

## **DRAFT ORDINANCE**

### **AN 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;

**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**, On May 7, 2019, the Town Council introduced an Ordinance, effecting amendments to the Town Codes regarding the land use appeal process, excluding changes to Section 29.20.300, and referred those changes back to the Council Policy Committee for further discussion;

**WHEREAS**, on June 25, 2019, July 23, 2019, August 27, 2019, and September 24, 2019, the Council Policy Committee considered changes to Section 29.20.275, Section 29.20.295, and Section 29.20.300, and forwarded a recommendation to the Town Council for approval of the proposed amendments;

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on December 3, 2019; and

**WHEREAS**, on December 3, 2019, the Town Council reviewed and commented on the proposed amendments regarding the land use appeal process and the Town Council voted to

introduce the Ordinance.

**NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Sec. 29.20.275, Sec. 29.20.295, and Sec. 29.20.300 of Town Code Chapter 29 are hereby amended to read as follows:

**Sec. 29.20.275. - Appeals from decisions by the Planning Commission.**

Any interested person as defined in section 29.10.020 may appeal to the Council 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 notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record. 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.~~ An appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal.

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**Sec. 29.20.295. - Council hearing and decision.**

~~When hearing~~ In the appeal, the Council shall consider and based on the record, ~~and such additional information 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 to prove that there was an error or abuse of discretion by the Planning Commission as required by ~~of proof before the Council~~ in proving that

~~one or more of the reasons specified in Section 29.20.275 300. If neither is proved, the appeal shall be denied. 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. If the appellant meets the burden, the Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, in its discretion, return the matter to the Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.~~

**~~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) 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.~~

## **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 amendments will have a significant impact on the environment; and
- B. The Town Code amendments are consistent with the General Plan.

## **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 December 3, 2019, 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 December 17, 2019 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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