



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 12/03/2019

ITEM NO: 16

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**DATE:** November 21, 2019  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** First Reading and Introduction of an Ordinance of the Town of Los Gatos Amending Chapter 29 (Zoning Regulations) of the Town Code Regarding the Land Use Appeal Process.  
Town Code Amendment Application A-19-008. Project Location: Town Wide.  
Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Staff recommends that Town Council accept public comment and then move for the introduction and first reading of an Ordinance (Attachment 11 or Attachment 12), by title only, amending Chapter 29 (Zoning Regulations) of the Town Code regarding the land use appeal process.

**BACKGROUND:**

In 2018, the Town Council Policy Committee requested that amendments to the Town Code to streamline the land use appeal process be placed on a Policy Committee agenda for discussion. On December 20, 2018, the Committee forwarded a recommendation to the Planning Commission to approve the proposed amendments to the land use appeal process.

On March 27, 2019, the Planning Commission recommended approval of the Council Policy Committee's proposed amendments to include a definition of the term interested person in Section 29.10.020, and to state that an interested person may appeal the decision on a Minor Residential Development application in Section 29.29.480. The Commission further recommended retaining the requirement that the Town Council make one of three findings to modify or reverse the decision of the Commission on any appeal in Section 29.20.300; however, they proposed modifying the second finding to clarify that the Town Council shall specify that

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Planning Manager

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Director, and Finance Director

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BACKGROUND (continued):

new information should be relative to the same project considered by the Planning Commission, with no design changes.

On May 7, 2019, the Town Council considered the Planning Commission recommendations and introduced an ordinance, effecting amendments to the Town Code, excluding the proposed changes to Section 29.20.300, and referred those changes back to the Policy Committee for further discussion. Attachment 1 contains the minutes for the May 7, 2019 Town Council meeting.

DISCUSSION:

A. Council Policy Committee Meeting

On June 25, 2019, the Policy Committee began discussion of the Planning Commission's recommended changes to Section 29.20.300. The Policy Committee recommended amendments to Section 29.20.275 to require the appellant's notice of appeal to include the error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record, and to clarify that an appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal, as follows, in ~~strike through~~ and underlined font:

**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.

With the recommended changes to Section 29.20.275, the Policy Committee recommended removing Section 29.20.300, as follows:

~~**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~~

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DISCUSSION (continued):

~~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.~~

~~e) 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.~~

Attachment 2 contains the staff report and Attachment 3 contains the minutes for the June 25, 2019 Policy Committee meeting.

The Policy Committee continued the discussion of the land use appeal process at their July 23, 2019 and August 27, 2019 meetings. Attachment 4 contains the staff report and Attachment 5 contains the minutes for the July 23, 2019 Policy Committee meeting. Attachment 6 contains the staff report and Attachment 7 contains the minutes for the August 27, 2019 Policy Committee meeting.

On September 24, 2019, the Policy Committee recommended two options for potential amendments to Section 29.20.295 for consideration by the Town Council. Attachment 8 contains the staff report and Attachment 9 contains the minutes for the September 24, 2019 Policy Committee meeting.

In Option 1 (Attachment 11), the Town Council may consider the record, including additional information, in its determination as to whether there was an error or abuse of discretion by the Planning Commission, or their decision is not supported by substantial evidence in the record, as follows:

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DISCUSSION (continued):

**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~~ins 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.

In Option 2 (Attachment 12), the Town Council may also consider the record in its determination. However, if the basis for granting the appeal is information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review, as follows with additional language in double underlined font:

**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~~ins 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.

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DISCUSSION (continued):

B. Public Outreach

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

- An eighth-page public notice in the newspaper;
- 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 Nextdoor page.

In addition, interested architects and the following organizations have been contacted regarding the amendments:

- American Institute of Architects (AIA) Silicon Valley;
- Santa Clara County Association of Realtors (SCCAR); and
- Silicon Valley Association of Realtors (SILVAR).

CONCLUSION:

Staff recommends that the Town Council:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 10);
2. Make the required finding that the amendments to Chapter 29 of the Town Code are consistent with the General Plan (Attachment 10); and
3. Introduce an ordinance of the Town of Los Gatos effecting Option 1 or Option 2 (Attachment 11 or Attachment 12) for amendments to Chapter 29 of the Town Code A-19-008, by title only, with any specific changes identified and agreed upon by the majority of the Town Council.

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ALTERNATIVES:

Alternatively, the Council may:

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

COORDINATION:

The evaluation of the application was coordinated with the Town Attorney.

ENVIRONMENTAL ASSESSMENT:

The project is Categorical 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 the amendments will have a significant effect on the environment.

PUBLIC COMMENTS:

No written comments have been received.

Attachments:

1. May 7, 2019 Town Council Minutes
2. June 25, 2019 Council Policy Committee Staff Report
3. June 25, 2019 Council Policy Committee Minutes
4. July 23, 2019 Council Policy Committee Staff Report
5. July 23, 2019 Council Policy Committee Minutes
6. August 27, 2019 Council Policy Committee Staff Report
7. August 27, 2019 Council Policy Committee Minutes
8. September 24, 2019 Council Policy Committee Staff Report
9. September 24, 2019 Council Policy Committee Minutes
10. Required Findings
11. Draft Ordinance (Option 1)
12. Draft Ordinance (Option 2)