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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Steve Raspe, Chair Emily Thomas, Vice Chair Susan Burnett Melanie Hanssen Kathryn Janoff Adam Mayer
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

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2  
3 P R O C E E D I N G S:

4 CHAIR RASPE: We now move to the public portion  
5 of the hearing tonight, and tonight we have a single item  
6 on the agenda, a request to further amend Chapter 29 of the  
7 Town Code to define "By Right Approvals," and amend the  
8 Housing Element Overlay Zone as Division 5 of Article VIII,  
9 "Overlay Zones and Historic Preservation." An Environmental  
10 Impact Report was prepared and certified for the 2040  
11 General Plan Update on June 30, 2022. As a result, no  
12 further environmental analysis is required.  
13

14 Tonight I believe our Staff Report is from Ms.  
15 Walters. Ms. Walters, would you like to proceed?

16 ERIN WALTERS: Yes, good evening, Chair and  
17 Planning Commissioners.

18 Before you tonight is an amendment to the Housing  
19 Element Overlay Zone Ordinance, also known as the HEOZ  
20 Ordinance. On November 21<sup>st</sup> of last year the Town Council  
21 adopted the original HEOZ Ordinance as recommended by  
22 Planning Commission, and this can be found in Exhibit 1.  
23

24 Tonight's amendment is in response to HCD's  
25 comments received by the Town on December 1<sup>st</sup>. The amended  
ordinance does not change the density minimum or maximum,

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1 it does not propose to modify sites with the HEOZ Overlay,  
2 but rather the proposed amendment provides more clear and  
3 explicit language. The Town's outside legal counsel,  
4 housing consultant, and HCD have reviewed this language.

5           The proposed amended ordinance in Exhibit 2  
6 includes a definition of "by right approval" by the State  
7 government code. It also provides clarification on  
8 regulations that apply to by right and non-by right  
9 residential development, which is an HEOZ overlay.

10           Planning Commission recommendation tonight will  
11 be forwarded to Town Council. Tentatively the Council will  
12 hear this item on February 20<sup>th</sup>, and the second reading is  
13 tentative for March 5<sup>th</sup>.

14           This concludes Staff's presentation. Staff is  
15 available for questions.

16           CHAIR RASPE: Thank you, Ms. Walters.  
17 Commissioners, any questions for Staff on this item?  
18 Commissioner Hanssen.

19           COMMISSIONER HANSSEN: Since we have gone through  
20 plenty of reviews with HCD, you did mention that this  
21 proposed change in language has been reviewed by outside  
22 legal, our consultants, and HCD, so you know what my next  
23 question is going to be. We shouldn't have any issue with  
24 getting this through HCD this time. They did flag that we  
25

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1 had not met the requirements for the rezoning, and so this  
2 will take us there and we don't have anything left?

3 ERIN WALTERS: That would be our hope per their  
4 review and our guidance from outside counsel.

5 COMMISSIONER HANSSEN: But they actually reviewed  
6 this section of what changes and they said it looks okay?

7 ATTORNEY WHELAN: They have. Yes, they did. This  
8 is Gabrielle Whelen, Town Attorney. They reviewed the  
9 ordinance over the past several weeks. They did have some  
10 questions for Staff on Monday and we responded to those  
11 questions, and I believe it meets their requirements.

12 COMMISSIONER HANSSEN: Okay, thank you.

13 CHAIR RASPE: Thank you. Any other questions from  
14 Commissioners? Commissioner Janoff.

15 COMMISSIONER JANOFF: Thank you. Since you met  
16 with HCD on Monday, or had feedback on Monday, and we  
17 received our packages on Friday, did the feedback from HCD  
18 offer any substantial changes to what you had offered?

19 ATTORNEY WHELAN: No, they wanted to see  
20 explicitly where it is stated that any residential  
21 development must comply with the minimum densities that are  
22 set forth in the ordinance, and so we provided that. I  
23 can't remember their other questions. They had like two  
24  
25

1 other questions. It was mostly they wanted to know where  
2 specifically in the ordinance requirements were located.

3 JENNIFER ARMER: I can jump in through the Chair  
4 to provide additional clarification. We shared this draft  
5 of the ordinance with HCD and with our reviewer on Friday  
6 at the same time that we provide you with the Staff Report,  
7 and we heard from them on Monday with a few clarifying  
8 questions.

9  
10 It seemed clear that they were just confirming  
11 that certain things were in there, for example, the fact  
12 that you can't use the underlying zone, which might have a  
13 lower density, but that you would need to meet the minimum  
14 density in the Housing Element Overlay Zone, and so it was  
15 just confirming that those were located within, and we  
16 received acknowledgement of our responses.

17 CHAIR RASPE: Thank you so much. Any further  
18 questions, Commissioners? I have just one, and correct me  
19 if I'm wrong. This appears to me to be a largely technical  
20 correction for some language to be included. Is it correct  
21 that this does not impact our RHNA allocation numbers?

22 ERIN WALTERS: That's correct, that does not  
23 change.

24 CHAIR RASPE: I appreciate the confirmation.  
25 Thank you. Commissioners, anything else? Let's then go to

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1 members of our public for their comments. I have two cards  
2 tonight. Lee Fagot, if you'd please come to the podium and  
3 state your name for the record. You have three minutes.

4           LEE FAGOT: Good evening, thank you. Appreciate  
5 the opportunity to speak tonight. Lee Fagot, a resident of  
6 Los Gatos. I'm not representing any group; I'm speaking as  
7 an individual long-term resident of the Town.

8           I appreciate the clarification tonight from the  
9 feedback that occurred Monday that was discussed as well  
10 earlier this week by Council.

11           My concern is that we must preserve the historic  
12 parts of our town, because that is the history of this  
13 town, that is the legacy, and that is what our next  
14 generations want to be able to relate to; that link is  
15 critical. If there is a way to go forward and continue to  
16 preserve and still meet the RHNA allocation requirements of  
17 numbers of sites, please find a way to do that.

18           The other question I had was going to be did you  
19 consider input from HCD from this week, but I just heard  
20 you do that.

21           Again, thanks for all the work that you've been  
22 doing. It's been a lot of effort, a lot of work, and the  
23 citizens appreciate it. You are representing us, the  
24 citizens in town going forward, and preserving the

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1 character of our town. The heritage that we inherited needs  
2 to be passed on, so please do what you can to preserve the  
3 Historic District and those sites with the design elements,  
4 the height, and densities that are appropriate.

5           Seeing Victorian homes with five-story monoliths  
6 next to them, as we've seen in some other municipalities,  
7 is not Los Gatos, and we can't let the clowns in Sacramento  
8 begin telling us how we're supposed to live our lives here.  
9 Let's be folks who take control of our lives here locally  
10 and manage it as best we can through this process and their  
11 edicts that are coming down. Thank you.  
12

13           CHAIR RASPE: Thank you, Mr. Fagot. Before you  
14 sit down, do any Commissioners have any questions? No.  
15 Thank you, again, for your comments. Lee Quintana, please,  
16 if you would approach.

17           LEE QUINTANA: I was going to ask the question  
18 also whether this had been reviewed by HCD, and I guess  
19 that's been answered, but I do have some questions.

20           The first question I have is I'm somewhat  
21 confused by the 1-A, which is, "Developments must be  
22 developed within the densities of Table 1-A below." Is it  
23 "within" the densities, or "at" the densities?  
24

25           It says in one place as long as there is no  
subdivision, I believe, and then in another place it

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1 indicates that subdivisions may be applicable. "Subdivision  
2 remains subject to all the applicable state and local laws,  
3 including but not including the Subdivision Act," so I was  
4 a little confused about that.

5           If you could refresh my memory, are there any  
6 medium-density sites within the AHOZ zone? My concern there  
7 is most medium-density sites in the downtown area are  
8 either on very small lots so they can't be developed into  
9 larger homes, or they are pre-1941, or they are within an  
10 historic district, so I just wanted clarity on that.

11           The other thing I wanted clarity on is whether or  
12 not all of the AHOZ zones currently have a General Plan  
13 designation and a zoning designation that are consistent  
14 with one another, because along the Boulevard I'm not sure  
15 they are. Those are my major questions.

16           CHAIR RASPE: Thank you, Ms. Quintana. Before you  
17 sit down, any Commissioners have questions of Ms. Quintana?  
18 Seeing none, thank you again for your comments. I think  
19 that's all the public comments we have here in the  
20 chambers. Mr. Paulson, anybody on Zoom wishing to speak on  
21 this matter?

22           JOEL PAULSON: No, there are no speakers on Zoom.

23           CHAIR RASPE: Thank you. I'll then close the  
24 public portion of this matter and I'll open up the  
25

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1 Commission to discussion, questions of Staff, anything  
2 further. Commissioner Burnett.

3 COMMISSIONER BURNETT: Thank you to the two Lees  
4 for your questions. My question would be for Staff. Would  
5 you be able to addresses Ms. Quintana's two questions?

6 ATTORNEY WHELAN: I can address the first two  
7 questions.

8 COMMISSIONER BURNETT: Thank you.

9 CHAIR RASPE: Please proceed.

10 ATTORNEY WHELAN: As written, the ordinance said  
11 that developments must be developed at the density  
12 specified in Table 1-A, but those densities are ranges.

13 I think it's clear as it is, but if the Planning  
14 Commission feels that it would be clearer to say "within  
15 the density ranges specified in Table 1-A below," I'd be  
16 open to making that change pending input from CDD.

17 The second question was about subdivisions. The  
18 first part of the ordinance where subdivisions are  
19 referenced is intended to say that, "Projects requiring  
20 subdivisions will not be by right projects," and then the  
21 second reference to subdivisions in the ordinance is  
22 intended to say that, "Subdivisions will remain subject to  
23 all other applicable laws," which is another way of saying  
24  
25

1 that subdivisions won't be by right development, and so  
2 that was our intent with the drafting.

3 CHAIR RASPE: Commissioner Burnett, does that  
4 answer your question?

5 COMMISSIONER BURNETT: Yes, thank you.

6 CHAIR RASPE: Thank you. Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I thought it would be  
8 worth asking the question about the timing of this since we  
9 had a lot of Builder's Remedy applications. When this  
10 actually takes effect, we do have some sites that are  
11 contained within the site inventory where we've already had  
12 a proposal from someone to develop then, and so I'm pretty  
13 sure that this won't apply to them because of the timing of  
14 their application, but I thought it was worth asking that  
15 question, and then I have a follow up question.

16 JENNIFER ARMER: Thank you for that question.  
17 Yes, for those that have already had their preliminary  
18 application deemed submitted, those vest the regulations at  
19 that time, and so any that were deemed submitted prior to  
20 December 21, 2023 but then had the overlay zone applied  
21 would be developed under the previous zoning.

22 If though, through the development process or  
23 decisions by the Applicant, that vesting is lapsed so they  
24 don't meet the State regulations or they choose to change  
25

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1 the project by more than 20% for floor area or number of  
2 units, then they would need to restart and it would be  
3 newly vested, and therefore they would then be subject to  
4 the Housing Element Overlay Zone regulations.

5 This really is being more explicit about what we  
6 already were referencing and had in place with the Housing  
7 Element Overlay Zone, so it's stronger, more defensible,  
8 and follows the direction from the State, but does not  
9 substantially change anything, because the numbers in the  
10 table are still the same.

11  
12 COMMISSIONER HANSSEN: Thank you; that was very  
13 helpful. Related to that, would it also be true that since  
14 they filed it and they are vesting with the zoning that was  
15 there at the time that they are not eligible for by right  
16 unless they came in under some other provision like it was  
17 provided for in SB 330?

18 JENNIFER ARMER: If I understand the question  
19 correctly, if we're talking about a site that then has been  
20 rezoned in order to provide affordable units in our sites  
21 inventory, but that rezoning occurred after the vesting of  
22 the regulations, your question is are those by right as  
23 described in here? I will defer to the Town Attorney to see  
24 if she has thoughts on that question.  
25

1           ATTORNEY WHELAN: I probably don't have an answer  
2 for the Planning Commission tonight. What I can do is  
3 follow up with a memo.

4           COMMISSIONER HANSSEN: Okay. I think that would  
5 be really helpful to understand, especially since we have a  
6 number of applications out there.

7           One last question, if the Chair doesn't mind, and  
8 this is for the benefit of people watching or trying to  
9 understand this. When it's by right, if they meet the 20%  
10 affordable, what by right means is that they do have to  
11 live within our objective standards within our zoning, but  
12 there is no discretionary review if it doesn't seem  
13 compatible with the neighborhood as long as it meets the  
14 objective standards in our Zoning Code. Is that how you see  
15 by right?

16           ATTORNEY WHELAN: Yes, the two big impacts are  
17 they're subject only to objective design review, and there  
18 is no analysis under CEQA.

19           COMMISSIONER HANSSEN: So if people don't like  
20 the architecture or something else, that's not something  
21 that we have purview over once it becomes by right?

22           ATTORNEY WHELAN: So long as it meets the Town's  
23 objective design standards, that's correct, and then there  
24  
25

1 would be no opportunity to evaluate the aesthetics under  
2 CEQA.

3 COMMISSIONER HANSSEN: Okay, thank you.

4 CHAIR RASPE: Thank you for those answers.  
5 Commissioners, any further questions for Staff? Vice Chair  
6 Thomas.

7 VICE CHAIR THOMAS: Thank you. I did just want to  
8 follow up with a question regarding the densities versus at  
9 the density ranges. When I read this I assumed that was  
10 within the... I understand why it's not within, because that  
11 would intend lower ranges also, but I guess I'm asking the  
12 Community Development Director, do you feel like what  
13 language is most helpful for Staff?  
14

15 JOEL PAULSON: I would say that Staff doesn't  
16 have a preference. The Town Attorney has offered that if  
17 you want to make that change she's comfortable with that,  
18 so we would be comfortable with it as well.

19 VICE CHAIR THOMAS: Okay. I don't have a huge  
20 opinion either way, but I'm also not a developer person  
21 that's going to be reading this.

22 CHAIR RASPE: Commissioner Janoff.

23 COMMISSIONER JANOFF: I would only say that  
24 because it's a range I would suggest that we use the word  
25 "within."

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1 CHAIR RASPE: Very good. Commissioners, any  
2 further questions or comments? If not, I'm willing to  
3 entertain a motion at this time. Further comment from the  
4 Vice Chair.

5 VICE CHAIR THOMAS: This is a question for the  
6 Town Attorney. What language would you be comfortable  
7 changing to?

8 ATTORNEY WHELAN: I think another alternative  
9 would be, and this is pending acceptance by CDD, "The  
10 developments must be developed within the density ranges  
11 specified in Table 1-A below."

12 VICE CHAIR THOMAS: Okay.

13 JENNIFER ARMER: That's acceptable to us.

14 CHAIR RASPE: Thank you. Commissioner Hanssen.

15 COMMISSIONER HANSSEN: I just wanted to weigh in  
16 and say that it feels clearer to me to use the word  
17 "within" than "at," but that could just be me.

18 CHAIR RASPE: Thank you, and with that  
19 clarification, is the Commission ready to proceed with this  
20 matter? I can give a crack at the motion, seeing no other  
21 takers.

22 I move to recommend to Town Council to further  
23 amend Chapter 29 of the Town Code to define "By Right  
24 Approvals," and amend the Housing Element Overlay Zone as

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1 Division 5, Article VIII, "Overlay Zones and Historic  
2 Preservations," containing the language as provided to the  
3 Planning Commission in the Staff Report with the singular  
4 change suggested by Town Counsel, substituting the "within"  
5 language as opposed to the "at" language. Making all  
6 necessary findings. Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I second the motion.

8 CHAIR RASPE: Vice Chair Thomas.

9 VICE CHAIR THOMAS: I just wanted to say  
10 explicitly amend the motion to contain Exhibit 2.  
11

12 CHAIR RASPE: So amended. And the seconder?

13 COMMISSIONER HANSSEN: Yes.

14 CHAIR RASPE: Roll call or show of hands on this?

15 JENNIFER ARMER: Show of hands is fine.

16 CHAIR RASPE: So Commissioners, can I see a show  
17 of hands of all those in favor of the motion? Being all in  
18 favor, none against, the motion passes unanimously. Thank  
19 you, Commissioners.

20 (END)  
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