



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/20/2023

ITEM NO: 22

DATE: June 15, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Introduce an Ordinance Titled "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, "Zoning Regulations," of the Town Code Regarding Land Use and Economic Recovery Amendments Related to Personal Service Businesses, Bars, Tap/Tasting Rooms, Specialty Food Retail, Banks, Financial and Investment Services, Office Activities, Formula Retail, Group Classes, Veterinarians, and Definitions." The Proposed Amendments to the Town Code are Not Considered a Project Under the California Environmental Quality Act. Town Code Amendment Application A-23-001. Project Location: Town Wide. Applicant: Town of Los Gatos

RECOMMENDATION:

Introduce an ordinance of the Town Council of the Town of Los Gatos, by title only, amending Chapter 29, "Zoning Regulations," of the Town Code regarding land use and economic recovery amendments related to personal service businesses, bars, tap/tasting rooms, specialty food retail, banks, financial and investment services, office activities, formula retail, group classes, veterinarians, and definitions (Attachment 1).

BACKGROUND:

Throughout the last several years, the Town Council has identified Strategic Priorities related to:

- Community vitality;
- Economic recovery;
- Business permit streamlining; and
- Policies and ordinances as they relate to business activity.

PREPARED BY: Sean Mullin, AICP
Senior Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Department Director, and Economic Vitality Manager

BACKGROUND (continued):

Given the priorities identified by the Town Council, staff brought forward a series of policy and ordinance changes to begin this streamlining work, creating a more welcoming and flexible business environment with reduced timelines and fee structures for businesses. The recently adopted 2023 - 2025 Strategic Priorities includes Economic Vitality and Pandemic Recovery (Attachment 3, Exhibit 3), providing an opportunity to continue the streamlining work that began before the pandemic to support the business community during the recovery.

Attachment 3, Exhibit 4, Economic Vitality and Land Use Streamlining, illustrates the policy and ordinance streamlining that took place prior to 2020. Once the pandemic hit the community and the devastating effects became notable, the local business community and economic well-being of the Town's shopping areas were among the stakeholder groups most negatively affected.

On March 12, 2020, the Director of Emergency Services (Town Manager) issued a proclamation pursuant to Town Code Section 8.10.035, declaring the existence of a local emergency within the Town due to the COVID-19 pandemic. On March 17, 2020, the Town Council adopted Resolution 2020-008 Ratifying and Continuing the Proclamation of Existence of Local Emergency Issued by the Director of Emergency Services (Attachment 3, Exhibit 5).

At this point, it was understood that the potential length and impacts of the pandemic were unknown and the Town needed to make adjustments to local land use and business permit policies to align with those being made at the County, State, and Federal levels through emergency orders, and to offer flexibility and options to support the local business community in the uncertain times. After thoughtful discussion by the Town Council, an Economic Recovery Resolution was adopted to provide businesses with options for flexibility to modify their business offerings. On June 3, 2020, an Economic Recovery Resolution 2020-022 was adopted by the Town Council, and has since been modified and extended with a current sunset date of October 31, 2023. Attachment 6 is the current Economic Recovery Resolution, 2023-027.

A high-level overview of the streamlining and flexibility offered through the Economic Recovery Resolution includes:

- Allowing outdoor dining in parklets along N. Santa Cruz Avenue and in private parking lots;
- Allowing existing businesses in Town to relocate, expand, or open additional locations without obtaining a new Conditional Use Permit (CUP) through an Economic Recovery Agreement;
- Suspending the requirement for personal service businesses to obtain a CUP in the C-2 zone through an Economic Recovery Agreement;
- Reducing the cost for a new CUP by 50 percent, with the Town paying the balance of the fees;

BACKGROUND (continued):

- Allowing alcohol consumption with meals in Town parks, temporary pop-up parks, temporary patio dining areas, and parklets; and
- Extending the expiration date for all building permits and planning entitlements by two years.

The California Emergency Services Act (California Government Code Section 8550, *et seq.*) provides that once the Town Council determines that there is no need to continue the local emergency, the Council shall proclaim the termination of the local emergency at the earliest possible date. The Governor of the State of California ended the State emergency declaration related to COVID-19 on February 28, 2023, and the County of Santa Clara demobilized its remaining COVID-19 mass vaccination and mass testing sites. On March 7, 2023, the Town Council adopted Resolution 2023-011, terminating the local emergency in line with the end of the State emergency declaration related to COVID-19 (Attachment 3, Exhibit 7). The Department of Health and Human Services terminated the Federal Public Health Emergency for COVID-19 on May 11, 2023.

In consideration of the recent termination of Federal, State, and local emergency orders and the sunset date of the current Economic Recover Resolution approaching, staff proposes amendments to the Town Code to continue the Town Council's pre-pandemic streamlining efforts and to offer post-pandemic economic recovery support for businesses consistent with the Town Council's Strategic Priorities.

On April 26, 2023, the Planning Commission considered the draft economic recovery Code amendments and made a recommendation to the Town Council based on the staff report and desk item (Attachments 3 and 4). The Planning Commission received and considered public comments on the draft economic recovery Code amendments, reviewed the proposed changes, and suggested edits in their recommendation of approval to Town Council as shown in the verbatim minutes (Attachment 5) and summarized below.

DISCUSSION:

The following sections include a summary of the existing regulatory framework; actions taken during the local COVID-19 emergency declaration; and the Planning Commission's recommended amendments to the Town Code (Attachment 2). Additional discussion of these topics is included in the April 26, 2023, Planning Commission staff report and desk item included as Attachments 3 and 4.

DISCUSSION (continued):

A. Personal Service Businesses as a Permitted Use in the C-2 and O Zones

Under the current Town Code, a personal service business is a permitted use in the C-1, CH, and LM zones. In the C-2 zone, personal service businesses are allowed on the ground floor with a CUP and are a permitted use in specific areas described in Town Code Section 29.60.320 (c)(2), as shown on the map included as Attachment 3, Exhibit 8. A CUP for a personal service use must be approved by the Planning Commission.

While the local COVID-19 emergency order was in place, the Town Council suspended the requirement for personal service businesses to obtain a CUP in the C-2 zone and allowed them to locate within the Office zone. This action offered locational flexibility and reduced costs and timelines to personal service businesses during the emergency order.

The Planning Commission recommends amendments to the Town Code allowing personal service businesses on the ground floor throughout the C-2 zone, making them a permitted use by eliminating the CUP requirement, and removing limitations based on location within the C-2 zone. Additionally, personal service businesses would be added as a permitted use in the Office zone.

B. Bars, Markets, and other Miscellaneous Commercial Businesses

The Town Code currently includes definitions and regulations for bars and restaurants. Bars are a conditional use allowed only in the C-2 zone and require approval by the Town Council. Restaurants without alcohol service are a conditional use allowed in the C-1, C-2, CH, LM, and CM zones. Restaurants with alcohol service also require a CUP, but are not allowed in the CM zone. A CUP for either type of restaurant may be considered by the Development Review Committee (DRC).

While the local COVID-19 emergency order was in place, the Town Council suspended the requirement for up to five (5) markets, bars, and/or miscellaneous commercial businesses to obtain a CUP in the C-2 zone. This action offered reduced costs and timelines to specific business types during the emergency order; however, the resolutions and the current Town Code lack a definition for “market” and do not clarify what is meant by “miscellaneous commercial businesses.”

As discussed in the Planning Commission staff report (Attachment 3), there is no need to introduce markets as a new use in the Town Code. The “miscellaneous commercial businesses” term included in the resolution allowed the Town to be nimble in its regulatory approach to new businesses within the bar to restaurant spectrum during an

DISCUSSION (continued):

unprecedented time. As the recovery process continues, it is important that updated Town Code language continue to provide for flexibility while recognizing and defining the variety of business models within the bar to restaurant spectrum. Two examples of business types that do not fit into the regulatory framework of the existing Town Code are tap/tasting rooms and specialty food retail. When these business types pursue operations in the Town, they are often forced into a category inconsistent with their desired operational characteristics, which may limit where they can be located and could require review by the Town Council.

Tap/Tasting Rooms

The Planning Commission recommends that the following definition of tap/tasting rooms be added to Town Code and be included in the restaurant categories for parking in the downtown area and outside of the downtown area. Tap/tasting rooms would also be added to the Table of Conditional Uses for the C-1, C-2, CH, and LM zones, and assigned to the DRC. A new definition would be added for tap/tasting room and the definition of bar would be simplified to reflect the rescinding of the Town's Alcohol Policy in 2019.

- *Tap/tasting room* means an establishment operating within the hours of 10:00 a.m. and 10:00 p.m. devoted to the sampling and sale of alcoholic beverages for on- and/or off-site consumption. Food service is not required.
- *Bar* means a drinking place operating within the hours of 6:00 a.m. and 2:00 a.m. where alcoholic beverages are served for on-site consumption. Food service is not required.

Specialty Retail and Specialty Food Retail

The Planning Commission recommends that the following definition of specialty food retail be added to Town Code and be included in the restaurant categories for parking in the downtown area and outside of the downtown area. Specialty food retail would also be added as a permitted use in the C-1, C-2, CH, and LM zones, where retail uses are also a permitted use. Approval of a CUP would be required for specialty food retail businesses offering alcohol for off-site or on-site consumption along with the appropriate ABC license. The Table of Conditional Uses would be updated accordingly.

- *Specialty food retail* means businesses that are primarily walk-in and impulse businesses that do not generally serve meals, but offer pre-packaged/pre-prepared foods and/or made-to-order beverages and have limited to no seating. Examples include but are not limited to, tea houses, donut shops, juice/smoothie bars, and ice cream/frozen yogurt shops. Specialty food retail does not include coffee houses.

DISCUSSION (continued):

This definition creates a use between retail and restaurant that allows for a business to offer pre-prepared food items and made-to-order beverages while not being classified as a restaurant. The new definition, which includes the exclusion of coffee houses, as recommended by Planning Commission (Attachment 5). Additionally, the Planning Commission supported staff's intended outreach to the local business community regarding the recommended amendments to the Town Code prior to the Town Council meeting. This outreach is described in the Public Outreach section of this report. More details of the recommended amendments, including a summary of the impacts to businesses, are included in the Planning Commission staff report (Attachment 3).

C. Banks and Financial and Investment Services

The Town Code does not provide definitions of bank, financial and investment services, or office activities. A bank requires a CUP in the C-1, C-2, and CH zones. The Planning Commission recommends the following new definitions in order to clarify the distinction between a bank and a financial and investment services use. New definitions would be added for retail bank, financial and investment services, and office activities. Existing regulations would continue to determine the parking requirements for office activities and where they could be located in the Town.

- *Bank, retail* means commercial and non-profit banks and credit unions, which are primarily focused on in-person customer services such as: cash deposits/withdrawals, loans, checking and savings accounts, currency exchanges, mortgages, personal loans, and debit or credit card services. This classification does not include payday lending businesses or check cashing businesses. The term "payday lending business" as used herein means retail businesses owned or operated by a "licensee" as that term is defined in California Financial Code Section 23001(d), as amended from time to time. The term "check cashing business" as used herein means a retail business owned or operated by a "check casher" as that term is defined in California Civil Code Section 1789.31 as amended from time to time.
- *Financial and investment services* means businesses that offer financial advice and services, including but not limited to: investment banking, portfolio management, private equity, and venture capital.
- *Office activities* means office uses, including but not limited to: administrative, professional, medical, dental, optical, real estate, insurance, financial and investment services, and other similar office uses characterized by an absence of retail sales.

DISCUSSION (continued):

Included in its recommendation, the Planning Commission made one modification to the staff recommendation, to include “cash” deposits/withdrawals in the definition of a retail bank. This modification is reflected in the definition above and the draft ordinance included as Attachment 1.

D. Formula Retail Greater than 6,000 Square Feet

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, décor, uniforms, architecture, colors, signs, or other similar features. Under the current Town Code, formula retail businesses up to 6,000 square feet are a permitted use in the C-1, C-2, CH, and LM zones. Formula retail businesses greater than 6,000 square feet are a conditional use in the C-1, C-2, CH, and LM zones and require Planning Commission approval.

The Planning Commission recommends amendments to the Town Code to allow formula retail businesses greater than 6,000 square feet as a permitted use in the C-1, C-2, CH, and LM zones by eliminating the formula retail definitions and specific regulations. This change would not impact the requirement for an Architecture and Site approval for new construction of a commercial building. More details on the recommended amendments related to formula retail businesses, including a summary of the impacts to businesses, is included in the Planning Commission staff report (Attachment 3).

E. Group Classes in C-2 Zone

The Town Code defines group classes as a class that offers instruction provided at a rate greater than one (1) student to one (1) instructor and does not include schools as defined in the Town Code. Under the current Town Code, group classes are a permitted use in the O, C-1, CH, and LM zones. Group classes require DRC approval of a CUP in the C-2 zone.

The Planning Commission recommends amendments to the Town Code to eliminate the requirement for a CUP for group classes in the C-2 zone, allowing it as a permitted use.

F. Veterinarians in C-1 Zone

Currently, the Town Code requires Planning Commission approval of a CUP for a veterinarian (without a kennel) in the C-2, CH, LM, and CM zones. Veterinarians are not allowed in the C-1 zone. Staff has received several inquiries recently related to commercial

DISCUSSION (continued):

properties in the C-1 zone, including locations on Los Gatos Boulevard, from parties interested in establishing a new veterinarian business.

The Planning Commission recommends amendments to the Town Code to allow veterinarians (without a kennel) in the C-1 zone with Planning Commission approval of a CUP, consistent with the other commercial zones.

PUBLIC OUTREACH:

Staff conducted outreach through the following media and social media resources, as well as direct communication with the Chamber of Commerce and individual businesses and groups as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account;
- The Town's NextDoor page;
- Two Economic Stakeholders Meetings at the Chamber of Commerce on June 13, 2023;
- Direct communication with the Chamber of Commerce Executive Director and Board Members; and
- Direct email communication to business stakeholders including property owners, business owners, and property managers/brokers.

With respect to the June Stakeholder Meetings, approximately 150 business interests (business owners, property owners, property managers, and commercial brokers) were invited via email directly from Town staff, while other meeting promotion and invitations were extended through the Chamber of Commerce network and the Town's social media outlets.

Approximately 30 stakeholders attended the meetings in person, and a couple, who were unable to attend, met with staff via individual meetings to learn about the Zoning Code amendments and streamlining efforts. Attachment 9 contains the slides that guided the conversation with stakeholders. Of the items discussed, the conversation around specialty food retail as it relates to coffee businesses generated the most dialogue, and staff anticipates that this may be a topic of interest in written and verbal comments to the Council.

Written public comments received after 11:00 a.m. on the day of the Planning Commission meeting are found in Attachment 7.

ENVIRONMENTAL ASSESSMENT:

In accordance with CEQA Guidelines Section 15378, the 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. Individual projects processed in accordance with the Town's Zoning Code will undergo CEQA review.

CONCLUSION:

Staff recommends that the Town Council:

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 (Attachment 1, Section XXI); and
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the draft Ordinance are consistent with the General Plan (Attachment 1, Section XXI);
3. Introduce an ordinance of the Town Council of the Town of Los Gatos, by title only, amending Chapter 29, "Zoning Regulations," of the Town Code regarding land use and economic recovery amendments related to personal service businesses, bars, tap/tasting rooms, specialty food retail, banks, financial and investment services, office activities, formula retail, group classes, veterinarians, and definitions (Attachment 1), with any specific changes identified and agreed upon by the majority of the Town Council.

ALTERNATIVES:

Alternatively, the Town Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer this item back to the Planning Commission with specific direction; or
3. Take no action, leaving the Town Code unchanged.

ATTACHMENTS:

1. Draft Ordinance
2. Draft Town Code Amendments Tracked Changes
3. April 26, 2023 Planning Commission Staff Report (with Exhibits 1-8)
4. April 26, 2023 Planning Commission Desk Item (with Exhibit 9)
5. April 26, 2023 Planning Commission Verbatim Minutes
6. Economic Recovery Resolution 2023-027
7. Public Comments
8. Slides Presented at the June Business Stakeholder Meetings

***This Page
Intentionally
Left Blank***