOWN's payment to CONTRACTOR. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

ARTICLE XX: PREVAILING WAGES

<u>Prevailing Wage</u>. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

- 1. The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
- 2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
- 3. The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

- 4. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 5. In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 6. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 7. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
- 8. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
- 9. The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

ARTICLE XXI: ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

ARTICLE XXII: PUBLIC RECORDS

The parties recognize and acknowledge that TOWN is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

ARTICLE XXIII: NOTICES

Any notice required to be given to CONTRACTOR shall be deemed to be duly and properly given if mailed to CONTRACTOR, postage prepaid, addressed to:

Square Signs LLC dba Front Signs 3520 Valhalla Drive Burbank, California 91505

or personally delivered to CONTRACTOR at such address or at such other addresses as CONTRACTOR may designate in writing to TOWN.

Any notice required to be given TOWN shall be deemed to be duly and properly given if mailed to TOWN, postage prepaid, addressed to:

Nicolle Burnham
Parks and Public Works Director
TOWN OF LOS GATOS
41 Miles Avenue
Los Gatos, California 95030

or personally delivered to TOWN at such address or at such other addresses as TOWN may designate in writing to CONTRACTOR.

ARTICLE XXIV: SECTION 7106 FORM

Attached to the Agreement is a fully executed and sworn non-collusion affidavit as required by Section 7106 of the California Public Contracts Code. Said affidavit is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

APPROVED AS TO CONTENT:	"TOWN": TOWN OF LOS GATOS	
Nicolle Burnham Director of Parks and Public Works	By:	
APPROVED AS TO FORM:	Attest:	
Gabrielle Whelan, Town Attorney	Wendy Wood, CMC, Town Clerk	
CONTRACTOR:	Ву:	
Name: Square Sign LLC dba Front Signs	Title:	
Address: 3520 Valhalla Drive Burbank, CA 91505	Ву:	
Tax ID No. or SSAN:	Title:	

CONTRACTOR'S BOND FOR LABOR AND MATERIAL

KNOW AL	L MEN BY THESE PRESENTS:
That	, as Principal, and
and authorized to and all material provender or oth to be executed companies or cor to said work to be persons who sup	ler the laws of the State of
), for the payment whereof, well and truly to be made, said Principal and selves, their administrators, successors and assigns, jointly and severally firmly
by these presents	i.

The condition of the foregoing obligation is such that; WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

Project # 23-813-0242 Parking Program Implementation-Wayfinding Signage

as required by the plans and specifications, pursuant to the award made to said contractor by the Council of the TOWN OF LOS GATOS, on 7th May, 2024, as will more fully appear by reference to the minutes of said Council of said TOWN of said date.

NOW, THEREFORE, if the above-bounden Principal, contractor, person, company, or corporation, or his agent, or the subcontractors, fails to pay for any materials, provisions, provender, or other supplies, or crews used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amount required to be deducted, withheld, and paid over to Franchise Tax Board, from the wages of employees of the contractor or subcontractor, pursuant to Section 18806 of the Revenue and Tax Code, then the Surety of this bond will also pay the same in an amount not exceeding the sum specified in the bond; and also, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

This bond is executed and filed to comply with the provisions of Sections 3247, et seq., of the Civil Code.

Signed and sealed this	_ day of, 2024.
BY:	BY:
SQUARE SIGNS LLC dba FRONT SIGNS	SURETY (Address and Phone No.)
(CORPORATE SEAL)	(SURFTY SFAL)

CONTRACTOR'S BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That ________, as Principal, and _______, as Principal, and ______, and authorized to execute bonds and undertakings as Surety, are held firmly bound unto the TOWN OF LOS GATOS, a municipal corporation of the State of California, in the sum of _______ Dollars (\$________), for payment whereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that: WHEREAS, the above-bounden Principal has entered into a certain contract attached hereto and incorporated herein by reference as though fully set forth, with the TOWN OF LOS GATOS, to do and perform the following work; to wit:

Project # 23-813-0242 Parking Program Implementation-Wayfinding Signage

as required by the plans and specifications, pursuant to the award made to said contractor by the Council of the TOWN OF LOS GATOS, on 7TH May, 2024, as will more fully appear by reference to the minutes of said Council of said date.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

NOW, THEREFORE, if the above-bounden Principal shall well and truly perform the work contracted to be performed under said contract, then this obligation shall be void; otherwise, to remain in full force and effect.

Signed and sealed this	day of	, 2024.
BY:	BY: _	
SQUARE SIGNS LLC dba FRONT	SIGNS SU	RETY (Address and Phone No.)
(CORPORATE SEAL)	(SL	JRETY SEAL)

MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute Agreements with the County of

Santa Clara for:

a. AB 939 Implementation Fee Collection and Distribution; and

b. Countywide Household Hazardous Waste (HHW) Collection Program to Augment Funding up to an Additional \$94,219 to the Countywide HHW

Program During Fiscal Year (FY) 2024/25

RECOMMENDATION:

Authorize the Town Manager to execute Agreements with the County of Santa Clara for:

- a. AB 939 Implementation Fee Collection and Distribution (Attachment 1); and
- b. Countywide Household Hazardous Waste (HHW) Collection Program (Attachment 2) to augment funding up to an additional \$94,219 to the Countywide HHW Program during Fiscal Year (FY) 2024/25.

BACKGROUND:

Responsible management of solid waste, including Hazardous Household Waste (HHW) is a requirement under Assembly Bill (AB) 939 and the California Integrated Waste Management Act. State law authorizes cities and counties to impose fees in amounts sufficient to support planning and implementation of integrated waste management programs, including HHW elements. The AB939 Agreement approves the Countywide collection of fees to facilitate safe and appropriate disposal or re-purposing of all wastes. Additionally, the Countywide HHW Agreement is designed to reduce and eventually eliminate the residential hazardous waste that is still sent to landfills countywide and to capture some of the hazardous waste that might otherwise be illegally dumped.

PREPARED BY: Dan Keller

Facilities and Environmental Services Manager

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

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute Agreements with the County of Santa

Clara doe Household Hazardous Waste Programs

DATE: May 1, 2024

BACKGROUND (continued):

The Town, along with 14 other jurisdictions in the County of Santa Clara (County), executes the AB939 agreement (Attachment 1) to define the terms and conditions under which the County will collect and distribute the fee of \$4.10 per ton of waste to be disposed in Fiscal Years 2025, 2026 and 2027. The fee is divided into two parts: \$1.50 per ton assists in funding an integrated Waste Management Plan, and \$2.60 per ton provides funding to implement the Countywide HHW Program.

The County executes the Agreement for Countywide Household Hazardous Waste Collection Program (Attachment 2) with the Town and each jurisdiction individually, which spells out the desire to use the collected \$2.60 per ton fee to fund the Countywide HHW Program. This arrangement provides operational efficiency to jurisdictions as they do not each have to run their own HHW collection programs. The County HHW Program includes two permanent drop-off facilities for HHW as well as temporary events at various locations in the County periodically throughout the year.

Los Gatos residents use this drop-off service for the responsible disposal of unwanted HHW materials. Los Gatos' portion of the fee is based on tons of materials being disposed of that originated in Los Gatos, including both regular accounts and construction and demolition debris. The County keeps track of the tonnage originating in Los Gatos and the fees collected on that tonnage and keeps a record of the jurisdiction of residence of each person who drops materials off at a HHW Program event. The County also tracks and reports on all the associated expenses for the Program. If the cost to serve Los Gatos' participating residents exceeds the funds collected via the per ton disposal fee, Los Gatos is invoiced for the difference.

Each year the County provides its jurisdiction an estimate of the anticipated shortfall between collected fees and participation cost for the next fiscal year, which they call augmented funds. To assure payment of the shortfall from each jurisdiction, the County creates an amendment to the agreement to identify the expected need for augmented funds. After the end of each fiscal year, the County tallies up actual collection and issues an invoice as appropriate.

DISCUSSION:

The County Board of Supervisors has approved reimposing the Countywide AB939 Implementation Fee for Fiscal Years 2025, 2026, and 2027 (July 1, 2024 through June 30, 2027). The HHW Fixed Program Costs as reflected in Attachment B of Attachment 2 have increased from prior years to an amount not exceeding \$5.07 per household.

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to Execute Agreements with the County of Santa

Clara doe Household Hazardous Waste Programs

DATE: May 1, 2024

DISCUSSION (continued):

The deadline to return the signed Agreement to the County is no later than June 10 in order for County staff to secure Board of Supervisors approval before the beginning of the next Fiscal Year.

CONCLUSION:

If authorized, this action will provide the agreements and resources needed for Los Gatos residents to participate in the County's HHW program. This program is critical to the Town's compliance with the State of California's Solid Waste laws.

FISCAL IMPACT:

The amount of \$94,219 for funding augmentation of the HHW Program is included as an expense in the Proposed FY 2024/25 Operating Budget within the Environmental Services Program. The amount is calculated based on anticipated resident participation from Los Gatos; actual funding augmentation for FY 2024/25 will be based on actual resident participation.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

- 1. Agreement for Countywide AB939 Implementation Fee
- 2. Agreement for Countywide Hazardous Household Waste Collection Program

AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE

This	Agreement is made by and	among the Citi	es and Towns of C	Campbell, Cupertino,
Gilroy, Los	Altos, Los Altos Hills, Los	Gatos, Milpitas	s, Morgan Hill, M	onte Sereno, Mountain
View, Palo	Alto, San José, Santa Clara,	Saratoga, and	Sunnyvale (CITIE	S) and the County of
Santa Clara	(COUNTY) on the	day of	2024.	The term CITIES may
refer to CIT	IES collectively or individu	ally.		•

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan;

WHEREAS, State law, Public Resource Code Section 41750, requires that the countywide integrated waste management plans contain a household hazardous waste ("HHW") element for each city within the county as well as for the unincorporated area of the county;

WHEREAS, the Board of Supervisors of the County of Santa Clara ("Board") has imposed a Countywide AB939 Implementation Fee ("Fee") since July 1, 1992 to pay for the costs of preparing, adopting, and implementing integrated waste management plans and programs, including HHW program elements;

WHEREAS, the Board has approved reimposing the Fee for Fiscal Years 2025, 2026, and 2027 (July 1, 2024 through June 30, 2027) at \$4.10 per ton of waste landfilled or incinerated in the County; received at any nondisposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; and removed from any location in the County by any person or business for disposal or incineration outside the County;

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary to meet HHW planning and management requirements under State law;

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground or in any other manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and for the unincorporated area of the County and will apportion the Fee according to the terms of this Agreement.

NOW THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$4.10 per ton of waste to be disposed in Fiscal Years 2025, 2026 and 2027. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste Fee of \$2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among the CITIES and COUNTY as described in Exhibit B, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

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3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the fee if it is landfilled or incinerated in the County; received at any non-disposal facility or collection facility in the County and subsequently transported for disposal or incineration outside the County; collected from any location within the County by a solid waste hauler operating under franchise, contract, license, or permit issued by a local jurisdiction and subsequently transported for disposal or incineration outside the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Best efforts will be made to prevent tonnage from being assessed a double fee (for instance, once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the CITIES' costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall be applied to fund the costs of CITIES' share of Countywide Household Hazardous Waste services; any HHW fees directly disbursed to CITIES as provided in this Agreement shall be used to fund the costs of preparing, adopting, and implementing the jurisdiction's HHW element of the Countywide integrated waste management plan, including providing HHW services to residents.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

6. INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the AB939 Program Fee to CITIES and the HHW Program Fee to the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin December 15, 2024, and continue quarterly through October 15, 2027.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10

days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

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12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by an instrument signed by all fifteen CITIES and the COUNTY.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2024 to June 30, 2027, or until all funds from the last quarter's Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2024. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2027.

16. NOTICES

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of	
Contact:	
Title:	
Address:	

County of Santa Clara

Contact: Recycling and Waste Reduction Program Manager

Program: Integrated Waste Management Services

Address: 1553 Berger Drive, Building 1

San José, CA 95112

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17. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

18. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

20. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

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IN WITNESS WHEREOF, the part FOR COUNTYWIDE AB939 IMPLEMENT	ties have executed this AGENCY AGREEMENT ΓΑΤΙΟΝ FEE on the dates as stated below:
Date:	COUNTY OF SANTA CLARA
	JAMES R. WILLIAMS County Executive
Date:	CITY"
	CITY/TOWN OF Title A municipal corporation
APPROVED AS TO FORM AND LEGALITY	7 :
Willie Nguyen Deputy County Counsel	

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site Kirby Canyon Sanitary Landfill Newby Island Sanitary Landfill Pacheco Pass Sanitary Landfill Palo Alto Refuse Disposal Area Zanker Materials Processing Facility Zanker Road Landfill

NON-DISPOSAL FACILTIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY

Butterick Enterprises Recyclery California Waste Solutions Recycling & Transfer Station City of Palo Alto Green Composting Facility ComCare Farms Composting Facility

Environmental Management Systems Facility

Green Waste Recovery Facility

Mission Trail Waste Systems, Inc.

Newby Island Compost Facility

Pacheco Pass Landfill Composting Facility

Pacific Coast Recycling, Inc.

Premier Recycling Facility

The Recyclery at Newby Island

San Martin Transfer Station

Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)

Z-Best Composting Facility

Zanker Materials Processing Facility

EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

Each of the CITIES, and the COUNTY for its unincorporated area, will receive \$1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 et seq. Public Resources Code Section 41901 authorizes imposition of a fee to support planning and implementation of integrated waste management programs, including their HHW elements. The HHW Fee, of \$2.60 per ton, collected as part of the AB939 Implementation Fee, will be the primary source of funding for Countywide Household Hazardous Waste Collection Program (CoHHW Program) services.

Funds derived from the HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San José Facility Use Surcharge will be apportioned based on CITIES' anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José.
- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Public Resources Code Section 41904.

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2. FIXED PROGRAM COST

Funds shall be allocated on a per household basis for Fixed Program Costs at the conclusion of each Fiscal Year. This portion of the funds shall be distributed directly to the Countywide HHW Program to pay for HHW Program costs. Fixed Program Costs funding shall be calculated shall not exceed \$5.07 per household in Fiscal Years 2025, 2026, and 2027. Fixed Program Costs may include, but are not limited to, eleven (11) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance, and union negotiated salary and benefit changes.

3. ABANDONED WASTE DISPOSAL COST

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$.05 per household are set forth in Attachment A, attached hereto and incorporated herein. Any existing unexpended non-profit abandoned waste fund balance may be allocated toward funding of disposal of HHW illegally abandoned at nonprofit charitable reuser organizations as defined in Public Resources Code Section 41904.

For the purposes of this agreement, a nonprofit charitable reuse organization has the definition provided in Public Resources Code Section 41904 as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. SAN JOSÉ FACILITY USE SURCHARGE

The total San José Facility Use Surcharge for CITY will be based on CITY residents' proportional participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.09 per car for Fiscal Years 2025, 2026, and 2027. The total San José Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José.

5. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection

Facilities and Temporary Events. This portion of the funds shall be distributed directly to the Countywide HHW Program. The Variable Cost Per Car is estimated to be \$66.02 per car for Fiscal Years 2025, 2026, and 2027. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and San José Facility Use Surcharge are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction where the level of 4% is not reached the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of Fixed Program Cost, San José Facility Use Surcharge, and Variable Per Car Cost. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. CITIES authorize the COUNTY to determine appropriate uses of available discretionary funding and to use CITIES' Available Discretionary Funding portion of the AB939 HHW Fee to provide for additional HHW services requested by the CITIES.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all jurisdictions in the County. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. If CITIES elect to participate in the Countywide HHW Program, their pro-rata share of the HHW Fee shall be retained by the County to utilize for HHW Program costs, as provided in this Agreement and the Agreement for Countywide Household Hazardous Waste Collection Program. The COUNTY will distribute to CITIES not participating in the Countywide Household Hazardous Waste Collection Program their pro-rata share of funding received by the COUNTY from the HHW Fee, except that the COUNTY may retain and expend that portion of the non-participating CITIES' fee attributable to Abandoned Waste Disposal Costs.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to allow residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule

an appointment for the resident. Liability shall be apportioned as provided in Exhibit D to this Agreement.

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EXHIBIT D

SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total

liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require Conditionally Exempt Small Quantity Generators ("CESQG") and Nonprofit Charitable Reusers to indemnify COUNTY for, at minimum, their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

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AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement for Countywide Househ	old Hazardous '	Waste Collection Program
("AGREEMENT") is made by and between the		("CITY") and the County of
Santa Clara ("COUNTY") on the	day of	2024.

RECITALS

WHEREAS, the Board of Supervisors of the County of Santa Clara ("Board of Supervisors") has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the unincorporated areas of the Santa Clara County and cities and towns within Santa Clara County participating in the Countywide program will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, CITY desires to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health and/or environmental hazard; and

WHEREAS, CITY desires to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil-based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste; and

WHEREAS, CITY desires to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2025 through FY 2027 (July 1, 2024 – June 30, 2027); and

WHEREAS, CITY desires to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in its jurisdiction; and

WHEREAS, CITY desires to participate in the Countywide Household Hazardous Waste Collection Program to meet these objectives; and

WHEREAS, pursuant to Public Resources Code Section 41901, the Board of Supervisors has approved the collection of a \$4.10 per ton Countywide AB939 Implementation fee, including a \$2.60 per ton Household Hazardous Waste Fee (AB939 HHW Fee), for FY 2025 through FY 2027 (July 1, 2024 – June 30, 2027) on all wastes landfilled or incinerated within Santa Clara County, received at any non-disposal or collection facility located within Santa Clara County and subsequently transported for disposal or incineration outside of Santa Clara County, collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently

transported for disposal or incineration outside of Santa Clara County, or removed from any location in Santa Clara County by any person or business for disposal or incineration outside the county; and

WHEREAS, the AB939 HHW Fee is allocated to the Countywide Household Hazardous Waste Program and participating jurisdictions to fund HHW program costs in accordance with the terms of the Countywide AB939 Implementation Fee Agreement; and

WHEREAS, CITY desires for COUNTY to utilize CITY's share of the AB939 HHW Fee to provide HHW services for CITY residents.

NOW THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this AGREEMENT is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into this AGREEMENT with the County.

2. PROGRAM FUNDING SOURCE

HHW Program services are mandated by State law, Public Resources Code Section 41500 *et seq*. State law authorizes cities and counties to impose fees in amounts sufficient to support planning and implementation of integrated waste management programs, including HHW elements. The AB939 HHW Fee, of \$2.60 per ton, imposed by COUNTY as part of the AB939 Implementation Fee and collected and distributed in accordance with the Agreement for Countywide AB939 Implementation Fee will be the primary source of funding for CoHHW Program services. CITY agrees that COUNTY may utilize CITY's share of the AB939 HHW fee to provide HHW Program services in accordance with the terms and conditions of this AGREEMENT.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San José Facility Use Surcharge will be apportioned based on CITY residents' participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José, CA 95133.

- C. Variable Cost Per Car is the cost associated with labor, waste disposal, transportation, and other services provided to residents at the County HHW Collection Facilities and at temporary HHW collection events. The Variable Cost Per Car is based on the estimated cost of providing a base level service to 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding is allocated based on tonnage generated per participating jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in Section 41904 of California Public Resources Code.

The projected AB939 HHW Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Estimated HHW Fixed Program Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs are allocated to CITY at the conclusion of each fiscal year based on CITY's proportional share of the County population and will not exceed \$5.07 per household for Fiscal Years 2025, 2026, and 2027. Fixed Program Costs may include, but are not limited to, up to eleven (11) County HHW Program staff members, facility lease costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations. The Abandoned Waste Disposal Cost is based on the cost to the County to dispose of abandoned waste allocated among participating jurisdictions based on their proportional share of the County population and shall not exceed \$0.05 per household. Projected Abandoned Waste Disposal Costs to the CITY based on a charge of \$0.05 per household are set forth in Attachment A, attached hereto and incorporated herein.

For the purposes of this Agreement, "Nonprofit Charitable Reuser Organization" is defined in accordance with Section 41904 of California Public Resources Code as follows: a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSÉ FACILITY USE SURCHARGE

The total San José Facility Use Surcharge for CITY will be based on CITY residents' proportional participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. Estimated San José Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein. The San José Facility Use Surcharge will vary depending on facility usage but will not exceed \$8.09 per car for Fiscal Years 2025, 2026, and 2027.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$66.02 per participating resident car for Fiscal Years 2025, 2026 and 2027. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San José Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in the CITY, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events. COUNTY has discretion to determine appropriate uses of Available Discretionary Funding in accordance with the terms and conditions in this Agreement, and to apply the funding toward those uses.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The County of Santa Clara Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the Agreement for Countywide AB939 Implementation Agreement. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law

to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall produce and make available to the public an HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within Santa Clara County and to Santa Clara County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing HHW promotion communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of HHW promotion materials produced by the CITY;
- Conducting and supporting outreach and publicity to attain the goal of 4% of households in the CITY participating in the CoHHW Program; and
- Providing the CoHHW Program a report summarizing all outreach activities conducted by the CITY during the fiscal year. The report is due 30 days after the end of the reporting period.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary

HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

When COUNTY conducts a Temporary HHW Event in CITY's jurisdiction, CITY agrees to provide solid waste and recycling services at such event at no cost to the CoHHW Program to ensure the proper management of non-hazardous waste generated at the event. Any additional expenses for such event incurred beyond the agreed-upon budget shall be subject to negotiation and mutual agreement between the COUNTY and the CITY.

To increase the Community's awareness of and participation in any Temporary HHW Event in CITY's jurisdiction, the CITY agrees to promote, at the CITY's sole expense, each such event to the residents at least thirty (30) days in advance before the scheduled date. The promotion may include, but is not limited to, bill inserts, door hangers, flyers, in-person outreach events, newsletters, press releases, public service announcements, social media, television public access stations, websites, etc.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ♦ San Martin, 13055 Murphy Avenue, San Martin, CA 95046
- ♦ San José, 1608 Las Plumas, San José, CA 95133

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. RECYCLING AND DISPOSAL PROGRAM FOR VERY SMALL QUANTITY GENERATORS

COUNTY will provide services to accept hazardous waste from Very Small Quantity Generators (VSQG) in accordance with Section 25218.3 of California Health and Safety Code, as amended from time to time. VSQG is defined in Section 25218.1(q) of California Health and Safety Code.

Eligible VSQGs include, but not limited to, small businesses, governmental entities, non-profit organizations, schools, special districts, etc. within the County so long as they meet the criteria as defined in Section 25218.1(q) of California Health and Safety Code. Eligible VSQGs will be allowed to bring their hazardous waste to CoHHWCF. These services to VSQGs located within the CITY will be provided on a cost recovery basis, which will include program administration,

on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating VSQG.

The CITY may choose to pay for services for VSQG's within the CITY and will notify the COUNTY in writing with 30-day advance notice in order to exercise this option. If the CITY exercises this option, the COUNTY will invoice the CITY for all costs associated with VSQG's within the CITY. If CITY has available Discretionary Funding, COUNTY may use this funding to pay for VSQG costs.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's rates for VSQGs.

B) NONPROFIT CHARITABLE REUSER

In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the available fund to pay for the disposal of the abandoned HHW from Nonprofit Charitable Reusers is exhausted, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's rates for VSQGs. No additional costs shall be applied to the budget of the CITY or any other participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to those materials that qualify as "Household Hazardous Waste" pursuant to Section 25218.1(d) of California Health and Safety Code, as amended from time to time. These materials include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals,

household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, electronic waste (e-waste), and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, biohazardous waste, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from VSQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY must augment funding provided under this Agreement to cover the cost of a minimum participation level of 4% of CITY households; CITY may also elect to augment funding to provide additional services to increase CITY participation beyond the 4% minimum participation level. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive Officer or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$_94,219.00 to the Countywide HHW Program during Fiscal Year 2025 for the purpose of attaining or increasing CITY household participation above the 4% minimum participation level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated, where applicable, at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to offset the above agreed additional augmentation amount.

CITY agrees to make an interim payment to COUNTY amounting to 50 percent of the augmentation amount stated above for each fiscal year. This interim payment shall be made no later than September 30th of each fiscal year. The remaining balance of any outstanding cost shall be reconciled and paid or refunded in accordance with the terms outlined in the annual cost statement.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

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17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m, except for COUNTY-recognized holidays The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some participating jurisdictions in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2025 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this Agreement, COUNTY may seek outside funding sources for services that would supplement existing HHW services such as permanent collection sites, equipment, retail take-back collection and operational funding. If outside funding is obtained, the CoHHW Program will, at COUNTY's discretion, proceed with development of additional programs using that outside funding without drawing on CITY's funding provided under this Agreement.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CITY authorizes the CoHHW Program to apply for lead agency grants, including but not limited to Used Oil Payment Program grants, from the California Department of Resources Recycling and Recovery (CalRecycle), on behalf of participating jurisdictions. The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude the COUNTY or a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply for the grant opportunity.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and

COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from California Department of Toxic Substances Control and will handle wastes in accordance with applicable state laws and regulations. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis, and all payments shall be due COUNTY within 30 days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment, and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions, including the CITY, and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit E Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15 of each year. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and not withstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident

employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the participating jurisdictions and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require VSQGs and Nonprofit Charitable Reusers to indemnify COUNTY, at minimum, for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The VSQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to VSQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2024 to June 30, 2027, or until all revenue from the last quarter's AB939 fee payments have expended and/or distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

All notices and communications herein required shall be in writing to the other party as

33. NOTICES

follows, unless expressly chan	ged in writing:					
CITY of	City Representative					
	Representative's Title					
	City Address					
	<u></u>					
County of Santa Clara	Director					
•	Consumer and Environmental Protection Agency					
	1553 Berger Drive					
	San José, California 95112					

34. CONTRACT EXECUTION

Unless otherwise prohibited by law or COUNTY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

Dat	Date: COUN	TY OF SANTA CLARA					
		S R. WILLIAMS Executive					
Dat	Date: "CITY	"					
		FOWN OFicipal corporation					
AP	APPROVED AS TO FORM AND LEGALITY:						
	WILLIE NGUYEN Deputy County Counsel						
Atta	Attachments:						
A	A Projected Fiscal Years 2025, 2026, and 2027 ABS Jurisdiction	939 HHW Fee Funding Allocation by					
В		Estimated HHW Program Fixed Costs for Fiscal Years 2025, 2026, and 2027					
C	E	HHW Schedule of Collection Events for Fiscal Year 2025					
D		Household Hazardous Waste Emergency Collection Plan					
E	Exhibit-E Insurance Requirements for Environment	ental Services Contracts					

ATTACHMENT A: PROJECTED FISCAL YEARS 2025-2027 ANNUAL HHW FEE FUNDING ALLOCATION BY JURISDICTION

TONDI	TOAL	LOC.	1110	. 1	DIU		VIOD1		11011										
Cities	No of Households	4% of Households	Disposal Tonnage		B939 HHW ee per Ton \$2.60	,	Fixed Cost per HH \$5.07		SJ Facility Surcharge \$8.09		Variable Cost per Car \$88.02	W	Abandoned aste Disposal Cost per HH \$0.05	Di	oretionary Fund		Estimated gmentation	Anticipated Participation	Anticipated Participation at SJ Facility
											-	T				-	8		
Campbel	18,451	738	37,162	s	96,620	s	93,494	s	5,971	s	48,725	s	923	s	(52,493)	\$	80,093	1,158	1,058
Cupertino	21,787	871	29,930	s	77,819	s	110,398	s	7,050	s	57,535	s	1,089	s	(98,254)	\$	133,081	1,399	938
												Г							
Gilroy	18,784	751	60,599	s	157,558	s	95,181	s	6,079	\$	49,605	s	939	\$	5,754	\$	27,110	1,162	154
Los Altos	11,871	475	16,597	s	43,153	s	60,152	s	3,842	\$	31,349	s	594	s	(52,784)	\$	96,037	1,130	784
Los Altos Hills	3,151	128	5.589	s	14,531	s	15.987	s	1.020	s	8.321	s	158	s	(10,934)	s	22,221	297	174
												Ť					,		
Los Gatos	14,008	580	23,770	S	61,802	S	70,970	\$	4,532	S	36,987	S	700	S	(51,388)	\$	94,219	1,209	1,199
Milpitas	25,769	1,031	59,694	s	155,204	s	130,575	s	8,339	s	68,051	s	1,288	s	(53,049)	\$	79,341	1,429	989
Monte Sereno	1,353	54	735	s	1,911	s	6,856	s	438	s	3,573	s	68	s	(9,024)	s	17,334	180	185
										Ť	-								
Morgan Hill	16,178	647	44,235	S	115,011	S	81,978	\$	5,235	S	42,723	\$	809	\$	(15,732)	\$	75,407	1,551	392
Mountain View	39,194	1,588	51,011	s	132,629	s	198,602	s	12,684	s	103,504	s	1,960	s	(184,120)	s	169,083	1,340	772
Pab Ato	29,285	1,171	45,188	s	117,489							s	1,484	\$	116,025				
San Jose	345.798	13.832	827,019	s	2,150,250	s	1,752,210	s	111,904	s	913,183	s	17.290	s	(844 337)	\$	1,186,168	22,039	20,539
0011000	010,700	10,002	521,010	Ĭ	2,100,200	_	1,102,210	Ť	111,001	Ť	010,100	Ť	11,200	Ť	(011,001)	Ť	1,100,100	22,000	20,000
Santa Clara	53,370	2,135	113,691	S	295,597	\$	270,434	\$	17,271	\$	140,939	s	2,669	\$	(135,715)	\$	237,003	3,669	2,010
Saratoga	11,353	454	17,897	s	46,533	s	57,527	s	3,674	s	29,981	s	568	s	(45,217)	\$	76,767	932	800
																[
Sunnyvale	63,111	2,524	99,239	\$	258,021	\$	319,793	\$	20,423	S	166,664	S	3,158	S	(252,014)	\$	262,351	2,681	1,533
Unincorporated	18,558	742	45,693	s	118,802	s	94,038	s	6,006	s	49,008	s	928	s	(31,176)	\$	80,009	1,482	845
Total	692,019	27,681	1,478,050	\$	3,842,931	\$	3,358,172	S	214,487	\$	1,750,148	\$	34,601	\$	(1,514,457)	\$	2,636,224	41,658	32,348

Notes: No of HH and Disposal tonnage are based on FY2022-2023 actuals. Anticipated participation and anticipated participation at SJ facility are based on 10% increase from FY2022-2023 actual participation

ATTACHMENT B: ESTIMATED ANNUAL HHW PROGRAM FIXED COSTS FOR FISCAL YEARS 2025, 2026, AND 2027

	FIXED COST	
Staff Salary and Benefits		\$ 1,926,605.10
County Admin Overhead		\$667,328
County Counsel		\$17,745
Phones and Communications		\$13,787
Facilities Lease Costs	San Jose	\$215,880
Vehicle Costs		\$44,363
Office Supplies and postage		\$4,430
Maintenance, Software		\$150,150
HHW Hotline		\$150,000
Garbage & Utilities		\$47,434
Membership & Dues		\$20,475
Training & Conference		\$6,825
Safety Wear		\$28,392
Printing		\$11,632
Other Services & Supplies		\$53,127
ESTIMATED ANNUAL TOTAL		\$ 3,358,171.77

ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION EVENTS FOR FISCAL YEAR 2025-2027*

2024/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Wed	3	San Jose	Permanent	
_	Thursday	4	No Event	No Event	4th OF JULY
	Fri,Sat	5,6	San Jose	Permanent	
	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri	11,12	San Jose	Permanent	
	Saturday	13	Sunnyvale	Temporary	Confirmed
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
August	Thurs,Fri,Sat	1,2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri	22,23	San Jose	Permanent	
	Saturday	24	Mountain View	Temporary	Confirmed
	Thurs,Fri	29,30	San Jose	Permanent	
	Saturday	31	No Event	No Event	LABOR DAY WEEKEND
September	Thurs,Fri,Sat	5,6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri	19,20	San Jose	Permanent	
	Saturday	21	Santa Clara	Temporary	Confirmed
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
October	Thurs,Fri,Sat	3,4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11	San Jose	Permanent	
	Saturday	12	Sunnyvale	Temporary	Confirmed
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
	Thurs	31	San Jose	Permanent	
November	Fri, Sat	1,2	San Jose	Permanent	
	Thurs,Fri, Sat	7,8,9	San Martin	Permanent	
	Thurs	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	No Event	No Event	THANKSGIVING
December	Fri, Sat	5,6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Wed, Thurs	25,26	No Event	No Event	CHRISTMAS
	Fri,Sat	27,28	San Jose	Permanent	

ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION EVENTS FOR FISCAL YEAR 2025-2027* (Continued)

2025/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Wed	1	No Event	No Event	NEW YEAR'S
	Thurs,Fri, Sat	2,3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri	9,10	San Jose	Permanent	
	Saturday	11	Sunnyvale	Temporary	TBD
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	TBD
	Thurs,Fri	30,31	San Jose	Permanent	
February	Sat	1	San Jose	Permanent	
	Thurs,Fri, Sat	6,7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri	27,28	San Jose	Permanent	
March	Sat	1	San Jose	Permanent	
	Thurs,Fri, Sat	6,7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
April	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri, Sat	3,4,5	San Martin	Permanent	
	Thurs,Fri	10,11	San Jose	Permanent	
	Saturday	12	Los Altos	Temporary	TBD
	Thurs,Fri	17,18	San Jose	Permanent	
	Saturday	19	Sunnyvale	Temporary	TBD
	Thurs,Fri	24,25	San Jose	Permanent	
	Saturday	26	Santa Clara	Temporary	TBD
May	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri, Sat	1,2,3	San Martin	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri	22,23	San Jose	Permanent	
	Saturday	24	No Event	No Event	MEMORIAL DAY WEEKEND
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
June	Thurs,Fri, Sat	5,6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri	12,13	San Jose	Permanent	
	Saturday	14	Milpitas	Temporary	TBD
	Thurs, Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	

^{*}SUBJECT TO CHANGE

ATTACHMENT D:

COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. PURPOSE

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and California Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification:

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

DTSC is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a centralized

location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- <u>Neighborhood Drop-off Events:</u> The County is able to provide localized service to specific areas
 in need of household hazardous waste collection services. The County will work with City Solid
 Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a
 specific event, waste will be transported by County staff or a hazardous waste contractor to an
 appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- <u>CoHHWCF</u>: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

San Martin, 13055 Murphy Ave, San Martin, CA 95046 San Jose, 1608 Las Plumas, San Jose, CA 95133

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the City's responsibility to pursue reimbursement from State or Federal agencies.

California Governor's Office of Emergency Services (Cal OES)

Cal OES is responsible for requesting assistan is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond ce on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from Cal OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. DTSC may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the Cal OES. Funding and assistance may be available from Federal agencies such as FEMA and the USEPA.

Damage estimates: The city should provide to the Cal OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or Cal OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from USEPA.

REFERENCES

California Integrated Waste Management Board, <u>Integrated Waste Management Disaster Plan:</u> Guidance for local government on disaster debris management, January 1997.

Emergency Planning Contacts and Personnel

Primary County Contact: County of Santa Clara

Consumer and Environmental Protection Agency

Household Hazardous Waste Program

ATTN: Hazardous Materials Program Manager

(408)-918-1967

For Non-Emergency after-hours, contact County Communications at: (408) 977-3220

Responsibility: Coordinate and establish proper collection and disposal methods for household hazardous waste. Assess the need for HHW and VSQG services in consultation with the City and other operations.

Cal OES Public Safety Communications Main Office

601 Sequoia Pacific Boulevard Sacramento, CA 95811 (916) 894-5209

Cal OES

3650 Schriever Avenue Mather, CA 95655-4203 (916) 845-8510

CHEMTREC Emergency number, (800) 424-9300

Non-emergency (800) 262-8200

Chemtrec is a public service established by the Chemical Manufacturers Association. The Center was developed as a resource for obtaining immediate emergency response information to mitigate accidental chemical releases, and as a means for emergency responders to obtain technical assistance from chemical industry product safety specialists, emergency response coordinators, toxicologists, physicians, and other industry experts to safely mitigate incidents involving chemicals.

EXHIBIT E

INSURANCE REQUIREMENTS FOR ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any third party claim, liability, loss, injury or damage to the extent arising out of, or in connection with, performance of this AGREEMENT by Contractor and/or its agents or employees, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this AGREEMENT to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this AGREEMENT and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this AGREEMENT, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this AGREEMENT, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the AGREEMENT until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

Should any of the requested policies be cancelled before the expiration date, notice will be provided in accordance with policy provisions.

D. Insurance Required

- 1. <u>Commercial General Liability Insurance</u> for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence \$1,000,000
 - b. General aggregate \$2,000,000
 - c. Products/Completed Operations aggregate \$2,000,000
 - d. Personal Injury \$1,000,000
- 2. <u>General liability coverage shall include:</u>
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
- 3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, (Commercial General Liability Additional Insured provided pursuant to Additional Insured Endorsement #1), which shall read:

"County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds provided pursuant to Additional Insured Endorsement Form #1."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided

under this policy. Public Entities may also be added to the Additional Insured Endorsement Form #1 as applicable by way of insurance addendum, and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

- 5. Workers' Compensation and Employer's Liability Insurance
 - a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
 - b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.
- 6. <u>Contractors Pollution Liability Insurance</u>

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

- 7. <u>Professional Errors and Omissions Liability Insurance</u> (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)
 - a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim/aggregate.
 - b. If coverage contains a deductible or self-retention, it shall be reviewed and approved by the County's Insurance Manager prior to contract execution.
 - Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this AGREEMENT.

8. <u>Claims Made Coverage</u>

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims. If coverage terminated Run-Off (Tail) coverage will be purchased for three (3) years following termination.

E. Special Provisions

The following provisions shall apply to this AGREEMENT:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this AGREEMENT, including but not limited to the provisions concerning indemnification.
- The County acknowledges that some insurance requirements contained in this AGREEMENT may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this AGREEMENT. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this AGREEMENT be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this AGREEMENT, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this AGREEMENT, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this AGREEMENT, at the option of County.

MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Fourth Amendment to the

Agreement for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services to Increase the Contract Amount for Fiscal Year 2023/24 in the Amount of \$55,000, for a Total Agreement Amount Not to Exceed \$1,008,948

RECOMMENDATION:

Authorize the Town Manager to execute a fourth amendment to the Agreement for Services with St. Francis Electric, Inc. for traffic signal and streetlight maintenance and underground service alert locating services to increase the contract amount for Fiscal Year 2023/24 in the amount of \$55,000, for a total agreement amount not to exceed \$1,008,948.

BACKGROUND:

The Town of Los Gatos contracts services for the routine maintenance and repair of traffic signals and streetlights, and underground utility locating services relating the electric services within the Town's jurisdiction. Traffic signal and streetlight contract services include repairs on an as-needed basis, periodic inspections, testing of the equipment, and lamp replacements. Underground utility locating services involve responding to Underground Service Alert (USA) requests to identify and mark the Town's underground infrastructure at construction sites prior to any digging operations. Staff has determined that contractual services are the most cost-effective delivery method due to technical expertise and specialty equipment required for this work.

On September 15, 2020, the Town Council authorized the execution of a five-year Agreement for Services (FY 2020/21 through FY 2024/25) with St. Francis Electric, Inc. to provide

PREPARED BY: Gary Heap

Town Engineer

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

PAGE 2 OF 3

SUBJECT: Authorize the Town Manager to Execute a Fourth Amendment to the Agreement

for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight

Maintenance and Underground Service Alert Locating Services

DATE: May 1, 2024

BACKGROUND:

traffic signal and streetlight repair and maintenance and USA locating services for a total agreement amount not to exceed \$675,000 (\$135,000 per year).

On August 3, 2021, the Town Council authorized a first amendment to the Agreement for an increase of \$8,567 for FY 2020/21 to cover the cost overage from a high number of USA requests received for various development and Town capital improvement projects for a total agreement amount not to exceed \$683,567.

On March 15, 2022, the Town Council authorized a second amendment to the Agreement for: a) an increase of \$67,000 for FY 2021/22 to cover cost overages for routine and response maintenance and USA requests; and b) an increase of \$50,000 per year to the base compensation of the agreement (\$150,000 total) for remaining three fiscal years. This resulted in a total agreement amount of \$900,567.

On May 12, 2023, the Town Council authorized a third amendment to the Agreement for: a) an increase of \$53,381 for FY 2022/23 to cover cost overages for response repair and maintenance services. This resulted in a total agreement amount of \$953,948.

Attachment 2 contains all of the amendments in reverse chronological order and the original agreement. The table below depicts the original contract and amendment amounts, increasing the total five-year contract amount not to exceed \$1,008,948.

Original Contract	\$675,000	Original Five Year Agreement
First Amendment	8,567	For FY20/21 Services
Second Amendment	67,000	For FY 2021/22 Services and
	150,000	For FY 2022/23 to FY 2024/25 Base Services
Third Amendment	53,381	For FY 2022/23 Services
Fourth Amendment		
(Proposed)	55,000	For FY 2023/24 Services
Total	\$1,008,948	

DISCUSSION:

The service needs and resulting costs each fiscal year depend on the number of traffic signal and streetlight repair and maintenance calls and USA requests. The budget for response repair and maintenance services has been exhausted for this fiscal year, with pending invoices that

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to Execute a Fourth Amendment to the Agreement

for Services with St. Francis Electric, Inc. for Traffic Signal and Streetlight

Maintenance and Underground Service Alert Locating Services

DATE: May 1, 2024

DISCUSSION (continued):

need to be paid. The Town encountered numerous traffic signal repair issues during this current fiscal year due to traffic crashes that damaged equipment; more funds are needed to replace and maintain traffic signal cabinets, conduits, wiring, and poles for the remainder of the fiscal year.

When an incident occurs, such as a traffic signal controller being damaged or a street light knock-down, the Town attempts to recover the cost of the repair from the driver's insurance if the driver remains on scene. Those funds are then collected and transferred to the General Fund Appropriated Reserve (GFAR) so they can be used to fund the repairs conducted by St. Francis. The contract with St. Francis needs to reflect the amount of funds needed for the repairs.

This fourth amendment is for an additional \$55,000 for the response maintenance repairs needed for the remainder of FY 2023/24 to continue the contract services by St. Francis Electric without disruptions.

CONCLUSION:

Staff recommends Town Council authorization of the fourth contract amendment for the traffic signal and streetlight repair services would allow St. Francis Electric to continue providing the contract services in FY 2023/24. At this time, the amount allocated for FY 2024/25 should be sufficient to meet the service needs in the last year of this Agreement.

COORDINATION:

This report was coordinated with the Finance Department.

FISCAL IMPACT:

There are sufficient funds available in the FY2023/24 Parks and Public Works Street Program Operating Budget for the contract amendment.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

- 1. Fourth Amendment to Agreement for Services with St. Francis Electric, Inc.
- 2. Exhibit A to Attachment 1 Containing the Amendments in Reverse Chronological Order and the Original Agreement

FOURTH AMENDMENT TO AGREEMENT FOR SERVICES

This FOURTH AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification on this 7th day of May 2024 and amends that certain THIRD AMENDMENT TO AGREEMENT FOR SERVICES dated June 6, 2013, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Service Provider") identified as a Partnership and whose address is 975 Carden Street, San Leandro, CA 94577.

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on September 15, 2020 ("Agreement"), a First Amendment to Agreement for Services on July 22, 2021, a Second Amendment to Agreement for Services on March 15, 2022, a Third Amendment to Agreement for Services on June 6, 2023, copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to increase the compensation of the agreement.

AMENDMENT

1. Section 2.6 <u>Compensation</u> is amended to read as follows:

Additional compensation for Traffic Signal and Streetlight Maintenance and Underground Service Alert Locating Services for Fiscal Year 2023/24 shall be increased by \$55,000 for a total agreement amount **not to exceed \$1,008,948**. Payment shall be based upon Town approval of each task.

2. All other terms and conditions of the Agreement remain in full force and effect.

ATTACHMENT 1

IN WITNESS WHEREOF, the Town and Supplier have executed this Amendment.

Town of Los Gatos by:	St. Francis Electric, by:
Laurel Prevetti, Town Manager	Guy Smith, Vice President
Recommended by:	Approved as to Form:
Nicolle Burnham Parks and Public Works Director	Gabrielle Whelan, Town Attorney
Attest:	
Wendy Wood, CMC, Town Clerk	

THIRD AMENDMENT TO AGREEMENT FOR SERVICES

This THIRD AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 6th day of June 2023 and amends that certain SECOND AMENDMENT TO AGREEMENT FOR SERVICES dated March 15, 2012, made by and between the TOWN OF LOS GATOS, ("Town,") and ST. FRANCIS ELECTRIC, ("Service Provider") identified as a Partnership and whose address is 975 Carden Street, San Leandro, CA 94577.

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on September 15, 2020 ("Agreement"), a First Amendment to Agreement for Services on July 22, 2021, a Second Amendment to Agreement for Services on March 15, 2022, copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to increase the compensation and to add the minimum scope of insurance of the agreement.

AMENDMENT

1. Section 2.6 <u>Compensation</u> is amended to read as follows:

Additional compensation for Response Maintenance Repair Services for Fiscal Year 2022/23 shall be increased by \$53,381 for a total agreement amount **not to exceed \$953,948.** Payment shall be based upon Town approval of each task.

2. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

All other terms and conditions of the Agreement remain in full force and effect.

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DocuSigned by:

Wendy Wood, CMC, Town Clerk

ITEM NO. 7.

IN WITNESS WHEREOF, the Town and Supplier have executed this Amendment.

Town of Los Gatos by:	St. Francis Electric, by:
Laurel frevetti	DocuSigned by:
853FEEA2EB39470	#BIEBBDADZ494
Laurel Prevetti, Town Manager	Guy Smith, Vice President
Recommended by:	Approved as to Form:
DocuSigned by:	DocuSigned by:
Molle Burnham	Gabrielle Whelan
Nicolle Burnham	Gabrielle Whelan, Town Attorney
Parks and Public Works Director	
Attest:	

SECOND AMENDMENT TO AGREEMENT FOR SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 15th day of March 2022 and amends that certain AGREEMENT FOR SERVICES dated September 15, 2020, and FIRST AMENDMENT TO AGREEMENT dated July 22, 2021, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **ST. FRANCIS ELECTRIC**, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on November 1, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Service Provider entered into First Amendment to the Agreement for Services on August 3, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town desires to make second amendment to the Agreement to the compensation for Services in Fiscal Year 2021/22 and Fiscal Years 2022/23 through Fiscal Year 2024/25.

AMENDMENT

- 1. 2.6 <u>Compensation</u> is amended to read as follows:
 - For Fiscal year 2021/22, the annual compensation for Services shall be increased by \$67,000 for a total annual amount of \$202,000; and
 - For Fiscal Year 2022/23 to Fiscal Year 2024/25, the annual compensation for Services shall be increased by \$50,000 for a total annual amount of \$185,000 for the three fiscal years, for a total revised contract amount not to exceed \$900,567.
- 2. All other terms and conditions of the Agreement remain in full force and effect.

ITEM NO. 7.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

Town of Los Gatos, by: DocuSigned by: 4/25/2022 Laurel Prevetti **Town Manager** Recommended by: DocuSigned by: Timm Borden 4/16/2022 Timm Borden Interim Director of Parks and Public Works Approved as to Form: DocuSigned by: Robert W. Schultz 4/22/2022 Robert Schultz, Town Attorney Attest: Shelley Neis 4/25/2022

Shelley Neis, MMC, CPMC, Town Clerk

St. Francis Electric, by:

Docusigned by:
Gy Smith 4/15/2022

Guy Smith / Vice President

Name/Title

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR SERVICES is dated for identification this 22nd day of July 2021 and amends that certain AGREEMENT FOR SERVICES dated June 5, 2018, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **ST. FRANCIS ELECTRIC**, ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on November 1, 2020 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement to the compensation of the agreement for Fiscal Year 2020/21 for Underground Service Alert (USA) Locating Services.

AMENDMENT

- 1. 2.6 Compensation is amended to read as follows:
 - Compensation for Underground Service Alert (USA) Locating Services for Fiscal Year 2020/21 shall be increased in an amount of \$8,567, for a total of \$143,567, for a total revised contract amount not to exceed \$683,567.
- 2. All other terms and conditions of the Agreement remain in full force and effect.

ITEM NO. 7.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

Town of Los Gatos, by:					
DocuSigned by:					
laurel Prevetti	8/3/2021				
Laurel Prevetti					
Town Manager					
Recommended by:					
DocuSigned by:					
Matt Molly	8/3/2021				
Matt Morley					
Director of Parks and P	ublic Works				
Approved as to Form:					
DocuSigned by:					
Robert W. Schultz	8/3/2021				
Robert Schultz, Town A	Attorney				
Attest:					
DocuSigned by:					
Shelley Neis	8/4/2021				
Sheffey Neds, MMC, CP	MC, Town Clerk				

St. Francis Electric, by:

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 15th of September 2020, and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and St. Francis Electric ("Service Provider"), whose address is 975 Carden St., San Leandro, CA. 94577. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.
- 1.2 Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Town desires to engage Service Provider to provide a comprehensive Street Lighting and Traffic Signal Preventive Maintenance and Repair Services.
- 1.4 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 <u>Scope of Services</u>. Service Provider shall provide services as described in that certain Proposal sent to the Town on August 26, 2020, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 <u>Term and Time of Performance</u>. The effective date of this Agreement shall begin November 1, 2020 and will continue through June 30, 2025, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 <u>Compliance with Laws</u>. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 <u>Sole Responsibility</u>. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

ITEM NO. 7.

2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

2.6 Compensation:

Compensation for year one shall not exceed \$135,000. Compensation for future years will be the base cost of \$135,000 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount. Payment shall be based upon Town approval of each task.

2.7 <u>Billing</u>. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos Attn: Accounts Payable P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 <u>Availability of Records</u>. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.
- 2.9 <u>Assignability and Subcontracting</u>. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 <u>Equal Employment Opportunity</u>. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall

discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 <u>All Coverages</u>. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 <u>Workers' Compensation</u>. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 <u>Indemnification</u>. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

IV. GENERAL TERMS

- 4.1 <u>Waiver</u>. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 <u>Governing Law</u>. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 <u>Termination of Agreement</u>. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15)

written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

- 4.4 <u>Prevailing Wages</u>. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.
 - 4.4.1 The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
 - 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
 - 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
 - 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such

- payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 <u>Amendment</u>. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.

- 4.6 <u>Disputes</u>. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 <u>Notices</u>. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos Attn: Town Clerk 110 E. Main Street Los Gatos, CA 95030

Service Provider: St. Francis Electric 975 Carden St. San Leandro, CA. 94577

or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.

- 4.8 <u>Order of Precedence</u>. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 <u>Entire Agreement</u>. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by: DocuSigned by: 10/6/2020 Laurel Prevetti Laurel Prevetti, Town Manager Recommended by: DocuSigned by: 9/30/2020 Matt Morley ਅਬਾਪਾਅਆਂ ਦੇ ਸ਼੍ਰੇ, Director of Parks and Public Works St. Francis by: DocuSigned by: Guy Smith 9/30/2020 4B1EB3DD40B2494... Vice President Title Approved as to Form: -DocuSigned by: 10/6/2020 Robert W. Schultz Robert Schultz, Town Attorney Attest: 10/6/2020 Shelley Neis, MMC, CPMC, Town Clerk



ITEM NO. 7.

Attachment 2: Signals/Streetlights Quote Summary 2020 Basic Services		St.	Francis Elec	tric	
Bid					Monthly
Item	Location	Description	Unit Price	Quantity	Cost
1	Los Gatos	Street Light Maintenance	\$1.10	1600	\$1,760
2	Los Gatos	Traffic Signal PM	\$120.00	31	\$3,720
3	Los Gatos	Parking Lot Light Maintenance	\$1.10	119	\$131
4	Los Gatos	USA Locating	\$140.00		
5					
6					
7					
8					
9					
			Monthly	Total	\$5,611
			Annual	Total	\$67,331
		Additional Services T & M			Per Hour
10					
11					
12					
13					



TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-

9921):

a. Award and Authorize the Town Manager to Execute a Public Works Contract with Villalobos and Associates in the Amount of \$409,480;

b. Authorize Town Manager to Execute Change Orders in an Amount Not to Exceed Ten Percent (10%) of the Contract Award Amount;

c. Authorize an Expenditure Budget Transfer in an Amount of \$185,331 from the Annual Street Repair and Resurfacing Project (CIP No. 811-9901); and

d. Approve the Project Construction Plans as Required by Government Code 830.6 – Design Immunity

RECOMMENDATION:

2024 Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921):

- a. Award and authorize the Town Manager to execute a public works contract with Villalobos and Associates (Attachment 1) in the amount of \$409,480;
- b. Authorize Town Manager to execute change orders in an amount not to exceed ten percent (10%) of the contract award amount;
- c. Authorize an Expenditure Budget Transfer in an amount of \$185,331 from the Annual Street Repair and Resurfacing Project (CIP No. 811-9901); and
- d. Approve the Project Construction Plans as required by Government Code 830.6 Design Immunity

BACKGROUND:

The adopted Fiscal Year (FY) 2023/24-2027/28 Capital Improvement Program (CIP) Budget designates funding for the 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project

PREPARED BY: Gary Heap

Town Engineer

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

PAGE **2** OF **5**

SUBJECT: Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

DATE: May 1, 2024

BACKGROUND (continued):

(CIP No. 813-9921). The goal of this annually funded project is to replace and improve damaged or outdated curbs, gutters, sidewalks, driveways, and curb ramps within the Town's jurisdiction to address safety and operational issues and to improve accessibility.

For the 2024 Annual Curb, Gutter, and Sidewalk Maintenance (Concrete) Project, a large portion of the work focuses on replacing or retrofitting curb ramps for compliance with the Americans with Disabilities Act (ADA) and other accessibility requirements. Title II of the ADA obligates jurisdictions to upgrade non-conforming curb ramps when streets are resurfaced from one intersection to another. The United States Department of Justice has determined that surface treatments such asphalt overlay, rubber cape seal, and micro-surfacing trigger the requirement for ADA compliant curb ramps on associated streets.

DISCUSSION:

The 2024 project was advertised for bid on Friday, March 8, 2024. On April 3, 2024, bid packages were opened and two contractors submitted bids: RK Engineering and Villalobos and Associates. A summary of bid results is presented in Table 1 with Villalobos as the apparent low bidder. A completed Bid Summary is in Attachment 2.

Table 1. Bid Summary for 2024 Curb, Gutter, Sidewalk (CIP No. 813-9921)

	Base Bid	Add. Alt. 1	Add. Alt. 2	Total Bid Amount
Engineer's Estimate	\$454,000.00	\$60,000.00	\$23,400.00	\$537,400.00
RK Engineering	\$453,140.00	\$69,250.00	\$25,720.00	\$548,110.00
Villalobos and Associates	\$349,670.00	\$42,300.00	\$17,510.00	\$409,480.00

Following the bid opening, the Town received a Letter of Bid Advisory from the Foundation for Fair Contracting (FFC) (Attachment 3). In the letter, FFC made four specific allegations against Villalobos and Associates. Specifically:

- Ongoing Violations of Prevailing Wage Laws Resulting in Wage Theft
- Failure to Comply with Bid Specifications/Unfair Competitive Advantage
- Failure to Comply with Workforce Development and Formal Apprenticeship Programs
- Occupational Safety and Health Administration (OSHA) Violations Resulting in Fines Issued and Upheld

PAGE 3 OF 5

SUBJECT: Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

DATE: May 1, 2024

DISCUSSION (continued):

In response to the letter, staff met with Villalobos and Associates on April 16. In addition, Villalobos has provided a written response (Attachment 4). The concerns raised in FFC's letter have been reviewed by staff and evaluated independently based on the discussions with Villalobos. Staff has determined that Villalobos had reasonable responses to each of the allegations, and that they have put measures in place to ensure that these issues will not occur on this job. The discussion of the allegations follows:

- 1) Prevailing wage violations: Complaints of prevailing wage violations were made with regard to projects in Saratoga and Morgan Hill. For the Saratoga matter, Villalobos paid a penalty. The Morgan Hill matter is currently being investigated by the Department of Labor Standards Enforcement. A determination has not been made. Villalobos has taken recent steps to assure internal compliance with prevailing wage tracking, and assured Town staff that it will comply with prevailing wage laws. This requirement is described in Section 7.2, Prevailing Wage, in the draft contract between the Town and Villalobos and Associates.
- 2) <u>Failure to Comply with Bid Specifications/Unfair Competitive Advantage</u>: Town staff does not have any evidence that this has occurred with the Town's bid on this project or in other jurisdictions
- 3) Failure to Comply with Workforce Development and Formal Apprenticeship Programs:

 A complaint regarding failure to employ apprentices in another jurisdiction are currently being investigated by the Department of Labor Standards Enforcement. A determination has not been made. The Department of Industrial Relations (DIR) requires all public works contracts valued at \$30,000 or more to carry an obligation to hire apprentices. Villalobos has assured Town staff that it will comply with the State's apprenticeship requirements. This requirement is specified by the DIR, and Section 7.3, DIR Registration, requires the contractor to register with DIR for this project.
- 4) OSHA Violations: In reviewing the FFC allegations and bid documents submitted by Villalobos and Associates to the Town, staff noted that Villalobos had not claimed any past OSHA or Cal OSHA violations even though there had been a previous determination of an OSHA violation in another jurisdiction. Villalobos stated that this was an administrative oversight by the individual who filled out the bid form. If a future OSHA violation is filed for work being done in Los Gatos or another jurisdiction while Villalobos and Associates is under contract with the Town, the draft agreement includes language that requires the firm to notify the Town immediately of the violation. This error in the bid documents does not cause the bid to be unresponsive.

PAGE 4 OF 5

SUBJECT: Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

DATE: May 1, 2024

DISCUSSION (continued):

Based on the meeting with Villalobos and the follow up letter, staff believes that Villalobos is working to rectify these issues. In addition, the draft agreement with Villalobos and Associates contains safeguards to address all of the issues raised in the FFC letter. Villalobos and Associates was also awarded the Town's 2021 Curb, Gutter, and Sidewalk contract and completed the work without incident or issue. Based on this, staff recommends that the Town proceed with award to Villalobos and Associates.

During execution of the contract, PPW staff monitors work site safety consistent as the Department does with all contractors that perform Town-funded work. While the Town is not responsible for verifying that the correct wages are paid to the contractor's employees, Town staff are responsible for verifying the appropriate records are submitted to the State of California for their review, and this will be completed for the Villalobos contract.

Government Code 830.6 – Design Immunity states that neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body. Since this project was not brought to Town Council with a request to bid, at which time approval of the construction plans would have taken place, staff requests that the Town Council also approve the construction plans for this project. The project construction plans can be found at the following link: https://www.losgatosca.gov/108/Capital-Improvement-Program

CONCLUSION:

The proposed actions would allow the Town to proceed with executing an agreement for construction services with Villalobos and Associates to complete the annual curb, gutter and sidewalk work within the Town.

COORDINATION:

This memorandum has been coordinated with the Finance Department and the Town Attorney's Office.

PAGE **5** OF **5**

SUBJECT: Annual Curb, Gutter, and Sidewalk Maintenance Project (CIP No. 813-9921)

DATE: May 1, 2024

FISCAL IMPACT:

Curb, Gutter, and Sidewalk Maintenance Project 2024					
CIP No. 813-9921		Budget		Costs	
GFAR	\$	451,332			
Budget Transfer (Approved by Town Council on 11/21/23)	\$	(5,500)			
Budget Transfer (Approved by Town Council on 12/19/23)	\$	(35,150)			
Budget	\$	410,682			
2023 Project Construction Costs (7/1/23-7/3/23 Service)			\$	89,535	
Contract with Precision Concrete for Additional Sidewalk Repair Services			\$	44,000	
Misc. Expenses			\$	50	
Costs to Date			\$	133,585	
Current Available Balance			\$	277,097	
GFAR	\$	277,097			
Transfer from CIP #411-811-9901 - Annual Street Repair and Resurfacing		· · · · · · · · · · · · · · · · · · ·			
(Proposed with this Staff Report)	\$	185,331			
Budget	\$	462,428			
Construction - Public Works Contract (Requested with this Staff Report)			\$	409,480	
Construction Contingency - Public Works Contract (10%)			\$	40,948	
Temporary/Part-Time Staff			\$	12,000	
Additional Costs Proposed in this Staff Report			\$	462,428	
Available Balance			\$	-	

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA as being Categorically Exempt (Section 15301(c)). A Notice of Exemption has been filed.

Attachments:

- 1. Construction Agreement with Exhibit A Bid Summary
- 2. Bid Summary
- 3. Bid Advisory Letter from Foundation for Fair Contracting
- 4. Villalobos Response to FFC Claims

Contract

This public works contract ("Contract") is entered into by and between the Town of Los Gatos ("Town") and Villalobos & Associates ("Contractor"), for work on the FY 2023/24 Curb, Gutter, and Sidewalk Maintenance Project ("Project").

The parties agree as follows:

- **1. Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On April 2, 2024, Town authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
- 2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - **2.1** Notice Inviting Bids;
 - **2.2** Instructions to Bidders;
 - **2.3** Addenda, if any;
 - **2.4** Bid Proposal and attachments thereto;
 - **2.5** Contract;
 - **2.6** Payment and Performance Bonds;
 - **2.7** General Conditions;
 - **2.8** Special Conditions;
 - **2.9** Project Plans and Specifications;
 - **2.10** Change Orders, if any;
 - **2.11** Notice of Potential Award;
 - **2.12** Notice to Proceed;
 - **2.13** Locations of Work (Appendix A); and
 - 2.14 Standard Plans (Appendix B); and
 - **2.15** The 2010 Caltrans Standard Specifications, as revised.
- 3. Contractor's Obligations. Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents. Should the contractor receive any violations from OSHA on this project, the contractor is required to notify the Town immediately.

- **4. Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Town will pay Contractor \$409,480 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
- **5. Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 40 Working Days from the start date set forth in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
- **6. Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, Town will assess liquidated damages in the amount of \$2,000 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from Town's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

- **7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- **7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.
- **7.3 DIR Registration.** Town may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- **8.** Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

- 9. Conflicts of Interest. Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any Town ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- **10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of Town and are not entitled to participate in any health, retirement, or any other employee benefits from Town.
- 11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

Town:

Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030
Attn: Nicolle Burnham, Parks and Public Works Director nburnham@losgatosca.gov

Copy to: Janice Chin, Assistant Engineer jchin@losgatosca.gov

Contractor:

Name:	Villalobos & Associates	
Address:_		
Town/Sta	te/Zip:	
Phone:		
Attn:		
Email:		
Copy to:_		

12. General Provisions.

- **12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Town's written consent. This Contract is binding on Contractor's and Town's lawful heirs, successors and permitted assigns.
- **12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- **12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- **12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between Town and Contractor.
- **12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act. If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- **12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

TOWN:		Approved as to form:
s/	s/	
<u>Laurel Prevetti, Town Manager</u> Name, Title		Gabrielle Whelan, Town Attorney Name, Title
Date:		Date:
Attest:		
s/		
Wendy Wood, CMC, Town Clerk Name, Title		
Date:		
CONTRACTOR: Villalobos & Associates Business Name		
s/	Seal:	
Name, Title		
Date:		
Second Signature (See Section 12.8):		
s/		
Name, Title		

Date:				
Contract	tor's California L	icense Numbe	er(s) and Expirati	on Date(s)

END OF CONTRACT

Payment Bond

The Town of Los Gatos ("Town") and ____Villalobos & Associates ___ ("Contractor") have entered into a contract for work on the 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

- its surety ("Surety"), are bound to Town as obligee in an amount not less than \$409,480, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety's Obligation. If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
- **3. Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
- **4. Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
- **5. Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. Town waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn:		
Address:		
Town/State/Zip:		
Phone:		
Email:		

6. Law and Venue. This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for Town's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7.	Effective Date; Execution. This Bond	is entered into and is effective on
	20	
SUR	ETY:	
	and Name	
Busi	ness Name	
s/		
		Date
N	. Till	
ivam	e, Title	
(Atta	ch Acknowledgment with Notary Seal	and Power of Attorney)
CON	TRACTOR:	
CON	TRACTOR.	
,	Villalobos & Associates	
Busi	ness Name	
c /		
3/		Date
Nam	e, Title	
APP	ROVED BY TOWN:	
- 1		
S/		 Date
<u>N</u> ico	lle, Burnham, Director of Parks and Pul	
	e. Title	

END OF PAYMENT BOND

Performance Bond

The Town of Los Gatos ("Town") and _____Villalobos & Associates ____ ("Contractor") have entered into a contract for work on the 2024 Annual Curb, Gutter, and Sidewalk Maintenance Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

- 1. General. Under this Bond, Contractor as principal and _______, its surety ("Surety"), are bound to Town as obligee for an amount not less than \$409,480 to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety's Obligations. Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
- **3. Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
- 4. Application of Contract Balance. Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, Town will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by Town to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which Town is entitled under the terms of the Contract.
- **5. Contractor Default.** Upon written notification from Town of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with Town's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

- 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to Town, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense;
- 5.3 Waive its right to complete the Work under the Contract and reimburse Town the amount of Town's costs to have the remaining Work completed.
- 6. Surety Default. If Surety defaults on its obligations under the Bond, Town will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 7. Notice. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Town/State/Zip:		Address:	
Phone: Fax: Email: Email: B. Law and Venue. This Bond will be governed by California law, and venue for any dispu pursuant to this Bond will be in the Santa Clara County Superior Court, and no other pla Surety will be responsible for Town's attorneys' fees and costs in any action to enforce provisions of this Bond. 9. Effective Date; Execution. This Bond is entered into and effective on		Town/State/Zip:	
Email: Email: Email: B. Law and Venue. This Bond will be governed by California law, and venue for any dispu pursuant to this Bond will be in the Santa Clara County Superior Court, and no other pla Surety will be responsible for Town's attorneys' fees and costs in any action to enforce provisions of this Bond. 9. Effective Date; Execution. This Bond is entered into and effective on		Phone:	
8. Law and Venue. This Bond will be governed by California law, and venue for any dispu pursuant to this Bond will be in the Santa Clara County Superior Court, and no other plants Surety will be responsible for Town's attorneys' fees and costs in any action to enforce provisions of this Bond. 9. Effective Date; Execution. This Bond is entered into and effective on			
pursuant to this Bond will be in the Santa Clara County Superior Court, and no other plane Surety will be responsible for Town's attorneys' fees and costs in any action to enforce provisions of this Bond. 9. Effective Date; Execution. This Bond is entered into and effective on			
	8.	pursuant to this Bond will be in the Santa Clara County Superior Court, Surety will be responsible for Town's attorneys' fees and costs in any a	and no other place.
Business Name s/ Date	9.	•	
s/ Date	SUR	SURETY:	
	Busi	Business Name	
	s/		
Name, Title		Date	
	Nan	Name, Title	

(Attach Acknowledgment with Notary Seal and Power of Attorney)

9.

CONTRACTOR:		
Villalobos & Associates		
Business Name		
s/		
	Date	
Name, Title		
APPROVED BY TOWN:		
s/	_	
	Date	
Nicolle, Burnham, Director of Parks and Pul	olic Works	
Name, Title		

END OF PERFORMANCE BOND

Town of Los Gatos Parks and Public Works Department #813-9921 2024 Annual Curb, Gutter, and Sidewalk Maintenance

BASE BID:			Villalobos	& Associates	
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION
1.	Traffic Control	L.S.	1	\$7,000.00	\$7,000.00
2.	Adjust Utility to Grade (Revocable)	Ea.	1	\$250.00	\$250.00
3.	Clearing and Grubbing	L.S.	1	\$7,000.00	\$7,000.00
4.	Remove and Replace Curb and Gutter	L.F.	1,000	\$60.00	\$60,000.00
5.	Remove and Replace Rolled Curb	L.F.	50	\$56.00	\$2,800.00
6.	Remove and Replace Sidewalk	S.F.	400	\$19.00	\$7,600.00
7.	Remove and Replace Cross Gutter (Revocable)	S.F.	50	\$54.00	\$2,700.00
8.	Remove and Replace Hardscape (Revocable)	S.F.	100	\$20.00	\$2,000.00
9.	Remove and Replace Commercial Concrete Driveway (Revocable)	S.F.	200	\$23.00	\$4,600.00
10.	Remove and Replace Residential Concrete Driveway	S.F.	180	\$22.00	\$3,960.00
11.	Install New Curb Ramp-Case B	Ea.	24	\$5,300.00	\$127,200.00
12.	Install New Curb Ramp-Case C	Ea.	15	\$5,300.00	\$79,500.00
13.	Install New Curb Ramp-Case F	Ea.	3	\$5,300.00	\$15,900.00
14.	Install New Curb Ramp-Case G	Ea.	2	\$5,300.00	\$10,600.00
15.	Install New Curb Ramp-Type B Passageway	Ea.	2	\$4,500.00	\$9,000.00
16.	Paint Red Curb (Revocable)	L.F.	100	\$5.00	\$500.00
17.	Remove and Replace Tree (Revocable)	Ea.	4	\$2,000.00	\$8,000.00
18.	Install Root Barrier	L.F.	60	\$11.00	\$660.00
19.	Remove and Install New Sign and Post (Revocable)	Ea.	2	\$200.00	\$400.00
		BASE BID TOTAL	\$349,670.00		

ADD. ALTERNATE 1:				Villalobos	& Associates
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION
A1.1.	Remove and Replace Curb and Gutter	L.F.	90	\$60.00	\$5,400.00
A1.2.	Remove and Replace Sidewalk	S.F.	1,200	\$19.00	\$22,800.00

				ADD. ALT. 1 TOTAL	\$42,300.00
A1.4.	Remove and Replace Residential Concrete Driveway	S.F.	550	\$22.00	\$12,100.00
A1.3.	Remove and Replace Hardscape	S.F.	100	\$20.00	\$2,000.00

ADD. A	LTERNATE 2:	Villalobos & Associates			
ITEM NO	ITEM DESCRIPTION	EST. QTY.	UNIT PRICE	EXTENSION	
A2.1.	Remove and Replace Curb and Gutter	L.F.	80	\$60.00	\$4,800.00
A2.2.	Remove and Replace Sidewalk	S.F.	390	\$19.00	\$7,410.00
A2.3.	Install New Curb Ramp-Case G	Ea.	1	\$5,300.00	\$5,300.00
				ADD. ALT. 2 TOTAL	\$17,510.00

Town of Los Gatos Parks and Public Works Department #813-9921 2024 Annual Curb, Gutter, and Sidewalk Maintenance Certified Bid Tabulation Bid Opening: April 3, 2024 at 3:00 pm

BASE E	BID:		Engineer	's Estimate	Villalobos	& Associates	RK Engineering		
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	Traffic Control	L.S.	1	\$20,000.00	\$20,000.00	\$7,000.00	\$7,000.00	\$40,000.00	\$40,000.00
2.	Adjust Utility to Grade (Revocable)	Ea.	1	\$1,000.00	\$1,000.00	\$250.00	\$250.00	\$1,500.00	\$1,500.00
3.	Clearing and Grubbing	L.S.	1	\$15,000.00	\$15,000.00	\$7,000.00	\$7,000.00	\$5,000.00	\$5,000.00
4.	Remove and Replace Curb and Gutter	L.F.	1,000	\$120.00	\$120,000.00	\$60.00	\$60,000.00	\$125.00	\$125,000.00
5.	Remove and Replace Rolled Curb	L.F.	50	\$30.00	\$1,500.00	\$56.00	\$2,800.00	\$150.00	\$7,500.00
6.	Remove and Replace Sidewalk	S.F.	400	\$20.00	\$8,000.00	\$19.00	\$7,600.00	\$32.00	\$12,800.00
7.	Remove and Replace Cross Gutter (Revocable)	S.F.	50	\$40.00	\$2,000.00	\$54.00	\$2,700.00	\$62.00	\$3,100.00
8.	Remove and Replace Hardscape (Revocable)	S.F.	100	\$60.00	\$6,000.00	\$20.00	\$2,000.00	\$35.00	\$3,500.00
9.	Remove and Replace Commercial Concrete Driveway (Revocable)	S.F.	200	\$50.00	\$10,000.00	\$23.00	\$4,600.00	\$45.00	\$9,000.00
10.	Remove and Replace Residential Concrete Driveway	S.F.	180	\$35.00	\$6,300.00	\$22.00	\$3,960.00	\$38.00	\$6,840.00
11.	Install New Curb Ramp-Case B	Ea.	24	\$6,000.00	\$144,000.00	\$5,300.00	\$127,200.00	\$4,000.00	\$96,000.00
12.	Install New Curb Ramp-Case C	Ea.	15	\$6,000.00	\$90,000.00	\$5,300.00	\$79,500.00	\$4,900.00	\$73,500.00
13.	Install New Curb Ramp-Case F	Ea.	3	\$6,000.00	\$18,000.00	\$5,300.00	\$15,900.00	\$4,600.00	\$13,800.00
14.	Install New Curb Ramp-Case G	Ea.	2	\$6,000.00	\$12,000.00	\$5,300.00	\$10,600.00	\$4,800.00	\$9,600.00
15.	Install New Curb Ramp-Type B Passageway	Ea.	2	\$6,000.00	\$12,000.00	\$4,500.00	\$9,000.00	\$5,500.00	\$11,000.00
16.	Paint Red Curb (Revocable)	L.F.	100	\$10.00	\$1,000.00	\$5.00	\$500.00	\$18.00	\$1,800.00
17.	Remove and Replace Tree (Revocable)	Ea.	4	\$5,000.00	\$20,000.00	\$2,000.00	\$8,000.00	\$7,000.00	\$28,000.00
18.	Install Root Barrier	L.F.	60	\$300.00	\$18,000.00	\$11.00	\$660.00	\$50.00	\$3,000.00
19.	Remove and Install New Sign and Post (Revocable)	Ea.	2	\$600.00	\$1,200.00	\$200.00	\$400.00	\$1,100.00	\$2,200.00
				BASE BID TOTAL	\$506,000.00	BASE BID TOTAL	\$349,670.00	BASE BID TOTAL	\$453,140.00

ADD. A	LTERNATE 1:		Engineer's Estimate		Villalobos	& Associates	RK Eng	ineering	
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION	UNIT PRICE	I EXTENSION I		EXTENSION
A1.1.	Remove and Replace Curb and Gutter	L.F.	90	\$120.00	\$24,000.00	\$60.00	\$5,400.00	\$125.00	\$11,250.00
A1.2.	Remove and Replace Sidewalk	S.F.	1,200	\$20.00	\$10,800.00	\$19.00	\$22,800.00	\$28.00	\$33,600.00
A1.3.	Remove and Replace Hardscape	S.F.	100	\$60.00	\$6,000.00	\$20.00	\$2,000.00	\$35.00	\$3,500.00
A1.4.	1.4. Remove and Replace Residential Concrete Driveway		550	\$35.00	\$19,250.00	\$22.00	\$12,100.00	\$38.00	\$20,900.00
					\$60,050.00	ADD. ALT. 1 TOTAL	\$42,300.00	ADD. ALT. 1 TOTAL	\$69,250.00

Town of Los Gatos Parks and Public Works Department #813-9921 2024 Annual Curb, Gutter, and Sidewalk Maintenance

Certified Bid Tabulation Bid Opening: April 3, 2024 at 3:00 pm

ADD. A	LTERNATE 2:		Engineer's Estimate		Villalobos	& Associates	RK Engineering		
ITEM NO	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
A2.1.	Remove and Replace Curb and Gutter	L.F.	80	\$120.00	\$9,600.00	\$60.00	\$4,800.00	\$125.00	\$10,000.00
A2.2.	Remove and Replace Sidewalk	S.F.	390	\$20.00	\$7,800.00	\$19.00	\$7,410.00	\$28.00	\$10,920.00
A2.3.	Install New Curb Ramp-Case G	Ea.	1	\$6,000.00	\$6,000.00	\$5,300.00	\$5,300.00	\$4,800.00	\$4,800.00
					\$23,400.00	ADD. ALT. 2 TOTAL	\$17,510.00	ADD. ALT. 2 TOTAL	\$25,720.00

	GRAND TOTAL	\$589,450.00	GRAND TOTAL	\$409,480.00	GRAND TOTAL	\$548,110.00
--	-------------	--------------	-------------	--------------	-------------	--------------

This certifies that all bids were received and opened on April 3, 2024 and that this is a copy of the bid tabulation with bids corrected for errors in addition and multiplication. By: J. Chin, Assistant Engineer



VIA EMAIL - JChin@losgatosca.gov

April 6, 2024

Janice Chin Town of Los Gatos 41 Miles Avenue Los Gatos, CA 95030

RE: **BID ADVISORY**

> Bidder(s): Villalobos & Associates, Inc.

Awarding Agency: Tow of Los Gatos

Project: 2024 Annual Curb, Gutter, and Sidewalk Maintenance

FFC Case No.: 1209SJ

Dear Ms. Chin:

The Foundation for Fair Contracting (FFC) is a nonprofit organization which has been serving the public interest since 1985. The objective of the FFC is, in-part, to monitor for compliance with prevailing wage laws pertaining to the construction industry, educate industry stakeholders, and ensure a fair and level playing field is present for all contractors. Unbalanced bids raise questions in regard to performance and compliance with the rules and regulations for the payment of prevailing wages, and the safety and well-being of the workforce. It further opens the question of excessive future change orders, the fairness to and rights of other bidders in the bidding process, and the intent of the bidding process in general.

In deference to all bidders and in order for the public interest to best be served, please enter this formal bid advisory against the above-noted contractors as a matter of public record. We respectfully request that Villalobos & Associates, Inc. (Villalobos) bid be rejected for the following reasons:

ONGOING VIOLATIONS OF PREVAILING WAGE LAWS RESULTING IN WAGE THEFT

Villalobos has committed infractions/violations which have resulted in willful circumvention of the laws and regulations governing the payment of prevailing wages, including, but not limited to, violations resulting in wage theft and non-compliance with apprenticeship laws. Audits have been performed by the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office, finding wages owed to workers. We have provided supporting documentation for your review.

Furthermore, Villalobos is currently under investigation by our offices and the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office in connection with issues provided below. We have provided supporting documentation for your review.

- Misclassifications resulting in underpayments.
- Failure to comply with overtime requirements.

FOUNDATION FOR FAIR CONTRACTING 3807 Pasadena Avenue, Suite 150 - Sacramento, CA 95821 (916) 487-7871 - Fax (916) 487-0306 www.ffccalifornia.com



Janice Chin Town of Los Gatos April 6, 2024 Page 2

- Failure to comply with apprenticeship requirements.
- Failing to report all workers on certified payrolls.

FAILURE TO COMPLY WITH BID SPECIFICATIONS/UNFAIR COMPETITIVE ADVANTAGE

Villalobos' bid is in excess of 22% lower than all other bidders on this project. A large bid variance commonly indicates a failure to account for the proper prevailing wage rate — including travel and subsistence. If awarded the project, this contractor would inevitably need to submit change orders to complete the project in accordance with the specifications and/or compromise prevailing wage laws/standards. This gives Villalobos an unfair advantage in its bidding practices against its competitors and puts the Town of Los Gatos into a precarious legal position.

• FAILURE TO COMPLY WITH WORKFORCE DEVELOPMENT AND FORMAL APPRENTICESHIP PROGRAMS

Villalobos has not made a good faith effort to participate and invest in Local Workforce Development, nor have they participated in local hiring of workers in the community through formal and recognized pre-apprenticeship programs and formal apprenticeship programs for specific apprenticeable crafts. They have failed to request, employ, train, and pay the proper prevailing wages to apprentices.

OSHA VIOLATIONS RESULTING IN FINES ISSUED AND UPHELD

Villalobos has safety infractions that have resulted in investigations and fines issued by OSHA. We have provided supporting documentation for your review.

Please contact our office with questions, comments, or clarifications.

Sincerely,

Jesse Jimenez Executive Director

FFC Case No: 1209SJ

cc: Town of Los Gatos – Mayor and Councilmembers

Mary Badame – Email: mbadame@losgatosca.gov Matthew Hudes – Email: mhudes@losgatosca.gov Rob Moore – Email: rmoore@losgatosca.gov Rob Rennie – Email: rrennie@losgatosca.gov Maria Ristow – Email: mristow@losgatosca.gov

Town of Los Gatos – Parks & Public Works Director Nicolle Burnham – Email: NBurnham@losgatosca.gov

STATE OF CALIFORNIA

Gavin Newsom Governor

DEPARTMEMT OF INDUSTRIAL RELATIONS Division of Labor Standard Enforcement 454 W. 4th Street, Room #348 San Bernardino, CA 92401 From the Desk of Caroline Wood Deputy Labor Commissioner (909)383-7408 cwood@dir.ca.giv



February 27, 2024

Re: DLSE Case No.: 40-78873-833

Project Name: AC and Curb and Gutter Repairs

Awarding Body: City of Saratoga

Prime Contractor: VILLALOBOS & ASSOCIATES Inc.

Dear Evangeline Rose,

Please be advised that I have completed my audit of Villalobos and Associates Inc. I have found the following information on the public works project referenced above and found the sum of \$3598.80 as due and owing. This amount is broken down as follows:

 Wages Due and Owing:
 \$474.80

 Training Funds Due and Owing:
 \$24.00

 Labor Code 1771.4:
 \$2,500.00

 Labor Code 1775:
 \$500.00

 Labor Code 1777.7:
 \$100.00

Accordingly, please remit a cashier's check in the amount of \$3598.80. The amount \$3598.80 is for settlement purposes only. Payment must be received no later than 3/06/24.

The check must be a cashier's check and should be made payable to the *State Labor Commissioner* and have case number 40-78873-833 written on the check. Mail payment to:

State of California

Department of Industrial Relations

Division of Labor Standards Enforcement

Bureau of Field Enforcement Cashiering Unit

2031 Howe Avenue Suite 100

Sacramento, CA 95825-0196.

Please be advised that failure to resolve this matter will result in the issuance of a Civil Wage and Penalty Assessment.

Please email me a copy/scan of the check along with tracking information for the mailing. CWood@dir.ca.gov

Thank you for your cooperation. If you have any questions, do not hesitate to contact me at 909-383-7408.

Sincerely

Caroline Wood

Caroline Wood

Deputy Labor Commissioner

Labor Commissioner, State of California ITEM NO. 8. Department of Industrial Relations Gavin Newsom, Governor Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works 6150 Van Nuys Blvd, Room 206 Van Nuys, CA 91401 (818) 464-7819 TEL: EMAIL: Sbabirye@dir.ca.gov **FFC** 3807 Pasadena Ave., Ste 150 RECEIVED Sacramento, CA95821 DATE: In Reply Refer to Case No: 40-79013-692 September 29, 2023

CASE ASSIGNMENT LETTER

Foundation for Fair Contracting

				Contracting					
Project Name	Awarding Body	Project No.	DIR Project ID						
Mendelsohn Lane Walkway Improvements - Asphalt Work	City of Saratoga	0	392924						
Prime Contractor									
VILLALOBOS & ASSOCIATES	VILLALOBOS & ASSOCIATES								
Subcontractor									

Please be advised that I have been assigned to investigate your complaint against the above named contractor.

Any additional information should be directed to my attention, in writing. Please reference the case number on all correspondence.

You will be kept advised of the progress of this investigation as needed and of the final disposition in this matter.

STATE LABOR COMMISSIONER

By

Susan Babirye

Susan Babirye

Page 134 Auditor

(Revised 6/2021)



Labor Commissioner, State of California						ITEM NO.
Department of Industrial Relations			1	Gavin Newsom,	Governor	
Division of Labor Standards Enforcement						
Bureau of Field Enforcement- Public Works			, 6	SEAL OF	HE	
6150 Van Nuys Blvd, Room 206				12/	1.164	
Van Nuys, CA 91401			1.2	a second		
TEL: (818) 464-7819 EMAIL	: Sbabirye@dir.ca.gov				F CALL	4
FFC				CAL IFORN	I.A.	7.35
3807 Pasadena Ave., Ste 150					RECE	IVED
Sacramento, CA95821					RECE	IVED
			111	18 SJ		
DATE:		In Reply Refer to	Case No:		OCT -	o 2023
September 29, 2023		40-79014-692			UCI	2 2020
September 29, 2023	CACE ACCION SERVI				Foundation	on for Fair
	CASE ASSIGNMENT	LETTER	· ·		Contr	racting
Project Name	Awarding Body	5. A	Project No.	DIR Project ID	a se g	
2023 Sidewalk Repair Project	City of Morgan Hill		0	462128		
Prime Contractor						
VILLALOBOS & ASSOCIATES						l k
Subcontractor						

Please be advised that I have been assigned to investigate your complaint against the above named contractor.

Any additional information should be directed to my attention, in writing. Please reference the case number on all correspondence.

You will be kept advised of the progress of this investigation as needed and of the final disposition in this matter.

STATE LABOR COMMISSIONER

Ву

Susan Babirye

Susan Babirye

Page 135 Auditor

(Revised 6/2021)



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The .gov means it's official.

Federal government websites often end in .gov or .mil. Before sharing sensitive information, make sure you're on a federal government site.



The site is secure.

The https:// ensures that you are connecting to the official website and that any information you provide is encrypted and transmitted securely.

ITEM NO. 8.

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Menu

OSHA V STANDARDS V ENFORCEMENT V TOPICS V HELP AND RESOURCES V NEWS V CONTACT US FAQ A TO Z INDEX LANGUAGES

Inspection Detail

Case Status: CLOSED

Inspection: 1527621.015 - Villalobos & Associates

Inspection Information - Office: Ca Fremont District Office

Inspection Nr: 1527621.015 Report ID: 0950612 Date Opened: 04/27/2021

Site Address: Union Status: NonUnion SIC:

Villalobos & Associates 21439 Continental Cir. Saratoga, CA 95070

NAICS: 236115/New Single-Family Housing Construction (except

Operative Builders)

Inspection Type: Accident Safety/Health: Safety

Scope: Partial Close Conference: 10/15/2021

Advanced Notice: N Emphasis:

Ownership: Private Case Closed: 06/12/2023

Related Activity

Mailing Address:

P.O. Box 110004, Campbell, CA 95011

Туре	Activity Nr	Safety	Health
Accident	1761874		
Inspection	1528679	Yes	
Inspection	1528966	Yes	

Case Status: CLOSED

ITEM NO. 8.

Violation Summary

Violations/Penalties	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2			4		6
Current Violations	2			4		6
Initial Penalty	\$21,825	\$0	\$0	\$2,375	\$0	\$24,200
Current Penalty	\$21,825	\$0	\$0	\$2,375	\$0	\$24,200
FTA Penalty	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items

#	Citation ID	Citaton Type	Standard Cited	Issuance Date	Abatement Due Date	Current Penalty		FTA Penalty	Contest	Latest Event
1.	01001	Other	341(D)(5)(A)	10/15/2021		\$625	\$625	\$0		Z - Issued
2.	01002	Other	1509(A)	10/15/2021		\$500	\$500	\$0		Z - Issued
3.	01003	Other	3395(H)(1)	10/15/2021		\$500	\$500	\$0		Z - Issued
4.	01004	Other	1541(J)(2)	10/15/2021		\$750	\$750	\$0		Z - Issued
5.	02001	Serious	15410001 A01	10/15/2021		\$16,200	\$16,200	\$0	05/04/2022	W - Empr Withdre
6.	03001	Serious	1541(K)(1)	10/15/2021		\$5,625	\$5,625	\$0	05/04/2022	W - Empr Withdre

OSHA Standards Enforcement Topics Media Center Contact Us



U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210
\$\cdot\$ 1-800-321-OSHA
1-800-321-6742
www.osha.gov

FEDERAL GOVERNMENT

White House

Benefits.gov

Coronavirus Resources

Disaster Recovery Assistance

DisasterAssistance.gov

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Notification of EEO Violations

ITEM NO. 8.

No Fear Act Data

U.S. Office of Special Counsel

OCCUPATIONAL SAFETY & HEALTH

Frequently Asked Questions

A - Z Index

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Dear Members of The City of Los Gatos Council,

We appreciate the opportunity to address the concerns raised in the bid advisory regarding prevailing wage violations associated with our company. We understand the seriousness of these matters and wish to provide clarity on the circumstances surrounding these incidents.

First and foremost, we want to emphasize that the prevailing wage violations occurred on projects that were managed by different personnel, and unfortunately, obligations were not adequately met under their management. These claims are currently being addressed through close collaboration with the labor commissioner, with efforts underway to both appeal and settle these cases. We want to assure you that any miscommunication or oversight was purely unintentional and does not reflect our company's values or intentions.

In our commitment to rectify these issues and demonstrate proactive compliance, we have taken several measures. One such initiative is our recent membership in ABC NorCal, an esteemed apprenticeship committee. Through this affiliation, we intend to sponsor selected workers to showcase our dedication to the future of construction while ensuring adherence to industry standards.

Moreover, we have implemented internal management changes aimed at enhancing our operational efficiency and regulatory compliance. One significant improvement is the adoption of the LCP Tracker Certified Professional Certificate, a certified payroll compliance software. This tool meticulously flags any discrepancies before final confirmation and submission to the Department of Industrial Relations (DIR), ensuring accuracy and adherence to prevailing wage requirements.

Regarding the OSHA violations mentioned, we want to clarify that they were not indicative of a disregard for safety protocols on our part. Rather, they stemmed from an unfortunate accident that occurred despite our ongoing efforts to maintain a safe working environment. We take these matters seriously and have a track record of prioritizing safety throughout our operations. Moving forward, we remain steadfast in our commitment to complying with all regulatory requirements and upholding stringent safety provisions to safeguard the well-being of our workers and the community. This case has been paid and closed and used as a direct correlation of the importance of safety and training.

With that being said, the discrepancy in the bid documents regarding the OSHA violations was a result of administrative error and oversight. Prior to this incident, our company had maintained a clean record with OSHA, demonstrating our commitment to safety and compliance. With recent changes in management, there was a lack of awareness regarding past claims, leading to the oversight in the bid documents. We deeply regret this oversight and understand the importance of accurate and transparent reporting. Moving forward, we have taken steps to ensure that our records are thoroughly reviewed and updated to reflect our commitment to safety and compliance with all regulatory requirements.

In conclusion, we acknowledge the past shortcomings highlighted in the bid advisory and assure you that they do not reflect our current standards or values. We are fully committed to addressing these issues transparently and proactively while striving for excellence in all aspects of our operations. Thank you for your attention, and we welcome any further inquiries or discussions on this matter.

Sincerely.

Tranquilino Villalobos - President

Villalobos & Associates

Labor Commissioner, State of California	17	
Department of Industrial Relations		
Division of Labor Standards Enforcement	Gavin Newsom, Governor	
464 W Fourth Street, Room 348		
San Bernardino, CA 92401	S St. COMPACE, THE	
TEL: (909) 383 - 7408		
EMAIL: cwood@dir.ca.gov		
	CALIFORNIA	
DATE:	In Reply Refer to Case No: 40-78873-833	
March 14, 2024		
NOTICE OF COMPLAINT CLOSED		
Project Name AC and Curb and Gutter Repairs	Project No. PW-E-22-012	
Prime Contractor	1 W 1-22-012	
VILLALOBOS & ASSOCIATES		
Subcontractor		
X Subject firm has satisfactorily paid all prevailing wages and/or penalties found due. The statute of limitations for the Labor Commissioner to prosecute California Public Work Law (Labor Code sections 1720 through 1861) has expired. Information for claimant please note: There are other legal claims which you may still pursue even though the statute of limitations has expired for the Labor Commissioner to enforce the public work provisions of the Labor Code. You may want to review the California Court of Appeals decision in the case of Tippett v Terich (1995), 37 Cal.App.4th 1517, 44Cal.Rptr.2d 862 and/or consult with an attorney to determine if you may pursue any of the legal actions discussed in the Tippett v Terich decision. There is insufficient evidence to confirm California Public Work Law was violated. Subject firm was not within the jurisdiction of California Public Work Law on this project. Other:		
STATE LABOR COMMISSIONER ByCaroline Wood		
Caroline Wood		

(Revised - 4/200

Deputy Labor Commissioner

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 6150 Van Nuys Blvd, Room 206 Van Nuys, CA 91401 TEL: (818) 464-7819 EMAIL: Sbabirye@dir.ca.gov VILLALOBOS & ASSOCIATES P O BOX 110004 CAMPBELL, CA 95011 DATE: April 18, 2024 In Reply Refer to Case No: 40-79013-692

NOTICE OF COMPLAINT CLOSED		
Project Name Mendelsohn Lane Walkway Improvements - Asphalt Work	Project No.	
Prime Contractor	L	
VILLALOBOS & ASSOCIATES		
Subcontractor		
The complaint against the above-named contractor(s) is being closed for the following Subject firm has satisfactorily paid all prevailing wages and/or penalties found due		
X The statute of limitations for the Labor Commissioner to prosecute California Public Code sections 1720 through 1861) has expired. Information for claimant please not other legal claims which you may still pursue even though the statute of limitations the Labor Commissioner to enforce the public work provisions of the Labor Code. review the California Court of Appeals decision in the case of Tippett v Terich (1944Cal.Rptr.2d 862 and/or consult with an attorney to determine if you may pursue discussed in the Tippett v Terich decision.	tic Work Law (Labor ote: There are is has expired for You may want to 195), 37 Cal.App.4th 1517,	
There is insufficient evidence to confirm California Public Work Law was violated	i.	
Subject firm was not within the jurisdiction of California Public Work Law on this	s project.	
Other:		
STATE LABOR COMMISSIONER		
By By		

Susan Babirye

Deputy Labor Commissioner

MEETING DATE: 05/07/2024

DATE: May 2, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to the

Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2025

RECOMMENDATION:

Authorize the Town Manager to execute a Second Amendment (Attachment 1) to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc. to provide services as the "Acting Town Surveyor" for various land development mapping services, extending the term to June 30, 2025.

BACKGROUND:

As part of its Engineering Development Services, the Town prepares and reviews mapping, performs map check reviews, and requires land surveying services. The Parks and Public Works Department does not have a Town Surveyor on staff, so these services are performed by a consultant who acts as the Town Surveyor. This includes the review of parcel maps and final maps; legal descriptions and plats for lot line adjustments, easements, and rights-of-way dedications; certificates of compliance; and other documents for technical correctness, adherence to codes, ordinances, the Professional Land Surveyor's Act, and the Subdivision Map Act.

Several complicated and sometimes invalid requests for lot line adjustments and map approvals come from developers looking to create new developable lots in the Town. These requests require review by an experienced surveyor with extensive knowledge in the field of historical chain of title review to verify the validity of these requests.

PREPARED BY: James Watson

Senior Civil Engineer

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

PAGE **2** OF **3**

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc.

to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2025

DATE: May 2, 2024

BACKGROUND (continued):

In 2018, the Town Council authorized a five-year agreement with Kier and Wright Civil Engineers and Surveyors, Inc. (Attachment 1, Exhibit A) to serve as the Town's Surveyor. In 2023, the Town Council authorized the First Amendment to that agreement, which will expire on June 30, 2024.

The Town is required to use a licensed surveyor by California's Subdivision Map Act Law for the review and signing of development maps and other land development documents.

DISCUSSION:

In addition to their previous experience completing challenging mapping services for the Town, Kier and Wright has a total of 12 California registered land surveyors on staff and available to assist the Town with complicated land development applications. This contract extension to June 30, 2025 would allow Kier and Wright to continue to review and sign the development maps and other land development documents, allowing Town engineering staff to develop a new Request for Proposals (RFP) and execute a new contract with a qualified survey firm by July 1, 2025. Staff is satisfied with the work done by Kier and Wright to date and recommends extending their contract for another year.

CONCLUSION:

Authorize the Town Manager to execute a Second Amendment to the Agreement for Consultant Services with Kier and Wright to provide services as the "Acting Town Surveyor" for various land development mapping services extending the term to June 30, 2025 (Attachment 1).

FISCAL IMPACT:

This agreement is based on a cost recovery activity as part of the development review process in which the Town uses fees and deposits collected from various development applications to pay for these services using "pass-through" accounts.

The original agreement was written with a not to exceed amount of \$125,000; however, the First Amendment incorporated the following for compensation language which will remain unchanged in this Second Amendment:

PAGE 3 OF 3

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to the Agreement for Consultant Services with Kier and Wright Civil Engineers and Surveyors, Inc.

to Provide Services as the "Acting Town Surveyor" for Various Land Development Mapping Services, Extending the Term to June 30, 2025

DATE: May 2, 2024

FISCAL IMPACT (continued):

Compensation for Consultant's professional services shall not exceed the established hourly rates and payment shall be based upon Town approval of each task.

There is no additional fiscal impact associated with the contract extension.

ENVIRONMENTAL ASSESSMENT:

The proposed agreement and related services are not a project defined under CEQA, and no further action is required.

Attachment:

 Second Amendment with Exhibit A (First Amendment and Original Agreement for Consultant Services with Kier & Wright Civil Engineers and Surveyors, Inc.) and Exhibit B (Hourly Rate Schedule)

SECOND AMENDMENT TO AGREEMENT

This SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 7th day of May 2024 and amends that certain FIRST AGREEMENT FOR CONSULTANT SERVICES dated June 6, 2023, made by and between the Town of Los Gatos ("Town") and Kier & Wright Civil Engineers and Surveyors, Inc. ("Consultant") identified as a C Corporation and whose address is 2850 Collier Canyon Road, Livermore, CA 94551.

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on August 7, 2018 ("Agreement") and a First Amendment to Agreement for Consultant Services on June 6, 2023, copies of which are attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Consultant Services to extend the term.

AMENDMENT

1. Section 2.2 <u>Term and Time of Performance</u> is amended to read:

This contract will remain in effect from August 7, 2018, to June 30, 2025.

2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos	Approved as to Consent:		
By:	Ву:		
Laurel Prevetti, Town Manager	Joe Thompson, Principal		
Department Approval:			
Nicolle Burnham			
Parks and Public Works Director			
Approved as to Form:	Attest:		
Gabrielle Whelan, Town Attorney	Wendy Wood, CMC, Town Clerk		

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 6th day of June 2023 and amends that certain AGREEMENT FOR CONSULTANT SERVICES dated August 7, 2018, made by and between the Town of Los Gatos, ("Town,") and the Kier & Wright Civil Engineers and Surveyors, Inc. ("Consultant") identified as a C Corporation and whose address is 2850 Collier Canyon Road, Livermore, CA 94551.

RECITALS

- A. Town and Consultant entered into a Consultant Services Agreement on August 7, 2018 ("Agreement"), copies of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement for Consultant Services to extend the term, to add to the compensation and the add to the minimum scope of insurance of the agreement.

<u>AMENDMENT</u>

1. Section 2.2 <u>Term and Time of Performance</u> is amended to read:

This contract will remain in effect from August 7, 2018, to June 30, 2024.

2. Section 2.6 <u>Compensation</u> is amended to read:

Compensation for Consultant's professional services shall not exceed the established hourly rates, as set forth in the Fee Schedule (Exhibit B), which is attached hereto and incorporated herein by reference. Payment shall be based upon Town approval of each task.

3. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

4. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos	Approved as to Consent:		
By: laurel Prevetti	By: Doe Thompson		
Laurel Prevetti, Town Manager	Joe Thompson, Principal		
Department Approval:			
DocuSigned by:			
Molle Burnham			
Nicolle Burnham			
Parks and Public Works Director			
Approved as to Form:	Attest:		
DocuSigned by:	DocuSigned by:		
Gabrielle Whelan	Wendy Wood		
Gabrielle Whelan, Town Attorney	Wendy Wood, CMC, Town Clerk		

AGR_	18	ITEM NO. 9.
IHH_		

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on August 7, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Kier & Wright Civil Engineers and Surveyors, Inc., ("Consultant"), whose address is 2850 Collier Canyon Road, Livermore, CA 94551. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide services as the designated "Acting Town Surveyor" for various land development mapping services as needed.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Request for Statement of Qualifications for Town Surveyor Consultant Services 2018, which is hereby incorporated by reference and attached as Exhibit A. Services will include lot line adjustments, map review, vacations, review of right of way, Certificates of Compliance, plats and legals, dedications/proposed easements, easement abandonment, lot mergers and general land surveying services. The Consultant will review, sign and stamp documents as needed and identified in the State of California Subdivision Map Act on behalf of the Town.
- 2.2 <u>Term and Time of Performance</u>. This contract will remain in effect from August 7, 2018 to June 30, 2023.
- 2.3 <u>Compliance with Laws</u>. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 <u>Sole Responsibility</u>. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 <u>Information/Report Handling</u>. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services

pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 <u>Compensation</u>. Compensation for Consultant's professional services **shall not exceed** \$125,000, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 <u>Billing</u>. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices: Town of Los Gatos Attn: Accounts Payable P.O. Box 655 Los Gatos, CA 95031-0655

- Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 <u>Assignability and Subcontracting</u>. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 <u>Independent Contractor</u>. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is

ITEM NO. 9.

- brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
 - i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 <u>All Coverages</u>. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 <u>Workers' Compensation</u>. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 <u>Indemnification</u>. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 <u>Waiver</u>. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 <u>Governing Law.</u> This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 <u>Amendment</u>. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 <u>Disputes</u>. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 <u>Notices</u>. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos Attn: Town Clerk 110 E. Main Street Los Gatos, CA 95030

Kier & Wright Civil Engineers and Surveyors, Inc. 2850 Collier Canyon Road Livermore, CA 94551

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 <u>Entire Agreement</u>. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement,

unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

KIER & WRIGHT

SURVEYS, INC

aurel Prevetti, Town Manager

JOSEPH

THOMPSON

Recommended by:

Matt Morley, Director of Parks and Public Works

VICE PRESIDENT

Approved as to Form:

Robert Schultz, Town Attorney



PROPOSAL FOR TOWN OF LOS GATOS RFQ FOR TOWN SURVEYOR SERVICES

PREPARED BY KIER & WRIGHT CIVIL ENGINEERS AND SURVEYORS, INC.

MAY 17th, 2018





2850 Collier Canyon Rd - Livermore, California 94551 · (925) 245-8788 · FAX (925) 245-8796

COVER LETTER

May 17, 2018

Town of Los Gatos Lisa Petersen, Assistant Director/Town Engineer 41 Miles Avenue Los Gatos, CA 95030

RE: REQUEST FOR QUALIFICATIONS FOR TOWN SURVEYOR SERVICES

Dear Ms. Petersen,

We are pleased to present the following qualifications to provide the Town of Los Gatos with on-call land surveying consulting services. As a local Bay Area firm, we are extensively experienced in providing efficient, cost-effective surveying services for a wide variety of projects throughout the Bay Area and its surrounding regions, and are providing services similar as those requested in the Town's RFQ for many agencies and municipalities. Since 1972, Kier & Wright has completed thousands of projects throughout the Bay Area. We are confident that we will continue be a good fit for the Town's projects, as we have in the past, and we look forward to this opportunity to continue working with you.

We currently have offices in Livermore, Santa Clara, Ventura, Manteca, and Rancho Cordova. Services for the Town will be managed and provided out of our corporate headquarters in **Livermore**.

With a team of <u>35 technical land surveying staff</u> based in our Livermore office and 20 additional supporting staff, including a fully equipped team of union field survey crews available for dispatch from this location, we are confident that we have the resources to manage and perform any and all survey tasks for the Town out of our headquarters. However, in the event that the Town's preferred schedule would be better served by concurrent dispatch of field survey crews to all survey sites within the Town, the Town may also utilize the team of <u>37 technical land surveying</u> staff based 12 miles from the Town offices in Kier & Wright's Santa Clara office. The Santa Clara survey team includes an additional fully equipped team of field survey crews available for dispatch to the Town of Los Gatos.

I, Joe Thompson, a California licensed land surveyor and a principal of the firm, will serve as the primary point of contact for this submission and any resulting project-specific requests for proposals, and will manage and oversee Kier & Wright land surveying projects for the Town. The following is a brief introduction to myself and the other key personnel on our proposed project team.

We appreciate the opportunity to provide you with our qualifications. We look forward to continuing our work with you on future projects and we hope this submission meets with your approval. Please feel free to contact me directly with any questions, comments, or requests for additional information.

Sincerely,

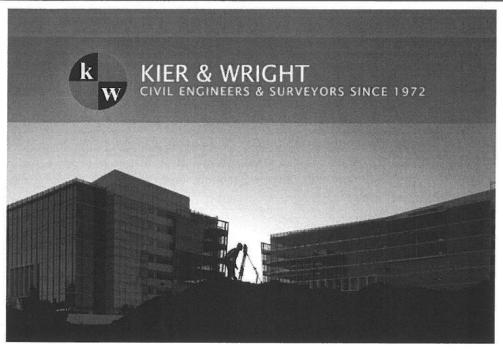
KIER & WRIGHT, CIVIL ENGINEERS AND SURVEYORS, INC.

Joe Thompson, PLS | Vice President

Phone: 925.245.8788

Email: jthompson@kierwright.com

FIRM INTRODUCTION



FIRM PROFILE

KIER & WRIGHT | California Corporation | EST. 1972

Kier & Wright is a civil engineering and land surveying firm specializing in land development. As a firm that provides civil design services, we understand the importance of having high-quality, accurate, design-level topographic surveys. Our land surveying department produces topographic surveys for use in our own civil

engineering plans. Through this coordination with our in-house civil design professionals, our surveying personnel have an in-depth understanding of the user experience, and know how to produce the optimal product showing the desired level of detail for utilization in the design process. In addition to providing these services for our own design work, Kier & Wright's client base includes numerous architects and engineers who rely on Kier & Wright to provide them with base mapping and design-level topographic surveying for their projects.

Kier & Wright Civil Engineers & Surveyors has been committed to providing both public and private sector clients with high-quality,



cost-effective, efficient civil engineering and land surveying services since 1972 Services offered include street and highway design, municipal consultation, utility engineering and the preparation of civil engineering plans for residential, commercial and industrial site developments. Kier & Wright is a California corporation with offices located in Santa Clara, Livermore, Ventura, Manteca, and Rancho Cordova.

The firm is currently staffed by 160 employees, including 17 registered civil engineers and 14 licensed land surveyors. Additional staff includes 72 civil engineering and land surveying technical personnel, 27 administrative and financial support staff and, depending on construction staking demands throughout the year, 20-35 field survey personnel.

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Kier & Wright has extensive experience in the following categories of civil engineering and land surveying services:

- Topographic, A.D.A. and boundary surveys.
- · Map checking.
- ALTA property surveys.
- · "Due Diligence" site investigations.
- · Street and highway design.
- Civil Engineering for site development of virtually all types of land development projects. Types of
 projects designed include corporate campus developments at up to two hundred acres in size, retail
 shopping centers, apartment complexes, airports, schools, medical facilities, housing developments,
 parks and automotive dealerships.
- · Construction Staking.

Kier & Wright is committed to providing efficient, cost effective services to our clients. Growth of the firm has been due entirely to referrals, repeat business, and the firm's underlying philosophy that demands the highest quality professional service, responsibility to client needs, timeliness and efficiency. Kier & Wright's principals review plans and project schedules continually and are actively involved in the design of all projects prepared by the firm. Our principals and senior staff are well-known in city and county public works departments throughout the San Francisco Bay Area and strive to maintain cooperative and friendly working relationships with public staff.

OUR RESOURCES

Kier & Wright civil and survey staff are experts in CAD drafting and design, and have extensive experience with AutoCAD Civil3D applications. Our civil and survey technicians and staff run Autodesk Civil 3D 2018 on custom-built Dell Workstation Computers with Intel Xeon Processors. All files and data are stored and backed up to secure, off-site data servers.

Kier & Wright field survey crews have the training, experience, and gear necessary to accurately, efficiently, and safely perform all types of field surveying, including boundary and topographic surveys, ALTA surveys and construction staking. Each crew is equipped with a fully stocked truck, digital levels, rods, layout staffs and a Trimble S-series Robotic Total Station with a Trimble TSC3 Data Collector, running the latest Trimble Access software. Our crews use Trimble R-8 and R-10 GNSS receivers and Trimble Business Center Software to adjust traverses by both conventional and GPS methods.

Our field survey operation is one of the most prolific in Northern California. Kier & Wright was the recipient of the California Civil Engineers and Land Surveyors Association's Survey Hours Champion award in 2017, 2015, 2014, 2012, 2011, 2009, 2008 and 2007.

Below are examples of recent on-call surveying contracts for which this proposed staff is successfully providing similar services listed in this RFQ:

- Surveying Services for Alameda County Public Works Agency (2001-Present)
- Surveying services for Alameda County Zone 7 Water Agency (2002-Present)
- Surveying services for City of Pleasanton (1998-Present)
- Surveying services for City of Hayward (2000-Present)
- Surveying services for City of Fremont (1998-Present)
- Surveying services for City of San Leandro (1994-Present)
- Surveying services for City of Dublin (2014-Present)
- Surveying services for City of Walnut Creek (2016-Present)
- Surveying services for City of Milpitas (2017-Present)

REFERENCES AND SIMILAR PROJECTS

REFERENCE: CITY OF FREMONT ON-CALL SURVEYING EXPERIENCE

Client:

City of Fremont, Public Works / Engineering Division

Year:

1998-Present

Contact:

Tom Dougherty, City Surveyor

Phone:

(510) 494-4715

Managers: Surveyors: Joe Thompson, PLS Rod Stewart II, PLS

Project Description:

Kier & Wright has been providing on-call surveying services to the city of Fremont since 1998. We have completed over 117 task orders for the City to date. Over our long history with the City of Fremont, we have consistently performed our work on-time and on or under budget. Below are a few examples.

Services Performed Include:

- Topographic survey and area wide Right of Way mosaic compilation for redevelopment and project feasibility studies of the Main Street at Washington neighborhood.
- Professional Land Surveyor for the City of Fremont handling the finalization of the documentation for the Bart Warm Springs extension. This task included the preparation of plats and legal descriptions for City parcels, right of way record maps
- The initial set-up and on-going slide monitoring survey for a street section in the Fremont hills
- Preparation of right of way record maps for Caltrans for the Auto Mall Parkway/Interstate 880 interchange modification project.
- Parcel and Subdivision map checking services and map boundary review service.

REFERENCE: CITY OF HAYWARD ON CALL SURVEYING EXPERIENCE

Client:

City of Hayward, Public Works, Engineering and Transportation

Year:

2000 - Present

Contact:

Dan S. Scott III, City Surveyor

Phone: Manager: (510) 583-4796

Surveyors:

Joe Thompson, PLS Rod Stewart II, PLS

Project Description:

Kier & Wright has been providing both individual project surveying services and on call surveying services to the city of Hayward since 2000. Over the years we have completed numerous contracts for the City. Two of these projects are the Hayward Cannery Project and the B Street at Foothill Projects.

The Hayward Cannery Project scope included topographic and boundary surveys for the initial feasibility study and partial final City design documents on a 70-acre site. The Boundary Survey included the resolution of numerous commercial and residential parcels.

The B Street at Foothill site scope included extensive topographic surveying and boundary resolution for two adjacent smaller sites in the formal downtown portion of the City. All sites had a large amount of improvement and property transfer history that had to be unraveled in order the provide the City with a current platform for orderly development.





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Services Performed Include:

- Boundary Surveys that included the resolution of numerous commercial and residential parcels.
- Record of Surveys of the Cannery Redevelopment Area that was used to set the stage for a multifaceted redevelopment project.
- Topographic Surveys for the initial feasibility study and partial final City design documents on a 70-acre site in an older industrial area of the City.
- Parcel mapping services to re-subdivide portions of the Cannery Project.
- Accounting for vast histories of improvement and property transfers for numerous agencies at each site.
- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.

REFERENCE:

ALAMEDA COUNTY PUBLIC WORKS AGENCY ON CALL SURVEYING EXPERIENCE

Client:

Alameda County Public Works Agency

Year:

2001-2004, 2010-2013, 2015 - Present

Contact:

Bob Machado, (510) 670-5792 Michael Rubner, (510) 670-5495

Manager:

Joe Thompson, PLS

Surveyor:

Rod Stewart II, PLS



Project Description

This project was a design level topographic survey of approximately 2.5 miles of the Alameda Creek Channel from southerly of the Bart Bridge to Decoto road (See Ehibit 1: Alameda Creek Channel). This survey was completed under a compressed schedule and the final delivery was made on a 29 day schedule.

Services Performed Include:

- Deliverables were prepared using AutoCAD Civil 3D formatting
- Creating a precise control network for the survey work to be performed including utilizing a digital level to establish elevations on all survey control points
- Implementing four (4) survey crews all working together at the same time to expedite timing.
- Utilizing four (2) Trimble R-8 GPS rovers from the same base station in order to expedite timing.

REFERENCE: CITY OF DUBLIN ON CALL SURVEYING EXPERIENCE

Client:

City of Dublin, Public Works Department

Year:

2014 - Present

Contact:

Laurie Sucgang, P.E.

Phone:

(925) 833-6630

Manager:

Joe Thompson, PLS

Surveyor:

Dean Jurado, PLS

Project Description:

Kier & Wright has been providing both individual project surveying services and on call surveying services to the City of Dublin since 2014 and has ensured that each project is prioritized to deliver on-time.





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Services Performed Include:

- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Assist with rewriting Subdivision Mapping review requirements, Subdivision Ordinance Chapters and other Ordinances as requested.
- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.

 Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.

REFERENCE:

CITY OF WALNUT CREEK ON CALL SURVEYING EXPERIENCE AND MAP CHECKING

Client:

City of Walnut Creek, Public Works Department

Year:

2016 - Present

Contact:

Kirsten Hanson, P.E.

Phone:

(925) 943-5899 (ext. 2266)

Contact:

Cathleen Terentieff, P.E.

Phone: Manager: (925) 943-5899 (ext. 2241) Joe Thompson, PLS

Surveyor:

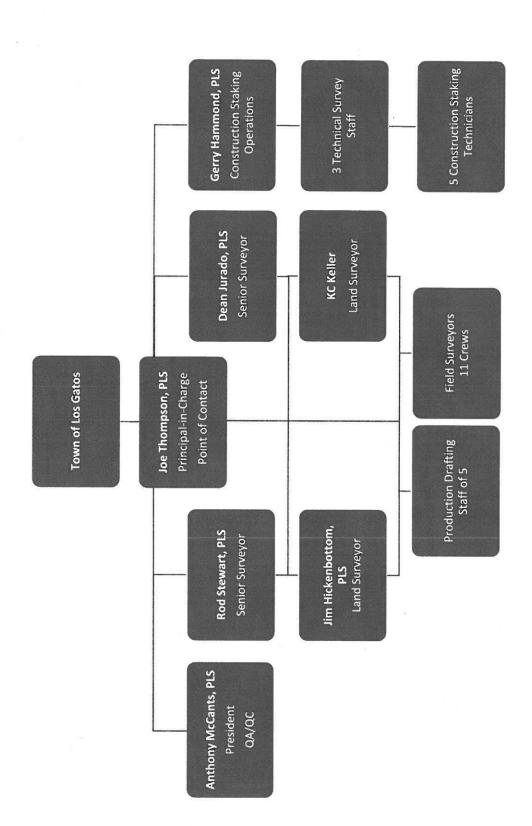
Dean Jurado, PLS

Project Description:

Kier & Wright has been providing both individual project surveying services and on call surveying services to the City of Walnut Creek since 2016.

Services Performed Include:

- Review of Parcel Maps, Condominium Maps and Tract Maps for technical correctness.
- Review of Legal Descriptions and Plats for Lot Line Adjustments, Misc. Easements and Street Dedications.



2850 Collier Canyon Rd · Livermore, California 94551 · (925) 245-8788 · FAX (925) 245-8796

RESUMES



JOE THOMPSON, PLS

Vice President, Project Manager

EXPERTISE

Right-of-Way surveys, parcel maps, record of surveys, Land title surveys, topographic surveys, well surveys, boundary resolution, condominium maps, and ALTA surveys.

BACKGROUND

Mr. Thompson, California P.L.S. 8121, was licensed as a Land Surveyor in July of 2006 and has 20 years of professional experience in the land development field. He is proficient in boundary resolution, mapping, A.L.T.A. Surveys, legal descriptions, monitoring surveys for

horizontal and vertical movements, analysis and resolution of public and private title issues, construction setup, monumentation, and topographic surveys. Mr. Thompson is well-versed in the processing and adjusting of control data for GPS static surveys and conventional surveys. Mr. Thompson provides project planning, management, and coordination along with the review of project deliverables and ensures clients are informed on the status of their projects. While at another firm, he was heavily involved in the success of the ADA upgrades at the Google Campus in Mountain View where he performed utility research, base mapping, control surveying, and topographic mapping for several building sites.

REPRESENTATIVE PROJECT EXPERIENCE

- Alameda Creek Bridge Pleasanton, CA
- Alameda County Water District Large Diameter Hayward Fault Pipeline Retrofit Project
- Airport Flood Protection Project Livermore, CA
- Zone 7 Water Agency Del Valle Water Treatment Plant Superpulsator Rehabilitation Project
- Topographic Survey of De La Salle High School Gym & Theater Areas, Concord, CA
- Tennyson High School High School Design-Level Topographic & Boundary Survey
- Livermore Valley Performing Arts Center Livermore, CA
- City of Pleasanton I-680 Sewer Project
- City of Pleasanton Vineyard Avenue Sewer Project
- City of Pleasanton Map Review for various Parcel Maps and Tract Maps
- Zone 7 Water Agency Arroyo Mocho Topographic and Cross Section Survey
- Zone 7 Water Agency UPRR Parcel Topographic Survey, Plat & Legal Desc., & Site Plan
- Zone 7 Water Agency Cope Lake Water Transfer Survey Control, Topographic Survey, and Staking
- Alameda County Water District Large Diameter Hayward Fault Pipeline Retrofit Project
- Various on-call projects for the Cities of Hayward and San Leandro.
- Rosita Park City of Los Altos, CA

REGISTRATION

- Professional Land Surveying License (PLS) State of California L 8121



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ANTHONY McCants, PLS

President, QA/QC

EXPERTISE

Right-of-Way surveys, parcel maps, record of surveys, Land title surveys, topographic surveys, well surveys, boundary resolution, condominium maps, and ALTA surveys.

BACKGROUND

Mr. McCants, California P.L.S. 5944, joined the Kier & Wright team in March of 1979. He was registered as a Land Surveyor in 1988, and is the firm's corporate president. Mr. McCants has decades of varied experience in land surveying, including extensive

construction staking experience. In addition to his experience at Kier & Wright, while working with another local land surveying firm, Mr. McCants was responsible for several large United States Army Corps of engineers mapping projects in Utah and in Merced County, California. Mr. McCants is on the Board of Directors and is a past President of the California & Nevada Civil Engineers & Land Surveyors Association (CELSA). He is currently the co-chairman of the Northern California Surveyors Joint Apprenticeship Committee. As chairman of the NCSJAC, he is involved in charting the future for the Surveyors Apprenticeship program in a direction that will move the next generation of surveying professionals in the direction of a professional surveying career. The program emphasizes a combination of hands on training, a common-sense approach to surveying, professional education and career discipline that provides apprentices with a solid foundation upon which to build a land surveying career. As a working principal, he is actively involved in the day-to-day operations of the firm. He has been honored by the CELSA as having the largest field surveying operation in the northern 46 California counties for 8 out of the last 13 years.

REPRESENTATIVE PROJECT EXPERIENCE

- City of Hayward Record of Survey and Parcel Map for the Cannery redevelopment area (21-acre site)
- Topographic Survey for De La Salle Track & Practice Field Areas, Concord, CA
- Topographic Survey for De La Salle Swimming Pool, Concord, CA
- Home Depot distribution facility in Tracy for AMB Property (44-acre site)
- Rossmoor Retail Center in Walnut Creek for Washington Capital Management (15-acre site)
- Costco in Danville for Costco Wholesale Corp. (10-acre site)
- Cordes Ranch Project for Prologis in Tracy-survey boundary mapping and supervision (2,300-acre site)
- I-580/I-205 at Mountain House Parkway overpass improvement mapping projects Tracy
- Arch Road Logistics Center, Stockton overall site Record of Survey mapping and Mariposa Road historic alignment retracement.
- Crossroads Business Park, Lathrop onsite survey support for the development team projects.
- Lathrop Industrial Project, Lathrop provided all mapping and survey support for the development team
- Various Surveys for the El Charro Specific Plan Area for the City of Livermore Livermore, CA
- Alameda Creek Topographic survey for the City of Fremont Fremont, CA
- Topographic & Cross Section Surveys of East 14th Street & 150th Avenue for the City of San Leandro San Leandro, CA
- Alameda County Surveyors Office On-Call Contract Manager

REGISTRATION

Professional Land Surveying License (PLS) State of California L 5944



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DEAN JURADO, PLS

Senior Surveyor

Years of Experience: 33

EXPERTISE

Mr. Jurado specializes in all surveying services such as map checking, right of way surveys, record of surveys, land title surveys, topographic surveys, well surveys, boundary resolutions, condominium maps, and ALTA surveys. He excels in AutoCAD Land desktop, AutoCAD Civil 3D, MS Word, MS Excel, and Trimble Business Center.

BACKGROUND

Mr. Jurado, PLS, has 32 years of experience in land surveying. He has been associated with Kier & Wright since 2012 and has extensive experience in land surveying for public and private developments. His specialties include map reviewing and on-call map checking services and well as general land surveying expertise such as topographic surveying and ALTA surveying.

REPRESENTATIVE PROJECT EXPERIENCE

- City of Tracy On-Call Maps & Plat Checking Tracy, CA
- City of Merced On-Call Map Checking Merced, CA
- City of Livingston On-Call Maps & Plat Checking Livingston, CA
- Cisco Campus San Jose, CA
- Costco Depot Tracy, CA
- Coleman-Highline (Avaya Stadium) San Jose, CA
- NVIDIA Campus Santa Clara, CA
- Santa Clara Town Centre Santa Clara, CA

REGISTRATIONS

California Licensed Land Surveyor, PLS 9032

EDUCATION

General Education and Engineering – San Joaquin Delta College, Merced Junior College, Modesto Junior College

PROFESSIONAL HISTORY

- 33 Years Professional Experience in the Land Development Field since 1985,
- Joined Kier & Wright in 2012



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ROD STEWART II, PLS

Senior Surveyor

EXPERTISE

Right-of-way surveys, Parcel Maps, Record of Surveys, Topographic Surveys, Monitoring Well Surveys, Boundary Resolution, bridge surveying, ALTA surveys, Subsidence Monitoring Surveys and Construction Staking Calculations.

BACKGROUND

Mr. Stewart has 18 years of experience in the surveying including 8 years in the field. His experience includes construction surveying, boundary surveying, mapping, and subdivision

work related to land development. Specific survey experience includes construction staking, topographic surveys, benchmark level circuits, elevation monitoring surveys, tentative maps, parcel maps, final maps, condominium plans, plats and legal descriptions, lot line adjustments, lot combinations, and ALTA/ACSM Land Title Surveys. Mr. Stewart is proficient in AutoCAD Civil 3D 2016, Trimble Business Center and fluent with Trimble and Topcon GPS and Total Station field Survey equipment.

REPRESENTATIVE PROJECT EXPERIENCE

- Bay Bridge Demolition Project Construction Calculations, 3D modeling and Topo California Engineering Contractors – San Francisco, CA
- Premium Outlets Construction Calculations Topo, Mapping and Project Management Livermore, CA
- Pleasanton Subsidence Monitoring Monitoring Program Management Zone 7 Pleasanton, CA
- Oaks Business Park Construction Calculations, Topo & Mapping Livermore, CA
- International Park of Commerce Topo and Boundary Tracy, CA
- Clorox Campus Construction Calculations and Project Management XL Construction Pleasanton, CA
- Stagg High School Phase 1 Topographic Survey for Stockton Unified School District, Stockton, CA
- Hayward High School Design-Level Topographic & Boundary Survey
- Mt. Eden High School Design-Level Topographic & Boundary Survey
- Tennyson High School High School Design-Level Topographic & Boundary Survey
- Holly Street Interchange Topo, Boundary and Mapping San Carlos, CA
- Arch Road Business Park Topo & Mapping Opus Stockton, CA
- Construction Staking Services for Washington High School Improvements, Fremont, CA

REGISTRATION

Professional Land Surveying License (PLS) State of California L 9225

PROFESSIONAL HISTORY

1998 – Present, Kier & Wright Civil Engineers and Surveyors, Livermore, CA

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RICHARD J. HICKENBOTTOM, PLS

Project surveyor

Mr. Hickenbottom earned his Professional Land Surveyors License in 2009 and holds over 17 years of combined field and office surveying experience. He has been associated with Kier & Wright since 2013. During this time he has performed surveys for the Alameda County Flood Control & Water Conservation Distirct Zone 7 for level runs and flood channel topographic surveys for District Zones 5 and 6. Mr. Hickenbottom also worked on the yearly level runs for the Santa Clara Valley Water District Alum Rock Loop in San Jose.

KC KELLER

Survey Technician

Mr. Keller became a Kier & Wright team member in 2013 after interning for us. He graduated from Fresno State's Gematics Engineering program in 2012 and holds 8 years of construction staking field experience. Additionally, he has 9 years of experience working with various versions of AutoCAD. Mr. Keller is well versed in the surveying of ALTA's and is skilled in mapping research including parcel maps, property corners, and records of survey. Recently, he has been the survey technician for the Skylark project in Tracy and has been providing conformance surveys for various track projects throughout the Bay Area.

GERRY HAMMOND, PLS

Senior Land Surveyor, Construction Staking Manager

Mr. Hammond, California P.L.S. 8166, was licensed as a Land Surveyor in July of 2006. He is proficient in various construction projects including: residential, mid-rise, shoring, commercial, industrial, transportation, infrastructure projects, boundary resolution, mapping, A.L.T.A. Surveys, legal descriptions, monitoring surveys for horizontal and vertical movements, analysis and monumentation, and topographic surveys. Mr. Hammond is well versed in the processing and adjusting of control networks for conventional and GPS surveys. As Senior Surveyor Mr. Hammond provides project planning, management, and coordination along with the review of project deliverables and ensures clients are informed on the status of their projects. In addition to managing field and office staff, Mr. Hammond also one of Kier & Wright's top performing estimators, providing competitive costs while maintaining Kier & Wright's impressive quality of work.



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SUB-CONSULTANTS

Cooper Aerial Surveys Co. (Aerial Surveying)

Cooper Aerial Surveys Co., est. 1966, has provided leading-edge aerial mapping solutions for over fifty years. Their team applies extensive knowledge of computer science to bring Cooper to new heights in technology and innovation. Cooper's approach employs the best of leading-edge technology, the experience of their seasoned team, and incorporates sound aerial mapping best practices.

With an average employee tenure of over 15 years, Cooper Aerial depends on the experience of its seasoned professionals to ensure the balance between best-practice, practical solutions and leading-edge technology. This approach enables them to meet the needs of their clients and deliver successful projects based on their priorities; be it cost- effectiveness, speed of delivery, or levels of data collected.

The Cooper Aerial team offers unparalleled expertise and knowledge of data collection for urban and rural communities as well as vast natural environments.

Cooper's expertise includes but is not limited to:

- Terrestrial, Aerial & Photogrammetric Mapping
- Topographic & Planimetric Survey
- Ortho-Photography
- LiDAR
- Oblique Imagery
- Remote Sensing
- Volume Surveys
- Historic Aerial
- GIS
- Geodata Processing
- Erosion Surveys
- Large-Scale Printing & Plotting
- UAV/Drones

Safe2Core (Underground Utility Locating)

SAFE2CORE personnel have more than 40 years of combined experience in Concrete Scanning, Concrete Cutting, Utility Locating,



and CCTV Pipeline Inspection. Their technicians have inspected a wide array of concrete structures, varying from simple inspections, such as locating rebar on concrete walls, to locating post-tension cables in highly complex structural concrete slabs. Their Concrete Cutting operators work in tandem with their Concrete Scanning technicians to insure that no damage is caused to any structural reinforcement or any other embedded targets when destructive work is performed. Their Utility Locating staff is well trained to map underground utility lines prior to excavation or concrete cutting using: GPR Locating, Electromagnetic Detection (EM), and Magnetometers (MAG). Safe2core's CCTV Pipeline inspection technicians hold PACP/MACP/LACP certifications through NASSCO and can help you code defects, assess asset conditions and plan for rehab replacements of your water, drainage, and sewer systems. Safe2core CCTV vans are equipped with the latest Sonde Enabled Main Line and Push Cameras available.



RATE SHEET

HOURLY RATE SCHEDULE

	Effective March 1, 2018 through February 28, 2019	
PRINCIPAL	~ ~ ~ ~ ~	\$ 243.00/Hour
PRINCIPAL ENGINEER	/SURVEYOR	\$ 221.00/Hour
SENIOR ENGINEER		\$ 192.00/Hour
PROJECT ENGINEER		\$ 179.00/Hour
ENGINEER II		\$ 149.00/Hour
ENGINEER I		\$ 124.00/Hour
SENIOR SURVEYOR		\$ 199.00/Hour
PROJECT SURVEYOR		\$ 177.00/Hour
SURVEY COORDINATO	PR	\$ 170.00/Hour
SURVEYOR II		\$ 143.00/Hour
SURVEYOR I		\$ 122.00/Hour
ENGINEERING TECH II		\$ 162.00/Hour
ENGINEERING TECH I		\$ 145.00/Hour
SENIOR DRAFTSMAN		\$ 124.00/Hour
DRAFTSMAN II		\$ 103.00/Hour
DRAFTSMAN I		\$ 93.00/Hour
SURVEY TECH		\$ 95.00/Hour
1-MAN SURVEY CREW		\$ 170.00/Hour
2-MAN SURVEY CREW		\$ 275.00/Hour
3-MAN SURVEY CREW		\$ 350.00/Hour
TESTIMONY (TRIAL OF	R DEPOSITION)	\$ 475.00/Hour
PROJECT COORDINATO	OR	\$ 102.00/Hour
ENGINEERING COORD	INATOR	\$ 88.00/Hour
ENGINEERING / SURVI	EY INTERN	\$ 51.00/Hour

All blueprinting and reproduction will be billed at cost plus 10%. Time spent for preparation for testimony will be billed in accordance with the above hourly rates

ITEM NO. 9.



HOURLY RATE SCHEDULE

Effective March 1, 2024 through February 28, 2025

Principal	\$ 302.00 / Hour
Principal Engineer	\$ 274.00 / Hour
Senior Engineer Manager	\$ 252.00 / Hour
Technical Manager	\$ 252.00 / Hour
Senior Engineer	\$ 239.00 / Hour
Engineer III	\$ 222.00 / Hour
Engineer II	\$ 185.00 / Hour
Engineer I	\$ 155.00 / Hour
Senior Survey Construction Manager	\$ 246.00 / Hour
Senior Land Surveyor	\$ 246.00 / Hour
Project Surveyor III	\$ 220.00 / Hour
Project Surveyor II	\$ 178.00 / Hour
Project Surveyor I	\$ 152.00 / Hour
Survey Coordinator	\$ 210.00 / Hour
Engineering Tech III	\$ 200.00 / Hour
Engineering Tech II	\$ 181.00 / Hour
Engineering Tech I	\$ 169.00 / Hour
Draftsman / Survey Tech III	\$ 155.00 / Hour
Draftsman / Survey Tech II	\$ 128.00 / Hour
Draftsman / Survey Tech I	\$ 117.00 / Hour
3-Man Survey Crew	\$ 435.00 / Hour
2-Man Survey Crew	\$ 344.00 / Hour
1-Man Survey Crew	\$ 212.00 / Hour
Testimony (Trial or Deposition)	\$ 589.00 / Hour
Project Coordinator III	\$ 144.00 / Hour
Project Coordinator II	\$ 127.00 / Hour
Project Coordinator I	\$ 110.00 / Hour
Engineering / Survey Intern	\$ 64.00 / Hour
3D Laser Scanning Crew	\$ 421.00 / Hour

All blueprinting and reproduction will be billed at cost plus 10%.

Time spent for preparation for testimony will be billed in accordance with the above hourly rates.



MEETING DATE: 05/7/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to the

Agreement for Consultant Services with AMS Electric LLC (dba Prime Electric LLC) for a Design-Build Project to Install a Battery Storage System at the Library (CIP 821-2505) to Extend the Term and Time of Performance through

June 30, 2025

RECOMMENDATION:

Authorize the Town Manager to execute a second amendment to the Agreement for Consultant Services with AMS Electric LLC (dba Prime Electric LLC) (Attachment 1) for a design-build-project to install a battery storage system at the Library (CIP 821-2505) to extend the term and time of performance through June 30, 2025.

BACKGROUND:

The Library Battery Storage Project (CIP 821-2505) includes the development of design plans and installation of a battery energy storage tied to the solar photovoltaic (PV) system at the Library. In FY 2020/21 Parks and Public Works staff issued a Request for Proposals (RFP) and AMS Electric LLC was selected. An Agreement for Services was executed on December 7, 2021 with an end date of June 30, 2023.

On June 6, 2023, a First Amendment to the Agreement for Services was executed to extend the agreement term to June 30, 2024 to allow for installation and completion of the project which was delayed due to extended plan review time with Santa Clara County Fire and delays in the manufacturing and delivery of equipment.

PREPARED BY: Dan Keller

Facilities & Environmental Services Manager

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

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SUBJECT: Authorize the Town Manager to Execute a Second Amendment to a Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a Design-Build Project to Install a Battery Storage System at the Library to Extending the

Term and Time of Performance through June 30, 2025

DATE: May 1, 2024

DISCUSSION:

Town staff and the consultant have completed steps critical to this project including pouring the concrete foundation and battery installation. Additional steps needed for completion are inspections for weld anchoring, internal HVAC installation, manufacturer requirements, PG&E, and Santa Clara County Fire. In addition, connection to the photovoltaic system (solar) and battery power commissioning are pending. An extension of the agreement term and time of performance is needed through June 30, 2025 to utilize existing grant funding and submit an application for a rebate on certain project costs.

CONCLUSION:

Authorize the Town Manager to execute a second amendment to the Agreement for Consultant Services with AMS Electric LLC (dba Prime Electric LLC) for a design-build project to install a battery storage system at the Library (CIP 821-2502) to extend the term and time of performance through June 30, 2025.

This will enable the Town to utilize the two grants in place for this project and apply for a rebate for equipment purchases.

FISCAL IMPACT:

There is no fiscal impact related to this action. Adequate funding exists to complete the work.

Battery Power Supply - Library				
CIP No. 821-2505				
		Budget		Costs
GFAR	\$	30,000		
State OES Community Power Resiliency Grant	\$	300,000		
Silicon Valley Clean Energy Grant	\$	213,000		
Total Budget	\$	543,000		
Consultant Services with AMS Electric LLC, dba Prime				
Electric LLC			\$	513,000
Misc. Project Costs			\$	27,182
Total Costs			\$	540,182
Remaining Balance			\$	2,818

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SUBJECT: Authorize the Town Manager to Execute a Second Amendment to a Consultant Services Agreement with AMS Electric LLC (dba Prime Electric LLC) for a Design-

Build Project to Install a Battery Storage System at the Library to Extending the

Term and Time of Performance through June 30, 2025

DATE: May 1, 2024

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15378(b)(5), approval of this amendment is not a project subject to CEQA because it is an administrative activity that will not impact the environment.

Attachment:

1. Second Amendment to Agreement for Consultant Services with Exhibit A (Original Agreement and First Amendment)

SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 7th day of May 2024 and amends that certain First Amendment to Agreement for Consultant Services dated June 6, 2023, made by and between the Town of Los Gatos, ("Town") and AMS Electric LLC dba as Prime Electric LLC ("Consultant") identified as a Partnership and whose address is 1941 Ringwood Avenue, Suite 140, San Jose, CA 95130.

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services for a Design-Build of Battery Power Supply at the Library on December 21, 2021, ("Agreement"), a First Amendment to Agreement for Consultant Services on June 6, 2023, copies of which are attached hereto and incorporated by reference as Exhibit A to this Agreement.
- B. Town desires to amend the Agreement to extend the term and time of performance.

AMENDMENT

1. Section 2.2 <u>Term and Time of Performance</u> is amended to read:

This contract will remain in effect from December 7, 2021 to June 30, 2025.

2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos:	Approved as to Consent:
Laurel Prevetti, Town Manager	Danny Thomas, COO
Department Approval:	
Nicolle Burnham	
Director of Parks and Public Works	
Approved as to Form:	Attest:
Gahrielle Whelan Town Attorney	Wendy Wood CMC Town Clerk

FIRST AMENDMENT TO AGREEMENT

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 6th day of June 2023 and amends that certain Agreement for Consultant Services dated December 7, 2021, made by and between the Town of Los Gatos, ("Town,") and AMS Electric LLC, dba Prime Electric LLC (Consultant") identified as a Partnership and whose address is 1941 Ringwood Avenue Suite 140, San Jose, CA 95131.

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services for a Design-Build of Battery Power Supply at the Library on December 7, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to extend the end date of the term and add to the minimum scope of insurance of the agreement.

AMENDMENT

1. Section 2.2 <u>Term and Time of Performance</u> is amended to read:

This contract will remain in effect from December 7, 2021 to June 30, 2024.

2. Section 3.1 Minimum Scope of Insurance is amended to read as follows:

Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

3. All other terms and conditions of the Agreement remain in full force and effect.

Page **1** of **2**

ITEM NO. 10.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos:	Approved as to Consent:		
DocuSigned by:	DocuSigned by:		
Laure Prevetti	Brandon Elliot		
Laurel Prevetti, Town Manager	Brandon Elliot,		
	Group Executive, Shareholder		
Department Approval:			
DocuSigned by:			
Mcolle Burnham			
Nicolle Burnham			
Director of Parks and Public Works			
Approved as to Form:	Attest:		
DocuSigned by:	DocuSigned by:		
Gabrielle Whelan	Wendy Wood		
Gabrielle Whelan, Town Attorney	Wendy Wood, CMC. Town Clerk		

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on this 7th day of December 2021 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and AMS Electric LLC dba Prime Electric LLC, whose address is 1941 Ringwood Ave. Suite 140, San Jose, CA, 95131. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide Design-Build services for development of plans and construct a Battery Electrical storage system at the Library.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement.
 Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 <u>Scope of Services</u>. Consultant shall provide services as described in that certain Proposal sent to the Town on December 1, 2021, which is hereby incorporated by reference and attached as Exhibit A and B.
- 2.2 <u>Term and Time of Performance</u>. This contract will remain in effect from date of execution to June 30, 2023.
- 2.3 <u>Compliance with Laws</u>. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 <u>Sole Responsibility</u>. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 <u>Information/Report Handling</u>. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and

the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 <u>Compensation</u>. Compensation for Consultant's professional services **shall not exceed \$513,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 <u>Billing</u>. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos Attn: Accounts Payable P.O. Box 655 Los Gatos, CA 95031-0655

- 2.8 <u>Availability of Records</u>. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 <u>Assignability and Subcontracting</u>. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under

this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

- 3.1 Minimum Scope of Insurance:
 - i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all

- certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 <u>All Coverages</u>. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 <u>Workers' Compensation</u>. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 <u>Indemnification</u>. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities,

penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 <u>Waiver</u>. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 <u>Governing Law</u>. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 <u>Termination of Agreement</u>. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 <u>Prevailing Wages</u>. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.
 - 4.4.1 The applicable California prevailing wage rate can be found at www.dir.ca.gov and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request._The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
 - 4.4.2 Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation

- of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
- 4.4.3 The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.
- 4.4.4 As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
- 4.4.5 In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
- 4.4.6 No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- 4.4.7 No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered "public works contractor" with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
- 4.4.8 Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of

- Industrial Relations against the TOWN for such violation, including all staff costs and attorney's fee relating to such fine.
- 4.4.9 The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.
- 4.5 <u>Amendment</u>. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.6 <u>Disputes</u>. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.7 <u>Notices</u>. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos Attn: Town Clerk 110 E. Main Street Los Gatos, CA 95030 AMS Electric LLC dba Prime Electric LLC 1941 Ringwood Ave. San Jose, CA, 95131

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.9 <u>Entire Agreement</u>. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

ITEM NO. 10.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

DocuSigned by:

Laurel Prevetti

2/14/2022

Laurer Prevetti, Town Manager

AMS Electric LLC dba Prime Electric LLC, by:

- DocuSigned by:

Brandon Elliott

2/7/2022

Recommended by:

DocuSigned by:

Matt Morley

2/8/2022

Matt Morley

Director of Parks and Public Works

Brandon Elliott, Group Executive, Shareholder

Printed Name and Title

Approved as to Form:

-DocuSigned by:

Robert W. Schultz

2/11/2022

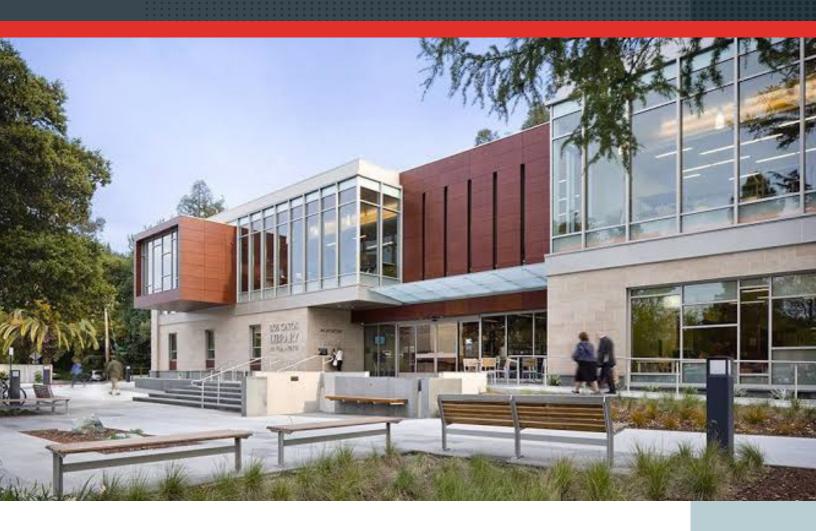
Robert Schultz, Town Attorney

Attest:

Shelley Leis

2/14/2022

Shelifey Neis, MMC, CPMC, Town Clerk



OCTOBER 22, 2021

Town of Los Gatos Battery Energy Storage System

ELECTRICAL RFP



Letter of Interest

ITEM NO. 10.

October 22, 2021

Town of Los Gatos

41 Miles Avenue Los Gatos, CA 95030 ATTN: Matt Morley

RE: Town of Los Gatos Battery Energy Storage System Request for Proposal: Electrical

Dear Matt:

PRIME Electric is pleased to submit our Electrical Proposal for the Town of Los Gatos Battery Energy Storage System project.

Our project experience with Design-Build and preconstruction services will bring tremendous value to the Town of Los Gatos team.

Our recent project experience (demonstrated herein) shows our ability to successfully turn over this project. We are comfortable with the Design-Build delivery model for this project and have selected a team that best fits the needs of the Town of Los Gatos Battery Energy Storage System project.

We understand that this project will be highly collaborative. PRIME will bring our lean and innovative practices, lessons learned from successes and challenges in the marketplace, and our strong and collaborative field team consisting of wireman and supervisors.

Additionally, the identified RFP project fundamentals are also core principles at PRIME:

- Proactive approach to preconstruction cost control and project planning
- Willingness to listen and provide project and design advice to the team
- Proven ability to deliver based on project needs
- Customer service focus
- Commitment to safety and quality control
- Commitment to planning and using Lean Planning principles (i.e. Pull Planning)

We are excited about the opportunity to work on this project; the outlined delivery model encompasses all of our best attributes. Performance based criteria and accountability metrics are welcomed by PRIME.

We are committed to adding value to this project. In order to accomplish this, PRIME will be a proactive team member that brings ideas to the table and focuses on solutions rather than problems. PRIME has the organizational depth and resources to assure total control and optimization of cost, quality, and schedule to positively impact the project.

Our project team will assist in developing the best overall solutions for the benefit of the entire project, not just our trade. We believe that the success of the project is best measured as a whole rather than by individual disciplines.

We look forward to demonstrating our ability to accomplish these goals. Thank you for the opportunity to provide this proposal response. We look forward to any questions or feedback.

Best Regards,

Jonathan Graves

PROJECT EXECUTIVE

X rouls





Danny Thomas CHIEF OPERATING OFFICER



Mike Sanjurjo EXECUTIVE DIRECTOR OF SALES



Brandon Elliott GROUP EXECUTIVE



Jonathan Graves PROJECT EXECUTIVE



Anthony Pinon SERVICE & SPECIAL PROJECTS MANAGER



10/22/2021

Town of Los Gatos Parks and Public Works 41 Miles Avenue Los Gatos, CA 95030

Attention: Matt Morley

Reference: Town of Los Gatos – Energy System

Prime Reference #: 21-228

Dear Matt,

Prime Electric is pleased to present this proposal for the electrical work required for the Project Town of Los Gatos – Energy System. This proposal is based on the provided drawings dated 3/15/10 and the scope discussed and detailed below.

Scope of work:

- 1. Provide Design Engineering and drawings for permitting.
- 2. Provide excavation and patch back for all underground requirements.
- 3. Install 125-kilowatt ELM Microgrid Battery Storage System.
 - a. See attached for cutsheet and details.
- 4. Provide start up, commissioning, and training for new Microgrid Battery Storage system.

Clarifications:

- A. All work shall be completed during normal business hours (7:00am to 4:00pm).
- B. All work shall be installed in compliance with the applicable specifications and all applicable codes.
- C. We have based our proposal on having unrestricted access to all work areas.
- D. We have assumed that the electrical panels have the space and capacity to accommodate the electrical requirements for this installation.
 - * NOTE: Commodities such as wire and conduit cost can fluctuate daily, and equipment pricing generally adjusts quarterly. Significant price increases will result in a request for adjustment of contract price
- E. We have not included the following:
 - 1. Overtime.
 - 2. Cut, patch and paint of existing finishes.
 - 3. Replacement of ceiling tiles.
 - 4. Provisions for and installation of temporary power and lighting.

- 5. Provisions for and installation of access panels.
- 6. Provision for a performance and payment bond.

The total cost to complete this work is \$498,470.00

Thank you for allowing Prime Electric to present this proposal for your review and consideration. This proposal is valid for sixty (60) days. Should you have any questions and/comments, please feel free to contact me at (925) 961-1600.
Sincerely,
Jonathan Graves
Jonathan Graves Project Executive Prime Electric

Approval Signature: ______Date: _____





ITEM NO. 10.

Prime Electric - Town of Los Gatos

- Battery Energy Storage System Bid Submittal -

SITE:

100 Villa Ave, Los Gatos, CA 95030

125 kW / 330 kWh ELM BATTERY ENERGY STORAGE SYSTEM

BATTERY ENERGY STORAGE SYSTEM (BESS)

Solar Technologies will design and furnish a 125-kilowatt ELM Microgrid Battery Storage system to provide 100% backup power during grid outage. The ELM Microgrid ESS has been engineered to form a microgrid, and can perform demand response, Time of Use, and self-consumption. The microgrid system integrates an EPC bi-directional inverter (PCS), Kore's UL 9540a lithium-ion battery, ELM Fieldsight energy management software and an energy meter which measures your facility's energy consumption and deploys energy as needed. All of these components are bundled in a pre-engineered NEMA 3R enclosure which includes thermal management.

The system will be designed with a charging or discharging power of 125 KW and an energy storage capacity of 330 kWh. The energy storage capacity is capable of future expansion up to 440 kWh.

The system will include a free standing NEMA 3R battery cabinet inclusive of battery modules, battery racks, integral controls, and fire suppression system. During times the grid is functioning, the system will provide self-consumption, energy arbitrage and demand charge management peak shaving functionality.

Solar Technologies will design, engineer, permit and provide a battery energy storage system described below. ELM will provide battery system commissioning assistance.

--actric.

- ELM Microgrid Battery Storage 125 kW / 330 kWh
- Systems contain the following:
 - o 3x 110kWh Kore battery racks and BPU pre-installed
 - Kore BMS
 - o EPC 125 kW PCS
 - ELM Microgrid controller
 - ELM Microgrid Switchgear package





- o Internal A/C bus for solar, generator, & microgrid loads
- 5 Year ELM Monitoring
- 5 Years OEM Warranty
- 24 Volt DC power supply and UPS
- HVAC/heater (thermal management of batteries)
- o NEMA 3R main enclosure
- Junction panel with termination blocks
- Wattnode energy meter
- o ELM will provide Annual Report on System Functionality

SYSTEM OPERATION

ELM's Energy storage system can be used in 4 key storage applications for commercial battery systems:

Forms a Microgrid: The system will form a microgrid either for the lifetime of the system or intermittently upon grid failure. Included in the standard microgrid system is a battery, inverter, internal UPS used for system controls, wiring box, grid relay and contactor.

Demand Response: Energy Storage system is used to offset a facilities demand charges by reducing the demand to the local utility by deploying energy from the battery during preset peak demand times

Time of Use Shifting (TOU): This system will store less expensive off-peak energy into the battery and then deploys that energy from the battery during more expensive peak rate times.

Self-Consumption: In markets that do not allow net metering your battery system can store excess PV generation thus preventing the system from back-feeding PV power to the grid.

System Overview & Functionality:

This system will have full Microgrid functionality as well as additional functionality that may be used to add capabilities and decrease electricity costs. Depending on how much electricity is being used, the system will provide power for at least 2 hours and could run infinitely with solar input. An onsite generator could also be used for onsite power. The preferred scenario would be that the generator would only need to be used in rare circumstances during times of especially low solar production (e.g. a large winter storm in January) Below is a typical system of operations.

Sequence of Operations

The two main operational modes are Island (backup) and Grid Tied.

1.1 Island Mode (SOO2/SOO3)

In this mode, the Microgrid will operate as an island isolated from the utility grid. The goal in this mode is to maximize the use of available battery and PV and minimize the use of the generator. In this mode, there are two operational modes and three sub modes:





- Genset ON (SOO2): When the combined maximum output of the PV array and battery (a minimum SOC threshold for the battery has been reached) is insufficient to support the loads, the site controller should turn ON the genset incorporating a seamless transition. While the genset is ON, the storage inverter will be utilized to support the load and charge the battery in current source mode. The generator will be operating in a constant power mode while charging the batteries with excess power generation. PV will be utilized if available.
- Genset OFF (SOO3): While there is sufficient PV generation and battery capacity available, the generator will remain off and the storage inverter will form the grid and act as the Microgrid master. The PV inverters will sense the AC voltage on their terminals and follow the storage inverter.

1.2 Grid Tied Mode (SOO6/SOO5)

In this mode, the Microgrid will operate in parallel with the utility grid. The goal is to maximize the local consumption of the PV generation and battery while keeping the batteries charged to prepare for an outage. If there is sufficient PV generation, the solar array will power the loads on site. If the load is fully met, PV will prioritize charging the battery bank until the battery state-of-charge (SOC) reaches 100%. If the PV generation exceeds the amount of power the battery can absorb (either due to high SOC or charge power limitations), the Microgrid can either export excess PV generation to the utility grid if allowed or curtail excess PV to prevent from exporting PV power to the grid. The microgrid will never export any battery power to the grid.

- Peak Shaving (SOO6): The Microgrid can be enabled to use PV and the battery up to a specific SOC threshold (configurable) to minimize grid import power by setting a load threshold the user wants to keep the grid power below.
- Demand Response (SOO6): The Microgrid can be enabled to use PV and the battery up to a specific SOC threshold (configurable) to minimize grid import power only during certain times by setting a load threshold the user wants to keep the grid power below.

We will provide equipment cutsheets, shop drawings, factory test reports, wiring diagrams, commissioning reports, as-builts and O&M Data as specified.





PROPOSAL ASSUMPTIONS, CLARIFICATIONS AND EXCLUSIONS

- Building permit fee and PG&E interconnection applications are excluded, to be passed through at direct cost without markup; we will request an estimate from AHJ prior to execution of contracts.
- New concrete pad with steel bollards for protection of energy storage enclosure to be provided by others. Included.
- Site preparation, including grading, soil stabilization, removal of landscaping and final grading is excluded and to be performed by others if needed.
- Microgrid control system programming & commissioning is excluded.
- Microgrid metering, relays, critical load panels and other related infrastructure and labor is excluded.
- Proposal assumes the existing Solar PV source circuit can be re-routed to energy storage system bussing.
- Proposal assumes as-built plan sets, C-ALTA, Geotechnical and Title Reports provided by Customer are sufficient for system engineering and permitting approval requirements. Additional studies or engineering reports will be charged in addition to proposal if required.
- On-site construction and labor services are excluded from our quote, prevailing wages would not apply.
- Repairs or upgrades to the property not described within this Proposal which are otherwise required or discovered during the project. This can include existing electrical equipment, structural improvements, roof system repairs, etc.
- Utility company interconnection requirements such as NGOM meters or upgrades to Utility company infrastructure or mitigation work required through the utility interconnection application are excluded.
- Any extraordinary engineering, approvals, discretionary reviews, special certification or testing would be charged in addition to this Proposal.
- Costs incurred because of property access restrictions during normal working hours or Buyer's non-standard work hour requirements are excluded.
- Painting or any other "decorative work" on the System is excluded.
- Bid, Price or Performance Bonding is excluded.
- Fire safety and sprinkler systems are excluded.
- Security personnel excluded, securing equipment is the responsibility of Customer upon delivery and installation.
- Repair of damaged underground utilities, power, plumbing or irrigation lines if not provided with plans specifying their location is excluded.
- Remobilization after start of construction is excluded.
- Any work not originally included within this Agreement or specified as an inclusion within this Addendum A will be charged in addition to this Agreement at a labor rate of . per hour and costs plus 15%.

Price is good for 30 days





SOLAR TECHNOLOGIES CORPORATE QUALIFICATIONS

STE Electric DBA Solar Technologies was founded in 1998. We are a privately held, full design/build, C-10/C-46 licensed contractor with 85+ employees and offices in San Ramon, Campbell and Santa Cruz, California. We focus on grid-tied, behind-the-meter PV solar, energy storage and EV charging station projects for commercial, municipal, non-profit and residential customers.

Over the past 20+ years we have established ourselves as one of the most accomplished and skilled solar design and installation companies in the business by providing customers with the best equipment, people and service at a competitive price. We are ranked among the top 25 commercial solar developers in California and were recognized in 2019 as SunPower's National Dealer of the Year and three times as SunPower Regional Commercial Dealer of the Year.

CALIFORNIA STATE LICENSE BOARD:

License #: 932914

License Type: C-10 Electrical / C-46 Solar

Expiration: 05/31/2023

DIR Public Works Registration #: PW-LR-1000460402

INSURANCE:

Broker Name: Wise Insurance Agency, Inc.

Broker Contact: 415.258.9912

Certificate of Insurance: Provided Upon Request

Commercial GL: \$1,000,000 per occurrence, \$2,000,000 general aggregate covering

bodily injury, property damage liability, operations and contractual

liability.

Commercial Auto: \$1,000,000 per occurrence covering bodily injury and property

damage liability.

Umbrella/Excess Liability: \$4,000,000 per occurrence and \$4,000,000 general aggregate in

excess liability coverage provided by GL and Auto.

Workers Compensation: \$1,000,000 for bodily injury as required by law.











The ELM Microgrid Turnkey Package is shipped as a self-contained unit and can be installed outdoors or indoors.



MICROGRID 125kW PACKAGE

Turnkey Solution

Factory Assembled
Pre-Engineered

Pre-Wired

Pre-Installed Safety
Labels

Pre-Tested

Managed Assets

Solar Generation

Distributed Battery Storage

Diesel, Propane & Nat Gas Generators

CHP Systems

Grid Power

Communications & Control

4G LTE Cellular

Ethernet and Wifi

Building Management

Generator Start and Stop

Optimal Power Forecasting

Power Reliability Alerts

Isochronous Generation Control

The Switch Advantage

Turnkey Solution

runney Solution

Indoor and Outdoor Enclosure Options

Climate Control

Fire Suppression Options

Microgrid Installation and O&M Guides



TECHNICAL SPECIFICATIONS

ITEM NO. 10.

Electrical	Specifi	cations
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AC Voltage	480 VAC
AC Input/Output Current	150 A
Max AC Output (discharge)	125kW
Max AC Input (charge)	125kW
Battery Capacity Range	110kWh – 910kWh
AC Frequency (field settable)	60 Hz
Max AC Overcurrent Protection	180 A
Peak Efficiency	98.5%
Power Factor	0 -1.0 Leading or
	Lagging

Equipment Specification	ns
External Dimensions (L x W x H)	60" x 36" x 104"
Weight	6100 lbs. (220kWh)
Lifting Provisions	Fork Lift Slots
Paint Tested	1000 Salt Hour Spray
Fire Suppression Options	Hybrid - 3M Novec
Temperature Range	-20°C to 50°C

Transfer to and from Islanded Mode

Upon detecting a grid disturbance, the system disconnects the Microgrid from the grid and seamlessly transitions critical/resiliency loads to Microgrid Islanded mode.

While in Microgrid Islanded mode, the system manages solar, wind and generator assets in order to efficiently support the resiliency loads.

Control Software
ELM Autonomous Microgrid Site Control System
Access & Alerts on Desktop & Mobile 24/7
Asset Monitoring System Level & Individual
Individual Microgrid Component Pages
Local HMI IP 65 Touchscreen
Communications: WiFi, Ethernet, Cellular

Functionality	
Islanded MicroGrid	Off-Grid Applications
Grid Tied MicroGrid	Al Machine Learning Demand Charge Mgmt. Peak Shaving Self-Consumption Demand Response
Distributed Generation	Time of Use Operation

Key System Components
NEMA 3R Enclosure
Bi Directional Storage Inverter
DC Disconnect - (Battery)
AC Disconnect (Inverter)
Climate Controls

Certifications	
Batteries	UL 1973, UL 9540A
Inverter	UL 1741 SA, IEEE 1547
System	UL 9540

For higher power or storage requirements multiple systems can be paralleled and additional energy storage containers can be added.

Please contact Switch Storage for more details.



c 650.793.2889 | w www.switchstorage.com | e d.hill@switchstorage.com



TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 05/07/2024

DATE: April 26, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Approve an Amendment to the Town Manager's Employment Agreement

RECOMMENDATION:

Approve an Amendment (Attachment 2) to the Town Manager's Employment Agreement.

REMARKS:

In September 2015, the Town Council approved an employment agreement with Laurel Prevetti as Town Manager (Attachment 1). The agreement includes language in Sections 3 through 6 that indicates that the intent was to provide the Town Manager the same benefits as other employees, including cash out provisions (Section 3). Cash out of an employee's unused vacation and unused sick leave is paid to all other Town employees at the time that an employee separates from the Town. The rate of pay for the unused vacation leave is 100% of the employee's hourly rate. The maximum rate of pay for the unused sick leave is 50% of the employee's hourly rate and is based on the employees hire date and length of service.

The current language in the Town Manager's agreement in Section 7 is inconsistent with the other Sections and could be interpreted to prevent the typical cash out. Attachment 2 contains the proposed Amendment which would clean up the discrepancy and clearly provide for cash out of earned vacation and sick leave, while continuing to prohibit severance pay upon voluntary resignation.

The Town Manager reached the Town's accrual cap in 2021 during the COVID-19 pandemic and no longer accrues vacation time. She is not expected to reach the sick leave cap.

COORDINATION:

The preparation of the proposed amendment was coordinated with the Town Attorney. The Finance Department prepared the estimated cash out value.

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

PAGE 2 OF 2

SUBJECT: Town Manager Employment Agreement Amendment

DATE: April 26, 2024

FISCAL IMPACT:

If the Town Council approves the Amendment and the Town Manager leaves Town service on June 28, 2024, the estimated value of unused vacation (592 hours) and sick time (813 hours) is approximately \$140,000 (pre-tax). The Department of the departing employee pays cash outs and is typically absorbed in the Town's budget.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

- 1. Original Employment Agreement
- 2. Proposed Amendment

	CLERK DEPARTMENT
	AGR 15.173
	IIIH
TOWN MANAGER EMPLOYMENT AGREEME	COPD
TOTAL MANAGER EM EGIMENT AGREEME	REC
	RESO

This Agreement made and entered into the 2nd day of September, 2015, by and between the Town of Los Gatos, a municipal corporation in the State of California ("TOWN"), and Laurel Prevetti ("MANAGER").

RECITALS

- A. The Town Council of the Town of Los Gatos desires to appoint Laurel Prevetti to the position of Town Manager of the Town of Los Gatos on September 2, 2015.
- B. It is the desire of the Town Council to establish the terms and conditions of employment of Laurel Prevetti as Town Manager of the Town of Los Gatos, including the duties, salary and benefits of employment.
- C. Laurel Prevetti desires to accept employment as Town Manager of the Town of Los Gatos under the terms set forth herein.

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and subject to all the terms and conditions hereof, the parties agree as follows:

SECTION 1. DUTIES AND RESPONSIBILITIES:

- A. <u>Appointment as Town Manager</u>. TOWN hereby agrees to employ MANAGER in the capacity of Town Manager for TOWN during the term of this Agreement. MANAGER will perform the functions and duties specified in Section 2.30.295 of the Los Gatos Municipal Code for this position and perform such other legally permissible and proper duties and functions as the Town Council may from time to time assign or delegate.
- B. Exclusive Employment. During the term of this Agreement, MANAGER shall be in the exclusive employ of TOWN; provided, however, that the term "exclusive employ" shall not prohibit future part-time employment which the Employee may desire to accept with appropriate prior knowledge and approval of the Town Council. "Appropriate prior knowledge and approval of the Town Council" shall mean that MANAGER shall give four (4) weeks written notice to the Town Council prior to accepting part-time employment and approval of the Town Council shall be deemed given unless any Town Council member states in writing that they desire a closed session to discuss the part-time employment. Such part-time employment shall not in any way conflict in time or interest with MANAGER's responsibilities to TOWN. Town Council shall have uncontrolled discretion in granting part-time outside employment and its determination to grant or deny part-time outside employment shall be final.

SECTION 2. SALARY:

- A. <u>Initial Salary</u>. TOWN agrees to pay MANAGER for her services rendered in the amount of \$203,000 annually, payable in installments at the same time as other employees of TOWN are paid.
- B. <u>Intial Performance Evaluation</u>. The Town Council shall evaluate the MANAGER's performance on or before March 15, 2016. This shall be a performance only evalution with no adjustment to compensation.
- C. Salary Increases The Town Council shall evaluate Manager performance annually thereafter beginning Setember 2016. Should the Town Council, upon completion of its annual review of MANAGER's performance pursuant to this Agreement, determine that MANAGER has met its performance expectations; the Town Council shall increase MANAGER's compensation at least consistent with compensation increases granted by Town Council to other Town Management (At-Will/Unrepresented) Employees. MANAGER understands and agrees that she has no entitlement to an increase in compensation. Any decision to increase MANAGER's compensation shall be retroactive to the beginning of the pay period immediately preceding the anniversary of the Effective Date when the review is conducted pursuant to this Agreement.

SECTION 3. BENEFITS:

All provisions of the Town Code and regulations and rules of Town relating to vacation and sick leave, medical, dental, vision, retirement (2% at 60 formula, 36-month highest average salary) and pension system contributions, holidays, cash out provisions, and other fringe benefits and working conditions pertaining to Town Management (At-Will/Unrepresented) Employees as they now exist or hereafter may be amended, except as otherwise set forth herein, also shall apply to MANAGER. Nothing in this Agreement shall affect any vacation, personal leave, administrative leave, sick time, pension system contributions or accurals, or other benefits which MANAGER has accrued and is owed or attributable to MANAGER as of the date of this Agreement, all of which shall remain accrued, owing, and attributable to MANAGER until used or redeemed by MANAGER.

SECTION 4. HOURS OF WORK AND LEAVE BENEFITS:

- A. Regular Hours. MANAGER's duties may involve expenditures of time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at Town Council and other meetings. MANAGER shall not be entitled to additional compensation for any work performed in excess of the TOWN's regular workweek.
- B. Administrative Leave. It is recognized that MANAGER must devote a reat deal of her time outside normal office hours without benefit of paid overtime in the conduct of TOWN business, and, to that end, MANAGER shall be entitled to administrative leave in an equivalent amount to that granted Town Management (At-Will/Unrepresented) Employees,

which the parties agree is five (5) days per year. MANAGER shall be entitled to accrue, use or redeem administrative leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.

- C. <u>Personal Leave</u>. MANAGER shall be entitled to personal leave in the amount of six (6) days per year. MANAGER shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.
- D. <u>Vacation Leave</u>. MANAGER shall be entitled to vacation leave in the amount of 25 days per year. MANAGER shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.
- E. <u>Sick Leave</u>. MANAGER shall be entitled to sick leave in the amount of 12 days per year. MANAGER shall be entitled to accrue, use or redeem personal leave in whatever manner is permitted pursuant to Town policy, as same may be amended from time to time by action of the Town Council.
- F. Mileage Reimbursement, Cell Phone Stipend, Holidays, Bereavement/Compassion Leave, Flexible Health Spending Account, Employee Assistance Program, and Other Fringe Benefits. MANAGER shall be entitled to mileage reimbursement, cell phone stipend, holidays, bereavement/compassion leave, Flexible Health Spending Account, Employee Assistance Program, and other fringe benefits as they now exist or hereafter may be amended for Town Department Directors.

SECTION 5. TECHNOLOGY:

A. <u>Technology</u>. TOWN agrees to budget, within the budget amount approved by the TOWN, a technology budget to assist MANAGER in keeping technologically current and personal productivity high. The technology improvements will be used to pay the cost of acquisition of equipment and purchase of services related to information systems, data handling, communications and productivity and shall be budgeted for the good of the Town in accordance with approved budgeting limitations. Purchases for technology improvements shall remain the property of the TOWN.

SECTION 6. ADDITIONAL EXPENSES:

- A. <u>Dues and Subscriptions</u>. TOWN agrees to pay the professional dues and subscriptions of MANAGER necessary for her continuation and full participation in such national, regional, state and local associations and organizations as are necessary and desirable for her continued professional participation, growth, and advancement and for the good of TOWN in accordance with approved budgetary limitations.
- B. <u>Professional Development.</u> TOWN agrees that attendance at ICMA. League of California Citics, American Leadership Forum, and other professional development activities is

both beneficial and expected. TOWN hereby agrees to pay the travel, lodging, and subsistence expenses of MANAGER for professional and official travel, lodging, meetings, and occasions, and for short courses, institutes and seminars necessary to continue the professional development of MANAGER, and to adequately pursue necessary official and other functions for TOWN, in accordance with approved budgetary limitations. Notwithstanding the above, appropriate prior knowledge and approval of the Town Council must be obtained prior to the regsitering and expenditure of funds for conferences, seminars, forums or other professional development that exceeds the length one (1) day. "Appropriate prior knowledge and approval of the Town Council" shall mean that the MANAGER shall give at least four (4) weeks written notice to the Town Council prior to registering for any professional development event that exceeds the length of one (1) day and approval of the Town Council shall be deemed given unless any Town Council member states in writing that they desire a closed session to discuss the matter.

C. Executive Expenses. TOWN recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by MANAGER and hereby agrees to reimburse such expenses upon presentation of a receipt and submission of the appropriate confining purchase requisition to the Mayor and Town Finance Department, in accordance with approved budgetary limitations and subject any policies and guidelines the Town Council may impose.

SECTION 7. TERM; TERMINATION:

- A. <u>Term of Agreement</u>. This Agreement shall commence upon execution by the parties and become effective September 2, 2015 and extend indefinitely until terminated as provided hereinafter.
- B. At-Will Employment. MANAGER's employment with the Town is "at-will" and MANAGER serves at the pleasure of the Town Council, pursuant to Section 2.30.260 of the Municipal Code. As such, a majority of the Town Council may terminate MANAGER's employment at any time, with or without cause, with or without advance notice, subject only to the hearing requirements set forth in Municipal Code sections 2.30.285, as amended by the Town Council on August 18, 2015.
- C. Termination Without Cause. In the event that TOWN terminates MANAGER's employment for reasons other than those set forth in subsection D below, including without limitation, for no reason stated, within the term of this Agreement, or any extensions, TOWN agrees to pay MANAGER a cash payment equal to six (6) months of the MANAGER's then current salary and any benefits that are lawfully required to be continued pursuant to COBRA and other statutes. Following such six (6) month period, MANAGER retains the right to participate in Town health and related benefit programs, should such programs be instituted during the term of this Agreement, at MANAGER's own and sole expense pursuant to the terms of COBRA, MANAGER shall be compensated for any unused vacation leave, holidays, and other benefits then accrued consistent with Town policies. The schedule of the payment pursuant to this section shall be at the sole discretion of the MANAGER.
- D. <u>Termination With Cause</u>. The TOWN may terminate MANAGER's employment hereunder at any time for cause subject to the provisons of Los Gatos Municipal Code Section

2.30.285. No lump sum cash payment or other severance pay shall be due MANAGER upon any termination for cause. For purposes of this Agreement, "cause" shall mean any of the following: (i) a gross or habitual failure to perform the functions and duties of the Town MANAGER or any other obligations as required by the terms of this Agreement; (ii) Any other intentional or grossly negligent action or inaction by MANAGER that materially and substantially; (A) impedes or disrupts the operations of the TOWN or its organizational units; (B) is detrimental to employee or public safety; or (C) violates properly established rules or procedures of the Town causing a material and substantial adverse effect on the TOWN's interests as clearly defined and delineated by properly established Town Council action taken by the Town Council as a body, policy, regulations or ordinances of the TOWN; (iii) That MANAGER has been willfully and intentionally absent without leave, or has willfully and intentionally failed to report after leave of absence has expired; (iv) That Manager has willfully failed or refused to appear in obedience to lawful process or order of the Town Council or to answer questions under oath, before the TOWN Council or before a duly authorized committee of Congress of the United States or of the Legislature of the State of California, or a committee or subcommittee of said Congress or Legislature, or before any authorized court, office or tribunal, or hefore a Grand Jury, on any subject relating to (1) matters connected with the conduct of official business of the TOWN or of any division, department, board or commission thereof, or (2) any of the matters set forth in sections 1028 and 1028.1 of the Government Code of the State of California; or (v) That Manager has been convicted of a misdemeanor involving a crime of moral turpitude or a felony. or entry of a plea of nolo contendere with regard to a misdemeanor involving a crime of moral turpitude or a felony.

- E. Voluntary Resignation. MANAGER may voluntarily resign her position with TOWN before expiration of the term of this Agreement by giving TOWN sixty (60) days prior written notice. No lump sum cash payment or other severance pay shall be due MANAGER upon any voluntary resignation.
- F. Termination Based on Disability or Death. In the event MANAGER is permanently disabled, as determined by MANAGER's duly licensed physician, or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health reasons for a period of three (3) consecutive months beyond any accrued sick leave, Town may terminate this Agreement.
- G. <u>Limitation on Removal</u>. Pursuant to Los Gatos Municipal Code Section 2.30.290, notwithstanding anything to the contrary herein, TOWN may not remove MANAGER from office during or within any period of 30 days following any general municipal election held in the Town at which election a member of the Town Council is elected.
- H. <u>Limitation on Obligation</u>. Notwithstanding anything to the contrary herein, TOWN shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under this agreement if MANAGER is terminated in the event MANAGER is convicted of a crime involving an abuse of her office or position. Any paid leave salary offered by TOWN to MANAGER pending an investigation shall be fully reimbursed by MANAGER if MANAGER is convicted of a crime involving an abuse of her office or position. For the purposes of this section, "abuse of office or position" means and is limited to the definition under Government

Code section 53243.4 either of the following: (a) an abuse of public authority including but not limited to waste, fraud, and violation of the law under color of authority; or (b) a crime against public justice, including but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the California Penal Code.

SECTION 8. GENERAL PROVISIONS:

- A. Entire Agreement. This Agreement shall constitute the full, complete and exclusive agreement between the parties hereto and shall supersede all prior and contemporaneous agreements, understandings and representations regarding the subject matter hereof, whether oral or written.
- B. <u>Indemnification</u>. TOWN agrees to defend, hold harmless and indemnify MANAGER against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out an alleged act or omission occurring in the performance of MANAGER's duties. TOWN, at its direction, is not required to indemnify MANAGER for any illegal or criminal acts for which a court of competent jurisdiction has determined, without possibility of appeal, was committed by MANAGER.
- C. <u>Bonding Requirements</u>. TOWN shall bear full cost of the Fidelity Bond required of MANAGER under any law or ordinance.
- D. Assignment. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by TOWN and MANAGER and their respective successors, assigns, heirs and executors, except that MANAGER may not assign this Agreement or delegate any of her obligations hereunder and may only assign her rights hereunder with the prior written consent of TOWN.
- E. <u>Severability</u>. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected and shall remain in full force and effect.
- F. <u>Notices</u>. Any notice required under this Agreement shall be in writing, shall be sent by personal delivery, courier or first class mail, return receipt requested, and shall be deemed effective upon receipt.
- G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflicts of laws principles.
- 11. Attorney's Fees. In the event of any dispute between the parties hereto relating to or arising out of this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees and costs, in addition to any other relief it may receive.

IN WITNESS WHEREOF, the Town of Los Gatos has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested to by its Town Clerk, and the MANAGER has signed and executed this Agreement the day and year first above written.

TOWN OF LOS GATOS

Mayor Macia Je sen

MANAGER

Laurel Prevetti

ATTEST:

Shelley Neis, Town Clerk Administor

APPROVED AS TO FORM:

Robert W. Schultz, Town Attorney

NINTH AMENDMENT TO THE TOWN MANAGER EMPLOYMENT AGREEMENT

This Amendment to Town Agreement AGR 15-172 is entered into this 16th day of April, 2024, by and between the Town of Los Gatos, a municipal corporation ("TOWN"), and Laurel Prevetti ("EMPLOYEE").

RECITALS

- **WHEREAS**, Town and Laurel Prevetti executed an Agreement effective September 2, 2015 to provide Town Manager services to the Town;
- **WHEREAS**, a First Amendment to the Agreement was executed on April 4, 2017 to amend the employment agreement to award a 4.43% wage increase to the annual base salary, effective on April 4, 2017 and a lump sum performance bonus of \$3,000; and
- **WHEREAS**, a Second Amendment to the Agreement was executed on January 16, 2018 to amend the employment agreement to award a \$8,000 wage increase to the annual base salary, effective on January 16, 2018; and
- **WHEREAS**, a Third Amendment to the Agreement was executed on December 18, 2018, to amend the employment agreement to award a \$16,250 wage increase to the annual base salary, effective on September 2, 2018 and a lump sum performance bonus of \$3,300; and
- **WHEREAS**, a Fourth Amendment to the Agreement was executed on December 3, 2019 to amend the employment agreement to award a \$13,750 wage increase to the annual base salary, effective on September 2, 2019 and a lump sum performance bonus of \$5,000; and
- **WHEREAS**, a Fifth Amendment to the Agreement was executed on November 3, 2020 to amend the employment agreement to award a \$12,500 wage increase to the annual base salary, effective on September 2, 2020 and a lump sum performance bonus of \$5,000; and
- **WHEREAS**, a Sixth Amendment to the Agreement was executed on November 16, 2021 to amend the employment agreement to award a \$5,250 wage increase to the annual base salary, effective on September 2, 2021; and
- **WHEREAS**, a Seventh Amendment to the Agreement was executed on December 6, 2022 to amend the employment agreement to award a \$8,033 wage increase (3%) to the annual base salary, effective on September 2, 2022, and a lump sum pandemic-related bonus of \$2,500; and
- **WHEREAS**, an Eighth Amendment to the Agreement was executed on December 5, 2023 to amend the employment agreement to award a \$13,789 wage increase (5%) to the annual base salary, retroactive to the anniversary date of September 2, 2023; and
- **WHEREAS**, the intent of the original Agreement intended for the Town Manager to enjoy the same benefits as other Town management employees regarding holidays, vacation, sick leave, other leaves, and other benefits, including the accrual, use, and redemption of vacation time, personal leave, administrative leave, and sick leave as stated in Sections 3 through 6 of the Agreement.

IT IS THEREFORE AGREED by the parties as follows:

Section 7(E) of the Agreement is amended to read as follows:

E. Voluntary Resignation.

MANAGER may voluntarily resign her position with TOWN before expiration of the term of this Agreement by giving TOWN sixty (60) days prior written notice. No severance pay shall be due MANAGER upon any voluntary resignation.

All other terms of the original Employment Agreement remain in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Town Manager Agreement on the date written above.

	TOWN OF LOS GATOS
	Mary Badame, Mayor
ATTEST:	Laurel Prevetti, Town Manager
Wendy Wood, Town Clerk	
APPROVED AS TO FORM:	
Gabrielle Whelan, Town Attorney	



MEETING DATE: 05/07/2024

DATE: April 26, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Approve and Authorize the Town Manager to Execute a Side Letter of

Agreement Between the Town of Los Gatos and the American Federation of State, County, and Municipal Employees (AFSCME) to Contract Out Street

Sweeping Services Effective July 1, 2024

RECOMMENDATION:

Approve and authorize the Town Manager to execute a Side Letter of Agreement between the Town of Los Gatos and the American Federation of State, County, and Municipal Employees (AFSCME) to contract out street sweeping services effective July 1, 2024

BACKGROUND:

The Town of Los Gatos Department of Parks and Public Works conducts street sweeping using staff resources and Town-owned equipment. Sweeping is completed on all roads once each month and weekly in the downtown area.

The West Valley Solid Waste Management Authority (WVSWMA) Joint Powers Agency (JPA) has negotiated a new contract with its waste hauling contractor, West Valley Collection and Recycling (WVC&R). The Town is a member of this JPA. The new contract begins July 1, 2024. The Town has the opportunity to have street sweeping performed by a third-party contactor that is managed by and paid for through WVC&R. The three other member agencies of the WVSWMA currently contract their street sweeping operations and would continue to do so under the new WVC&R contract. Contracting street sweeping services is not expected to change the rate that residents pay for trash collection services.

PREPARED BY: Katy Nomura

Assistant Town Manager

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

PAGE 2 OF 2

SUBJECT: Approve a Side Letter of Agreement Between the Town of Los Gatos and the

American Federation of State, County, and Municipal Employees (AFSCME)

DATE: April 26, 2024

DISCUSSION:

Staff believes contracting out street sweeping services would be beneficial operationally, enhance pollution prevention efforts, reduce operating and maintenance costs of the Town's street sweeper, and bring the Town into alignment with other WVSWMA member agencies. The Town met and conferred with AFSCME to develop the proposed Side Letter (Attachment 1). The Side Letter allows for street sweeping to be contracted out effective July 1, 2024, with no reduction in workforce. This would allow staff time to be reallocated to other pressing needs. Employees may still be directed to perform street sweeping as needed.

In addition, the Side Letter suspends the Work Furlough Program, with the Town being able to restart the program to meet operational needs at its discretion. If the Work Furlough Program is restarted at a future date, the Side Letter also increases the premium pay for Maintenance Workers assigned to oversee the Work Furlough Program from 5% to 8%.

CONCLUSION:

Staff has met its obligation to meet and confer with AFSCME on the proposed Side Letter. AFSCME has indicated support for the proposal. Therefore, it is recommended that the Side Letter of Agreement be approved, and the Town Manager be authorized to execute the Side Letter.

COORDINATION:

The preparation of this report was coordinated with the Human Resources Department, Parks and Public Works Department, Finance Department, Town Attorney's Office, and Town Manager's Office.

FISCAL IMPACT:

The operational costs of in-house street sweeping were fully offset by revenue received from WVSWMA and the costs of contracting out would continue to be covered by WVSWMA. There is no budget adjustment required to implement the Side Letter as the Work Furlough Program is currently suspended. If the Work Furlough Program is restarted, any costs associated with the increased premium pay would either be absorbed in the operating budget or a budget adjustment would be requested as needed.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Side Letter of Agreement Between Town of Los Gatos and AFSCME

SIDE LETTER OF AGREEMENT BETWEEN THE TOWN OF LOS GATOS AND THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME)

The Town of Los Gatos (Town) and the American Federation of State, County, and Municipal Employees (AFSCME) have met and conferred in good faith and hereby agree to the following:

- 1. Effective July 1, 2024, the Town will contract out street sweeping services to help improve garbage collection coordination and operations by aligning the Town with other West Valley Solid Waste Management Authority (WVSWMA) agencies and enhance pollution prevention efforts. This action will not result in a reduction in the workforce. At the Town's discretion, employees may be directed to perform street sweeping duties as needed.
- 2. Effective the first full pay period after Council approval of this side letter, the premium pay for Maintenance Workers for supervision duties when assigned to the Work Furlough Program will increase from 5% to 8%, regardless of the number of Work Furlough Program staff supervised. All other provisions of Section 25: Work Furlough Program will remain in effect without changes.
- 3. Suspend the Work Furlough Program. The Town, at its own discretion, can restart the Work Furlough Program to meet operational needs.

The terms of this Side Letter Agreement shall become effective when signed by all parties below and upon Town Council approval. This Side Letter Agreement shall be incorporated into the current or successor Memorandum of Agreement of the bargaining unit.

FOR AFSCME:		FOR THE TOWN OF LOS GATOS:	
Carol McEwan Union Representative AFSCME Council 57	Date	Laurel Prevetti Town Manager	Date
Danny Murdock Maintenance Assistant	Date	APPROVED AS TO FORM:	
		Gabrielle Whelan Town Attorney	Date

Page 214 ATTACHMENT 1



MEETING DATE: 05/07/2024

DATE: April 26, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Review Polling Results, Authorize the Town Manager to Execute an

Amendment to the NBS Agreement to Include Phase 2 in the Scope of Services to Prepare a 1/8th Cent Sales Tax Measure for the November 2024 Ballot and Increase the Not to Exceed Amount to \$105,000, and Authorize an Expenditure Budget Adjustment in an Amount of \$60,400 from the Available

General Fund Capital/Special Projects Reserve

RECOMMENDATION:

Review polling results, authorize the Town Manager to execute an amendment to the NBS agreement to include Phase 2 in the Scope of Services to prepare a 1/8th cent sales tax measure for the November 2024 Ballot and increase the not to exceed amount to \$105,000 (Attachment 1), and authorize an expenditure budget adjustment in an amount of \$60,400 from the available General Fund Capital/Special Projects Reserve.

BACKGROUND:

While costs of providing services and programs for residents have significantly increased over the years, Town revenues have not kept pace. Los Gatos is facing the same economic pressures as many other cities and businesses, including inflation and the uneven recovery from the pandemic. In addition, unfunded mandates by the State have also reduced the Town's available funds.

The Town maintains a relatively stable and low staffing level. Even so, costs per employee continue to escalate as evidenced by pension benefit costs having increased 35% in the last five years. The Town Council has taken several proactive steps to reduce the Town's pension liability, including Additional Discretionary Payments for the Pension Plans and curbing cost escalation in Other Post-Employment Benefits (OPEB).

PREPARED BY: Katy Nomura

Assistant Town Manager

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

PAGE 2 OF 4

SUBJECT: Revenue Ballot Measure Polling Results

DATE: April 26, 2024

BACKGROUND (continued):

Los Gatos has taken the following proactive cost-cutting measures during major economic downturns to control costs while maintaining high service levels:

- Staffing levels significantly reduced from 2001 2005 and have not returned to those levels, despite an increase in population since then, unfunded mandates, and service demands,
- Imposed wage freezes and unpaid furloughs, and
- Reduced employee benefit costs.

Town financials are reviewed annually by an independent auditor. Los Gatos has earned recognition for its fiscal responsibility with the highest credit rating (AAA bond rating by Moody's) and annual awards by the Government Finance Officers Association for its high quality and transparent budgeting practices.

On November 17, 2022, the Finance Commission reviewed several cost reduction measures and recommended that the Town further work toward operational efficiencies and researching additional revenue options.

On January 24, 2023, the Town Council determined its Strategic Priorities for 2023-2025, which included exploring new revenue opportunities.

On June 20, 2023, the Town Council authorized the Town Manager to issue a Request for Qualifications (RFQ) for revenue ballot measure consulting services. After conducting the RFQ process, the Town selected NBS.

On October 17, 2023, Town Council authorized the Town Manager to enter into an agreement for the initial phase of the work for an amount not to exceed \$44,600, with direction to return to Council with revenue modeling prior to beginning any polling.

On December 19, 2023, Town Council reviewed the Revenue Modeling Report prepared by NBS and continued the item to February 20, 2024 to consider it at the same time as the five-year forecast.

On February 12, 2024, the Finance Commission discussed the NBS report and recommended that the Town Council not rely upon the NBS Report's conclusions regarding deficit reductions because the financial analysis was based on an outdated 5-Year Forecast which did not include actual results for Fiscal Year 2022/23. The Finance Commission did find that the incremental revenue contribution for the revenue options analyzed are credible and can be used for modeling purposes. While the Commission did not make a motion regarding any potential ballot measure, individual Commissioners questioned the need for it at this time. One

PAGE **3** OF **4**

SUBJECT: Revenue Ballot Measure Polling Results

DATE: April 26, 2024

BACKGROUND (continued):

Commissioner expressed that there may or may not be merit to the 1/8th cent tax measure and indicated this was the reason they declined to opine.

On February 13, 2024, the Town Council updated its Strategic Priorities and removed the detailed bullets under "Develop a Five-Year Structurally Balanced and Sustainable Operating Forecast," including reference to new revenue opportunities.

On February 20, 2024, the Town Council directed staff to proceed with polling to explore a 1/8th cent sales tax. A 1/8th cent sales tax is estimated to result in approximately \$1 million in additional revenue annually.

DISCUSSION:

NBS partnered with Gene Bregman and Associated to conduct the scientific polling. Polling occurred from March 24-27, 2024 and surveyed 200 registered Los Gatos voters. The summary of the polling results will be presented at the Council meeting, including the following conclusions:

- Los Gatos residents are very positive towards their Town, local government, and Departments within local government.
- Maintaining public safety (police services and wildfire prevention) and traffic congestion are of paramount importance to voters.
- Majority of voters are supportive of a 1/8th cent sales tax increase for the Town.
- If the Town captures the remaining 1/8th cent of sales tax capacity available to Los Gatos, 100% of the funds would remain in Los Gatos.
- Not claiming the remaining sales tax capacity means a County entity could capture the 1/8th cent and raise sales tax for Los Gatos with potentially little benefit to the Town.

The Finance Commission had the option to consider the polling results at its May 6, 2024 meeting prior to Council consideration. The Finance Commission Chairperson preferred to focus the meeting on the proposed Fiscal Year 2024/25 Budget and referenced that the Commission discussed potential polling and revenue measures on February 12, 2024. A summary of the February 12, 2024 discussion can be found in the Background section of this report.

If Council authorizes Phase 2 of the NBS agreement, the consultant will prepare public education and outreach, refine ballot measure language, and draft a resolution for the Town Council to place the measure on the 2024 ballot. It is worth noting that a super majority of Council (4/5) is required to place a measure on the 2024 ballot.

PAGE 4 OF 4

SUBJECT: Revenue Ballot Measure Polling Results

DATE: April 26, 2024

CONCLUSION:

Staff looks forward to Council's discussion and direction on whether to pursue a 1/8th cent sales tax measure. If a measure is pursued, final ballot measure language and a resolution to place the measure on the November 2024 ballot would return to Council in June to meet the August 9, 2024 submittal deadline to the Santa Clara County Registrar of Voters.

COORDINATION:

The preparation of this report was coordinated with the Town Manager, Town Attorney, and Director of Finance.

FISCAL IMPACT:

On October 17, 2023, Council authorized the Town Manager to enter into an agreement for the initial phase of the work for amount not to exceed \$44,600. The proposed amendment would bring the total not to exceed amount for the contract to \$105,000 and require an expenditure budget adjustment of \$60,400 from the Available General Fund Capital/Special Projects Reserve. The cost of placing a measure on the 2024 general election ballot is estimated to cost approximately \$60,000. If a measure is pursued, the \$60,000 expenditure budget adjustment would be requested when the Council considers the resolution to place the measure on the ballot.

If a 1/8th cent sales tax measure is successful, it is estimated to generate \$1 million in additional revenue for the Town annually.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Draft Amendment to NBS Agreement

AMENDMENT TO AGREEMENT

This AMENDMENT TO AGREEMENT is dated for identification this 8th day of May 2024 and amends that certain (AGREEMENT DESCRIPTION) dated October 18, 2023 made by and between the Town of Los Gatos, ("Town,") and NBS Government Finance Group, DBA: NBS, S Corporation ("Consultant"), whose address is 870 Market Street, Suite 1223, San Francisco, CA 94102.

RECITALS

- A. Town and Consultant entered into a Consulting Agreement on October 18, 2023, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to complete Phase 2 described in the Scope of Services.

AMENDMENT

1. Section 2.1 <u>Scope of Services</u> is amended to read as follows:

Consultant shall provide services as described in Phase 1 and Phase 2 of the Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.

2. Section 2.6 Compensation is amended to read as follows:

Compensation for Consultant's professional services shall not exceed \$105,000, inclusive of all costs. Payment shall be based upon Town approval of each task.

3. All other items and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos:	Approved as to Consent:
Laurel Prevetti, Town Manager	Michael Rentner, Chief Executive Office
Recommended by:	
Katy Nomura	<u></u>
Assistant Town Manager	

Approved as to Form:	Attest:
Gabrielle Whelan, Town Attorney	Wendy Wood, CMC, Town Clerk

AGREEMENT FOR REVENUE BALLOT MEAURE CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on October 18, 2023 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and NBS Government Finance Group, DBA: NBS, S Corporation ("Consultant"), whose address is 870 Market Street, Suite 1223, San Francisco, CA 94102. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide **revenue ballot measure consultant** services.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement.
 Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 <u>Scope of Services</u>. Consultant shall provide services as described in **Phase 1 of the Scope of Services**, which is hereby incorporated by reference and attached as **Exhibit A**.
 - Town staff and Consultant shall return to the Los Gatos Town Council for direction before conducting the voter poll portion of the work.
- 2.2 <u>Term and Time of Performance</u>. This contract will remain in effect from **October 18, 2023 to November 5, 2024**.
- 2.3 <u>Compliance with Laws</u>. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 <u>Sole Responsibility</u>. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 <u>Information/Report Handling</u>. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits

prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of the these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 <u>Compensation</u>. Compensation for Consultant's professional services **shall not exceed \$44,600**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 <u>Billing</u>. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 <u>Availability of Records</u>. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 <u>Assignability and Subcontracting</u>. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 <u>Independent Contractor</u>. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations

under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents, are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the automobile or professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurances maintained by the Town, its elected and appointed officials, employees, and agents, shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, employees, and agents.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 <u>All Coverages</u>. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 <u>Workers' Compensation</u>. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further,

- Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 <u>Indemnification</u>. The Consultant shall save, keep, hold harmless and indemnify and defend the Town, its elected and appointed officials, employees, and agents, from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing the work described in this contract.

IV. GENERAL TERMS

- 4.1 <u>Waiver</u>. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 <u>Governing Law and Venue</u>. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 <u>Termination of Agreement</u>. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 <u>Amendment</u>. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 <u>Disputes</u>. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 <u>Notices</u>. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos Attn: Town Clerk 110 E. Main Street Los Gatos, CA 95030 NBS Government Finance Group, DBA: NBS, S Corporation 870 Market Street, Suite 1223 San Francisco, CA 94102

- or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.
- 4.7 <u>Order of Precedence</u>. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 <u>Entire Agreement</u>. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:	Consultant, by:
DocuSigned by:	DocuSigned by:
laurel prevetti	Michael Kentner
Laurel Prevetti, Town Manager	C1107459CCD7488
Recommended by:	
DocuSigned by:	
katy Nomura	Michael Rentner, Chief Executive Officer
Katy Nomura, Assistant Town Manager	Printed Name and Title
Approved as to Form:	
DocuSigned by:	
Gabrielle Whelan	
Gabrielle Whelan, Town Attorney	
Attest:	
DocuSigned by:	
Wendy Wood	
Wendy Wood CMC Town Clerk	

ITEM NO. 13.

4. Project Approach

Summary of Approach



NBS will communicate with the Town staff throughout the duration of the project to clarify the Town's goals, identify any special circumstances, and develop a realistic project schedule. The following Work Plans detail the steps needed to put the Town in the best position to propose a viable local funding ballot measure for the November 2024 election.

Although not mentioned in the Town's Request for Qualifications, an additional service we can provide is Revenue Measure Modeling to calculate financial benefit to the Town of a Special Financing District. This is listed as an optional item in our proposed budget.

Phase 1 | October - December 2023 | Issue Research, Polling, Community Survey

NBS will work with your team to understand the specific needs for, and demand on, the Town's programs and services, and will provide an analysis of various tax models for the Town to understand potential options.

Develop Stakeholder Outreach and Public Engagement Messaging: NBS will work with staff, elected officials and stakeholders to develop agreed-upon messaging that will ensure the sharing of consistent ideas and concepts with the community during Phase One services such as polling. Standard messaging will provide clarity to community members and prevent confusion.

NBS will partner with the Town Manager, Town team, and our subconsultant GBA to provide the research needed for the Town to understand its most viable revenue measure options.

Voter Poll: Working with NBS and the Town team, GBA will draft a survey questionnaire for Town approval, and conduct a poll among likely voters within Los Gatos that will achieve the following objectives:

- Explore the current image of the Town of Los Gatos, voters' attitudes towards the Town, and their assessments of the strengths and weaknesses of local government;
- Determine voter perceptions of the needs of the Town and the priorities that voters set for those needs;
- Determine voter attitudes towards various revenue measures for the Town, and the optimum amount to place before the voters;

ITEM NO. 13.

- Evaluate voters' top priorities for money raised in order to design a measure that best addresses the
 desires of the community;
- Determine the most effective and important reasons for your voters to support a ballot measure;
- Develop a demographic profile of Town voters, including how various demographic groups differ in their opinions and attitudes towards a possible ballot measure.

Polling Methodology: Our subconsultant, GBA, will select the survey sample from highly sophisticated and up-to-date voter registration files. This information, when combined with the answers to our survey questions, is essential as we identify voters who are most likely to vote in general, primary, municipal, special, or mail-only elections. It is critical to remember that any survey must interview only <u>likely</u> voters. Being a registered voter is not enough. Those likely to vote will have demonstrated their interest in voting through their history in previous elections.

The sample will be drawn from lists of registered voters which have been matched with telephone directories and other lists to maximize the quantity of available telephone numbers. Since this is a small city, we would expect that a smaller sample of voters will be adequate, even if it is no more than 100-200 completed interviews.

GBA believes that it is of the utmost importance to go beyond simple questions and simple answers. For example, you will never see us ask if a problem is serious or not serious. We require differentiation between those with strong opinions and those with weaker opinions, those who say the problem is "extremely serious," or "very serious" rather than those who say it is only "somewhat serious" or "not too serious." Therefore, virtually all questions in our polls will delve into the intensity of feeling that voters bring to an issue. Only in this way can we separate those voters with a general opinion on an issue from those who are moved to take action because of that same issue (even if the "action" is just voting "yes" or "no").

Telephone interviews are conducted by a regularly employed staff of full-time professional interviewers who specialize in conducting interviews for public opinion surveys. GBA supervises the interviewing process and verifies that interviews are conducted according to specifications. Supervisory procedures include continuous on-site and telephone monitoring of interviews. GBA follows established industry standards for call backs of busy or "not-at-home" numbers designed specifically to maintain the randomness of interviewee selection and the validity of the survey. A regularly employed staff of full-time professional interviewers conducts interviews in English, Spanish, Vietnamese, Cantonese, Mandarin, and other languages.

To summarize, we will provide to the Town of Los Gatos:

- Random telephone and on-line survey of likely voters
- Consultation solely with principal of Gene Bregman & Associates
- Assistance in developing topic areas to be investigated
- Development of survey questionnaire
- Scientific sample selection to assure reaching an accurate representation of the voting population
- Pre-testing of questionnaire
- Conduct of field work from our central phone bank, as well as surveys completed from text and email contacts
- Editing, coding, and electronic data processing
- A full computer printout of all cross-tabulated data

- Analysis of survey results
- On-going strategy and consultation

Feasibility Analysis of Ballot Measure Options and Expenditure Plan: Incorporating polling data, NBS and GBA will make recommendations to the Town team on a proposed ballot measure amount and ballot measure expenditure plan elements. If polling is favorable for a potential funding measure, this would be an optimal time to present polling data to the Town Council for discussion and recommendation to draft ballot measure language. This allows time for community outreach, input and consensus building among key stakeholders prior to finalizing the proposed ballot language and the resolutions Council must adopt to officially place a measure before voters.

Decision from Council to move to Phase 2.

Phase 2 | January 2023 – July 2024 | Message Toolkit, Stakeholder Outreach and Public Engagement

Outreach to key stakeholders (business, labor, and other community leaders) before a measure is officially proposed can be key to the success of its passage. This is where potential bumps in the road are uncovered, and ideally resolved. NBS will work with the Town team to develop a Stakeholder Outreach Plan and strategy to help build community consensus around the need for a ballot measure to maintain the quality of life that Los Gatos residents desire.

NBS will work with the Town team to create a Key Stakeholder Outreach Plan and a list of key stakeholders and media outlets, develop website content, and an Informational Toolkit (fact sheet, Q&A, PowerPoint



presentation) that can be used to educate and engage leaders in the public and private sector, business community, and community-based organizations about the need for additional funding for essential public services.

Once the Council acts to place a measure on the ballot, the Town may consider some informational outreach to educate residents on the proposal itself through online and news media communications and through the mail. Working with your staff and legal counsel, we can assist with crafting and implementing that communications program.

Community Survey: In addition to the quantitative research conducted by GBA, CivicMic can conduct qualitative research in the form of a community survey of residents at large. This outreach through email and social media will be comprised of an abbreviated survey asking residents to weigh in with their priorities for town services and programs. This community engagement effort provides additional perspectives to the research and can be helpful in conveying the Town's commitment to inclusivity and transparency.



Engagement Activities

Aiming to reach residents with diverse backgrounds allowing for unique perspectives, CivicMic would:

Create a customized webpage for your project on civicmic.com. This site would feature a variety of engagement tools and informational materials.

Develop an email campaign strategy to reach out to community members and stakeholders who may not have access to social media or may not regularly visit the Town website.

Include specialized mapping and graphics on CivicMic.com, such as sample maps showing community participation in the survey.

Design content related to the Town's challenges in maintaining high services levels for resident programs and services.

Coach various Stakeholders on ways to share educational materials with community members through workshops and printed materials.

Create an email list of community members who have expressed interest in receiving updates.

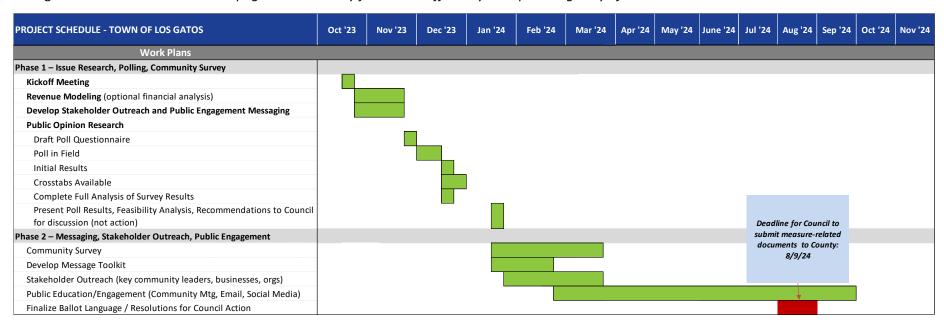
Finalize Ballot Measure Language and Ballot Argument

To place a ballot measure on the November 5, 2024 ballot, all election-related Council action and resolutions must be completed and noticed to the County by August 9, 2024, providing an important window of time for informing and engaging community members around the need for additional revenue before officially proposing and finalizing the ballot measure language.

NBS will work with the Town Manager and Town Attorney to draft ballot measure language and accompanying resolutions for Town Council approval.

DRAFT TIMELINE

The following is an overview of our proposed project schedule. We will discuss a detailed schedule at the kick-off meeting, along with the expected timing for individual tasks. *Note: This page is intentionally formatted differently to improve legibility of the table contents.*



ent of Qualifications for Town of Los Gatos NBS | 7

5. Costs

Our professional fees are based on our understanding the Town's needs and the effort we believe is necessary to complete the scope of services described.

	Grand To					d Totals					
FEE SCHEDULE TOWN OF LOS GATOS	Director (Wood)	Project Manager (Lewis)	GBA Flat Fee	NBS Consultant (Argerich- Valentine)	NBS Senior Consultant (Dayhoff)	(Savage)	Consultant Labor (Hrs.)	С	nsultant osts (\$) with Optional ervices	О М	onsultant Costs (\$) without Optional Gervices
Work Plans Hourly Rate	\$250	\$200	\$30,000	\$175	\$200	\$150					
Phase 1 – Issue Research, Polling, Develop Communications Plan											
Kickoff Meeting	1.0	1.0	-	1.0	1.0	-	4.0	\$	825	\$	825
Revenue Modeling (Optional)	2.0	2.0	-	2.0	30.0	-	36.0	\$	7,250	\$	_
Develop Stakeholder Outreach & Public Education Messaging	7.0	7.0	-	5.0	_	8.0	27.0	\$	5,225	\$	5,225
Public Opinion Research* (design voter poll, analyze data)	2.0	4.0	1.0	-	_	-	7.0	\$	31,300	\$	31,300
Total Phase 1								\$	44,600	\$	37,350
Phase 2 – Messaging, Stakeholder Outreach & Public Engagement											
Community Survey Implementation (Optional)	4.0	10.0	-	10.0	-	20.0	44.0	\$	7,750	\$	-
Complete Stakeholder Outreach & Public Education Plan	8.0	8.0	-	5.0	-	-	21.0	\$	4,475	\$	4,475
Create Informational Toolkit (e.g., webpage content, Fact Sheet, FAQ)	4.0	12.0	-	12.0	-	4.0	32.0	\$	6,100	\$	6,100
Stakeholder Outreach & Public Education (meetings, flyers, social media)	8.0	40.0	-	20.0	-	20.0	88.0	\$	16,500	\$	16,500
Draft Ballot Language	5.0	5.0	-	-	-	-	10.0	\$	2,250	\$	2,250
Finalize Ballot Language / Resolution for Council	5.0	5.0	-	-	-	-	10.0	\$	2,250	\$	2,250
Total Phase 2								\$	39,325	\$	31,575
GRAND TOTAL FEES	46.0	94.0	1.0	55.0	31.0	52.0	279.0	\$	83,925	\$	68,925
ESTIMATED EXPENSES	ı										
Mailing and printing costs		Cost as:	sociated wit	n the design/	print/postage	per mailer		\$	12,000	\$	12,000
Travel and meeting expenses		,				,		\$	3,500	\$	3,500
TOTAL INCLUDING ESTIMATED EXPENSES								\$	99,425	\$	84,425
OPTIONAL SERVICES PRICING								4	2.005	<u> </u>	2.005
Labor & Travel Costs Per Optional In-Person Meeting								\$	2,000	\$	2,000

^{1.} Travel-related cost and direct reimbursable expenses; all other expenses are included in labor rates. This cost will be \$0 if all meetings and presentations are held remotely.

ent of Qualifications for Town of Los Gatos

ADDITIONAL POLLING INFORMATION

*Survey cost dependent on # of completed interviews desired.

100 completed interviews = \$15,000

200 completed interviews = \$24,000

300 completed interviews = \$30,000

Three major factors determine the cost for a survey: the number of interviews to be completed; the average length of each interview; and how easy or hard it is to reach and complete interviews with qualified voters. Of course, the more interviews that are completed, the more reliable is the data, as shown by the changes in sampling tolerance, or margin of error (MOE), at different completion rates. The following table shows how the MOE changes with the number of completes:

200 completed interviews = Margin of Error +/- 6.9% 300 completed interviews = Margin of Error +/- 5.7%

In addition, when the overall sample size increases, the sample sizes for various voter sub-groups will also increase, and their margins of error will decrease.

HOURLY RATES

Title	Hourly Rate
Director / Senior Review	\$250
Associate Director / Engineer	\$225
Senior Consultant	\$200
Consultant	\$175
Project Analyst / Specialist	\$150
Project Resource Analyst	\$130
Clerical / Support	\$110

TERMS

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Public Engagement services are invoiced on a monthly basis. Expenses will be itemized and included in the next regular invoice. If the project is prematurely terminated by either party, NBS shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days, simple interest will begin to accrue at the rate of 1.5% per month. Either party can cancel consulting contract with 30 days' written notice.

ent of Qualifications for Town of Los Gatos

NBS | 9

ITEM NO. 13.

EXPENSES

Customary out-of-pocket expenses are billed at actual cost to NBS. These expenses may include, but not be limited to, boundary map and assessment diagram preparation (time, materials, plotting and all related costs), mailing fulfillment, postage, supplies, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.

ent of Qualifications for Town of Los Gatos NBS | 10



TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Receive an Update on the Downtown Restroom Feasibility Study (CIP No.

821-2011) and Provide Direction to Town Staff

RECOMMENDATION:

Receive an update on the Downtown Restroom Feasibility Study (CIP No. 821-2011) and provide direction to Town staff.

BACKGROUND:

Per the direction of Town Council, funding for the Downtown Restroom Feasibility Study (CIP No. 821-2011) was adopted in the Fiscal Year 2023/24 Capital Budget using funding made available for recognizing the American Rescue Plan Act (ARPA) proceeds for loss revenues. The purpose of this project is to analyze alternative locations for a public restroom facility with consideration of utility needs and potential impacts of the work.

DISCUSSION:

On March 15, 2023 a Request for Proposals (RFP) for a Downtown Restroom Feasibility Study (the Study) was issued to the Town's list of on-call architectural firms. Will Duff Architects, Inc. submitted a proposal and the Town executed an Agreement for Consultant Services with the firm for this project.

The scope of the study was to identify a preferred site for an American with Disabilities Act (ADA) compliant public restroom in downtown Los Gatos. Attachment 1 summarizes the consultant's work in a memorandum. Working with the consultant and giving consideration to space and size limitations in most downtown locations, staff is recommending two gender neutral, single occupant private stalls with one toilet fixture each,

PREPARED BY: Marina Chislett

Environmental Programs Specialist

Reviewed by: Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 3

SUBJECT: Receive an Update on the Downtown Restroom Feasibility Study (CIP No. 821-

2011) and Provide Direction to Town Staff

DATE: May 1, 2024

DISCUSSION (continued):

rather than multiple stalls within one space. Single occupant facilities are considered to be safer and more inclusive than traditional public restrooms. In single occupant facilities, the sink can be located outside the building, reducing overuse of water.

The primary factors for site selection included: proximity and value to the downtown area, financial efficiency, utility adjacency, accessibility, safety, and flexibility. Based on these criteria, the consultant assessed four potential sites for consideration for the new restroom facility:

- Site 1: Northwest corner of Town Plaza Park
- Site 2: Southeast corner of Parking Lot #6 (West Main Street & Victory Lane)
- Site 3: North edge of Parking Lot #5 (Elm Street)
- Site 4: South edge of Parking Lot #5 (West Main Street)

After evaluation of the four sites (Attachment 1) with specific criteria to identify the best location to accommodate a restroom facility, Site #1 was identified as being the most feasible location. This site provides the most civic value to the community with consideration to space and size limitations.

For Site 1, staff and the consultants identified three options:

- Option 1: Remove the raised planter bed and replace with a new restroom facility.
- **Option 2:** Install restroom facility adjacent or attached to existing bus stop shelter (location of portable).
- Option 3: Demolish existing bus stop shelter and replace with a new restroom facility.

Staff recommends focusing on Option 2. If the Town Council agrees that Option 2 at Site 1 is the preferred location, then the exact placement of the building and how it would fit with the bus shelter would be evaluated during the design phase. If this option is selected, staff would seek to minimize impact to the existing planters. Staff estimates the cost for design and construction of a new restroom at this location would range from \$550,000 to \$650,000.

CONCLUSION:

After evaluation of the four sites with specific criteria to identify the best location to accommodate a restroom facility, site #1 was identified as the most feasible location and provides the most civic value to the community with consideration to space and size limitations.

PAGE **3** OF **3**

SUBJECT: Receive an Update on the Downtown Restroom Feasibility Study (CIP No. 821-

2011) and Provide Direction to Town Staff

DATE: May 1, 2024

CONCLUSION (continued):

Staff recommends two single occupant private stalls with one toilet fixture each, rather than multiple stalls within one space for this project.

FISCAL IMPACT:

The funding for the study phase of the project was allocated in the Downtown Restroom Feasibility Study project (CIP No. 821-2011) budget. This phase of the project has been completed in FY 2023/24 and is on the Completed Project list in the Proposed Capital Improvement Program Budget FY 2024/25 – 2028/29.

Costs for design, permitting, and construction may range from \$550,000 to \$650,000. Additional funding will need to be identified for the future phases of this project.

Downtown Restroom Feasibility Study CIP No. 821-2011					
		Budg	et		Costs
GFAR	\$	2	5,000		
Total Budget	\$	2	5,000		
					Costs
Consultant Services				\$	23,000
Total Costs				\$	23,000
Available Balance				\$	2,000

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA.

Attachment:

1. Downtown Restroom Feasibility Study (CIP No. 821-2011)



To: Laurel Prevetti, Town Manager

From: Marina Chislett, Environmental Programs Specialist

Subject: Downtown Restroom Feasibility Study (CIP No. 821-2011)

Date: April 4, 2024

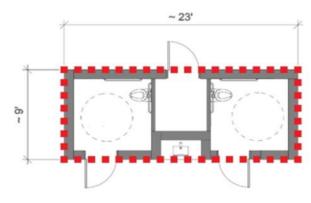
BACKGROUND

Per the direction of Town Council, funding for the Downtown Restroom Feasibility Study (CIP No. 821-2011) was funded through American Recovery Plan Act (ARPA) funding in August 2022. The purpose of this project is to analyze alternative locations for a public restroom facility with consideration of utility needs and potential impacts of the work. This memorandum summarizes the efforts of the consultant study prepared by William Duff Architects.

DISCUSSION

The Town of Los Gatos issued a Request for Proposals (RFP) for a Downtown Restroom Feasibility Study (the Study) on March 15, 2023 to the Town's list of On-Call Architects. William Duff Architects was awarded this project.

The scope of the Study was to identify a preferred site for a handicap accessible public restroom in the downtown Los Gatos area. The number of recommended toilet fixtures is two when giving consideration to space and size limitations in most downtown locations. Staff is recommending single occupant facilities rather than multiple stalls within one space. Single occupant facilities are safer and more inclusive than multi-stall public



Graphic by William Duff Architects

Figure 1. Two Single Occupant Accessible Layout with a shared sink



restrooms. Figure 1 is the preferred layout for a public restroom in the Downtown area.

The primary factors for site selection included: proximity and value to the downtown area, financial efficiency, utility adjacency, accessibility, safety, and flexibility. From this criteria, four potential sites were evaluated for the new restroom facility as shown in Figure 2:

- Site 1: Northwest corner of Town Plaza Park
- Site 2: Southeast corner of Parking Lot #6 (West Main Street & Victory Lane)
- Site 3: North edge of Parking Lot #5 (Elm Street)
- Site 4: South edge of Parking Lot #5 (West Main Street)



Figure 2. Site Location Map



SITE EVALUATIONS

Site #1: Northwest Corner of Town Plaza Park (Recommended)

The northwest corner of Town Plaza Park is located at intersection of two major streets - Santa Cruz Avenue and West Main Street. The sidewalk in this area is wide and the site features include a bus stop shelter with red brick columns and a simple sloped roof along with raised planter beds featuring small trees and vegetation. The existing bus structure was constructed in 1980 and is currently an open-air enclosure for two benches and one mailbox. This area makes up the border to the flat grass park that is Town Plaza. In recent months a portable restroom has been located next to the bus stop.

When considering this location the following options were considered:

- **Option 1:** Remove the raised planter bed and replace with a new restroom facility.
- **Option 2:** Install restroom facility adjacent or attached to existing bus stop shelter (location of portable).
- Option 3: Demolish existing bus stop shelter and replace with a new restroom facility.

These locations are shown in Figure 3 and considerations of this location are presented in Table 1.

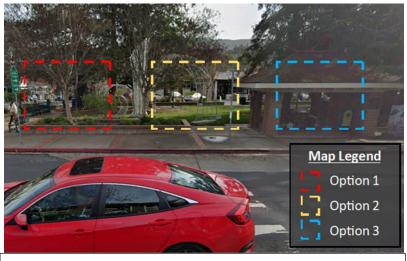


Figure 3. Site 1: Northwest corner of Plaza Park



Table 1. Assessment of Site 1

Site #1: Northwest Corner of Town Plaza Park				
Pros	Cons			
 Close proximity to bus stop Close proximity to weekly Farmers' Market and other downtown events Close proximity to primary pedestrian pathway Potential for new visible feature in the Downtown Area Potential to enhance the bus shelter (Option 3) Preliminary information suggests a sewer line runs under the park, reducing costs for excavation 	 Raised planter bed would be removed and/or impacted (Option 1 & Option 2) Very visible location on significant corner, could require additional design work and material cost Additional cost if integrating or demolishing bus stop Would not serve areas of downtown that are further north 			

Conclusion: After evaluation of all site criteria, Site #1 was identified as the most ideal location for a restroom facility to serve the Los Gatos downtown area. This site has the best proximity to points of interest while also having the most space and flexibility. A facility with two toilet fixtures would also serve the downtown areas well during typical usage and would supplement or reduce the need for portable units at special events. Overall, this site has minimal drawbacks while also providing the most potential value for a new restroom facility.

Site 2: Southeast Corner of Parking Lot #6

Parking Lot #6 located on Main Street near Victory Lane, is one of the larger parking lots in downtown Los Gatos and is located one block west of Santa Cruz Avenue. This site features a large tree and fire department connection adjacent to the prospective location. There are five accessible parking spaces that are separated from the sidewalk by a low curb planter bed. The accessible spaces currently provide direct connection to the sidewalk from the accessible aisles. Figure 4 is a photo of the location and Table 2 summarizes the considerations for this area.

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The following options were considered:

- Option 1: Demolish sidewalk planter bed and replace with new restroom facility.
- **Option 2:** Demolish one accessible and one standard parking space and replace with new restroom facility.



Figure 4. Site 2: Southeast corner of Parking Lot #6

Table 2. Assessment of Site 2

Site #2: Southeast Corner of Parking Lot #6					
Pros	Cons				
 Good connection to downtown shopping areas Would not take away from aesthetics in highly visible locations, but not so far out of the way that it cannot be located 	 Location would potentially displace accessible parking that would have to be relocated as part of the project Users waiting for restroom would be either in the parking lot or the narrow sidewalk Higher chance of vandalism when out of public view 				

Conclusion: After evaluation of all site criteria, Site #2 was not considered an ideal location for a restroom facility to serve the Los Gatos downtown area. This site is a moderate distance out of the way of the public view and may require signage and wayfinding for users to find the

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restroom. Site #2 would require modifications to the parking lot to accommodate the restroom, including displacing and relocating handicap accessible parking spaces as well as excavation for sewer line connection, and possibly increased patrolling to monitor crime and vandalism.

Site 3: North Edge of Parking Lot #5

Parking Lot #5 is located parallel to Santa Cruz Avenue, between Main Street and Elm Street. Option #3 would locate a restroom at the north edge of the lot near Elm Street. There are two aisles of parking between three travel lanes with two accessible parking spaces in the western parking aisle. This area also has electric vehicle charging stations. There are sidewalks on either edge of the parking lot, but they are not continuous nor are they fully accessible to people with disabilities. The locations are shown on Figure 5 and considerations of this location are in Table 3.

When evaluating this location, the following options were considered:

- Option 1: Remove and adjust one accessible parking space and one standard parking space on the western parking aisle to place a new restroom facility.
- **Option 2:** Remove or adjust several standard parking spaces on the eastern parking aisle to be replaced with a new restroom facility.



Figure 5. Site 3: North Edge of Parking Lot #5



Table 3. Assessment of Site 3

Site #3: North Edge of Parking Lot #5					
Pros	Cons				
 Close proximity to further north portions of the Downtown Area Sidewalk access easily connects to Downtown shopping areas Elm Street has lower traffic flow and is may be safer for patrons waiting in line 	 Distant from primary pedestrian pathway Location would potentially displace accessible and standard parking that would have to be relocated as part of the project Location would mix pedestrian traffic and car traffic in parking lot Users waiting for restroom would be either in the parking lot or sidewalk 				

Conclusion: After evaluation of all site criteria, Site #3 was not considered an ideal location for a restroom facility to serve the Los Gatos downtown area. This site is a moderate distance out of the way of the public view. This location would also require significant modifications to accommodate a restroom, including displacing standard parking spaces and relocating accessible parking spaces.

Site 4: North Edge of Parking Lot #5

Site #4 is located on the south edge of Parking Lot #5 along West Main Street and across from Town Plaza Park. Features on this side of the parking lot include a single parking aisle with driving lanes on either side and two accessible parking spaces on the west side. Figure 6 shows this location and Table 4 summarizes the considerations.

The following options were considered when evaluating this location:

- Option 1: Remove and adjust two standard parking spaces to be replaced with a new restroom facility. Potentially would need to adjust adjacent accessible parking space and connection to sidewalk.
- Option 2: Close the Parking Lot #5 entrance on West Main Street fully and utilize the end of the lot.

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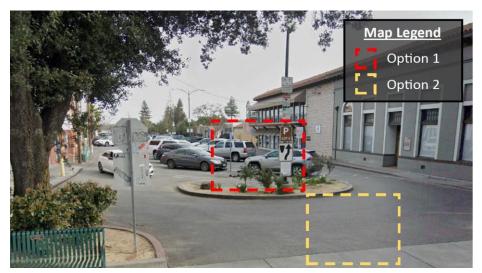


Figure 6. Site 4: South edge of Parking Lot #5

Table 4. Assessment of Site 4

Site #4: South Edge of Parking Lot #5					
Pros	Cons				
 Close proximity to weekly Farmers' Market and other downtown events Close proximity to primary pedestrian pathway Potential for new visible feature in the Downtown Area Would improve pedestrian safety along Main Street by eliminating vehicle entrance to parking lot. (if Option 2 were selected) 	 Would require changes to traffic circulation in, out and around Parking Lot #5 Patrons may not use existing crosswalk to gain a more direct line to the restroom, increasing safety concerns Location would displace some parking spaces Would require excavation in street for sewer line connection Users waiting for the restroom would be either in the parking lot or sidewalk 				

Conclusion: After evaluation of all site criteria, Site #4 was not considered an ideal location for a restroom facility to serve the Los Gatos downtown area. This site poses many safety concerns with mixing pedestrian ad vehicle traffic, unless the parking lot entrance onto Main Street were



closed. That change would require extensive changes to the parking area and to East Main Street, making this alternative cost prohibitive. It also requires displacing and relocating accessible parking spaces as well as excavation for sewer line connections, and the need to address mixed traffic congestion concerns.

CONSTRUCTION CONSIDERATIONS

Restrooms of this size and scale may be prefabricated or custom built. These options are described below.

Conventional Prefabricated

Prefabricated restroom buildings can be an efficient way to easily install a restroom building. There is generally some level of customization such as wall and roof materials, colors, and skylights. Prefabricated facilities provide a permanent, durable, and fast solution to the need for a restroom in Downtown Los Gatos. However, prefabricated facilities, while offering some customization are limited in aesthetic choices. For example, brick patterning to match the existing bus shelter would likely be via a concrete siding rather than true brick. Figure 7 shows on example of a pre-fabricated restroom building.



Figure 7. Prefabricated Restroom Facility



Fully Custom

A custom designed restroom is preferable if a certain aesthetic and customization is desired. The advantage of a custom restroom would be the flexibility within its site and aesthetic. The disadvantage would be longer design and construction timelines.

CONCLUSION

After evaluation of the four sites with specific criteria to identify the best location to accommodate a restroom facility, Site #1 was identified as being the most feasible location. This site provides the most civic value to the community with consideration to space and size limitations. Staff recommends two single occupant private stalls with one toilet fixture each, rather than multiple stalls within one space for this project. Staff estimates that the cost for design, permitting, and construction of a restroom at Plaza Park may range from \$550,000 to \$650,000 depending on the construction methods and details.



MEETING DATE: 05/07/2024

DATE: April 29, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute an Agreement for Services with the

Los Gatos Chamber of Commerce to Manage the Los Gatos Visitors Information Center and the Visit Los Gatos Website, Social Media and

Destination Marketing Services for FY 2024/2025, in an amount not to exceed

\$55,000.

RECOMMENDATION:

Authorize the Town Manager to execute an agreement for services with the Los Gatos Chamber of Commerce to manage the Los Gatos Visitors Information Center and the Visit Los Gatos website, social media and destination marketing services for FY 2024/2025, in an amount not to exceed \$55,000.

BACKGROUND:

The Chamber of Commerce has long been a valued partner with the Town of Los Gatos in supporting the business community, coordinating the Leadership Los Gatos program, and providing visitor information and destination marketing services. Beginning in 2001, the Town began formally contracting with the Chamber to provide such services and the Town Council has approved annual renewals with modifications, as needed, every year thereafter.

Originally, in 2001, the agreed upon scope of services with the Chamber of Commerce was quite extensive and included several additional tasks beyond the Visitors Information Center and Leadership Los Gatos services, including maintenance of the Town's official website; creation, production/printing, and distribution of the Town's calendar, Town maps, and brochures; and an advertising campaign with local radio stations and newspapers. The Town

PREPARED BY: Monica Renn

Economic Vitality Manager

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

PAGE 2 OF 5

SUBJECT: Annual Agreement for Services with the Chamber of Commerce FY 2024/25

DATE: April 29, 2024

BACKGROUND (continued):

provided funding in the amount of \$100,526 in total for these services, with the Town Information Center and Leadership Los Gatos accounting for about \$42,000 of that total.

As the years progressed, the contract for services evolved and the services provided by the Chamber of Commerce were reduced to the Visitors Information Center and Leadership Los Gatos. Around 2007, the Town was providing \$33,000 for the Town's Visitors Information Center and \$15,000 for the coordination of Leadership Los Gatos, with additional budget to fund the Town staff participating as Leadership candidates.

The contract amount has continued to increase slightly over time, with the most notable increase taking place in Fiscal Year (FY) 2019/20 when the contracted amount was a not to exceed amount of \$60,000, allocated as \$55,000 for Visitors Information Center services and \$5,000 for the assistance with the Town's Leadership Los Gatos program. Additionally with this contract, the scope of services specific to the coordination of Leadership Los Gatos was reduced significantly with the workload being absorbed by Town staff.

For the following fiscal year (FY 2020/21), the COVID-19 pandemic had hit the Los Gatos community and the Town Council voted to continue to provide \$55,000 to the Chamber as a subsidy for managing the Town's Visitors Information Center and assisting with related community vitality initiatives, as they were a crucial partner in supporting the business community and community at large navigate health orders and dynamic economic environment. Leadership Los Gatos was suspended for the year.

Additionally, on May 4, 2021, the Town Council allocated \$55,000 of the American Rescue Plan Act (ARPA) funds to the Chamber of Commerce to assist with emergency destination marketing to provide a jumpstart to community vitality efforts. The destination marketing effort included: the creation of a "one stop" branded website, Visit Los Gatos; social media content development; video production of a Visit Los Gatos promotional video; investment into Visit California content; media relations, and "Fam" trips which are local tours for hotel and hospitality staff to get to know the area in order to make recommendations to guests.

When this money was allocated, the Town Council noted that it was necessary to show a distinction between the services rendered for the emergency destination marketing, and the services rendered under the Chamber's annual agreement to facilitate the Town's Visitors Information Center.

Subsequently, on June 15, 2021, the Town Council approved the annual agreement for services for FY 2021/22 for \$55,000 for the Chamber of Commerce to operate the Town's Visitors

PAGE 3 OF 5

SUBJECT: Annual Agreement for Services with the Chamber of Commerce FY 2024/25

DATE: April 29, 2024

BACKGROUND (continued):

Information Center that included refreshed deliverables in the scope of services, which were developed in collaboration with the Chamber, and focused on website and social media efforts. Leadership Los Gatos was not included for FY 2021/22 as the program had not yet returned due to the ongoing COVID-19 pandemic. Leadership Los Gatos has since returned and is being facilitated by Town staff.

As FY 2022/23 approached, staff prepared to bring forward an agreement with status quo funding. The Chamber of Commerce requested an increase in funding for a total of \$88,500 for the Visitors Information services. The Town Council voted to keep the contract amount at \$55,000 for FY 2022/23; however, provided a grant for street pole banners through the Town's community grant program, ARPA grant funding for the coordination and implementation of the Promenades summer event series, and subsidy for the annual Holiday Light Display installation.

In early 2023, the Chamber of Commerce office staff announced its team's anticipated departure from the Chamber at the end of the FY. At the May 2, 2023 Town Council meeting, the Chamber's outgoing staff requested an increase in funding for the FY 2023/24 agreement to provide additional resources for the new Chamber of Commerce staff to continue to support and grow the Visitors Information Center and Visit Los Gatos efforts, specifically those related to strengthening the social media and destination marketing services. The Town Council granted an increase in funding to a not to exceed amount of \$88,000 to support the expanded destination marketing and social media efforts, without committing to the amount as an ongoing increase, as it was funded through the one-time ARPA dollars.

The Town Council's discussion at this meeting focused on the importance of supporting the Chamber of Commerce through its transition, continuing to foster the partnership between the Town and Chamber while strengthening destination marketing services. The Council was interested to understand if the funding level for the specific scope of services would be a fit as the Chamber of Commerce brought on a new management and staff team, recognizing that objectives, expectations, and stakeholder demand may shift.

Given this discussion, and that the additional funding for FY 2023/24 was made possible with ARPA funding, which has since been fully allocated by the Town Council, staff is bringing this discussion back to the Town Council as an item for the Town Council's consideration.

Currently, staff has built the baseline funding of \$55,000 into the Proposed Operating Budget for FY 2024/25.

PAGE **4** OF **5**

SUBJECT: Annual Agreement for Services with the Chamber of Commerce FY 2024/25

DATE: April 29, 2024

DISCUSSION:

The Chamber of Commerce continues to be a vital partner with the Town of Los Gatos to serve businesses, residents, and visitors alike. The programs, events, and personalized service provided by the Los Gatos Chamber of Commerce through the services rendered under the annual agreement are robust and enhance the Town's community and economic vitality.

During FY 2023/24, an entirely new staff team was hired at the Chamber of Commerce and has been dedicated to continuing the partnership with the Town while working with Town staff regularly to understand the scope of services and expectations of the agreement. The Chamber of Commerce team has worked to balance the specific and exclusive work of the Chamber of Commerce for its members, with the scope of services for the Visitors Information Center and Visit Los Gatos services, which must be available to the Town's stakeholders regardless of Chamber membership or affiliation.

At the time of this report, the Chamber had not yet submitted its annual report for the services rendered under the FY 2023/24 agreement, although it is expected to be available as an addendum prior to the Town Council meeting. The Visit Los Gatos Instagram page currently maintains 7,608 followers, while the Facebook page has 2,076 followers, representing strong platforms to engage visitors from near and far, promote businesses and events, and continue to highlight the Town of Los Gatos overall as an unparalleled destination.

CONCLUSION:

Attachment 1 provides a draft Agreement for Services, including Exhibit A, Scope of Services for FY 2024/25. The content of this Agreement and Scope of Services is similar to the prior Agreement and Scope of Services for FY 2023/24, with some of the language being condensed and cleaned-up while not changing the deliverables or service level for FY 2024/25. The main difference is that now that the Visit Los Gatos website and Instagram have been created, the Chamber is now maintaining these sites to promote Los Gatos as a premier destination.

Staff recommends that the Town Council authorize the Town Manager to execute an agreement for services with the Los Gatos Chamber of Commerce to manage the Los Gatos Visitors Information Center and the Visit Los Gatos website, social media and destination marketing services for FY 2024/2025, in an amount not to exceed \$55,000.

Alternatively, the Town Council may wish to allocate resources in a different amount, in which case, if it exceeds \$55,000, an additional funding source will need to be identified to support the increase.

COORDINATION:

This report was prepared by the Town Manager's Office.

PAGE **5** OF **5**

SUBJECT: Annual Agreement for Services with the Chamber of Commerce FY 2024/25

DATE: April 29, 2024

FISCAL IMPACT:

The recommended funding amount of \$55,000 has been allocated in the proposed budget for FY 2024/25. Should additional funding be allocated by the Town Council, an additional funding source would be required given that the ARPA funds used in FY 2023/24 have been fully allocated.

ENVIRONMENTAL ASSESSMENT:

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

Attachments:

1. Draft Agreement for Services with Exhibit A, Scope of Services, with the Chamber of Commerce for FY 2024/25

AGREEMENT FOR SERVICES BY AND BETWEEN THE TOWN OF LOS GATOS AND THE LOS GATOS CHAMBER OF COMMERCE FISCAL YEAR 2024/2025

THIS AGREEMENT is made and entered into on May 7, 2024, by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and LOS GATOS CHAMBER OF COMMERCE, ("Chamber"), whose address is 10 Station Way, Los Gatos, California. This Agreement is made with reference to the following facts.

WHEREAS, Town appropriated funds in its Fiscal Year 2024/2025 Budget for this agreement for service, and;

WHEREAS, Town desires to engage Chamber to provide services as identified in this agreement, and Town has appropriated funds for this purpose, to be utilized during the time period between July 1, 2024, and June 30, 2025, and;

WHEREAS, Chamber represents and warrants the truth of all statements contained in "Scope of Services" attached as Exhibit A and incorporated herein by reference.

WHEREAS, Town and Chamber have executed an Agreement since Fiscal Year 2001, and;

WHEREAS, Town desires to engage the Chamber to provide Town Visitors Information Center, including the Visit Los Gatos Website and Social Media Marketing of the Town of Los Gatos to attract visitors and economic vitality for businesses in Los Gatos.

WHEREAS, the Chamber represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

WHEREAS, the Chamber warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement and acknowledges Town has relied upon these warranties to retain Chamber.

NOW. THEREFORE, the parties agree as follows:

- 1. Scope of Services. Chamber shall provide services as described in that certain Exhibit A Chamber of Commerce Scope of Services, which is hereby incorporated by reference and attached as Exhibit A.
- 2 Term and Time of Performance. This contract will remain in effect from July 1, 2024, to June 30, 2025. Chamber shall perform the services described in this agreement as follows: provide the Town's Visitors Information Center including the Visit Los Gatos website, and social media and destination marketing services as outlined in Exhibit A - Scope of Services.

Page **1** of **8**

- 3. <u>Compliance with Laws</u>. The Chamber shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Chamber represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Chamber to practice its profession. Chamber shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 4. <u>Sole Responsibility</u>. Chamber shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 5. <u>Information/Report Handling</u>. All documents furnished to Chamber by the Town and all reports and supportive data prepared by the Chamber under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Chamber's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Chamber in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Chamber shall not make any of these documents or information available to any individual or organization not employed by the Chamber or the Town without the written consent of the Town before such release.
- 6. <u>Compensation</u>. Compensation for Chamber's professional services **shall not exceed \$55,000** for the management of the Town Visitors Information Center and Visit Los Gatos website, social media, and destination marketing efforts, inclusive of all costs.
- 7. <u>Billing</u>. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed as described in Exhibit A.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Email to: <u>AP@losgatosca.gov</u>
Or, Mail to: Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 8. <u>Availability of Records</u>. Chamber shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Chamber shall make these records available to authorized personnel of the Town at the Chamber's offices during business hours upon written request of the Town.
- 9. <u>Annual Report.</u> Chamber shall provide bi-annual reports by December 1, 2024 and May 1 2025, accounting for the services rendered by the Chamber to support the Visitors Information Center, Visit Los Gatos Website, Visit Los Gatos social media outlets, and associated destination marketing efforts, including all expenditures of the funds covered by this agreement, including: direct expenditures for any products purchased; allocation of

Page 2 of 8

staff hours; documentation of any approved subcontractors or third party vendors used to provide services under this contract including agreements, invoices and proof of payment, and other related documentation; and analytics and data reflective of in person, online, social media, and other efforts to support the services outlined in Exhibit A- Scope of Services.

- 10. <u>Use of Town of Los Gatos Branding and Logo.</u> The Town has provided branding for the Visit Los Gatos Website including a logo and color palette. This shall continue to be used for the maintenance of the website. The provided branding is property of the Town and shall only be used by the Chamber for business of and marketing collateral that is executed as a part of the Visitors Information Center or Visit Los Gatos website. Use of the logo in social media, print, email, or other form that is not directly related to the Visitors Information Center or Visit Los Gatos website requires explicit written permission by the Town.
- 11. <u>Assignability and Subcontracting</u>. The services to be performed under this Agreement are unique and specific to the Chamber. Any portion of these services that the Chamber elects to assign or subcontract to another vendor/consultant requires written consent of the Town, and copies of all related agreements, invoices, and other documentation must be included in the bi-annual reports as noted in this Agreement.
- 12. <u>Independent Contractor</u>. It is understood that the Chamber, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor, the Chamber shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Chamber may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Chamber agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Chamber shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Chamber or is based on allegations of Chamber's negligent performance or wrongdoing.
- 13. Conflict of Interest. Chamber understands that the professional responsibilities of the Town Information Center are solely to the Town. The Chamber has and shall not obtain any holding or interest within the Town of Los Gatos. Chamber has no business holdings or agreements with any individual member of the staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Chamber warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Chamber shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Chamber discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Chamber shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

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- 14. <u>Use of Funds.</u> The Chamber shall not use any monies received under this agreement for the endorsement, opposition, or participation in any political lobbying activity involved in the support or opposition to any candidate for public office, proposed ballot measure or item pending Town Council action.
- 15. <u>Equal Employment Opportunity</u>. Chamber warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Chamber nor its subcontractors shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

16. Minimum Scope of Insurance:

- i. Chamber agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Chamber agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Chamber shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Chamber agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Chamber agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$2,000,000 which is sufficient to insure Chamber for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Chamber; products and completed operations of Chamber, premises owned or used by the Chamber. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Chamber's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees

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- or volunteers shall be excess of the Chamber's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Chamber's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 17. <u>All Coverages</u>. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 18. <u>Workers' Compensation</u>. In addition to these policies, Chamber shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Chamber shall ensure that all subcontractors employed by Chamber provide the required Workers' Compensation insurance for their respective employees.
- 19. <u>Indemnification</u>. The Chamber shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Chamber, or any of the Chamber's officers, employees, or agents or any subconsultant.
- 20. <u>Waiver</u>. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 21. <u>Governing Law</u>. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 22. <u>Termination of Agreement</u>. The Town and the Chamber shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Chamber shall deliver to the Town all plans, files, documents, reports, performed to date by the Chamber. In the event of such termination, Town shall pay Chamber an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 23. <u>Amendment</u>. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Chamber.

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- 24. <u>Disputes</u>. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 25. <u>Notices</u>. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos LOS GATOS CHAMBER OF

Attn: Town Clerk COMMERCE

110 E. Main Street Attn: Jennifer Lin, Executive Director

Los Gatos, CA 95030 10 Station Way

Los Gatos, CA 95030

or personally delivered to Chamber to such address or such other address as Chamber designates in writing to Town.

- 26. Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 27. <u>Entire Agreement</u>. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Chamber. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Chamber have executed this Agreement.

Recommended by:	
	Los Gatos Chamber of Commerce by:
Monica Renn, Economic Vitality Manager	
	Executive Director, Signature
Town of Los Gatos by:	
	Executive Director, Printed Name
Laurel Prevetti, Town Manager	
•	
Approved as to Form:	Attest:
Gabrielle Whelan, Town Attorney	Wendy Wood, Town Clerk

EXHIBIT A - SCOPE OF SERVICES AGREEMENT FOR SERVICES WITH THE CHAMBER OF COMMERCE 2024/2025

LOS GATOS VISITOR INFORMATION CENTER, VISIT LOS GATOS WEBSITE, SOCIAL MEDIA AND DESTINATION MARKETING SERVICES FOR \$55,000

All services rendered as a part of this scope of services under the function of the Los Gatos Visitor Information Center shall be to the benefit and promotion of Town-wide stakeholders including businesses, residents, and visitors.

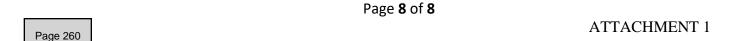
The following services and information will be coordinated and provided by the Chamber of Commerce as a part of the operations of the Los Gatos Visitor Information Center, Visit Los Gatos Website, and Visit Los Gatos Social Media and Destination Marketing Services:

- 1. Provide services to manage and maintain Visit Los Gatos as follows:
 - a. Maintain branded website, https://visitlosgatosca.com, that is easily accessible, simple to navigate, and appears within the top online keyword searches; and
 - b. Ensure the services, promotions, content, etc. under the umbrella of Visit Los Gatos is open to and inclusive of all Los Gatos businesses regardless of their membership status at the Los Gatos Chamber of Commerce; and
 - c. Ensure the branding and messaging of content related to Visit Los Gatos is reflective of the Town's goals and objectives; and
 - d. Include language on the website that clearly reflects the partnership of the Town of Los Gatos and Chamber of Commerce as partners/sponsors of the website (the Town continues to provide a direct link from its website to Visit Los Gatos); and
 - e. Provide limited printed marketing materials such as small cards, window clings, counter signs, or other appropriate collateral that may be displayed or provided to visitors at the hotels, restaurants, shops, Chamber of Commerce Office, Town Hall, Library, etc. that identifies and promotes the Visit Los Gatos website, social media, and related activities; and
 - f. Maintain and update the information on the website in a timely manner to ensure the information provided is accurate and up to date, with a minimum of once monthly updates; and
 - g. Provide dedicated staffing to support the social media and destination marketing efforts of Visit Los Gatos, including Visit Los Gatos focused posts published across social media and similar platforms a minimum of five times weekly.
- 2. Continue to support the Town's business outreach efforts for events, meetings, and programs through social media, email, etc.
 - a. Promote Town events in Chamber of Commerce marketing materials including email notifications and newsletters. Content will be provided by Town staff for distribution.

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- 3. Offer in-person Los Gatos Visitor Information Center services at the Chamber of Commerce offices.
 - a. Respond to walk-in and call-in inquiries, and encourage engagement with the Visit Los Gatos website and social media platforms; and
 - b. Allow Town meetings with the business community to be conducted at the Chamber of Commerce offices during mutually agreed upon times and days.
- 4. Provide Bi-Annual Written Reports and Monthly Invoicing.
 - a. Bi-annual written reports shall be provided by December 1, 2024, and May 1, 2025 by the Chamber of Commerce that quantifies all services rendered and accounts for all funds expended to meet this Scope of Services, and the attached Agreement, meeting the requirements of Section 9 of the attached Agreement; and
 - b. Invoice the Town for payment of services monthly, as described in the attached Agreement.





MEETING DATE: 05/07/2024

DATE: May 1, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Approve West Valley Community Services, Counseling and Support Services

for Youth, and AWO as Potential Community Service Partners to Provide their

Respective Services at the Interim Community Center.

RECOMMENDATION:

Approve West Valley Community Services, Counseling and Support Services for Youth, and AWO as potential Community Service Partners to provide their respective services at the Interim Community Center.

BACKGROUND:

On August 15, 2023, the Town Council allocated \$866,281 to a Community Center Development Fund to design and construct near-term improvements to the Adult Recreation Center to achieve two major purposes. One purpose is to facilitate the use of space for a variety of non-profit agencies to provide services to the community. The second purpose is to reconfigure the existing space to make it more open and inviting to the community. This effort is referred to as the Interim Community Center.

On November 21, 2023, the Town Council provided additional feedback on the Interim Community Center effort which involves the following steps:

- 1. *(Completed January 25, 2024)* **Host Community Meeting** to receive community input on:
 - a. Preferred types of community partners/services;
 - b. Community partner selection criteria; and
 - c. Ideas for near-term improvements to the ARC/Community Center.

PREPARED BY: Robert Gray

Chief Building Official

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

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SUBJECT: Approve Community Service Providers

DATE: May 1, 2024

BACKGROUND (continued):

(Completed February 15, 2024) Receive the Community Health and Senior Services
 Commission's (CHSSC) recommendation on items relevant to a Request for Interest
 (RFI) for community partners, such as the types of community partners and selection
 criteria.

- 3. (Completed March 5, 2024) Return to Council with CHSSC's recommendation for Council input and approval on items relevant to the Request for Interest (RFI) for community partners, such as the types of community partners and selection criteria.
- 4. (Completed March 29, 2024) Issue the RFI.
- 5. (We are here) Return to Council with the final selection of community partners.
- Discuss any potential physical near-term improvements and operational support needed by selected community partners with Los Gatos Saratoga Recreation (LGS Recreation).
- Receive CHSSC's recommendation on near-term improvements and operational support for Council's consideration, taking into account ideas shared at the community meeting and budget constraints.
- 8. Return to Council with CHSSC's recommendation on near-term improvements and operational support for consideration.
- 9. Hire an architect to provide cost estimates for the prioritized items.
- 10. **Return to Council with cost estimates** for selection of which prioritized items to move forward for design and bidding.

DISCUSSION:

Based on the direction Council provided on March 5, 2024, staff issued the RFI seeking Statements of Interest (SOIs) from any non-profit service provider serving Los Gatos, with an emphasis on those addressing basic needs such as health, wellness, mental health, food needs, housing, and transportation. The RFI was sent to approximately 30 organizations, promoted on social media and the Town's weekly newsletter, and posted on the Town's website.

Upon the closing of the RFI on April 21, 2024, staff received proposals from West Valley Community Services (WVCS), Counseling and Support Services for Youth (CASSY), and AWO Skin Color Race. The following criteria were used in evaluating the service providers:

- The extent to which the provider serves basic needs and serves an unmet need in the community.
- The extent to which the provider already serves Los Gatos residents and the community.
- The extent to which the provider could expand or enhance services with the additional Interim Community Center space. This would include an evaluation of how much the provider needs additional space for their services.

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SUBJECT: Approve Community Service Providers

DATE: May 1, 2024

DISCUSSION (continued):

• The extent of the provider's volunteer base and how they can effectively support a service at the Interim Community Center.

- The extent to which the provider's service lends itself to being successful in a rotational shared space at the Interim Community Center.
- Each service provider selected should provide a service that is unique and not duplicative of other selected service providers. Since service providers can offer a variety of services, some of their services can overlap, but each must have at least one unique offering or service.

The SOIs were also preliminarily reviewed to assess space and schedule needs and to determine whether the services conflicted with current LGS Recreation programs. Services that are more activity-based or involve events may not lend themselves to a rotational desk space model; however, a successful path forward could be to integrate these types of services into LGS Recreation's ongoing programming. For example, some of AWO's activity-based services could be integrated into LGS Recreation's program offerings, benefiting both providers and the community.

CONCLUSION:

Based on the evaluation criteria above, staff recommends moving forward with all the prospective service providers that submitted SOIs.

If Town Council agrees with this recommendation, staff will work with the selected providers and LGS Recreation to determine space allocations, schedules, and appropriate services. All provider requests may not be able to be accommodated, and staff will work towards collaborative solutions. Staff will return to the CHSSC for its recommendations on physical, near-term improvements for the Interim Community Center with consideration for any needs of the service providers.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

FISCAL IMPACT:

The \$866,281 allocated to the Community Center Development Fund can be used for near-term improvements to the Adult Recreation Center/Community Center. Additional funding may be required to support the operational and administrative needs of coordinating and supporting the service providers if the providers do not pay those costs directly.

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SUBJECT: Approve Community Service Providers

DATE: May 1, 2024

ENVIRONMENTAL ASSESSMENT:

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

ATTACHMENT:

1. Statements of Interest from Prospective Service Providers

Interim Community Center Service Providers West Valley Community Services RFI

Introduction: Include a statement of interest and pertinent introductory information. Include your current service territory and whether or not you currently serve the Los Gatos.

West Valley Community Services is a private, non-profit, community-based agency that has been providing direct assistance and referral services in the west valley communities of Los Gatos, Saratoga, Cupertino, Monte Sereno, West San Jose, and the unincorporated mountain regions for nearly 50 years. We provide a continuum of basic needs and housing assistance services, including information and referrals, food, homeless services, affordable housing, rental and utility assistance, and case management. In addition to distributing basic needs services, West Valley Community Services focuses on providing case management to each client and ensuring access to a continuum of services to provide a strong foundation for those threatened with hunger and homelessness. The mission of the organization is to unite the community to fight hunger and homelessness.

Experience and Service: Include a detailed description of the experience and expertise required to provide the proposed community service and how it fulfills a basic and/or unmet need within the community. Indicate a measurable goal or desired outcome of becoming a community partner at the Interim Community Center and a method of tracking progress and evaluating effectiveness in the community.

Many families and individuals living in the West Valley struggle to put food on the table and pay their rent in the wake of staggering increases in gas, food, and electricity, stagnant wages, high rents, and a tight affordable housing market. According to the San Jose State University 2022 pain index, \$2,365 is the median monthly rent in the San Jose-Sunnyvale-Santa Clara metro area in December 2021, making it the most expensive metro area to rent in the U.S. Families living on minimum wage and seniors who are on fixed income feel the rent burden more and get evicted at a faster rate in Santa Clara county. Poverty creates further barriers to accessing critical services, including health services, nutritious food, and other necessities, contributing to poor physical and mental health. Poverty also inhibits socialization and engagement with the community. For low-income families with limited English language skills or at-risk seniors, finding where or how to access services is much more of a challenge. In some cases, these families may not know where to go or may not have reliable transportation to get the help they need. This can result in significant delays in service delivery, leading them further into financial crises, unhealthy or risky living conditions, or circumstances that make them vulnerable to being taken advantage of.

For the past 50 years, West Valley Community Services has been the safety net for families experiencing short-term crises, helping families with food, housing, and emergency financial assistance in the West Valley. However, the trends have shown that the circumstances for the many families that access our services have not changed, and as a result, they continue to need access to basic services to survive. West Valley Community Services has become one of many clients' first responders. Through case management, we have successfully connected them with basic services such as access to health care services, information about health care coverage, free tax, and public benefits assistance, which helps to reduce poverty.

The West Valley region has a large population of families who are more likely to live in poverty and are in greater need of services. They also face other unique issues, such as:

- Lack of accessibility and availability of resources: West Valley Community
 Services' service area comprises a broad and diverse socio-economic spectrum.
 Amongst the million-dollar single-family homes, there are also homes where the
 power or water has been shut off or multiple families rent rooms in single-family
 homes. Because of the large number of high-income families living in our service
 area who do not have basic needs, many of these services are located outside
 the Cupertino-Saratoga-Los Gatos corridor, creating accessibility issues for
 low-income individuals.
- Isolation of high-risk individuals: Low-income individuals and families in affluent communities struggle with low self-esteem, isolation, and less social involvement. Individuals in need are too embarrassed and ashamed to ask for help. They cannot also access the resources to help them succeed or maintain a healthy standard of living.
- Lack of public transportation: The cost of owning and operating a car is beyond reach for most individuals served at West Valley Community Services. Given our mass transit system's limited reach or slow speed, people without cars need help accessing services.

To address these challenges, WVCS programs and services ensure impoverished households have easy access to public benefits, supportive services, and education resources that help families build financial and household stability. West Valley Community Services is our community's safety net. We ensure that low-income and homeless individuals and families receive the support and services they need to build the foundation for a brighter future.

- By providing supplemental food, West Valley Community Services prevents hunger, improves health and nutrition, and enables clients to spend more of their financial resources on housing, transportation, medical costs, and other life essentials.
- By providing case management, information, and referrals, West Valley Community Services is helping clients find the resources they need to acquire

- suitable housing, learn about public benefits, eat more healthily, cover healthcare expenses, and much more.
- By providing access to a mobile food pantry, West Valley Community Services is making food pantry service accessible to all close to where they live. The mobile food pantry has several locations in West San Jose, Saratoga, and Los Gatos.
- By providing emergency rental and utility assistance, West Valley Community Services is preventing clients from eviction and homelessness. With this help, clients are prevented from entering the downward spiral that can make returning to stability difficult or impossible.

If awarded this Service Provider contract, WVCS will provide case management, an accessible food market that provides weekly groceries, and supportive services for the homeless.

Qualifications: Name, phone number, and email of the contact person and/or project manager; qualifications of these individuals and their team that demonstrate the ability to provide the services described in this RFI successfully; a list of at least two professional references with names, addresses, emails, phone numbers, business relationship, and a brief description of the project or interaction.

West Valley Community Services' staff have significant educational and professional expertise in working with low-income families, seniors, and the homeless community in the West Valley region of Santa Clara County. We have held several State, County, and Town contracts and met all our deliverables. The West Valley Community Services staff that provide direct services to clients either hold a Bachelor's degree in social sciences or have at least three years of work experience in social services. Vahnessa Hayes, who has five years of experience in program management and supervision, will provide program and clinical supervision. Mateo Lumbraras, the Director of Client Services, has extensive countywide experience running offsite programs successfully. Sujatha Venkatraman, the Executive director who holds an MSW and has over 30 years of experience in community development, program, and contract management, will lead the strategic program's direction. WVCS leverages the cost of other staff supporting this program through other grants.

As the Executive Director, Sujatha will work closely with West Valley Community Services staff and board to ensure appropriate financial and programmatic transparency to support the organization's core mission. In addition, all contractual management obligations, including reporting, are under the responsibility of the Executive Director and the Finance Director.

Organization: The total number of volunteers and/or staff who will provide the required services and their role(s) at the Interim Community Center.

We anticipate having one to two staff members and two volunteers at the Interim Community Center.

Schedule and Space: Include a statement indicating whether a shared rotational desk space could work for the service(s) provided and the ideal schedule. For example, Mondays and Wednesdays from 8:00 a.m. to 2:00 p.m. Please also include the ideal scenario of how much space and what kind of space would be ideal for providing your services at the Interim Community Center. There are no guarantees that the schedule and space can be accommodated; however, this will help us understand the needs. Indicate whether storage space is needed and how much.

Ideally, we would like to have the space for one week to two times a week to provide case management, an accessible food market that provides weekly groceries, and supportive services for the homeless. Tuesday from 9:00 a.m. to noon and Thursday from 2-5 pm. Ideally, We would like a space 200-300 SF for a mini food pantry with a refrigerator, freezer, and shelves for dry goods(pasta, beans, and rice). Along with space for one staff member and a volunteer.



April 17, 2024

Robert Gray Chief Building Official Town of Los Gatos rgray@losgatosca.gov

Dear Mr. Gray,

Since 2009, Counseling and Support Services for Youth (CASSY) has shown how effective and powerful school-based counseling can be for everyone involved. Through partnering with schools and communities, we integrate mental health support into the fabric of the school and reach students in a familiar, safe environment.

We have grown and now partner with schools throughout Santa Clara and San Mateo Counties, but our roots with Los Gatos High School remain strong. In fact, we now work with all the high schools that support the majority of Los Gatos students – Los Gatos High, Saratoga High, Leigh High, and Westmont High. Our highly qualified, post-graduate therapists provide individual, goal-oriented counseling; group therapy; proactive mental health education to students; staff and parent consultations and support; and crisis intervention.

We know from experience that placing competent and caring therapists where students are located will lead students to accessing the help they need. We also have a good understanding of what works and what doesn't in Los Gatos. We understand the intense issues the students in our community are dealing with. We also know that these issues do not end when the school day ends nor do they cease during school breaks. We believe that CASSY and the Town of Los Gatos have a unique opportunity to leverage the community center space for Los Gatos youth who may need additional support.

In community, *Marico Sayoc*Executive Director

I. Background of Provider Agency Philosophy

As a nonprofit agency with experienced leadership, we are both ambitious and pragmatic. Our mission is to destigmatize mental health and make supporting students' social and emotional well-being the norm in our local schools. We envision a world where all youth get the support they need to be successful in school and in life. At the same time, we understand that creating such a utopia will take a serious commitment from more than our schools and requires our community's involvement.

Although every CASSY program is unique, we stick to five core values:

1. We are available to help all students, regardless of their ability to pay.

We serve all students, where free services at school are the only realistic way to reach youth. We also serve financially stable communities where many families have the resources, but other barriers such as stigma, transportation, and insurance limits get in the way.

2. We partner with communities that value mental health in the educational process.

The only way to achieve our shared goals is to create a strong working relationship between our agency and our communities. To do so, we would like to set up shop right at the Los Gatos Interim Community Center. Together, we will create a mental health resource team that extends beyond any one school campus for Los Gatos youth.

3. We tailor our programs to meet the unique needs of the population we will serve.

We factor in the unique characteristics of our community when creating any new program, and this venture will be an innovative idea for CASSY.

4. We hire, train and mentor professional therapists who love working with youth.

We use experienced therapists to tackle our clients' issues rather than using our clients' issues to train inexperienced therapists. Our model starts with a licensed Clinical Program Manager who supervises a staff of professional postgraduate therapists.

5. We are committed to making a difference.

We take great pride in improving the lives of the students we support. We view each case independently to decide the best course of treatment – whether to handle it internally, provide services on campus, or refer out to another community-based provider. When there is a mental health crisis at the Community Center, we will be there leading the way.

II. Our Proposed Services and Programs

The specific services we propose to implement at the Los Gatos Interim Community Center will be aligned with CASSY's values.

For Students:

Proactive Mental Health Education

An ideal way to improve students' overall mental health is to educate them before they are in crisis. We provide psycho-educational presentations directly to students and their families. With the community center space, we can offer presentations to all Los Gatos students who may benefit, regardless of which school they attend.

Ongoing Counseling - Individual and Group

CASSY provides individual and group counseling sessions on-campus during school hours. There may be times when a student requests a session after school hours, and the Interim Community Center would be a convenient meeting space.

For Parents & Community:

Parent Consultation

CASSY therapists are experienced dealing with adolescent behaviors and issues. We offer parents confidential consultations at the schools we serve; however, some parents cannot meet during school hours and would like to meet after hours. Having an office at the Los Gatos Interim Community Center will allow parents to consult with our staff at a convenient location after school hours — or even during school hours at a location they might prefer for reasons of confidentiality.

Community Outreach

CASSY provides parent education opportunities by giving presentations and leading discussions about raising emotionally healthy children. These presentations can be provided at the Los Gatos Interim Community Center for everyone to attend, regardless of whether they have students in Los Gatos.

III. Filling an Unmet Community Need

Under our current model, CASSY provides mental health services on campus during the school day. Some of the concerns we deal with include depression, anxiety, academic stress, family conflict, and peer relationship issues. However, not all of our student's issues are appropriate for the school-based model, thus a room in the neighboring community center would be an ideal venue for counseling to continue.

We want to give our students the continuity of care they deserve and want to offer counseling options until the presenting issues are resolved and any negative symptoms are relieved. CASSY would like to provide continuity of care for our clients outside of school hours, but we do not currently have a physical location for this support. The Los Gatos Interim Community Center would provide a much-needed solution.

The Los Gatos Interim Community Center would also be an ideal venue for CASSY to provide community-wide presentations on mental health topics and be a resource for those who do not know how to enter into the behavioral system.

IV. Program Evaluation/Expected Data Collection

We offer the following measurable objectives to assess our program:

Quantitative:

- Pediatric Symptoms Checklist (PSC) The PSC is a psychosocial screen designed to
 facilitate the recognition of cognitive, emotional, and behavioral problems so that
 appropriate interventions can be initiated as early as possible. CASSY therapists assess
 students at the beginning and end of treatment, with the results compiled at the end.
- **Progress toward treatment goals** Treatment goals are the building blocks of a student's treatment plan. Goals are developed with the student and are designed to be specific, realistic, and tailored to the needs of each individual youth.

Qualitative:

- **Self-report by students** We ask students if they thought counseling was helpful and whether they would seek counseling again in the future.
- **Parent feedback** We request a parent feedback form which gives the parent an opportunity to evaluate the impact of our services on their child.
- **Staff feedback** We invite key staff to complete an end-of-year survey.

V. Qualifications

Contact

Marico Sayoc Executive Director msayoc@cassybayarea.org (408) 493-5289

All clinical staff who will be working from the Los Gatos Interim Community Center are BBS-registered MFTs or MSWs.

Professional References

Dr. Kristy Grasty Assistant Principal, Los Gatos High School 20 High School Ct. Los Gatos, CA 95030 kgrasty@lgsuhsd.org (408) 354-2730

In 2009, Dr. Grasty was instrumental in ushering in an award-winning partnership with CASSY to serve students at Los Gatos High School.

Tylor Taylor
Executive Director, Successful Aging Solutions & Community Counseling (SASCC)
19655 Allendale Avenue
Saratoga, CA 95070
tylor@sascc.org
(408) 644-8625

We partnered with Tylor and SASCC on a community-wide mental health fair at Los Gatos High School in September 2022. The purpose was to provide intergenerational mental health resources to the entire Los Gatos and Saratoga communities. With space at the Los Gatos Interim Community Center, we hope to continue with this type of programming.

VI. Organization

CASSY has 40 employees; however, the number of CASSY staff on site would vary, depending on the type of services performed. For example, individual or group counseling would have one therapist on site in a private room whereas a community wide presentation may have two to three staff.

VII. Schedule and Space

CASSY's ideal space would be one dedicated office for confidential sessions. However, we know space is limited, so the next best option would be the use of a private office that we could reserve on an as-needed basis. We also request use of the large multipurpose room – when available – to provide presentations to the community on mental health concerns. No storage space is needed; however, if there will be a resource wall, CASSY can provide resources for the community.

We would be honored to partner with the Town of Los Gatos to support the mental health of our youth. Please let me know if there are any questions about our proposal or if I can provide more information.



April 15, 2024

Robert Gray Chief Building Official Town of Los Gatos 110 E.Main Street Los Gatos, CA 95030

Dear Robert.

I am pleased to submit this Statement of Interest respectfully requesting to become a prospective Community Partner with the Town and provide services to the community at the Interim Community Center, also known as the Adult Recreation Center, located at 208 E. Main, Los Gatos. AWQ is the word for skin and color in the Nigerian language of Yoruba. We're a social justice non-profit vehemently dedicated to unifying the glorious shades of HUEmanity. Founded in 2020 in response to the death of George Floyd, we provide community space where people can ingest accurate cultural narratives – about themselves, others, and HUEmanity as a collective. We have been based in Los Gatos since inception and continue to serve the community and its surrounding areas including Campbell, San Jose, Saratoga, Monte Sereno and beyond.

The Vision of AWO is to achieve a more inclusive and representative world by focusing on the unheard stories of individuals within society to build a more collective understanding about ourselves.

To deliver our innovative HUEmanity programs, we use education and awareness supported by the arts and culture. The art forms we use to support our efforts are storytelling, music and dance. We are well vast in implementing community engagement events, public education and awareness events that promote community conversations, dialogue and different perspectives from black, indigenous, ethnic, urban, and rural artists and speakers, who come from diverse backgrounds and use their life experiences to inspire, empower and model how to break down barriers and bring healing to local communities.

I founded AWO and I am the Executive Director. Debra Crenshaw is the Executive Program Manager. We have a combined work experience of over 60 years in delivering community engagement events and programming, and school programming in the US, Nigeria and UK. Our core team of instructors and artists are versatile and work really well with all ages. They have a combined 100-120 years experience in community engagement work all across the globe.

AWO, through its Wellness for Huemanity Program, proposes an innovative approa ITEM NO. 16. to improve individual and community health & well-being through shared narratives, engaging interactive activities and experiential learnings related to boosting health and emotional well-being. Our Wellness for Huemanity Program aims to accomplish health and social goals such as improving mental wellness, reducing stress and tension and alleviating pain. In addition to its healing potential, we focus on magnifying the message of diversity, inclusion, equity, belonging and lived experience. We believe when people think collectively, can creatively collaborate and are introduced to new cultures, ultimately, they enhance and expand their understanding, appreciation and respect of diverse communities and perspectives. Participants will explore their own identities and intersect with those around them. Services will help individuals recognize the role diversity, equity, inclusion, belonging and lived experiences play in enhancing community cohesion and building strong local communities. For the first time and in a structured setting, if this opportunity is given, we will be providing not just a one time experience per event but a continuum of collective experiences over a period of time and through weekly or biweekly sessions. This is a next level development for our community engagement services. With additional space, we automatically expand and enhance the delivery of our community engagement offerings.

Our program directly addresses factors like:

- •Social and Community Context: Such as social integration, social support and community engagement.
- •Neighborhood conditions: Creating safe and inclusive spaces for well-being exploration and for fostering a sense of community belonging.
- •Advocacy and access to healthcare: Connecting participants to relevant healthcare services and advocating for culturally competent care.

Three specific desired outcomes if we become a community partner at the Interim Community Center are— community healing, global perspectives and combat loneliness & relationship building

First, local community members who come from diverse backgrounds (youth, disabled, high resourced, refugee, elderly, immigrant, etc.) will use their life experiences to inspire, empower and teach how to gain confidence and use their own voices to break down barriers, bridge gaps and bring healing to communities through listening sessions, honest conversations, music-making activities, such as drumming circles, songwriting, shared narratives or group singing, we can facilitate emotional release, promote self-reflection, and create a sense of community. Our arts engagement offerings can also serve as a catalyst for social connection and support, breaking down barriers and bridging divides.

Second, local community members will see, hear and experience new insights and global perspectives from local artists, educators, speakers and other community members who will broaden self-understanding, cultural competency and empathy for people different from themselves.

Third, our activities create inclusive spaces where people from diverse backgrounds can come together, collaborate, and build relationships based on shared interests. These experiences promote social cohesion, combat loneliness, and provide a support network that can positively impact overall well-being throughout The Town and its surrounding areas.

To track progress, we will carry out a lot of social documentation work including collecting, publishing and archiving oral stories, capturing observations and reactions through photography and videography of the program in progress and collection of written surveys by participants. All these help us assess the process and also provide ideas and inspiration for future programs.

Yes, a shared rotational desk space could work. Depending on the group size and activity type during any one session, there could be anywhere between 1-5 staff and/or volunteers. It would be good to have a space that is no less than 600 square ft. A safe storage space of no less that 150-200 square feet is ideal too so if there is a possibility that this can be available, that'll be great. Friday (4-10pm), Saturday 9-3pm and/or Sunday from 1-6pm will be ideal schedules.

- 1. Board Member: Tomara Hall, 349 Cereza Place, San Jose, CA 95112, 209-408-9791, tomarahall7@gmail.com
- 2. Community Volunteer: Marie Tagne 510-684-3087, meyoum@gmail.com

Thank you for your consideration of this request.

Warmest regards,

Folake Phillips

Founder & Executive Director

AWO: Skin. Color. Race.

AWO is a Registered Charity: 87-3912985 Address: 1484 Pollard Road Los Gatos #242, Los Gatos, CA 95032 | Tel: 408-601-0364 | Web:www.AWOcenter.org

MEETING DATE: 05/07/2024

DATE: May 2, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Discuss and Provide Direction on Outreach and Noticing Options for Senate

Bill (SB) 330 Projects.

RECOMMENDATION:

Discuss and provide direction on outreach and noticing options for Senate Bill (SB) 330 projects.

BACKGROUND:

On April 16, 2024, during the Town Council consideration of modifications to the Town's Story Pole Policy, direction was given to return for further discussion of potential enhancements to the Town's community noticing and engagement for large development projects and specifically SB 330 projects.

SB 330 is State legislation intended to ease the production of housing. Its primary provisions are as follows:

1) Subject to limited exceptions, SB 330 provides that a qualifying housing development project is only subject to the ordinances, policies, and standards adopted and in effect when a "preliminary application" is submitted, which occurs at the outset of the entitlements process. Development impact fees, charges, or other monetary exactions are also vested at that same time, and the only changes allowed relate to increases resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

PREPARED BY: Jennifer Armer, AICP

Planning Manager

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

PAGE **2** OF **5**

SUBJECT: SB 330 Project Outreach and Noticing

DATE: May 2, 2024

BACKGROUND (continued):

2) In addition to creating new timing requirements under the Permit Streamlining Act, SB 330 provides that no more than five public hearings, including continued hearings and appeals, may be held on a project after an application for a qualified housing development project is deemed complete.

- 3) Subject to limited exceptions, SB 330 provides that any determination as to whether a project site is historic must be made at the time the application for the qualifying housing development project is deemed complete, as defined therein.
- 4) Local agencies cannot impose or enforce new design standards that are not objective. Recent case law clarifies the meaning of "objective" design standards, albeit in the context of the Housing Accountability Act (HAA), by explaining that a design standard is not "objective" if reasonable people could reach different conclusions as to how to comply with the design standard.
- 5) With limited exceptions, local agencies, including the electorate pursuant to its local initiative or referendum power, cannot impose growth caps or moratoria on new housing development.
- Local agencies cannot reduce permitted housing density to below that allowed under the applicable specific or general plan in effect on January 1, 2018.

DISCUSSION:

A. Online Outreach

As seen at the April 16, 2024 Town Council discussion of the Story Pole Policy, the Town continues to receive ideas for providing information to the community about potential future development projects. Many of these ideas have been implemented, including:

- Reinstating the pending planning projects map at the top of the page listing pending planning projects by address (<u>www.losgatosca.gov/2216/Pending-Planning-Projects</u>).
- Posting all SB 330 Preliminary Applications, and maintaining a list of those that have proceeded to the formal application process (<u>www.losgatosca.gov/2875/Senate-Bill-SB-330</u>);
- Providing a summary table of all SB 330 projects for quick reference www.losgatosca.gov/2875/Senate-Bill-SB-330); and
- Regular social media posts to remind the community where they can find information about potential development projects (see Town newsletter sent on Friday, April 19 and April 26).

PAGE **3** OF **5**

SUBJECT: SB 330 Project Outreach and Noticing

DATE: May 2, 2024

DISCUSSION (continued):

B. Expanded Project Noticing

Staff has selected several of the sites for which Preliminary SB 330 Applications have been received to illustrate the difference in noticing between the 300-foot noticing required by Town Code 29.20.450 (and State law), and the proposed 1,000-foot noticing suggested by a Council Member at the April 16, 2024 Town Council meeting. The projects were selected to provide a variety of examples based on the following criteria:

- Locations throughout Town;
- Neighborhood types (detached single-family, downtown, neighborhood commercial, transitional, and Los Gatos Boulevard); and
- Proposed project types (townhomes, seven-story residential or mixed use, detached single-family residential subdivision).

		300-foot Radius		1,000-foot Radius		Cost
Project	Project	Number	Cost	Number	Cost	Increase
Address	Scope	of Cards		of Cards		Factor
101 S. Santa	Mixed-Use Building (58	124	\$95.48	583	\$448.91	4.7
Cruz Avenue	units)					
220 Belgatos	Detached Single-Family	88	\$67.76	305	\$234.85	3.5
Road	Residential Subdivision					
	(30 units)					
647 N Santa	Multi-Family	111	\$85.47	510	\$392.70	4.6
Cruz Avenue	Townhomes (13 units)					
14288 Capri	Multi-Family	330	\$254.10	693	\$533.61	2.1
Drive	Residential Building (95					
	to 175 units)					
15525 Los	Multi-Family	693	\$105.49	505	\$388.85	3.7
Gatos	Residential Building					
Boulevard	(238 units)					

As seen above, the 1,000-foot noticing radius increases the cost between two and 4.7 times. Attachment 1 is a set of maps showing the difference in the areas included in the noticing, as well as the number of parcels included. Please note that the number of parcels listed in the Attachment 1 are less than the noticing numbers above because the noticing includes both property owner and occupant if those are different.

Legally, the Town may adopt noticing requirements that are more extensive than the 300 feet required by State law. However, due to the increased cost to the applicant, it is possible that expanded noticing requirements could be considered a hindrance to housing, and therefore, counter to the intent of SB 330. In addition, based on the Constitutional

PAGE **4** OF **5**

SUBJECT: SB 330 Project Outreach and Noticing

DATE: May 2, 2024

DISCUSSION (continued):

requirement for "equal protection," any distinction in noticing requirements should have a rational basis. Potential bases for imposing increased noticing requirements would be projects over a specified height, number of units, or square footage based on the added visual impact to the neighborhood or other factors.

Alternatively, without a rational basis for the distinction in noticing requirements, the Town also has the option of assuming the cost of the increased noticing. If this is the Council's preference, a funding source would need to be identified.

C. Town-Wide Mailer

In addition to a project focused noticing mentioned above, the Town has periodically sent out a postcard Town-wide to notify property owners, residents, and businesses about issues of interest like the General Plan and Housing Element updates. The cost associated with these efforts is approximately \$10,000. This option may be more cost effective and useful in combination with social media posts regarding upcoming milestones of SB 330 or other major development applications in Town.

FISCAL IMPACT:

The fiscal impact depends on the scope of the increased noticing determined by the Town Council.

CONCLUSION:

This agenda item allows Town Council to provide direction on additional noticing and outreach. Staff recommends consideration of the following questions:

- 1. Are there additional online outreach techniques that should be implemented?
- 2. Are there additional mail noticing requirements for pending planning projects that the Town Council would like to implement at this time? If so:
 - a. What projects would it apply to?
 - b. What should the timing be for the additional noticing?
 - c. Should additional noticing be sent if a project changes significantly?
 - d. Who should be noticed? (Town-wide, 300-foot radius, 1,000-foot radius, or other)
 - e. Should the 300-foot public hearing noticing requirement be changed?
 - f. Should an additional fee be added to the fee schedule to defray this cost?

PAGE **5** OF **5**

SUBJECT: SB 330 Project Outreach and Noticing

DATE: May 2, 2024

CONCLUSION (continued):

3. Does the Town Council wish to initiate a periodic Town-wide mailer with information about development in the Town? If so:

- a. What information should be included? (For example, "learn about pending planning projects," "find out about pending SB 330 proposals," "sign up for NotifyMe and the Weekly Newsletter," or other.)
- b. How frequently should the Town-wide mailer be sent?

Staff looks forward to the Town Council's discussion and direction.

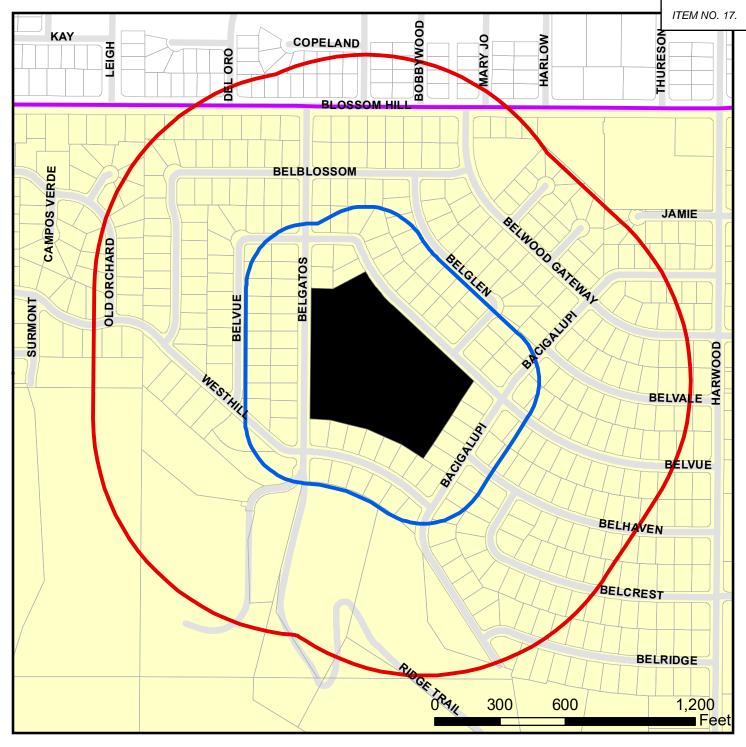
ENVIRONMENTAL ASSESSMENT:

Because the Town Council is providing direction only at this time, this is not a project defined under CEQA.

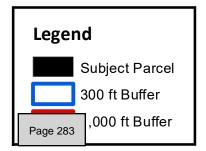
Attachment:

1. Example Noticing Maps

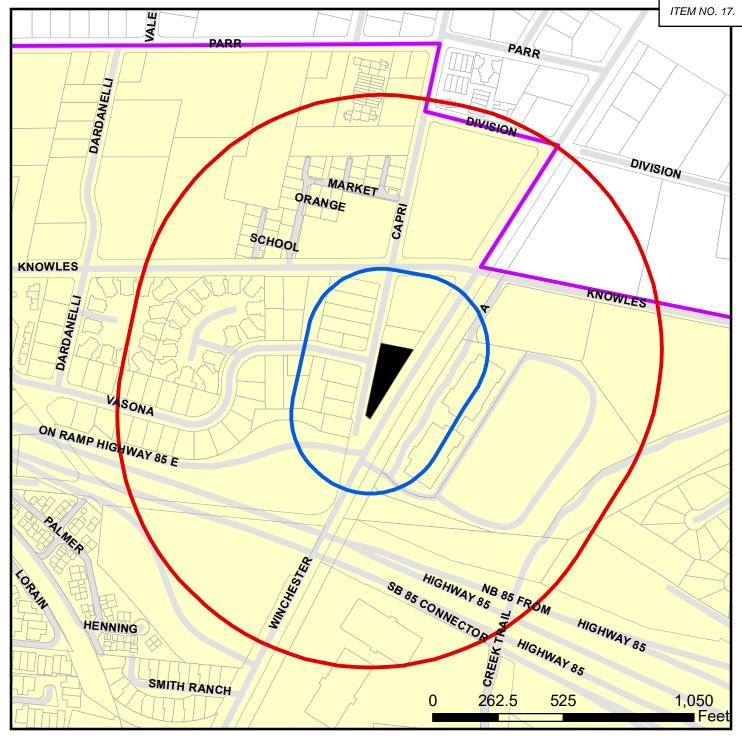
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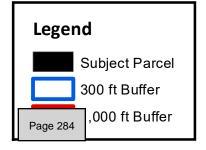
220 Belgatos Rd



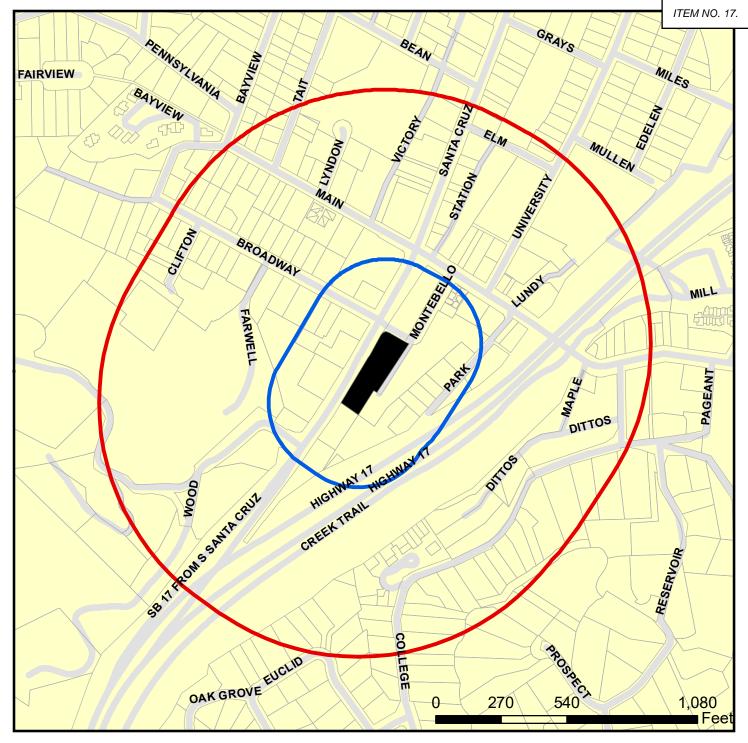
	Parcels within	Parcels within	
Address	300 ft	1,000 ft	Percent Difference
101 S. Santa Cruz Ave	38	223	587%
220 Belgatos Rd	91	373	410%
647 N. Santa Cruz Ave	59	393	666%
14288 Capri Dr	27	169	626%
15525 Los Gatos Blvd	48	594	1238%



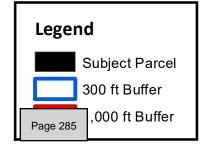
14288 Capri Dr



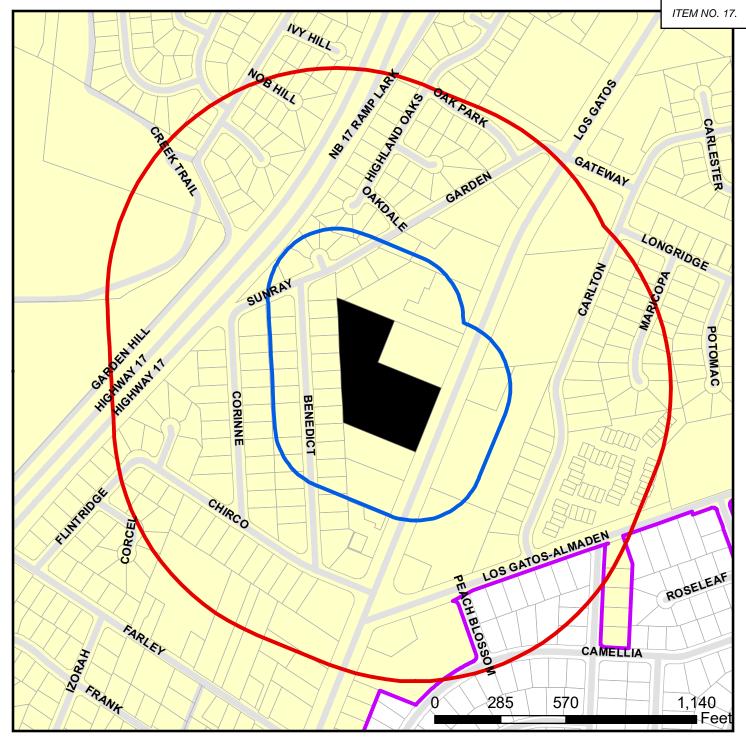
Address	Parcels within 300 ft	Parcels within 1,000 ft	Percent Difference
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14288 Capri Dr	27	169	626%
15525 Los Gatos Blvd	48	594	1238%



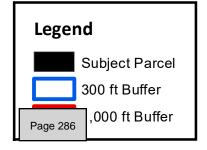
101 S. Santa Cruz Ave



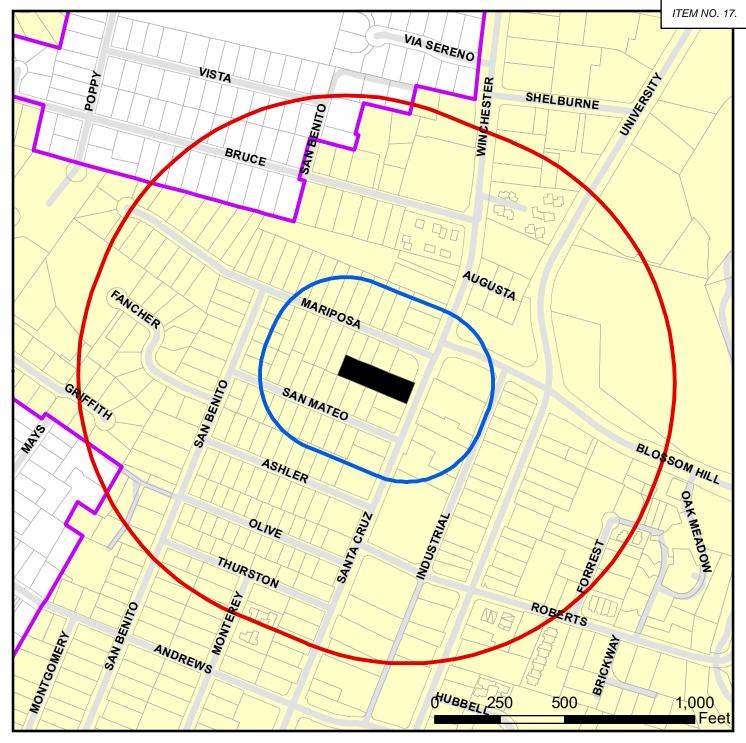
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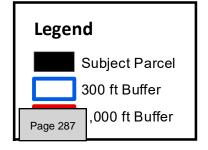
15525 Los Gatos Blvd



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647 N. Santa Cruz Ave



	Parcels within	Parcels within	
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MEETING DATE: 05/07/2024

DATE: May 2, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Discuss and Provide Direction on Objective Design Standards

RECOMMENDATION:

Discuss and provide direction on Objective Design Standards.

BACKGROUND:

In 2019, the Town initiated a process to develop Objective Design Standards for Qualifying Multi-Family and Mixed-Use Residential Development (Attachment 1). This effort was in response to State legislation [Senate Bill (SB) 167, SB 35, and SB 330] requiring jurisdictions to adopt objective standards and to implement them for streamlined review of qualifying housing projects such as multi-family and residential mixed-use developments. Objective Standards are defined under State law as, "standards that involve no personal or subjective judgement 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" (California Government Code, Section 65913.4).

The purposes of the Town adopting Objective Design Standards were to:

- Comply with recent State housing legislation;
- Implement streamlined and ministerial review processes for qualifying housing projects;
- Ensure that these qualifying projects align with the Town's expectations and vision to maintain and support the character of the Town;
- Provide a set of clear criteria to guide development; and
- Establish an objective framework by which a qualifying project will be evaluated.

PREPARED BY: Jennifer Armer, AICP

Planning Manager

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

PAGE 2 OF 4

SUBJECT: Objective Design Standards Direction

DATE: May 2, 2024

BACKGROUND (continued):

The process to develop and adopt Objective Design Standards included the following steps:

- On November 5, 2019, the Town Council authorized an application for, and receipt of, SB 2
 Planning Grant Program funds. Subsequently the Town received approval of the application
 to receive reimbursable grant funding for the proposed scope of work.
- On November 20, 2020, staff released a request for qualifications (RFQ) to provide services for preparation of Objective Standards. On March 16, 2021, the Town Council authorized the Town Manager to execute an agreement with M-Group planning consultants for the proposed scope of work.
- Between July and December 2021, a subcommittee of the Planning Commission met five times to discuss and provide feedback.
- On February 22, and May 12, 2022, Town staff conducted two community engagement meetings to gather feedback from residents and stakeholders and then discuss a preliminary draft of the Objective Standards.
- On June 22, August 24, and September 14, 2022, the Planning Commission received and considered public comments on the Draft Objective Standards, reviewed the document, provided input to staff on recommended modifications, and on September 14, 2022, forwarded a recommendation of approval with modifications to Town Council.
- On November 15, 2022, Resolution 2022-72 was adopted by Town Council by a vote of three to two with Council Members Badame and Hudes voting no.

DISCUSSION:

On February 13, 2024, Town Council discussed its Strategic Priorities for the next two years, adding an update to the Objective Design Standards. In the discussion regarding the interest to update the Objective Design Standards, the several topics were mentioned. Each topic is identified below with a brief discussion of how the topic was addressed in the first effort and/or the direction that would be needed from Town Council to develop Objective Standards for the topic:

A. Hillside Views

This topic was discussed extensively in the Planning Commission subcommittee meetings mentioned in the Background Section above, as well as by the full Planning Commission and Town Council. As stated by staff at the time, establishing Objective Standards for this topic would be extremely difficult and no successful objective criteria for protecting views from the valley floor to the hillsides had been found. It would require establishment of specific viewing areas with very specific criteria to establish when hillside views were or were not blocked, and the protections provided would be limited only to those viewing areas.

PAGE 3 OF 4

SUBJECT: Objective Design Standards Direction

DATE: May 2, 2024

DISCUSSION (continued):

B. Architecture

This topic was considered during the November 15, 2022, Town Council discussion. When architectural style is included within Objective Standards, it is most effective in those areas where a single style is uniformly used. For the Town, with a diverse history of architectural styles, this work would require identification of specific areas on a map and specification of a limited number of allowed styles along with specific objectively defined criteria for what constitutes each style. The mixture of architectural styles used throughout Town would require an extensive process. Alternatively, the Council could dictate which two or three styles are appropriate for these types of streamlined projects, limit the projects to these styles, and then provide standards for just those styles.

C. Historic Significance

Much of the discussion in the previous section on Architecture would also apply to this topic.

D. <u>Transition Between Neighborhoods</u>

As noted for Architecture above, this will be extremely challenging to make objective. The Town may have a few neighborhoods that have one or two distinct architectural styles, and the boundaries of those neighborhoods would need to be specifically delineated and the allowed styles and how to address transitions would need to be identified for each. If Council chose the path of dictating the styles appropriate to these streamlined projects, there may be more opportunity to create standards for neighborhood compatibility; however, it will still be extremely difficult.

When considering the work described above, an additional factor is the fact that for most of the projects to which these Objective Design Standards apply, the State provides them with the ability to use concessions or waivers to circumvent these standards through State Density Bonus law or other State laws.

CONCLUSION:

This agenda item has been scheduled to allow Town Council to discuss potential future work on Objective Design Standards and provide direction to staff on how to proceed. Staff recommends consideration of the following questions:

- 1. Are there modifications to the Town's Objective Design Standards that should be pursued at this time?
- 2. If so, what specific topics should be included in the drafting of new/modified standards?

PAGE 4 OF 4

SUBJECT: Objective Design Standards Direction

DATE: May 2, 2024

CONCLUSION (continued):

3. Would the Town Council like staff to prepare a new request for proposals (RFP) or work with the previous consultant for this effort?

4. What funding source would the Town Council like to use for this project?

Staff looks forward to the Town Council's discussion and direction.

FISCAL IMPACT:

The fiscal impact depends on the scope of the work proposed. The development of the existing Objective Design Standards involved a grant from the State for \$160,000. Most of this amount (\$121,920.90) went toward a contract with a consultant and the remaining partially offset staff time.

ENVIRONMENTAL ASSESSMENT:

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

Attachment:

1. Objective Design Standards for Qualifying Multi-Family and Mixed-Use Residential Development, approved on November 15, 2022

TOWN OF LOS GATOS OBJECTIVE DESIGN STANDARDS FOR QUALIFYING MULTI-FAMILY AND MIXED-USE RESIDENTIAL DEVELOPMENT Updated January 31, 2023

PURPOSE AND APPLICABILITY

The purpose of the Objective Design Standards is to ensure that new qualifying projects in Los Gatos provide high-quality architecture, integrate with surrounding development, and include well-designed amenities and outdoor areas to enhance community character. These standards are intended to guide property owners, applicants, developers, and design professionals by providing clear design direction that enhances the Town's unique character and ensures a high-quality living environment.

California Government Code Section 65589.5 identifies Qualifying Housing Development Projects to include:

- Multi-family housing developments;
- Residential Mixed-Use Housing developments with a minimum of two-thirds of the square footage designated for residential use; or
- Supportive and transitional housing development.

A Qualifying Housing Development Project shall be approved through a streamlined, ministerial review process when the project complies with these Objective Design Standards as well as complying with all existing objective development regulations in the Town, including but not limited to the following:

- General Plan;
- Town Code:
- Guidelines and Standards for Land Use Near Streams;
- Bicycle and Pedestrian Master Plan;
- Parks and Public Works Standards; and
- Santa Clara County Fire Department Requirements.

These standards are only to be used for review of qualifying projects where Town review, approval, and/or denial is limited to only objective design standards. Many projects will proceed through the standard review process, in which case the objective design standards included herein would not apply.

ORGANIZATION

The Objective Design Standards are organized into two primary sections: Site Standards; and Building Design. The Site Standards section includes objective design standards for site layout and building placement; vehicular access and parking; and outdoor areas and amenities. The Building Design section includes objective design standards for building form and massing; façade articulation; materials; and roof design.

KEY TERMS

Community recreation space in Residential Mixed-Use developments means public gathering spaces, such as: plazas, outdoor dining areas, squares, pocket parks, or other community areas for the use of all residents and the business patrons and tenants.

Community recreation space in multi-family developments means gathering spaces, such as: play areas, pool areas, patios, rooftop decks, or other community areas for the use of all residents.

Façade articulation means the division of a building façade into distinct sections; including the materials, patterns, textures, and colors that add visual interest to a building or façade.

Fenestration means the design, construction, and presence of any openings in a building, such as: windows, doors, vents, wall panels, skylights, curtain walls, and louvers.

Landscaping means an area devoted to plantings, lawn, ground cover, gardens, trees, shrubs, and other plant materials; excluding driveways, parking, loading, or storage areas.

Multi-family use means the use of a site for three or more dwelling units on the same site.

Objective Design Standards means development regulations that are measurable, verifiable, and knowable to all parties prior to submittal of a qualifying project. A planning review process based on objective design standards involves streamlined ministerial review with no personal or subjective judgement by a public official.

Primary building means a building within which the principal or main use on a lot or parcel is conducted. Where a permissible use involves more than one building designed or used for the primary purpose on the subject property, each such building on the parcel shall be construed as constituting a primary building.

Private recreation space at ground level means an outdoor enclosed patio or deck accessible from a single dwelling unit.

Private recreation space above ground level means an outdoor balcony, terrace, or rooftop deck, accessible from a single dwelling unit.

Residential Mixed-Use means a development project where a variety of uses such as office, commercial, and institutional, are combined with residential use(s) in a single building or on a single site in an integrated project. Two thirds of the project square footage must be residential uses.

Transitional and supportive housing means a type of housing used to facilitate the movement of people experiencing homelessness into permanent housing and independent living.

A. SITE STANDARDS

A.1. Pedestrian Access

- 1.1 All on-site buildings, entries, facilities, amenities, and vehicular and bicycle parking areas shall be internally connected with a minimum four-foot-wide pedestrian pathway or pathway network that may include use of the public sidewalk. The pedestrian pathway network shall connect to the public sidewalk along each street.
- 1.2 Pedestrian pathways within internal parking areas shall be separated from vehicular circulation by a physical barrier, such as a grade separation or a raised planting strip, of at least six inches in height and at least six feet in width. A pedestrian pathway is exempt from this standard where it crosses a parking vehicular drive aisle.

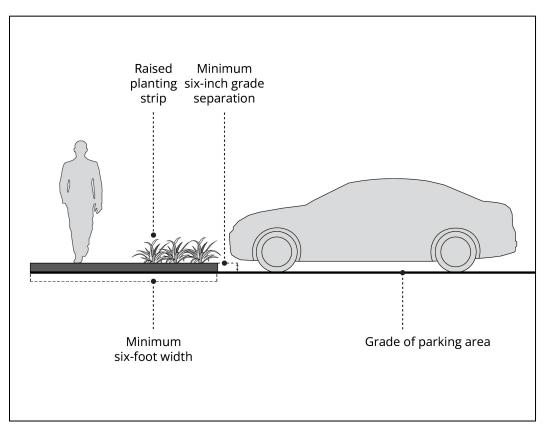


Figure A.1.2

A.2. Short-Term Bicycle Parking (Class II)

Short-term bicycle parking (Class II bicycle parking facility) consists of racks that support the bicycle frame at two points and allow for the bicycle frame and one wheel to be locked to the rack with a U-lock.

- 2.1 Short-term bicycle parking space shall be located within 50 feet of the primary pedestrian building entrance.
- 2.2 Short-term bicycle parking shall be provided at a rate of one space per dwelling unit and one space per 2,000 square feet of non-residential floor area.
- 2.3 Each short-term bicycle parking space shall be a minimum of seven feet in length and two feet in width.
- 2.4 If more than 20 short-term bicycle spaces are provided, at least 50 percent of the spaces shall be covered by a permanent solid-roofed weather protection structure.

A.3. Long-Term Bicycle Parking (Class I)

Long-term bicycle parking facilities (Class I bicycle parking facility) consists of bicycle lockers or bicycle rooms with key access for use by residents.

- 3.1 Long-term bicycle parking facilities shall be located on the ground floor and shall not be located between the building and the street.
- 3.2 Multi-family residential and residential mixed-use buildings shall provide one long-term bicycle parking space per dwelling unit. Developments such as townhomes that include individual garages for each unit shall not be required to provide long-term bicycle parking.
- 3.3 Bicycle locker minimum requirements:
 - a. Dimensions of 42 inches wide, 75 inches deep, and 54 inches high.
 - b. Must withstand a load of 200 pounds per square foot.
 - c. Opened door must withstand 500-pound vertical load.

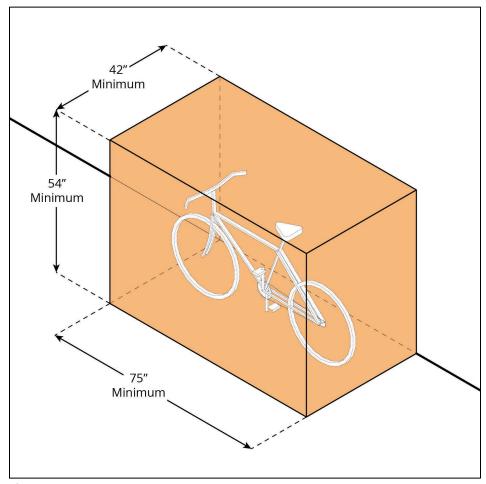


Figure A.3.3

- 3.4 Bicycle rooms with key access minimum requirements:
 - a. Bicycle rooms shall have a minimum ceiling height of seven feet.
 - b. Bicycle rooms shall contain racks that support the bicycle frame at two points and allow for the bicycle frame and one wheel to be locked to the rack with a U-lock.
 - c. Long-term bicycle parking spaces shall be served by an aisle with a minimum width of six feet.
 - d. Maneuverability space of at least two feet shall be provided between the aisle and long-term bicycle parking spaces
 - e. Each horizontal long-term bicycle parking space shall be a minimum of seven feet in length, two feet in width, four-and one-half feet in height. Each vertical long-term bicycle parking space shall be a minimum of three-and one-half feet in length, two feet in width, and seven feet in height.

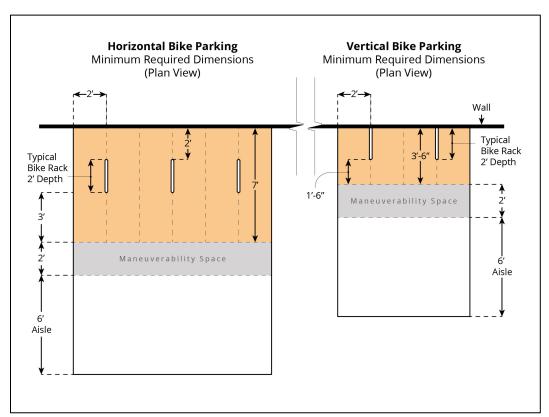


Figure A.3.4

A.4. Vehicular Access

4.1 Off-street parking lots shall have vehicular circulation using an internal vehicular network that precludes the use of a public street for aisle-to-aisle internal circulation.

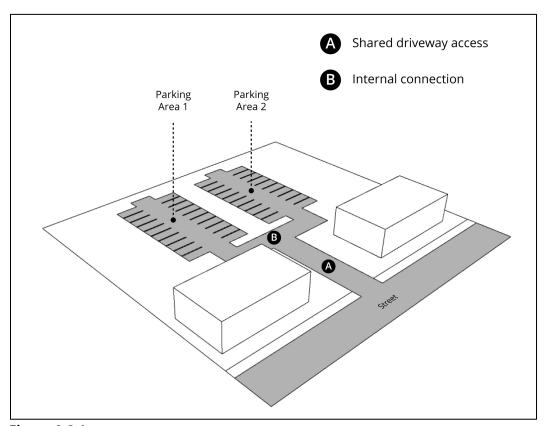


Figure A.3.1

A.5. Parking Location and Design

- 5.1 Surface parking lots and carports shall not be located between the primary building frontage and the street.
- 5.2 Uncovered parking rows with at least 15 consecutive parking spaces shall include a landscape area of six feet minimum width at intervals of no more than 10 consecutive parking stalls. One tree shall be provided in each landscape area.

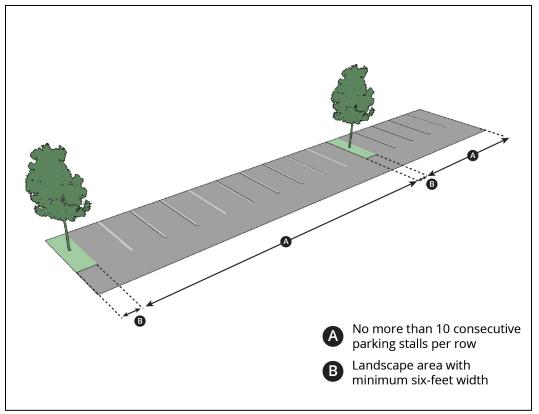


Figure A.4.2

A.6. Parking Structure Access

- 6.1 Any vehicular entry gate to a parking structure shall be located to allow a minimum of 18 feet between the gate and the back of the sidewalk to minimize conflicts between sidewalks and vehicle queuing.
- 6.2 A parking structure shall not occupy more than 50 percent of the building width of any street-facing façade, and it shall be recessed a minimum of five feet from the street-facing façade of the building.
- 6.3 For projects with five or more residential units and that have a vehicle access gate to the parking structure, a pedestrian gate shall also be provided.

A.7. Utilities

- 7.1 Pedestrian-oriented lighting shall be provided along all pedestrian paths in community recreation spaces. Exterior lighting fixtures shall be a minimum of three feet and a maximum of 12 feet in height. Light fixtures shall be placed along the pedestrian path at a spacing of no more than 30 linear feet.
- 7.2 Exterior lighting shall be fully shielded and restrain light to a minimum 30 degrees below the horizontal plane of the light source. Lighting shall be arranged so that the light will not shine directly on lands of adjacent residential zoned properties. Uplighting is prohibited.

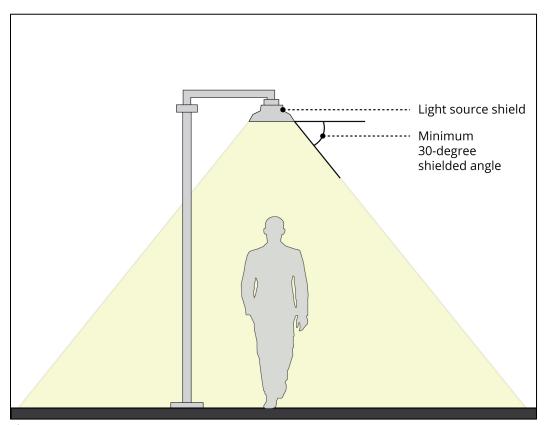


Figure A.6.2

- 7.3 Street-level views of ground level utility cabinets, mechanical equipment, trash, and service areas shall be screened from sight with landscape planting, fencing, or a wall, as allowed by the Town Code. The screening shall be at least the same height as the item being screened and screening that is not landscape material shall be constructed with one or more of the materials used on the primary building.
- 7.4 Rooftop mechanical equipment shall be screened from view from the street. Solar equipment is exempt from this requirement.

A.8. Landscaping and Screening

- 8.1 At least 50 percent of the front setback area shall be landscaped.
- 8.2 A minimum 10-foot-wide landscape buffer shall be provided along the full length of the shared property line between multi-family or Residential Mixed-Use development and abutting residential properties. The buffer shall include the following:
 - a. A solid masonry wall with a six-foot height, except within a street-facing setback where walls are not permitted; and

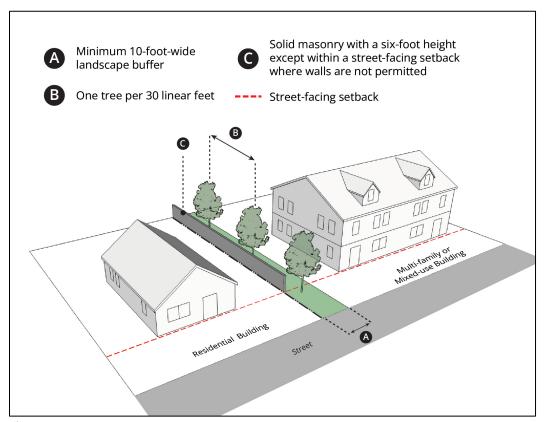


Figure A.7.2a

- b. Trees planted at a rate of at least one tree per 30 linear feet along the shared property line. Tree species shall be selected from the Town of Los Gatos Master Street Tree List and shall be a minimum 15-gallon size.
- 8.3 Surface parking lots shall be screened from view of the street with landscaping or a wall with a minimum three-foot height to screen the parking lot when not already screened by a primary building. When located in a street-facing setback, screening may not exceed a height of three feet.

A.9. Fencing

- 9.1 Fences, walls, and gates within required setbacks along all street frontages are prohibited unless used to screen on-site parking spaces from view from the street.
- 9.2 Chain link fencing is prohibited.
- 9.3 Perimeter barrier gates for vehicles and pedestrian entry gates shall have a maximum height of six feet.
- 9.4 Solid vehicular and pedestrian entry gates are prohibited. Entry gates shall be a minimum 50 percent open view.

A.10. Retaining Walls

- 10.1 Retaining walls shall not exceed five feet in height. Where an additional retained portion is necessary, multiple-terraced walls shall be used. Terraced walls shall set back at least three feet from the lower segment.
- 10.2 Retaining walls shall not run in a straight continuous direction for more than 50 feet without including the following:
 - a. A break, offset, or landscape pocket in the wall plane of at least three feet in length and two feet in depth; and
 - b. Landscaping at a minimum height of three feet at the time of installation along a minimum of 60 percent of the total length of the retaining wall.

A.11. Landscaped, Private, and Community Recreation Spaces

- 11.1 The landscaped, private, and community recreation spaces listed below are required for all qualifying projects. Community recreation spaces and private recreation spaces are calculated independent of each other. Landscaped areas within community recreation spaces can contribute to required minimums for both landscaped area and community recreation space.
 - a. Landscaped space: A minimum of 20 percent of the site area shall be landscaped.
 - b. Private recreation space: The minimum horizontal dimension is six feet in any direction and a minimum area of 60 square feet. The minimum vertical clearance required is eight feet. Private recreation space shall be directly accessible from the residential unit. Landscaped sections of private recreation space shall not count towards required landscaping requirements.
 - i. Each ground floor dwelling unit shall have a minimum of 120 square feet of usable private recreation space.

- ii. Each dwelling unit above the ground floor shall have a minimum of 60 square feet of usable private recreation space. Where multiple balconies are provided for a single unit, the 60-square-foot minimum can be an aggregate of all balconies, provide each balcony meets the requirements for minimum horizontal dimensions.
- c. Community recreation space: The minimum dimensions are 10 feet by six feet. A minimum of 60 percent of the community recreation space shall be open to the sky and free of permanent solid-roofed weather protection structures. Community recreation space shall provide shading for a minimum 15 percent of the community recreation space by either trees or structures, such as awnings, canopies, umbrellas, or a trellis. Tree shading shall be calculated by using the diameter of the tree crown at 15 years maturity. Shading from other built structures shall be calculated by using the surface area of the overhead feature.
 - i. Community recreation space shall be provided in Residential Mixed-Use developments at a minimum of 100 square feet per residential unit plus a minimum of two percent of the non-residential square footage.
 - ii. Community recreation space shall be provided in multi-family residential development projects at a minimum of 100 square feet per residential unit.
 - iii. A project with four or less residential units is exempt from community recreation space requirements.
 - iv. Landscaped roof space can satisfy both required landscaping requirements and community recreation space requirements.
 Landscaped roof space may not be used to satisfy more than 50 percent of the required landscaping for the site.

A.12. Building Placement

12.1 To ensure buildings provide a continuous frontage along sidewalks, development in commercial zones shall place at least 75 percent of any ground floor street-facing façade on or within five feet of the setback line designated in the Town Code.

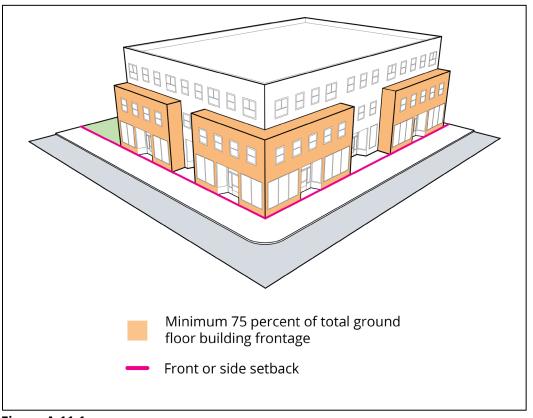


Figure A.11.1

- 12.2 A Residential Mixed-Use project with a ground-floor non-residential use shall provide site amenities on a minimum of 15 percent of the ground plane between the building and the front or street-side property line. The site amenities shall be comprised of any of the following elements:
 - a. Landscape materials or raised planters;
 - b. Walls designed to accommodate pedestrian seating, no higher than 36 inches;
 - c. Site furnishings, including fountains, sculptures, and other public art; or
 - d. Tables and chairs associated with the ground floor use.

B. BUILDING STANDARDS

B.1. Massing and Scale

- 1.1 Multiple-story building façades that face a street shall incorporate breaks in the building mass by implementing a minimum of three of the following solutions along the combined façade area of all primary buildings facing the street:
 - a. A minimum of 40 percent of the upper floor façade length shall step back from the plane of the ground-floor façade by at least five feet;

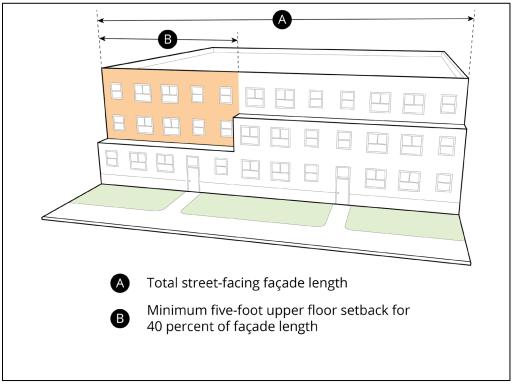


Figure B.1.1a

b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet;

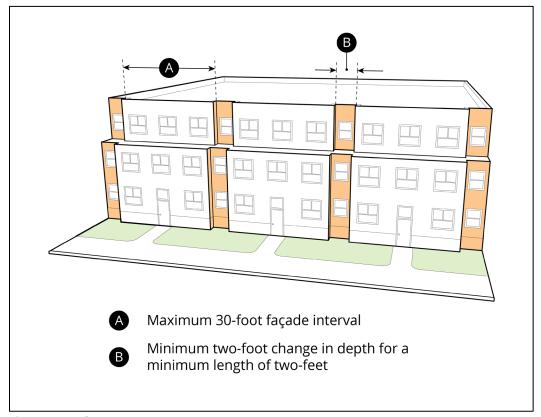


Figure B.1.1b

c. Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet. Where an awning or entry covering is provided, it can extend beyond the wall plane;



Figure B.1.1c

d. An exterior arcade that provides a sheltered walkway within the building footprint with a minimum depth of eight feet. For a façade 50 feet or greater, the arcade must be a minimum length of 65 percent of the full building façade; for a facade less than 50 feet, the arcade must be a minimum of 80 percent of the full building façade.

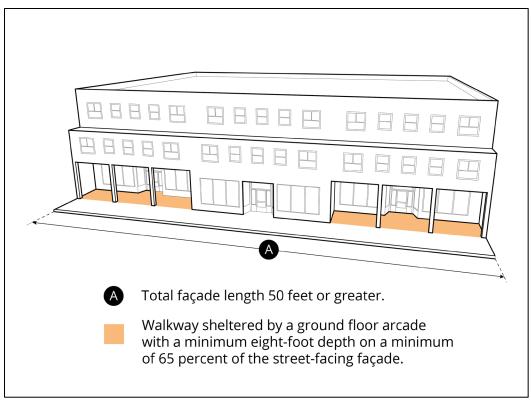


Figure B.1.1d (1)

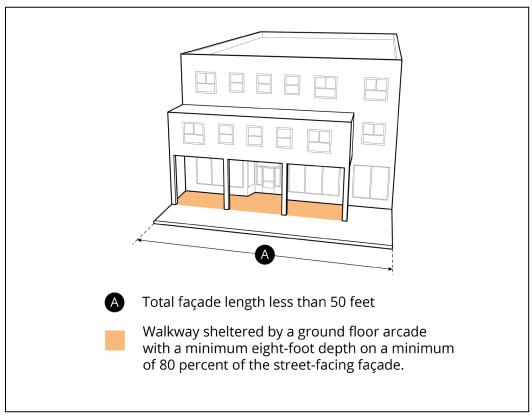


Figure B.1.1d (2)

e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet; or



Figure B.1.1e

f. Vertical elements, such as pilasters or columns, that protrude a minimum of one foot from the façade and extend the full height of the building base or ground floor, whichever is greater.

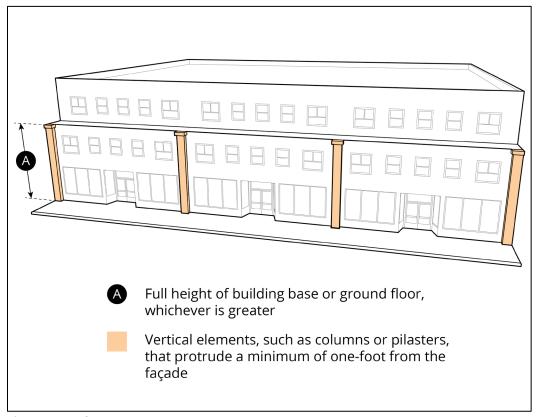


Figure B.1.1f

1.2 Upper floors above two stories shall be set back by a minimum of five feet from the ground-floor façade.

B.2. Parking Structure Design

- 2.1 The ground-floor façade of a parking structure facing a street or pedestrian walkway shall be fenestrated on a minimum of 40 percent of the façade.
- 2.2 Façade openings on upper levels of a parking structure shall be screened at a minimum 10 percent and up to 30 percent of the opening to prevent full transparency into the structure.
- 2.3 Parking structures facing a street and greater than 40 feet in length shall include landscaping between the building façade and the street, or façade articulation of at least 25 percent of the façade length. The façade articulation shall be implemented by one of the following solutions:
 - a. An offset of the façade plane with a depth of at least 18 inches for a minimum of eight feet in horizontal length; or
 - b. A different building material covering the entire façade articulation.

B.3. Roof Design

- 3.1 At intervals of no more than 40 feet along the building façade, horizontal eaves shall be broken using at least one of the following strategies:
 - a. Gables;
 - b. Building projection with a depth of a minimum of two feet;
 - c. Change in façade or roof height of a minimum of two feet;
 - d. Change in roof pitch or form; or
 - e. Inclusion of dormers, parapets, and/or varying cornices.
- 3.2 Skylights shall have a flat profile rather than domed.

3.3 The total width of a single dormer or multiple dormers shall not exceed 50 percent of the total roof length at the street-facing façade. The dormer width shall be measured at dormer roof fascia, or widest part of the dormer.

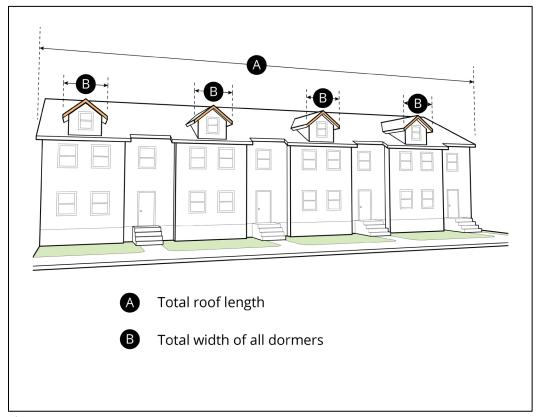


Figure B.3.3

3.4 Carport roof materials shall be the same as the primary building.

B.4. Façade Design and Articulation

- 4.1 Buildings greater than two stories shall be designed to differentiate the base, middle, and top of the building on any street-facing façade. Each of these elements shall be distinguished from one another using at least two of the following solutions:
 - a. Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet;

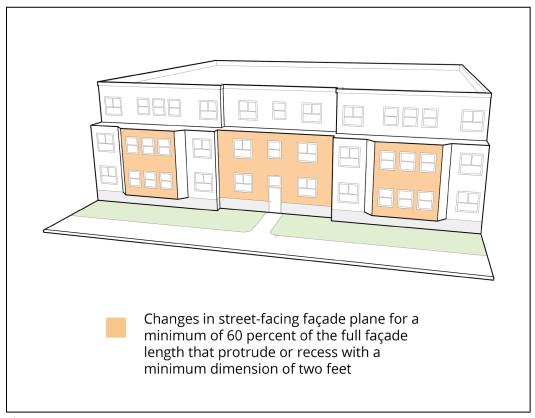


Figure B.4.1a

b. Balconies or habitable projections with a minimum depth of two feet for a minimum of 20 percent length of the street-facing façade;

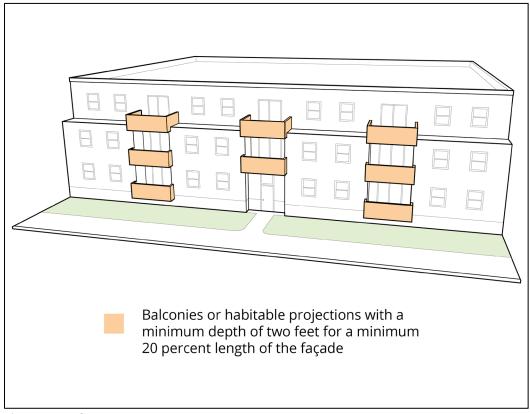


Figure B.4.1b

c. Variation in façade articulation, using shade and weather protection components, projecting a minimum of three feet for a minimum of 20 percent length from the street-facing façade;

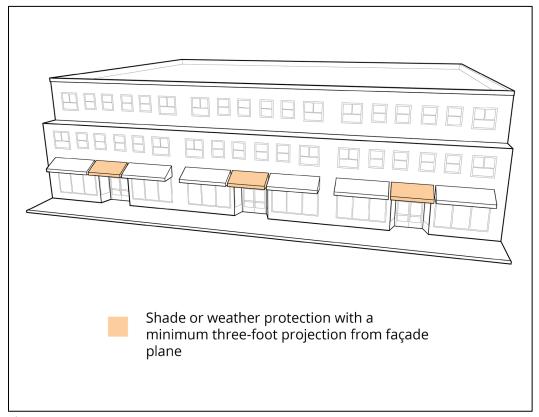


Figure B.4.1c

- d. The use of at least two different façade materials, each covering a minimum of 20 percent of the street-facing façade, or
- e. The upper floor shall implement a façade height that is a minimum of two feet greater than the façade height of the floor immediately below. The greater façade height shall be made evident by taller windows or arrangement of combined windows.

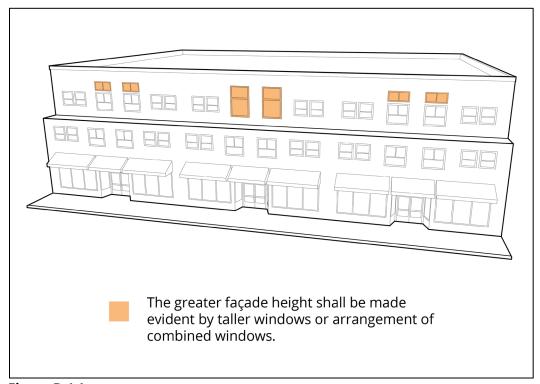


Figure B.4.1e

4.2 All façade materials, such as siding, window types, and architectural details, used on the street-facing façade shall be used on all other building façades.

- 4.3 Variation in the street-facing façade planes shall be provided for buildings greater than one story by incorporating any combination of the following architectural solutions to achieve a minimum of 16 points:
 - Architectural features, such as:

	Architectural reatures, such as.	
	 Arcade or gallery along the ground floor; 	8 points
	 Awnings or canopies on all ground floor windows of 	6 points
	commercial space;	
	 Building cornice; 	5 points
	 Façade sconce lighting at a minimum of one light fixture per 15 linear feet. 	3 points
•	Bay or box windows projecting a minimum of 18 inches from the façade plane and comprising a minimum of 20 percent of the fenestration on the upper floors of the facade;	6 points
•	Balconies or Juliet balconies provided on a minimum of 40 percent of the fenestration on the upper floors of the facade;	5 points
•	Landscaped trellises or lattices extending across a minimum of 65 percent of any level of the facade;	5 points
•	Materials and color changes;	3 points
•	Eaves that overhang a minimum of two feet from the facade with supporting brackets;	3 points
•	Window boxes or plant shelves under a minimum of 60 percent of the fenestration on the upper floors of the facade; or	3 points

4.4 Garage doors shall be recessed a minimum of 12 inches from the façade plane and along the street-facing façade shall not exceed 40 percent of the length of the building façade.

Decorative elements such as molding, brackets, or corbels.

3 points

4.5 Changes in building materials shall occur at inside corners.

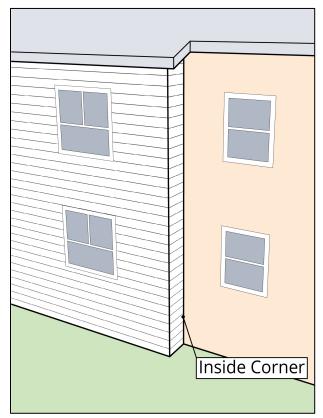


Figure B.4.5

- 4.6 A primary building entrance shall be provided facing a street or community recreation space. Additionally, all development shall meet the following requirements:
 - a. Pedestrian entries to ground-floor and upper-floor non-residential uses shall meet at least one of the following standards:
 - i. The entrance shall be recessed in the façade plane at least three feet in depth; or
 - ii. The entrance shall be covered by an awning, portico, or other architectural element projecting from the façade a minimum of three feet.

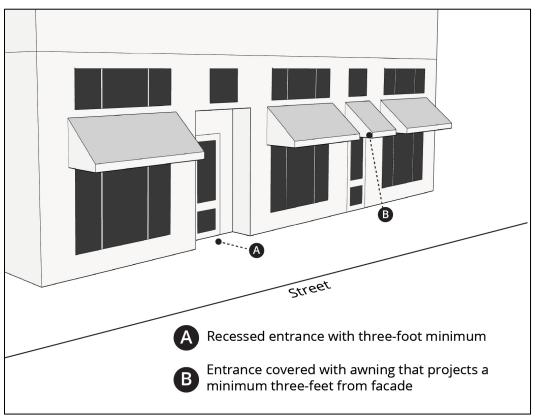


Figure B.4.6a

b. For ground-floor commercial uses, façades facing a street shall include windows, doors, or openings for at least 60 percent of the building façade that is between two and 10 feet above the level of the sidewalk.

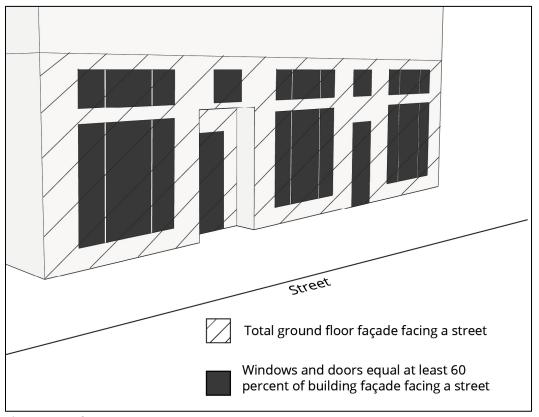


Figure B.4.6b

- 4.7 Pedestrian entries to buildings shall meet minimum dimensions to ensure adequate access based on use and development intensity. Building entries inclusive of the doorway and the facade plane shall meet the following minimum dimensions:
 - a. Individual residential entries: five feet in width
 - b. Single entry to multiple residential unit building, including Residential Mixed-Use buildings: eight feet in width
 - c. Storefront entry: six feet in width

- 4.8 Mirrored windows are prohibited.
- 4.9 Awnings shall be subject to the following requirements:
 - a. A minimum vertical clearance of eight feet measured from the pedestrian pathway;
 - b. Shall not extend beyond individual storefront bays; and
 - c. Shall not be patterned or striped.
- 4.10 For buildings abutting a single-family zoning district or existing single-family use, no part of a rooftop or upper floor terrace or deck shall be closer than five feet from the facade plane of the lower floor, to prevent views into adjacent residential uses.
- 4.11 Balconies are allowed on facades facing the street and those facades facing existing non-residential uses on abutting parcels. Such balconies shall be without any projections beyond the building footprint.
- 4.12 Residential Mixed-Use buildings shall provide at least one of the following features along street-facing façades where the façade exceeds 50 feet in length:
 - a. A minimum five-foot offset from the façade plane for a length of at least 10 feet:
 - b. Multiple pilasters or columns, each with a minimum width of two feet; or
 - c. Common open space, such as a plaza, outdoor dining area, or other spaces.
- 4.13 Continuous blank façades on any floor level shall not exceed 25 percent of the entire façade length along any street.

Appendix A - Evaluation of Existing Developments

The following developments in the Town of Los Gatos were analyzed to see if they would meet the three following standards that offer multiple design solutions (B.1.1, B.4.1, and B.4.3). These projects were designed and built without requirements to adhere to specific objective design standards. While some of the projects would not comply with all of the standards below, incorporating additional design solutions would be easily accomplished during the design phase.

C. BUILDING STANDARDS

C.1. Massing and Scale

- 1.1 Multiple-story building façades that face a street shall incorporate breaks in the building mass by implementing a minimum of three of the following solutions along the combined façade area of all primary buildings facing the street:
 - a. A minimum of 40 percent of the upper floor façade length shall step back from the plane of the ground-floor façade by at least five feet;
 - b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet;
 - c. Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet. Where an awning or entry covering is provided, it can extend beyond the wall plane;
 - d. An exterior arcade that provides a sheltered walkway within the building footprint with a minimum depth of eight feet. For a façade 50 feet or greater, the arcade must be a minimum length of 65 percent of the full building façade; for a facade less than 50 feet, the arcade must be a minimum of 80 percent of the full building façade.
 - e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet; or
 - f. Vertical elements, such as pilasters or columns, that protrude a minimum of one foot from the façade and extend the full height of the building base or ground floor, whichever is greater.

B.4. Façade Design and Articulation

- 4.1 Buildings greater than two stories shall be designed to differentiate the base, middle, and top of the building on any street-facing façade. Each of these elements shall be distinguished from one another using at least two of the following solutions:
 - g. Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet;
 - h. Balconies or habitable projections with a minimum depth of two feet for a minimum of 20 percent length of the street-facing façade;
 - Variation in façade articulation, using shade and weather protection components, projecting a minimum of three feet for a minimum of 20 percent length from the street-facing façade;
 - j. The use of at least two different façade materials, each covering a minimum of 20 percent of the street-facing façade, or
 - k. The upper floor shall implement a façade height that is a minimum of two feet greater than the façade height of the floor immediately below. The greater façade height shall be made evident by taller windows or arrangement of combined windows.

- 4.3 Variation in the street-facing façade planes shall be provided for buildings greater than one story by incorporating any combination of the following architectural solutions to achieve a minimum of 16 points:
 - Architectural features, such as:

-	Architectural reatures, such as.	
	 Arcade or gallery along the ground floor; 	8 points
	 Awnings or canopies on all ground floor windows of 	6 points
	commercial space;	
	 Building cornice; 	5 points
	 Façade sconce lighting at a minimum of one light fixture per 15 linear feet. 	3 points
•	Bay or box windows projecting a minimum of 18 inches	6 points
	from the façade plane and comprising a minimum of 20	
	percent of the fenestration on the upper floors of the	
	facade;	
•	Balconies or Juliet balconies provided on a minimum of 40	5 points
	percent of the fenestration on the upper floors of the	·
	facade;	
•	Landscaped trellises or lattices extending across a	5 points
	minimum of 65 percent of any level of the facade;	•
	Materials and color changes;	3 points
	Eaves that overhang a minimum of two feet from the	3 points
	facade with supporting brackets;	- poco
	Window boxes or plant shelves under a minimum of 60	3 points
	percent of the fenestration on the upper floors of the	5 points
	percent of the remediation on the apper moors of the	

• Decorative elements such as molding, brackets, or corbels.

facade; or

3 points

Appendix A - EXAMPLE SCORING OF EXISTING DEVELOPMENTS

University Avenue at Los Gatos-Saratoga Road



B.1.1 - (Minimum 3)

- b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet.
- c. Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet.
- e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet.
- **B.4.1** Not applicable, only two stories.
- **B.4.3** (16 points minimum)

Arcade (8 points)

Building cornice (5 points)

Sconce lighting (3 points)

Balconies (5 points)

Decorative elements (3 points)

TOTAL = 24 points

Aventino - Winchester Boulevard



B1.1 - (Minimum 3)

- b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet.
- c. Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet.

B4.1 – (Minimum 2)

- a. Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet:
- b. Balconies or habitable projections with a minimum depth of two feet for a minimum of 20 percent length of the street-facing façade;

B4.3 – (16 points minimum)

Material and color changes (3 points)

Balconies or Juliet balconies (5 points)

Eaves that overhang a minimum of two feet from the façade with supporting brackets (3 points)

Window boxes or plant shelves (3 points)

Decorative elements such as molding, ornamentation, or corbels (3 points):

TOTAL = 17 points

North 40 - Market Hall







B1.1 – (minimum 3)

- b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet;
- e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet; or

B4.1 – (Minimum 2)

- a. Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet;
- c. Variation in façade articulation, using shade and weather protection components, projecting a minimum of three feet for a minimum of 20 percent length from the street-facing-façade;
- d. The use of at least two different façade materials, each covering a minimum of 20 percent of the street-facing façade;

B4.3 – (16 points minimum)

Awnings or canopies (6 points)

Material and color changes (3 points)

Eaves that overhang a minimum of two feet from the façade with supporting brackets (3 points)

Decorate elements such as molding, brackets, or corbels (3 points)

TOTAL = 15 points

<u>Appendix B - OBJECTIVE DESIGN STANDARDS CHECKLIST</u>

APPLICANT RESPONSIBILITY

Applicants are responsible for accurately responding to each objective design standard listed below by indicating whether each standard has been met or does not apply. Applicants shall indicate the sheet(s) within the project plans that show compliance with each objective design standard.

A. SI	TE ST	ANDA	RDS						
A	4.1. Po	edesti	rian Acco	ess					
YES	NO	N/A	Object	Objective Design Standard					
			A.1.1	All on-site buildings, entries, facilities, amenities, and vehicular and					
				bicycle parking areas shall be internally connected with a minimum					
				four-foot-wide pedestrian pathway or pathway network that may					
				include use of the public sidewalk. The pedestrian pathway network					
				shall connect to the public sidewalk along each street.					
			A.1.2	Pedestrian pathways within internal parking areas shall be separated					
				from vehicular circulation by a physical barrier, such as a grade					
				separation or a raised planting strip, of at least six inches in height					
				and at least six feet in width. A pedestrian pathway is exempt from					
				this standard where it crosses a parking vehicular drive aisle.					
A	4.2. SI	hort-T	erm Bic	ycle Parking (Class II)					
YES	NO	N/A	Object	ive Design Standard	SHEET				
			Short-t	term bicycle parking (Class II bicycle parking facility) consists of racks					
			that su	ipport the bicycle frame at two points and allow for the bicycle frame					
			and on	e wheel to be locked to the rack with a U-lock.					
			A.2.1	Short-term bicycle parking space shall be located within 50 feet of the					
				primary pedestrian building entrance.					
			A.2.2	Short-term bicycle parking shall be provided at a rate of one space per					
				dwelling unit and one space per 2,000 square feet of non-residential					
				floor area.					
			A.2.3	Each short-term bicycle parking space shall be a minimum of seven					
				feet in length and two feet in width.					
			A.2.4	If more than 20-short term bicycle spaces are provided, at least 50					
				percent of the spaces shall be covered by a permanent solid-roofed					
				weather protection structure.					

	4.3. Lo	ng-Te	erm Bicycle Parking (Class I)	
YES	NO	N/A		SHEET
			Long-term bicycle parking facilities (Class I bicycle parking facility) consists of	
			bicycle lockers or bicycle rooms with key access for use by residents.	
			A.3.1 Long-term bicycles parking facilities shall be located on the ground	
			floor and shall not be located between the building and the street.	
			A.3.2 Multi-family residential and residential mixed-use buildings shall	
			provide one long-term bicycle parking space per dwelling unit.	
			Developments such as townhomes that include individual garages for	
			each unit shall not be required to provide long-term bicycle parking.	
			A.3.3 Bicycle locker minimum requirements:	
			a. Dimensions of 42 inches wide, 75 inches deep, and 54 inches	
			high.	
			b. Must withstand a load of 200 pounds per square foot.	
			c. Opened door must withstand 500-pound vertical load.	
			A.3.4 Bicycle rooms with key access minimum requirements:	
			a. Bicycle rooms shall have a minimum ceiling height of seven feet.	
			b. Bicycle rooms shall contain racks that support the bicycle frame	
			at two points and allow for the bicycle frame and one wheel to	
			be locked to the rack with a U-lock.	
			c. Long-term bicycle parking spaces shall be served by an aisle with	
			a minimum width of six feet.	
			d. Maneuverability space of at least two feet shall be provided	
			between the aisle and long-term bicycle parking spaces	
			e. Each horizontal long-term bicycle parking space shall be a	
			minimum of seven feet in length, two feet in width, four-and	
			one-half feet in height. Each vertical long-term bicycle parking	
			space shall be a minimum of three-and one-half feet in length,	
		<u> </u>	two feet in width, and seven feet in height.	
			lar Access	
YES	NO	N/A	, ,	SHEET
			A.4.1 Off-street parking lots shall have vehicular circulation using an	
			internal vehicular network that precludes the use of a public street for	
	\	- wle!	aisle-to-aisle internal circulation.	
			g Location and Design	
YES	NO	N/A		SHEET
			A.5.1 Surface parking lots and carports shall not be located between the	
			primary building frontage and the street.	
			A.5.2 Uncovered parking rows with at least 15 consecutive parking spaces	
			shall include a landscape area of six feet minimum width at intervals	
			of no more than 10 consecutive parking stalls. One tree shall be	
			provided in each landscape area.	

-	4.6. Pa	arking	Structu	re Access	
YES	NO	N/A	Object	ive Design Standard	SHEET
			A.6.1	Any vehicular entry gate to a parking structure shall be located to allow a minimum of 18 feet between the gate and the back of the sidewalk to minimize conflicts between sidewalks and vehicle queuing.	
			A.6.2	A parking structure shall not occupy more than 50 percent of the building width of any street-facing façade, and it shall be recessed a minimum of five feet from the street-facing façade of the building.	
			A.6.3	For projects with five or more residential units and that have a vehicle access gate to the parking structure, a pedestrian gate shall also be provided.	
-	1.7. U	tilities	3		
YES	NO	N/A	Object	ive Design Standard	SHEET
			A.7.1	Pedestrian-oriented lighting shall be provided along all pedestrian paths in community recreation spaces. Exterior lighting fixtures shall be a minimum of three feet and a maximum of 12 feet in height. Light fixtures shall be placed along the pedestrian path at a spacing of no more than 30 linear feet.	
			A.7.2	Exterior lighting shall be fully shielded and restrain light to a minimum 30 degrees below the horizontal plane of the light source. Lighting shall be arranged so that the light will not shine directly on lands of adjacent residential zoned properties. Uplighting is prohibited.	
			A.7.3	Street-level views of ground level utility cabinets, mechanical equipment, trash, and service areas shall be screened from sight with landscape planting, fencing, or a wall, as allowed by the Town Code. The screening shall be at least the same height as the item being screened and screening that is not landscape material shall be constructed with one or more of the materials used on the primary building.	
			A.7.4	Rooftop mechanical equipment shall be screened from view from the street. Solar equipment is exempt from this requirement.	

	4.8. La	ndsca	ping and	d Screening	
YES	NO	N/A		ve Design Standard	SHEET
			A.8.1	At least 50 percent of the front setback area shall be landscaped.	
			A.8.2	A minimum 10-foot-wide landscape buffer shall be provided along the full length of the shared property line between multi-family or Residential Mixed-Use development and abutting residential properties. The buffer shall include the following: a. A solid masonry wall with a six-foot height, except within a street-facing setback where walls are not permitted; and b. Trees planted at a rate of at least one tree per 30 linear feet along the shared property line. Tree species shall be selected from the Town of Los Gatos Master Street Tree List and shall be a minimum 15-gallon size.	
			A.8.3	Surface parking lots shall be screened from view of the street with landscaping or a wall with a minimum three-foot height to screen the parking lot when not already screened by a primary building. When located in a street-facing setback, screening may not exceed a height of three feet.	
	1.9. F €	encing			
YES	NO	N/A		ve Design Standard	SHEET
			A.9.1	Fences, walls, and gates within required setbacks along all street frontages are prohibited unless used to screen on-site parking spaces from view from the street.	
			A.9.2	Chain link fencing is prohibited.	
			A.9.2	Perimeter barrier gates for vehicles and pedestrian entry gates shall have a maximum height of six feet.	
			A.9.4	Solid vehicular and pedestrian entry gates are prohibited. Entry gates shall be a minimum 50 percent open view.	
	A.10. I	Retain	ing Wall:		
YES	NO	N/A		ve Design Standard	SHEET
			A.10.1	Retaining walls shall not exceed five feet in height. Where an additional retained portion is necessary, multiple-terraced walls shall be used. Terraced walls shall set back at least three feet from the lower segment.	
			A.10.2	Retaining walls shall not run in a straight continuous direction for more than 50 feet without including the following: a. A break, offset, or landscape pocket in the wall plane of at least three feet in length and two feet in depth; and b. Landscaping at a minimum height of three feet at the time of installation along a minimum of 60 percent of the total length of the retaining wall.	

			caped, Private, and Community Recreation Spaces	<u> </u>
YES	NO	N/A	Objective Design Standard	SHEET
			A.11.1 The landscaped, private, and community recreation spaces listed	
			below are required for all qualifying projects. Community recreation	
			spaces and private recreation spaces are calculated independent of	
			each other. Landscaped areas within community recreation spaces	
			can contribute to required minimums for both landscaped area and	
			community recreation space.	
			a. Landscaped space: A minimum of 20 percent of the site area	
			shall be landscaped.	
			b. Private recreation space: The minimum horizontal dimension is	
			six feet in any direction and a minimum area of 60 square feet.	
			The minimum vertical clearance required is eight feet. Private	
			recreation space shall be directly accessible from the residential	
			unit. Landscaped sections of private recreation space shall not	
			count towards required landscaping requirements.	
			i. Each ground floor dwelling unit shall have a minimum of 120	
			square feet of usable private recreation space.	
			ii. Each dwelling unit above the ground floor shall have a	
			minimum of 60 square feet of usable private recreation space.	
			· · · · · · · · · · · · · · · · · · ·	
			Where multiple balconies are provided for a single unit, the	
			60-square-foot minimum can be an aggregate of all balconies,	
			provide each balcony meets the requirements for minimum	
			horizontal dimensions.	
			c. Community recreation space: The minimum dimensions are 10	
			feet by six feet. A minimum of 60 percent of the community	
			recreation space shall be open to the sky and free of permanent	
			solid-roofed weather protection structures. Community	
			recreation space shall provide shading for a minimum 15 percent	
			of the community recreation space by either trees or structures,	
			such as awnings, canopies, umbrellas, or a trellis. Tree shading	
			shall be calculated by using the diameter of the tree crown at 15	
			years maturity. Shading from other built structures shall be	
			calculated by using the surface area of the overhead feature.	
			i. Community recreation space shall be provided in Residential	
			Mixed-Use developments at a minimum of 100 square feet	
			per residential unit plus a minimum of two percent of the	
			non-residential square footage.	
			ii. Community recreation space shall be provided in multi-family	
			residential development projects at a minimum of 100 square	
			feet per residential unit.	
			iii. A project with four or less residential units is exempt from	
			community recreation space requirements.	
			iv. Landscaped roof space can satisfy both required landscaping	
			requirements and community recreation space requirements.	
			Landscaped roof space may not be used to satisfy more than	
			50 percent of the required landscaping for the site.	

-	۱.12. ا	Buildir	ng Placen	nent	
YES	NO	N/A	Objectiv	ve Design Standard	SHEET
			A.12.1	To ensure buildings provide a continuous frontage along sidewalks,	
				development in commercial zones shall place at least 75 percent of	
				any ground floor street-facing façade on or within five feet of the	
				setback line designated in the Town Code.	
			A.12.2	A Residential Mixed-Use project with a ground-floor non-residential	
				use shall provide site amenities on a minimum of 15 percent of the	
				ground plane between the building and the front or street-side	
				property line. The site amenities shall be comprised of any of the	
				following elements:	
				a. Landscape materials or raised planters;	
				b. Walls designed to accommodate pedestrian seating, no higher	
				than 36 inches;	
				c. Site furnishings, including fountains, sculptures, and other public	
				art; or	
				d. Tables and chairs associated with the ground floor use.	

B. Bl	JILDII	NG DE	SIGN		
Е	3.1. N	lassin	g and Sc	ale	
YES	NO	N/A	Object	ive Design Standard	SHEET
			B.1.1	Multiple-story building façades that face a street shall incorporate breaks in the building mass by implementing a minimum of three of the following solutions along the combined façade area of all primary buildings facing the street:	
				 a. A minimum of 40 percent of the upper floor façade length shall step back from the plane of the ground-floor façade by at least five feet; 	
				 b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet; 	
				 Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet. Where an awning or entry covering is provided, it can extend beyond the wall plane; 	
				d. An exterior arcade that provides a sheltered walkway within the building footprint with a minimum depth of eight feet. For a façade 50 feet or greater, the arcade must be a minimum length of 65 percent of the full building façade; for a facade less than 50 feet, the arcade must be a minimum of 80 percent of the full building façade.	
				e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet; or	
				f. Vertical elements, such as pilasters or columns, that protrude a minimum of one foot from the façade and extend the full height of the building base or ground floor, whichever is greater.	
			B.1.2	Upper floors above two stories shall be set back by a minimum of five feet from the ground-floor façade.	

E	3.2. Pa	arking	Structu	re Design	
YES	NO	N/A	Object	ive Design Standard	SHEET
			B.2.1	The ground-floor façade of a parking structure facing a street or	
				pedestrian walkway shall be fenestrated on a minimum of 40 percent	
				of the façade.	
			B.2.2	Façade openings on upper levels of a parking structure shall be	
				screened at a minimum 10 percent and up to 30 percent of the	
				opening to prevent full transparency into the structure.	
			B.2.3	Parking structures facing a street and greater than 40 feet in length	
				shall include landscaping between the building façade and the street,	
				or façade articulation of at least 25 percent of the façade length. The	
				façade articulation shall be implemented by one of the following	
				solutions:	
				a. An offset of the façade plane with a depth of at least 18 inches for	
	ļ			a minimum of eight feet in horizontal length; or	
				b. A different building material covering the entire façade	
				articulation.	
		oof D			
YES	NO	N/A		ive Design Standard	SHEET
			B.3.1	At intervals of no more than 40 feet along the building façade,	
				horizontal eaves shall be broken using <u>at least one</u> of the following	
	ļ			strategies:	
				a. Gables;	
				b. Building projection with a depth of a minimum of two feet;	
				c. Change in façade or roof height of a minimum of two feet;	
	ļ			d. Change in roof pitch or form; or	
				e. Inclusion of dormers, parapets, and/or varying cornices.	
			B.3.2	Skylights shall have a flat profile rather than domed.	
			B.3.3	The total width of a single dormer or multiple dormers shall not	
				exceed 50 percent of the total roof length at the street-facing façade.	
				The dormer width shall be measured at dormer roof fascia, or widest	
				part of the dormer.	
			B.3.4	Carport roof materials shall be the same as the primary building.	

E	3.4. Fa	çade	Design	and Articulation	
YES	NO	N/A	Object	ive Design Standard	SHEET
			B.4.1	Buildings greater than two stories shall be designed to differentiate	
				the base, middle, and top of the building on any street-facing façade.	
				Each of these elements shall be distinguished from one another using	
				at least two of the following solutions:	
				 Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet; 	
				 Balconies or habitable projections with a minimum depth of two feet for a minimum of 20 percent length of the street-facing façade; 	
				c. Variation in façade articulation, using shade and weather protection components, projecting a minimum of three feet for a minimum of 20 percent length from the street-facing façade;	
				d. The use of at least two different façade materials, each covering a minimum of 20 percent of the street-facing façade, or	
				e. The upper floor shall implement a façade height that is a minimum of two feet greater than the façade height of the floor immediately below. The greater façade height shall be made evident by taller windows or arrangement of combined windows.	
			B.4.2	All façade materials, such as siding, window types, and architectural details, used on the street-facing façade shall be used on all other building façades.	

В	.4. Fa	çade [Design a	nd Articulation (continued)		
YES	NO	N/A		ive Design Standard		SHEET
			B.4.3	Variation in the street-facing façade planes shall be provided	d for	
				buildings greater than one story by incorporating any combi	nation of	
				the following architectural solutions to achieve a minimum of	of 16	
				points:		
				Architectural features, such as:		
				 Arcade or gallery along the ground floor; 	8 points	
				Awnings or canopies on all ground floor windows	6 points	
				of commercial space;		
				Building cornice;	5 points	
				 Façade sconce lighting at a minimum of one light 	3 points	
				fixture per 15 linear feet.		
				 Bay or box windows projecting a minimum of 18 	6 points	
				inches from the façade plane and comprising a		
				minimum of 20 percent of the fenestration on the		
				upper floors of the facade;		
				 Balconies or Juliet balconies provided on a minimum of 	5 points	
				40 percent of the fenestration on the upper floors of		
				the facade;		
				 Landscaped trellises or lattices extending across a 	5 points	
				minimum of 65 percent of any level of the facade;		
				Materials and color changes;	3 points	
				Eaves that overhang a minimum of two feet from the	3 points	
				facade with supporting brackets;		
				 Window boxes or plant shelves under a minimum of 60 	3 points	
				percent of the fenestration on the upper floors of the		
				facade; or		
				 Decorative elements such as molding, brackets, or 	3 points	
				corbels		
				TOTAL		
			B.4.4	Garage doors shall be recessed a minimum of 12 inches from	n the	
				façade plane and along the street-facing façade shall not exc	ceed 40	
				percent of the length of the building façade.		
			B.4.5	Changes in building materials shall occur at inside corners.		
			B.4.6	A primary building entrance shall be provided facing a street	or	
				community recreation space. Additionally, all development	shall meet	
				the following requirements:		
				a. Pedestrian entries to ground-floor and upper-floor non-		
				residential uses shall meet at least one of the following		
				 The entrance shall be recessed in the façade plane a 	t least	
				three feet in depth; or		
				ii. The entrance shall be covered by an awning, portico	, or other	
				architectural element projecting from the façade a n	ninimum	
				of three feet.		

ES	NO	N/A	Objectiv	ve Design Standard	SHEET
				b. For ground-floor commercial uses, façades facing a street shall	
				include windows, doors, or openings for at least 60 percent of the	
				building façade that is between two and 10 feet above the level of	
				the sidewalk.	
			B.4.7	Pedestrian entries to buildings shall meet minimum dimensions to	
				ensure adequate access based on use and development intensity.	
				Building entries inclusive of the doorway and the facade plane shall	
				meet the following minimum dimensions:	
				a. Individual residential entries: five feet in width	
				b. Single entry to multiple residential unit building, including	
				Residential Mixed-Use buildings: eight feet in width	
				c. Storefront entry: six feet in width	
			B.4.8	Mirrored windows are prohibited.	
			B.4.9	Awnings shall be subject to the following requirements:	
				a. A minimum vertical clearance of eight feet measured from the	
				pedestrian pathway;	
				b. Shall not extend beyond individual storefront bays; and	
				c. Shall not be patterned or striped.	
			B.4.10	For buildings abutting a single-family zoning district or existing single-	
				family use, no part of a rooftop or upper floor terrace or deck shall be	
				closer than five feet from the facade plane of the lower floor, to	
				prevent views into adjacent residential uses.	
			B.4.11	Balconies are allowed on facades facing the street and those facades	
				facing existing non-residential uses on abutting parcels. Such	
				balconies shall be without any projections beyond the building	
				footprint.	
			B.4.12	Residential Mixed-Use buildings shall provide at least one of the	
				following features along street-facing façades where the façade	
				exceeds 50 feet in length:	
				a. A minimum five-foot offset from the façade plane for a length of	
				at least 10 feet;	
				b. Multiple pilasters or columns, each with a minimum width of two	
				feet; or	
				c. Common open space, such as a plaza, outdoor dining area, or	
				other spaces.	
			B.4.13	Continuous blank façades on any floor level shall not exceed 25	
				percent of the entire façade length along any street.	

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TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 05/07/2024

DATE: May 2, 2024

TO: Mayor and Town Councilmembers

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: Introduce an Ordinance Titled, "An Ordinance of the Town Council of the

Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as Recommended by the Planning Commission. The proposed amendments to the Town Code are not a project subject to CEQA [CEQA Guidelines Section 15061(b)(3)]. Town Code Amendment Application A-24-002. **Project**

Location: Town Wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Introduce an Ordinance (Attachment 3) titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as recommended by the Planning Commission.

BACKGROUND:

The Town Council considered this ordinance for introduction at its April 2, 2024 meeting. A copy of the staff report for the April 2, 2024 meeting is provided as Attachment 1.

At the April 2, 2024 meeting, the Town Council discussed the proposed 90-day time limit for the display of temporary signs. The Town Council was concerned that temporary signs would remain on display for too long a period. The Town Council expressed a preference that temporary signs, such as election signs, that are related to a specific event be required to be removed within a specified number of days from the event to which they pertain.

DISCUSSION:

Language has been added to Section 29.10.110(15) of the proposed ordinance to require the removal of temporary signs relating to a specific event within fifteen days after that event. The City of Campbell imposes a similar time limit.

DISCUSSION (continued):

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

PAGE **2** of **5**

SUBJECT: Sign Ordinance/A-24-002

DATE: May 2, 2024

A redline of the proposed ordinance is provided as Attachment 2 and a clean version of the proposed ordinance is provided as Attachment 3.

CEQA:

The proposed amendments to the Town's Sign Code are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to temporary signs.

RECOMMENDATION:

Staff recommends that the Town Council introduce an Ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" (Attachment 2). If the ordinance is introduced at the May 7, 2024, meeting, it will return for adoption on May 21, 2024, and will take effect 30 days after adoption.

Attachments:

- 1. April 2, 2024, Town Council Staff Report (without attachments)
- 2. Redline of Town Code
- 3. Draft Sign Ordinance Clean



TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 04/02/2024

DATE: March 27, 2024

TO: Mayor and Town Councilmembers

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: Introduce an Ordinance Titled, "An Ordinance of the Town Council of the

Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as Recommended by the Planning Commission. The proposed amendments to the Town Code are not a project subject to CEQA [CEQA Guidelines Section 15061(b)(3)]. Town Code Amendment Application A-24-002. **Project**

Location: Town Wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

Introduce an Ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as recommended by the Planning Commission.

BACKGROUND:

The Town Council considered this topic at a study session last year. As the Town Council will recall, the Town's Sign Ordinance is codified at Sections 29.10.100 through 29.10.140 of the Town Code and was most recently amended in 1994. Since then, a number of court decisions affecting sign regulations have been issued. These court decisions discuss the First Amendment and "freedom of speech." The most significant of these decisions is *Reed v. Gilbert*, 576 U.S. 155 (2015). In *Reed v. Gilbert*, the court overturned a local ordinance that imposed content-based regulations. Government regulation of speech is considered to be "content-based" if the law applies to particular speech based on the topic discussed or the idea or message expressed.

If a regulation affecting signs in the public right of way is "content-based," a court will only uphold the regulation if it: 1) serves a compelling government interest; and 2) is narrowly tailored to serve that interest. This is a very high standard and, aside from decisions upholding directional signage, content-based regulations are routinely struck down. A regulation affecting signs on private property will be upheld if it is: 1) reasonable; and 2) content-neutral.

Attachment 1

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

PAGE **2** of **5**

SUBJECT: Sign Ordinance/A-24-002

DATE: March 25, 2024

BACKGROUND (continued):

The Town's Sign Ordinance currently includes content-based regulations for several types of temporary signs. Examples of this are regulations that are specific to "political signs," "real estate open house signs," "grand opening" banners, and special event signs. The best practice is to have a category for "temporary signs" and apply the same regulations to all forms of temporary signs.

Case law does authorize the Town to impose "time, place, and manner" regulations on signage. Examples of "time, place, and manner" regulations are those related to size, location, and time limits for display.

At its study session, the Town Council's feedback was that the sign ordinance works well and should be amended as minimally as possible. The Town Attorney has worked with outside counsel to draft revisions for temporary signs that remove the "content-based" restrictions. For example, "political signs" have been reclassified as "temporary signs."

In addition, a revision is included to prohibit temporary signs in the following areas of public right of way: 1) the median; and 2) the area between the paved road and the sidewalk.

The Planning Commission reviewed proposed amendments to the Town's sign ordinance on February 28, 2024. In addition to the proposed revisions, the Planning Commission recommended that the ordinance be revised to:

- 1) Add a definition for "yard signs;"
- 2) Revise the "temporary sign" definition to give examples of temporary signs and to revise the 90-day time limit to add "or as otherwise set forth in this Article" (since some temporary signs have different time limits);
- 3) Change the term "jointly and severally liable" to "jointly and severally responsible;"
- 4) Provide that yard signs are limited in size to no more than six square feet and that there is no limit on the number of yard signs;
- 5) Remove the general prohibition on flags, banners, and balloons and address them as temporary signs that require a permit; and
- 6) Make the permitted size of signs on construction sites proportional to the size of the parcel.

DISCUSSION:

A redline of the sign ordinance with the proposed revisions, including the Planning Commission recommendations, is attached as Attachment 1. The proposed changes are:

PAGE **3** of **5**

SUBJECT: Sign Ordinance/A-24-002

DATE: March 25, 2024

DISCUSSION (continued):

Sec. 29.10.100. Definitions.

The content-based portions of the definitions of "bulletin board" and "sign" have been removed.

The definition for "political sign" has been removed since it is content-based.

Within the definition of "temporary sign," a display limit of "90 days or as otherwise provided" has been added.

Sec. 29.10.100 Definitions.

The definition of "bulletin board" has been revised to remove the "content-based" description.

The term "zoning plot" has been replaced with the term "parcel."

The term "political sign" has been removed because it is content-based.

Content-based language has been removed from the definition of "sign."

Examples of temporary signs have been added to the definition of "temporary sign."

Sec. 29.10.105 Generally.

A subsection (f) has been added to give noncommercial speech the same protections as commercial speech. This change is required by recent case law.

Sec. 29.10.110. Exceptions.

Subsection (5) has been renamed "Temporary Signs" and content-based regulations have been replaced with locational regulations. A category for yard signs has been added, providing that there is no limit on yard signs but that no yard sign shall exceed six square feet in size. The removal requirement for temporary signs has been moved to this Section.

Subsection (6) formerly contained a prohibition on individual or company advertising on open house signs. This prohibition has been removed because it is content-based. It has been revised and moved to be under the newly titled "Temporary Sign" subsection.

In subsection (8), content-based regulations have been removed.

PAGE 4 of 5

SUBJECT: Sign Ordinance/A-24-002

DATE: March 25, 2024

DISCUSSION (continued):

The previous subsection (15) is content-based and has been deleted. In the new subsection (15), the phrase "jointly and severally liable" has been replaced with the phrase "jointly and severally responsible."

Sec. 29.10.115. Prohibited Signs.

The Planning Commission recommended that subsection (1) prohibiting "banners, flags, pennants, balloons, and similar objected designed to move with the wind" be removed from this Section and that sign permits be required for these types of signs in accordance with Section 29.10.105(c) and 29.10.120.

A subsection (16) has been added to prohibit temporary signs in the public right of way median or area between the paved road and the sidewalk.

Sec. 29.10.120. Temporary Signs.

The heading of this Section has been revised to "Temporary Signs Requiring Permits" to differentiate it from the Section addressing temporary signs for which permits are not required. Content-based regulations have been replaced with content-neutral time, place, and manner regulations.

As recommended by the Planning Commission, the proposed ordinance provides that signs on construction sites with under 100 lineal feet of street frontage are limited to 32 square feet. Signs on construction sites with 100 lineal feet or more of street frontage are limited to 64 square feet.

PUBLIC COMMENTS:

Prior to the February 28th Planning Commission meeting, staff conducted outreach through the following media and social media resources, as well as direct communication with stakeholders as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account;
- The Town's NextDoor page;
- Newspaper ad; and
- Telephone call and letter to Silicon Valley Association of Realtors.

PAGE **5** of **5**

SUBJECT: Sign Ordinance/A-24-002

DATE: March 25, 2024

PUBLIC COMMENTS (continued):

Because there was limited public comment at the Planning Commission meeting, staff subsequently provided a copy of the proposed sign ordinance to the Chamber of Commerce along with a cover letter summarizing the proposed revisions.

CEQA:

The proposed amendments to the Town's Sign Code are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to temporary signs.

RECOMMENDATION:

Staff recommends that the Town Council introduce an Ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" (Attachment 2).

ALTERNATIVE:

Alternatively, the Town Council could retain the original regulations for construction site signage, which did not provide for increased size based on street frontage.

ATTACHMENTS:

- 1. Redline of Town Code
- 2. Draft Sign Ordinance Clean

- CODE Chapter 29 - ZONING REGULATIONS ARTICLE I. - IN GENERAL DIVISION 3. SIGNS

DIVISION 3. SIGNS

Sec. 29.10.100. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned sign means a sign located on a parcel of land or on a structure either of which is vacant for a period of ninety (90) days, a sign pertaining to a past occupant or business different from the present occupant of or business on the premises, a sign pertaining to a past event or any sign abandoned as the term is used in state law.

Arcade means a covered passageway with business establishments along at least one (1) side.

Attached sign means a sign which is affixed to and made an integral part of a building or structure. Attached signs include, but are not limited to wall signs, roof signs, and projecting signs, to distinguish them from freestanding and ground signs.

Attraction board is a sign constructed so that letters or other advertising material can be changed, and which relates to businesses or organizations which depend, on a large part, upon trade and attendance generated by temporary, independent and frequently changing events or showing, such as those engaged in providing live or filmed entertainment or sporting events.

Awning is synonymous with marquee.

Billboard means a sign, other than a directional sign, which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a place other than where the sign is erected. Included are signs erected upon benches.

Bulletin board is a sign located on the same premises and used solely in connection with activities of as a church, school, hospital, or public building, and allowing changeable messages.

Business frontage is that portion of a building which faces a street, parking lot, pedestrian mall, arcade or walkway. The primary business frontage is one which contains a customer entrance or which includes a glass-enclosed showroom facing the street. If a building has more than one (1) business frontage with a customer entrance, the property owner must designate one (1) of them as the primary business frontage. Unless otherwise stated, the phrase "business frontage" means "primary business frontage." All other business frontage is secondary frontage. As used in this section, "parking lot" means either a publicly owned and operated parking lot or a parking lot located on the same zoning plotparcel as the business frontage.

Canopy is synonymous with marquee.

Conformance means the state of being in conformity with the provisions of this division, either because of reconstruction or modification pursuant to a sign permit, or because of removal or obliteration.

Construction sign is a sign located on a construction site during the course of construction, which identifies the architects, engineers, contractors, financiers or other persons and other individuals or firms involved with the construction, or announcing the building, enterprise or function for which the construction is intended.

Convenience sign is a sign which facilitates traffic flow and safety, not erected by a governmental agency, such as entrance-exit, caution, parking, right or left turns only, stop, drive-up window, or towaway zone.

Los Gatos, California, Code of Ordinances (Supp. No. 92)

Entity means any person and any distinct business enterprise even where adjacent business enterprises are owned or operated by a single person.

Erect means to construct, place, relocate, enlarge, alter, attach, suspend, paint, post, display, hang, or affix.

Face of a sign is the portion or portions of the exterior surface of a sign intended to or particularly adapted either to display an advertising message or to attract attention to the sign. The face of a sign is often the front, but may be any surface including a rear or blank portion. A sign may have more than one (1) face and may be virtually all face. The fact that no message is imprinted on a portion of a sign does not necessarily prevent that portion from being a face, as in the case of a flat sign erected near and perpendicular to a street. Such sign would have two (2) faces even if one (1) were blank. In determining what constitutes a sign face, weight will be given to whether the particular aspect in question is readily viewable from public property or any premises other than those where the sign is erected, but a sign face may exist even where the face is visible only from some part of the premises where the sign is erected if the face is viewable from out-of-doors and the other elements of the definition of face are present. Usually, all of one (1) face is visible from one (1) point. Where, for example, several "boards" of a sign are erected on a single plane or parallel planes, they together comprise one (1) face, and are measured within a single perimeter, including the spaces between them.

Freestanding sign is a sign which is wholly or partly supported by a structural element which is not an integral part of a building.

Ground sign is a freestanding sign less than seven (7) feet high.

Height of a freestanding sign is the elevation above finished grade of the highest point of either the sign or the stand, poles, wall or other structure upon which it is mounted. Finished grade is the general finished ground surface where the sign is erected, not taking into account mounding or other alterations to the surface made in regard to the sign. However, where finished grade is below the elevation of the top of the curb on the frontage where the sign is erected, or if there is no curb below the elevation of the margin of the street surface, height is the elevation above the top of the curb, or at the margin of the street surface if there is no curb. The point on the curb or the margin of the street surface to be used as a base point for measurement is the point intersected by a line drawn perpendicular to the centerline of the street which intersects the center of the base of the sign.

Lot frontage means the property line of a lot abutting on a public street which affords access to the lot. In the case of a corner lot and other lots which are bordered on more than one (1) side by a street, lot frontage is the lot line in respect to which the business for which the sign is provided has its primary business frontage.

Marquee means a temporary or permanent structure attached to or supported by a building, designed for shelter over a pedestrian or vehicular way and which may or may not project over public property.

Neighborhood identification sign is a ground sign situated where a street enters a residential neighborhood, which serves only to identify the neighborhood.

Nonconforming sign is one which was lawfully erected but which does not comply with this division because of:

- (1) Annexation of territory to the Town;
- (2) Amendment to the zoning ordinance;
- (3) Rezoning, other than rezoning when the application for rezoning is made by or joined in by the owner of the real property where the sign is located.

However, a sign which was lawfully erected but which does not comply with this division because of:

- (1) Division of real property where the sign is located;
- (2) Alterations to any building on the lot or, parcel or zoning plot where the sign is located; or

(3) Rezoning, when the application for rezoning was made by or joined in by the owner of the real property where the sign is located;

is not a nonconforming sign. A sign may be a nonconforming sign because of a single characteristic, such as height or brightness, correction of which may result in conforming status for the sign, or a new amortization date. This section does not list all classes of signs which are not nonconforming signs.

Off-premises sign is any sign not located on the same zoning plotparcel as the entity it advertises.

Pedestrian directional sign is an on-premises sign which shows the direction to or location of a customer entrance to a business.

Political sign is any sign which is intended to influence the vote for the passage or defeat of a measure, or nomination, election or defeat of a candidate in any governmental election.

Portable sign is a sign which is movable, not structurally attached to the ground, nor to a building, structure, or sign. "A"-frame and sandwich signs are portable signs.

Projecting sign is any sign erected on the wall of a building or structure, or suspended from an overhang, with display surfaces generally not parallel to the wall.

Roof sign is an attached sign erected on a roof or projecting above the eave or rake of a building or coping of a parapet. A sign erected on top of a canopy, arcade, awning or marquee is a roof sign.

Sign is any thing, or element of a thing, located out of doors or in a place where it is visible from out of doors, created, adapted, or installed, by a person for the primary and apparent purpose of conveying a visible advertising communicating a message, and may include supports, standards and fixtures. A color scheme or special lighting effect on the exterior of a building is a sign where the placement of the colors or lighting effect in relation to the building create a primary effect of advertising. Exceptions:

- (1) Merchandise on display is generally not a sign because merchandise is ordinarily possessed for the primary purpose of permitting sales from stock on hand. A merchandise display located at a distance from the point of sale or displayed in the unusual manner might constitute a sign.
- (2) A structural element of a building or the supports, standard, or fixtures of a sign would not be a sign where the element is related to reasonable structural necessity, and the circumstances show that the element is not intended to be identified by viewers with the sale or promotion of goods or services.
- (3) Nighttime, white illumination, within reasonable brightness limitations, of a building or of merchandise is not of itself a sign, where the result is only to make visible without undue emphasis that which can be seen in the daytime.

Sign area is the total area of the face or faces of a sign. Each face is measured by determining the smallest area within a single perimeter composed of not more than eight (8) straight lines drawn by the applicant enclosing the extreme limits of the face. Where a sign consists of letters or symbols on a wall, the wall is not designed so that one (1) of its main purposes is to support a sign, and the sign's background is an indistinguishable part of a wall. For the purposes of measurement a six-inch margin around all of the words and symbols will be included in the perimeter composed of not more than eight (8) straight lines.

Sign permit is the permit issued by the Planning Director to evidence approval by any of the bodies or person authorized by this division to erect a sign.

Temporary sign is a sign, usually constructed of cloth or fabric, cardboard, wallboard, wood or other light materials, intended to be displayed for a short period of time as set forth in section 29.10.120 fewer than 90 days or a short period of time as set forth elsewhere in this Division. Examples of temporary signs are yard signs, for sale signs, for rent signs, flags, balloons, and banners.

Time and temperature sign is a sign which shows time and/or temperature and which contains no advertising.

Vehicular directional sign is an off-premises sign which shows the direction to or location of a use or activity.

Wall is a surface which has a slope steeper than one (1) foot horizontal to two (2) vertical.

Wall sign is a sign erected on a wall or fascia of a building or structure (other than a structure, one (1) of whose main purposes is to support a sign), the face of which is generally parallel to the wall or fascia and all of which is below the coping of the parapet, below the rake, the top of the fascia, the eave line, or in any event, below the top of the structure. A sign which meets the definition of this section but is erected between posts, pillars, or columns which support a roof or second story, rather than on a wall, is also a wall sign. A sign which is erected on and incidental to a freestanding wall or fence, including any gateway portion of a wall or fence, is also a wall sign.

Window sign is a sign which is displayed in or through a window, is less than twenty-four (24) inches inside glass, and is visible from a street, walkway, parking lot, or pedestrian plaza, any of which is accessible to the public.

Yard sign is a temporary freestanding sign that is supported by a frame, pole, or other structure placed directly in or upon the ground on private property.

(Ord. No. 1316, §§ 3.31.010—3.31.190, 6-7-76; Ord. No. 1363, 8-1-77; Ord. No. 1519, 10-26-81)

Sec. 29.10.105. Generally.

- (a) Application. The regulations in this division apply to all signs in all zones. Regulations of the number and area of signs refer to the signs allowed on a zoning plotparcel, except where the regulations prescribe the number and area of signs allowed on a business frontage.
- (b) *Intent.* The intent of this division is as follows:
 - (1) The Town is a predominantly residential community of natural beauty, distinctive architecture and historic character. The economic stability of the Town is dependent upon its high quality and Town-oriented, commercial and residential environment. Unregulated and uncontrolled erection and maintenance of advertising structures tends to create a garish and gaudy atmosphere which is not in harmony with the character and environment of the business or residential community.
 - (2) The purpose of a sign is to inform the general public that a business enterprise and function exists in the Town.
 - (3) This chapter recognizes the right of the public to be directed, warned, advised, and informed; and also recognizes the economic need for a sign to function as a means of identification, expression of business character, and positive notification of product and service availability for consumption.
 - (4) This chapter regulates the location, height, width, shape, proportion, design, illumination and construction (except as provided by building codes) of signs for the purpose of insuring that they are architecturally compatible with the planned image of the Town.
 - (5) The purpose of this chapter is to assist in the continuation of existing and introduction of new commercial activities in architectural harmony with the existing and planned Town, to take advantage of the unusual character of the Town and to encourage proper maintenance and rehabilitation of real property. To accomplish this:
 - a. Local public values must be balanced with general public rights and economic functions related to signs.

- b. The size of a sign must be prevented from overpowering its surroundings or becoming a determinant factor in consumer evaluation of competitive enterprises.
- c. The shape of a sign must not conflict with the architectural lines of its setting.
- d. A sign must be prevented from overpowering its surroundings through hue, saturation, and brilliance or close combination of incompatible colors.
- e. Normal maintenance and speedy repair is required for all signs.
- (c) *Permits*. Sign permits must be obtained before erection of all signs, except as provided by section 29.10.110. A building permit may be required by another ordinance.
- (d) Variances. The provisions of this chapter concerning variances are not available to modify the terms of this division.
- (e) Authority to erect. No sign shall be erected without the express permission of the landowner. A lease to a lessee would be sufficient evidence of the authority to erect a sign.
- (f) Noncommercial Signs. Notwithstanding any provision of the section, signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.
- (g) Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid for any reason by a court having jurisdiction under state or federal law, the remaining portions of this chapter shall remain in full force and effect.

(Ord. No. 1316, §§ 3.30.010—3.30.070, 6-7-76; Ord. No. 1363, 8-1-77)

Sec. 29.10.110. Exceptions.

A sign permit is not required for the signs described in this section. The number and area of these signs are regulated only by this <u>section Section</u> and they are allowed in addition to signs of other classes.

- (1) House numbers, traffic, etc. House numbers, street names, signs warning against danger, railroad crossing signs, authorized traffic or parking signs and rural delivery boxes.
- (2) Nameplates. Nameplates having an area not over one and one-half (1½) square feet, affixed flat against the wall of a building, which only show the name or address of a person or persons or entity occupying the area, up to a limit of six (6) plates per building.
- (3) Building directories. Building directories for buildings with more than six (6) tenants, the sign having an area not over nine (9) square feet, affixed flat against the wall of a building, which only show the name or address of the persons or entitles occupying the building.
- (4) Plaques. Solid metal plaques or cut inscriptions, either erected by recognized historical agencies, or which show names of buildings and dates of erection, provided the sign does not exceed four (4) square feet in area.
- (5) Real estate Temporary Sign.
 - a. On Fence or Building. One (1) nonilluminated sign on each street frontage for any lot fence or building which serves solely to advertise the sale, lease or rental of or an offer to build to suit on the premises where the sign is located, provided the sign does not exceed twelve (12) square feet in area if the sign is in a commercial, professional or industrial zone, or six (6) square feet in area if the sign is in a residential zone. This exception is only available when all or part of the premises is actually available for the sale or lease transaction advertised.

- b. At Intersection or on Parcel. Open house. Nonilluminated, off-site, portable signs directing customers to the location of an open house which is for sale are permitted, unlimited in total number, but limited to one (1) double-faced sign per corner of an intersection or zoning plotparcel. The signs shall not exceed an area of one (1) square foot per face and shall not be more than four (4) feet high. Open house signs shall contain no individual, or individual company advertising. Prior permission shall be obtained from the property owner if the sign is to be placed on a privately owned parcel. The signs shall be removed each day after the closing of the open house. Open houseSuch signs are an exception to the rule prohibiting off-premises signs and signs on public property.
- (6)(7) Interior signs. Signs in the interior of a building, enclosed lobby or court, not visible from the outside and signs not visible from off the premises.
- (7)(8) Convenience signs. Convenience signs not exceeding two (2) square feet in area and containing no advertising material providing directions only. Exception: Hospital emergency signs may be as large as four (4) square feet and may be illuminated.
- (8)(9) No trespassing signs. "No trespassing" or "no dumping" signs not exceeding three (3) square feet in area.
- (9)(10) Window signs. Window signs not exceeding twenty-five (25) percent of the window area.
- (10)(11) Parking signs. Not more than one (1) parking control sign for each parking entrance, not exceeding an area of two (2) square feet. Parking control signs may contain the name(s) of the business(es) controlling the parking lot.
- (11)(12) Public notices and warnings. Notices posted by a public officer in the performance of a public duty, or by any person for the purpose of giving legal notice, and warning or informational signs required or authorized by governmental regulations.
- (12)(13) Recycling and vending facilities. Recycling and vending facility signs shall not exceed two (2) square feet, plus one (1) square foot for every one hundred (100) square feet of facility or machine in excess of one hundred (100) total square feet of floor area.
- (13)(14) Other public agency signs. Street signs, traffic signs, emergency warnings, and the like erected by a public agency.
- (15) Political signs. Any number of nonilluminated political signs, either freestanding or attached, is permitted, limited to a total sign area not exceeding six (6) square feet in residential zones and not exceeding eighteen (18) square feet in other zones. There is no area limit for political window signs, and their area is in addition to that allowed for other political signs. No political sign shall be erected an unreasonable period of time in advance of the election or convention, and all persons who erect political signs or who own or control the premises where political signs are erected, are jointly and severally liable to remove such signs within ten (10) days after the election or convention to which the sign pertains.
- (14)(16) Special event signs. Any sign permitted by a special event permit issued under Article X of Chapter 14 of this Code.
- (15)(17) Temporary signs. With the exception of yard signs, any number of temporary signs, either freestanding or attached, is permitted, limited to a total sign area not exceeding six (6) square feet in residential zones and eighteen (18) square feet in other zones. There is no limit on the number of yard signs, but no yard sign shall exceed six square feet in size. All persons who erect temporary signs, including yard signs, or who own or control the premises where temporary signs are erected, are jointly and severally responsible to remove such signs after ninety (90) days or as otherwise set forth in this Division. Temporary signs relating to an event, such as an election, shall be removed within fifteen days after the event.

(Ord. No. 1316, §§ 3.32.010—3.32.070, 6-7-76; Ord. No. 1446, 11-19-79; Ord. No. 1731, 7-6-87; Ord. No. 1737, § VI, 11-2-87; Ord. No. 1738, 11-2-87; Ord. No. 1908, § III, 7-20-92)

Sec. 29.10.115. Prohibited signs.

Except as otherwise provided in this chapter, the signs described in this section are prohibited.

- (1) <u>Banners, Flags, etc. pennants, balloons, and similar objects.</u> Flags, banners, pennants, balloons, and similar objects designed to move with the wind, except flags up to 3 x 5 square fee in side are permitted. except the American flag, the flag of any nation or governmental entity, or house flags when flown in conjunction with the American flag, either on the same staff or a separate staff, and when the house flag is smaller than or equal in size to the American flag.
- (2) Lighted signs. Lighted signs that flash on and off, fluctuate or appear to move.
- (3) Moving signs. Signs that rotate or move in any fashion, except barber poles.
- (4) Excessively bright signs. Lighted signs whose brightness is detrimental to the reasonable enjoyment of surrounding property or are a traffic hazard.
- (5) Obstructing signs generally. Signs which prevent free use of a door, window or fire escape, or obstruct the view from any living area in the building to which the sign is attached.
- (6) Signs obstructing standpipes, etc. Signs attached to a standpipe or fire escape.
- (7) Signs obstructing traffic devices. Signs located so as to obstruct the view of a traffic sign, signal, or device.
- (8) Confusing signs. Signs which might be mistaken for or confuse the viewers of a traffic light or a signal.
- (9) *Posters.* Placards, posters, announcement and similar signs erected on any fence, pole, tree, pavement, wall, bus stop, bench, or any other object in a public thoroughfare, except those of an official nature as provided in section 29.10.110(12).
- (10) Portable signs. Portable signs and signs erected on parked vehicles or trailers, when such vehicles or trailers are parked in such a location or manner that it is clear the intention is to advertise the services of a business.
- (11) Freeway signs. Signs erected for the dominant purpose of being seen by travelers on a freeway.
- (12) Off-premises signs. Off-premises signs, except those authorized by sections 29.10.110(6), (15), 29.10.120(2), (4), and 29.10.130(1).
- (13) Indecent signs. Signs containing matter which is obscene under State law.
- (14) *Projected light signs.* Signs which are flashed or projected onto walls or other structures by means of a projector or other device.
- (15) Billboards. Any billboard sign.
- (16) Temporary signs in Portions of the Public Right of Way. Temporary signs in the median of the public right of way or the portion of the right of way between the road and the sidewalk.
- (17)(16) Unauthorized signs. Any sign not specifically authorized in sections 29.10.110, 29.10.120 and 29.10.130.

(Ord. No. 1316, §§ 3.33.010—3.33.090, 6-7-76; Ord. No. 1363, 8-1-77; Ord. No. 1446, 11-19-79)

Sec. 29.10.120. Temporary signs Requiring Permits.

Every sign described in this section, regardless of the manner of its construction, is a temporary sign. The number and area of such signs are regulated only by this section and are in addition to the allowed number and area for other classes of signs.

- (1) Grand opening signOn Premises Sign Erected by Business. Temporary signs used in conjunction with a grand openingerected on premises ofby a business are permitted as long as the grand opening does not for up to exceed forty-five (45) calendar days. The total area of temporary signs may be equal to or less than the total sign area permitted for the business by section 29.10.135. The permit shall state the maximum sign area allowed and the date the sign is to be removed as set by the erector of or this chapter, whichever is more restrictive.
- Subdivision signs On Premises Sign Erected by of Subdivision der. Nonilluminated, on-site signs (2) advertising a residential subdivision on property which has received subdivision or development approval from the Town, from that approval until issuance of a building permit for the last lot to be sold or completion of the development project, erected by a subdivider are permitted, limited to one (1) double-faced sign not exceeding an area of twenty-five (25) square feet per face, placed at a right angle to the street, or two (2) single-faced signs not exceeding an area of twenty-five (25) square feet each placed parallel to a street. The signs shall not be more than fifteen (15) feet high and shall be erected at least fifteen (15) feet from a street right-of-way line. Additional Up to four additional signs containing information about the model name or number, floor plan, area or price are permitted in residential subdivisions provided there is not more than one (1) such sign for each model (not one (1) sign for each example of a model). Additional sSigns concerning models shall have an area not exceeding three (3) square feet, nor a height of more than four (4) feet, and shall be located in the immediate vicinity of an example of the model to which they refer. One oOff-premises subdivision signs advertising subdivisionserected by subdividers which are not located on a major arterial street as defined by the Town general plan is are permitted, limited to one (1) sign per subdivision. The signs shall not exceed eighteen (18) square feet in area, shall not be more than fifteen (15) feet high and shall be erected at least fifteen (15) feet from a street right-of-way line and shall be in a commercial or industrial zone. Such signs may be erected for up to 90 days. Signs authorized by this section shall not be erected until the subdivision map is recorded and building permits are issued for the construction of the project. Signs authorized under this section shall be removed when occupancy permits have been granted for ninety (90) percent of the dwelling units in the development. Off-premises subdivision signs erected by subdividers are an exception to the rules prohibiting billboards and off-premises signs.
- (3) Sign Erected by Lessor of Futureon Commercial, Office, or Industrial Development for Sale or Lease Lease and rental signs. One (1) single-faced sign, advertising the rental or lease on property owned by lessorfor sale or lease of a commercial, office, or industrial development to be built in the future. The sign shall not have an area exceeding twenty (20) square feet, shall not be more than fifteen (15) feet high, and shall be erected parallel to a street, at least fifteen (15) feet from a street right-of-way line. The sign shall not be erected until a Development Review Committee approval is granted for the erection of the building or buildings and the sign shall be removed when seventy (70) percent of the floor area of the project is occupied for over 90 days.
- (4) Event signs Sign Erected by Special Event Sponsor.
 - Subject to the conditions of this section, a permit may be issued for a temporary sign
 promotingto the sponsor of a civic, political, charitable, cultural, recreational, educational or religious event as follows:
 - (i) An event in town sponsored by a non-profit organization; or

- (ii) An event sponsored by a non-profit organization with its principal business address in Town; or
- (iii) An event sponsored by a public school; or
- (iv) An event sponsored by a non-profit organization to which the Town contributes funds; or
- (v) An event co-sponsored by the Town.
- b. If a non-profit organization's event does not qualify under subsection (a), the non-profit organization may submit an application to the Town Planning Director for a temporary sign if the organization can demonstrate to the satisfaction of the Planning Director that the event will occur within Santa Clara County and the proceeds from the event will be used to benefit residents of Los Gatos. The Planning Director shall review the application and determine whether to grant the application based upon whether the proceeds from the event will benefit residents of Los Gatos. If the Director denies the application, the applicant may appeal the decision to the Town Council within ten (10) days of the Director's decision.
- c. Application. The event sponsor shall submit an application with applicable fee to the Planning Director. The application shall specify the proposed location for each sign for which approval is requested, a calculation of the total sign area proposed and permitted under section 29.10.135, and a description of the sign material and means of posting proposed.
- d. Conditions of approval.
 - (i) The sign may not be erected more than fourteen (14) days prior to the event and shall be removed within twenty-four (24) hours after the event.
 - (ii) The An event sign shall be no larger than permitted under section 29.10.135.
 - (iii) No more than a total of three (3) signs per event <u>sponsor</u> shall be allowed in the Town. Within this limit of three (3) signs, the following restrictions apply:
 - A. Except as provided under subsection (B) below, no more than one sign per event shall be permitted in the Downtown Area.
 - B. No more than one sign shall be permitted at the event site. Should the event have a number of locations or not have a fixed location, the event site sign shall be placed within five hundred (500) feet of the beginning or end of the event. Should the event site be located within the Downtown Area, the sign at the event site shall not count against the limitation imposed by subsection (A) above.
 - (iv) Event signs shall be secured at all four (4) corners to avoid flapping.
 - (v) No temporary structure may be erected for the purpose of displaying an event sign.
- e. General restrictions.
 - (i) No more than three (3) event signs in total shall be permitted at any one time within five hundred (500) feet of any intersection in Town.
 - (ii) The square footage of an event sign shall not exceed the calculation of total sign area permitted under section 29.10.135.
 - (iii) No more than one sign is permitted on any one property at one time.
- f. For purposes of this section, "non-profit organization" is defined as:
 - (i) A non-profit corporation existing under Division 2 of Title 1 of the Corporations Code; or

- (ii) A non-profit association as defined in Corporations Code section 21000; or
- (iii) A non-profit corporation existing under the laws of another State governing non-profit corporations and which is permitted to do business in California under California law.
- g. For the purposes of this section, Downtown Area means the C-2 zone.
- (5) Construction sSigns on construction sites. On parcels of under one acre, oOne (1) construction (nonilluminated) sign on a zoning plot of not more than thirty-two (32) square feet in total area at each street frontage during the time of construction or remodeling of the property. On parcels of one acre or more, one (1) nonilluminated sign of not more than sixty-four (64) square feet in total area at each street frontage during the time of construction or remodeling of the property. No construction sign shall be erected prior to the issuance of a building permit, and each shall be removed as soon as a certificate of use and occupancy is issued.

(Ord. No. 1316, §§ 3.34.010—3.34.035, 6-7-76; Ord. No. 1375, 11-21-77; Ord. No. 1908, § I, 7-20-92; Ord. No. 1980, § II, 5-23-94)

Sec. 29.10.125. Standards.

The following standards prescribed in this section shall apply to all sign approvals.

- (1) Copy. Signs are limited to naming the entity and the kind of activity conducted on the premises and products and services offered there. Signs may refer to matters not on the premises only when sections 29.10.105 through 29.10.140 expressly provide.
- (2) Trade names or logos. Signs may show trade names or logos that are not the name of the entity on the premises, but only when such trade name or logo is that of a product or service which is a major part of the sales or services conducted on the premises.
- (3) Compatibility with surroundings. The design, color and location of each sign shall be compatible with the architecture of the buildings on the premises, and in harmony with the structures and other improvements on the property.
- (4) Shopping centers. In a shopping center or multi-tenant building, each sign shall be related to the other signs in the same center or building by incorporating at least four (4) of the following six (6) identical elements:
 - a. Material.
 - b. Letter style.
 - c. Color.
 - d. Illumination.
 - e. Method used for structural support of attachment.
 - f. Shape of the entire sign and its components.
- (5) Backs and supports. The backs and supports of all signs shall be subdued.
- (6) *Illumination generally.* No portion of the surface of any illuminated sign nor any visible lamp illuminating a sign shall have a brightness exceeding one hundred fifty foot-lamberts.

- (7) Illumination near residential districts. Illuminated signs with a brightness more than thirty foot-lamberts shall not be erected nearer than fifty (50) feet from any point in a residential district unless the face of the sign is not visible from the residential district.
- (8) Roof signs. Roof signs must:
 - a. Be erected only on a roof whose pitch is at least one (1) vertical to four (4) horizontal.
 - b. Have a face no more than two (2) feet measured vertically.
 - c. Be located so the face is parallel to the eave in front of the sign.
 - d. Be set no more than eight (8) inches above the roof.
 - e. Be designed and erected so that no part of its face is higher than either the peak or an elevation five (5) feet above the eave in front of the sign.
 - f. Have architecture and site approval.

Architecture and site approval may only be issued on the basis of findings that a wall sign is not feasible because the wall of the building is set back beneath and obscured by the porch or roof overhang which is an extension of and integral with the sloping roof of the building, and that the sign cannot be suspended between posts or columns supporting the roof without obstructing safe passage for pedestrians.

- (9) Projecting signs. Projecting signs shall not project more than thirty-six (36) inches from the wall of a building nor more than twelve (12) inches into any public right-of-way. The projection is measured on a line perpendicular to the wall. All projecting signs which project over a walkway or public right-of-way shall have a clearance of nine (9) feet above grade.
- (10) Signs suspended from a marquee. All signs suspended from a single marquee shall be uniform in size, shape, placement and background color. Such signs shall have a clearance of at least eight (8) feet above grade.
- (11) Signs for theaters. The traditional methods of theater advertising require a unique type of sign program so the size, location, and number of signs, including attraction boards for a theater, are subject only to the limitations and provisions in the conditional use permit for the theater. Whenever a theater is operated lawfully but has no conditional use permit the signs of that theater which have been erected on or before the effective date of this chapter are nonconforming signs and a conditional use permit authorizing the signs must be obtained or the signs must be abated in the manner provided in section 29.10.140.

(Ord. No. 1316, §§ 3.35.010—3.35.065, 6-7-76; Ord. No. 1363, 8-1-77; Ord. No. 1375, 11-21-77; Ord. No. 1460, 3-3-80)

Sec. 29.10.130. Signs which may be erected in all zones.

A sign permit is required for the signs described in this section. The number and area of such signs are regulated only by this section and they are allowed in addition to signs of other classes.

(1) Directional signs (vehicular). Nonilluminated vehicular directional signs showing the direction to or location of the civic center, hospitals, public parking lots, and any publicly owned facility. A sign showing the direction to a private facility that serves the general public (other than a church) may also be permitted upon findings by the Planning Director that there is a public interest in making the facility easy to find; that the public would have great difficulty finding the facility without a sign; and that the sign would not have a detrimental effect on the neighborhood. Signs erected under this section may be

erected in the public right-of-way by express permission, but shall in all cases meet the following requirements:

- a. The sign must be located on an arterial street.
- b. The sign shall not exceed six (6) square feet in area, nor a height of ten (10) feet.
- c. The sign shall be erected at least one hundred (100) feet from any other directional sign.
- (2) *Directional signs (pedestrian).* For each customer entrance, one (1) nonilluminated pedestrian directional sign which does not exceed one (1) square foot in area.
- (3) Bulletin boards. Bulletin boards not exceeding eighteen (18) square feet in area, nor height of six (6) feet, when located on the premises of, and used solely in connection with activities of a church, school or public building.
- (4) Community bulletin boards and kiosks. Community-oriented bulletin boards and kiosks, including service club directories, may be located on public property after review and approval as provided by sections 29.20.745 and 29.20.755.

(Ord. No. 1316, §§ 3.37.010—3.37.025, 6-7-76; Ord. No. 1363, 8-1-77; Ord. No. 1375, 11-21-77; Ord. No. 1519, 10-26-81)

Sec. 29.10.135. Zone regulations.

- (a) Scope. This section specifies the signs which may be erected in each zone, other than signs which by the express provisions of this chapter may be erected in all zones. Except where this section specifies, nonconforming uses shall have only those signs allowed for the zone and not signs which might otherwise be allowed for similar uses in other zones.
- (b) Residential zones. In residential zones (defined by section 29.40.010) the following signs may be erected:

Land Use			Class of Sign	Number of Signs	Total Area
1.	Multiple Fan	Multiple Family Developments:		Of Signs	Alea
	a.	Less than 10 units	wall signs	one per lot frontage	18 sq. ft.
	b.	10 units or more	wall signs	one per lot frontage	24 sq. ft.
2.	(including re schools, chu	Authorized Nonresidential Uses (including recreational activities, schools, churches, public utilities, lawful nonconforming uses, etc.)		one per zoning plot <u>parcel</u>	24 sq. ft.
			wall signs	one per lot frontage	24 sq. ft.
3.	(only for neig	Neighborhood Identification Signs (only for neighborhoods with an area of 3 acres or more)		number and location subject to determination by the deciding body	24 sq. ft.

(c) Nonresidential zones. The rules for nonresidential zones (defined by section 29.50.010) are specified in this section, and by number in the following list, table and footnotes. Rules 1 and 2 govern the calculation of the area of attached signs for each entity. Rules 3 through 9 govern the calculation of the total area of all signs

for each zoning plotparcel. The following paragraph applies to all nonresidential zones. The numbered rules apply only where the table so indicates. The maximum sign area for attached signs on any frontage may not exceed the area derived from the calculation for that frontage. Attached signs may be erected on any wall of the building, however, the area of a sign on a wall that is not a business frontage may not exceed twenty-five (25) percent of the sign area predicated on the primary business frontage. In addition, signs cannot be erected on a nonbusiness frontage wall if the zoning plotparcel is contiguous to a residential zone and if the wall faces that zone.

- (1) Allowed sign area is one (1) square foot for each lineal foot of primary business frontage plus one (1) square foot for each lineal foot of secondary business frontage provided that the sign area generated by each secondary business frontage cannot exceed fifty (50) percent of the sign area generated by the primary business frontage.
- (2) Allowed sign area is one (1) square foot for each lineal foot of primary business frontage plus one-half square foot for each lineal foot of secondary business frontage.
- (3) For vehicle sales the area of freestanding signs is not restricted by any rule limiting total sign area on the zoning plotparcel.
- (4) The total area of all signs on a zoning plot parcel shall not exceed one (1) square foot of sign area for each lineal foot of lot frontage.
- (5) The total area of all signs on a zoning plotparcel is limited to the area derived from the business frontage calculation.
- (6) For shopping centers the area of a ground sign is not restricted by any rule limiting total sign area on the zoning plotparcel.
- (7) For shopping centers the area of a freestanding sign is not restricted by any rule limiting total sign area on the zoning plotparcel.
- (8) The area of time and temperature signs is not restricted by any rule limiting total sign area.
- (9) The area of any attraction board shall be included in the calculation of the area of signs of the same class and in the calculation of the total area of signs on a zoning plotparcel.

TABLE OF SIGN REGULATIONS

ZONES	0	C-1	C-2	C	H	LM	CM
ATTACHED SIGNS				eg vargery gay untermosycopy militir blekka osanov si filmkov isson ottok hink hink at ka hinke tila atta ka ka		(Maximum Area 100 sq. ft./sign)	
Wall	X	X	х	į x		X X	/sign)
Roof		x	х	X		-	
Projecting		x	x	x	No		
Suspended from a Marquee (limited to one per entity)	Х	x	x	x		Par marriage continues	
Formulas for Area Calculations	Rule 1	Rules 1 & 8	Rules 2 & 8	Rul	e 1	Rule 1	Rule 1
TIME & TEMPERATURE SIGNS (limited to one per zoning plot)			CONTRACTOR OF THE CONTRACTOR O	Action of white property was			VIII. Complete Comple
Area per Face (sq. ft.)		12	12	12		The state of the s	
Total Area (sq. ft.)		24	24	24		A PROPERTY OF THE PROPERTY OF	
GROUND SIGNS (limited to one per zoning plot except in the 0 and CM District - See Note 3) Area per face (sq. ft.)	16	See Note 1	2.6	20		20	20
Total Area (sq. ft.)	32	40	32	40		40	40
May be used as a Tenant Directory	Х		Х	nacional de la companya de la compan		Х	х
FREESTANDING SIGNS (limited to one per zoning plot except in the CH District - See Note 2)		For shopping centers only		FIRST SIGN	SECOND SIGN See Note 2	ATTACON AND AND AND AND AND AND AND AND AND AN	SOLICATION CENTRAL PROPERTY OF THE PROPERTY OF
Area per Face (sq. ft.)		50		125	75		
Total Area (sq. ft.)		100		250	150		
Height (ft.)	<u>.</u>	15		25	20		
ATTRACTION BOARDS		х .	х	х			
Rules for Calculating Total Sign Area of Zoning Plot	Rule 4	Rules 5, 6, 7, 8 & 9	Rules 5, 6, 8 & 9	Rules 3, 5,	8 & 9	Rule 4	Rule 4

Note 1: Shopping centers may have a ground sign in addition to a freestanding sign if the center has more than one lot frontage.

Note 2: Ioning plots which exceed one acre and have more than one lot frontage may have an additional freestanding sign.

Note 3: Zoning plots which have a lot frontage exceeding 300 feet may have a ground sign for each 300 feet of frontage or fraction thereof.

(d) Planned development overlay zone. The signs shown on the official development plan referred to in division 2 of article VIII of this chapter may be erected in the PD zone.

(Ord. No. 1316, §§ 3.38.010—3.38.040, 6-7-76; Ord. No. 1328, 8-2-76; Ord. No. 1344, 1-17-77; Ord. No. 1363, 8-1-77; Ord. No. 1375, 11-21-77; Ord. No. 1446, 11-19-79)

Sec. 29.10.140. Nonconforming signs.

- (a) Scope. This section regulates the use and removal of nonconforming, unlawful, and abandoned signs.
- (b) *Modifications to nonconforming signs.* The following modifications to nonconforming signs are allowed:
 - (1) Changes in sign copy.
 - (2) Modifications that reduce the extent to which the sign does not comply with this chapter.

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No modification of a nonconforming sign shall have any effect on the length of the amortization period for the sign.

- (c) Record of nonconforming signs. The Planning Director shall prepare a list of all signs in the Town which are nonconforming signs.
- (d) Mailing of notices. The Planning Director shall mail a notice by certified return receipt mail to the occupant business, if known, and to the owner (as shown on the last equalized assessment roll) of the land where each nonconforming sign is located. The notice shall contain:
 - (1) A description of the land where the sign is located and a description of the sign, both in terms reasonably sufficient for the owner to identify the sign.
 - (2) A statement that the sign is a nonconforming sign.
 - (3) The applicable date for removal of the sign under the provisions of subsection (f).

Information concerning more than one (1) sign, and information concerning separate amortization dates for different characteristics of one (1) or more single signs, separately stated, may be included in a single notice. If the Planning Director subsequently learns that for any reason notice has not been given in a timely manner, or that notice given is defective in any way, the Planning Director shall promptly mail a proper notice to the occupant and owner, even if the regular time for notification has expired. Notice mailed after the time required by this subsection meets the requirements of subsection (e) and is effective to start the time period provided in subsection (f).

- (e) Effect of mailing of notices. Notice mailed as provided in subsection (d) is deemed to be notice to the owners of nonconforming signs and to all persons having any right, title or interest therein. The mailing of notices is intended as a convenience to sign owners. However, no failure to give notice shall invalidate any proceeding to enforce this chapter to abate any sign, or to punish any sign violation.
- (f) Duration of nonconforming signs. A nonconforming sign which becomes nonconforming shall be a nonconforming sign for the applicable period shown on the following schedule:
 - (1) Painted on wall signs, excessive brightness of signs, roof signs, signs suspended from a marquee: two (2) years.
 - (2) Freestanding signs, wall signs, projecting signs and all signs not otherwise specified in this section: five (5) years.
 - (3) Signs where total area of all signs on a building or zoning plotparcel exceed permitted area: five (5) years.
- (g) Notification and other procedures concerning subsequent nonconforming signs. Within six (6) months of the date when a sign described in subsection (f) becomes a nonconforming sign, the Planning Director shall add the sign to the list of nonconforming signs and mail notices in the manner specified in subsection (d), and such notices shall have the same effects as the notices provided for other nonconforming signs.
- (h) Extension of nonconforming sign status. During the deliberations on the provisions of this chapter concerning signs, it was determined that this chapter should not include provisions for granting extensions of nonconforming status since the basic periods for nonconforming status were extended by the same number of years originally proposed for allowable extension.
- (i) Removal of unlawful signs. Any sign erected or maintained contrary to the provisions of this division or any other ordinance of the Town including unlawfully erected signs, and formerly nonconforming signs whose nonconforming status has terminated, is in its entirety an unlawful sign. The provisions of sections 29.20.950 and 29.20.955 are applicable to unlawful signs, and to those who erect or maintain them.

- (j) Abandoned signs. The owner must have all copy removed from an abandoned sign and the sign shall remain blank until a new entity has occupied the premises. Further, if any sign has been abandoned for a period of one (1) year the owner shall remove the sign and any appurtenant structures.
- (k) Maintenance. All signs shall be maintained and kept in repair and shall be painted and repainted at reasonable intervals. If the owner fails to comply, after ten (10) days' written notice by the Planning Director, or duly appointed deputy, to so maintain such signs, the Planning Director shall have the sign removed at the owner's expense.

(Ord. No. 1316, §§ 3.39.010—3.39.070, 6-7-76; Ord. No. 1380, 1-23-78)

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29, "ZONING REGULATIONS," ARTICLE I, "IN GENERAL," DIVISION 3, "SIGNS," OF THE TOWN CODE REGARDING SIGN REGULATIONS

WHEREAS, the Town's Sign Ordinance is codified at Sections 29.10.100 through 29.10.140 of the Town Code and was most recently amended in 1994; and

WHEREAS, since then, court decisions on the topic of the First Amendment and freedom of speech have been issued, including *Reed v. Gilbert*, 576 U.S. 155 (2015) in which the court overturned a local ordinance that imposed content-based sign regulations; and

WHEREAS, the Town's Sign Ordinance currently includes content-based regulations for several types of temporary signs; and

WHEREAS, the Town Council wishes to amend the Town Code to comply with State Law and make as minimal edits as possible; and

WHEREAS, the Planning Commission at its meeting on February 28, 2024, reviewed the proposed amendments to the Town Code regarding sign regulations and forwarded recommendations to the Town Council to revise the Ordinance which are incorporated below; and

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

The following sections of the Town Code are amended to read as follows:

SECTION I. Section 29.10.100, "Definitions," of the Town Code is amended to read as follows:

Section 29.10.100. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned sign means a sign located on a parcel of land or on a structure either of which is vacant for a period of ninety (90) days, a sign pertaining to a past occupant or business different from the present occupant of or business on the premises, a sign pertaining to a past event or any sign abandoned as the term is used in state law.

Arcade means a covered passageway with business establishments along at least one (1) side.

Attached sign means a sign which is affixed to and made an integral part of a building or structure. Attached signs include, but are not limited to wall signs, roof signs, and projecting signs, to distinguish them from freestanding and ground signs.

Attraction board is a sign constructed so that letters or other advertising material can be changed, and which relates to businesses or organizations which depend, on a large part, upon trade and attendance generated by temporary, independent and frequently changing events or showing, such as those engaged in providing live or filmed entertainment or sporting events.

Awning is synonymous with marquee.

Billboard means a sign, other than a directional sign, which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a place other than where the sign is erected. Included are signs erected upon benches.

Bulletin board is a sign located on the same premises as a church, school, hospital, or public building, and allowing changeable messages.

Business frontage is that portion of a building which faces a street, parking lot, pedestrian mall, arcade or walkway. The primary business frontage is one which contains a customer entrance or which includes a glass-enclosed showroom facing the street. If a building has more than one (1) business frontage with a customer entrance, the property owner must designate one (1) of them as the primary business frontage. Unless otherwise stated, the phrase "business frontage" means "primary business frontage." All other business frontage is secondary frontage. As used in this section, "parking lot" means either a publicly owned and operated parking lot or a parking lot located on the same parcel as the business frontage.

Canopy is synonymous with marquee.

Conformance means the state of being in conformity with the provisions of this division, either because of reconstruction or modification pursuant to a sign permit, or because of removal or obliteration.

Construction sign is a sign located on a construction site during the course of construction, which identifies the architects, engineers, contractors, financiers or other persons and other individuals or firms involved with the construction, or announcing the building, enterprise or function for which the construction is intended.

Convenience sign is a sign which facilitates traffic flow and safety, not erected by a governmental agency, such as entrance-exit, caution, parking, right or left turns only, stop, drive-up window, or towaway zone.

Entity means any person and any distinct business enterprise even where adjacent business enterprises are owned or operated by a single person.

Erect means to construct, place, relocate, enlarge, alter, attach, suspend, paint, post, display, hang, or affix.

Face of a sign is the portion or portions of the exterior surface of a sign intended to or particularly adapted either to display an advertising message or to attract attention to the sign. The face of a sign is often the front, but may be any surface including a rear or blank portion. A

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sign may have more than one (1) face and may be virtually all face. The fact that no message is imprinted on a portion of a sign does not necessarily prevent that portion from being a face, as in the case of a flat sign erected near and perpendicular to a street. Such sign would have two (2) faces even if one (1) were blank. In determining what constitutes a sign face, weight will be given to whether the particular aspect in question is readily viewable from public property or any premises other than those where the sign is erected, but a sign face may exist even where the face is visible only from some part of the premises where the sign is erected if the face is viewable from out-of-doors and the other elements of the definition of face are present. Usually, all of one (1) face is visible from one (1) point. Where, for example, several "boards" of a sign are erected on a single plane or parallel planes, they together comprise one (1) face, and are measured within a single perimeter, including the spaces between them.

Freestanding sign is a sign which is wholly or partly supported by a structural element which is not an integral part of a building.

Ground sign is a freestanding sign less than seven (7) feet high.

Height of a freestanding sign is the elevation above finished grade of the highest point of either the sign or the stand, poles, wall or other structure upon which it is mounted. Finished grade is the general finished ground surface where the sign is erected, not taking into account mounding or other alterations to the surface made in regard to the sign. However, where finished grade is below the elevation of the top of the curb on the frontage where the sign is erected, or if there is no curb below the elevation of the margin of the street surface, height is the elevation above the top of the curb, or at the margin of the street surface if there is no curb. The point on the curb or the margin of the street surface to be used as a base point for measurement is the point intersected by a line drawn perpendicular to the centerline of the street which intersects the center of the base of the sign.

Lot frontage means the property line of a lot abutting on a public street which affords access to the lot. In the case of a corner lot and other lots which are bordered on more than one (1) side by a street, lot frontage is the lot line in respect to which the business for which the sign is provided has its primary business frontage.

Marquee means a temporary or permanent structure attached to or supported by a building, designed for shelter over a pedestrian or vehicular way and which may or may not project over public property.

Neighborhood identification sign is a ground sign situated where a street enters a residential neighborhood, which serves only to identify the neighborhood.

Nonconforming sign is one which was lawfully erected but which does not comply with this division because of:

- (1) Annexation of territory to the Town;
- (2) Amendment to the zoning ordinance;
- (3) Rezoning, other than rezoning when the application for rezoning is made by or joined in by the owner of the real property where the sign is located.

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However, a sign which was lawfully erected but which does not comply with this division because of:

- (1) Division of real property where the sign is located;
- (2) Alterations to any building on the lot or parcel where the sign is located; or
- (3) Rezoning, when the application for rezoning was made by or joined in by the owner of the real property where the sign is located;

is not a nonconforming sign. A sign may be a nonconforming sign because of a single characteristic, such as height or brightness, correction of which may result in conforming status for the sign, or a new amortization date. This section does not list all classes of signs which are not nonconforming signs.

Off-premises sign is any sign not located on the same parcel as the entity it advertises.

Pedestrian directional sign is an on-premises sign which shows the direction to or location of a customer entrance to a business.

Portable sign is a sign which is movable, not structurally attached to the ground, nor to a building, structure, or sign. "A"-frame and sandwich signs are portable signs.

Projecting sign is any sign erected on the wall of a building or structure, or suspended from an overhang, with display surfaces generally not parallel to the wall.

Roof sign is an attached sign erected on a roof or projecting above the eave or rake of a building or coping of a parapet. A sign erected on top of a canopy, arcade, awning or marquee is a roof sign.

Sign is any thing, or element of a thing, located out of doors or in a place where it is visible from out of doors, created, adapted, or installed, by a person for the primary and apparent purpose of communicating a message, and may include supports, standards and fixtures. A color scheme or special lighting effect on the exterior of a building is a sign where the placement of the colors or lighting effect in relation to the building create a primary effect of advertising. Exceptions:

- (1) Merchandise on display is generally not a sign because merchandise is ordinarily possessed for the primary purpose of permitting sales from stock on hand. A merchandise display located at a distance from the point of sale or displayed in the unusual manner might constitute a sign.
- (2) A structural element of a building or the supports, standard, or fixtures of a sign would not be a sign where the element is related to reasonable structural necessity, and the circumstances show that the element is not intended to be identified by viewers with the sale or promotion of goods or services.
- (3) Nighttime, white illumination, within reasonable brightness limitations, of a building or of merchandise is not of itself a sign, where the result is only to make visible without undue emphasis that which can be seen in the daytime.

Sign area is the total area of the face or faces of a sign. Each face is measured by determining the smallest area within a single perimeter composed of not more than eight (8) straight lines drawn by the applicant enclosing the extreme limits of the face. Where a sign consists of letters or symbols on a wall, the wall is not designed so that one (1) of its main purposes is to support a sign, and the sign's background is an indistinguishable part of a wall. For the purposes of measurement a six-inch margin around all of the words and symbols will be included in the perimeter composed of not more than eight (8) straight lines.

Sign permit is the permit issued by the Planning Director to evidence approval by any of the bodies or person authorized by this division to erect a sign.

Temporary sign is a sign, usually constructed of cloth or fabric, cardboard, wallboard, wood or other light materials, intended to be displayed for fewer than 90 days or a short period of time as set forth elsewhere in this Division. Examples of temporary signs are yard signs, for sale signs, for rent signs, flags, balloons, and banners.

Time and temperature sign is a sign which shows time and/or temperature and which contains no advertising.

Vehicular directional sign is an off-premises sign which shows the direction to or location of a use or activity.

Wall is a surface which has a slope steeper than one (1) foot horizontal to two (2) vertical.

Wall sign is a sign erected on a wall or fascia of a building or structure (other than a structure, one (1) of whose main purposes is to support a sign), the face of which is generally parallel to the wall or fascia and all of which is below the coping of the parapet, below the rake, the top of the fascia, the eave line, or in any event, below the top of the structure. A sign which meets the definition of this section but is erected between posts, pillars, or columns which support a roof or second story, rather than on a wall, is also a wall sign. A sign which is erected on and incidental to a freestanding wall or fence, including any gateway portion of a wall or fence, is also a wall sign.

Window sign is a sign which is displayed in or through a window, is less than twenty-four (24) inches inside glass, and is visible from a street, walkway, parking lot, or pedestrian plaza, any of which is accessible to the public.

Yard sign is a temporary freestanding sign that is supported by a frame, pole, or other structure placed directly in or upon the ground on private property.

SECTION II. Section 29.10.105, "Generally," of the Town Code is amended to read as follows:

Section 29.10.105. Generally.

(a) Application. The regulations in this Division apply to all signs in all zones. Regulations of the number and area of signs refer to the signs allowed on a parcel, except where the regulations prescribe the number and area of signs allowed on a business frontage.

- (b) *Intent.* The intent of this Division is as follows:
 - (1) The Town is a predominantly residential community of natural beauty, distinctive architecture and historic character. The economic stability of the Town is dependent upon its high quality and Town-oriented, commercial and residential environment. Unregulated and uncontrolled erection and maintenance of advertising structures tends to create a garish and gaudy atmosphere which is not in harmony with the character and environment of the business or residential community.
 - (2) The purpose of a sign is to inform the general public that a business enterprise and function exists in the Town.
 - (3) This Chapter recognizes the right of the public to be directed, warned, advised, and informed; and also recognizes the economic need for a sign to function as a means of identification, expression of business character, and positive notification of product and service availability for consumption.
 - This Chapter regulates the location, height, width, shape, proportion, design, illumination and construction (except as provided by building codes) of signs for the purpose of insuring that they are architecturally compatible with the planned image of the Town.
 - (5) The purpose of this Chapter is to assist in the continuation of existing and introduction of new commercial activities in architectural harmony with the existing and planned Town, to take advantage of the unusual character of the Town and to encourage proper maintenance and rehabilitation of real property. To accomplish this:
 - Local public values must be balanced with general public rights and economic functions related to signs.
 - The size of a sign must be prevented from overpowering its surroundings or becoming a determinant factor in consumer evaluation of competitive enterprises.
 - The shape of a sign must not conflict with the architectural lines of its setting. C.
 - A sign must be prevented from overpowering its surroundings through hue, saturation, and brilliance or close combination of incompatible colors.
 - Normal maintenance and speedy repair is required for all signs.
- (c) Permits. Sign permits must be obtained before erection of all signs, except as provided by section 29.10.110. A building permit may be required by another ordinance.
- (d) Variances. The provisions of this Chapter concerning variances are not available to modify the terms of this division.
- (e) Authority to erect. No sign shall be erected without the express permission of the landowner. A lease to a lessee would be sufficient evidence of the authority to erect a sign.

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Noncommercial Signs. Notwithstanding any provision of this Section, signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.

SECTION III. Section 29.10.110, "Exceptions," of the Town Code is amended to read as follows: Section 29.10.110. Exceptions.

A sign permit is not required for the signs described in this Section. The number and area of these signs are regulated only by this Section and they are allowed in addition to signs of other classes.

- (1) House numbers, traffic, etc. House numbers, street names, signs warning against danger, railroad crossing signs, authorized traffic or parking signs and rural delivery boxes.
- (2) Nameplates. Nameplates having an area not over one and one-half (1½) square feet, affixed flat against the wall of a building, which only show the name or address of a person or persons or entity occupying the area, up to a limit of six (6) plates per building.
- (3) Building directories. Building directories for buildings with more than six (6) tenants, the sign having an area not over nine (9) square feet, affixed flat against the wall of a building, which only show the name or address of the persons or entitles occupying the building.
- (4) Plagues. Solid metal plagues or cut inscriptions, either erected by recognized historical agencies, or which show names of buildings and dates of erection, provided the sign does not exceed four (4) square feet in area.
- (5) Temporary Sign.
 - On Fence or Building. One (1) nonilluminated sign on each street frontage for any fence or building where the sign is located, provided the sign does not exceed twelve (12) square feet in area if the sign is in a commercial, professional or industrial zone, or six (6) square feet in area if the sign is in a residential zone. This exception is only available when all or part of the premises is actually available for sale or lease.
 - At Intersection or on Parcel. Nonilluminated, off-site, portable signs are permitted, unlimited in total number, but limited to one (1) double-faced sign per corner of an intersection or parcel. The signs shall not exceed an area of one (1) square foot per face and shall not be more than four (4) feet high Prior permission shall be obtained from the property owner if the sign is to be placed on a privately owned parcel. The signs shall be removed each day. Such signs are an exception to the rule prohibiting off-premises signs and signs on public property.
- (6) Interior signs. Signs in the interior of a building, enclosed lobby or court, not visible from the outside and signs not visible from off the premises.

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- (7) Convenience signs. Convenience signs not exceeding two (2) square feet in area providing directions only. Exception: Hospital emergency signs may be as large as four (4) square feet and may be illuminated.
- (8) No trespassing signs. "No trespassing" or "no dumping" signs not exceeding three (3) square feet in area.
- (9) Window signs. Window signs not exceeding twenty-five (25) percent of the window area.
- (10) Parking signs. Not more than one (1) parking control sign for each parking entrance, not exceeding an area of two (2) square feet. Parking control signs may contain the name(s) of the business(es) controlling the parking lot.
- (11) *Public notices and warnings.* Notices posted by a public officer in the performance of a public duty, or by any person for the purpose of giving legal notice, and warning or informational signs required or authorized by governmental regulations.
- (12) Recycling and vending facilities. Recycling and vending facility signs shall not exceed two (2) square feet, plus one (1) square foot for every one hundred (100) square feet of facility or machine in excess of one hundred (100) total square feet of floor area.
- (13) Other public agency signs. Street signs, traffic signs, emergency warnings, and the like erected by a public agency.
- (14) Special event signs. Any sign permitted by a special event permit issued under Article X of Chapter 14 of this Code.
- (15) Temporary signs. With the exception of yard signs, any number of temporary signs, either freestanding or attached, is permitted, limited to a total sign area not exceeding six (6) square feet in residential zones and eighteen (18) square feet in other zones. There is no limit on the number of yard signs, but no yard sign shall exceed six square feet in size. All persons who erect temporary signs, including yard signs, or who own or control the premises where temporary signs are erected, are jointly and severally responsible to remove such signs after ninety (90) days or as otherwise set forth in this Division. Temporary signs relating to an event, such as an election, shall be removed within fifteen days after the event.

SECTION IV. Section 29.10.115, "Prohibited signs," of the Town Code is amended to read as follows:

Section 29.10.115. Prohibited signs.

Except as otherwise provided in this Chapter, the signs described in this Section are prohibited.

- (1) Lighted signs. Lighted signs that flash on and off, fluctuate or appear to move.
- (2) Moving signs. Signs that rotate or move in any fashion, except barber poles.

- (3) Excessively bright signs. Lighted signs whose brightness is detrimental to the reasonable enjoyment of surrounding property or are a traffic hazard.
- (4) Obstructing signs generally. Signs which prevent free use of a door, window or fire escape, or obstruct the view from any living area in the building to which the sign is attached.
- (5) Signs obstructing standpipes, etc. Signs attached to a standpipe or fire escape.
- (6) Signs obstructing traffic devices. Signs located so as to obstruct the view of a traffic sign, signal, or device.
- (7) Confusing signs. Signs which might be mistaken for or confuse the viewers of a traffic light or a signal.
- (8) Posters. Placards, posters, announcement and similar signs erected on any fence, pole, tree, pavement, wall, bus stop, bench, or any other object in a public thoroughfare, except those of an official nature as provided in Section 29.10.110(11).
- (9) Portable signs. Portable signs and signs erected on parked vehicles or trailers, when such vehicles or trailers are parked in such a location or manner that it is clear the intention is to advertise the services of a business.
- (10) Freeway signs. Signs erected for the dominant purpose of being seen by travelers on a freeway.
- (11) Off-premises signs. Off-premises signs, except those authorized by sections 29.10.110(5), (15), 29.10.120(2), (4), and 29.10.130(1).
- (12) Indecent signs. Signs containing matter which is obscene under State law.
- (13) Projected light signs. Signs which are flashed or projected onto walls or other structures by means of a projector or other device.
- (14) Billboards. Any billboard sign.
- (15) Temporary signs in Portions of the Public Right of Way. Temporary signs in the median of the public right of way or the portion of the right of way between the road and the sidewalk.
- (16) Unauthorized signs. Any sign not specifically authorized in Sections 29.10.110, 29.10.120 and 29.10.130.

SECTION V. Section 29.10.120, "Temporary signs," of the Town Code is amended to read as follows:

Section 29.10.120. Temporary Signs Requiring Permits.

Every sign described in this Section, regardless of the manner of its construction, is a temporary sign. The number and area of such signs are regulated only by this Section and are in addition to the allowed number and area for other classes of signs.

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- (1) On Premises Sign Erected by Business. Temporary signs erected on premises of a business are permitted for up to forty-five (45) calendar days. The total area of temporary signs may be equal to or less than the total sign area permitted for the business by Section 29.10.135. The permit shall state the maximum sign area allowed and the date the sign is to be removed as set by the erector or this Chapter, whichever is more restrictive.
- (2) On Premises of Subdivision. Nonilluminated, on-site signs on property which has received subdivision or development approval from the Town, from that approval until issuance of a building permit for the last lot to be sold or completion of the development project, are permitted, limited to one (1) double-faced sign not exceeding an area of twenty-five (25) square feet per face, placed at a right angle to the street, or two (2) single-faced signs not exceeding an area of twenty-five (25) square feet each placed parallel to a street. The signs shall not be more than fifteen (15) feet high and shall be erected at least fifteen (15) feet from a street right-of-way line. Up to four additional signs are permitted in residential subdivisions. Additional signs shall have an area not exceeding three (3) square feet, nor a height of more than four (4) feet. One off-premises signs erected by subdividers which are not located on a major arterial street as defined by the Town general plan is permitted. The sign shall not exceed eighteen (18) square feet in area, shall not be more than fifteen (15) feet high and shall be erected at least fifteen (15) feet from a street right-of-way line and shall be in a commercial or industrial zone. Such signs may be erected for up to 90 days. Off-premises signs erected by subdividers are an exception to the rules prohibiting billboards and off-premises signs.
- (3) Sign Erected on Commercial, Office, or Industrial Development for Sale or Lease. One (1) single-faced sign on property for sale or lease of a commercial, office, or industrial development to be built in the future. The sign shall not have an area exceeding twenty (20) square feet, shall not be more than fifteen (15) feet high, and shall be erected parallel to a street, at least fifteen (15) feet from a street right-of-way line. The sign shall not be erected for over 90 days.
- (4) Sign Erected by Special Event Sponsor.
 - a. Subject to the conditions of this Section, a permit may be issued to the sponsor of a civic, political, charitable, cultural, recreational, educational or religious event as follows:
 - (i) An event in town sponsored by a non-profit organization; or
 - (ii) An event sponsored by a non-profit organization with its principal business address in Town; or
 - (iii) An event sponsored by a public school; or
 - (iv) An event sponsored by a non-profit organization to which the Town contributes funds; or
 - (v) An event co-sponsored by the Town.

- If a non-profit organization's event does not qualify under subsection (a), the non-profit organization may submit an application to the Town Planning Director for a temporary sign if the organization can demonstrate to the satisfaction of the Planning Director that the event will occur within Santa Clara County and the proceeds from the event will be used to benefit residents of Los Gatos. The Planning Director shall review the application and determine whether to grant the application based upon whether the proceeds from the event will benefit residents of Los Gatos. If the Director denies the application, the applicant may appeal the decision to the Town Council within ten (10) days of the Director's decision.
- Application. The event sponsor shall submit an application with applicable fee to the Planning Director. The application shall specify the proposed location for each sign for which approval is requested, a calculation of the total sign area proposed and permitted under section 29.10.135, and a description of the sign material and means of posting proposed.
- Conditions of approval.
 - The sign may not be erected more than fourteen (14) days prior to the event and shall be removed within twenty-four (24) hours after the event.
 - (ii) The sign shall be no larger than permitted under section 29.10.135.
 - (iii) No more than a total of three (3) signs per event sponsor shall be allowed in the Town. Within this limit of three (3) signs, the following restrictions apply:
 - Except as provided under subsection (B) below, no more than one sign per event shall be permitted in the Downtown Area.
 - No more than one sign shall be permitted at the event site. Should the event have a number of locations or not have a fixed location, the event site sign shall be placed within five hundred (500) feet of the beginning or end of the event. Should the event site be located within the Downtown Area, the sign at the event site shall not count against the limitation imposed by subsection (A) above.
 - (iv) Event signs shall be secured at all four (4) corners to avoid flapping.
 - (v) No temporary structure may be erected for the purpose of displaying an event sign.
- General restrictions. e.
 - No more than three (3) event signs in total shall be permitted at any one time within five hundred (500) feet of any intersection in Town.
 - (ii) The square footage of an event sign shall not exceed the calculation of total sign area permitted under Section 29.10.135.

- (iii) No more than one sign is permitted on any one property at one time.
- f. For purposes of this section, "non-profit organization" is defined as:
 - A non-profit corporation existing under Division 2 of Title 1 of the Corporations Code; or
 - (ii) A non-profit association as defined in Corporations Code Section 21000; or
 - (iii) A non-profit corporation existing under the laws of another state governing non-profit corporations and which is permitted to do business in California under California law.
- For the purposes of this section, Downtown Area means the C-2 zone.
- (5) Signs on construction sites. On parcels of under one acre, one (1) nonilluminated sign of not more than thirty-two (32) square feet in total area at each street frontage during the time of construction or remodeling of the property. On parcels of one acre or more, one (1) nonilluminated sign of not more than sixty-four (64) square feet in total area at each street frontage during the time of construction or remodeling of the property. No construction sign shall be erected prior to the issuance of a building permit, and each shall be removed as soon as a certificate of use and occupancy is issued.

SECTION VI. Section 29.10.135, "Zone regulations," of the Town Code is amended to read as follows:

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Section 29.10.135. Zone regulations.

- (a) Scope. This Section specifies the signs which may be erected in each zone, other than signs which by the express provisions of this Chapter may be erected in all zones. Except where this Section specifies, nonconforming uses shall have only those signs allowed for the zone and not signs which might otherwise be allowed for similar uses in other zones.
- (b) Residential zones. In residential zones (defined by Section 29.40.010) the following signs may be erected:

Land Use			Class of Sign	Number	Total
				of Signs	Area
1.	Multiple Family				
	Developments:				
	a.	Less than 10	wall signs	one per lot	18 sq. ft.
		units		frontage	
	b.	10 units or	wall signs	one per lot	24 sq. ft.
		more		frontage	
2.	Authorized Nonresidential Uses (including recreational activities, schools, churches,		ground signs	one per parcel	24 sq. ft.
	public utilities, lawful				
	nonconforming uses, etc.)				
			wall signs	one per lot	24 sq. ft.
				frontage	
3.	Neighborhood Identification Signs (only for neighborhoods with an area of 3 acres or more)		ground signs	number and	24 sq. ft.
				location subject	
				to	
				determination	
				by the deciding	
				body	

(c) Nonresidential zones. The rules for nonresidential zones (defined by Section 29.50.010) are specified in this Section, and by number in the following list, table and footnotes. Rules 1 and 2 govern the calculation of the area of attached signs for each entity. Rules 3 through 9 govern the calculation of the total area of all signs for each parcel. The following paragraph applies to all nonresidential zones. The numbered rules apply only where the table so indicates. The maximum sign area for attached signs on any frontage may not exceed the area derived from the calculation for that frontage. Attached signs may be erected on any wall of the building, however, the area of a sign on a wall that is not a business frontage may not exceed twenty-five (25) percent of the sign area predicated on the primary business frontage. In addition, signs cannot be erected on a nonbusiness frontage wall if the parcel is contiguous to a residential zone and if the wall faces that zone.

- (1) Allowed sign area is one (1) square foot for each lineal foot of primary business frontage plus one (1) square foot for each lineal foot of secondary business frontage provided that the sign area generated by each secondary business frontage cannot exceed fifty (50) percent of the sign area generated by the primary business frontage.
- (2) Allowed sign area is one (1) square foot for each lineal foot of primary business frontage plus one-half square foot for each lineal foot of secondary business frontage.
- (3) For vehicle sales the area of freestanding signs is not restricted by any rule limiting total sign area on the parcel.
- (4) The total area of all signs on a parcel shall not exceed one (1) square foot of sign area for each lineal foot of lot frontage.
- (5) The total area of all signs on a parcel is limited to the area derived from the business frontage calculation.
- (6) For shopping centers the area of a ground sign is not restricted by any rule limiting total sign area on the parcel.
- (7) For shopping centers the area of a freestanding sign is not restricted by any rule limiting total sign area on the parcel.
- (8) The area of time and temperature signs is not restricted by any rule limiting total sign
- (9) The area of any attraction board shall be included in the calculation of the area of signs of the same class and in the calculation of the total area of signs on a parcel.

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TABLE OF SIGN REGULATIONS

ZONES	0	C·1	C-2	C	Н	LM	CM
ATTACHED SIGNS				en de la companya de		(Maximum Area 100 sq. ft./sign)	
Wall	x	х	х		х	Х	х
Roof		х	х	Bigliotavegizzo	X	arabana araban	electrical participation of the control of the cont
Projecting		х	х		X	-	and the second
Suspended from a Marquee (limited to one per entity)	Х	x	х		K		
Formulas for Area Calculations	Rule l	Rules 1 & 8	Rules 2 & 8	Ru	le l	Rule 1	Rule 1
TIME & TEMPERATURE SIGNS (limited to one per zoning plot)							
Area per Face (sq. ft.)	CONTRACTOR OF THE CONTRACTOR O	12	12	1.	2	Constitution of the Consti	
Total Area (sq. ft.)		24	24	2	4		
GROUND SIGNS (limited to one per zoning plot except in the O and CM District - See Note 3) Area per face (sq. ft.)	16	See Note 1	16	de de la constant de)	2 O	20
Total Area (sq. ft.)	32	40	32	40)	40	40
May be used as a Tenant Directory	Х		х			Х	х
FREESTANDING SIGNS (limited to one per zoning plot except in the CH District - See Note 2)		For shopping centers only		FIRST SIGN	SECOND SIGN See Note 2	COLOR OF THE PRINCIPAL PRI	
Area per Face (sq. ft.)		50		125	75	ļ	
Total Area (sq. ft.)		100		250	150		
Height (ft.)		15		25	20		
ATTRACTION BOARDS		х	Х	x			
Rules for Calculating Total Sign Area of Zoning Plot	Rule 4	Rules 5, 6, 7, 8 & 9	Rules 5, 6, 8 & 9	Rules 3, 5, 8 & 9 Rule		Rule 4	Rule 4

Note 1: Shopping centers may have a ground sign in addition to a freestanding sign if the center has more than one lot frontage.

Note 2: Zoning plots which exceed one acre and have more than one lot frontage may have an additional freestanding sign.

Note 3: Zoning plots which have a lot frontage exceeding 300 feet may have a ground sign for each 300 feet of frontage or fraction thereof.

(d) Planned development overlay zone. The signs shown on the official development plan referred to in Division 2 of Article VIII of this Chapter may be erected in the PD zone.

SECTION VII. Section 29.10.140, "Nonconforming signs," of the Town Code is amended to read as follow

Section 29.10.140. Nonconforming signs.

- (a) *Scope.* This section regulates the use and removal of nonconforming, unlawful, and abandoned signs.
- (b) *Modifications to nonconforming signs.* The following modifications to nonconforming signs are allowed:
 - (1) Changes in sign copy.

(2) Modifications that reduce the extent to which the sign does not comply with this chapter.

No modification of a nonconforming sign shall have any effect on the length of the amortization period for the sign.

- (c) Record of nonconforming signs. The Planning Director shall prepare a list of all signs in the Town which are nonconforming signs.
- (d) Mailing of notices. The Planning Director shall mail a notice by certified return receipt mail to the occupant business, if known, and to the owner (as shown on the last equalized assessment roll) of the land where each nonconforming sign is located. The notice shall contain:
 - (1) A description of the land where the sign is located and a description of the sign, both in terms reasonably sufficient for the owner to identify the sign.
 - (2) A statement that the sign is a nonconforming sign.
 - (3) The applicable date for removal of the sign under the provisions of subsection (f).

Information concerning more than one (1) sign, and information concerning separate amortization dates for different characteristics of one (1) or more single signs, separately stated, may be included in a single notice. If the Planning Director subsequently learns that for any reason notice has not been given in a timely manner, or that notice given is defective in any way, the Planning Director shall promptly mail a proper notice to the occupant and owner, even if the regular time for notification has expired. Notice mailed after the time required by this subsection meets the requirements of subsection (e) and is effective to start the time period provided in subsection (f).

- (e) Effect of mailing of notices. Notice mailed as provided in subsection (d) is deemed to be notice to the owners of nonconforming signs and to all persons having any right, title or interest therein. The mailing of notices is intended as a convenience to sign owners. However, no failure to give notice shall invalidate any proceeding to enforce this chapter to abate any sign, or to punish any sign violation.
- (f) Duration of nonconforming signs. A nonconforming sign which becomes nonconforming shall be a nonconforming sign for the applicable period shown on the following schedule:
 - (1) Painted on wall signs, excessive brightness of signs, roof signs, signs suspended from a marquee: two (2) years.
 - (2) Freestanding signs, wall signs, projecting signs and all signs not otherwise specified in this section: five (5) years.
 - (3) Signs where total area of all signs on a building or parcel exceed permitted area: five (5) years.
- (g) Notification and other procedures concerning subsequent nonconforming signs. Within six
 (6) months of the date when a sign described in subsection (f) becomes a nonconforming sign, the Planning Director shall add the sign to the list of nonconforming signs and mail

- notices in the manner specified in subsection (d), and such notices shall have the same effects as the notices provided for other nonconforming signs.
- (h) Extension of nonconforming sign status. During the deliberations on the provisions of this Chapter concerning signs, it was determined that this chapter should not include provisions for granting extensions of nonconforming status since the basic periods for nonconforming status were extended by the same number of years originally proposed for allowable extension.
- (i) Removal of unlawful signs. Any sign erected or maintained contrary to the provisions of this Division or any other ordinance of the Town including unlawfully erected signs, and formerly nonconforming signs whose nonconforming status has terminated, is in its entirety an unlawful sign. The provisions of Sections 29.20.950 and 29.20.955 are applicable to unlawful signs, and to those who erect or maintain them.
- (j) Abandoned signs. The owner must have all copy removed from an abandoned sign and the sign shall remain blank until a new entity has occupied the premises. Further, if any sign has been abandoned for a period of one (1) year the owner shall remove the sign and any appurtenant structures.
- (k) Maintenance. All signs shall be maintained and kept in repair and shall be painted and repainted at reasonable intervals. If the owner fails to comply, after ten (10) days' written notice by the Planning Director, or duly appointed deputy, to so maintain such signs, the Planning Director shall have the sign removed at the owner's expense.

(Ord. No. 1316, §§ 3.39.010—3.39.070, 6-7-76; Ord. No. 1380, 1-23-78)

SECTION VIII. Severability.

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

SECTION IX. CEOA.

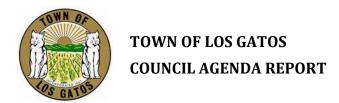
Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

SECTION X. Publication.

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 pf the Government Code of the State of California.

SECTION XI. Effective Date.

	ar meeting of the Town Council of the Town of
Los Gatos on the day of 20 , and ado	·
Gatos at its regular meeting on the day of _	20 , 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:	



MEETING DATE: 5/07/2024

DATE: May 2, 2024

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Introduce an Ordinance Titled "An Ordinance of the Town Council of the

Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code Regarding Senate Bill (SB) 9 For Modified Design Review Standards and Other Clarifying Revisions." The Proposed Amendments to the Town Code

are Not Considered a Project Under Section 15378 of the California

Environmental Quality Act, and in Accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 Ordinances are Not a Project Subject to the California Environmental Quality Act. Town Code Amendment Application A-

24-003. Project Location: Town Wide.

Applicant: Town of Los Gatos.

RECOMMENDATION:

Introduce an Ordinance titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' of the Town Code Regarding SB 9 for Modified Design Review Standards and Other Clarifying Revisions" (Attachment 1).

BACKGROUND:

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

PREPARED BY: Ryan Safty

Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Department Director

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SUBJECT: SB 9 Ordinance Amendments/ A-24-003

DATE: May 2, 2024

BACKGROUND (continued):

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

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

On December 21, 2021, Town Council adopted an Urgency Ordinance to implement local objective standards for SB 9 applications. On November 15, 2022, Town Council approved Ordinance 2334, which established the permanent SB 9 Ordinance within Chapter 29 (Zoning Regulations) of the Town Code (Attachment 3, Exhibit 2). No modifications have occurred since the adoption of the permanent Ordinance at the end of 2022.

At the February 13, 2024, Strategic Priorities meeting, Town Council provided guidance to Town staff on workload prioritization for the next two years. A local architect presented at this meeting, requesting that the SB 9 Ordinance be amended to allow flexibility with the second-story step-back rule (Attachment 3, Exhibit 3). Specifically, the recommendation was to allow the five-foot step-back to be measured from a covered porch projection on the first floor, and not just the wall of the first floor below. Town Council voted to include this request within the Strategic Priorities and listed the change as the first priority for ordinance amendments.

On April 10, 2024, the Planning Commission held a public hearing to consider the materials provided in the staff report (Attachment 3), and Desk Item (Attachment 4); received and considered public testimony on the Draft Ordinance (Attachment 3, Exhibit 4); reviewed the proposed changes; and recommended approval to Town Council with the recommendation to include a list of prohibited exterior building materials and screening requirements for ground-mounted mechanical equipment. The recommendations from the Planning Commission are reflected in the verbatim minutes (Attachment 5) and summarized below.

DISCUSSION:

The Draft Ordinance presented to the Planning Commission (Attachment 3, Exhibit 4) included amendments to Town Code, incorporating the requested second-story step-back rule as well as other clean-up amendments that staff has identified since Ordinance 2334 was adopted. On April 10, 2024, the Planning Commission conducted a public hearing, received public comment, and reviewed and discussed each of the proposed edits in Exhibit 4 of Attachment 3. Planning Commission recommended approval of each of the proposed amendments, and identified two

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SUBJECT: SB 9 Ordinance Amendments / A-24-003

DATE: May 2, 2024

DISCUSSION (continued):

other formatting edits: first, to italicize the header of Section 29.10.630(1)(g); and second, to add a header to Section 29.10.630(1)(r).

In addition, a Planning Commissioner requested consideration of additional objective design standards similar to those of the City of San Mateo Interim Objective Building and Design Standards provided in the Desk Item (Attachment 4). The Planning Commission went through each of San Mateo's standards, and voted to recommend inclusion of exterior material prohibitions and ground-mounted mechanical equipment screening (Attachment 5), detailed below.

A. Exterior Material Prohibitions:

San Mateo's SB 9 standards prohibit the following materials on building exteriors: exterior foam molding, corrugated metal, vinyl siding, plywood, exterior insulation finishing system (EIFS), and any material with a light reflection value of less than 45 (Attachment 4). The Planning Commission voted to include exterior foam molding, vinyl siding, plywood, and EIFS as prohibited materials in their recommendation. The corrugated metal was noted to be acceptable as it has been used in ways that look nice for residential buildings, and the Town already has a light reflectivity limit for SB 9 properties in the hillsides, consistent with the Town's Hillside Development Guidelines and Standards. This draft recommended modification for exterior material prohibitions was added as Town Code Section 29.10.630(2)(i) – Design Review Standards (Attachments 1 and 2).

B. <u>Mechanical Equipment Screening</u>:

San Mateo's SB 9 standards require that, "ground-mounted utilities, mechanical equipment, generators, and air conditioning (AC) units that directly serve the development shall be screened from view from adjacent properties and the public right-of-way by either an enclosure designed as part of the building and/or fencing" (Attachment 4). Planning Commission recommended inclusion of similar screening requirements (Attachment 5).

Staff recommends modifying the language slightly to remain objective and uniformly enforceable. First, staff recommends removing mention of utilities as a property owner may not have the ability to modify a utility company's requirements. Second, staff recommends requiring screening from "streets" instead of "adjacent properties and public right-of-way," since it is challenging to verify and enforce screening from neighboring homes; and the Town defines "street" as, "any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements."

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SUBJECT: SB 9 Ordinance Amendments / A-24-003

DATE: May 2, 2024

DISCUSSION (continued):

Staff's recommended language is as follows: "Heating, ventilation, and air conditioning (HVAC) units, generators, energy storage systems (ESS), and other similar ground-mounted mechanical equipment shall be screened from view from any adjacent street if not already located out of view behind a building or solid fence." This draft modification for mechanical equipment screening was added as Town Code Section 29.10.630(2)(j) – Design Review Standards (Attachments 1 and 2).

Staff has incorporated the additional recommended objective design standards into the Draft Ordinance included as Attachment 1. Attachment 2 includes a track-changes version (with removed text shown in strike-through and new text shown underlined) of the current SB 9 regulations in Ordinance 2334.

PUBLIC OUTREACH:

Staff conducted outreach through the following media and social media resources:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's NextDoor page.

Public comment received at time of the publication of this report is included as Attachment 6.

ENVIRONMENTAL ASSESSMENT:

In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15378, these proposed ordinance amendments are not a "project" subject to CEQA. Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 ordinances are not a project subject to CEQA.

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SUBJECT: SB 9 Ordinance Amendments / A-24-003

DATE: May 2, 2024

CONCLUSION:

Staff recommends that the Town Council introduce the draft Ordinance by taking the following steps:

- 1. Make the finding that the environmental impacts of the proposed amendments to the Town Code are not considered a project under CEQA Section 15378, and in accordance with Government Code Section 66411.7(n) and 66452.21(g), SB 9 ordinances are not a project subject to CEQA (Attachment 1, Section X);
- 2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Attachment 1, Section XI); and
- 3. Introduce an ordinance of the Town Council of the Town of Los Gatos, by title only, amending Chapter 29, "Zoning Regulations," of the Town Code regarding Senate Bill 9 (SB 9) for modified design review standards and other clarifying revisions (Attachment 1).

ALTERNATIVES:

Alternatively, the Town Council may:

- 1. Introduce the Draft Ordinance with modifications; or
- 2. Continue this item to a date certain with specific direction to staff; or
- 3. Refer this item back to the Planning Commission with specific direction; or
- 4. Take no action, leaving the Town Code unchanged.

Attachments:

- 1. Draft Ordinance for Adoption
- 2. Draft Ordinance Redline
- 3. April 10, 2024 Planning Commission Staff Report (with Exhibits 1-4)
- 4. April 10, 2024 Planning Commission Desk Item
- 5. April 10, 2024 Planning Commission Verbatim Minutes
- 6. Public Comment Received Prior to 11:00 a.m., Thursday, May 2, 2024

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modification by Town Cound on deliberations and direction

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE REGARDING SENATE BILL (SB) 9 FOR MODIFIED DESIGN REVIEW STANDARDS AND OTHER CLARIFYING REVISIONS

TOWN CODE AMENDMENT APPLICATION A-24-003

PROPERTY LOCATION: TOWN WIDE APPLICANT: TOWN OF LOS GATOS

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 (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 proposed housing developments containing no more than two residential units by removing public notice and hearings by the Development Review Committee or Planning Commission, by authorizing only administrative review of the project, and by requiring ministerial approval of a two-unit housing development that meets objective standards; 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 authorizes local agencies to adopt an ordinance allowing for up to a 24-month additional map extension, for the use of an approved or conditionally approved

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Ordinance May 7, 2024

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; and

WHEREAS, SB 9 allows the Town to adopt objective zoning 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

WHEREAS, on November 15, 2022, Town Council adopted Ordinance 2334 to regulate SB 9 projects within the Town; and

WHEREAS, at the February 13, 2024, Strategic Priorities meeting, Town Council voted to include a request for a modification to the second-story step-back requirement for SB 9 units (Section 29.10.630.(2)(e) of Ordinance 2334) within the Town's upcoming Strategic Priorities for ordinance amendments; and

WHEREAS, the Planning Commission at its meeting on April 10, 2024, reviewed the proposed amendments to the Town Code regarding SB 9 second-story step-back requirements and other clarifying revisions as recommended by staff, held a public hearing, and forwarded a recommendation of approval to the Town Council with recommended modifications related to prohibited exterior materials and screening requirements for ground-mounted mechanical equipment; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on May 7, 2024; and

WHEREAS, on May 7, 2024, the Town Council accepted the report of the Planning Commission's recommendation of approval for the proposed amendments to the Town Code regarding SB 9, held a public hearing, and voted to introduce the Ordinance.

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

SECTION I. Section 29.10.600, "Purpose and Applicability," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

The Town Council finds and determines that this Division is applicable only to voluntary **2** of **19**

Ordinance May 7, 2024

applications for two-unit housing developments and urban lot splits consistent with Senate Bill (SB) 9. 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 29.10.610 (Definitions) shall not be subject to this Ordinance. Any provision of this Division 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 Division shall supersede and take precedence over any inconsistent provision of the Town Code to the extent necessary to effect the provisions of this Division.

SECTION II. Section 29.10.610, "Definitions," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

In addition to definitions contained in Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following definitions apply for purposes of this Division. Where a conflict may exist, the definitions in this Division shall apply.

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on January 1, 2022, 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.

Adjacent parcel means any parcel of land that is: touching the parcel at any point; separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or separate from another parcel only by other real property which is in common ownership or control of the applicant.

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.

Car-share vehicle means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

Common ownership or control means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

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

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Existing structure means a lawfully constructed building that has received final building permit clearance.

First residential unit means one of two primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200-square foot floor area limitation on first residential units.

Flag lot means "lot, corridor" as defined in Section 29.10.020 of Town Code.

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", "R-1D or Single-Family Residential Downtown Zone", or "HR or Hillside Residential Zone" as specified in Article IV, "Residential Zones," of the Zoning Code.

Subdivision Code means Chapter 24 of the Los Gatos Town Code.

Sufficient for separate conveyance means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

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.

Zoning Code means Chapter 29 of the Los Gatos Town Code.

SECTION III. Section 29.10.620, "Eligibility," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

An urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- (1) Zoning District. A parcel that is located within a single-family residential zone.
- (2) Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and the Town's Subdivision Regulations in effect at the time the parcel was created. Applications for an urban lot split or two-unit housing development will only be accepted on parcels with either a recorded parcel map or certificate of compliance. When both an urban lot split and two-unit housing development application are submitted simultaneously, no construction or building permits for new construction or grading activities may be issued until the new parcel map for the urban lot split approval has been recorded.
- (3) Excluding Historic Property. A parcel that 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 a parcel that does not contain a Historic Structure, as defined in Town Code Section 29.10.020, or is not 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."
- (4) 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 state responsibility area, as defined in Section 4102 of the Public Resources Code. This subparagraph 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, including, but not limited to, standards established under all of the following or their successor provisions: (i) Section 4291 of the Public Resources Code or Section 51182, as applicable; (ii) Section 4290 of the Public Resources Code; and (iii) Section 7A of the California Building Code (Title 24 of the California Code of Regulations).
- (5) 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.
- (6) 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.
- (7) 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 two-unit housing development is constructed in compliance with the provisions of Town Code Chapter 29, Article XI, "Floodplain Management," as determined by the floodplain administrator.
- (8) 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).
- (9) Excluding Prime Farmland and Wetlands. A parcel that contains either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; or wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- (10) Excluding Conservation Easements. A parcel subject to a recorded conservation easement.

SECTION IV. Section 29.10.630, "Requirements," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

Two-unit housing developments must comply with the following objective zoning standards, design review standards, and general requirements and restrictions:

- (1) Zoning Standards. The following objective zoning standards supersede any other standards to the contrary that may be provided elsewhere 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 subsection (4), "Exceptions:"
 - a. 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, and those located in the Hillside Residential (HR) zones, shall not exceed 16 feet in height;
- b. New Driveways. Each parcel shall include no more than a single driveway unless the parcel has more than 100 feet of contiguous street frontage or more than one existing driveway. Any new driveway shall satisfy the following requirements:
 - 1. A minimum width of 10 feet up to a maximum width of 18 feet.

 Driveways in the Hillside Residential (HR) zones shall have a minimum width of 12 feet;
 - 2. A minimum depth of 18 feet measured from the front or street side property line;
 - 3. Surfacing shall comply with Town Code Section 29.10.155(e);
 - 4. Only a single driveway curb-cut shall be permitted per parcel unless the parcel has more than 100 feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and
 - 5. A maximum slope of 15 percent.
- c. 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-byside or front-to-back configuration within the same structure or one dwelling unit located atop another dwelling unit within the same structure;
- d. *Fencing.* All new fencing shall comply with the requirements of Sections 29.40.030 through 29.40.0325 of the Zoning Code;
- e. Floor Area Ratio and Lot Coverage.
 - 1. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
 - 2. For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
 - i. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - 3. The maximum size of the first new residential unit shall not exceed 1,200 square feet.

- 4. When a two-unit housing development is proposed and the existing structures are at or below the maximum allowed floor area, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.
- 5. Notwithstanding the floor area ratio and lot coverage standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

f. Grading.

- To the extent required by Chapter 12, Article II and Section 29.10.09045(b) of the Town Code, the grading activities set forth in subsection 2. below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application;
- 2. Grading activity associated with a two-unit housing development shall not exceed 50 cubic yards, cut plus fill, except:
 - Light wells that do not exceed the minimum required per Building Code shall not count as grading activity for the purpose of this section;
 - Grading activities required to provide the minimum driveway and fire access as required by the Santa Clara County Fire Department shall not count as grading activity for the purpose of this section; and
 - iii. Excavation within the footprint of a primary dwelling unit or garage shall not count as grading activity for the purpose of this section.
- g. *Cut and Fill.* Two-unit housing developments shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements) below:

Table 1-1 - Cut and Fill Requirements				
Site Element	Cut *	Fill *		
House and attached garage	8' **	3'		
Detached accessory building *	4'	3'		
Driveways ***	4'	3'		
Other (decks, yards) *	4'	3'		

^{*} Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

^{**} Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code

and light-wells that do not exceed the minimum required per Building Code.

*** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.

- h. *Building Sites.* The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with slopes exceeding 30 percent. This provision applies only to the building site, not the property as a whole;
- i. Retaining Walls. Retaining walls shall not exceed five feet in height and shall not run in a straight continuous direction for more than 50 feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer when adjacent to the street;
- j. Light Reflectivity Value. Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;
- k. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);
- Lighting. New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill light onto neighboring parcels consistent with Section 29.10.09015 of the Zoning Code;
- m. *Trees*. Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article 1, Division 2, "Tree Protection," of Town Code;
- 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;
- o. 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 public transportation; or where there is a designated parking area for one or more car-share vehicles within one block of the parcel.
 - 2. 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.

p. Setbacks. Two-unit housing developments and attached garages shall be subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below. Detached garages and detached accessory structures shall meet the setback requirements specified in Town Code Section 29.40.015 (Accessory Buildings).

Table 1-2 - Setback Requirements				
Setback		Requirement ⁽²⁾		
Property Line Setbacks ⁽¹⁾	Front	Per the applicable zoning district. (5)		
	Garage Entry	18 feet		
	Interior Sides	4 feet ⁽³⁾		
	Rear			
	Street Side	Per the applicable zoning		
		district.		
Separation Between Detached Structures ⁽³⁾⁽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) For parcels created through an urban lot split where the parcels are under the same ownership, no interior side setback shall be required for two-unit housing development units constructed as attached units on separate lots, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance as a separate fee parcel. Similarly, no rear setback (for the front property) or front setback (for the rear property) shall be required for two-unit housing development units constructed as attached units in a flag-lot configuration where the parcels are under the same ownership.
- (4) Except for primary dwellings constructed as a duplex or attached single-family residences.
- (5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.
 - q. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and
 - r. *Utilities*. New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.
- (2) 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 existing primary dwelling units as part of a two-unit housing development, except as provided by subsection (4) below, "Exceptions:"

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- a. Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front- and street-side elevations of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building footprint;
- b. *Finished Floor*. The finished floor of the first story shall not exceed three feet in height as measured from finished grade;
- c. 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;
- d. Front Porch. If proposed, porches shall have a minimum depth of six feet and a minimum width equal to 25 percent of the linear width of the front elevation;
- e. Step-back. The interior side and rear elevations of the second story of a twostory primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall. In the case of a covered porch on the first floor below, the step-back is measured from the structural post of the covered porch to the wall above;
- f. Garages. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
- g. Plate Height. The plate height of each story shall be limited to a maximum of 10 feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight feet; and
- h. Windows. All second story windows less than 10 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 except as necessary for egress purposes as required by the Building Code.
- i. *Prohibited Materials*. The following exterior materials are prohibited on all building exteriors:
 - 1. Exterior foam molding;
 - 2. Vinyl siding;
 - Plywood; and
 - Exterior Insulation Finishing System (EIFS).
- j. Mechanical Equipment. Heating, ventilation, and air conditioning (HVAC) units, generators, energy storage systems (ESS), and other similar ground-mounted mechanical equipment shall be screened from view from any adjacent street if not already located out of view behind a building or solid fence.
- (3) 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 subsection (4) below, "Exceptions:"

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 Ordinance
 May 7, 2024

- a. *Number of Units*. A maximum of four units, with a maximum of two primary dwelling units, on lots that have not undergone an urban lot split.
- b. Accessory Dwelling Units. In addition to the two residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.
- c. 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 Town Code, respectively, apply to all two-unit housing developments.
- d. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve 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.
- e. Restrictions on Demolition. The two-unit housing development shall not require either demolition of more than 25 percent of the exterior walls or alteration of any of the following types of housing:
 - 1. 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. This shall be evidenced by an attestation from the property owner;
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or
 - 3. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner.

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for a two-unit housing development shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town.

If any existing dwelling unit is proposed to be demolished, the applicant shall comply with the replacement housing provisions of Government Code Section 66300(d).

- f. Recorded Covenant. Prior to building permit issuance, the applicant shall record a restrictive covenant in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A limitation restricting the property to residential uses only; and
 - 2. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- (4) Exceptions. If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two (2) primary dwelling units or physically preclude either of the two (2) primary dwelling units from being at least eight hundred (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.
 - a. 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 V. Section 29.10.640, "Application Process for Two-Unit Housing Development," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the

- applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).
- (4) Building Permits. Approval of a two-unit housing development application shall be required prior to acceptance of an application for building permit(s) for the new and/or modified primary dwelling unit(s) comprising the two-unit housing development;
- (5) 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
- (6) Appeals. Two-unit housing application decisions are ministerial and are not subject to an appeal.

SECTION VI. Section 29.10.650, "Subdivision Standards," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

- (1) 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:
 - a. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;
 - b. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one (1) parcel shall not be smaller than forty (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. If one (1) of the proposed lots is a flag/corridor lot, the area of the access corridor shall count toward the lot area as follows:
 - 1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - 2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.

- c. *Minimum Lot Width*. Each new parcel shall maintain a minimum lot width of twenty (20) feet;
- d. *Minimum Public Frontage*. Each new parcel shall have frontage upon a street with a minimum frontage dimension of twenty (20) feet, except as allowed above for flag/corridor lots;
- e. *Number of Lots*. The parcel map to subdivide an existing parcel shall result in no more than two (2) parcels; and
- f. Lot Merger. Lots resulting from an urban lot split shall not be merged unless that lot merger can be done without loss of housing units and without causing a non-conforming building, lot, or use.
- (2) General Requirements and Restrictions. The following requirements and restrictions apply to all proposed urban lot splits:
 - a. 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 Division;
 - Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements but may, however, 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;
 - c. 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 1-2 (Setback Requirements, Exception Number 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
 - d. Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one (1) of the housing units on the newly created parcels as their principal residence for a minimum of three (3) years from either:
 - 1. The date of the approval of the urban lot split when the intent is to live in an existing residence; or
 - 2. Certificate of occupancy when the intent is to occupy a newly constructed residential unit.

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;
- e. 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 setbacks as specified by Table 1-2 (Setback Requirements, Exception Number 2), maximum allowed lot coverage, and maximum allowed floor area ratio;
- f. Number of Units. No more than two (2) dwelling units may be located on any lot created through an urban lot split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as two-unit developments. Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;
- g. *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;
- h. Restrictions on Demolition. The proposed urban lot split shall not require either the demolition of more than twenty-five (25) percent of the exterior walls or alteration of any of the following types of housing:
 - 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. This shall be evidenced by an attestation from
 the property owner;
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or
 - 3. Housing that has been occupied by a tenant in the last three (3) years. This shall be evidenced by an attestation from the property owner;

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an urban lot split shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three (3) years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using and urban lot split;

- Replacement Units. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d);
- j. Recorded Covenant. Prior to approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;
 - 2. A limitation restricting the properties to residential uses only; and
 - 3. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- k. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;
- I. *Utility Providers*. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and
- m. Compliance with Subdivision Map Act. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410), except as otherwise expressly provided in Government Code Section 66411.7.

SECTION VII. Section 29.10.660, "Application Process for Urban Lot Splits," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist

- of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).
- (4) 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;
- (5) *Development*. Development on the resulting parcels is limited to a project approved by the two-unit housing development process, the Town's Accessory Dwelling Unit process, or through the Town's standard discretionary process;
- (6) 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
- (7) Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.

SECTION VIII. Severability.

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

SECTION IX. CEQA.

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378). Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 Ordinances are not a project subject to the California Environmental Quality Act.

SECTION X. Consistency with General Plan.

The amendments to the Town Code are consistent with the General Plan as SB 9 is a state law; and

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Ordinance May 7, 2024

SECTION XI. Publication.

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

SECTION XII. Effective Date.

This Ordinance was introduced at a regular Los Gatos on the 7 th day of May 2024, and adopted Gatos at its regular meeting on the day of	
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:	

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Draft Ordinance: subjection by Town Cound on deliberations and direction

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29, "ZONING REGULATIONS," OF THE TOWN CODE REGARDING SENATE BILL (SB) 9 FOR MODIFIED DESIGN REVIEW STANDARDS AND OTHER CLARIFYING REVISIONS

TOWN CODE AMENDMENT APPLICATION A-24-003

PROPERTY LOCATION: TOWN WIDE APPLICANT: TOWN OF LOS GATOS

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 (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 proposed housing developments containing no more than two residential units by removing public notice and hearings by the Development Review Committee or Planning Commission, by authorizing only administrative review of the project, and by requiring ministerial approval of a two-unit housing development that meets objective standards; 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 authorizes local agencies to adopt an ordinance allowing for up to a 24-month additional map extension, 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; and

WHEREAS, SB 9 allows the Town to adopt objective zoning 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

WHEREAS, on November 15, 2022, Town Council adopted Ordinance 2334 to regulate SB 9 projects within the Town; and

WHEREAS, at the February 13, 2024, Strategic Priorities meeting, Town Council voted to include a request for a modification to the second-story step-back requirement for SB 9 units (Section 29.10.630.(2)(e) of Ordinance 2334) within the Town's upcoming Strategic Priorities for ordinance amendments; and

WHEREAS, the Planning Commission at its meeting on April 10, 2024, reviewed the proposed amendments to the Town Code regarding SB 9 second-story step-back requirements and other clarifying revisions as recommended by staff, held a public hearing, and forwarded a recommendation of approval to the Town Council with recommended modifications related to prohibited exterior materials and screening requirements for ground-mounted mechanical equipment; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on May 7, 2024; and

WHEREAS, on May 7, 2024, the Town Council accepted the report of the Planning Commission's recommendation of approval for the proposed amendments to the Town Code regarding SB 9, held a public hearing, and voted to introduce the Ordinance.

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

SECTION I. Section 29.10.600, "Purpose and Applicability," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

The Town Council finds and determines that this Division is applicable only to voluntary applications for two-unit housing developments and urban lot splits consistent with Senate Bill (SB) 9. 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 #H-29.10.610 (Definitions) shall not be subject to this Ordinance. Any provision of this Division 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 Division shall supersede and take precedence over any inconsistent provision of the Town Code to the extent necessary to effect the provisions of this Division.

SECTION II. Section 29.10.610, "Definitions," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

In addition to definitions contained in Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following definitions apply for purposes of this Division. Where a conflict may exist, the definitions in this Division shall apply.

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on January 1, 2022, 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.

Adjacent parcel means any parcel of land that is: touching the parcel at any point; separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or separate from another parcel only by other real property which is in common ownership or control of the applicant.

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.

Car-share vehicle means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

Common ownership or control means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

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

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

First residential unit means one of two primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200-square foot floor area limitation on first residential units.

Flag lot means "lot, corridor" as defined in Section 29.10.020 of Town Code.

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", "R-1D or Single-Family Residential Downtown Zone", or "HR or Hillside Residential Zone" as specified in Article IV, "Residential Zones," of the Zoning Code.

Subdivision Code means Chapter 24 of the Los Gatos Town Code.

Sufficient for separate conveyance means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

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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.

Zoning Code means Chapter 29 of the Los Gatos Town Code.

SECTION III. Section 29.10.620, "Eligibility," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

An urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- (1) Zoning District. A parcel that is located within a single-family residential zone.
- (2) Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and the Town's Subdivision Regulations in effect at the time the parcel was created. Applications for an urban lot split or two-unit housing development will only be accepted on proposed-parcels with either a recorded parcel map or certificate of compliance. When both an urban lot split and two-unit housing development application are submitted simultaneously, no construction or building permits for new construction or grading activities may be issued until the new parcel map for the urban lot split approval has been recorded.
- (3) Excluding Historic Property. A parcel that <u>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 a parcel that does not contain a Historic Structure, as defined <u>in</u> Town Code Section 29.10.020, or is not 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."</u>
- (4) 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 state responsibility area, as defined in Section 4102 of the Public Resources Code. high orvery 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. This subparagraph 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, including, but not limited to, standards established under all of the following or their successor provisions: (i) Section 4291 of the Public Resources Code or Section 51182, as applicable; (ii) Section 4290 of the Public Resources Code; and (iii) Section 7A of the California Building Code (Title 24 of the California Code of Regulations). excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or sites that

- have adopted fire hazard mitigation measures pursuant to existing building standards or State fire mitigation measures applicable to the development.
- (5) 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.
- (6) 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.
- (7) 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 two-unit housing development is constructed in compliance with the provisions of Town Code Chapter 29, Article XI, "Floodplain Management," as determined by the floodplain administrator.
- (8) 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).
- (9) Excluding Prime Farmland and Wetlands. A parcel that contains either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; or wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- (10) Excluding Conservation Easements. A parcel subject to a recorded conservation easement.

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SECTION IV. Section 29.10.630, "Requirements," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

Two-unit housing developments must comply with the following objective zoning standards, design review standards, and general requirements and restrictions:

- (1) Zoning Standards. The following objective zoning standards supersede any other standards to the contrary that may be provided elsewhere 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 subsection (4), "Exceptions:"
 - a. 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, and those located in the Hillside Residential (HR) zones, shall not exceed 16 feet in height;
 - b. <u>New Driveways</u>. Each parcel shall include no more than a single driveway unless the parcel has more than 100 feet of contiguous street frontage <u>or more than one existing driveway</u>. and aAny new driveway shall satisfy the following requirements:
 - A minimum width of 10 feet up to a maximum width of 18 feet.
 Driveways in the Hillside Residential (HR) zones shall have a minimum width of 12 feet;
 - 2. A minimum depth of 18 feet measured from the front or street side property line;
 - 3. Surfacing shall comply with Town Code Section 29.10.155(e);
 - 4. Only a single driveway curb-cut shall be permitted per parcel unless the parcel has more than 100 feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and
 - 5. A maximum slope of 15 percent.
 - c. 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;
 - d. *Fencing*. All new fencing shall comply with the requirements of Sections 29.40.030 through 29.40.0325 of the Zoning Code;

- e. Floor Area Ratio and Lot Coverage.
 - 1. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
 - 2. For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
 - i. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - 3. The maximum size of the first new residential unit shall not exceed 1,200 square feet.
 - 4. When a two-unit housing development is proposed and the existing structures are at or below the maximum allowed floor area, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.
 - 5. Notwithstanding the floor area ratio <u>and lot coverage</u> standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

f. Grading.

- To the extent required by Chapter 12, Article II and Section 29.10.09045(b) of the Town Code, the grading activities set forth in subsection 2. Below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application;
- 2. Grading activity associated with a two-unit housing development shall not exceed 50 cubic yards, cut plus fill, except:
 - Light wells that do not exceed the minimum required per Building Code shall not count as grading activity for the purpose of this section;
 - Grading activities required to provide the minimum driveway and fire access as required by the Santa Clara County Fire Department shall not count as grading activity for the purpose of this section; and
 - iii. Excavation within the footprint of a primary dwelling unit or garage shall not count as grading activity for the purpose of this section.

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

Table 1-1 – Cut and Fill Requirements				
Site Element	Cut *	Fill *		
House and attached garage	8′ **	3'		
Detached accessory building *	4'	3'		
Driveways ***	4'	3'		
Other (decks, yards) *	4'	3'		

^{*} Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.

- h. Building Sites. The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with an average slopes exceeding 30 percent. This provision applies only to the building site, not the property as a whole;
- i. Retaining Walls. Retaining walls shall not exceed five feet in height and shall not run in a straight continuous direction for more than 50 feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer when adjacent to the street;
- j. Light Reflectivity Value. Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;
- k. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);
- Lighting. New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill light onto neighboring parcels consistent with Section 29.10.09015 of the Zoning Code;
- m. *Trees*. Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article 1, Division 2, "Tree Protection," of Town Code;
- n. *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;

^{**} Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code and light-wells that do not exceed the minimum required per Building Code.

^{***} Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.

Parking. ο.

- 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 public transportation; or where there is a designated parking area for one or more car-share vehicles within one block of the parcel.
- 2. 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.
- Setbacks. Two-unit housing developments and attached garages shall be p. subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below. <u>Detached garages and detached accessory</u> structures shall meet the setback requirements specified in Town Code Section 29.40.015 (Accessory Buildings).

Table 1-2 - Setback Requirements			
Setback		Requirement ⁽²⁾	
Property Line Setbacks ⁽¹⁾	Front	Per the applicable zoning district. (5)	
	Garage Entry	18 feet	
	Interior Sides	4 feet ⁽³⁾	
	Rear		
	Street Side	Per the applicable zoning	
		district.	
Separation Between Detached Structures ⁽³⁾⁽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) For parcels created through an urban lot split where the parcels are under the same ownership, nNo interior side setback shall be required for two-unit housing development units constructed as attached units on separate lots, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance as a separate fee parcel. Similarly, no rear setback (for the front property) or front setback (for the rear property) shall be required for two-unit housing development units constructed as attached units in a flag-lot configuration where the parcels are under the same ownership.
- (4) Except for primary dwellings constructed as a duplex or attached single-family residences.
- (5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.

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- q. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and
- r. <u>Utilities.</u> New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.
- (2) 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 existing primary dwelling units as part of a two-unit housing development, except as provided by subsection (4) below, "Exceptions:"
 - a. Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front- and street-side elevations of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building footprint;
 - b. *Finished Floor*. The finished floor of the first story shall not exceed three feet in height as measured from finished grade;
 - c. 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;
 - d. Front Porch. If proposed, porches shall have a minimum depth of six feet and a minimum width equal to 25 percent of the linear width of the front elevation;
 - e. Step-back. The interior side and rear elevations of the second story of a twostory primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall. In the case of a covered porch on the first floor below, the step-back is measured from the structural post of the covered porch to the wall above;
 - f. Garages. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
 - g. Plate Height. The plate height of each story shall be limited to a maximum of 10 feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight feet; and
 - h. Windows. All second story windows less than 10 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 except as necessary for egress purposes as required by the Building Code.

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- i. Prohibited Materials. The following exterior materials are prohibited on all building exteriors:
 - Exterior foam molding;
 - 2. Vinyl siding;
 - 3. Plywood; and
 - 4. Exterior Insulation Finishing System (EIFS).
- j. Mechanical Equipment. Heating, ventilation, and air conditioning (HVAC) units, generators, energy storage systems (ESS), and other similar ground-mounted mechanical equipment shall be screened from view from any adjacent street if not already located out of view behind a building or solid fence.
- (3) 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 subsection (4) below, "Exceptions:"
 - a. *Number of Units*. A maximum of four units, with a maximum of two primary dwelling units, on lots that have not undergone an urban lot split.
 - b. Accessory Dwelling Units. In addition to the two residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.
 - c. 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 Town Code, respectively, apply to all two-unit housing developments.
 - d. Encroachment Permits. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve 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.
 - e. Restrictions on Demolition. The two-unit housing development shall not require either demolition of more than 25 percent of the exterior walls or alteration of any of the following types of housing:
 - 1. 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. This shall be evidenced by an attestation from the property owner;
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or

3. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner.

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for a two-unit housing development shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town.

If any existing dwelling unit is proposed to be demolished, the applicant shall comply with the replacement housing provisions of Government Code Section 66300(d).

- f. Recorded Covenant. Prior to building permit issuance, the applicant shall record a restrictive covenant in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A limitation restricting the property to residential uses only; and
 - 2. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- (4) Exceptions. If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two (2) primary dwelling units or physically preclude either of the two (2) primary dwelling units from being at least eight hundred (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.
 - a. 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 V. Section 29.10.640, "Application Process for Two-Unit Housing Development," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

(a) 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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).
- (4) Building Permits. Approval of a two-unit housing development application shall be required prior to acceptance of an application for building permit(s) for the new and/or modified primary dwelling unit(s) comprising the two-unit housing development;
- (5) 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
- (6) Appeals. Two-unit housing application decisions are ministerial and are not subject to an appeal.

SECTION VI. Section 29.10.650, "Subdivision Standards," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

- (1) 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:
 - a. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;
 - b. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one (1) parcel shall not be smaller than forty (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. If one (1) of the proposed lots is a flag/corridor lot, the area of the access corridor shall count toward the lot area as follows:
 - When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - 2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - c. *Minimum Lot Width*. Each new parcel shall maintain a minimum lot width of twenty (20) feet;
 - d. *Minimum Public Frontage*. Each new parcel shall have frontage upon a street with a minimum frontage dimension of twenty (20) feet, except as allowed above for flag/corridor lots;
 - e. Number of Lots. The parcel map to subdivide an existing parcel shall result in no more than two (2) parcels; and
 - f. Lot Merger. Lots resulting from an urban lot split shall not be merged unless that lot merger can be done without loss of housing units and without causing a non-conforming building, lot, or use.
- (2) General Requirements and Restrictions. The following requirements and restrictions apply to all proposed urban lot splits:
 - a. 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 Division;
 - b. *Dedication and Easements*. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements but may, however,

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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;

- c. 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 1-2 (Setback Requirements, Exception Number 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
- d. Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one (1) of the housing units on the newly created parcels as their principal residence for a minimum of three (3) years from either:
 - 1. The date of the approval of the urban lot split when the intent is to live in an existing residence; or
 - 2. Certificate of occupancy when the intent is to occupy a newly constructed residential unit.

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;

- e. 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 1-2 (Setback Requirements, Exception Number 2), maximum allowed lot coverage, and maximum allowed floor area ratio;
- f. Number of Units. No more than two (2) dwelling units may be located on any lot created through an urban lot split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as two-unit developments. Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;
- g. *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;

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- h. Restrictions on Demolition. The proposed urban lot split shall not require either the demolition of more than twenty-five (25) percent of the exterior walls or alteration of any of the following types of housing:
 - 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. This shall be evidenced by an attestation from
 the property owner;
 - 2. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. This shall be evidenced by an attestation from the property owner; or
 - 3. Housing that has been occupied by a tenant in the last three (3) years. This shall be evidenced by an attestation from the property owner;

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an urban lot split shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three (3) years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using and urban lot split;

- Replacement Units. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d);
- j. Recorded Covenant. Prior to approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;
 - 2. A limitation restricting the properties to residential uses only; and
 - 3. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- k. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;
- I. *Utility Providers*. The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and

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m. Compliance with Subdivision Map Act. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410), except as otherwise expressly provided in Government Code Section 66411.7.

SECTION VII. Section 29.10.660, "Application Process for Urban Lot Splits," of Division 10., "Two-Unit Housing Development and Urban Lot Splits," of Chapter 29, "Zoning Regulations," is amended to read as follows:

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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).
- (4) 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;
- (5) *Development*. Development on the resulting parcels is limited to a project approved by the two-unit housing development process, the Town's Accessory Dwelling Unit process, or through the Town's standard discretionary process;
- (6) 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
- (7) Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.

SECTION IX. Severability.

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

SECTION X. CEQA.

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378). Additionally, in accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 Ordinances are not a project subject to the California Environmental Quality Act.

SECTION XI. Consistency with General Plan.

The amendments to the Town Code are consistent with the General Plan as SB 9 is a state law; and

SECTION XII. Publication.

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

SECTION XIII. Effective Date.

This Ordinance was introduced at a regular Los Gatos on the 7 th day of May 2024, and adopted Gatos at its regular meeting on the day of	
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:	



MEETING DATE: 04/10/2024

ITEM NO: 2

DATE: April 5, 2024

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter

29 (Zoning Regulations) of the Town Code for Senate Bill 9 Regarding a Change to Required Second-Story Step-Backs and Other Clarifying Revisions. The Proposed Amendments to the Town Code Are Not Considered a Project Under Section 15378 of the California Environmental Quality Act, and in Accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 Ordinances Are Not a Project Subject to the California

Environmental Quality Act. Town Code Amendment Application A-24-003.

Project Location: Town Wide. Applicant: Town of Los Gatos.

RECOMMENDATION:

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

CEQA:

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

PREPARED BY: Ryan Safty

Associate Planner

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

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SUBJECT: SB 9 Ordinance Amendments

DATE: April 5, 2024

FINDINGS:

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

■ The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

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

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

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

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

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

PAGE 3 of 6

SUBJECT: SB 9 Ordinance Amendments

DATE: April 5, 2024

DISCUSSION:

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

A. Second-Story Step-Back Modification

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

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

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

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

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

B. Ordinance Clean-Ups

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

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SUBJECT: SB 9 Ordinance Amendments

DATE: April 5, 2024

DISCUSSION (continued):

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

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SUBJECT: SB 9 Ordinance Amendments

DATE: April 5, 2024

DISCUSSION (continued):

• Garage Setbacks [Section 29.10.630(1)(p)]. Clarification to the setback section was added to specify that only garages attached to the SB 9 primary unit can use the reduced SB 9 setbacks, and that detached garages are subject to the standard Town Code setbacks for accessory buildings.

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

PUBLIC COMMENTS:

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

CEQA DETERMINATION:

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

PAGE 6 of 6

SUBJECT: SB 9 Ordinance Amendments

DATE: April 5, 2024

CONCLUSION:

A. Summary

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

B. Recommendation

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

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

C. Alternatives

Alternatively, the Commission can:

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

EXHIBITS:

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

PLANNING COMMISSION – *April 10, 2024* **REQUIRED FINDINGS**

<u>Senate Bill 9 Ordinance Amendments</u> Town Code Amendment Application A-24-003

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

FINDINGS:

Required finding for CEQA:

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

Required consistency with the Town's General Plan:

■ That the proposed amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding Senate Bill 9 are consistent with the General Plan.

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- CODE

Chapter 29 - ZONING REGULATIONS ARTICLE I. - IN GENERAL

DIVISION 10. TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

DIVISION 10. TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

Sec. 29.10.600. Purpose and applicability.

The Town Council finds and determines that this Division 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 Ordinance. Any provision of this Division 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 Division shall supersede and take precedence over any inconsistent provision of the Town Code to the extent necessary to effect the provisions of this Division.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.610. Definitions.

In addition to definitions contained in Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following definitions apply for purposes of this Division. Where a conflict may exist, the definitions in this Division shall apply.

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on January 1, 2022, 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.

Adjacent parcel means any parcel of land that is: touching the parcel at any point; separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or separate from another parcel only by other real property which is in common ownership or control of the applicant.

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.

Car-share vehicle means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

Common ownership or control means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

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.

EXHIBIT 2

First residential unit means one of two primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200-square foot floor area limitation on first residential units.

Flag lot means "lot, corridor" as defined in Section 29.10.020 of Town Code.

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", "R-1D or Single-Family Residential Downtown Zone", or "HR or Hillside Residential Zone" as specified in Article IV, "Residential Zones," of the Zoning Code.

Subdivision Code means Chapter 24 of the Los Gatos Town Code.

Sufficient for separate conveyance means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

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.

Zoning Code means Chapter 29 of the Los Gatos Town Code.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.620. Eligibility.

An urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- (1) Zoning District. A parcel that is located within a single-family residential zone.
- (2) Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and the Town's Subdivision Regulations in effect at the time the parcel was created. Applications for an urban lot split or two-unit housing development will only be accepted on proposed parcels with either a recorded parcel map or certificate of compliance.
- (3) Excluding Historic Property. A parcel that does not contain a Historic Structure, as defined Town Code Section 29.10.020, or is not 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."
- (4) 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. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or State fire mitigation measures applicable to the development.
- (5) 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.
- (6) 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.
- (7) 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 two-unit housing development is constructed in compliance with the provisions of Town Code Chapter 29, Article XI, "Floodplain Management," as determined by the floodplain administrator.
- (8) 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).
- (9) Excluding Prime Farmland and Wetlands. A parcel that contains either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; or wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.630. Requirements.

Two-unit housing developments must comply with the following objective zoning standards, design review standards, and general requirements and restrictions:

(1) Zoning Standards. The following objective zoning standards supersede any other standards to the contrary that may be provided elsewhere 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 subsection (4), "Exceptions:"

- a. 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, and those located in the Hillside Residential (HR) zones, shall not exceed 16 feet in height;
- b. *Driveways.* Each parcel shall include no more than a single driveway unless the parcel has more than 100 feet of contiguous street frontage, and any new driveway shall satisfy the following requirements:
 - 1. A minimum width of 10 feet up to a maximum width of 18 feet. Driveways in the Hillside Residential (HR) zones shall have a minimum width of 12 feet;
 - 2. A minimum depth of 18 feet measured from the front or street side property line;
 - 3. Surfacing shall comply with Town Code Section 29.10.155(e);
 - 4. Only a single driveway curb-cut shall be permitted per parcel unless the parcel has more than 100 feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and
 - 5. A maximum slope of 15 percent.
- c. 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;
- d. *Fencing*. All new fencing shall comply with the requirements of Sections 29.40.030 through 29.40.0325 of the Zoning Code;
- e. Floor Area Ratio and Lot Coverage.
 - 1. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
 - 2. For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
 - When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - 3. The maximum size of the first new residential unit shall not exceed 1,200 square feet.
 - 4. When a two-unit housing development is proposed, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.
 - 5. Notwithstanding the floor area ratio standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

f. Grading.

1. To the extent required by Chapter 12, Article II and Section 29.10.09045(b) of the Town Code, the grading activities set forth in subsection 2. below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application;

- 2. Grading activity associated with a two-unit housing development shall not exceed 50 cubic yards, cut plus fill, except:
 - Light wells that do not exceed the minimum required per Building Code shall not count as grading activity for the purpose of this section;
 - ii. Grading activities required to provide the minimum driveway and fire access as required by the Santa Clara County Fire Department shall not count as grading activity for the purpose of this section; and
 - iii. Excavation within the footprint of a primary dwelling unit or garage shall not count as grading activity for the purpose of this section.
- g. Cut and Fill. Two-unit housing developments shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements) below:

Table 1-1 - Cut and Fill Requirements				
Site Element	Cut *	Fill *		
House and attached garage	8' **	3'		
Detached accessory building *	4'	3'		
Driveways ***	4'	3'		
Other (decks, yards) *	4'	3'		

- * Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.
- ** Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code and lightwells that do not exceed the minimum required per Building Code.
- *** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.
 - h. *Building Sites*. The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with an average slope exceeding 30 percent. This provision applies only to the building site, not the property as a whole;
 - i. Retaining Walls. Retaining walls shall not exceed five feet in height and shall not run in a straight continuous direction for more than 50 feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer adjacent to the street;
 - j. Light Reflectivity Value. Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;
 - k. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);
 - Lighting. New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill light onto neighboring parcels consistent with Section 29.10.09015 of the Zoning Code;
 - m. *Trees.* Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article 1, Division 2, "Tree Protection," of Town Code;

- n. *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;
- o. Parking.
 - 1. 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 public transportation; or where there is a designated parking area for one or more car-share vehicles within one block of the parcel.
 - 2. 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.
- p. *Setbacks*. Two-unit housing developments shall be subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below:

Table 1-2 - Setback Requirements				
Setback		Requirement ⁽²⁾		
Property Line Setbacks ⁽¹⁾	Front	Per the applicable zoning district. (5)		
	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 on separate lots, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance as a separate fee parcel.
- (4) Except for primary dwellings constructed as a duplex or attached single-family residences.
- (5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.
 - Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and
 - r. New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.

- (2) 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 existing primary dwelling units as part of a two-unit housing development, except as provided by subsection (4) below, "Exceptions:"
 - Balconies/Decks. Rooftop and second floor terraces and decks are prohibited. Balconies shall only
 be permitted on the front- and street-side elevations of a primary dwelling unit fronting a public
 street. Such balconies shall be without any projections beyond the building footprint;
 - b. *Finished Floor.* The finished floor of the first story shall not exceed three feet in height as measured from finished grade;
 - c. 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;
 - d. Front Porch. If proposed, porches shall have a minimum depth of six feet and a minimum width equal to 25 percent of the linear width of the front elevation;
 - e. *Step-back*. The interior side and rear elevations of the second story of a two-story primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall;
 - f. *Garages.* Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
 - g. Plate Height. The plate height of each story shall be limited to a maximum of 10 feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight feet; and
 - h. Windows. All second story windows less than 10 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 except as necessary for egress purposes as required by the Building Code.
- (3) General Requirements and Restrictions. The following requirements and restrictions apply to all twounit housing developments, inclusive of existing and new primary dwelling units, except as provided by subsection (4) below, "Exceptions:"
 - a. *Number of Units.* A maximum of four units, with a maximum of two primary dwelling units, on lots that have not undergone an urban lot split.
 - b. Accessory Dwelling Units. In addition to the two residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.
 - c. 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 Town Code, respectively, apply to all two-unit housing developments.
 - d. *Encroachment Permits*. Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve 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.
 - e. Restrictions on Demolition. The two-unit housing development shall not require either demolition of more than 25 percent of the exterior walls or alteration of any of the following types of housing:

- 1. 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. This shall be evidenced by an attestation from the property owner;
- Housing that is subject to any form of rent or price control through a public entity's valid
 exercise of its police power. This shall be evidenced by an attestation from the property
 owner; or
- 3. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner.

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for a two-unit housing development shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town.

If any existing dwelling unit is proposed to be demolished, the applicant shall comply with the replacement housing provisions of Government Code Section 66300(d).

- f. *Recorded Covenant*. Prior to building permit issuance, the applicant shall record a restrictive covenant in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A limitation restricting the property to residential uses only; and
 - 2. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- (4) Exceptions. If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two (2) primary dwelling units or physically preclude either of the two (2) primary dwelling units from being at least eight hundred (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.
 - a. 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.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.640. Application process for two-unit housing development.

- (a) 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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the applicant's parcel).
- (4) Building Permits. Approval of a two-unit housing development application shall be required prior to acceptance of an application for building permit(s) for the new and/or modified primary dwelling unit(s) comprising the two-unit housing development;
- (5) 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
- (6) Appeals. Two-unit housing application decisions are ministerial and are not subject to an appeal.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.650. Subdivision standards.

Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

- (1) 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:
 - a. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;
 - b. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one (1) parcel shall not be smaller than forty (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. If one (1) of the proposed lots is a flag/corridor lot, the area of the access corridor shall count toward the lot area as follows:
 - 1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - 2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - c. Minimum Lot Width. Each new parcel shall maintain a minimum lot width of twenty (20) feet;
 - d. *Minimum Public Frontage*. Each new parcel shall have frontage upon a street with a minimum frontage dimension of twenty (20) feet, except as allowed above for flag/corridor lots;
 - e. *Number of Lots*. The parcel map to subdivide an existing parcel shall result in no more than two (2) parcels; and

- f. Lot Merger. Lots resulting from an urban lot split shall not be merged unless that lot merger can be done without loss of housing units and without causing a non-conforming building, lot, or use.
- (2) General Requirements and Restrictions. The following requirements and restrictions apply to all proposed urban lot splits:
 - a. 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 Division;
 - b. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements but may, however, 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;
 - c. 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 1-2 (Setback Requirements, Exception Number 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
 - d. *Intent to Occupy.* The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one (1) of the housing units on the newly created parcels as their principal residence for a minimum of three (3) years from either:
 - 1. The date of the approval of the urban lot split when the intent is to live in an existing residence; or
 - 2. Certificate of occupancy when the intent is to occupy a newly constructed residential unit.

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;

- e. *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 1-2 (Setback Requirements, Exception Number 2);
- f. Number of Units. No more than two (2) dwelling units may be located on any lot created through an urban lot split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as two-unit developments. Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;
- g. *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;
- h. *Restrictions on Demolition*. The proposed urban lot split shall not require either the demolition of more than twenty-five (25) percent of the exterior walls or alteration of any of the following types of housing:

- 1. 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. This shall be evidenced by an attestation from the property owner;
- Housing that is subject to any form of rent or price control through a public entity's valid
 exercise of its police power. This shall be evidenced by an attestation from the property
 owner; or
- 3. Housing that has been occupied by a tenant in the last three (3) years. This shall be evidenced by an attestation from the property owner;

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an urban lot split shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three (3) years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using and urban lot split;

- i. Replacement Units. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d);
- j. Recorded Covenant. Prior to approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;
 - 2. A limitation restricting the properties to residential uses only; and
 - 3. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- j. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;
- k. *Utility Providers.* The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and
- Compliance with Subdivision Map Act. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410), except as otherwise expressly provided in Government Code Section 66411.7.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.660. Application process for urban lot splits.

- (a) 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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the applicant's parcel).
- (4) 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;
- (5) Development. Development on the resulting parcels is limited to a project approved by the two-unit housing development process or through the Town's standard discretionary process;
- (6) 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
- (7) Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.

(Ord. No. 2334, § 2, 11-15-22)

Sec. 29.10.670. Sunset clause.

If SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Division shall be repealed."

(Ord. No. 2334, § 2, 11-15-22)



MOCK

SB9 STEP BACK CODE MODIFICATION

TO: TOWN OF LOS GATOS

FROM: JAY PLETT ARCHITECT

GOOD EVENING COUNCIL MEMBERS.

THANK YOU SO MUCH FOR YOUR AVAILABILITIES TO MEET WITH PATRICK AND I.

WE WOULD ASK THAT AT YOUR NEXT STRATEGIC PRIORITIES MEETING, YOU WOULD MODIFY THE SB9 STEP BACK RULE TO INCLUDE ATTACHED COVERED PORCH STRUCTURES. WE ARE PROVIDING ILLUSTRATIONS FOR YOUR CONVENIENCE - ATTACHED.

WE BELIEVE THIS CHANGE WILL ENSURE THE INTENT OF THE STEP BACK RULE BY PROVIDING NEIGHBOR PRIVACY AND AT THE SAME TIME PROVIDE FOR MORE CREATIVE OPTIONS FOR ARCHITECTS AND TOWN RESIDENTS TO MEET THEIR DESIGN AND AESTHETIC CONCERNS - AND, NOT JUST FOR THE HOMEOWNER, BUT FOR THE NEIGHBORHOOD AS WELL.

I'VE SPOKEN EXTENSIVELY WITH RYAN SAFTY OF THE PLANNING DEPARTMENT - WHO HAS BEEN EXCEPTIONALLY HELPFUL - AND IT IS HIS POSITION THIS WOULD BE A MINOR MODIFICATION TO HOW THE TOWN ADMINISTERS SB9 COMPLIANCE AND A SIMPLE PROCESS OF AMENDING THE EXISTING CODE. I WOULD HAVE TO DEFER QUESTIONS ABOUT THAT PROCESS TO STAFF.

AGAIN, THANK YOU FOR YOUR TIME AND INTEREST IN THIS MATTER.

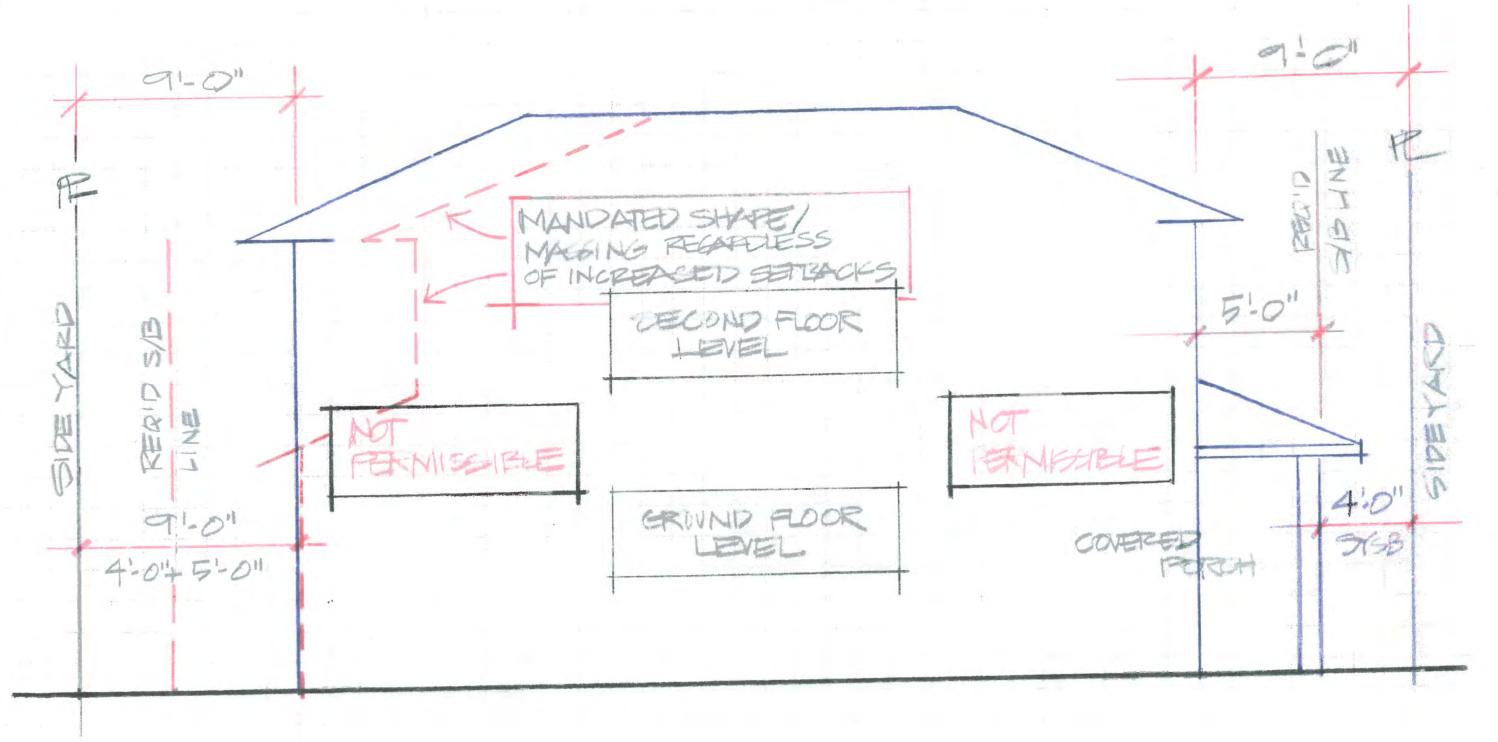
RESPECTFULLY,

JAY PLETT

TOWN MANDATED MASSING COIDE YARDS ITEM NO. 20. D'O" OFFSET 5-0" OFFERT FOND PLOT MANDADRY GEOUND FLAK 4EVEL Page 449

ARE PLETE HYPOTHETICAL MASSING - NOT PERMITTED BY TOWN





ITEM NO. 20.

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DIVISION 10. TWO-UNIT HOUSING DEVELOPMENTS AND URBAN LOT SPLITS

Sec. 29.10.600. Purpose and applicability.

The Town Council finds and determines that this Division is applicable only to voluntary applications for two-unit housing developments and urban lot splits consistent with Senate Bill 9 (SB 9). 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 #1-29.10.610 (Definitions) shall not be subject to this Ordinance. Any provision of this Division 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 Division shall supersede and take precedence over any inconsistent provision of the Town Code to the extent necessary to effect the provisions of this Division.

Sec. 29.10.610. Definitions.

In addition to definitions contained in Chapter 24 (Subdivision Regulations) and Chapter 29 (Zoning Regulations), the following definitions apply for purposes of this Division. Where a conflict may exist, the definitions in this Division shall apply.

Acting in concert means persons, as defined by Government Code Section 82047, as that section existed on January 1, 2022, 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.

Adjacent parcel means any parcel of land that is: touching the parcel at any point; separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or separate from another parcel only by other real property which is in common ownership or control of the applicant.

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.

Car-share vehicle means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

Common ownership or control means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

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

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

First residential unit means one of two primary dwelling units developed under a two-unit housing development and can be an existing primary dwelling unit if it meets or is modified to meet the 1,200-square foot floor area limitation on first residential units.

Flag lot means "lot, corridor" as defined in Section 29.10.020 of Town Code.

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

Page | 1 EXHIBIT 4

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", "R-1D or Single-Family Residential Downtown Zone", or "HR or Hillside Residential Zone" as specified in Article IV, "Residential Zones," of the Zoning Code.

Subdivision Code means Chapter 24 of the Los Gatos Town Code.

Sufficient for separate conveyance means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

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.

Zoning Code means Chapter 29 of the Los Gatos Town Code.

Sec. 29.10.620. Eligibility.

An urban lot split or a two-unit housing development may only be created on parcels satisfying all of the following general requirements:

- (1) Zoning District. A parcel that is located within a single-family residential zone.
- (2) Legal Parcel. A parcel which has been legally created in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.) and the Town's Subdivision Regulations in effect at the time the parcel was created. Applications for an urban lot split or two-unit housing development will only be accepted on proposed-parcels with either a recorded parcel map or certificate of compliance. When both an urban lot split and two-unit housing development applications are submitted simultaneously, no construction or building permits for new construction or grading activities may be issued until the new parcel map for the urban lot split approval has been recorded.
- (3) Excluding Historic Property. A parcel that 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 a parcel that does not contain a Historic Structure, as defined in Town Code Section 29.10.020, or is not 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."
- (4) 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 state responsibility area, as defined in Section 4102 of the Public Resources Code. 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. This subparagraph 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, including, but not limited to, standards established under all of the following or their successor provisions: (i) Section 4291 of the Public Resources Code or Section 51182, as applicable; (ii) Section 4290 of the Public Resources Code; and (iii) Section 7A of the California Building Code (Title 24 of the California

<u>Code of Regulations)</u>. <u>excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or State fire mitigation measures applicable to the development.</u>

- (5) 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.
- (6) 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.
- (7) 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 two-unit housing development is constructed in compliance with the provisions of Town Code Chapter 29, Article XI, "Floodplain Management," as determined by the floodplain administrator.
- (8) 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).
- (9) Excluding Prime Farmland and Wetlands. A parcel that contains either prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction; or wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- (10) Excluding Conservation Easements. A parcel subject to a recorded conservation easement.

Sec. 29.10.630. Requirements.

Two-unit housing developments must comply with the following objective zoning standards, design review standards, and general requirements and restrictions:

- (1) Zoning Standards. The following objective zoning standards supersede any other standards to the contrary that may be provided elsewhere 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 subsection (4), "Exceptions:"
 - a. 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, and those located in the Hillside Residential (HR) zones, shall not exceed 16 feet in height;

- b. <u>New Driveways</u>. Each parcel shall include no more than a single driveway unless the parcel has more than 100 feet of contiguous street frontage <u>or more than one existing driveway</u>. A₂ and any new driveway shall satisfy the following requirements:
 - 1. A minimum width of 10 feet up to a maximum width of 18 feet. Driveways in the Hillside Residential (HR) zones shall have a minimum width of 12 feet;
 - 2. A minimum depth of 18 feet measured from the front or street side property line;
 - 3. Surfacing shall comply with Town Code Section 29.10.155(e);
 - 4. Only a single driveway curb-cut shall be permitted per parcel unless the parcel has more than 100 feet of contiguous street frontage, designed in accordance with the Town's Standard Specifications and Plans for Parks and Public Works Construction; and
 - 5. A maximum slope of 15 percent.
- c. 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;
- d. *Fencing*. All new fencing shall comply with the requirements of Sections 29.40.030 through 29.40.0325 of the Zoning Code;
- e. Floor Area Ratio and Lot Coverage.
 - 1. The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.
 - 2. For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:
 - i. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - 3. The maximum size of the first new residential unit shall not exceed 1,200 square feet.
 - 4. When a two-unit housing development is proposed and the existing structures are at or below the maximum allowed floor area, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.
 - 5. Notwithstanding the floor area ratio <u>and lot coverage</u> standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

f. Grading.

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

- Grading activities required to provide the minimum driveway and fire access as required by the Santa Clara County Fire Department shall not count as grading activity for the purpose of this section; and
- iii. Excavation within the footprint of a primary dwelling unit or garage shall not count as grading activity for the purpose of this section.
- g. Cut and Fill. Two-unit housing developments shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements) below:

Table 1-1 - Cut and Fill Requirements				
Site Element	Cut *	Fill *		
House and attached garage	8' **	3'		
Detached accessory building *	4'	3'		
Driveways ***	4'	3'		
Other (decks, yards) *	4'	3'		

- * Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.
- ** Excludes below grade square footage pursuant to Section 29.40.072 of the Town Code and lightwells that do not exceed the minimum required per Building Code.
- *** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.
 - h. Building Sites. The footprint of the proposed residential unit(s) and garage(s) shall not be located on lands with an average slopes exceeding 30 percent. This provision applies only to the building site, not the property as a whole;
 - i. Retaining Walls. Retaining walls shall not exceed five feet in height and shall not run in a straight continuous direction for more than 50 feet without a break, offset, or planting pocket. Retaining walls shall have a five-foot landscaped buffer when adjacent to the street;
 - j. Light Reflectivity Value. Exterior material colors for primary dwelling units and garages in the Hillside Residential (HR) zones shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines;
 - k. Landscaping Requirement. All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO);
 - Lighting. New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill light onto neighboring parcels consistent with Section 29.10.09015 of the Zoning Code;
 - m. *Trees.* Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article 1, Division 2, "Tree Protection," of Town Code;
 - n. *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;
 - o. 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 public transportation; or where there is a designated parking area for one or more car-share vehicles within one block of the parcel.

- 2. 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.
- p. Setbacks. Two-unit housing developments and attached garages shall be subject to the setback and building separation requirements specified by Table 1-2 (Setback Requirements), below.

 Detached garages and detached accessory structures shall meet the setback requirements specified in Town Code Section 29.40.015 (Accessory Buildings).÷

Table 1-2 - Setback Requirements			
Setback		Requirement ⁽²⁾	
Property Line Setbacks ⁽¹⁾	Front	Per the applicable zoning district. (5)	
	Garage Entry	18 feet	
	Interior Sides	4 feet ⁽³⁾	
	Rear		
	Street Side	Per the applicable zoning district.	
Separation Between Detached Structures ⁽³⁴⁾⁻⁽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) For parcels created through an urban lot split where the parcels are under the same ownership, Nno interior side setback shall be required for two-unit housing development units constructed as attached units on separate lots, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance as a separate fee parcel. Similarly, no rear setback (for the front property) or front setback (for the rear property) shall be required for two-unit housing development units constructed as attached units in a flag-lot configuration where the parcels are under the same ownership.
- (4) Except for primary dwellings constructed as a duplex or attached single-family residences.
- (5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.
 - q. Stormwater Management. The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer; and
 - r. New units shall be designed as individual units, with separate gas, electric, and water utility connections directly between each dwelling unit and the utility.
 - (2) 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 existing primary dwelling units as part of a two-unit housing development, except as provided by subsection (4) below, "Exceptions:"

- a. *Balconies/Decks*. Rooftop and second floor terraces and decks are prohibited. Balconies shall only be permitted on the front- and street-side elevations of a primary dwelling unit fronting a public street. Such balconies shall be without any projections beyond the building footprint;
- b. Finished Floor. The finished floor of the first story shall not exceed three feet in height as measured from finished grade;
- c. 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:
- d. Front Porch. If proposed, porches shall have a minimum depth of six feet and a minimum width equal to 25 percent of the linear width of the front elevation;
- e. *Step-back*. The interior side and rear elevations of the second story of a two-story primary dwelling unit shall be recessed by five feet from the first story, as measured wall to wall. In the case of a covered porch on the first floor below, the step-back is measured from the structural post of the covered porch to the wall above;
- f. *Garages*. Street-facing attached garages shall not exceed 50 percent of the linear width of the front-yard or street-side yard elevation;
- g. Plate Height. The plate height of each story shall be limited to a maximum of 10 feet as measured from finished floor, and when above the first floor the plate height shall be limited to a maximum of eight feet; and
- h. Windows. All second story windows less than 10 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 except as necessary for egress purposes as required by the Building Code.
- (3) General Requirements and Restrictions. The following requirements and restrictions apply to all twounit housing developments, inclusive of existing and new primary dwelling units, except as provided by subsection (4) below, "Exceptions:"
 - a. *Number of Units*. A maximum of four units, with a maximum of two primary dwelling units, on lots that have not undergone an urban lot split.
 - b. Accessory Dwelling Units. In addition to the two residential units allowed under this section, consistent with Chapter 29, Article 1, Division 7, "Accessory Dwelling Units," of the Town Code, one accessory dwelling unit and one junior accessory dwelling unit shall be allowed on lots that have not undergone an urban lot split.
 - c. 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 Town Code, respectively, apply to all two-unit housing developments.
 - d. *Encroachment Permits.* Separate encroachment permits, issued by the Parks and Public Works Department, shall be required for the installation of utilities to serve 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.
 - e. Restrictions on Demolition. The two-unit housing development shall not require either demolition of more than 25 percent of the exterior walls or alteration of any of the following types of housing:
 - 1. 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. This shall be evidenced by an attestation from the property owner;

- Housing that is subject to any form of rent or price control through a public entity's valid
 exercise of its police power. This shall be evidenced by an attestation from the property
 owner; or
- 3. Housing that has been occupied by a tenant in the last three years. This shall be evidenced by an attestation from the property owner.

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for a two-unit housing development shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three years on a form prescribed by the Town.

If any existing dwelling unit is proposed to be demolished, the applicant shall comply with the replacement housing provisions of Government Code Section 66300(d).

- f. *Recorded Covenant*. Prior to building permit issuance, the applicant shall record a restrictive covenant in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A limitation restricting the property to residential uses only; and
 - 2. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- (4) Exceptions. If any of the provided zoning standards or design review standards would have the effect of physically precluding construction of up to two (2) primary dwelling units or physically preclude either of the two (2) primary dwelling units from being at least eight hundred (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.
 - a. 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.

Sec. 29.10.640. Application process for two-unit housing development.

- (a) 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) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).

- (4) Building Permits. Approval of a two-unit housing development application shall be required prior to acceptance of an application for building permit(s) for the new and/or modified primary dwelling unit(s) comprising the two-unit housing development;
- (5) 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
- (6) Appeals. Two-unit housing application decisions are ministerial and are not subject to an appeal.

Sec. 29.10.650. Subdivision standards.

Urban lot splits shall comply with the following objective subdivision standards, and general requirements and restrictions:

- (1) 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:
 - a. Flag/Corridor Lots. The access corridor of a flag/corridor lot (Town Code Section 29.10.085) shall be either in fee as part of the parcel or as an easement, and shall be a minimum width of 12 feet;
 - b. Minimum Lot Size. Each new parcel shall be approximately equal in lot area provided that one (1) parcel shall not be smaller than forty (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. If one (1) of the proposed lots is a flag/corridor lot, the area of the access corridor shall count toward the lot area as follows:
 - 1. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and
 - 2. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.
 - c. Minimum Lot Width. Each new parcel shall maintain a minimum lot width of twenty (20) feet;
 - d. *Minimum Public Frontage*. Each new parcel shall have frontage upon a street with a minimum frontage dimension of twenty (20) feet, except as allowed above for flag/corridor lots;
 - e. *Number of Lots.* The parcel map to subdivide an existing parcel shall result in no more than two (2) parcels; and
 - f. Lot Merger. Lots resulting from an urban lot split shall not be merged unless that lot merger can be done without loss of housing units and without causing a non-conforming building, lot, or use.
- (2) General Requirements and Restrictions. The following requirements and restrictions apply to all proposed urban lot splits:
 - a. 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 Division;
 - b. Dedication and Easements. The Town Engineer shall not require dedications of rights-of-way nor the construction of offsite improvements but may, however, 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;

- c. 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 1-2 (Setback Requirements, Exception Number 3). All other existing structures shall be modified, demolished, or relocated prior to recordation of a parcel map;
- d. Intent to Occupy. The applicant shall submit a signed affidavit to the Community Development Director attesting that the applicant intends to occupy one (1) of the housing units on the newly created parcels as their principal residence for a minimum of three (3) years from either:
 - The date of the approval of the urban lot split when the intent is to live in an existing residence; or
 - 2. Certificate of occupancy when the intent is to occupy a newly constructed residential unit.

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;

- e. 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 1-2 (Setback Requirements, Exception Number 2), maximum allowed lot coverage, and maximum allowed floor area ratio;
- f. Number of Units. No more than two (2) dwelling units may be located on any lot created through an urban lot split, including primary dwelling units, accessory dwelling units, junior accessory dwelling units, density bonus units, and units created as two-unit developments. Any excess dwelling units that do not meet these requirements shall be relocated, demolished, or otherwise removed prior to approval of a parcel map;
- g. *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;
- h. Restrictions on Demolition. The proposed urban lot split shall not require either the demolition of more than twenty-five (25) percent of the exterior walls or alteration of any of the following types of housing:
 - 1. 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. This shall be evidenced by an attestation from the property owner;
 - Housing that is subject to any form of rent or price control through a public entity's valid
 exercise of its police power. This shall be evidenced by an attestation from the property
 owner; or
 - 3. Housing that has been occupied by a tenant in the last three (3) years. This shall be evidenced by an attestation from the property owner;

If any existing housing is proposed to be altered or demolished, the owner of the property proposed for an urban lot split shall sign an affidavit, stating that none of the conditions listed above exist and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three (3) years on a form prescribed by the Town. The owner and applicant shall also sign an affidavit stating that neither the owner nor applicant, nor any person

- acting in concert with the owner or applicant, has previously subdivided an adjacent parcel using and urban lot split;
- i. Replacement Units. If any existing dwelling unit is proposed to be demolished, the applicant will comply with the replacement housing provisions of Government Code Section 66300(d);
- j. Recorded Covenant. Prior to approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Town, which shall run with the land and provide for the following:
 - 1. A prohibition against further subdivision of the parcel using the urban lot split procedures as provided for in this section;
 - 2. A limitation restricting the properties to residential uses only; and
 - 3. A requirement that any dwelling units on the property may only be rented for a period longer than thirty (30) days.
- j. Stormwater Management. The subdivision shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer;
- k. *Utility Providers.* The requirements of the parcel's utility providers shall be satisfied prior to recordation of a parcel map; and
- I. Compliance with Subdivision Map Act. The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410), except as otherwise expressly provided in Government Code Section 66411.7.

Sec. 29.10.660. Application process for urban lot splits.

- (1a) Applications for urban lot splits shall be submitted and processed in compliance with the following requirements:
 - <u>a.(1)</u> 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;
 - <u>b.(2)</u> Application Filing. An urban lot split application, including the required application materials and fees, shall be filed with the Community Development Department;
 - c.(3) Neighbor Notification. In addition to the standard application materials, the applicant will be required to submit one (1) set of stamped, addressed envelopes to neighboring residents and property owners. The Planning Department will assist the applicant in determining the neighboring properties to be notified (which will consist of all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of the properties directly across the street).
 - <u>d.(4)</u> 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;
 - <u>e.(5)</u> Development. Development on the resulting parcels is limited to a project approved by the two-unit housing development process, the Town's Accessory Dwelling Unit process, or through the Town's standard discretionary process;
 - <u>f.(6)</u> 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

g.(7) Appeals. Urban lot split application decisions are ministerial and are not subject to an appeal.

Sec. 29.10.670. Sunset clause.

If SB 9 is repealed or otherwise rescinded by the California State Legislature or by the People of the State of California, this Division shall be repealed.



ITEM NO: 2

DESK ITEM

DATE: April 10, 2024

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter

29 (Zoning Regulations) of the Town Code for Senate Bill 9 Regarding a Change to Required Second-Story Step-Backs and Other Clarifying Revisions. The Proposed Amendments to the Town Code Are Not Considered a Project Under Section 15378 of the California Environmental Quality Act, and in Accordance with Government Code Section 66411.7(n) and 66452.21(g), Senate Bill 9 Ordinances Are Not a Project Subject to the California

Environmental Quality Act. Town Code Amendment Application A-24-003.

Project Location: Town Wide. Applicant: Town of Los Gatos.

REMARKS:

Exhibit 5 includes additional information provided by a Commissioner.

EXHIBITS:

Previously received with the April 10, 2024, Staff Report:

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

Received with this Desk Item Report:

5. Commissioner Comment

PREPARED BY: Ryan Safty

Associate Planner

Reviewed by: Planning Manager and Community Development Director

This Page Intentionally Left Blank From:
To: Ryan Safty

Subject: Objective Design Standards for SB 9 Units Date: Tuesday, April 9, 2024 3:00:31 PM

Attachments: Interim Objective Design Standards Two Unit Overlay District.pdf

[EXTERNAL SENDER]

Dear Ryan.

Thank you so much for your prompt and detailed responses to my questions.

I would be very grateful if you would submit a desk item for tomorrow's PC meeting, at a Commissioner's request, for consideration of additional objective design standards similar to those of the County of San Mateo Interim Building and Design Guidelines, attached below.

With thanks in advance.

Jeffrey



CITY OF SAN MATEO
COMMUITY DEVELOPMENT DEPARTMENT

330 W. 20th Avenue San Mateo, CA 94403 www.cityofsanmateo.org (650) 522-7200

Two – Unit Development Overlay District Interim Objective Building and Design Standards

Purpose. The purpose of this document is to establish interim objective building and design standards for ministerial single-family and two-unit SB 9 development planning applications. These standards are intended to provide for high-quality building designs that fit contextually and respect the scale and design of existing single-family neighborhoods and district where new residential development is proposed.

Applicability. The interim standards set forth herein shall be applicable to all ministerial single-family and two- unit SB 9 development projects and shall apply in addition to the development standards in Chapter 27.21. In the event of a conflict between these standards and the standards of Chapter 27.21, the more restrictive standards shall apply except that no standard shall preclude the development of at least two dwelling units that are at least 800 square feet each as permitted by Sections 65852.21 and 66411.7, of the California Government Code, as amended. **Definitions.** The following definitions shall apply. Terms not defined herein shall defer to the definitions contained

Definitions. The following definitions shall apply. Terms not defined herein shall defer to the definitions contained in Chapters 26 and 27 of the San Mateo Municipal Code. Where definitions conflict, the definitions below shall prevail.

- (a) "Architectural Features" shall include but are not limited to bay windows, box windows, projections of at least 18 inches, balconies, balconettes, insets of at least 18 inches, and dormers.
- (b) "Attic" means a non-habitable space within the roof of a building as defined by the California Building Code.
- (c) "Dormer" means a roofed projecting window structure, set upright in a sloping roof, that projects vertically beyond the plane of the pitched roof. The face of a dormer shall be setback at least 1 foot from the wall below, with a roof pitch no less than half the main roof and a ridge below the main roof ridge.
- (d) "Utilities and Mechanical Equipment" means, but is not limited to, air conditioners; heaters; utility meters; cable and similar telecommunications equipment; backflow preventions; irrigation control valves; electrical transformers; pull boxes; all ducting for air conditioning, heating, and blower systems; fire protection equipment; and all roof-mounted equipment.

Objective Building and Design Standards. All development shall conform with the following:

- (a) <u>Architectural Style</u>
 - (1) Attached units shall be of the same architectural style including:
 - (A) Roof form
 - (B) Windows
 - (C) Entrances
 - (D) Massing/scale/proportions
 - (E) Colors/Materials
 - (F) Architectural detailing/fenestration.

ITEM NO. 20.

(b) Massing and Scale

(1) Structures shall provide a plane offset of a minimum of two feet per each 30 feet of horizontal length along the primary frontage and a street side yard Structures shall provide a minimum 2-foot stepback for second story elements on side elevations and on a rear elevation when it is within 15 feet of the rear lot line.

(c) Entries and Entry Ways

- (1) Individual entries shall be provided to each dwelling unit.
- (2) All primary entries to a dwelling unit shall incorporate at least one of the following elements at front entrances:
 - (A) Front porches
 - (B) Stoops
 - (C) Recessed entry with a depth of at least 3 feet
- (3) At least one principal entryway shall face the primary street frontage, primary right-of-way, or access corridor.
- (4) When an exterior staircase is proposed for an upper-level primary dwelling unit, it shall have a setback of at least 5 feet from nearest lot line and shall have a landing limited to the minimum area required to allow ingress and egress as specified by the California Building Code.

(d) Windows

- (1) Window type, style, recess depth, and mullions shall be consistent across elevations.
- (2) Location and Privacy
 - (A) Second story windows and balconies shall be offset from the window locations and balconies of neighboring residences to maximize privacy.
 - (B) When located within 5 feet of a lot line of an abutting residential lot, second story windows up to 5 feet from the finished floor shall provide and maintain obscured glazing.

(e) Materials and Colors

- (1) A building shall carry the same theme on all elevations. A theme includes primary (non-accent) material(s) and color(s).
- (2) The following materials are prohibited on building exteriors:
 - (A) Exterior Foam Molding
 - (B) Corrugated Metal
 - (C) Vinyl Siding
 - (D) Plywood
 - (E) Exterior Insulation Finishing System (EIFS)
 - (F) Any material with a light reflection value of <45.
- (f) <u>Lightwells.</u> Lightwells shall not be located along the primary front façade of a structure. All light wells shall be screened from public view
- (g) <u>Lighting.</u> All exterior lighting shall be downward directed (excluding landscaping uplighting), have a shielded light source, and be designed so that light is not directed-off site.
- (h) Utilities and Mechanical Equipment

Ground-mounted utilities, mechanical equipment, generators, and AC units that directly serve the development shall be screened from view from adjacent properties and the public right-of-way by either an enclosure designed as part of the building and/or fencing.

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1	<u> </u>	RANCES:
2		
3	Los Gatos Planning Commissioners:	Steve Raspe, Chair Emily Thomas, Vice Chair
4		Jeffrey Barnett Susan Burnett
5		Adam Mayer
6		
7	Town Manager:	Laurel Prevetti
8	Community Development Director:	Joel Paulson
9		
10	Town Attorney:	Gabrielle Whelan
11	Transcribed by:	Vicki L. Blandin
12		(619) 541-3405
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LOS GATOS PLANNING COMMISSION 4/10/2024, Item #2, Amendments to Town Code re: Senate Bill 9

24

PROCEEDINGS:

CHAIR RASPE: That takes us to the public portion

of the hearing in which we have one item this evening, Item

2. It is forwarding a recommendation to the Town Council on

Amendments to Chapter 29, the Zoning Regulations, of the

Town Code for Senate Bill 9, also known as SB 9, regarding

a change to required second story step-backs and other

clarifying revisions. The proposed amendments to the Town

Code are not considered a project under Section 15378 of

the California Environmental Quality Act, and in accordance

with Government Code Section 66411.7(n) and 66452.21(g),

Senate Bill 9 Ordinances are not a project subject to the

California Environmental Quality Act. This is Town Code

Commissioners, are there any disclosures on this

Amendment Application A-24-003.

evening, Commissioners.

Before you is an amendment to the SB 9 Ordinance within Chapter 29 of Town Code. Earlier this year the Town Council heard from a local architect requesting revisions

regarding the second story step-back rule for SB 9 two-unit developments. Town Council voted to include this request within the strategic priorities for the coming years and listed the change as the first priority for ordinance amendments. So here we are.

Current Town Code for SB 9 requires that the interior, side, and rear elevations of the second story of a two-story primary dwelling unit be recessed by 5' from the first story, and that's measured from wall-to-wall.

The standard was included originally in an attempt to limit potential second story privacy impacts associated with an SB 9 development project since SB 9 units can be placed as close as 4' from the side and rear property lines.

Additionally, the 5' step-back decreases the mass of a two-story SB 9 in accordance with the Town's Residential Design Guidelines since only objective standards can be used to review these SB 9 applications.

Based on the diagram from the architect, and that's provided in Exhibit 3 of your report, measuring the 5' step-back from the structural post of a covered porch would meet the same intent and allow the design community more flexibility.

1 2

The interior, side, and rear elevations of the second story would still have the increased 9' minimum side and rear setback, and the covered porch step-back would still help decrease the second floor massing.

In addition to the step-back modifications provided in Exhibit 4, Staff also recommends a handful of other minor clean up items. These are either to better align the Town's standards with State law or to clarify existing standards as identified by Staff over the past few years as we've been using the ordinance and reviewing applications.

The recommended ordinance modifications in Exhibit 4 would not be considered a project under CEQA and would be very minor changes to the existing process, hardly noticeable.

A Desk Item was provided today on Commissioner request to provide the City of San Mateo's Interim Building and Design Guidelines for consideration in adding additional objective standards within the Town's ordinance.

It is worth noting that the Town's existing SB 9
Ordinance has actually been very effective, and the
direction from Town Council was to make a single
modification to an existing design standard. To date we
have approved three two-unit housing development

1 applications and 17 urban lot splits, and Staff on several occasions has received verbal praise from HCD regarding our 3 SB 9 Ordinance. 4 Based on the discussion provided in the Staff 5 Report Staff recommends that the Planning Commission review 6 the information included within the report and forward a 7 recommendation to the Town Council for approval of the 8 amendments to Chapter 29 of the Town Code in Exhibit 4, and also make the required findings in Exhibit 1. 10 This concludes Staff's presentation and we are 11 happy to answer any questions. 12 CHAIR RASPE: Thank you very much, Mr. Safty. 13 Commissioners, any questions for Staff with respect to 14 either the report they provided or the Desk Item that has 15 16 been attached? Commissioner Barnett. 17 COMMISSIONER BARNETT: I'm going to ask an 18 obvious question to which there is an obvious answer. The 19 Town Attorney has reviewed each of these changes and 20 approves them? 21 RYAN SAFTY: That is correct. 22 CHAIR RASPE: Thank you so much. Good question I 23 was hoping someone would ask. 24 We now invite comments from members of the 25

public. If you've not already turned in a speaker card to

LOS GATOS PLANNING COMMISSION 4/10/2024, Item #2, Amendments to Town Code re: Senate Bill 9

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Staff, please do so at this time, or if you're on Zoom use the Raised Hand feature. When you are called to speak, please state your name and address for the record, adjust the microphone so that you may speak directly into it, and you will have three minutes.

I have a single card so far. Mr. Tony Jeans, if you'd like you can step forward if you wish to speak on the matter before the Commission, Agenda Item #2, and you have three minutes, sir. If you could begin by stating your name and address for the record.

TONY JEANS: Tony Jeans, PO Box 1518, Los Gatos. Thank you for this opportunity.

I think the Town of Los Gatos SB 9 Ordinance is working very well. I'm comparing it with other ordinances, such as Saratoga and Monte Sereno, for example.

This is not really an ordinance issue, but it's more an issue and I'd like your help to make this happen: I would like the process to run more smoothly.

For example, I'm in the middle of one SB 9 lot split on Marchmont Avenue. Planning approved it, so we've done the lot split. The owner of the property who recently purchased it wants to move into the house that is going to be remodeled on the property, and then they're going to

LOS GATOS PLANNING COMMISSION 4/10/2024, Item #2, Amendments to Town Code re: Senate Bill 9

build another house that they'll sell, which will enable them to basically afford to move into Los Gatos.

The problem I'm having is in submitting the plans to the Town to remodel the existing house I got plan check comments back from Planning. Building is taking forever, but the plan check comments that I got back from Engineering was we can't give you any comments at this stage because you haven't recorded the Parcel Map.

Now, the Parcel Map is part of the process of doing a lot split, but why can't they look at what we're trying to do with an existing house? Why throw back something saying we can't even review it? The reason it's taken so long to get the Parcel Map done is it has gone through three iterations with Engineering at four weeks per time to try to get the Parcel Map fine tuned.

I think if this can all be made a little more efficient it would really help. This is meant to be an efficient process.

As to words in the actual change, I want you to distinguish between a conservation easement, which is being added, and open space easement, which should not be restrictive. If there is an open space easement that is not a conservation easement, that should not restrict someone

from doing an SB 9 lot split, and there is a distinction in the law. Thank you.

CHAIR RASPE: Thank you. Before you step away, Commissioners, any questions for Mr. Jeans? Vice Chair Thomas.

VICE CHAIR THOMAS: Thank you for your input. I know we always appreciate the public comments.

I just want to clarify about the conservation easement versus open space easement. You're requesting that it clarify that conservation easement does not include open space easement?

TONY JEANS: Right. A conservation easement typically is something that you have to get a land trust involved. There's a tax break, it bestows certain benefits on the owner of the land, and an open space easement is different. Sometimes you might put an open space easement so that you can't build on a certain portion of the property, but it is nothing to do with a conservation easement. An open space easement might be placed along the edge of a creek, for example.

VICE CHAIR THOMAS: Are you asking that we would include a definition of conservation easement in the list of definitions?

TONY JEANS: I am saying that there is a distinction between the two. Thank you.

VICE CHAIR THOMAS: Yes, perfect. Thank you.

CHAIR RASPE: Thank you. Any other questions for this speaker? No. Thank you again for your comments. I have no further yellow cards for any members of the public present. Mr. Paulson, do we have any members of the public on Zoom?

JOEL PAULSON: We do not.

CHAIR RASPE: Very good. We have no more public comment. I will close the public hearing portion of this matter. Commissioners, I invite you to ask questions, ask questions of Staff, or of each other.

I think the most efficient way to do it is we've been provided Exhibit 4, which is a redline document making changes to our existing policy with new changes. My hope and my desire is to go through this on a page-by-page basis, and if any Commissioners have any comments we'll do that as we go through, keeping in mind we also have Commissioner Barnett's additional comments and if we can introduce them as part of this discussion that would be great.

Without further ado let's begin then with page 1 of Exhibit 4. Again, minor definitional comments.

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1 COMMISSIONER BARNETT: Can I ask one question of 2 Staff before we move forward? 3 CHAIR RASPE: Please. 4 COMMISSIONER BARNETT: Does Staff have a response 5 to Mr. Jeans' comments regarding the timing of the Parcel 6 Map? 7 RYAN SAFTY: We do, thank you. This is actually 8 something that we recommended an amendment to on page 2 of Exhibit 4, under 29.10.620, Item 2, on what constitutes a 10 legal parcel. Previously we would say that you had to get 11 your Parcel Map recorded before we're going to even accept 12 the two-unit development application. Now we say when both 13 urban lot split and two-unit housing development 14 applications are submitted simultaneously no construction 15 16 or building permits for new construction or grading 17 activities may be issued until the new Parcel Map for the 18 urban lot split has been approved and recorded. So we will 19 take in the application, we will review a Building Permit; 20 we're just not going to issue Construction Permits until 21 the parcel is legal. 22 COMMISSIONER BARNETT: Thank you for that. 23 CHAIR RASPE: Commissioner Mayer. 24 COMMISSIONER MAYER: I have a follow up question 25 to that actually. The public comment was in regard to the

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renovation of an existing structure on the property to be split. Is that covered here in that section? I'm only seeing it refer to a two-unit housing development application and not necessarily like a remodel application.

RYAN SAFTY: Thank you for the question. I would say I would need to know a little bit more about the individual case being referenced. I don't know why the Parks and Public Works Department cannot review an internal remodel.

There is one minor point to clarify that if an urban lot split is going to modify or demolish a structure that has been used, say, as affordable housing or has been rented by somebody in the last three years, then you can't do anything on it. That's the only example I could think of why Engineering would not allow that permit to be issued.

JENNIFER ARMER: I'll just add that that language is directly from State law, so that is something that needs to be maintained. I think at this point we can follow up with the member of the public who commented and figure out which project it is and see if we can find out what the situation was there.

COMMISSIONER MAYER: If you could follow up with the Planning Commission after you guys have that conversation, because I'm curious. With more SB 9 projects

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1 coming down the pipeline, there are going to be instances where a property owner is going to want to keep one of the 3 existing structures on the site, perhaps to do a remodel or 4 do an addition to it, and then add two units to the other 5 parcel they split off. 6 SB 9 is still relatively new, so I think we're 7 all learning as we go along and see more applications 8 coming through, but in these sort of instances I'd like to see the process be more streamlined. Thanks. 10 CHAIR RASPE: Thank you. Any other questions for 11 Staff? All right, then Exhibit 4, and we'll take this one 12 page at a time. 13 Any Commissioners have any questions or comments 14 with respect to page 1? 15 16 Okay, page 2. This includes the language we were 17 just discussing. Mr. Safty just pointed to some other 18 changes, including the historic property exclusion, and the 19 very high fire hazard severity zone exclusion as well. Any 20 comments? 21 My only thought here is perhaps based upon Mr. 22 Jeans' comments of in the definition portions should we 23 include now an open space easement definition? 24 RYAN SAFTY: I would like to jump in if I can on

LOS GATOS PLANNING COMMISSION 4/10/2024, Item #2, Amendments to Town Code re: Senate Bill 9

25

that one.

1 CHAIR RASPE: Please.

RYAN SAFTY: The specific conservation easement situation is something that is directly out of State law, and so in speaking with the Town Attorney previously the direction is that we keep it identical to State law. Our SB 9 Ordinance does not say the words "open space easement," however, there is a civil code that our Town Attorney has pointed in our direction that does say that an open space easement is a part of a conservation easement, and so we wanted to leave it that way so if the civil code changes our ordinance does not have to change; our ordinance is directly pulled from State law.

CHAIR RASPE: Thank you. I appreciate those comments. Given that explanation, Commissioners, any further suggested changes or ideas on page 2? Seeing none.

Let's proceed to page 3. It might be a minor change on page 3. Any changes there? Seeing none.

Page 4. Seeing none.

Page 5. Again, these appear to be largely stylistic and/or grammatical changes. Vice Chair Thomas.

VICE CHAIR THOMAS: I did just notice that for G for cut and fill it wasn't in italics and all the other ones are.

1	CHAIR RASPE: With that one change then, page 6.
2	Vice Chair Thomas.
3	VICE CHAIR THOMAS: For R I noticed that it just
4	starts with New Units, but all the others start with like,
5	say, storm water management, period, and then the
6	description. This one doesn't have a title that's in
7	italics.
8	CHAIR RASPE: Thank you for those comments. Any
9 10	other Commissioner comments on page 6?
11	Page 7, and this is a single change here. This is
12	the change which started the process of the revision of the
13	section, that is, the second story step-back. Staff has
14	included new language there on how that is to be measured
15	when there is a covered porch. Commissioners, any changes
16	or comments? Yes, Commissioner Mayer.
17	COMMISSIONER MAYER: I just want to say I support
18	the changes that were proposed by Jay Plett.
19	CHAIR RASPE: Thank you. Any other comments?
20	Seeing none.
21	Page 7. It looks like one single change. I see no
22	comments.
23	Page 8. There is a single comment on the bottom.
24	Page 9 has no changes.
25]

1 Page 10, a single change in paragraph (e). Seeing 2 no comments. 3 Page 11. It looks like some numbering and 4 lettering changes, and again, a couple of minor clarifying 5 comments. Any changes or comments? Seeing none. 6 Then, again, only minor changes on the final 7 page. 8 So it sounds like our changes are only stylistic as to the language proposed by Staff. 10

I'd like to direct my Commissioners then to the item provided by Commissioner Barnett, which is San Mateo's Interim Objective Building and Design Standards for Two-Unit Development Overlay Districts. I invite discussion among our Commissioners-we haven't had much time to look at it-and your thoughts as to how you would like to take a look at these.

It could be the case that some or all of this is applicable to this discussion, or it may be the case that we simply wish to append this to our motion to Town Council and ask them if they wish to consider any of these additional thoughts or changes which are not currently incorporated into our changes. I'm open to ideas and discussions from my Commissioners.

Yes, Commissioner Barnett.

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COMMISSIONER BARNETT: I'd like to ask a preliminary question of Staff. Although the time has been short, do you have a feeling about whether architectural standards of this nature would be consistent with the SB 9 law?

RYAN SAFTY: Thank you. Actually I did have a chance to go through San Mateo's documents, I kind of went line-by-line, if you wanted to go that route, or I can also alternatively just let you know which ones I do not think are objective and would not stand up in court, and then there are some also I wanted to point out that we have standards that say this already.

So why don't I start with just letting you know which items I do not think are objective? This is based on my extensive work on the objective standards document and M-Group consultants, so I've got a pretty good idea.

Item (a), Architectural Style, is not defined. We've been directed previously from M-Group that that's not going to stand up. That's saying that you have to have the same architectural style.

Item (c)(2) Entrances and Entryways, "All primary entries to a dwelling unit," they don't define primary entries. It would be a simple fix, but they would have to define it.

1 Item (d)(1), Windows, it says windows type and 2 style. Those two would not be enforceable. Recess depth and 3 mullions would be enforceable, since we could definitively 4 say that that's consistent on all sides. 5 Then the last one, (e) (1), Materials and Colors, 6 "A building shall carry the same theme on all elevations." 7 That one gives me the biggest pause. 8 Thank you very much. COMMISSIONER BARNETT: That's very helpful. 10 CHAIR RASPE: Commissioners, then what I propose 11 is since we're going through this for the first time as a 12 group, why don't we go through it as a group and let's 13 address quickly those that are on here that we think would 14 be considered objective standards and could be considered 15 16 by the Town, and those we wish to pass along to Town 17 Council. 18 Commissioner Mayer. 19 COMMISSIONER MAYER: I have a question first 20 before we dive into that. 21 CHAIR RASPE: Please. 22 COMMISSIONER MAYER: Probably for Staff. Does the 23 SB 9 State Ordinance require that the Town create objective 24 standards for a two-unit development?

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RYAN SAFTY: It requires that all standards in our SB 9 Ordinance are objective. It's worth noting that the terms we're using right now are easy to get confused. These are objective design standards. We have objective standards. It's also worth noting we also have objective design standards in our ordinance.

COMMISSIONER MAYER: That's what I'm referring to, the objective design standards.

Second question follow up. The Town already has Residential Design Guidelines. That would not apply to a

RYAN SAFTY: That is correct. It's worth noting that when we were going through the SB 9 process we did go through the Residential Design Guidelines and tried to figure out which of those items, for example, the 5' stepback, we wanted to implement in the SB 9 Ordinance.

CHAIR RASPE: Yes, Commissioner Burnett.

COMMISSIONER BURNETT: Question for Staff, thank you. Which ones do we have presently that would be already

The items that are already addressed? Item (b) (1), Massing and Scale. There are two different ways of doing this. They're talking about a daylight plane. We have a 5' step-back, and we also have

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1 reduced plate heights on the second story, so that helps 2 with both the massing and the scale. 3 CHAIR RASPE: Vice Chair Thomas. 4 I just would like to VICE CHAIR THOMAS: 5 interrupt with a question. The language that we currently 6 have to address that is most similar to what is in our 7 Residential Design Guidelines versus this language? They 8 both address massing, but we probably want to be as consistent as possible with how we address massing across 10 those two areas? 11 RYAN SAFTY: That is correct that what we have in 12 our current SB 9 Ordinance is much closer to the wording in 13 the Residential Design Guidelines. 14 VICE CHAIR THOMAS: Okay, thank you. 15 16 CHAIR RASPE: Mr. Safty, you were going down a 17 list of those items that we have addressed at least in some 18 form or manner. 19 Thank you. Moving on, (c)(1), RYAN SAFTY: 20 Entries and Entryways, "Individual entries shall be 21 provided to each dwelling unit." That's a Building Code 22 requirement; there is no need to put that in our SB 9 23 Ordinance. 24 (d)(2), Windows, "Location and Privacy," we have 25 that. We've got the requirement that any window closer than

1	10' of a side or rear property line has to be Clerestory,	
2	and additionally, we also have balcony requirements where	
3	we say you cannot have any balconies on the second story of	
4	that project, and if you are going to have them I think we	
5	say they have to be within the footprint of the side and	
6	rear elevations.	
7	(e) Materials and Colors, (F), we've got light	
8	reflection values (LRV) requirements. We say if you're in	
9	the hillside you're subject to 30 LRV, which is, again,	
11	kind of repeating what's in our Hillside Design Guidelines.	
12	Then (g), Lighting, we have that almost identical	
13	in our ordinance.	
14	CHAIR RASPE: Thank you so much. If I could	
15	recap, and please correct me if I'm wrong.	
16	So those matters which remain, they are either	
17	neither subjective or we haven't already addressed them	
18	elsewhere. That would include (c)(3) and (4), is that	
19	correct?	
20	RYAN SAFTY: Yes.	
21	CHAIR RASPE: I think (e)(2), but excluding (F).	
22	RYAN SAFTY: Yes.	
23	CHAIR RASPE: (e)(2), that's sub (A) through sub	
25	(E), correct?	
	RYAN SAFTY: Correct.	

1	CHAIR RASPE: And then all of sub (g) and sub
2	(h)?
3	RYAN SAFTY: Correct.
4	CHAIR RASPE: So those are the ones,
5	Commissioners, that we currently don't have addressed in
6	our guidelines and could be permissible to be added to our
7	guidelines. So if we were going to add any, those would be
8	the ones I would proffer we should discuss this evening.
10	Does that sound fair?
11	COMMISSIONER BURNETT: Yes.
12	CHAIR RASPE: Vice Chair Thomas.
13	VICE CHAIR THOMAS: I do have a question about
14	(h) Utilities and Mechanical Equipment. What is in our
15	Residential Design Guidelines related to that?
16	RYAN SAFTY: We say we don't want to see them,
17	and so normally Staff asks for them to be behind a fence.
18	VICE CHAIR THOMAS: So it's kind of like a
19	request? I guess people probably don't want to see them in
20	general either, so this is kind of a self-enforcing
21	situation.
22	RYAN SAFTY: There's not generally much pushback
24	on that, and I would argue the same thing with (c)(3),
25	Entries and Entryways. Most people are going to put their

1 entrance facing one of these streets, so it just happens 2 naturally. 3 VICE CHAIR THOMAS: Okay, thank you. 4 CHAIR RASPE: Very good. Again, as a Commission 5 if we want to proffer ideas or suggestions to include some 6 of these comments. Let's just go through these one at a 7 time then. 8 So (c)(3), "At least one principal entryway shall 9 face the primary street frontage, primary right-of-way, or 10 access corridor." As Mr. Safty has indicated, generally 11 this happens as a matter of practicality, but do we want to 12 as a Commission include this within our objective standards 13 for SB 9 properties? 14 Commissioner Mayer. 15 16 I don't know. COMMISSIONER MAYER: 17 CHAIR RASPE: Anyone have any strong feelings? 18 COMMISSIONER BARNETT: I'll speak up on that one. 19 Even though it might be common practice, I think that it 20 makes logical sense to have it as an objective; it's not 21 going to hurt, and it could help. 22 COMMISSIONER BURNETT: I agree. 23 VICE CHAIR THOMAS: I am wondering if 24 Commissioner Mayer could expand on, maybe from an 25 architectural point of view, why this would be problematic?

1 COMMISSIONER MAYER: Sure. What SB 9 is doing is 2 it's legalizing what is essentially like a four-plex unit 3 on one property before it's split, and I just don't want to 4 limit architecturally the entry sequence to the units. 5 Now, obviously for a single-family home it's 6 pretty standard 99.9% of the time to have the entry facing 7 the front right-of-way. I just don't want to limit 8 necessarily future projects like four-plex projects. It depends on the property itself, and I think it 10 should be a case-by-case basis. For instance, if someone 11 proposes an SB 9 project and they don't have the entry on 12 the front and it looks totally out of place in the 13 neighborhood, I think that's something that can be brought 14 up either by the Commission or Staff or something, but I 15 just think it's a bit restrictive to put that into 16

objective standards at this point.

CHAIR RASPE: Yes, Commissioner Burnett.

COMMISSIONER BURNETT: Just a comment. Can we say "preferably"?

JENNIFER ARMER: I'll jump in on that. Yes, it would need to be objective, and one cautionary thought on this is with Accessory Dwelling Units we did get direction from HCD that one of the regulations we had in place for them that the entry door for the ADU can't be visible from

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the street, that was something that we were not allowed to prohibit.

This is a different character. I don't remember whether it was broader than that in terms of rules about the entryways, but it's the kind of thing that could potentially be a little risky.

CHAIR RASPE: Yes, Commissioner Barnett.

COMMISSIONER BARNETT: I just note that the requirement is for at least one door, and I was thinking about Commissioner Mayer's comment about perhaps there would be a U-shaped configuration, and in that case you would think that at least one unit at the bottom of the U would be able to have a front door so that there is not an appearance of it being a jail and enclosed complex.

CHAIR RASPE: Commissioner Mayer.

COMMISSIONER MAYER: I understand Commissioner
Barnett's concern for sure. I think the fear is having this
blank wall facing the public right-of-way, and I think
that's understandable. I don't know if there's a way we can
put language and like objective design standards to say
that you're not allowed to have a blank wall, like maybe it
needs to have some sort of façade articulation and some
fenestration like some windows or something.

CHAIR RASPE: Thank you. Vice Chair Thomas.

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I'm still not convinced though that it needs to be like the front door, but I do understand that there is concern about how the front façade appears on the street and I'm willing to maybe explore that.

I just imagine like, for instance, you have four units. They could be off of one linear road or corridor along the side of the property rather than directly on the front. It depends again on a case-by-case basis on the individual site. I just don't want to put this restriction in.

CHAIR RASPE: Yes, Commissioner Burnett.

this. The problem with objective guidelines here, you take so much away from any kind of subjective architectural design, so that if we were left with a frontage that has no door, no personality, I mean what we're trying to do is have some personality into the building and everything is objective, nothing is subjective, so I would think it's important to have something to break up a wall that if we leave that in place you're not having... I mean, there's really no personality, so I think this is a way we could have some kind of personality into the building without being subjective.

1 VICE CHAIR THOMAS: I agree with Commissioner 2 Mayer for two reasons. One, I think that 99.9% of the time 3 people are going to not want to just build a wall that 4 faces the frontage street, because people inherently like 5 things that look... If they're going to put money and energy 6 and time, and money in Los Gatos, into building a unit it's 7 probably going to look decent, because many family members 8 I have are real estate agents, and what something looks like from the street makes a big difference, so that being 10 said I think that, again, this is like a self-enforcing 11 thing and I think that it only restricts. I'm not concerned 12 that this is going to be happening all over town, so I 13 agree with Commissioner Mayer. 14 I do have a question for Staff. In our 15 16 17 18 face the street? Because if we don't, then there's no

Residential Design Guidelines do we require anything about having a window or a front door or anything that has to reason that we should include it in here, I don't think.

RYAN SAFTY: I could confirm. I would be shocked if there wasn't at least something that talks about discouraging blank walls facing a street, but if you don't mind, let me get back to you on that.

CHAIR RASPE: Thank you so much, and while he's looking that up this is what I propose, Commissioners. We

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have, I think, five individual matters on this from San Mateo that we are considering applying to ours, and my sense is we are not unanimous necessarily with respect to this first item.

I will put each item up to a vote among the Commissioners, and those that garner a majority of votes will be included then with our recommendation to Town Council with respect to the redline Exhibit 4, which was attached previously. Does that sound acceptable to all? Okay, very good.

Yes, Mr. Safty.

RYAN SAFTY: Thank you. Coming back to that last topic, we do have a design guideline that says, "The front of the house should be oriented towards the street and the front entry clearly identified."

VICE CHAIR THOMAS: Okay, thank you.

CHAIR RASPE: Any other questions for Staff with respect to Item (c)(3), Entries and Entryways? If not, then let me ask for by a show of hands those Commissioners that wish to include (c)(3) as one of our recommendations to Town Council with respect to the SB 9 Ordinance. I see two. Those against? I see three, so the Commission will not recommend (c)(3) be included within our recommendations to Town Council.

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Going to (c)(4), "When an exterior staircase is proposed for an upper-level primary dwelling unit it shall have a setback of at least 5' from the nearest lot line and shall have a landing limited to the minimum area required to allow ingress and egress as specified by the California Building Code." Commissioners, any comments or thoughts with respect to (c)(4) of Entries and Entryways?

Commissioner Barnett.

COMMISSIONER BARNETT: A comment was made at the outset of our discussion tonight about that issue being possibly addressed in the existing regulations or code?

RYAN SAFTY: Thank you. I'm not sure if I was referring to this one specifically, but I'm glad you brought it up because we do require a 4' setback, so one foot less, and that's for any part of the structure, and that would include the staircase. And then the Building Code has landing requirements, so I would assume that would be covered by standard Building Code.

CHAIR RASPE: Yes, Commissioner Mayer.

COMMISSIONER MAYER: I'm okay with clarifying that exterior stairways need to be within this and follow the setback. It sounds like that's already addressed.

1 CHAIR RASPE: Mr. Safty, including this language, 2 would it be duplicative then of what we already have? Would 3 it be a confusion? 4 RYAN SAFTY: It would allow one additional foot 5 for the staircase. Honestly, it would create confusion, 6 most likely. I apologize; it would require one additional 7 foot. Sorry. 8 COMMISSIONER BARNETT: So if that were reduced to 4' and was consistent with the existing standards, would 10 you be agreeable with that? 11 RYAN SAFTY: With our current SB 9 Ordinance we 12 are looking at staircases as a part of the structure, and 13 so it's required to meet a 4' side yard setback, period, 14 with no amendment to the ordinance. 15 16 COMMISSIONER BARNETT: Thank you for that. 17 CHAIR RASPE: Vice Chair Thomas. 18 VICE CHAIR THOMAS: I just want to confirm that 19 any staircase, any permanent deck or porch type thing, any 20 posts associated with a covering or anything like that, all 21 of that is considered a part of the structure, so it would 22 be required to comply with the setbacks? 23 RYAN SAFTY: Correct. 24 VICE CHAIR THOMAS: Okay, thank you. 25

1	CHAIR RASPE: Thank you. All right,
2	Commissioners, given those explanations what are your
3	feelings on adding (c)(4), Entries and Entryways, as part
4	of a recommendation to Town Council with SB 9? It seems to
5	me that it probably doesn't add much since we are currently
6	covered with our existing language. Any difference of
7	opinion? Okay, thank you. So we will not include (c)(4).
8	Commissioner Burnett.
9	COMMISSIONER BURNETT: For Staff. I would like to
10	go back to (c)(3) of Entries and Entryways. On (3), which
12	would take precedence, what is already in our guidelines or
13	this recommendation that would be coming from the Town
14	Council by a 3-2 vote?
15	RYAN SAFTY: The recommendation failed 2-3, so we
16	will not bringing that recommendation forward to Town
17	Council.
18	COMMISSIONER BURNETT: Oh, I thought
19	CHAIR RASPE: No. We won't recommend
20	COMMISSIONER BURNETT: (Inaudible).
21	CHAIR RASPE: No, no. Just to confirm, yes, we're
22	not recommending
23	JOEL PAULSON: Through the Chair, just to
24	Commissioner Burnett, we will be doing verbatim minutes, so
25	deministration burness, we will be doing verbucin minutes, so

1 the Council will have the ability to read it as well as it will be on video. 3 CHAIR RASPE: Thank you. Then moving on I will 4 treat these as a group. (e)(2), Materials and Colors, and 5 we'll go (A) through (E); apparently, again, (F) has 6 already been dealt with elsewhere in our guidelines, so, 7 "The following materials are prohibited on building 8 exteriors: (A) Exterior Foam Molding, (B) Corrugated Metal, (C) Vinyl Siding, (D) Plywood, and (E) Exterior Insulation 10 Finishing System (EIFS). Commissioners, any questions or 11 thoughts, or questions for Staff, on these items? 12 Commissioner Barnett. 13 COMMISSIONER BARNETT: I would submit that (B) 14 and (C) and (D) are self-evident as being important. 15 16 That would leave (A), and I would open that to 17 discussion by my fellow commissioners. The criticism I've 18 heard of (A), foam moldings, is that one, they break down; 19 and two, they look artificial; let me put it that way. They 20 don't look like natural building materials. 21 And I'm not clear what (E), the exterior 22 insulation finishing system, is. Thank you. 23 CHAIR RASPE: Thank you. Vice Chair Thomas. 24 VICE CHAIR THOMAS: I have a question for Staff 25 about if any of these materials would be approved through

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the Building Code? Are there building codes that exist that wouldn't allow some of these materials already to be used?

JENNIFER ARMER: Not that I'm aware of.

VICE CHAIR THOMAS: Okay, so it's just more of like, you know with fire code and things like that you have to have the fire barrier, that's all internal, not any external?

RYAN SAFTY: That's correct. It's also worth noting that we discourage foam molding in our Residential Design Guidelines.

CHAIR RASPE: Thank you. Commissioner Mayer.

COMMISSIONER MAYER: Regarding the comments about the foam molding, I would agree that it's not the best material to use for exterior applications. It doesn't look great, as Commissioner Barnett said; it breaks down easily and wears over time. There are also issues with fire with that material. They make foam that's sprayed with fire retardant, but generally I don't think it performs as well as other materials. I would be willing to maybe incorporate some of the language from the Residential Design Guidelines for this regarding that particular material.

The other materials, (E) Exterior Finishing system (EIFS), I see that more common on commercial projects and multi-family projects, not so much on single-

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family or like SB 9 small multi-family projects. Also,
there are some concerns about fire with that too; it's also
kind of a foam product.

(C) Vinyl Siding, and (D) Plywood, those are
generally just kind of the cheaper options for siding, so

they don't look as high-quality.

I don't know if it's within our authority to make a value judgment about aesthetics on that, but I would say that if the Commissioners and Staff want to promote nice looking exteriors they should discourage the use of those materials.

I think (B) Corrugated Metal, although it is often associated with more industrial type of buildings, I've seen it used in ways, especially in Europe, that look nice for residential buildings, so I wouldn't want to say no corrugated metal, but the other ones I'd have no problem saying that we want to discourage using those.

CHAIR RASPE: Thank you so much. Vice Chair Thomas.

VICE CHAIR THOMAS: I agree that (A) and (E) seem problematic for multiple reasons, like in addition to what was stated they are made with materials that are toxic and have forever chemicals, which the EPA literally released new guidelines on that yesterday, so I would say that those

ones, especially if that's not going to be eliminating anything architecturally, should be included in something that can be prohibited.

However, the others I am concerned just because I know that there are some opportunities and options for these ready-made ADUs that get dropped in your backyard kind of thing, and I wouldn't want any of those to be restricted because they have some of these materials on the outside. They look nice and they might not even be necessarily viewable from the street in many of these situations. I'm not sure really what materials those types of things are made of, so that would be my only concern moving forward, and if Staff could comment on that and/or just maybe if this does move forward, taking it to Town Council, if that could be looked into before the final decision is made.

CHAIR RASPE: Great. Thank you. Commissioners, any other questions? Commissioner Burnett.

COMMISSIONER BURNETT: Again, going back to objective standards here, I would tend to agree that these building materials, I would not want to see any of them on any of our structures if we're trying to keep some kind of subjectivity, even though we're really not, and these materials to me lack a lot of personality, and they have a

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1 lot of issues with them as far as from my experience and how I view them, so I wouldn't be for any of these. 3 CHAIR RASPE: Thank you for those comments. 4 Commissioners, any others? All right, I tried to group 5 these as a group, but again, I sense as a group we've made 6 some distinctions among them, so what I will do is ask for 7 (A) through (E) a show of hands, and the ask is those items 8 that should be excluded, that is, they will be prohibited on building exteriors. If you believe that the materials 10 should not be part of our acceptable building on SB 9 11 buildings, then that's what will be the ask here. 12 So, sub (A), Exterior Foam Molding, by show of 13 hands, those that believe that exterior foam molding should 14 not be part of our building exteriors, please, raise your 15 16 hands. Okay. 17 Same question with respect to sub (B), Corrugated 18 Metal. I show that's two in favor. 19 COMMISSIONER BURNETT: Two in favor? 20 CHAIR RASPE: One, two. You and Commissioner 21 Barnett. 22 COMMISSIONER BURNETT: I'm not in favor. 23 JENNIFER ARMER: To clarify, two in favor of 24 prohibiting that item. 25 CHAIR RASPE: Prohibiting.

1	COMMISSIONER BURNETT: Okay, good. I need that
2	word prohibited.
3	CHAIR RASPE: I'm sorry.
4	COMMISSIONER BURNETT: Okay, thank you.
5	CHAIR RASPE: Thanks for the clarification. So,
6	again, corrugated metal, three are in favor of allowing it
7	as a building material.
8	Sub (C), Vinyl Siding, those in favor of
9	prohibiting it as a building material on SB 9 projects?
11	Five to nothing.
12	Sub (D), Plywood, those in favor of having it as
13	a prohibited material on the exteriors of Again, five to
14	nothing.
15	Sub (E), Exterior Insulation Finishing System
16	(EIFS), those in favor? Five to nothing.
17	So to recap and to confirm, subs (A), (C), (D)
18	and (E) will constitute the list of prohibited building
19	exterior items for SB 9 projects. Thank you.
20	Vice Chair Thomas.
21	VICE CHAIR THOMAS: I'm sorry, I know that I'm
22	asking us to backtrack, but I do want to say that these are
23 24	things that we're trying to not change the ordinance in the
<u> </u>	future, and I do just have a question for my fellow

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1 commissioners about vinyl siding, like mainly for 2 Commissioner Mayer. 3 I know that vinyl flooring has changed 4 dramatically over even just the past decade. Are there any 5 possible materials... Do you think that that one could be 6 limiting in a way, or do you really see that there is no 7 movement in that direction for possible outside materials? 8 COMMISSIONER MAYER: Sure, I can answer that question, and you're correct that more recently the vinyl 10 flooring products have gotten much better. 11 I honestly don't see vinyl that often being used 12 as an exterior siding material, and I haven't really seen 13 examples. Vinyl windows are one thing, but as far as the 14 siding, I haven't really seen it that much used. 15 16 I know you brought up prefabricated ADUs before, 17 and on those I haven't seen vinyl. Usually it's like a 18 wood, like a lap siding, or some sort of fiber cement board 19 is pretty popular these days, so I image a lot of SB 9 20 projects are going to be using fiber cement board, which is 21 not on the list of excluded materials. 22 CHAIR RASPE: Thank you. Does that answer your 23 question? 24 VICE CHAIR THOMAS: Yes. 25 CHAIR RASPE: Mr. Safty, a follow up?

1	RYAN SAFTY: Thank you. I just wanted to clarify
2	one thing. When we're talking about vinyl siding, do we
3	also want to prohibit vinyl windows? Okay, no.
4	COMMISSIONER MAYER: Sorry, when I voted for
5	prohibiting it I was assuming that it only referred to the
6	cladding on
7	VICE CHAIR THOMAS: (Inaudible).
8	COMMISSIONER MAYER: Yes, the cladding, not the
9	windows.
11	JENNIFER ARMER: Thank you for that
12	clarification.
13	CHAIR RASPE: Thank you, and I'll actually ask
14	all my Commissioners by a show of hands, those that agree
15	that the vinyl siding includes siding, but not windows? By
16	a show of hands that you're understanding?
17	COMMISSIONER BURNETT: (Inaudible).
18	VICE CHAIR THOMAS: So then should we make the
19	recommendation that the following materials are prohibited
20	with the exceptions to windows, not including windows?
21	CHAIR RASPE: Oh, yes, I see what it says here.
22	VICE CHAIR THOMAS: Yes, because it says,
23	"Materials are prohibited on building exteriors."
24	CHAIR RASPE: Correct.
25	VICE CHAIR THOMAS: So now we're getting into it.
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1 RYAN SAFTY: Staff can take this recommendation 2 and we can draft the ordinance to Town Council. 3 CHAIR RASPE: But you understand? 4 RYAN SAFTY: We understand the direction. 5 VICE CHAIR THOMAS: We don't want to be 6 pigeonholing that. 7 JOEL PAULSON: Through the Chair, from Staff's 8 perspective, and maybe I'll just speak for myself, siding and windows are two distinctly different components of a 10 building. 11 CHAIR RASPE: Agreed. 12 VICE CHAIR THOMAS: It does say (inaudible). 13 CHAIR RASPE: Thank you, then let's move to sub 14 (f), Lightwells. "Lightwells shall not be located along the 15 16 primary front facade of a structure. All light wells shall 17 be screened from public view." Commissioners, any comments 18 or thoughts on this standard? Commissioner Mayer. 19 COMMISSIONER MAYER: This one is confusing to me. 20 I don't understand. "Lightwells shall not be located..." Yes, 21 I'm having a hard time visualizing what exactly this 22 objective standard is trying to get at. 23 CHAIR RASPE: Staff, do you have any insight? 24 RYAN SAFTY: It's a good question. I had the same 25 thought the first time I read it. I think what they're

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1 implying is the railing, everything you see above grade of these lightwells is what they're not going to want to see, 3 and more importantly, I don't think they want the lightwell 4 on the front elevation; I think the lightwells would be on 5 the side and rear elevations based on the intent of this. 6 JENNIFER ARMER: And what could become 7 complicated is if you do have a basement and you have a 8 lightwell for required access along one side or the other; what constitutes screening from view is going to 10 potentially be a question. 11 But we have seen some houses where they have a 12 lightwell for access to the below-grade square footage, and 13 that is along the front façade right in front of the front 14 porch, so that is something we have seen before in just a 15 16 regular house that's been proposed. 17 And that's currently permitted CHAIR RASPE: 18 under our Town Code? 19 JENNIFER ARMER: Correct. 20 CHAIR RASPE: All right, thank you. 21 Commissioners, any other questions or thoughts on sub (F)? 22 Commissioner Barnett. 23 COMMISSIONER BARNETT: Just for clarification, 24 you have a concern about what screening would mean, and it 25 sounds like in the instance where you did allow a primary

front façade to have a lightwell, I guess you didn't comment on whether that was something that was approved or approved with reservations. Thank you.

JOEL PAULSON: Thank you. Through the Chair, I'll jump in. I think from a screening perspective they're allowing these if they're screened. You could put a hedge around the front of the railing that the lightwell has, so I don't think it's an onerous requirement, so I think it's pretty easy for an applicant. If the Commission is interested in forwarding that, it is something that could be recommended to Town Council.

CHAIR RASPE: Thank you, and just to clarify, of these two, the first sentence, "Lightwells shall not be located along the primary front façade," that would be a change from our current design guidelines. The second would be a more minor but probably acceptable change, is that fair? Okay.

Commissioners, with that in mind, that would be my recommended change with respect to sub (F). Strike the first sentence, because lightwells are currently allowed along our primary façade, but we require that all lightwells shall be screened from public view. Vice Chair Thomas.

1 VICE CHAIR THOMAS: I'm sorry; do we currently 2 require all lightwells to be screened from public view? 3 Okay, so that's not part of our standard Residential Design 4 Guidelines? I personally also struggled to understand what 5 this said, and considering we have an architect and a 6 planner here that also struggled first hand, I feel like 7 I'm not really in favor of including it at this point. 8 CHAIR RASPE: Commissioner Mayer. COMMISSIONER MAYER: Now I'm trying to visualize 10 what Ms. Armer referred to, like a subterranean basement 11 with the lightwell in front. You're not really going to see 12 the lightwell anyway. There might be a railing around the 13 perimeter of it, which already is sort of a screen, so I 14

I don't want to recommend anything because it doesn't make any sense to me.

CHAIR RASPE: Very good. Other Commissioners?

Commissioner Barnett.

COMMISSIONER BARNETT: I think there's an obvious answer to this one as well, but are any lightwells used as part of secondary access, or is that not allowed by code?

RYAN SAFTY: They are used for ingress and egress all the time. It's also worth noting that we have received direction from HCD in the past that making rules that are

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more restrictive than our current guidelines and code can be problematic.

CHAIR RASPE: Thank you, that's a helpful comment. Commissioners, any other questions on this one? Given Mr. Safty's final comments there and following up on Commissioner Mayer's, I think, learned comments, my proposal has modified. I would suggest not including sub (f), Lightwells, as part of our recommendation to Town Council.

By a show of hands may I see those who are not inclined to include sub (f) as part of our recommendation?

And it's unanimous it shall not be included.

Finally, sub (h), Utilities and Mechanical

Equipment. I think Mr. Safty already commented on this

earlier. "Ground-mounted utilities, mechanical equipment,

generators, and AC units that directly serve the

development shall be screened from view from adjacent

properties and the public right-of-way by either an

enclosure designed as part of the building and/or fencing."

Vice Chair Thomas.

VICE CHAIR THOMAS: With that being said, just about how our Residential Design Guidelines don't require this but we prefer it, I don't know if we should require this in this space, but perhaps our Residential Design

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Guidelines should be updated if people feel strongly. Maybe that's not really a recommendation, not to make more work for everyone, but again, I don't know if that would be considered more restrictive.

CHAIR RASPE: Yes, Commissioner Mayer.

COMMISSIONER MAYER: This is an interesting one. I agree with the intent of it. Especially with SB 9 if you're going to end up with four units on a property, or two properties after the lot split, I think it makes sense aesthetically to try to minimize the visual impact of mechanical equipment. How to go about doing that without being too overly restrictive, I think, is a challenge.

There are also requirements for HVAC equipment: that it can breath, that it can get fresh air around it, and we're moving a lot more toward mini-split heat pump systems, especially with these types of projects and ADU SB 9 projects. The good news is that the equipment tends to be smaller, but you can still see it.

I wouldn't necessarily be opposed to having some sort of screening, but I think we need to be careful about what we require. For instance, if there is some sort of screening you would want to have like open louvers around it so that it can still breath in air rather than enclose it like in a plywood fence or something like that.

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1 I agree with the intent of trying to minimize the 2 visual impact of this, but I don't want to be overly 3 prescriptive either, again, to either lessen the 4 functionality of the equipment itself or take up too much 5 space on a property. 6 CHAIR RASPE: Thank you for those comments. I'm 7 going to lean into your expertise as an architect. I 8 understand ground-mounted utilities, mechanical equipment, and generators, but AC units, as you note, the split 10 systems, window units, all the rest of them, it seems to me 11 that that's a different animal and could be much more 12 difficult to screen. Would you agree with that? 13 COMMISSIONER MAYER: Yes, I think so. I don't 14 think it's necessary. Again, not all these projects are 15 16 going to use the heat pump system; they might have bigger 17 equipment. I guess maybe we can talk piece-by-piece. 18 Obviously a generator is going to be bigger than a heat 19 pump. There might already be guidelines about screening 20 generators. Mechanical equipment, that's kind of vague. I 21 think you bring up a good point that not all mechanical 22 equipment is created equally. 23 CHAIR RASPE: Thank you. First Commissioner 24

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Barnett and then Vice Chair Thomas.

1 COMMISSIONER BARNETT: Of Staff. If I recall 2 correctly, the Commercial Design Guidelines require 3 screening of mechanical equipment, is that correct? 4 RYAN SAFTY: That is correct in residential 5 design. 6 CHAIR RASPE: Vice Chair Thomas. 7 VICE CHAIR THOMAS: I have a question for Staff 8 about an AC unit. If this were implemented could a possible workaround be that you would just add an AC unit after you 10 get your final Occupancy Permit? You could really drop in 11 an AC unit and add that anywhere; there is no requirement 12 right now. If I want to change my HVAC system at my house 13 and put an AC unit in, I don't have to get a permit for 14 that, correct? 15 16 RYAN SAFTY: I believe you do need a Building 17 Permit. 18 VICE CHAIR THOMAS: Oh, I do? Well, I don't. I 19 don't have the money to do that, because I'm a teacher, so 20 my husband from England is just really grateful we're 21 living in a one-story house, but there will be signs if we 22 win the lottery; we will be getting an AC unit. 23 But you can build a structure with the HVAC and 24 then literally just drop the AC in afterwards? Okay, thank 25 you.

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JENNIFER ARMER: It would require a Building

Permit, but because it wasn't part of development of the

two-unit development itself, it very well could be reviewed

separately based on the regular code at that point.

VICE CHAIR THOMAS: And which wouldn't require it to be screened currently. I must say that as a person that did used to live in a place with air conditioning, my AC unit was right by my front door at my condo and it was really ugly and it drove me crazy and I wanted it screened myself. You want to hide those things, so I am hesitant still to include this, just because it seems like some of it could be more restrictive than our current Residential Design Guidelines, and I do think it's a self-enforcing situation, but I am interested to hear what my other Commissioners have to say.

CHAIR RASPE: Before I forget, just one follow up question. You mentioned the Commercial Design Guidelines require shielding of these things. Commissioner Mayer mentioned some cause for concern that it could create issues with respect to overheating and causing maybe dangers. Do the Commercial Design Guidelines specify how those shieldings work? Are they (inaudible)?

JOEL PAULSON: I'll jump in through the Chair. Typically we're talking about roof-mounted equipment for

1 commercial, so it's screening from the public right-of-way, and so that's generally the issue. I'm not sure if Ms. 3 Armer or Mr. Safty have anything to add. 4 JENNIFER ARMER: No, thank you, that is exactly 5 what I was going to say as well, that in general we're 6 talking about roof-mounted units that would be screened, 7 and so the screen often is not anywhere near the unit 8 itself, just making sure that it won't be visible from the street. 10 CHAIR RASPE: Very good. Thanks. 11 Commissioner Mayer. 12 COMMISSIONER MAYER: I have a comment about that, 13 but I'll say my first comment first. I would be okay with 14 saying that mechanical equipment shouldn't be visible from 15 16 the public right-of-way. That's doesn't necessarily mean 17 you need to screen it, it just means it needs to be behind 18 the buildings or behind a fence so you don't see it from 19 the public right-of-way. 20 Also, from adjacent properties, generally there 21 is a fence between properties, so that already takes care 22 of itself, so I think that might be okay. 23 There might be instances where in SB 9 24

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developments an owner or builder chooses to put HVAC

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equipment on a roof. I would be okay with saying that that needs to be screens if that ever happens.

CHAIR RASPE: Thank you. Vice Chair Thomas.

VICE CHAIR THOMAS: I agree with Commissioner
Mayer's comments. Is there a definition of mechanical
equipment? Now looking at this, obviously when it's
combined with utilities I can image these things, but what
if there is like a wheelchair ramp or something like that?
I feel like that is not what we mean. I feel like
mechanical equipment is not objective enough to be
included, but I understand ground-mounted utilities,
generators, and AC units. Does Staff agree that mechanical
equipment is too vague?

RYAN SAFTY: That is a great point. That's what my note said as well; we'd have to define what visible is and what the mechanical equipment is.

VICE CHAIR THOMAS: I think that, yes, mechanical equipment, even defining that seems like a big ask, so perhaps dropping that language, but I do agree that the most important thing is that it's not viewable from a public right-of-way.

The adjacent properties also kind of concerned me, because if we are doing a lot split—and this might be covered in the definition—would those now be considered

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1 adjacent property? You might not be putting a fence down the middle, so I don't think that needs to be screened in 3 that sense, but it should be perhaps not viewable from the 4 public right-of-way. 5 CHAIR RASPE: Thank you for those comments. 6 Commissioner Barnett. 7 COMMISSIONER BARNETT: To Staff, like there is an 8 electrical code is there a mechanical code? RYAN SAFTY: Yes, there is. 10 COMMISSIONER BARNETT: And there might be 11 definitions in that code of what the equipment is that's 12 covered? 13 JOEL PAULSON: There probably is. Generally HVAC 14 is what covers all of that. 15 COMMISSIONER BARNETT: I'm not strongly invested 16 17 in this, although I think Commissioner Mayer has made some 18 excellent suggestions, but perhaps we could propose to the 19 Town Council that they consider a definition in the 20 Mechanical Code of mechanical equipment or some other 21 objective definition. 22 CHAIR RASPE: Very good. Allow we to summarize 23 what I think we are headed towards. I think generally we 24 are in favor of some form of screening or protection from 25 ground-mounted utilities, generators, and AC units at least

from the public right-of-way, and perhaps if mechanical equipment were properly defined that could also be included in the grouping. Is that my sense of where this discussion has led? Yes, Vice Chair Thomas.

VICE CHAIR THOMAS: Yes, I agree. Maybe it's not specific enough, so this is where I would defer to Staff, but I think that screened from view or just not viewable from the public right-of-way, and maybe our Town Attorney needs to be the one to word this. I don't feel like we should require it to be enclosed. I am personally comfortable with having landscaping. I feel like that in some ways might be less weird looking in some cases, so defining how it has to be screened by building or fencing is important, but just whatever would be the most straightforward with regard to being objective and being able to interpret is what I would be in favor of.

CHAIR RASPE: Thank you. Again, to modify my earlier comments then, Commissioners, the ask seems to be that those ground-mounted utilities, generators, and AC units that directly serve the utility shall be screened from view, either by structure or landscaping, from the public right-of-way. Yes, Commissioner Mayer.

COMMISSIONER MAYER: I think that's confusing, because let's say you have an AC unit and it's in the

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1 backyard. It's already not visible from the public rightof-way, so is that considered "screened," or are people 3 going to interpret that as they have to add an additional 4 screen around it? 5 CHAIR RASPE: How about we just say shall not be 6 visible from the public right-of-way? 7 COMMISSIONER MAYER: Yes, that works. That 8 implies that if it is visible from the public right-of-way it requires a screen. 10 CHAIR RASPE: I would agree. I think that's 11 implied in that discussion. Yes, Vice Chair Thomas. 12 VICE CHAIR THOMAS: I agree that it does and 13 that's the spirit of what we mean, so however Staff feels 14 most comfortable about wording that and checking with the 15 16 Town Attorney on the interpretation of that I think is what 17 we should propose to Town Council. 18 CHAIR RASPE: So if that's clear enough to the 19 Commissioners sitting here, by a show of hands those who 20 wish to include that as a recommendation to Town Council? 21 Okay, four to one, so that carries. 22 Than according to my notes our recommendation 23 will be the redline changes that were included within the 24

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Staff Report, and additionally from the San Mateo

1	guidelines sub (e), (2), (A)(C)(D) and (E), and sub (h) as
2	modified per this discussion. Yes, Ms. Armer.
3	JENNIFER ARMER: Through the Chair, I wanted to
4	check to see whether the two changes identified by the Vice
5	Chair, page 5, putting cut and fill in italics for G, and
6	page 6, giving a title to R, shall be included?
7	CHAIR RASPE: Yes, sorry, I should have put that
8	in. Commissioners, are those changes that the Vice Chair
9	has previously noted acceptable? I'm sorry; I think the
11	Vice Chair is going to add one more?
12	VICE CHAIR THOMAS: No, those two are the only
13	ones.
14	CHAIR RASPE: Very good. Commissioners, by a show
15	of hands those are acceptable changes then. The changes are
16	acceptable.
17	To Staff, do you need a motion, or are these
18	recommendations adequate in their current form?
19	RYAN SAFTY: We need a motion. You've got to make
20	the finding.
21	JENNIFER ARMER: And a recommendation of the
22	ordinance to Town Council.
23	CHAIR RASPE: Very good. Commissioner Barnett.
24 25	COMMISSIONER BARNETT: I'm prepared to make the
<u>.</u> J	motion.

1	CHAIR RASPE: Please.
2	COMMISSIONER BARNETT: I'm going to try to
3	simplify this, and then I'll ask Staff if it is sufficient.
4	I move to forward a recommendation to the Town
5	Council for the amendments that are specified in the
6	subject line of the Town Planning Commission report of
7	April 5, 2024. I can make the findings in accordance with
9	CEQA. I can make the finding that the amendments are
10	consistent with the General Plan, and I'm open to any
11	suggestions for further changes.
12	CHAIR RASPE: Thank you. Ms. Armer.
13	JENNIFER ARMER: Through the Chair, I was going
14	to suggest specific reference to the exhibits that were
15	prepared. Exhibit 4 shows the draft changes, that that be
16	also part of the motion.
17	COMMISSIONER BARNETT: I'm sorry; I meant to
18	include that. The items upon which the majority of the
19	Commission has voted tonight be included as part of the
20	recommendations to the Town Council. Thank you.
21	CHAIR RASPE: And including Exhibit 4 with the
22	Vice Chair's changes, correct?
23	COMMISSIONER BARNETT: Yes, let's make sure
25	that's in it. Thank you.

Τ	CHAIR RASPE: Thank you so much. Commissioners, a
2	second on the motion? I'd be happy to. I'll second the
3	motion. Comments, questions, Commissioners?
4	Then by a show of hands, can I see all those in
5	favor of the motion? Motion carries unanimously. Thank you
6	so much, Commissioners. That was an interesting a spirited
7	discussion; I'm glad we went through it.
8	COMMISSIONER BURNETT: Question for the Chair. Do
9	we have to find the required findings for SB 9?
11	CHAIR RASPE: I think the required findings were
12	made in the motion.
13	COMMISSIONER BURNETT: That was in the motion?
14	CHAIR RASPE: Yes.
15	COMMISSIONER BARNETT: I made the findings that
16	were specified as necessary in the Commission report.
17	CHAIR RASPE: Thank you so much. And I assume
18	there are no appeal rights given that this is a
19	recommendation.
20	JENNIFER ARMER: Correct, it's a recommendation.
21	CHAIR RASPE: Great, thank you.
22	(END)
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24	
25	

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Ryan Safty

From: Terence J. Szewczyk

Sent: Wednesday, April 10, 2024 3:28 PM

To: Jennifer Armer Cc: Ryan Safty

Subject: Desk Item for SB9 modifications

Follow Up Flag: Follow up Flag Status: Flagged

[EXTERNAL SENDER]

Jennifer, Thank you for your capable management of the SB9 applications to date. I think we have collaborated on six approvals to date. I have just one concern:

SB9 is a <u>ministerial</u> application, and the Town planning staff struggles with that definition, having been indoctrinated with broad and unchecked discretion in the review of applications. The CA Legislature dealt with these issues and intentionally removed the neighborhood opposition by removing noticing requirements. Why does the Town persist in the unlawful notification of neighbors? Should we elevate this to <u>mail fraud</u> since staff sends notices that conflict with California law? This noticing requirement was added as a great notion by one council member without advice from silent senior staff.

Neighbor Notification. In addition to the standard application mal to submit one (1) set of stamped, addressed envelopes to neighbor The Planning Department will assist the applicant in determining notified (which will consist of all properties abutting the applicant the street and the two (2) parcels on each side of the properties of

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DEFINITION OF MINISTERIAL

Cal. Code Regs. tit. 14

Current through Register 2024 Notice Reg. No. 13, March 29, 2024

Section 15369 - Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by public official as to the wisdom or manner of carrying out the project. The public official me applies the law to the facts as presented but uses no special discretion or judgment in reach decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether zoning allows the structure to be built in the requested location, the structure would measurements in the Uniform Building Code, and the applicant has paid his fee.

2

Cal. Code Regs. Tit. 14, § 15369

Best regards, Terry Terence J. Szewczyk. P.E.

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