



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 01/08/2020

ITEM NO: 3

DATE: January 3, 2020
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Town Code Amendment Application A-19-010. Project Location: **Town Wide.**
Applicant: Town of Los Gatos.
Consider amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding land use and economic vitality streamlining.

RECOMMENDATION:

Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding land use and economic vitality streamlining.

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment.

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Exempt, Section 15061(b)(3); and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

The Town Council has an adopted strategic priority that promotes community vitality and encourages land use streamlining efforts. Since the adoption of this priority, staff has been working with the Town Council and Council Policy Committee to identify and streamline many of the business-related processes to reduce the associated time and cost.

PREPARED BY: Sean Mullin, AICP
Associate Planner

Reviewed by: Planning Manager and Community Development Director

BACKGROUND (continued):

As part of the adopted streamlining efforts, five temporary resolutions were adopted by the Council and were set to sunset in December of 2019. On October 1, 2019, the Council voted to memorialize the streamlining efforts (Exhibit 2). On November 5, 2019, the Council adopted Resolution 2019-051 extending the temporary streamlining efforts until such time that the Town Code amendments may be adopted (Exhibits 3 and 4). To provide context for the discussion, below are high-level summaries of how the temporary streamlining efforts have been utilized.

- **Formula Retail Businesses in the Downtown C-2 Zone** (resolution adopted 6/5/18): The Town Council adopted a temporary resolution allowing up to five new formula retail businesses over an 18-month period in the downtown C-2 zone that do not have a current Conditional Use Permit (CUP) in place.
- **Restaurants**
 - **Restaurant CUP modifications at the Development Review Committee (DRC)** (adopted 6/19/18): The Town Council adopted a temporary 18-month resolution to allow current restaurants to modify their CUP at the DRC. Many of these businesses chose to modify their use permit to allow them to participate in the pilot parklet program as the former language in their CUP prohibited outdoor dining in many cases.
 - **New restaurant CUPs to be heard at the DRC and suspension of Ordinance 2021** (adopted 3/5/19): The Town Council adopted a temporary resolution valid through 12/31/19 allowing new restaurants, Town-wide, to be heard by the DRC. To make this possible, Ordinance 2021 was also suspended for the same period.
- **Minor Exterior Modifications to Commercial Buildings** (adopted 3/5/19): The Town Council adopted a temporary resolution valid through 12/31/19 allowing minor exterior modifications to commercial buildings to be processed as building permits, rather than as Architecture and Site applications at the DRC.
- **Group Classes** (adopted 3/19/19): The Town Council adopted a temporary resolution valid through 12/31/19 allowing a CUP for group classes within the downtown C-2 zone to be heard by the DRC, and those in other commercial zones to be allowed by right with a Certificate of Use and Occupancy and a Business license.

DISCUSSION:

Five resolutions were adopted by the Council temporarily suspending certain sections of the Town Code in an effort to promote community vitality and encourage land use streamlining

DISCUSSION (continued):

(Exhibit 2, Attachments 2 through 6). Below is a discussion of the amendments to the Town Code required to memorialize the temporary streamlining efforts.

A. Formula Retail Businesses in the Downtown C-2 Zone

The Town Code defines a formula retail business as a business which, along with seven or more other business locations, is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services, decor, uniforms, architecture, colors, signs, or other similar features. In the downtown C-2 zone (Exhibit 5) under the current Town Code, formula retail businesses up to 6,000 square feet require approval of a CUP by the Planning Commission and are allowed by-right in other commercial zones.

Currently, formula retail businesses greater than 6,000 square feet are not allowed in the downtown C-2 zone and require approval of a CUP in other commercial zones. No changes are proposed to these regulations.

On June 5, 2018, the Council adopted Resolution 2018-032 temporarily allowing up to five new formula retail businesses over an 18-month period without approval of a CUP in the downtown C-2 zone. By eliminating the requirement for a CUP, this streamlining effort significantly reduced the time and cost of establishing a formula retail business in the downtown C-2 zone by requiring only a Certificate of Use and Occupancy with a cost of \$262.20 and a Business License with a cost ranging from \$75 to \$975, both of which can be issued over the counter. In contrast, a Planning Commission level review of a formula retail business CUP in the downtown C-2 zone would take approximately 12 to 24 weeks to complete, and the fees would be \$8,591.14. To date, three new formula retail businesses have been established in spaces in the downtown C-2 zone that were formerly occupied by a use other than a formula retail business. It is important to note that some formula retail businesses who had valid CUPs have left the downtown C-2 zone, thus the replacement businesses do not count towards the five new formula retail businesses.

To memorialize this streamlining effort, the Town Code would be amended to eliminate formula retail businesses up to 6,000 square feet from the Table of Conditional Uses in Section 29.20.185. This change would permit formula retail businesses to establish in the downtown C-2 zone by right with approval of a Certificate of Use and Occupancy and a Business License. The Permitted Uses sections for the C-1, C-2, CH, and LM zones would also be amended to clarify that formula retail businesses up to 6,000 square feet are permitted by-right. Additionally, Section 29.20.190 would be amended to clarify that the deciding body may only deny a CUP for a formula retail business greater than 6,000 square feet if specific findings can be made.

DISCUSSION (continued):

B. Restaurants in the Downtown C-2 Zone

The Table of Conditional Uses in Town Code Section 29.20.185 requires approval of a CUP for restaurants in the C-1, C-2, CH, LM, and CM zones. Sections 29.20.745 and 29.20.750 of the Town Code assign the review of CUPs for restaurants outside the downtown C-2 zone to the DRC, and restaurants within the downtown C-2 zone to the Planning Commission. Ordinance 2021, adopted in 1996, includes a section outlining a concern with an overconcentration of restaurants in the downtown C-2 zone and requiring careful consideration of restaurant uses that replace retail in the downtown C-2 zone by the Planning Commission (Exhibit 6). Additionally, this Ordinance introduced the definitions of *bar* and several different types of restaurants, including *drive-in*, *fast food*, *high turnover (sit down)*, *minor*, and *quality* to Section 29.10.020 of the Town Code.

Through the work of the Policy Committee, Planning Commission, and Town Council, the Town has taken strides to establish, modify, and rescind Town policies and Town Code language to generate opportunities for businesses to continue to grow in Town, including the adoption of: a Late Night Entertainment Policy; an Outdoor Seating Policy; Town Code language permitting businesses to offer valet parking; and an amendment to the Town Code to allow restaurants to calculate parking requirements and seating capacities separately. In addition, on April 3, 2018, the Town Council adopted Resolution 2018-011 rescinding the Town's Alcohol Beverage Policy given that the State of California's Alcohol Beverage Control (ABC) provides enforcement and oversight of the state law and permit requirements for businesses that sell and serve alcohol (Exhibit 7).

On June 19, 2018, the Council adopted Resolution 2018-039 temporarily allowing the DRC to approve certain modifications to CUPs for restaurants Town-wide, such as hours of operation and new or expanded alcohol service, for a period of 18 months (Exhibit 2, Attachment 3). This streamlining effort significantly reduced the time and cost of modifying a CUP for a restaurant. Average processing time for modifying an existing CUP for a restaurant at the DRC level is approximately six to eight weeks and requires an application fee of \$4,147.58. In contrast, a Planning Commission level modification would take approximately 12 to 16 weeks to complete, and the fees would be \$6,443.36. A Town Council level modification of a CUP for a restaurant with alcohol service would take approximately 16 to 24 weeks to complete, and fees would be \$11,035.04.

On March 5, 2019, the Council adopted Resolution 2019-008 temporarily allowing the DRC to approve new CUPs for all restaurants Town-wide to be approved by the DRC for a period of 18 months (Exhibit 2, Attachment 4). To make this possible, Ordinance 2021

DISCUSSION (continued):

was also suspended for the same period. This streamlining effort significantly reduced the time and cost for a new CUP for a restaurant. Average processing time for a new CUP for a restaurant at the DRC level is approximately six to eight weeks and requires an application fee of \$5,566.10. In contrast, processing at the Planning Commission level would take approximately 12 to 16 weeks to complete, and the fees would be \$8,591.14. Processing at the Town Council level would take approximately 16 to 24 weeks to complete, and fees would be \$13,182.82.

To date, 18 restaurants have completed a modification at the DRC level, one restaurant is currently in the process of requesting a modification, and three new restaurants have been approved by the DRC.

To memorialize this streamlining effort, the draft Ordinance would rescind Section I of Ordinance 2021. Section 29.10.020 of the Town Code would be amended to clarify the definition of *restaurant* and remove antiquated definitions of types of restaurants introduced by Ordinance 2021. Sections 29.20.745 and 29.20.755 would be amended to assign review of modification of existing and new CUPs for all restaurants Town-wide to the DRC. To reflect the Council's rescission of the Alcoholic Beverage Policy, references to that policy would be removed from Section 29.10.225 and 29.20.318.

C. Minor Exterior Modifications to Commercial Buildings

Town Code Section 29.20.745 requires that the DRC determine and issue zoning approval for minor exterior alterations to commercial buildings. Additionally, Resolution 2005-038 provides a definition of *minor exterior alterations to commercial buildings* to clarify the types of minor projects that can be reviewed at the DRC level (Exhibit 8).

On March 5, 2019, the Council adopted Resolution 2019-009 temporarily reassigning the duties for minor exterior modifications to commercial buildings from the DRC to the Community Development Director with a building permit for a nine-month period (Exhibit 2, Attachment 5). During this streamlining effort, staff used the provisions of the Town Code and Commercial Design Guidelines to determine that the proposed alterations were appropriate and to ensure the compatibility of the exterior modification with the existing building and surrounding area. If the building was deemed historic, consideration by the Historic Preservation Committee could be required; however, after this consideration the applicant could submit directly for building permits.

This streamlining effort significantly reduced the time and cost for minor exterior modifications to commercial buildings. Average processing time for minor exterior

DISCUSSION (continued):

modifications at the building permit level is eight to 10 weeks and building permit application fees vary based on the project valuation. In contrast, a DRC review of an Architecture and Site application for exterior modifications would take approximately 12 to 16 weeks and the application fees would be \$5,743.02. To date, seven applications for exterior modifications, which included window and door changes, parking lot reconfigurations, window awnings, pedestrian walkways, and changes to exterior materials have been processed.

To memorialize this streamlining effort, Resolution 2005-038 would be rescinded, eliminating the Council Policy on minor alterations to commercial buildings (Exhibit 9). Section 29.10.020 the Town Code would be amended to incorporate the definition of *minor exterior alterations to commercial buildings* from this policy. The assignment of duties in Sections 29.20.700 and 29.20.745 would be amended to reassign the duties for minor exterior modifications to commercial buildings from the DRC to the Community Development Director with a building permit.

D. Group Classes

Although the term *group classes* is not defined in the Town Code, it is considered a use consistent with *art, craft, music, dancing school*, which is a conditional use in the O, C-1, C-2, CH, and LM zones. Section 29.20.750 (8) assigns the review of CUPs for group classes to the Planning Commission. The Town Code does not provide a parking requirement for group classes and a rate of one space for each employee and one space per three students has been applied.

On March 9, 2019, the Council adopted Resolution 2019-012, temporarily allowing CUPs for group classes within the downtown C-2 zone to be heard by the DRC, and those outside of the downtown C-2 zone to be permitted by right with a Certificate of Use and Occupancy and a Business License (Exhibit 2, Attachment 6). This streamlining effort significantly reduced the time and cost for establishing group classes. Average processing time for a CUP for group classes in the downtown C-2 zone by the DRC is four to 12 weeks and requires an application fee of \$5,566.10. Outside of the downtown C-2 zone, group classes can be permitted by right with a Certificate of Use and Occupancy with a cost of \$262.20 and a Business License with a cost ranging from \$75 to \$975, both of which can be issued over the counter. In contrast, a Planning Commission review of a CUP for group classes would take approximately 12 to 24 weeks and the application fees would be \$8,591.14. To date, one new CUP for group classes in the downtown C-2 zone has been approved by the DRC and one is currently in process. Following the DRC approval of the application, it was appealed by a community member to the Planning Commission whom ultimately upheld the DRC approval. Additionally, one new group class use outside of the downtown C-2 zone has been permitted.

DISCUSSION (continued):

To memorialize this streamlining effort, Section 29.20.745 would be amended to assign review of group classes CUPs in the downtown C-2 zone to the DRC. Group classes would be added as a permitted use in the O, C-1, CH, and LM zones. Section 29.10.020 the Town Code would be amended to introduce a definition for *group classes* and Section 29.10.150 (c) would be amended to introduce a parking rate for group classes of one space for each employee and one space per three students.

E. Public Outreach

Public input has been requested through the following media and social media resources:

- A poster at the Planning counter at Town Hall;
- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's Next Door page.

PUBLIC COMMENTS:

At this time, the Town has not received any public comment.

CONCLUSION:

A. Recommendation

Based on the direction of the Town Council, staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval to rescind Resolution 2005-038 and approval of the amendments to Chapter 29 of the Town Code in the draft Ordinance. The Commission should also include any comments or recommended changes to the draft Ordinance in taking the following actions:

1. Make the finding that there is no possibility that the amendments to Chapter 29 of the Town Code in the draft Ordinance will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the draft Ordinance are consistent with the General Plan (Exhibit 1);

CONCLUSION (continued):

3. Forward a recommendation to the Town Council for approval of a Resolution rescinding Resolution 2005-038 (Exhibit 9); and
4. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the draft Ordinance (Exhibit 10).

B. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance with modifications; or
2. Forward a recommendation to the Town Council for denial of the Draft Ordinance; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. October 1, 2019 Town Council Report with attachments
3. November 5, 2019 Town Council Report without attachments
4. Resolution 2019-051
5. C-2 Zone Map
6. Ordinance 2021
7. Resolution 2018-011
8. Resolution 2005-038
9. Draft Resolution
10. Draft Ordinance