



**TOWN OF LOS GATOS  
PLANNING COMMISSION AGENDA  
APRIL 10, 2024  
110 EAST MAIN STREET  
TOWN COUNCIL CHAMBERS  
7:00 PM**

*Steven Raspe, Chair  
Emily Thomas, Vice Chair  
Jeffrey Barnett, Commissioner  
Susan Burnett, Commissioner  
Melanie Hanssen, Commissioner  
Kathryn Janoff, Commissioner  
Adam Mayer, Commissioner*

**IMPORTANT NOTICE**

This is a hybrid/in-person meeting and will be held in-person at the Town Council Chambers at 110 E. Main Street and virtually through the Zoom webinar application (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](http://www.LosGatosCA.gov/TownYouTube).

**PARTICIPATION**

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 click this URL to join: <https://losgatosca.gov.zoom.us/j/81224586881?pwd=rvL9l24l0uaQLUkvf61o1BWu0N8eHw.oZBjTqaV1diE7Seu>. Passcode: 059739. You can also type in 812 2458 6881 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join> and use passcode 059739.

When the Chair 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 US Toll-free or (636) 651-0008 US Toll. (Conference code: 686100). 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 Vice Chair before the meeting or when the Chair announces the item for which you wish to speak.

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

(2) If you are unable to participate in real-time, you may email to [planning@losgatosca.gov](mailto:planning@losgatosca.gov) the subject line “Public Comment Item #\_\_” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” All comments received will become part of the record.

(3) Deadlines to submit written public comments are:

11:00 a.m. the Friday before the Planning Commission meeting for inclusion in the agenda packet.

11:00 a.m. the Tuesday before the Planning Commission meeting for inclusion in an addendum.

11:00 a.m. on the day of the Planning Commission meeting for inclusion in a desk item.

(4) Persons wishing to make an audio/visual presentation must submit the presentation electronically to [planning@losgatosca.gov](mailto:planning@losgatosca.gov) no later than 3:00 p.m. on the day of the Planning Commission meeting.

## MEETING CALL TO ORDER

## ROLL CALL

## PLEDGE OF ALLEGIANCE

**VERBAL COMMUNICATIONS** (Members of the public may address the Commission on any matter that is not listed on the agenda. Unless additional time is authorized by the Commission, remarks shall be limited to three minutes.)

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)** *(Before the Planning Commission acts on the consent agenda, any member of the public Commission may request that any item be removed from the consent agenda. At the Chair's discretion, items removed from the consent calendar may be considered either before or after the Public Hearings portion of the agenda.)*

1. Draft Minutes of the March 13, 2024 Planning Commission Meeting

**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 the Commission's consent at the meeting.)*

2. 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.

## OTHER BUSINESS

## REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

## SUBCOMMITTEE REPORTS / COMMISSION MATTERS

**ADJOURNMENT** *(Planning Commission policy is to adjourn no later than 11:30 p.m. unless a majority of the Planning Commission 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].

*Planning Commission meetings are broadcast Live on KCAT, Channel 15 (on Comcast) on the 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays at 7:00 p.m.  
Live and Archived Planning Commission meetings can be viewed by going to:  
[www.LosGatosCA.gov/TownYouTube](http://www.LosGatosCA.gov/TownYouTube).*



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 04/10/2024

ITEM NO: 1

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**DRAFT  
MINUTES OF THE PLANNING COMMISSION MEETING  
MARCH 13, 2024**

The Planning Commission of the Town of Los Gatos conducted a Regular Meeting on Wednesday, March 13, 2024, at 7:00 p.m.

**MEETING CALLED TO ORDER AT 7:00 PM**

**ROLL CALL**

Present: Chair Steve Raspe, Commissioner Susan Burnett, Commissioner Melanie Hanssen, Commissioner Kathryn Janoff, and Commissioner Adam Mayer.

Absent: Vice Chair Emily Thomas.

**PLEDGE OF ALLEGIANCE**

**VERBAL COMMUNICATIONS**

None.

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

1. **Approval of Minutes** – February 28, 2024

**MOTION:**                   **Motion by Commissioner Hanssen** to approve adoption of the Consent Calendar. **Seconded by Commissioner Janoff.**

**VOTE:**                   **Motion passed unanimously.**

**PUBLIC HEARINGS**

2. **124 Garden Hill Drive**

Fence Height Exception Application FHE-23-005

APN 424-23-084

Property Owner/Appellant: Rushikesh Kulkarni

Project Planner: Ryan Safty

Consider on remand an Appeal of a Denial of a Fence height Exception Request for Construction of a 6-Foot-Tall Fence Located Within the Required Front Yard Setback,

Street Side Yard Setback, and Corner Sight Triangle on Property Aoned R-1:8.  
Categorically Exempt Pursuant to CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures, and Section 15301: Existing Facilities.

Ryan Safty, Associate Planner, presented the staff report.

Opened Public Comment.

Rushikesh Kulkarni

- We have reached a point of consensus between the Planning Department and myself and believe we can achieve a happy medium where my security concerns as a parent of two toddlers who play in that side of the yard can be addressed. One concern is coyote sightings in the neighborhood, leading to the need for a 6-foot-high fence, as well as an occasion where a dog jumped the fence into our yard. We erected the bamboo fence as a temporary arrangement. I believe we have addressed all concerns the Planning Commission and Public Works had. If the appeal is granted, we will remove the solid fence and install the wrought iron fence as shown in the plans.

Closed Public Comment.

Commissioners discussed the matter.

**MOTION:**                    **Motion by Commissioner Hanssen** to grant an Appeal of a Denial of a Fence Height Exception for construction of a 6-foot-tall fence located within the required front yard setback, street side yard setback, and corner sight triangle on property zoned R-1:8 for 124 Garden Hill Drive with the Special Circumstance finding in Town Code Section 29.40.0320(e)) for the configuration of the property and lack of a rear yard. **Seconded by Commissioner Burnett.**

**VOTE:**                    **Motion passed unanimously.**

**3. 666 North Santa Cruz Avenue**

Conditional Use Permit Application U-22-004

APN 529-10-141

Property Owner/Applicant: Samir Dave, HDLM Associates

Project Planner: Jocelyn Shoopman

Requesting Approval of a Modification to an Existing Conditional Use Permit for a Convenience Market that Includes the Sale of Beer and Wine at an Automobile Service Station on Property Zoned C-1. Categorically Exempt Pursuant to CEQA Guidelines Section 15301: Existing Facilities.

Jocelyn Shoopman, Associate Planner, presented the staff report.

Opened Public Comment.

Kurt Wagenknecht, K12 Architects

- It is common today to have beer and wine sales within convenience stores and most of them provide chilled beer and wine, which is a competitive sale item.

Gary Fowler

- I've been in Town for 36 years and know Sam and his family. He is a hardworking businessperson and a really good guy, and he and his family run a great business. I don't go to Sam's convenience store for beer or wine, but I run in for milk or eggs, as will the 500 new residents of the North Forty and the 500 members of the Los Gatos Lodge. There are only two other convenience stores in town, and with limited parking. I think Sam has a great idea.

Eric Monsef

- I grew up in Los Gatos and have known Sam for 15 years. Sam is a person I can rely on as a friend and a neighborhood helper. Sam, his family, and his business are one of the anchors of the community. That particular location serves as a visual gateway to the town, so having a person and business of such integrity there is a big upgrade to the Town.

Closed Public Comment.

Commissioners discussed the matter.

**MOTION:**                    **Motion by Commissioner Hanssen** to approve a modification to an existing Conditional Use Permit for a convenience market that includes the sale of beer and wine at an automobile service station on property zoned C-1 with a modification of Condition 5 to modify the hours of operation to 6:00 a.m. to 10:00 p.m. Monday through Friday and 7:00 a.m. to 10:00 p.m. Saturday and Sunday. **Seconded by Commissioner Janoff.**

**VOTE:**                    **Motion passed unanimously.**

## **OTHER BUSINESS**

### **REPORT FROM THE COMMUNITY DEVELOPMENT DEPARTMENT**

Jennifer Armer, Planning Manager

- The Town Council met March 5, 2024:
  - Discussed the Housing Element and approved a motion to move forward with the process. The Draft Housing Element is currently in the seven-day public review period with the goal of submitting it to HCD on March 18, 2024.
  - An appeal of Planning Commission approval of the new home at 212 Thurston Street was considered. The Town Council denied the appeal and upheld the Planning Commission's decision.

## **SUBCOMMITTEE REPORTS/COMMISSION MATTERS**

### **Historic Preservation Committee**

Commissioner Burnett

- The HPC met March 13, 2024 and considered three items.
  - Two items had returned to the Committee for a final resolution, which was accomplished.
  - The third item was alterations to a storefront on a pre-1941 building on North Santa Cruz Avenue.

## **ADJOURNMENT**

The meeting adjourned at 7:47 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the March 13, 2024 meeting as approved by the Planning Commission.

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/s/ Vicki Blandin



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 04/10/2024

ITEM NO: 2

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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

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

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FINDINGS:

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

BACKGROUND:

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

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

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

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

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



DISCUSSION:

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

A. Second-Story Step-Back Modification

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

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

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

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

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

B. Ordinance Clean-Ups

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

DISCUSSION (continued):

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

DISCUSSION (continued):

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

PUBLIC COMMENTS:

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

CEQA DETERMINATION:

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

CONCLUSION:

A. Summary

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

B. Recommendation

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

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

C. Alternatives

Alternatively, the Commission can:

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

EXHIBITS:

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

**PLANNING COMMISSION – April 10, 2024**  
**REQUIRED FINDINGS**

**Senate Bill 9 Ordinance Amendments**  
**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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## *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.

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*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



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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:
      - 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, 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:
  - 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;
  - 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 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 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 (MWEL0);
- l. *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 <sup>(2)</sup>
Property Line Setbacks <sup>(1)</sup>	Front	Per the applicable zoning district. <sup>(5)</sup>
	Garage Entry	18 feet
	Interior Sides	4 feet <sup>(3)</sup>
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures <sup>(4)</sup>		5 feet
<p>Exceptions:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) Except for primary dwellings constructed as a duplex or attached single-family residences.</p> <p>(5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.</p>		

- 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.

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- (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;
  - 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 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:

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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.

( 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;

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- (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

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- 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:



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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 (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 an 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
- l. *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;

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- (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)

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.

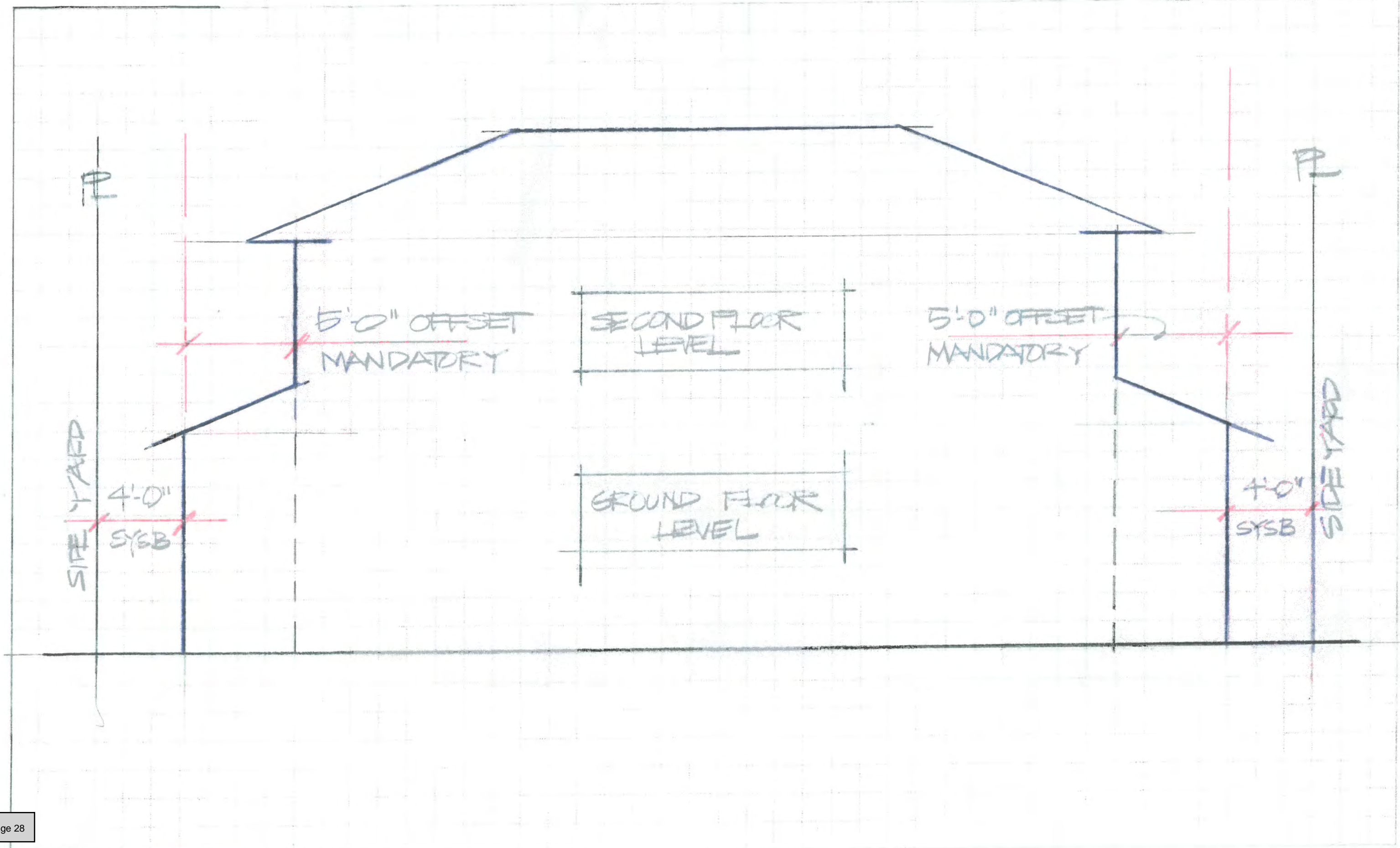
WE BELIEVE THIS CHANGE WILL ENSURE THE INTENT OF THE STEP BACK RULE BY PROVIDING NEIGHBOR PRIVACY AND AT THE SAME TIME PROVIDE FOR MORE CREATIVE OPTIONS FOR ARCHITECTS AND TOWN RESIDENTS TO MEET THEIR DESIGN AND AESTHETIC CONCERNS - AND, NOT JUST FOR THE HOMEOWNER, BUT FOR THE NEIGHBORHOOD AS WELL.

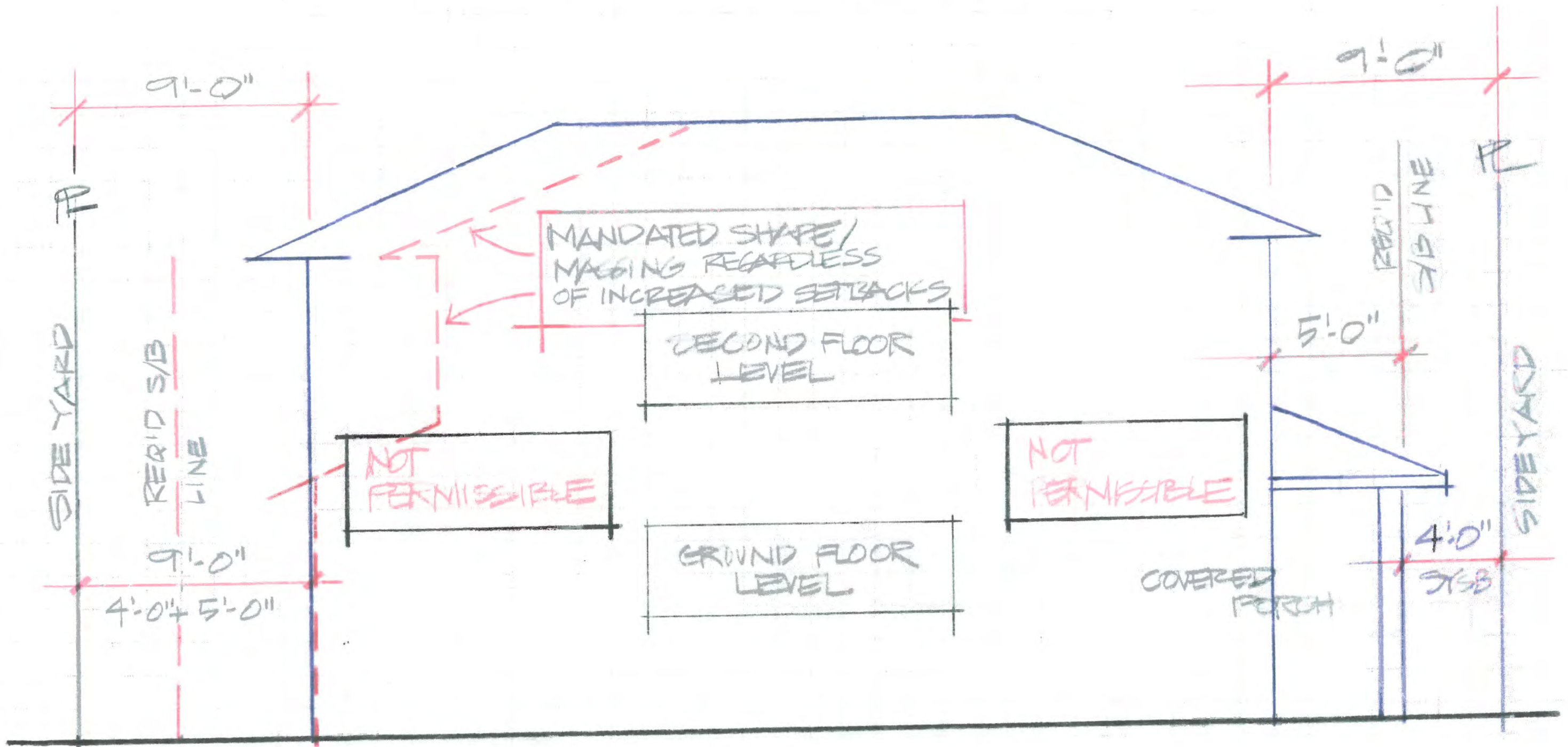
I'VE SPOKEN EXTENSIVELY WITH RYAN SAFTY OF THE PLANNING DEPARTMENT - WHO HAS BEEN EXCEPTIONALLY HELPFUL - AND IT IS HIS POSITION THIS WOULD BE A MINOR MODIFICATION TO HOW THE TOWN ADMINISTERS SB9 COMPLIANCE AND A SIMPLE PROCESS OF AMENDING THE EXISTING CODE. I WOULD HAVE TO DEFER QUESTIONS ABOUT THAT PROCESS TO STAFF.

AGAIN, THANK YOU FOR YOUR TIME AND INTEREST IN THIS MATTER.

RESPECTFULLY,

JAY PLETT





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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 ~~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.

*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



~~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.

### **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. 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. ~~A, 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 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.
  - 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;

- 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 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 ~~an average slopeslopes~~ 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);
- l. *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 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 <sup>(2)</sup>
Property Line Setbacks <sup>(1)</sup>	Front	Per the applicable zoning district. <sup>(5)</sup>
	Garage Entry	18 feet
	Interior Sides	4 feet <sup>(3)</sup>
	Rear	
	Street Side	Per the applicable zoning district.
Separation Between Detached Structures <sup>(34)-(4)</sup>		5 feet
<p>Exceptions:</p> <p>(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.</p> <p>(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.</p> <p>(3) <u>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.</u></p> <p>(4) Except for primary dwellings constructed as a duplex or attached single-family residences.</p> <p>(5) Flag/corridor lots shall use the interior side setback requirements for all property lines other than the rear.</p>		

- 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 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.

#### **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:
  - 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;
- 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;
  - 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;

- 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
- l. *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:

- ~~a.(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;
- ~~b.(2)~~ *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).
- ~~d.(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;
- ~~e.(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;
- ~~f.(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

~~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.



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 4/10/2024

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

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**From:** [REDACTED]  
**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](#)

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[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



## 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 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) Architectural Style
  - (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.

- (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 setback 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) Lightwells. Lightwells shall not be located along the primary front façade of a structure. All light wells shall be screened from public view
- (g) Lighting. 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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