

ORDINANCE

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING THE LAND USE APPEAL PROCESS

WHEREAS, the Town Council would like to streamline the land use appeal process to reduce the back and forth between Planning Commission and Town Council; and

WHEREAS, the proposed amendments give the Town Council more discretion as the ultimate decision-maker without needing to make one of the three findings currently required by Section 29.20.300; and

WHEREAS, the proposed amendments still provide the Town Council the option of remanding an application that is appealed to the Town Council back to Planning Commission for review; and

WHEREAS, the Town encourages prospective applicants to utilize the Town's Conceptual Development Advisory Committee to receive initial feedback on a possible development prior to application submittal;

WHEREAS, the Town Planning staff are available to answer questions as applicants are putting together their application materials;

WHEREAS, the Town expects all applicants to do their best work in the initial application and not wait until a potential appeal process to propose viable solutions that meet Town Codes, Policies, and Guidelines;

WHEREAS, the Planning Commission is expected to fully vet the land use application according to the adopted Town Code, Policies, and Guidelines;

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on March 27, 2019; and

WHEREAS, on March 27, 2019, the Planning Commission reviewed and commented on the proposed amendments regarding the land use appeal process and forwarded a recommendation to the Town Council for _____ of the proposed amendments _____ modifications; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on _____; and

WHEREAS, on _____, the Town Council reviewed and commented on the proposed amendments regarding land use appeals and the Town Council voted to introduce an Ordinance with specific changes identified and agreed upon by a majority of the Council.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Section 29.10.020, Section 29.20.255, Section 29.20.257, Section 29.20.258, Section 29.20.295 and Section 29.20.300 of Town Code Chapter 29 are hereby amended to read as follows:

Sec. 29.10.020. - Definitions.

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Interested Person means:

- (1) *Residential Projects.* Any person or persons or entity or entities who own property or reside within 500 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
- (2) *Non-residential and Mixed-use Projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

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Sec. 29.20.255. - Appeals from the decision by the Planning Director.

Any interested person as defined in Sec. 29.10.020 may appeal to the Planning Commission ~~from any~~ decision of the Planning Director:

- (1) Determining an application for a horse permit, for an amateur horse event or animal permit, for a home occupation permit, for a tree removal permit, for a sign permit, or denying a certificate of use and occupancy on the ground that the use is not allowed in the zone.
- (2) Granting or denying an extension of time related to one (1) of the foregoing transactions.
- (3) Revoking or modifying one (1) of the foregoing approval of permits.
- (4) Determination of an unlawful demolition and/or the penalty and the cost assessment for the unlawful demolition.
- (5) Determining a request for reasonable accommodation.

Sec. 29.20.257. - Appeals from decisions by the Development Review Committee.

Any interested person as defined in Sec. 29.10.020 may appeal to the Planning Commission any Development Review Committee decision making a determination authorized by section 29.20.745.

Sec. 29.20.258. - Appeals from decisions of the Historic Preservation Committee.

Any interested person as defined in Sec. 29.10.020 may appeal to the Planning Commission any Historic Preservation Committee determination.

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Sec. 29.20.275. – Appeals from decisions by the Planning Commission.

Any interested person as defined in Sec. 29.10.020 may appeal to the Council ~~from~~ any decision of the Planning Commission. The appellant must file a written notice of appeal in duplicate with the Clerk not more than ten (10) days after the decision is rendered. The notice shall state clearly the reasons why the appeal ought to be granted. The Council shall only hear the appeal if the notice is filed and all required fees are paid within the ten-day appeal period. Once a notice of appeal has been filed, it may be withdrawn by the appellant prior to the distribution of public hearing notices, but not thereafter.

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Sec. 29.20.295. - Council hearing.

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Sec. 29.20.300. - Decision.

(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.

~~(b) If the Council decides to modify or reverse the decision of the Planning Commission on any appeal, the resolution shall specify one or more of the following:~~

- ~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~
- ~~(2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or~~
- ~~(3) An issue or policy over which the Commission did not have discretion to modify or address,~~

~~but which is vested in the Council for modification or decision.~~

~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~

~~(d-b)~~ The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

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Sec. 29.20.480. - Administrative procedure for minor residential projects.

(1) This procedure is established for review of minor residential projects to provide for neighborhood review in a timely and streamlined process. This process shall be used by the Planning Director for projects listed in section 29.20.480(2) ~~and by the Development Review Committee for reviewing projects identified in subsections 29.20.745(12) and (15).~~

- (a) An application and fee is submitted. In addition to the standard application materials (application and plans), the applicant will be required to submit one 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 (all properties abutting the applicant's parcel, properties directly across the street and the two parcels on each side of it).
- (b) The deciding body reviews the application using the Town's Development Standards, as well as the Town Code requirements.
- (c) If the Planning Director intends to approve the application, a "Notice of Pending Approval" will be mailed to neighboring residents and property owners including any applicable conditions, exactions or dedications as required. The notice will advise the neighboring residents and property owners of the applicant's plans, and that the application will be approved ten days from the date of mailing unless there is an objection. The residents and property owners Any interested person as defined in Sec. 29.10.020 will have ten days from the date of approval the "Notice of Pending Approval" in which to file a written notice of appeal to the Planning Commission with review the application and to notify the Planning Director in writing of any concerns or problems.
- ~~(d) If a written notice of appeal objection to the project is not filed within the ten-day period, the application may be approved. If a written objection is filed but the differences in opinion can be worked out to the satisfaction of all objectors, then the application may also be approved. Once the zoning approval is granted, a building permit may be applied for and issued, subject to the conditions of the zoning approval.~~
- ~~(e) If an objection to the project is filed in a timely manner and the differences cannot be resolved at the staff level, the application is scheduled before the Planning Commission on the next available agenda for consideration at the applicant's cost. All property owners and residents notified originally shall be notified of the Planning Commission meeting.~~

~~(f) If the Planning Director determines that the application cannot be approved because it does not comply with the Town's Development Standards and the applicant is unwilling to revise the plans, then the applicant will be required to file an Architecture and Site Application (including the required fee) and the application shall be considered by the Planning Commission.~~

SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

SECTION III

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on _____, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on _____ and becomes effective 30 days after it is adopted.

In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

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