



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 01/24/2024

ITEM NO: 3

DATE: January 19, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider a Request to Further Amend Chapter 29 of the Town Code to Define "By Right Approvals" and Amend the Housing Element Overlay Zone as Division 5 of Article VIII, "Overlay Zones and Historic Preservation." An Environmental Impact Report (EIR) was Prepared and Certified for the 2040 General Plan Update on June 30, 2022. No further Environmental Analysis is Required. Zoning Code Amendment Application Z-24-001. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation of approval to the Town Council to further amend Chapter 29 of the Town Code to define "By Right Approvals" and amend the Housing Element Overlay Zone (HEOZ) as Division 5 of Article VIII, "Overlay Zones and Historic Preservation."

BACKGROUND:

The Town of Los Gatos is required to prepare an updated Housing Element for the period covering 2023-2031 that is certified by the State Housing Community Development Department (HCD). The Housing Element is one of nine State-mandated elements that must be included in every General Plan. The Housing Element assesses housing needs for all income groups within the community and identifies implementation programs to meet those housing needs. Unlike other General Plan elements, the Housing Element must be updated every eight years, rather than every 10 to 20 years, must address statutory requirements regarding its content, and is subject to mandatory review by HCD. The Town's Regional Housing Needs Allocation (RHNA) for the sixth cycle planning period is 1,993 units.

The Town of Los Gatos 2023-2031 Housing Element identifies amending the Town Code to create the HEOZ as a strategy to accommodate the Town's Regional Housing Needs Allocation (RHNA).

PREPARED BY: Jocelyn Shoopman and Erin Walters
Associate Planner and Associate Planner

Reviewed by: Community Development Director, Planning Manager, and Town Attorney

BACKGROUND (continued):

On August 23, 2023, the Planning Commission reviewed the proposed Town Code amendments, held a public hearing, and forwarded a recommendation of approval to the Town Council to modify the Affordable Housing Overlay Zone (AHOZ) to be the HEOZ.

On October 3, 2023, the Town Council accepted the report of the Planning Commission's recommendation of approval for the proposed Town Code amendment and held a public hearing.

On November 7, 2023, the Town Council, reviewed the proposed Town Code amendments, held a public hearing, and introduced the ordinance to amend the Town Code.

On November 21, 2023, the Town Council adopted Ordinance No. 2347 to enact the proposed Town Code amendments (Exhibit 1).

On December 1, 2023, the Town received the HCD findings/comment letter on the Town's Draft Revised Housing Element as submitted to HCD, including a cursory review of the adopted HEOZ ordinance. The letter is available on the Town's Housing Element webpage:

<https://www.losgatosca.gov/HousingElement>

DISCUSSION:

A. Zoning Amendments

The Town has received comments from HCD requiring amendments to the Town's adopted HEOZ ordinance to include by right approval requirements pursuant to Government Code section 65583.2, subdivision (h) and (i), as well as the minimum density requirements of Government Code section 65583.2, subdivision (h).

Staff, with the assistance from the Town's outside legal counsel, Goldfarb and Lipman LLP, and the Town's Housing Consultant, Veronica Tam and Associates, have prepared an amended ordinance (Exhibit 2) to address HCD's comments.

B. Add "By Right Approval" Definition

The definition of "By Right Approval" below will be added to Section 29.10.2020, "Definitions," of Chapter 29, "Zoning Code Regulations," of the Town Code:

By right approval shall have the meaning set forth in Government Code Section 65583.2 (i).

DISCUSSION (continued):

Government Code Section 65583.2 (i) defines “By Right Approval” as the following:

For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

C. Provide Additional Specification on Residential Development in the HEOZ

Division 5 of Article VIII, “Overlay Zones and Historic Preservation,” of Chapter 29, “Zoning Regulations,” is amended to provide clarification on what regulations apply to “by right” and “non by right” residential development in the HEOZ.

Specification includes the following for “by right” developments:

- Residential developments on sites with underlying zoning of RM, CH, or NF-SP with at least 20 percent of the units proposed for “low income” households and without a subdivision are subject to “by right approval.”
- The developments must be developed at the densities specified in Table 1A below and in no event shall any residential development projects be developed below the minimum density of 30 units per acre.
- The developments shall be subject to non-discretionary design review based on objective development standards in accordance with the procedures specified in Article II, "Administration and Enforcement," of Chapter 29, “Zoning Regulations,” of the Town Code.
- No California Environmental Quality Act review shall be required.
- Subdivisions remain subject to all applicable state and local laws, including but not limited to the Subdivision Map Act.
- Residential units shall occupy at least 50 percent of the floor area in all mixed-use projects.
- For residential developments and mixed-use projects, the standards set forth in Table 1A shall apply.

DISCUSSION (continued):**Table 1A HEOZ Development Standards for “By Right” Residential Development**

General Plan Land Use Designation	Zoning	Minimum Yards	Maximum Lot Coverage	Maximum Floor Area Ratio (FAR)	Maximum Height Limit (ft)	Density Units Per Acre
High Density Residential	R-M	As authorized by Section 29.40.645	75%	N/A	45 feet	30-40
Mixed-Use	CH	As authorized by Section 29.60.435	N/A	3.0	45 feet	30-40
North Forty Specific Plan	NF-SP	As defined in Specific Plan	As defined in Specific Plan	As defined in Specific Plan	As defined in Specific Plan	30-40

Specification includes the following for all other residential developments include the standards in Table 1B:

Table 1B HEOZ Development Standards for Other Residential Development

General Plan Land Use Designation	Zoning	Minimum Yards	Maximum Lot Coverage	Maximum Floor Area Ratio (FAR)	Maximum Height Limit (ft)	Density Units Per Acre
Low Density Residential	R-1	As authorized by Section 29.40.405	50%	N/A	30 feet	0-5
Medium Density Residential	R-1D, R-D, and R-M	As authorized by Section 29.40.405, 29.40.530, and 29.40.645	75%	N/A	35 feet	14-22 or 5-12 in Very High Fire Hazard Severity Zones
Neighborhood Commercial	C-1	As authorized by Section 29.60.225	N/A	1.0	35 feet	10-20
Central Business District	C-2	As authorized by Section 29.60.335	N/A	2.0	45 feet	20-30
Office Professional	O	As authorized by Section 29.60.100	N/A	1.0	35 feet	10-20

Specification includes the following for all residential developments, both “by right” and “non by right”:

- The underlying zoning development standards will remain in effect for all other development without a residential component.
- Regardless of the underlying zoning designation, no residential use may be developed that does not meet the applicable HEOZ development standards.
- Where standards are not specified, the development standards provided in the underlying zoning district shall apply.

DISCUSSION (continued):

D. Next Steps

The Town Council will consider the proposed HEOZ Town Code amendments at a future date.

PUBLIC COMMENTS:

Public notification has included a legal ad in the paper. The meeting has also been publicized on the Town's website and through the Town's social media platforms. As of the drafting of this report, no comments from the public have been received.

CONCLUSION:

A. Summary

Consider a request for approval to further amend Chapter 29 of the Town Code to Define "By Right Approvals" and amend the HEOZ as Division 5 of Article VIII, "Overlay Zones and Historic Preservation."

B. Recommendation

Based on the analysis above, staff recommends that the Planning Commission consider the Town Code amendments and forward a recommendation for approval of the amendments to the Town Council (Exhibit 2).

C. Alternatives

Alternatively, the Planning Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Provide a recommendation for denial to the Town Council providing findings for denial.

EXHIBITS:

1. Adopted Ordinance 2347
2. Draft Ordinance

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