



**TOWN OF LOS GATOS
PLANNING COMMISSION AGENDA
MARCH 23, 2022
110 EAST MAIN STREET
LOS GATOS, CA**

*Melanie Hanssen, Chair
Jeffrey Barnett, Vice Chair
Kylie Clark, Commissioner
Kathryn Janoff, Commissioner
Steven Raspe, Commissioner
Reza Tavana, Commissioner
Emily Thomas, Commissioner*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Planning Commission meeting.

Effective Proceedings: The purpose of the Planning Commission meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Planning Commission meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Commissioners without first being recognized; interrupting speakers, Commissioners or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Planning Department by 1 p.m. or the Clerk’s Office no later than 3:00 p.m. on the day of the Planning Commission meeting.
- Persons wishing to submit written comments to be included in the materials provided to the Planning Commission must provide the comments to the Planning Department as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Friday before the meeting
 - For inclusion in any Addendum: by 11:00 a.m. the day before the meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the meeting

***Planning Commission meetings are broadcast Live on KCAT, Channel 15 (on Comcast) on the 2nd and 4th Wednesdays at 7:00 p.m.
Live and Archived Planning Commission meetings can be viewed by going to:
www.LosGatosCA.gov/TownYouTube***

***IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING,
PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN
TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]***

IMPORTANT NOTICE REGARDING PLANNING COMMISSION MEETING

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044 this meeting will not be physically open to the public and the Council and/or Commissioners will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below). The live stream of the meeting may be viewed on television and/or online at:

<https://meetings.municode.com/PublishPage/index?cid=LOSGATOS&ppid=ed97530d-9c22-4c95-961a-4d6a2c43b619&p=1>. **In accordance with Executive Order N-29-20, the public may only view the meeting on television and/or online and not in the Council Chambers.**

PARTICIPATION

If you are not interested in providing oral comments real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at <https://www.youtube.com/channel/UCFh35XRBWer1DPx-F7vvhcg>.

If you are interested in providing oral comments in real-time during the meeting, you must join the Zoom webinar at:

<https://losgatosca.gov.zoom.us/j/87364455550?pwd=cE8yeCtyY1R5M1lPUlRtWGM0bTQ5Zz09>
Passcode: 215047.

Please be sure you have the most up-to-date version of the Zoom application should you choose to provide public comment during the meeting. Note that participants cannot turn their cameras on during the entire duration of the meeting.

During the meeting:

- When the Chair announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- When called to speak, please limit your comments to three (3) minutes, or such other time as the Chair may decide, consistent with the time limit for speakers at a Council meeting.

If you are unable to participate in real-time, you may send an email to PlanningComment@losgatosca.gov with the subject line “Public Comment Item # ” (insert the item number relevant to your comment) or “Verbal Communications – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 11:00 a.m. on the day of the meeting. All comments received will become part of the record. The Chair has the option to modify this action on items based on comments received.

REMOTE LOCATION PARTICIPANTS

The following Planning Commissioners are listed to permit them to appear electronically or telephonically at the Planning Commission meeting: CHAIR MELANIE HANSSEN, VICE CHAIR JEFFERY BARNETT, COMMISSIONER KYLIE CLARK, COMMISSIONER KATHRYN JANOFF, COMMISSIONER STEVEN RASPE, COMMISSIONER REZA TAVANA, AND COMMISSIONER EMILY THOMAS. All votes during the teleconferencing session will be conducted by roll call vote.

**TOWN OF LOS GATOS
PLANNING COMMISSION AGENDA
MARCH 23, 2022
7:00 PM**

RULES OF DECORUM AND CIVILITY

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- Addressing the Planning Commission without first being recognized;
- Interrupting speakers, Planning Commissioners, or Town staff;
- Continuing to speak after the allotted time has expired;
- Failing to relinquish the microphone when directed to do so; and
- Repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker. Disruption of the meeting may result in a violation of Penal Code Section 403.

MEETING CALL TO ORDER

ROLL CALL

VERBAL COMMUNICATIONS *(Members of the public may address the Commission on any matter that is not listed on the agenda. Unless additional time is authorized by the Commission, remarks shall be limited to three minutes.)*

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Commission may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Chair asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 2 of this agenda. If an item is removed, the Chair has the sole discretion to determine when the item will be heard.)*

1. Draft Minutes of the March 9, 2022 Planning Commission Meeting

PUBLIC HEARINGS *(Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to the Commission's consent at the meeting.)*

2. Requesting Approval for Construction of a Roof Sign on Property Zoned C-2:LHP. **Located at 9 and 11 Montebello Way.** APN 529-01-006. Architectural and Site Application S-22-010. Property Owner: Los Gatos Investments, LLC. Applicant: Montebello Market, LLC. Project Planner: Ryan Safty.

3. Public Hearing to Consider Amendments to Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code.

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

SUBCOMMITTEE REPORTS / COMMISSION MATTERS

ADJOURNMENT *(Planning Commission policy is to adjourn no later than 11:30 p.m. unless a majority of the Planning Commission votes for an extension of time)*

Writings related to an item on the Planning Commission meeting agenda distributed to members of the Commission within 72 hours of the meeting are available for public inspection at the reference desk of the Los Gatos Town Library, located at 100 Villa Avenue; the Community Development Department and Clerk Department, both located at 110 E. Main Street; and are also available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Commission at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 03/23/2022

ITEM NO: 1

**DRAFT
MINUTES OF THE PLANNING COMMISSION MEETING
MARCH 9, 2022**

The Planning Commission of the Town of Los Gatos conducted a Regular Meeting on Wednesday, March 9, 2022, at 7:00 p.m.

This meeting was conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, all planning commissioners and staff participated from remote locations and all voting was conducted via roll call vote.

MEETING CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Present: Chair Melanie Hanssen, Vice Chair Jeffrey Barnett, Commissioner Kylie Clark, Commissioner Kathryn Janoff, Commissioner Steve Raspe, Commissioner Reza Tavana, and Commissioner Emily Thomas

Absent: None.

VERBAL COMMUNICATIONS

None.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approval of Minutes – February 23, 2022

MOTION: Motion by Commissioner Raspe to approve adoption of the Consent Calendar. **Seconded** by Commissioner Thomas.

VOTE: Motion passed unanimously.

PUBLIC HEARINGS

2. 289 Marchmont Drive

APN 532-10-019

Applicant: David Britt

Appellants: Mark Jamieson and Don Woodward

Property Owner: Durgaprasad Shamain

Project Planner: Jocelyn Shoopman

Consider an Appeal of a Community Development Director Decision to Approve Construction of a Second Story Addition to an Existing Single-Family Residence on Property Zoned R-1:10.

Jocelyn Shoopman, Associate Planner, presented the staff report.

Vice Chair Barnett indicated he would recuse himself from the public hearing regarding 289 Marchmont Drive due to the proximity of his residence to the subject site.

Opened Public Comment.

Mark Jamieson (Appellant)

- The appeal was made in conjunction with our neighbors at 293 Marchmont, Jihun Choi and Naree Yoon. The proposed 1,320-foot second-story addition is not in character with the neighborhood; it is too large, with an FAR that is 20 percent more than any other residence. The applicant's foundation is three feet higher than ours, making the proposed structure appear taller than 28 feet. Of the 25 houses in the subdivision, only five are two-story homes.

Jihun Choi (Appellant)

- I conducted a shadow study based on the owner's information and found that our solar access would be impacted by the proposed second story. There is also a tree impacting our solar and I hope the property owner can cut it down to get some sun. I believe the cost of the impact will be over 10 percent, due to the impact on our solar energy. We will also be directly impacted by one of the windows on the second story addition.

Janhavi Gudal (Applicant/Owner)

- We plan to add a second floor to our home because our family has grown to three children. The appellants are concerned that additional bathrooms would not be in alignment with California water conservation, but our house occupancy would stay the same and we plan to install water-conserving fixtures. We are not increasing the house's footprint in order to preserve trees, outdoor spaces, and our long driveway. The appellants are concerned about construction vehicle parking and noise that is inherent to any construction. Our long driveway will be used for construction vehicle parking, and a contractor will follow Los

Gatos ordinances regarding construction timing and noise. We are asking for no exceptions or variances. We have followed all the Town Consulting Architect's recommendations. We have conducted neighborhood outreach door to door and through emails and have received positive feedback. We met with the appellants after the appeal was filed with the Town and appellant Woodward viewed our evergreen trees that provide screening and agreed that there would be no privacy issues. There is 130 feet between the appellant's second story bedroom windows and our bedroom windows on the proposed addition.

David Britt of Britt/Rowe (Applicant/Architect)

- I designed the project within the Municipal Code as well as the Los Gatos Residential Design Guidelines, worked closely with Town staff to ensure the project was compatible with the neighborhood, and adopted all the Town Consulting Architect's recommendations. I commend my client for working so closely with the neighbors and received comments that there would be no issues.

Mark Jamieson (Appellant)

- We have met with the applicants several times to discuss the issues and have gotten nowhere, as the applicants are unwilling to change their plans. What I really object to is demolishing some of the first-floor square footage to increase the second story square footage. Five bedrooms and six-and-a-half bathrooms seem excessive. Changes I've come up with include: decreasing the second floor ceilings to eight feet; decreasing the roof slope; increasing the second story setback on the 293 Marchmont side; or building an addition on the front of the house that would not affect 293 Marchmont's solar. We are also concerned about traffic safety for pedestrians walking by the school, as I don't believe the applicants would keep their word to not have construction vehicles parked on the street. This is a large project, not just an addition, but basically remodeling the whole house.

Jihun Choi (Appellant)

- We have two groups of windows facing the applicant's wall. One is a bathroom that is impacted by shadows in the late afternoon, and the other is a powder room window closer to the wall, which is a source of sunshine, so that is a big concern. Solar is our biggest concern, because we rely on it, and I have an electric vehicle, so the project would definitely make some trouble for us.

Closed Public Comment.

Commissioners discussed the matter.

Opened Public Comment.

Commissioners asked questions of the applicant.

Closed Public Comment.

Commissioners discussed the matter.

MOTION: **Motion by Commissioner Raspe** to deny an appeal of a Community Development Director decision to approve construction of a second story addition to an existing single-family residence at 289 Marchmont Drive, with conditions that: 1) the overall building structure be reduced by two feet by imposition of eight-foot second floor ceiling heights and a 4:12 roof pitch on the second story; and 2) the Town imposes conditions regarding appropriate traffic measures during school hours. **Seconded by Commissioner Clark.**

VOTE: **Motion passed unanimously.**

OTHER BUSINESS

None.

REPORT FROM THE DIRECTOR OF COMMUNITY DEVELOPMENT

Joel Paulson, Director of Community Development

- The Town Council held a retreat on March 5, 2022.

SUBCOMMITTEE REPORTS/COMMISSION MATTERS

Conceptual Development Advisory Committee

Vice Chair Barnett

- The CDAC met March 9, 2022, to discuss a proposal for mixed-use development in Phase 2 of the North Forty Specific Plan. Items discussed included: a percentage of below-market housing; public outreach requirements; a mix of residential, commercial, and retail; building heights; and density.

Commissioner Janoff

- Attended her first CDAC meeting on March 9, 2022, and was impressed that the input from the community was in 100 percent agreement that more below-market affordable housing is needed.

Commission Matters

Chair Hanssen

- Thanked West Valley Community Services for holding a session on the Housing Element and hoped they could continue doing that as the Housing Element process moves forward.

Commissioner Thomas

- Spoke at the Youth Commission meeting on March 8, 2022, in her capacity as a teacher and told the Commission about the Balancing Act, the community tool available soon that will bring information from the community to the Housing Element Advisory Board.

ADJOURNMENT

The meeting adjourned at 8:35 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the March 9, 2022, meeting as approved by the Planning Commission.

/s/ Vicki Blandin

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 03/23/2022

ITEM NO: 2

DATE: March 18, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Requesting Approval for Construction of a Roof Sign on Property Zoned C-2:LHP. **Located at 9 and 11 Montebello Way.** APN 529-01-006.
Architectural and Site Application S-22-010. Property Owner: Los Gatos Investments, LLC. Applicant: Montebello Market, LLC.
Project Planner: Ryan Safty

RECOMMENDATION:

Consider approval of a request for construction of a roof sign on property zoned C-2:LHP, located at 9 and 11 Montebello Way.

PROJECT DATA:

General Plan Designation: Central Business District
Zoning Designation: C-2:LHP - Central Business District with a Landmark and Historic Preservation overlay
Applicable Plans & Standards: Zoning Code and Commercial Design Guidelines
Parcel Size: 2,673 square feet (0.06 acres)

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Commercial and residential	Central Business District	C-2:LHP
East	Commercial	Central Business District	C-2:LHP
South	Office	Central Business District	C-2
West	Town Plaza Park	Open Space	RC

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

FINDINGS:

- As required, the project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.
- The project is consistent with the applicable Commercial Design Guidelines.
- As required by Section 29.10.125(8) of the Town Code for granting a roof sign.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located on the east side of Montebello Way, across the street from Town Plaza Park (Exhibit 1), in the Central Business District and Downtown Commercial Historic District. The 2,349-square foot commercial tenant space is currently under construction for a tenant improvement to accommodate an approved Conditional Use Permit for a commercial market (Montebello Market).

Prior to the Conditional Use Permit and associated building permit approvals, the building was divided in two and was occupied by a dry cleaner and an interior design retail store. In 2019, the dry cleaners had a hanging sign, and the retail store had a window sign. In 2014, the northernmost unit at 9 Montebello Way (Frank) had a roof sign (Exhibit 4).

On February 1, 2022, the applicant applied for a sign permit (SN-22-005) for the property. Staff reviewed the sign permit application package and determined that the proposal is considered a roof sign by Town Code, which requires an Architecture and Site application. On February 23, 2022, the applicant applied for an Architecture and Site application for the roof sign.

PROJECT DESCRIPTION:

The proposed roof sign requires Architecture and Site approval per Town Code Section 29.10.125(8)(f). The Commercial Design Guidelines do not list roof signs as an allowed sign type and specify that roof-mounted signs are a prohibited sign type, "except where other types of signage cannot be effectively employed." Therefore, this application is being considered by the Planning Commission.

PROJECT DESCRIPTION (continued):

A. Location and Surrounding Neighborhood

The subject property is located on the east side of Montebello Way, across the street from Town Plaza Park (Exhibit 1), in the Central Business District and Downtown Commercial Historic District. The property abuts commercial and residential to the north, office to the south, commercial to the east, and Town Plaza Park to the west, across Montebello Way.

DISCUSSION:

A. Project Summary

The applicant proposes to add a roof sign above the flat projecting awning, set one foot in from the front of the awning. Pursuant to Town Code, a roof sign requires approval of an Architecture and Site application.

The proposed roof sign would consist of 18-inch tall individual letters set on top a two-inch tall raceway. The letters would be three-inch deep aluminum channel and painted dark blue, while the raceway would be four inches deep and painted black. The letters would have a white acrylic face with internal illumination. The sign letters would appear blue during the day, and then white at night. Renderings of the sign in both the day and night have been provided (Exhibit 7).

B. Commercial Design Guidelines

The Town's Commercial Design Guidelines Section 6.1.1 (Allowed Signage Types) does not include roof signs. Roof-mounted signs are listed in Section 6.1.2 (Prohibited Signage Types) with the caveat, "except where other types of signage cannot be effectively employed" (Exhibit 5). There are no specific guidelines in the Commercial Design Guidelines related to roof signs. However, the proposed roof sign would comply with the general sign guidelines listed in Sections 6.1.3 through 6.1.9 related to maximum sign area, excessive wording, font types, sign proportions, materials, shapes, and type styles.

C. Town Code

Pursuant to Town Code Section 29.10.135(c), allowed sign area is calculated as one square foot of sign area for each lineal foot of primary business frontage. The subject property has 42 feet, eight inches of business frontage, which equates to allowed sign area of 42.67 square feet. The proposed sign would be 41.47 square feet.

DISCUSSION (continued):

Town Code does not have specific design requirements related to roof signs, but Section 29.10.125 contains standards that shall apply to all sign approvals. With the inclusion of Condition of Approval 3 (Exhibit 3) related to maximum illumination intensity, the proposed sign complies with Section 29.10.125. Town Code Section 29.10.125(3), compatibility with surroundings, is discussed in the Neighborhood Compatibility section of the report below.

D. Architecture and Site Analysis

Pursuant to Town Code Section 29.10.125(8), roof signs require an Architecture and Site application and are only allowed as follows:

(8) Roof signs. Roof signs must:

- a. Be erected only on a roof whose pitch is at least one (1) vertical to four (4) horizontal.*
- b. Have a face no more than two (2) feet measured vertically.*
- c. Be located so the face is parallel to the eave in front of the sign.*
- d. Be set no more than eight (8) inches above the roof.*
- e. Be designed and erected so that no part of its face is higher than either the peak or an elevation five (5) feet above the eave in front of the sign.*
- f. Have architecture and site approval.*

Architecture and site approval may only be issued on the basis of findings that a wall sign is not feasible because the wall of the building is set back beneath and obscured by the porch or roof overhang which is an extension of and integral with the sloping roof of the building, and that the sign cannot be suspended between posts or columns supporting the roof without obstructing safe passage for pedestrians.

The applicant has provided responses to each of these requirements in their Project Description and Letter of Justification (Exhibit 6). The proposal complies with Town Code Section 29.10.125(8)(b) through (f), as the face of the sign would be 18 inches in height, the face would be oriented parallel to the eave, the sign would be set two inches above the roof, the proposed sign would not be higher than the parapet peak nor more than five feet above the eave in front of the sign, and an Architecture and Site application has been submitted.

Town Code Section 29.10.125(8)(a) requires that roof signs be erected only on a roof whose pitch is at least one vertical to four horizontal (25 percent slope). However, Town Code Section 29.10.100 (Sign Definitions) defines a roof sign as, “an attached sign erected on a roof or projecting above the eave or rake of a building or coping of a parapet. A sign erected on top of a canopy, arcade, awning or marquee is a roof sign.”

DISCUSSION (continued):

Per Town Code, the proposed sign above the projecting awning meets the definition of a roof sign; however, the proposed sign could not meet Section 29.10.125(8)(a) as the awning is flat.

The flat projecting awning is an existing feature of this Downtown Commercial Historic District building. The Historic Preservation Committee (HPC) reviewed and supported the current façade update work, with the existing awning remaining as is. The existing awning would need to be modified to have a minimum 25 percent slope to meet Town Code Section 29.10.125(8)(a), which would alter the front façade and require additional HPC review.

The applicant's Project Description and Letter of Justification also addresses the required findings for granting Architecture and Site approval of a roof sign (Exhibit 6). Regarding the first finding, the applicant contests that a wall sign is not feasible as the building façade is primarily glass and could not accommodate a wall sign. The parapet above the projecting awning is setback four feet from the front edge of the projecting awning and, "this is an older building, and we are concerned with the ability to properly attach this amount of weight to the parapet, as well as the ability of the attachment to remain in place permanently."

Regarding the second finding, the applicant contests that the sign cannot be suspended between posts or columns supporting the roof due to visibility concerns. "We want to be able to easily attract customers and identify where the new market is located. From the intersection of N. Santa Cruz Ave. and Main St. this presents a challenge due to all of the trees in Town Plaza blocking visibility. [...] We want to ensure it is readable from a distance to draw customers through the park to an area that was previously unknown as a market [...] In this circumstance, we feel the roof sign is appropriate and there is no option for an alternate sign type."

E. Neighborhood Compatibility

Town Code Section 29.10.125(3) requires the design, color, and location of each sign be compatible with the architecture of the buildings on the premises, and in harmony with the structures and other improvements on the property. The applicant justified neighborhood compatibility in their Project Description and Letter of Justification (Exhibit 6): "The design, size, and scale of the sign from that viewing distance has been recommended by our architect and sign manufacturer, to strike a balance between visibility at a distance and appropriateness given the scale of the building and other surrounding buildings."

DISCUSSION (continued):

F. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

PUBLIC COMMENTS:

At this time, the Town has not received any public comment.

CONCLUSION:

A. Summary

The applicant is requesting approval of an Architecture and Site application for a roof sign. The proposed sign complies with the applicable provisions of the Commercial Design Guidelines and Town Code requirements, with the exception of Town Code Section 29.10.125(8)(a) (roof pitch).

B. Recommendation

Based on the analysis above, staff recommends approval of the Architecture and Site application subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:

1. Make the finding that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15301: Existing Facilities (Exhibit 2);
2. Make the finding that the project complies with the applicable Commercial Design Guidelines (Exhibit 2);
3. Make the finding as required by Section 29.10.125(8) of the Town Code for granting a roof sign; and
4. Approve Architecture and Site application S-22-010 with the conditions contained in Exhibit 3 and the development plans in Exhibit 7.

CONCLUSION (continued):

C. Alternatives

Alternatively, the Commission can:

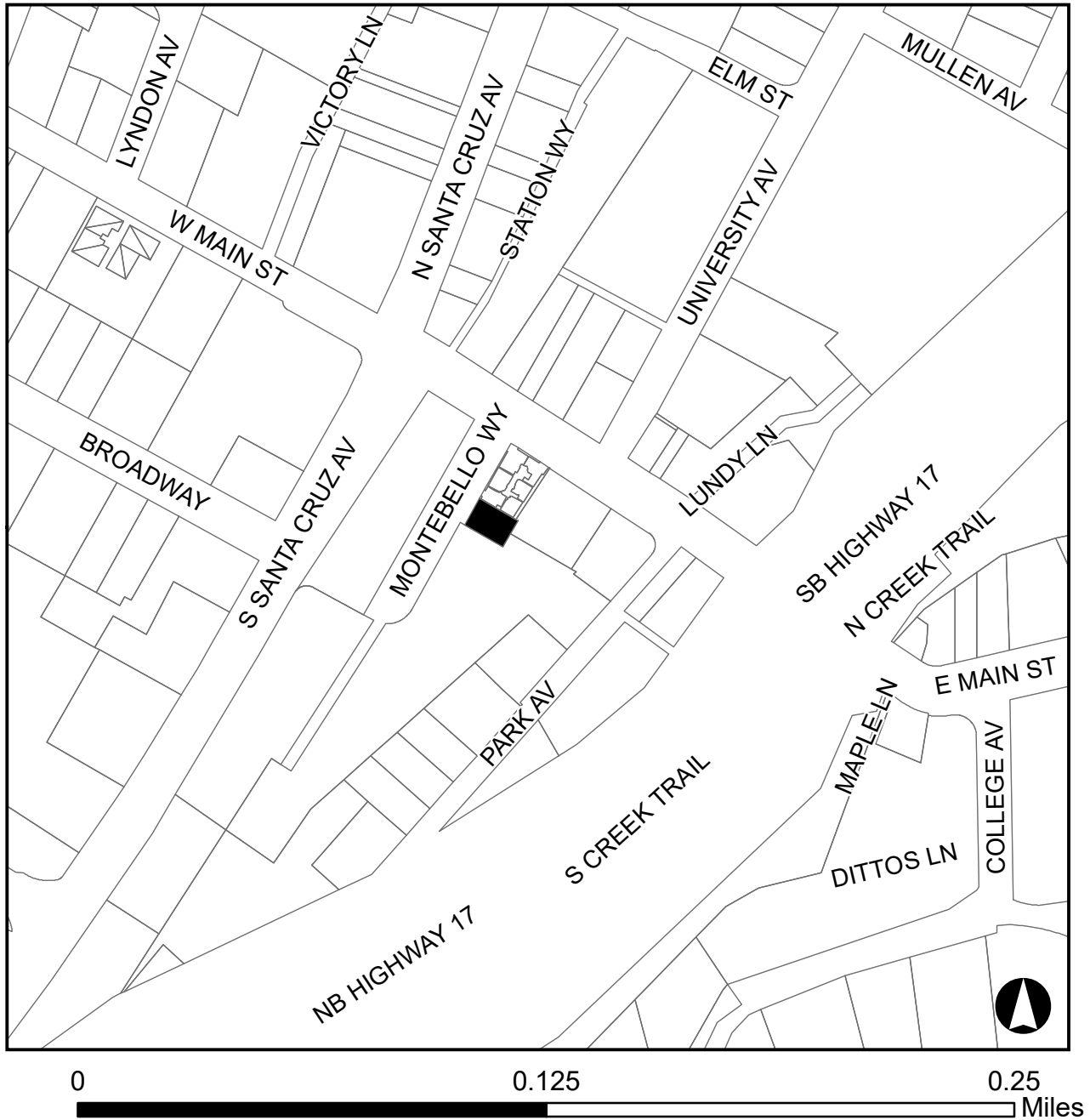
1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application.

EXHIBITS:

1. Location Map
2. Required Findings and Considerations
3. Recommended Conditions of Approval
4. Historic Images of Subject Property
5. Commercial Design Guidelines Section 6.1 – General Guidelines
6. Project Description and Letter of Justification, received February 23, 2022
7. Project Plans, received February 23, 2022

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9 & 11 Montebello Way



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PLANNING COMMISSION – March 23, 2022
REQUIRED FINDINGS FOR:

9 and 11 Montebello Way
Architecture and Site Application S-22-010

Requesting Approval for Construction of a Roof Sign on Property Zoned C-2:LHP.
APN 529-01-006.

PROPERTY OWNER: Los Gatos Investments, LLC
APPLICANT: Montebello Market, LLC
PROJECT PLANNER: Ryan Safty

FINDINGS

Required findings for CEQA:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

Commercial Design Guidelines:

- The proposed sign is consistent with applicable provisions of the Commercial Design Guidelines.

Required findings for a roof sign:

- As required by Section 29.10.125(8) of the Town Code for roof signs, that a wall sign is not feasible as the front façade is glass and there are concerns with the structural integrity of the existing parapet wall above, and that a suspended sign below the flat projecting awning is not feasible due to visibility concerns.

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PLANNING COMMISSION – March 23, 2022
DRAFT CONDITIONS OF APPROVAL

9 and 11 Montebello Way
Architecture and Site Application S-22-010

Requesting Approval for Construction of a Roof Sign on Property Zoned C-2:LHP.
APN 529-01-006.

PROPERTY OWNER: Los Gatos Investments, LLC
APPLICANT: Montebello Market, LLC
PROJECT PLANNER: Ryan Safty

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval and in substantial compliance with the approved plans. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director, DRC or the Planning Commission depending on the scope of the changes.
2. **EXPIRATION:** The approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. **SIGN ILLUMINATION:** The roof sign shall comply with maximum allowed illumination intensity pursuant to Town Code Section 29.10.125(6) and (7).
4. **TOWN INDEMNITY:** Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval and may be secured to the satisfaction of the Town Attorney.

EXHIBIT 3

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2019



SIGNAGE

Signage is a necessary feature to assist residents and visitors in locating goods and services within the community, and it is critical to the economic viability of individual businesses as well as to the Town as a whole. This importance must be balanced with the goals of providing a strong sense of community, and using the design of signage to reinforce the special character and ambiance of the Town of Los Gatos.

Applicants should refer to Division 3 of the Town of Los Gatos Zoning Ordinance which contains relevant definitions and the basic standards which will be applied to commercial signage. The guidelines in this chapter supplement the Sign Ordinance, and are intended to provide more detail in regard to good signage design principles and community expectations. In some cases, these guidelines are more restrictive than the maximums established in the ordinance.

The sign examples shown are drawn from the Town of Los Gatos and other communities. They are for the purpose of illustrating specific guidelines only, and might not be appropriate for all locations. Each sign will be reviewed in the context of the proposed project buildings and the surrounding area.

6.1 GENERAL GUIDELINES

6.1.1 Allowed signage types

Signs will be limited to the following types which are illustrated below and described on the following pages.

- Wall Signs
- Awning Signs
- Window Signs
- Projecting Signs
- Hanging Signs
- Plaque Signs
- Ground Signs
- Freestanding Signs

INTENT OF THE SIGNAGE GUIDELINES

- Reinforce the high quality character and image of the Town of Los Gatos
- Assist businesses within the community to inform residents and visitors of their presence
- Assist residents and visitors in finding businesses and services located within the community
- Design signage which is appropriate to the special characteristics of the district in which it is located
- Encourage commercial signage that communicates more effectively to potential customers
- Avoid the visual chaos of excessive or inappropriate signage

SIGNAGE PROGRAMS

Projects with multiple tenants will be required to prepare a Master Signage Program for review and approval. The program will establish the specific location and design for major project signs (e.g., Ground Signs)

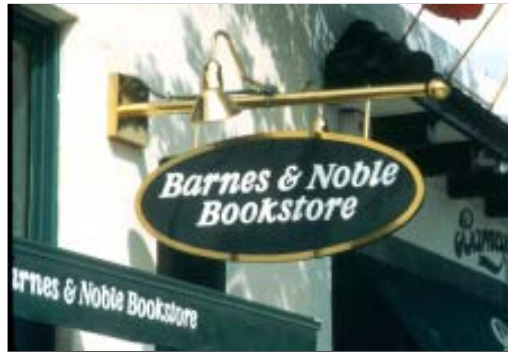
Property owners are encouraged to upgrade signage to conform to these design guidelines. However, when tenants change within a project with a previously approved Signage Program, new signs should be fabricated to meet the standards of the approved program.

SIGNAGE GUIDELINES

6



Wall Sign



Projecting Sign



Awning Sign



Hanging Sign



Plaque Sign



Window Sign



Ground Sign



Freestanding Sign

6

6.1.2 Prohibited signage types

- Flags (except for the American flag and other related flags as described in the Town's Zoning Ordinance)
- Lighted signs that flash on and off, fluctuate or appear to move
- Moving signs that rotate or move in any fashion, except barber poles
- Attraction Boards and Movable Letter Signs (except for churches, cinemas, performing arts facilities or similar uses that have frequently changing events or showings)
- A-Frame Signs
- Off-premises Signs
- Electronic Signs
- Projected Light Signs which are flashed or projected onto walls or other structures by means of a projector or other device
- Roof-mounted Signs (except where other types of signage cannot be effectively employed)
- Billboards
- Cloth, paper or fabric signs hung from the building or placed in windows except for Temporary Signs allowed under the Sign Ordinance
- Any signs not specifically authorized by the Sign Ordinance

6.1.3 Maximum allowed sign area

One (1) square foot for each linear foot of primary business frontage plus one (1) square foot for each linear foot of secondary business frontage up to fifty percent (50%) of the amount allowed by the primary business frontage.

Los Gatos Boulevard Auto Dealerships

Signage quantity will be evaluated under the review and approval of a master signage program based upon the following criteria:

- *Signage compatibility with the scale and character of Los Gatos Boulevard*
- *Signage sizes needed for readability from reasonable viewing distances*
- *Limitation of text content to the minimum necessary to convey ownership and brand recognition*
- *Compatibility of the signage and supporting structures to the architecture of the dealership*

SIGN AREA

Sign area is the total area of the face or faces of a sign. Each face is measured by determining the smallest area within a single perimeter composed of not more than eight (8) straight lines drawn by the applicant enclosing the extreme limits of the face.

For the purposes of measurement, a six-inch margin around all words and symbols will be included in the perimeter composed of not more than eight (8) straight lines.

For more information on what constitutes a sign face, consult Division 3: Signs of the Town of Los Gatos Zoning Ordinance.

**SIGN LOCATIONS**

Applicants should choose proposed sign types as well as their location and mounting heights to avoid blockage by street tree foliage, taking into account the possibility that the trees may continue to grow and be larger in the future.

SIGNAGE GUIDELINES

6

TYPE STYLE EXAMPLES

Below are examples of type styles which would generally be considered acceptable. All letters are shown at the same point size which gives an indication of the amount of relative space that each will require.

Arial**Book Antiqua***Book Antiqua Italic**Brush Script***Calisto****Century Schoolbook****ENGRAVERS****Footlight****Garamond****Goudy Old Style****Helvetica****Humanist 521 BT****Lucida Bright****Lucida Sans***Monotype Corsiva***Perpetua****Souvenir Lt BT****Times New Roman***Viner Hand ITC***Zaph Humanist BT****6.1.4 Avoid excessive wording and advertising messages**

Signs are most effective when their messages can be grasped quickly. Too many words or images compete for attention and reduce the readability of the sign.

6.1.5 Use no more than two letter font types per sign

The primary purpose of a sign is to quickly convey information to passing pedestrians and motorists. More than two letter styles make readability more difficult. A simple logo with an additional type style may be considered.

6.1.6 Keep the size of letters and graphics in proportion to overall sign area

Text and graphics are difficult to read if they crowd the borders of the sign. Smaller letters with space around them will have more impact than larger letters with limited space around them.

Generally limit the width and height of lettering and graphics to 85% of the overall sign width and 65% of the height of the sign area. Information, such as graphic logos, may be closer to borders if a significant amount of background is provided for the sign as a whole. A good rule of thumb is to limit the amount of sign information to no more than 50 to 55% of the overall sign area.

**6.1.7 Use high quality materials**

Appropriate materials include finished wood, metal, and for projecting banner signs, woven fabric. Plastic sign materials and signs painted directly onto building surfaces will not be allowed.

The sign materials and design should be related to those of the building on which it is mounted, and all sign edges must be cleanly finished.

6.1.8 Use simple and symmetrical sign shapes

Geometrical shapes such as rectangles, squares, circles, ovals and triangles are visually stable shapes which help focus attention on the sign message. These should be used in almost all cases. Combinations of geometric shapes will also generally produce a good sign shape.

6

6.1.9 Use relatively slender type styles

Slender letter styles are encouraged over fat or block styles to improve readability, and avoid a cumbersome appearance. Some examples of readable letter styles are shown in the side bar on the previous page.

6.2 WALL SIGNS

Wall signs are panels or individual letters mounted flat against and parallel to a building wall or roof fascia

6.2.1 Limit sign information

Generally, limit sign information to the business name. Graphic logos, date of building construction, address, and other elements may be allowed at the discretion of the Town.

6.2.2 Place signs within a clean Signable Area

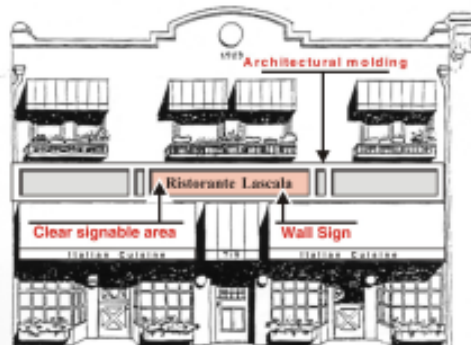
a) The *Signable Area* should:

- Be relatively flat
- Not contain doors or windows
- Not include projecting molding or trim
- Be in reasonable proportion to the overall facade

The Signable area should generally not exceed 15% of the building facade

b) If a building does not have a good location for a wall sign, use other allowed types such as awning, window, or projecting signs.

c) Sign dimensions and coverage within the Signable Area should conform to Guideline 6.1.8



Signable Area

SIGN LETTER SIZE

The messages of effective signs need to be easily read and understood by passing motorists and pedestrians. A number of factors including distance from the sign, speed of travel, letter-to-background contrast, and the number and nature of nearby competing signs contribute to the "readability" of a sign.

The signage industry generally recognizes a standard of 1 inch of letter height for every 40 feet to 50 feet of viewing distance. This size factor may be increased by up to 10% for higher speed streets where businesses are strongly auto oriented.

Maximum letter heights are included in these guidelines for each sign type. In some cases, the maximum letter height may be too large for the surrounding environment and existing signs. In other special circumstances, the maximum letter size may not provide adequate business signage.

For the purpose of evaluating appropriate sign size, the Town will consider the normal sign viewing distances, the general nature of the street (e.g., width and traffic speed), and the size of other existing signs in the area,

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February 22, 2022

Montebello Market Roof Sign Project Description and Letter of Justification

Project Description:

Install one new roof sign to read “Montebello” per the attached plans as the primary business sign for the new Montebello Market located at 9 Montebello Way.

Letter of Justification:

Dear Planning Commission,

We are requesting approval of the Montebello Market roof sign as outlined in the staff report. Montebello Market is unique in many ways and will be a new and exciting benefit to the residents, businesses, and especially visitors to the downtown area. Due to the orientation of the building where the project is located, we determined that a roof sign is most appropriate for the business. We want to be able to easily attract customers and identify where the new market is located. From the intersection of N. Santa Cruz Ave and Main St. this presents a challenge due to all of the trees in Town Plaza blocking the visibility. The design, size, and scale of the sign from that viewing distance has been recommended by our architect and sign manufacturer, to strike a balance between visibility at a distance and appropriateness given the scale of the building and other surrounding buildings. This is a first-class project and you can be assured the look, feel, and quality of this sign will be top notch and appropriate for the downtown.

The Commercial Design Guidelines that discuss signage were written in 2005, 17 years ago. A revision to this document has been discussed for many years now but is way down on the list for the Town staff workplan, so it is unknown when it will be updated. It is very likely that an update to the document, particularly regarding signage, would modernize the sizes and types of signs that would be appropriate in various districts in Town as society evolves and Los Gatos needs to remain competitive with commercial districts in other areas.

Until such time as the Commercial Design Guidelines and Town sign code can be updated, certain proposed signs, such as ours, should be evaluated for what they are on a case-by-case basis. Something proposed that may not conform to the previous guidelines could be a significant improvement by today’s standards. A good example of this mentality is when the Town began to approve “Wine Bars.” The table of uses had not contemplated that kind of use and they did not wait until they changed the policies, ordinances, or code. The Town handled it for what it was on a case-by-case basis. We now have several thriving wine bars that have benefited this community by that type of reasoning. We would encourage taking a similar approach when making your decision.

Below we have outlined some points to consider when making your decision as well as support for the necessary findings.

Commercial Design Guidelines:

- Section 6.1.2 – Prohibited Sign Types - Roof-mounted Signs (except where other types of signage cannot be effectively employed).

In this circumstance, we feel the roof sign is appropriate and there is no option for an alternate sign type as outlined below.

- 6.1.3 – Maximum allowed sign area.

The proposed sign conforms to the guidance. Please pay particular attention to the reasonable exception that was created for the auto dealerships:

- Signage compatibility with the scale and character of Los Gatos Boulevard.

If similarly applied, the proposed sign certainly meets the scale and character of the surrounding area. The sign height is in fact lower than the “Le Boulanger” sign in the immediately adjacent building.

- Signage sizes needed for readability from reasonable viewing distances

This is the critical issue for the proposed sign. We want to ensure it is readable from a distance to draw customers through the park to an area that was previously unknown as a market/food use.

- Limitation of text content to the minimum necessary to convey ownership and brand recognition.

The text is limited to the business name “Montebello.”

- Compatibility of the signage and supporting structures to the architecture of the dealership.

Our architect has designed the sign and font type to be compatible with the structure and our branding.

Montebello Market and the proposed roof sign meet all of those objective standards if similar logic is applied that was outlined for the auto dealers. We are a community service that needs visibility from the intersection through the trees in Town Plaza.

Town Code Section 29.10.125 states:

(8) Roof signs. Roof signs must:

a. Be erected only on a roof whose pitch is at least one (1) vertical to four (4) horizontal.

The roof in question is 90 degrees to the parapet.

b. Have a face no more than two (2) feet measured vertically.

The proposed sign is 18" vertically.

c. Be located so the face is parallel to the eave in front of the sign.

The proposed sign will run parallel to the eave.

d. Be set no more than eight (8) inches above the roof.

The sign will be installed 2" above the roof in a raceway.

e. Be designed and erected so that no part of its face is higher than either the peak or an elevation five (5) feet above the eave in front of the sign.

The proposed sign is +/- 36" below the top of the parapet and +/- 20" from the eave.

f. Have architecture and site approval. Architecture and site approval may only be issued on the basis of findings that a wall sign is not feasible because the wall of the building is set back beneath and obscured by the porch or roof overhang which is an extension of and integral with the sloping roof of the building, and that the sign cannot be suspended between posts or columns supporting the roof without obstructing safe passage for pedestrians.

Installing the sign on the parapet is not feasible for other reasons than as outlined in item (f) above (which seems unusually specific and restrictive), requiring an exception or accommodation. This is an older building, and we are concerned with the ability to properly attach this amount of weight to the parapet, as well as the ability of the attachment to remain in place permanently. We don't know the exact type of construction or what condition the interior of the parapet is in. However, through the improvements that were recently done for the market, we opened up the inside of the lower roof structure and verified the conditions are suitable to support the proposed sign and have prepared the structure to accommodate it.

We would appreciate your taking a close look at what we are proposing and hope to apply some reasonable decision making to approve the sign for all of the aforementioned reasons. We can't reiterate enough how critical this will be to identify this new and amazing amenity we are bringing to Town. We are happy to answer any questions you may have.



View from the intersection of N Santa Cruz Ave & Main St.

Thank you!



Jim Foley
David Cohen
Jason Farwell

Founding Partners

MONTEBELLO MARKET
LOS GATOS, CA

9 Montebello Way, Los Gatos, CA 95030

montebellomarket.com



Signs, inc.

ARCHITECTURAL SIGNAGE

FABRICATE | INSTALL | SERVICE

1752 Junction Avenue Unit C
San Jose CA 95112
(408)971 - 6643
C45 License# 945852
design@sjpsigns.com

Montebello Market

9 Montebello Way

Los Gatos, CA

PROJECT ID - 9fqzL5-122021

Fabrication & Installation By SJP Signs

Sign Types - Exterior Signage
Date - 03/04/2022

Quantity - 01
Version - v4

Fabrication and installation of
Exterior Signs
based on Design Intent and
Drawings specified in the document.

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financially responsible for this order when we receive your approval.

SALES REP :
Harry Singh

DESIGNER :
Shailendra

DATE:
03/04/2022

CLIENT NAME :
Montebello Market

LOCATION :
9 Montebello Way
Los Gatos, CA
REVISION :
v4

PROJECT DESCRIPTION

Customer Signature

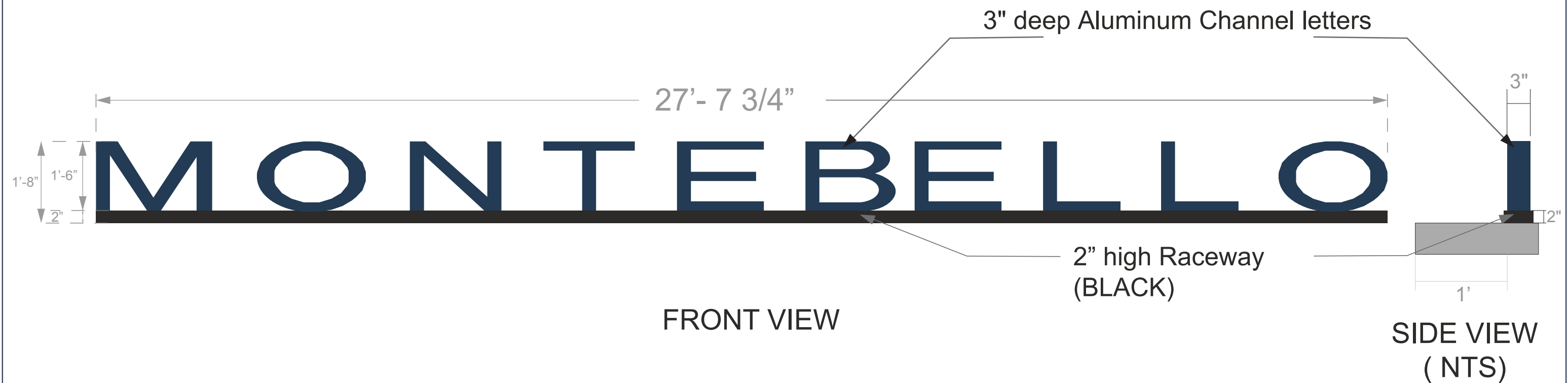
Date Place

FOR CLIENT USE ONLY
☐ APPROVED BY CLIENT
☐ APPROVED SUBJECT TO COMMENTS
☐ REVISE & RESUBMIT FOR APPROVAL
☐ GOOD FOR CONSTRUCTION / PERMITS



STORE FRONT SIGN - FACE LIT
VISUAL DAYVIEW MOCKUP

Page 03
Scale - 1:25
Quantity - 01



Note: 3" deep Aluminum Channel letters
Deep blue day/night film on face of the letters
2" high & 4" deep Raceway

Proposed Signage area- 41.47 sqft

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STORE FRONT SIGN - FACE LIT
VISUAL DAYVIEW MOCKUP



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SALES REP :
Harry Singh

DESIGNER :
Shailendra

DATE:
03/04/2022

CLIENT NAME :
Montebello Market

LOCATION :
9 Montebello Way
Los Gatos, CA
REVISION :
v4

PROJECT DESCRIPTION

Customer Signature

Date Place

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☐ APPROVED BY CLIENT
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STORE FRONT SIGN - FACE LIT
VISUAL NIGHTVIEW MOCKUP



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SALES REP :
Harry Singh

DESIGNER :
Shailendra

DATE:
03/04/2022

CLIENT NAME :
Montebello Market

LOCATION :
9 Montebello Way
Los Gatos, CA
REVISION :
v4

PROJECT DESCRIPTION

Customer Signature

Date Place

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 03/23/2022

ITEM NO: 3

DATE: March 18, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Public Hearing to Consider Amendments to Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code.

RECOMMENDATION:

Forward a recommendation to the Town Council for approval of the attached Ordinance amendments to Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code.

CEQA:

It has been determined 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)].

FINDINGS:

- Find 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)] (Exhibit 1).
- Find that the Town Code amendments are consistent with the General Plan.

ACTION:

Recommendation to Town Council.

PREPARED BY: ROBERT SHULTZ
Town Attorney

Reviewed by: Planning Manager and Community Development Director

BACKGROUND:

On June 2, 2015, the Town Council adopted Ordinance 2240, the Tree Protection Ordinance, which included more comprehensive amendments. On February 4, 2020, the Town Council adopted Ordinance 2303, the Tree Protection Ordinance, which included amendments regarding exemptions for Defensible Space. The intent of the Tree Protection Ordinance is to regulate the removal of trees within the Town to retain as many trees as possible consistent with the purpose of the Ordinance and the reasonable use of private property. The provisions of the Ordinance require that anyone seeking to remove or prune a Protected Tree, as defined in the Ordinance, must obtain a permit. The Ordinance outlines review criteria to be applied to applications for Tree Removal. The Ordinance also includes a penalty section for violations of the Tree Protection Ordinance.

DISCUSSION:

The majority of the Tree Protection Ordinance has been in place for over six years and has played a role in maintaining the wooded environment of the Town. Based on staff's experience in implementing the Tree Protection Ordinance and processing Tree Removal permit applications, staff proposes minor revisions to the Ordinance to provide clarity within the chapter related primarily to fines and penalties. The proposed amendments are redlined and attached as Exhibit 2.

This is an opportunity for the Planning Commission to review the Ordinance amendments and direct any modifications to ensure that it continues to serve the Town well.

CEQA DETERMINATION:

It has been determined 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)].

CONCLUSION AND RECOMMENDATION:

A. Conclusion

The attached amendments to Town Code Chapters 29 are recommended to strengthen the Town's commitment to preservation and enhancement of its urban forest and to clarify and update provisions of the Town Code. The amendments would also meet a Town Strategic Goal.

CONCLUSION AND RECOMMENDATION (continued):

B. Recommendation

For the reasons mentioned in this report, staff recommends that the Planning Commission forward the draft Ordinance amendments to the Town Council with a recommendation for adoption. The Commission should also include any comments or recommended changes to the draft Ordinance in taking the following actions:

1. Find 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)] (Exhibit 1); and
2. Make the required finding that the Ordinance amendments are consistent with the General Plan (Exhibit 1); and
3. Forward a recommendation to the Town Council for adoption of the Ordinance amendments to the Town Code.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Recommend the Ordinance with additional modifications; or
3. Recommend that the Town Council not adopt the Ordinance.

EXHIBITS:

1. Findings
2. Draft Tree Protection Ordinance – Red Lined

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PLANNING COMMISSION – *March 23, 2022*
REQUIRED FINDS FOR:

Town Code Amendment A-21-001

Consider the Adoption of Amendments to Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code.

FINDINGS

Required finding for CEQA:

- It has been determined 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)].

Required finding for consistency with the General Plan:

- The proposed Ordinance amendments are consistent with the General Plan.

EXHIBIT 1

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TOWN CODE
Chapter 29 - ZONING REGULATIONS
ARTICLE I. - IN GENERAL
DIVISION 2. - TREE PROTECTION

DIVISION 2. TREE PROTECTION¹

Sec. 29.10.0950. Intent.

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees and contains individual trees of great beauty. The community of the Town benefit from preserving the scenic beauty of the Town, preventing erosion of topsoil, providing protection against flood hazards and risk of landslides, counteracting pollutants in the air, maintaining climatic balance, and decreasing wind velocities. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. While trees provide multiple benefits, it is also the intent of this division to acknowledge that a portion of the Town is located in a Very High Fire Hazard Severity Zone, as defined by the California Department of Forestry and Fire Protection (CAL FIRE) and the associated wildfire threat that exists for the community. It is the intent of this division to preserve as many protected trees as possible throughout the Town through staff review and the development review process. Special provisions regarding hillsides are included in section 29.10.0987 of this division in recognition of the unique biological and environmental differences between the hillside and non-hillside areas of the Town. This section does not supersede the provisions of Chapter 26 of this Code.

(Ord. No. 2240, § I (Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0955. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

Building envelope means the area of a parcel (1) upon which, under applicable zoning regulations, a structure may be built outside of required setbacks without a variance; or (2) that is necessary for the construction of primary access to structures located on the parcel, where there exists no feasible means of access which would avoid protected trees. On single-family residential parcels, the portion of the parcel deemed to be the building envelope access shall not exceed ten (10) feet in width.

Certified or consulting arborist means an individual in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide a tree report, tree survey or supervise the care and maintenance of trees; and who is certified by the International Society of Arboriculture, a member of the American Society of Consulting Arborists or approved by the director.

Damage means any action undertaken which causes short-term or long-term injury, death, or disfigurement to a tree. This includes but is not limited to: cutting of roots or limbs, poisoning, over-watering, relocation or transplanting a tree, or trenching, grading, compaction, excavating, paving, or installing impervious surface within the root zone of a protected tree.

¹Editor's note(s)—Ord. No. 2240, § I (Exh. B), adopted June 2, 2015, amended Div. 2 to read as herein set out. Former Div. 2, §§ 29.10.0950—29.10.1045, pertained to similar subject matter, and derived from Ord. No. 2114, §§ I, II, adopted Aug. 4, 2003.

Dead tree means a tree that cannot be restored to good health and has at least one of the following characteristics:

- (1) Is completely devoid of life;
- (2) Has no leaves at a time when it should;
- (3) Exhibits no buds if dormant;
- (4) Is incapable of translocating food and water between leaves and roots; or
- (5) Has a high likelihood of imminent death in the opinion of the Town Arborist.

Destroy means to cause the premature decline of tree health or life as evaluated and determined by the Town Arborist.

Defensible Space means an area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Development means any work upon any property in the Town which requires a subdivision, rezoning, planning permit, variance, use permit, building permit, demolition permit, grading permit or other Town approval or which involves survey work, story pole placement, excavation, landscaping, construction, etc., or clearing and grubbing within the dripline or any area that would affect a protected tree.

Diameter means measurement of the trunk diameter for the purpose of applying this section shall be made four and one-half (4.5) feet (fifty-four (54) inches) above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunk diameters measured at four and one-half (4.5) feet (fifty-four (54) inches) above natural grade.

Director means the Director of Community Development or the Director's designated representative.

Dripline area means the area around the trunk of the tree extending out a distance ten (10) times the diameter of the trunk, or the perimeter of the tree canopy, whichever is greater.

Heritage tree means a tree or grouping of trees specifically designated by action of the Town Council, upon the recommendation of the Historic Preservation Commission, that possess exceptional aesthetic, biological, cultural, or historic value and is expected to have a continuing contribution to the community,

Hillside means all properties located within the area defined by the hillside area map as contained in the Town of Los Gatos Hillside Development Standards and Guidelines.

Large protected tree means any oak (*Quercus*), California buckeye (*Aesculus californica*), or Pacific madrone (*Arbutus menziesii*) which has a 24-inch or greater diameter (75-inch circumference); or any other species of tree with a 48-inch or greater diameter (150-inch circumference).

Multi-trunk tree means a tree that has more than one (1) major supporting stem or trunk growing from a single root mass located at ground level or just above the trunk flare.

Native means any tree that is found in the immediate natural habitat. For instance, redwood trees are native to the Santa Cruz Mountains but they are not native to the oak woodlands and chaparral areas of Los Gatos.

Pollarding means a pruning technique where the ends of the branches of a tree are terminated with a heading cut to a predetermined length, and then resultant epicormic shoots that emerge from just below the heading cut are cut back on an annual basis, forming an enlarging "knob" or knuckle" at the end of the remaining branches over time. Pollarding should be done on small branches no more than two (2) inches in diameter and is only allowed without a permit on fruitless mulberry trees (*Morus alba*) or other species approved by the Town Arborist.

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Protected tree means a tree regulated by the Town of Los Gatos as set forth in Section. 29.10.0960, Scope of protected trees.

Pruning means the selective removal of plant parts to meet specific goals and objectives, including but not limited to: safety and risk reduction; clearance; health maintenance; aesthetic improvement; growth control; and to enhance performance or function by developing and preserving tree structure and health. All pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).

Public nuisance, means any tree, shrub, plant or part thereof growing in, or overhanging, a public street or right-of-way, interfering with the use of any public street or public place in the Town, or tree which, in the opinion of the Director, endangers the life, health, safety, comfort or property of any persons using such public street, or in such public place, because of the tree's or shrub's location, condition of its limbs, roots or trunk, or because of its diseased condition, is hereby declared to be a public nuisance.

Public place means any road or street, or public school, or place of public assemblage, or real property, building, or other space or area which is open to public access, and which is under public control, or maintained at public expense, or which the Town or the County of Santa Clara, or the State of California, or the United States, as the case may be, owns some or all interest or which it leases.

Public street means all or any portion of territory within the Town set apart and designated for the use of the public as a thoroughfare for travel, including the sidewalks, curb and gutter.

Remove means any of the following: (1) Complete removal, such as cutting to the ground or extraction, of a protected tree; (2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to severe pruning, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.

Severe pruning means topping or removal of foliage or significant scaffold limbs or large diameter branches so as to cause permanent damage and/or disfigurement of a tree, and/or which does not meet specific pruning goals and objectives as set forth in the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning). Severe Pruning shall also include pruning as described in section 29.10.1010(3) of this chapter.

Shrub means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet high at maturity.

Significant impact on a property from a tree means an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject tree species, the size of the tree relative to the property, and whether the condition can be corrected shall be considered. Normal maintenance, including but not limited to pruning not requiring a permit under this division, and leaf removal and minor damage to paving or fences shall not be considered when making a determination of significant impact.

Street tree means a tree in a public place, or along or within a public street or right-of-way.

Topping means the practice of cutting back large diameter branches of a tree, including but not limited to cutting of a central leader, to some predetermined lower height to reduce the overall height of the tree, where the remaining buds, stubs or lateral branches are not large enough to assume a terminal role.

Tree means a woody perennial plant characterized by having a main stem or trunk, or a multi stemmed trunk system with a more or less definitely formed crown, and is usually over ten (10) feet high at maturity.

Tree canopy replacement standard means a replacement tree formula to mitigate removal of a protected tree. The standard is based on measuring the widest distance across the canopy of a tree for the purpose of determining the mitigating size and number of replacement trees.

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Tree protection zone (TPZ) means the area of a temporary fenced tree enclosure under the tree's dripline or as specified in a report prepared by a certified or consulting arborist. The TPZ is a restricted activity zone before and after construction where no soil disturbance is permitted unless approved and supervised by the certified or consulting arborist.

Tree Risk Rating means a categorization of risk based on an assessment of the likelihood of failure and impact and the consequences such failure and impact would have on life, property, utilities, or essential transportation systems. For purposes of this division, Tree Risk Rating shall be the rating of tree risk as provided for in the International Society of Arboriculture (ISA) Tree Risk Assessment Best Management Practices Tree Risk Rating Matrix, which categorizes risk as Extreme, High, Moderate or Low.

Tree value standard means the method of appraising a tree's value to a property using the Trunk Formula Method or Replacement Cost Method as described in the most recent edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA) and the Species Classification and Group Assignment by the Western Chapter of the International Society of Arboriculture (ISA).

Trunk means the primary structural woody part of the tree beginning at and including the trunk flare and extending up into the crown from which scaffold branches grow.

Trunk flare means the area at the base of the plant's trunk where it broadens to form roots and is the transition area between the root system and the trunk.

(Ord. No. 2240, § I (Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0960. Scope of protected trees.

This division shall apply to every property owner and to every person, corporation, partnership, sole proprietorship or other entity responsible for removing, maintaining or protecting a tree. The trees protected by this division are:

- (1) All trees which have a twelve-inch or greater diameter (thirty-seven and one-half-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eighteen inches or greater diameter (fifty-six and one-half-inch circumference) of the sum of all trunks, where such trees are located on developed residential property.
- (2) All trees which have an eight-inch or greater diameter (twenty-five-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eight inches or greater diameter (twenty-five-inch circumference) of the sum of all trunks, where such trees are located on developed Hillside residential property.
- (3) All trees of the following species which have an eight-inch or greater diameter (twenty-five-inch circumference) located on developed residential property:
 - a. Blue Oak (*Quercus douglasii*);
 - b. Black Oak (*Quercus kelloggii*);
 - c. California Buckeye (*Aesculus californica*);
 - d. Pacific Madrone (*Arbutus menziesii*).
- (4) All trees which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk, when removal relates to any review for which zoning approval or subdivision approval is required.
- (5) Any tree that existed at the time of a zoning approval or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (6) of this section (e.g., landscape or site plans).

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- (6) Any tree that was required by the Town to be planted or retained by the terms and conditions of a development application, building permit or subdivision approval in all zoning districts, tree removal permit or code enforcement action.
 - (7) All trees, which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk and are located on property other than developed residential property.
 - (8) All publicly owned trees growing on Town lands, public places or in a public right-of-way easement, which have a four-inch or greater diameter (twelve and one-half-inch circumference) of any trunk.
 - (9) A protected tree shall also include a stand of trees, the nature of which makes each dependent upon the other for the survival of the stand.
 - (10) The following trees shall also be considered protected trees and shall be subject to the pruning permit requirements set forth in section 29.10.0982 and the public noticing procedures set forth in section 20.10.0994:
 - a. Heritage trees;
 - b. Large protected trees.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0965. Prohibitions.

Except as provided in section 29.10.0970, it shall be unlawful:

- (1) To remove or cause to be removed any protected tree in the Town without first obtaining a permit pursuant to this chapter.
- (2) To prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five (25) percent or more of any protected tree without first obtaining a permit pursuant to this chapter.
- (3) To prune, trim, or cut any branch or root greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) of a Heritage tree or large protected tree without first obtaining a permit pursuant to this chapter.
- (4) To conduct severe pruning as defined in section 29.10.0955 without first obtaining a permit pursuant to this chapter.
- (5) For any person or business entity engaged in the business of removing trees or tree care to perform work requiring a permit under this division without first obtaining a permit under this division. The permit shall be posted on-site at all times during the removal or permitted pruning of a tree and must be made available upon request from the Chief of Police, Code Compliance Officer, Director of Parks and Public Works Department, or their designee. After a violation, the Los Gatos business license of the violating person or entity shall be revoked for a period of one year.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0970. Exceptions.

The following trees are excepted from the provisions of this division and may be removed or severely pruned without Town approval or issuance of a tree removal permit:

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).

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- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
 - a. Black Acacia (*Acacia melanoxylon*)
 - b. Tulip Tree (*Liriodendron tulipifera*)
 - c. Tree of Heaven (*Ailanthus altissima*)
 - d. Blue Gum Eucalyptus (*E. globulus*)
 - e. Red Gum Eucalyptus (*E. camaldulensis*)
 - f. Other Eucalyptus (*E. spp.*)-Hillsides only
 - g. Palm (except *Phoenix canariensis*)
 - h. Privet (*Ligustrum lucidum*)
 - (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Section 29.10.0960 - Scope of Protected Trees.

(Ord. No. 2240, § I (Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0975. Emergency action.

A protected tree may be removed or severely pruned without a permit where it presents an imminent danger to life, property, utilities or essential transportation systems and a Tree Risk Rating of Extreme or High is present. In such event, the property owner or representative shall be responsible for the following:

- (1) Notify the Town Parks and Public Works Department during business hours or the Police Department after business hours and request authorization of the proposed emergency action, including removal or severe pruning.
- (2) Emergency action may be authorized by the Director, Town Manager, Parks and Public Works Director, Town Arborist or their designees, or a member of the police or fire department or other emergency personnel when the situation and conditions warrant immediate action to protect life or property and other Town officials are unavailable.
- (3) No later than seventy-two (72) hours after the emergency action has been taken the property owner shall submit photo documentation and written verification to the Town confirming the emergency condition and describing the action taken.

If the Director determines that the condition was not reasonably determined to have been an emergency requiring immediate action, the person responsible for removing or damaging the protected tree shall be subject to fines and penalties as set forth in section 29.10.1025.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0980. Applications for a tree removal or severe pruning permit.

Applications for a protected tree removal or severe pruning permit for trees on private property shall be available from and filed with the Town as indicated on the application. Application submittals for the removal of trees on public property (street trees) are provided for in section 26.10.060 of the Town Code. Applications for tree removal or severe pruning on private property may be granted, denied or granted with conditions. Application

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submittals for removal or severe pruning of trees on private property shall include the following minimum information for staff review:

- (1) A completed tree removal application form, signed by the property owner.
- (2) A written explanation of why each tree(s) should be removed or pruned and how it meets the Town's Standards of Review.
- (3) Photograph(s) of the tree(s).
- (4) If required by the Director, a certified or consulting arborist's written assessment of the tree's disposition shall be provided for review by the Town. The report shall be signed by the arborist and include tree size (diameter, height, crown spread); location on the site; numbered on a site plan or arborist's tree survey (if there is more than one (1) tree); condition of health; condition of structure; and if tree risk findings apply, a Tree Risk Assessment and Rating must be completed using the most recent version of the Tree Risk Assessment Best Management Practices or any successor document published by the International Society of Arboriculture. Other information, images, etc. may be included in the report.
- (5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may also be required in addition to an arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damage(s) directly caused by the tree.
- (6) Payment of permit fee, as established by Town resolution.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0982. Applications for heritage and large protected tree pruning permit.

A pruning permit is required where pruning of branches or roots greater than four (4) inches in diameter is proposed for any Heritage tree or large protected tree. Applications shall be available from and filed with the Town. Applications for pruning may be granted, denied or granted with conditions. Application submittals under this section shall include the following minimum information for staff review:

- (1) A completed pruning permit application, signed by the property owner.
- (2) A written description of the proposed pruning including the pruning objectives and pruning methods to be used consistent with International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).
- (3) Photographs of the tree indicating as best possible where pruning is to occur.
- (4) If required by the Director, a certified or consulting arborist's written report describing the proposed pruning.
- (5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may be required in addition to an arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damages directly caused by the tree.
- (6) Payment of permit fee, as established by Town resolution.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

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Sec. 29.10.0985. Determination and conditions of permit.

The Director shall determine whether to grant a permit. The Director may consult with other Town departments or outside agencies at his/her discretion. When a development application for any zoning approval, or subdivision of land, including lot line adjustment, is under consideration by the Planning Commission, the determination on the tree removal permit shall be made concurrently by the Planning Commission with the related matter. The Director or the deciding body shall impose, except when removal is permitted if the tree is dead or a Tree Risk Rating of Extreme or High is present, as a condition on which a protected tree removal permit is granted that two (2) or more replacement trees of a species and a size designated by the Director or designee, shall be planted in the following order of preference:

- (1) Two (2) or more replacement trees, of a species and size designated by the Director, shall be planted on the subject private property. Table 3-1, Tree Canopy-Replacement Standard shall be used as a basis for this requirement. The person requesting the permit shall pay the cost of purchasing and planting the replacement trees.
- (2) If a tree or trees cannot be reasonably planted on the subject property, an in-lieu payment in an amount set forth by the Town Council by resolution shall be paid to the Town Tree Replacement Fund to:
 - a. Add or replace trees on public property in the vicinity of the subject property; or
 - b. Add or replace trees or landscaping on other Town property; or
 - c. Support the Town's urban forestry management program.

Table 3-1 — Tree Canopy — Replacement Standard

Canopy Size of Removed Tree ¹	Replacement Requirement ^{2, 4}	Single Family Residential Replacement Option ^{3, 4}
10 feet or less	Two 24-inch box trees	Two 15-gallon trees
More than 10 feet to 25 feet	Three 24-inch box trees	Three 15-gallon trees
More than 25 feet to 40 feet	Four 24-inch box trees; or Two 36-inch box trees	Four 15-gallon trees
More than 40 feet to 55 feet	Six 24-inch box trees; or Three 36-inch box trees	Not Available
Greater than 55 feet	Ten 24-inch box trees; or Five 36-inch box trees	Not Available

Notes

- ¹ To measure an asymmetrical canopy of a tree, the widest measurement shall be used to determine canopy size.
- ² Often, it is not possible to replace a single large, older tree with an equivalent tree(s). In this case, the tree may be replaced with a combination of both the Tree Canopy Replacement Standard and in-lieu payment in an amount set forth by Town Council resolution paid to the Town Tree Replacement Fund.
- ³ Single Family Residential Replacement Option is available for developed single family residential lots under n thousand (10,000) square feet that are not subject to the Town's Hillside Development Standards and Guidelines. All fifteen-gallon trees must be planted on-site. Any in-lieu fees for single family residential shall be based on twenty-four-inch box tree rates as adopted by Town Council.

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- ⁴ Replacement Trees shall be approved by the Town Arborist and shall be of a species suited to the available planting location, proximity to structures, overhead clearances, soil type, compatibility with surrounding canopy and other relevant factors. Replacement with native species shall be strongly encouraged. Replacement requirements in the Hillside Development Standards and Guidelines Appendix A and section 29.10.0987 Special Provisions—Hillsides.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0987. Special provisions-hillsides

The Town of Los Gatos recognizes its hillsides as an important natural resource and sensitive habitat which is also a key component of the Town's identity, character and charm. In order to maintain and encourage restoration of the hillside environment to its natural state, the Town has established the following special provisions for tree removal and replacement in the hillsides:

- (1) All protected trees located thirty (30) or more feet from the primary residence that are removed shall be replaced with native trees listed in Appendix A Recommended Native Trees for Hillside Areas of the Town of Los Gatos Hillside Development Standards and Guidelines (HDS&G).
- (2) All protected trees located within thirty (30) feet of the primary residence that are removed shall be replaced as follows:
 - (a) If the removed tree is a native tree listed in Appendix A of the HDS&G, it shall only be replaced with a native tree listed in Appendix A of the HDS&G.
 - (b) If the removed tree is not listed in Appendix A, it may be replaced with a tree listed in Appendix A, or replaced with another species of tree as approved by the Director.
 - (c) Replacement trees listed in Appendix A may be planted anywhere on the property.
 - (d) Replacement trees not listed in Appendix A may only be planted within thirty (30) feet of the primary residence.
- (3) Replacement requirements shall comply with the requirements in Table 3-1, Tree Canopy—Replacement Standard of this Code.
- (4) Property owners should be encouraged to retain dead or declining trees where they do not pose a safety or fire hazard, in order to foster wildlife habitat and the natural renewal of the hillside environment.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0990. Standards of review.

The Director or deciding body shall review each application for a tree removal permit required by this division using the following standards of review. The standards of review are intended to serve as criteria for evaluating tree removal requests and the basis upon which the Director or the deciding body will subsequently determine whether or not one (1) or more of the Required Findings listed in section 29.10.0992 can be made.

- (1) The condition of the tree or trees with respect to: (a) disease, (b) imminent danger of falling, (c) structural failure, (d) proximity to existing or proposed structures, (e) structural damage to a building, or (f) a public nuisance caused by a tree. The International Society of Arboriculture (ISA) Best Management Practices for Tree Risk Assessment shall be used where appropriate in determining a Tree Risk Rating.

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- (2) The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.
 - (3) The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.
 - (4) The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a protected tree is a detriment to or crowding another protected tree.
 - (5) In connection with a proposed subdivision of land into two (2) or more parcels, the removal of a protected tree is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.).
 - (6) Except for properties located within the hillsides, the retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
 - (7) The Hillside Development Standards and Guidelines.
 - (8) Removal of the protected tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.
 - (9) Whether the Protected Tree has a significant impact on the property. Significant impact from a tree is defined in section 29.10.0955. Definitions.
 - (10) The species, size (diameter, canopy, height), estimated age and location on the property of the protected tree.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0992. Required findings.

The Director, Director's designee, or deciding body shall approve a protected tree removal permit, severe pruning permit, or pruning permit for Heritage trees or large protected trees only after making at least one (1) of the following findings:

- (1) The tree is dead, severely diseased, decayed or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.
- (2) The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.
- (3) The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.
- (4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.
- (5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.

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- (6) The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.
 - (7) Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
 - (8) The removal of the tree is unavoidable due to restricted access to the property.
 - (9) The removal of the tree is necessary to repair a geologic hazard.
 - (10) The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.
 - (11) The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

(Ord. No. 2240, § I (Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0994. Additional procedures for heritage and large protected tree removal or pruning permits.

- (1) These procedures are established for the review of Heritage tree and large protected tree removal or pruning permit applications where a permit is requested for a tree that is not dead, severely disfigured, profoundly diseased, or an Extreme or High Risk on the ISA Tree Risk Rating Matrix, and where findings (1) or (2) above cannot be made.
- (2) In addition to the fee and application materials required by section 29.10.0980 or section 29.10.0982, the applicant will be required to submit one (1) set of stamped, addressed envelopes for neighboring residents and property owners. The Planning Department will assist the applicant in determining the properties to be notified (all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of it).
- (3) The Director shall review the application using the Standards of Review set forth in section 29.10.0990 and the Required Findings set forth in section 29.10.0992.
- (4) If the Director intends to approve the application, a "Notice of Pending Issuance of Tree Removal or Pruning Permit" will be mailed to neighboring residents and property owners including any applicable conditions, and required tree replacement requirements. The notice will describe the proposed tree removal or pruning, and that the permit will be issued unless there is an objection. Any interested party shall have ten (10) days from the date of the "Notice of Pending Issuance of Tree Removal or Pruning Permit" to notify the Director in writing of any concerns or problems.
- (5) If a written objection is not filed within the ten-day period, the permit will be issued. If a written objection is filed and a resolution is found that meets all parties' concerns then the permit will also be issued.
- (6) If an objection is filed in a timely manner and a mutually acceptable resolution cannot be agreed upon with the Director within ten (10) days, the objecting party shall be so advised and shall be provided an additional five (5) days to file a formal appeal of the tree removal or pruning permit with the Town, which shall be scheduled for consideration by the Planning Commission. All property owners and residents notified under section 29.10.0994(4) shall be notified of the Planning Commission meeting.
- (7) Trees removed illegally or damaged shall require the issuance of a retroactive tree removal permit. Once this retroactive permit is issued, along with any assessed monetary penalties and replacement requirements, then any Stop Work Order shall be removed.

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(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.0995. Disclosure of information regarding existing trees.

- (a) Any application for a discretionary development approval, or for a building, grading or demolition permit where no discretionary development approval is required, shall be accompanied by a signed tree disclosure statement by the property owner or authorized agent which discloses whether any protected trees exist on the property which is the subject of the application, and describing each such tree, its species, size (diameter, canopy dripline area, height) and location. This requirement shall be met by including the following information on plans submitted in connection with the development application.
- (b) The location of all trees on the site and in the adjacent public right-of-way which are within thirty (30) feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans, identified by species, size (diameter, canopy, dripline area, height), and location.
- (c) Within the dripline area or area that would affect a protected tree, the location of shrubs and other vegetation subject to development shall be shown on the plans.
- (d) The director may require submittal of such other information as is necessary to further the purposes of this division including but not limited to photographs.
- (e) Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading, trenching or paving.
- (f) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this division.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1000. New property development.

- (a) A tree survey shall be conducted prior to submittal of any development application proposing the removal of or impact to one (1) or more protected trees. The development application shall include a Tree Survey Plan and Tree Preservation Report based on this survey. The tree survey inventory numbers shall correspond to a numbered metal tag placed on each tree on site during the tree survey. Tree survey inventory number tags in place from previous tree surveys, if easily visible, shall be retained and used in any new tree survey report. The tree survey plan shall be prepared by a certified or consulting arborist, and shall include the following information:
 - (1) Location of all existing trees on the property as described in section 29.10.0995;
 - (2) Identify all trees that could potentially be affected by the project (directly or indirectly-immediately or in long term), such as upslope grading or compaction outside of the dripline;
 - (3) Notation of all trees classified as protected trees;
 - (4) In addition, for trees four (4) inches in diameter or larger, the plan shall specify the precise location of the trunk and crown spread, and the species, size (diameter, height, crown spread) and condition of the tree.
- (b) The tree survey plan shall be reviewed by the Town's consulting arborist who shall, after making a field visit to the property, indicate in writing or as shown on approved plans, which trees are recommended for preservation (based on a retention rating of high/moderate/low) using, as a minimum, the Standards of

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Review set forth in section 29.10.0990. This plan shall be made part of the staff report to the Town reviewing body upon its consideration of the application for new property development;

- (c) When development impacts are within the dripline of or will affect any protected tree, the applicant shall provide a tree preservation report prepared by a certified or consulting arborist. The report, based on the findings of the tree survey plan and other relevant information, shall be used to determine the health and structure of existing trees, the effects of the proposed development and vegetation removal upon the trees, recommendations for specific precautions necessary for their preservation during all phases of development (demolition, grading, during construction, landscaping); and shall also indicate which trees are proposed for removal. The tree preservation report shall stipulate a required tree protection zone (TPZ) for trees to be retained, including street trees, protected trees and trees whose canopies are hanging over the project site from adjacent properties. The TPZ shall be fenced as specified in section 29.10.1005:
- (1) The final approved tree preservation report shall be included in the building permit set of development plans and printed on a sheet titled: Tree Preservation Instructions (Sheet T-1). Sheet T-1 shall be referenced on all relevant sheets (civil, demolition, utility, landscape, irrigation) where tree impacts from improvements may be shown to occur;
 - (2) The Town reviewing body through its site and design plan review shall endeavor to protect all trees recommended for preservation by the Town's consulting arborist. The Town reviewing body may determine if any of the trees recommended for preservation should be removed, if based upon the evidence submitted the reviewing body determines that due to special site grading or other unusual characteristics associated with the property, the preservation of the tree(s) would significantly preclude feasible development of the property as described in section 29.10.0990;
 - (3) Approval of final site or landscape plans by the appropriate Town reviewing body shall comply with the following requirements and conditions of approval:
 - a. The applicant shall, within ninety (90) days of final approval or prior to issuance of a grading or building permit, whichever occurs first, secure an appraisal of the condition and value of all trees included in the tree report affected by the development that are required to remain within the development using the Tree Value Standard methodology as set forth in this Chapter. The appraisal of each tree shall recognize the location of the tree in the proposed development. The appraisal shall be performed in accordance with the current edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA) and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraisal shall be subject to the Director's approval.
 - b. The site or landscape plans shall indicate which trees are to be removed. However, the plans do not constitute approval to remove a tree until a separate permit is granted. The property owner or applicant shall obtain a protected tree removal permit, as outlined in section 29.10.0980, for each tree to be removed to satisfy the purpose of this division.
 - (d) Prior to acceptance of proposed development or subdivision improvements, the developer shall submit to the Director a final tree preservation report prepared by a certified or consulting arborist. This report shall consider all trees that were to remain within the development. The report shall note the trees' health in relation to the initially reported condition of the trees and shall note any changes in the trees' numbers or physical conditions. The applicant, or their successors, will then be responsible for the removal or loss of any tree at any time during development that was not previously approved for removal. For protected trees which were removed, the developer shall pay a penalty in the amount of the appraised value of such tree in addition to replacement requirements contained in section 29.10.0985 of this Code. The applicant shall remain responsible for the health and survival of all trees within the development for a period of five (5) years following acceptance of the public improvements of the development or certificate of occupancy.

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- (e) Prior to issuance of any demolition, grading or building permit, the applicant or contractor shall submit to the Building Department a written statement and photographs verifying that the required tree protection fence is installed around street trees and protected trees in accordance with the tree preservation report.
 - (f) If required by the Director and conditioned as part of a discretionary approval, a security guarantee shall be provided to the Town. Prior to the issuance of any permit allowing construction to begin, the applicant shall post cash, bond or other security satisfactory to the Director, in the penal sum of five thousand dollars (\$5,000.00) for each tree required to be preserved, or twenty-five thousand dollars (\$25,000.00), whichever is less. The cash, bond or other security shall be retained for a period of one (1) year following acceptance of the public improvements for the development and shall be forfeited in an amount equal to five thousand dollars (\$5,000.00) per tree as a civil penalty in the event that a tree or trees required to be preserved are removed, destroyed or severely damaged.
 - (g) An applicant with a proposed development which requires underground utilities shall avoid the installation of said utilities within the dripline of existing trees whenever possible. In the event that this is unavoidable, all trenching shall be done using directional boring, air-spade excavation or by hand, taking extreme caution to avoid damage to the root structure. Work within the dripline of existing trees shall be supervised at all times by a certified or consulting arborist.
 - (h) It shall be a violation of this division for any property owner or agent of the owner to fail to comply with any development approval condition concerning preservation, protection, and maintenance of any protected tree.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1005. Protection of trees during construction.

- (a) Protective tree fencing shall specify the following:
 - (1) Size and materials. Six (6) foot high chain link fencing, mounted on two-inch diameter galvanized iron posts, shall be driven into the ground to a depth of at least two (2) feet at no more than ten-foot spacing. For paving area that will not be demolished and when stipulated in a tree preservation plan, posts may be supported by a concrete base.
 - (2) Area type to be fenced. Type I: Enclosure with chain link fencing of either the entire dripline area or at the tree protection zone (TPZ), when specified by a certified or consulting arborist. Type II: Enclosure for street trees located in a planter strip: chain link fence around the entire planter strip to the outer branches. Type III: Protection for a tree located in a small planter cutout only (such as downtown): orange plastic fencing shall be wrapped around the trunk from the ground to the first branch with two-inch wooden boards bound securely on the outside. Caution shall be used to avoid damaging any bark or branches.
 - (3) Duration of Type I, II, III fencing. Fencing shall be erected before demolition, grading or construction permits are issued and remain in place until the work is completed. Contractor shall first obtain the approval of the project arborist on record prior to removing a tree protection fence.
 - (4) Warning sign. Each tree fence shall have prominently displayed an eight and one-half-inch by eleven-inch sign stating: "Warning—Tree Protection Zone—This fence shall not be removed and is subject to penalty according to Town Code 29.10.1025."
- (b) All persons, shall comply with the following precautions:
 - (1) Prior to the commencement of construction, install the fence at the dripline, or tree protection zone (TPZ) when specified in an approved arborist report, around any tree and/or vegetation to be retained which could be affected by the construction and prohibit any storage of construction materials or other

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materials, equipment cleaning, or parking of vehicles within the TPZ. The dripline shall not be altered in any way so as to increase the encroachment of the construction.

- (2) Prohibit all construction activities within the TPZ, including but not limited to: excavation, grading, drainage and leveling within the dripline of the tree unless approved by the Director.
- (3) Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline of or in drainage channels, swales or areas that may lead to the dripline of a protected tree.
- (4) Prohibit the attachment of wires, signs or ropes to any protected tree.
- (5) Design utility services and irrigation lines to be located outside of the dripline when feasible.
- (6) Retain the services of a certified or consulting arborist who shall serve as the project arborist for periodic monitoring of the project site and the health of those trees to be preserved. The project arborist shall be present whenever activities occur which may pose a potential threat to the health of the trees to be preserved and shall document all site visits.
- (7) The Director and project arborist shall be notified of any damage that occurs to a protected tree during construction so that proper treatment may be administered.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1010. Pruning and maintenance.

Tree pruning must not be done in a manner that is detrimental to the tree. Any action undertaken which intentionally or recklessly causes or tends to cause injury, death, or disfigurement to a tree is considered to be detrimental. Examples of detrimental actions which are prohibited may include cutting, poisoning, burning, over-watering, relocating, or transplanting a tree.

All tree pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning) and any special conditions as determined by the Director. For developments, which require a tree preservation report, a certified or consulting arborist shall be in reasonable charge of all activities involving protected trees, including pruning, cabling and any other work if specified.

- (1) Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of a protected tree shall obtain permission from the Director before performing any work, including pruning, which may cause injury to a protected tree (e.g. cable TV/fiber optic trenching, gas, water, sewer trench, etc.).
- (2) Pruning for clearance of utility lines and energized conductors shall be performed in compliance with the current version of the American National Standards Institute (ANSI) A300 (Part 1)-Pruning, Section 5.9 Utility Pruning. Using spikes or gaffs when pruning, except where no other alternative is available, is prohibited.
- (3) No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown of any protected tree without first obtaining a permit pursuant to this division except for pollarding of fruitless mulberry trees (*Morus alba*) or other species approved by the Town Arborist. Applications for a pruning permit shall include photographs indicating where pruning is proposed.
- (4) No person shall remove any Heritage tree or large protected tree branch or root through pruning or other method greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) without first obtaining a permit pursuant to this division.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

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Sec. 29.10.1015. No limitation of authority.

Nothing in this division limits or modifies the existing authority of the Town under Division 29 of Title 29 (Zoning Regulations), Title 26 (Public Trees) or the Hillside Development Standards and Guidelines to require trees and other plants to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this division and conditions of any permit or other approval granted pursuant to Chapter 29 or Chapter 26 of the Town Code or the Hillside Development Standards and Guidelines. The more protective requirements shall prevail.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1020. Responsibility for enforcement.

The Town shall vigorously enforce the provisions of this Chapter. All officers and employees of the Town shall report violations of this division to the Director of Community Development. Whenever an Enforcement Officer as defined in section 1.30.015 of the Town Code determines that a violation of this Code has occurred, the Enforcement Officer shall have the authority to issue an administrative citation pursuant to the provisions of section 1.30.020 of the Town Code.

Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1025. Enforcement—Remedies for violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the Town for violation of this division. These remedies can be levied against any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation:

- (1) Tree removals in absence of or in anticipation of development.
 - a. If a violation occurs in the absence of or prior to proposed development, then discretionary applications and/or building permit applications will not be accepted or processed by the Town until the violation has been remedied to the reasonable satisfaction of the Director. Mitigation measures as determined by the Director may be imposed as a condition of any subsequent application approval or permit for development on the subject property. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed or damaged tree(s). The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

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b. The violation of any provisions in this division during the conduct by any person of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for revocation of any business license issued to such person. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(2) Pending development applications.

a. Incomplete applications will not be processed further until the violation has been remedied. If an application has been deemed complete, it may be denied by the Director or forwarded to the Planning Commission with a recommendation for denial at the Director's discretion. Mitigation measures as determined by the director may be imposed as a condition of approval. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

b. The violation of any provisions in this division during the conduct by any person of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for revocation of any business license issued to such person. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(3) Projects under construction.

- a. If a violation occurs during construction, the Town may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the Director, agreed to in writing by the property owner(s) or the applicant(s) or both, and either implemented or guaranteed by the posting of adequate security in the discretion of the Director. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.
- b. The violation of any provisions in this division during the conduct by any person of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for revocation of any business license issued to such person. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

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(4) Criminal penalties. Notwithstanding section 29.20.950 relating to criminal penalty, any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than \$1,000.00 or by imprisonment of not more than 6 months or by both such fine and imprisonment. Each person convicted may be deemed guilty of a separate offense for every day during any portion of which any violation is committed or permitted.

(5) Civil penalties. Notwithstanding section 29.20.950 and Section (4) above, relating to criminal penalty, any person, property owner, firm, or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, found to have violated section 29.10.0965, shall be liable to pay the Town a civil penalty as prescribed in subsections a. through d.

- a. As part of a civil action brought by the Town, a court may assess against any person who commits, allows, or maintains a violation of any provision of this division a civil penalty in an amount not to exceed five thousand dollars per violation. For damaged trees, in addition to civil penalties, the property owner will be required to obtain the services of an ISA certified arborist to determine the future viability of the tree and if salvageable, create a maintenance plan to restore the tree.
- b. Where the violation has resulted in removal of a protected tree, the civil penalty shall be in an amount not to exceed five thousand dollars (\$5,000.00) per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. If the tree removal is related to any development or subdivision then the civil penalties shall be the value of the tree times four, plus all related staff costs. Such amount shall be payable to the Town and deposited into the Tree Replacement Fund. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture.
- c. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town.
- d. The cost of enforcing this division, which shall include all costs, staff time, and attorneys' fees.

(56) Injunctive relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(67) Costs. In any civil action brought pursuant to this division in which the Town prevails, the court shall award to the Town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

(8) Remedies not exclusive. To the maximum extent permitted by law, administrative remedies specified in this chapter are in addition to and do not supersede or limit any and all other provided for herein shall be cumulative and not exclusive.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

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Sec. 29.10.1030. Fees.

The fee, as adopted by Town Resolution, prescribed therefore in the municipal fee schedule shall accompany the removal or pruning permit application submitted to the Town for review and evaluation pursuant to this division.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1035. Severability.

If any provision of this division or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this division which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1040. Notices.

All notices required under this division shall conform to noticing provisions of the applicable Town Code.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec. 29.10.1045. Appeals.

Any interested person, as defined in section 29.10.020 of the Town Code, may appeal a decision of the director pursuant to this division in accordance with the procedures set forth in section 29.20.260 of the Town Code. All appeals shall comply with the public noticing provisions of section 29.20.450 of the Town Code.

(Ord. No. 2240, § I (Exh. B), 6-2-15)

Sec 29.10.1050 No liability upon the Town.

Nothing in this chapter shall be deemed to impose any liability upon the Town or upon any of its officers or employees, nor to relieve the owner or occupant of any private property from the duty to keep in safe condition any trees and shrubs upon that private property or upon sidewalks and planting areas in front of that property.

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 03/23/2022

ITEM NO: 3

ADDENDUM

DATE: March 22, 2022
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Public Hearing to Consider Amendments to Chapter 29 (Zoning Regulations – Tree Protection) of the Town Code.

REMARKS:

Exhibit 3 includes public comment received between 11:01 a.m., Friday, March 18, 2022, and 11:00 a.m., Tuesday, March 22, 2022.

EXHIBITS:

Previously received with the March 23, 2022 Staff Report:

1. Findings
2. Draft Tree Protection Ordinance – Red Lined

Received with this Addendum Report:

3. Public comment received between 11:01 a.m., Friday, March 18, 2022, and 11:00 a.m., Tuesday, March 22, 2022

PREPARED BY: ROBERT SHULTZ
Town Attorney

Reviewed by: Planning Manager and Community Development Director

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To: Planning Commission
Re: Item 3, meeting of March 23, 2022
From: Dave Weissman

Dear Commissioners,

I am happy to confirm my support of the draft changes submitted by staff to the Tree Protection Ordinance. I suggest the following additions to this draft, **in red below**, to make the intent more clear and to try and eliminate any loop-holes.

Exhibit 2, Code page 1 (Staff report page 51): Damage means any action undertaken which causes short-term or **possible** long-term injury, death, or disfigurement to a tree. This includes but is not limited to: **mechanical injury (whether intentional or not)**, cutting of roots or limbs, poisoning, over-watering, relocation or transplanting a tree, or trenching, grading, compaction, excavating, paving, or installing impervious surface within the root zone of a protected tree.

Exhibit 2, Code page 11 (Staff report page 61): Sec. 29.10.0994 (7) Trees removed illegally or damaged shall require the issuance of a retroactive tree removal permit. Once this retroactive permit is issued, **and all required conditions fulfilled**, along with any assessed monetary penalties **paid** and **tree** replacement requirements **completed**, then any Stop Work Order shall be removed.

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