



## SPECIAL MEETING

### TOWN OF LOS GATOS TOWN COUNCIL POLICY COMMITTEE

*Council Policy Committee – (2016)*

*Marico Sayoc, Vice Mayor  
Marcia Jensen, Council Member*

AGENDA  
TOWN COUNCIL CHAMBERS  
110 EAST MAIN STREET  
OCTOBER 27, 2016 – 9:30 A.M.

### MEETING CALLED TO ORDER

### ROLL CALL

### VERBAL COMMUNICATIONS *(Three minute time limit)*

### AGENDA ITEMS

*(The reports for each item are provided in the order of the agenda)*

1. Approval of the October 13, 2016 Council Policy Committee Draft Minutes
2. Review and Discuss Land Use Definitions
3. Review and Discuss Traffic Impact Fees

### ADJOURNMENT

cc: Post *(also posted on Town Web)*  
Town Council

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Manager's Office 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]

**TOWN OF LOS GATOS**  
**COUNCIL POLICY COMMITTEE**  
October 13, 2016

110 E. Main Street  
Town Council Chambers  
Los Gatos, California

**DRAFT ACTION MINUTES**

**Call to Order**

The Council Policy Committee meeting was called to order at 10:00 a.m.

**Members and Staff present:**

Vice Mayor Marico Sayoc  
Councilmember Marcia Jensen  
Town Attorney, Robert Schultz  
Shelley Neis, Town Clerk  
Shelayne Hammack, Management Analyst  
Joel Paulson, Community Development Director

**Verbal Communications**

None

**Agenda Items**

**1. Approval of September 29, 2016 Council Policy Committee Meeting Minutes**  
**Committee Action:**

The Committee unanimously approved the draft minutes with no changes.

**2. Review and discuss the Commission Appointment Policy**

The Committee discussed the edits to the proposed changes to the Commissions. They also listened to public testimony from Maria Ristow. The Committee's recommendations are summarized below:

- The changes reflect what they wanted and the Committee is ready to move forward.
- Regarding attendance requirements, Committee members requested to change item 4 to 3/5 instead of 4/5.
- Committee members recommend deferring the Finance Committee discussion to the Town Council's Strategic Priorities discussion in January.
- Committee members recommend starting the recruitment for BPAC as soon as possible.

- The staff report should reflect the Committee's reasoning for residency requirements for the Youth Commission and the package of changes should be considered by the Council on October 18<sup>th</sup>.

### **3. Review and discuss potential amendments to Council Policy 1-04: Town Facilities Policy regarding Oak Meadow Park**

The Committee approved the proposed Policy as redlined and would like it to be considered by the Council on October 18<sup>th</sup>. The Committee emphasized that the staff report should reflect that the Policy reinforces that public spaces should be accessible to and used by the public.

The Committee requested the following topics at its next meeting:

- Land Use Definitions and traffic impact fees
- Employee parking permit/valet – The Committee is interested in doing a pilot before Christmas and discussing this topic with the Chamber

Next meeting is on October 27, 2016 at 9:30 a.m.

The meeting was adjourned at 10:14 a.m.



MEETING DATE: 10/27/16  
ITEM NO: 2

## COUNCIL POLICY COMMITTEE REPORT

DATE: OCTOBER 19, 2016  
TO: COUNCIL POLICY COMMITTEE  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: REVIEW AND DISCUSS LAND USE DEFINITIONS

### RECOMMENDATION:

Review and discuss land use definitions.

### BACKGROUND:

Beginning in August of 2015, the Policy Committee and Town Council have been reviewing various elements of Chapter 29 of the Town Code in an effort to streamline the process businesses must go through to operate in Los Gatos. There has also been a desire stated by Council Members to reduce the "red tape" and costs of opening and operating a business in Town.

On September 1, 2015, staff presented a report to the Council with recommendations to amend the definitions and policies related to various commercial uses (see Attachment 1). The intent primarily was to reduce the confusion that businesses experience between the use definitions in the Code and Traffic Impact Fee Policy. In addition, revised definitions would clarify and modernize the language in the Code to match the requests of businesses. Specifically, the report and discussion included the definitions of formula retail, specialty retail and outdoor seating, and how the Town's policies and ordinances are currently applied to businesses. During this meeting, the Council heard from several businesses and stakeholders who identified a number of concerns regarding conducting business in Los Gatos.

The Council directed staff to come back with information that included a compilation and summary of those items presented by the speakers including formula retail, Conditional Use Permits (CUPs), outdoor seating, and seat capacities tied to parking requirements. This discussion was continued to the October 6, 2015 Town Council meeting which also included a study session on Alcohol and Entertainment, another closely related topic to the broader discussion of provisions on businesses.

PREPARED BY: MONICA RENN  
Economic Vitality Manager

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Reviewed by:  N/A  Assistant Town Manager  NA  Town Attorney  NA  Finance

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BACKGROUND (cont'd):

After the discussion on October 6, the Council decided that these issues were too large to take on as a whole and directed staff to separate the topics and bring them back individually for consideration.

Starting in November with the Policy Committee, an Outdoor Seating Policy was discussed and forwarded to the Council, which adopted the Policy on December 2, 2015. In the same time frame, with a recommendation from the Policy Committee and Planning Commission, the Town Council adopted an ordinance amendment allowing businesses in the C-2/Downtown zone to offer paid valet parking in private lots. The Council also discussed decoupling the relationship between parking requirements and seating capacities, sending the issue to the Planning Commission for their consideration and recommendation back to Council.

Beginning on January 13, 2016, the Planning Commission discussed decoupling parking requirements from seating capacities in restaurants. The issue was continued until March 13, 2016 at which time the Planning Commission recommended decoupling seats and parking, and amending the parking requirements for restaurants to a more restrictive requirement at one space per 150 square feet, versus the current code language of one space per 300 or 235 square feet, depending on the zoning.

While the topic of seats and parking was being vetted through the planning process, the Planning Commission and Town Council also discussed an amendment to the definition of a formula retail business. On January 13, 2016 staff presented the Planning Commission with amendments to Chapter 29 language as it pertains to defining and regulating formula retail businesses. Staff presented a recommendation for an amendment to the Town Code with specific criteria to define a formula retail business included in Attachment 1. The Planning Commission recommended adopting the language presented by staff, and recognized that is only a small piece of a much larger discussion.

When this recommendation returned to the Town Council on February 2, 2016, the Council discussed the topic at great length and ultimately voted to not accept the Planning Commission's recommendation and return it to the Policy Committee for consideration and recommendation back to the Council. The Policy Committee discussed formula retail at their meeting on February 25, 2016 and made a recommendation back to the Council to suspend the requirement for formula retail businesses to obtain a CUP, along with suspending Ordinance 2021, which strongly discourages the displacement of retail by restaurant, for a period of 18 months as a way to test the impact of the changes.

The Town Council heard this recommendation on March 15, 2016 and denied the suspension of the formula retail provisions, took no action on the suspension of Ordinance 2021, and sent both issues back to the Policy Committee along with a review of the application of the Traffic Impact Policy. The Traffic Impact Policy is being addressed in a separate report for the Policy Committee in an effort to simplify the conversations as much as possible.

At the Town Council's most recent discussion on business policies and ordinances on October 4, 2016, the Council considered the Planning Commission's recommendation from their March 13, 2016 meeting to decouple seats and parking. During this discussion, Council members agreed that decoupling seats and

BACKGROUND (cont'd):

parking may make sense for the Town; however, it saw the connection between this issue and other business-related regulations and voted to return it to the Policy Committee for consideration. The Council requested that the items return in a more inclusive package of topics along with amended definitions for specific business uses.

DISCUSSION:

Over the past 14 months, Council has been carefully considering a variety of issues in an attempt to clarify and improve consistency with various land use definitions between the Code and other Town policies. As a starting point, staff recommends that the Policy Committee consider the proposed definitions that were drafted over a year ago (see Attachment 1). Also included in Attachment 1 is a relationship map of various business-related issues that have been identified as possible discussion topics for streamlining the business permitting process.

Through each discussion, draft policy, and amended ordinance that has come before the Town Council, Council Policy Committee and Planning Commission, the Council Policy Committee has acknowledged that the Council needs to determine its goals for the Town's economic vitality. A common goal would help direct the needed changes to the Town's regulatory process. This topic may be the focus of a future Council study session.

In addition, staff has recognized that multiple Town Code amendments may be necessary to address these inter-related issues in a more comprehensive manner. This way, definitions and process could be examined together to ensure that the Council's economic vitality goals are being realized. Rather than continue to suggest individual Code amendments, this may be an opportune time to explore the option of having the Town's Zoning Code rewritten. Understanding that this is a large undertaking with an associated timeline and budget expense, staff could begin collecting information on the feasibility of such an effort. From a grander perspective, reviewing and modifying Chapter 29 of the Town Code and its application as a whole may be a large initial investment, however the long term benefit could outweigh the cost of Council, Committee, Commission, and staff time spent with individual amendments while providing customers with a governing document that is relevant to today's world.

Typically, zoning code rewrites involve an RFP process to hire a third party land use zoning expert that assumes the full responsibility of working with staff, elected officials and the community to capture and include desired elements, relevant rules in relation to current times, and a cleaner, more simple product.

CONCLUSION AND NEXT STEPS:

The Policy Committee may wish to review and discuss the current definitions from Section 29.10.020 and the definitions drafted in Attachment 1, and make a recommendation to the Town Council on amended definitions for the various restaurant and food uses. After discussing the Traffic Impact Policy, the Policy Committee may wish to align the definitions between the two documents to improve consistency.

CONCLUSION AND NEXT STEPS (Cont'd):

The Policy Committee may also identify additional topics that could be packaged together with use definitions to return to the Town Council as discussed by the Council in their motion on October 4, 2016.

Alternatively, the Policy Committee could direct staff to research the timeline and cost for a comprehensive Chapter 29 Zoning Code rewrite and return the information to the Policy Committee for further discussion.

Attachments:

1. Staff report and associated attachments considered by the Town Council at its September 1, 2015 meeting.



MEETING DATE: 09/01/15  
ITEM NO: 11

COUNCIL AGENDA REPORT

DATE: AUGUST 20, 2015  
TO: MAYOR AND TOWN COUNCIL  
FROM: LES WHITE, INTERIM TOWN MANAGER  
SUBJECT: PROVIDE DIRECTION ON THE TOWN'S DEFINITIONS AND POLICIES FOR FORMULA RETAIL, SPECIALTY RETAIL, AND OUTDOOR SEATING.

*Council 9/1/15 10:00  
LW*

RECOMMENDATION:

Provide direction on the Town's definitions and policies for formula retail, specialty retail, and outdoor seating.

BACKGROUND:

Los Gatos has long been known as a destination for locals and visitors alike to spend time shopping and dining. In particular, Downtown Los Gatos is home to a vibrant mix of businesses including local and national brands, independent retailers, and a variety of eating establishments that fit nearly every culinary category. In recent times, the face of retail has changed dramatically with the availability and ease of online shopping. Brick and mortar businesses are left with the challenge of creating a unique experience for their shoppers that provides enough incentive to visit the physical location and shop in person. In addition, the rise in the cost of living and doing business in Los Gatos has played a role in the demographic shift in merchants and customers, the hours visitors are in Downtown, and the products and experiences sought.

As businesses evolve and new business trends emerge, staff is often faced with hybrid business models that do not fit within the Town's current policies and ordinances, causing frustration for applicants, and a longer process as staff work to define such businesses. At its August 18, 2015 meeting, Town Council expressed interest in examining many of the regulations that pertain to businesses looking to expand or locate in Los Gatos. While there are many elements to these regulations, and all of them tend to relate with one another. As directed by Council, staff has

PREPARED BY: MONICA RENN  
Economic Vitality Manager

*MRM for Monica Renn*

Reviewed by: WJ Assistant Town Manager \_\_\_\_\_ Town Attorney nlq Finance

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MAYOR AND TOWN COUNCIL

SUBJECT: PROVIDE DIRECTION TO TOWN STAFF REGARDING THE TOWN'S  
DEFINITIONS AND POLICIES ON FORMULA RETAIL, SPECIALTY RETAIL,  
AND OUTDOOR SEATING.

AUGUST 20, 2015

BACKGROUND (cont'd):

identified three main topics that can help guide this conversation and present options for the Council's consideration.

The definitions, policies, and practices around Formula Retail, Specialty Retail, and Outdoor Seating have long been issues raised by businesses through their operations and applications for Conditional Use Permits (CUP). In addition, clarification has been requested by both the Town Council at recent CUP hearings and the Policy Committee through their work on current Town Policies.

As a result, staff is seeking Council direction on these topics, with an end goal of providing clarification, transparency, and consistency related to Formula Retail, Specialty Retail, and Outdoor Seating. Achieving these goals could improve the customer experience as businesses go through various Town processes and contribute to the Town's economic vitality by having avenues to offer greater business diversity. The latter directly addresses one of the Town's 2014-2016 Strategic Goals of developing a policy to ensure continued diversity of independent and national businesses in the Downtown.

DISCUSSION:

Within this report, Formula Retail, Specialty Retail, and Outdoor Seating will be discussed separately, although it should be noted that the crossover and connectivity between these topics is pronounced, as well as the relationship between other retail regulations, policies, and practices. Attachment 1 illustrates the relationship between these three topics, and includes other topics that are directly related and/or affected by Formula Retail, Specialty Retail, and Outdoor Seating.

**Formula Retail**

Town Code section 29.10.020 defines Formula Retail businesses as those with more than seven existing locations, also known as national brands or chain stores. The Town does not have a separate adopted Formula Retail Policy, or an adopted rule of 80% independent to 20% Formula. The Town Code requires a CUP for new Formula Retail businesses, regardless of size, to be located within the Downtown/C-2 zone. In contrast, within other commercial zones, only those Formula Retailers larger than 6,000 square feet must obtain a CUP.

The current definition provides a limited amount of detail for categorizing such a business and as a result creates confusion for many prospective businesses. Staff has conducted best practice research among other California cities that regulate Formula Retail businesses and found that while very few jurisdictions enforce such regulations, those that do generally use similar criteria. Attachment 2 includes the Town's current definition of Formula Retail, and language that reflects the criteria more widely used by other jurisdictions, providing options for the Town Council to consider as they discuss Formula Retail regulations.

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AUGUST 20, 2015

CONCLUSION AND RECCOMENDATION (cont'd):

Within the best practice research conducted by staff, it was discovered that most jurisdictions have an increased threshold of existing number of locations and where those locations exist (i.e. 10 or 11 existing locations within the United States vs. the Town's threshold of more than seven locations anywhere), and include restaurants under the Formula definition. These would also be elements of the definition that staff recommends for Council's consideration.

Staff's research revealed that with the absence of any such protective policy, Downtowns often experience attrition of independent retailers, as larger retailers are able to pay higher commercial rents and offer longer lease term commitments. This information was notable to staff as it directly speaks to the Town's own intent with the establishment of Formula Retail regulations and the desire to protect and enhance the Downtown's business diversity as reflected in the aforementioned Strategic Goal. For reference, Attachment 3 includes information on the Town's existing Downtown Formula Retailers.

**Specialty Retail**

The Town currently has an administrative Specialty Retail Policy (Attachment 4) that was implemented by a past Community Development Director allowing retailers selling "pre-packaged" food items in a non-restaurant capacity to operate as a retailer, thus not requiring a Conditional Use Permit. The policy permits businesses such as a bakery or whole bean coffee shop, although specifically prohibits businesses selling ice cream or health drinks. This is out of date, confusing, and in conflict with those businesses that are classified as a Specialty Retailer within our current Traffic Impact Policy.

At a recent Town Council discussion on the Traffic Impact Policy, Town Council requested that staff work on drafting suggestions that align the land use definition and traffic definition of this business category allowing for a clearer and more cohesive process for potential businesses. The Traffic Impact Policy defines such businesses as follows:

*Walk-in, impulse businesses such as juice bars, coffee shops, yogurt shops and donut shops, which do not serve meals as primary use, shall be considered Specialty Retail for purposes of calculating new vehicle trips (Peak Hour and ADT).*

Those businesses that the currently Town considers Specialty Retailers from a land use perspective all provide food or beverages to the consumer, with the primary goal of off-site, or quick on-the-go consumption. In addition, these retailers typically offer one type of food product with several varietal choices. Confusion commences when a business comes forward as a Specialty Retailer and is not listed on the policy but directly mimics one that is, or would like to offer their specialty food item made to order. Direction is not always clear for these applicants.

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AUGUST 20, 2015

DISCUSSION (cont'd):

For example the current policy would allow a bakery making bagels to be a specialty retailer, however, once the retailer offers the option of adding condiments such as cream cheese or jam, the retailer is now categorized as a restaurant. The current policy also prohibits any Specialty Retailer from offering seats to their customers. Once seats are provided, regardless of the business model, the Town Code currently defines the business use as a restaurant.

Staff has not recommended rescission of the Specialty Retail Policy to the Policy Committee to date because with the absence of a Specialty Retail policy or a newly adopted Town Code definition, any food establishment would be required to go through the CUP process as a restaurant. Instead, staff seeks Council direction on possible alternatives to the attached Specialty Retail Policy, perhaps the addition of a Town Code definition for Specialty Food Retail, calling out that the specialty items are consumable. Staff has drafted one option of such a definition for the Council to discuss as a part of Attachment 5.

Current economic trends are showing that online shopping is at an all-time high, thus many retailers are seeking innovative ways to enhance the in-store customer experience. This is often achieved by blending consumable products and gathering opportunities that cannot be offered to the online customer, creating a whole new way of defining business and retail categories. Staff has experienced an increased interest from current and prospective businesses of blending such business models to create a fuller more enriched customer experience. As this is considered, requests have increased for adding small quantities of seating, stand up counters or benches within businesses to caterer to evolving consumer trends of specialty food on-the-go, or the enhanced retail experience.

For the Council's consideration, Attachment 5 also contains a chart of seating currently permitted in restaurants based on parking space credit per Town Code; and, includes options for seating that could be considered for a Specialty Food Retailer by square footage. It should be noted that throughout staff's benchmarking, most jurisdictions do not limit seats in any restaurant, bar or food based establishment based on parking space credits, rather use either square footage or the restrictions set by the fire code to define the occupancy for eating establishments.

Another layer for consideration is that Specialty Retail is often defined or evolves from those uses that are not defined within restaurant categories. This is a significant point in that how the Town defines restaurant uses now or in the future could affect how Specialty Food Retail is defined.

There is a spectrum of options for the Council's consideration that range from only addressing Specialty Retail to fully considering all restaurant use definitions and including a new definition for Specialty Food Retail within the Town Code. While expansive, the latter would provide the opportunity to align all of the definitions for continuity with one another, address seating both indoors and out, and consider the categories used to define restaurant uses for traffic impact fee

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AUGUST 20, 2015

DISCUSSION (cont'd):

calculations. Given that this would be staff's recommendation, Attachment 6 contains both current and draft definitions of restaurant uses for Council's discussion.

**Outdoor Seating**

At its August 4, 2015 Town Council meeting, the Council approved the rescission of an outdated Outdoor Seating Policy, and may now wish to develop a new policy or guidelines for outdoor seating. Currently, a restaurant with private outdoor space may apply through the Conditional Use Permit process to have seating outdoors given that it remains out of the public right-of-way.

Outdoor seating is often requested by the business community as a way to enhance the customer experience given the desirable climate and views experienced in Los Gatos. Many of the Town's sidewalks are not currently wide enough to allow for the addition of seats while maintaining an appropriate amount of public access.

Currently, the Town Code restricts use of public right-of-way and addressed encroachment permits in section 23.30.005, and commercial use of the public right-of-way in section 29.50.020. In addition to determining if the outdoor area that may be used, a CUP also regulates the total number of seats allowed in an outdoor space, as well as the types, sizes, and placement of outdoor furniture in some cases.

Outdoor Seating that is permitted by a CUP in a restaurant is considered in the overall total number of seats allowed, and is calculated based on the type of restaurant and zoning using a ratio of seats per parking space credited to the location. In the Downtown, the total number of seats allowed in a restaurant is calculated as follows:

- Restaurants without a separate bar: 4 seats per parking space credit
- Restaurants with a separate bar: 3 seats per parking space credit
- Bars, taverns, and nightclubs: 3 seats per parking space credit

As with Formula Retail and Specialty Retail, the discussion of outdoor seats often leads to other business related topics, such as overall seating capacity and calculation methods, parking, and definitions of restaurant uses, as shown in Attachment 1.

CONCLUSION AND RECCOMENDATION:

While three different topics are being highlighted in this report, each directly affects the other, and overlaps with other business related polices and ordinances. Taking this opportunity to look at these elements and those related to them comprehensively could allow for a greatly improved customer experience through clarity, continuity and business use opportunity.

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CONCLUSION AND RECCOMENDATION (cont'd):

Staff recommends that the Town Council consider the all of the components for permitting businesses that are outlined in this report, both primary and secondary, and direct modifications that allow Los Gatos businesses to better compete with neighboring jurisdictions, experience an improved permitting process, and increase their own customers' experiences, ultimately creating the opportunity for a more diverse and vibrant business community.

Because of the complexity and number of issues addressed within this report, staff has proactively drafted suggestions for each of the elements outlined in this report, and included existing regulations to give the Town Council a starting point for the discussion. Council may wish to structure the discussion using the following guide:

- **Formula Retail**

- Consider the original intent of the Formula Retail Policy and if it is still the desire of the Council to maintain this provision on businesses, noting the currently Formula Retailers are not prohibited or discouraged, rather regulated through the CUP process depending on size and desired location.
- Consider the draft definition that reflects best practice research, including the addition of restaurants, limiting the locations under consideration to the United States, and increasing the threshold to 10 existing locations.

- **Specialty Retail**

- Consider the intent of having provisions for a Specialty Food Retailer that allow for a food use that is not a restaurant.
- Consider the Traffic Impact Policy's definition of an "impulse business" as a guide for the Town's own Specialty Food Retail use definition. Draft definition is contained in Attachment 4.
- Consider allowing limited seats at a Specialty Food Retailer
- Consider amending all food use/restaurant use definitions to allow for clarity and continuity with one another.

- **Outdoor Seating**

- Consider guidelines for outdoor seating including the use of public right-of-way and private property.
- Consider mechanisms for permitting outdoor seating on both a temporary and ongoing basis.
- Consider how the number of outdoor seats is calculated and if it should be a part of the total seats allowed in a restaurant, or if additional seats can be permitted if outdoor space exists.
- Consider how all seat capacities are calculated and if this should be amended to reflect the benchmarking of other jurisdictions whom mostly use square footage, floor area or fire code to guide seating limits.

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AUGUST 20, 2015

COORDINATION:

This staff report was written in coordination with the Town Manager's Office and Community Development Department.

FISCAL IMPACT:

None

ENVIRONMENTAL ASSESMENT:

This is not a project defined under CEQA, and no further action is required.

ATTACHMENTS:

1. Illustration of relationship between the regulations that affect business uses
2. Formula Retail: current definition and recommended amendments
3. List of current Formula Retailers in the Downtown
4. Specialty Retail Administrative Policy
5. Recommendation for Specialty Food Retail definition and seating ratio calculations
6. Current Restaurant Use definitions and recommendations for amendments

## DISCUSSION POINTS & RELATIONSHIPS BETWEEN BUSINESS REGULATIONS

### FORMULA RETAIL

- Identify specific characteristics to define Formula Retail, considering best practices:
  - Number of existing locations
  - Locations of existing retail locations (US vs. Worldwide)
  - Extending the regulation to include all commercial retail including restaurants and specialty retailers.
  - C2 zone vs other commercial zones

### SPECIALTY RETAIL

- Compare all definitions for consistency and clarity:
  - Specialty Food Retailers
  - Restaurant uses
- Consider Traffic Impact Policy definition of "Impulse Businesses."
- Should there be a consideration for Specialty Food Retail with alcohol service?
- Should limited seats be allowed in a Specialty Food Retailer?
  - Number of Seats: Calculations based on parking or Square footage
  - Types of seats: benches, stand up counters, or other quick resting points.

### OUTDOOR SEATING

- Consider the placement of seats:
  - Private/Commercial property
    - Rooftop or patio seating
  - Use of public right-of-way
    - Temporary (Parklets or seasonal)
    - Ongoing use
- Consider permitting the use of public right-of-way:
  - Encroachment permits (temporary )
  - CUP (on going use)
  - Other mechanism
- Implement barriers for ABC if alcohol service is present
- Calculating outdoor seating- Should it be a part of the total seat count?
- Should the way we calculate total seat be modified?
- Consider trends in communal dining and gathering:
  - Communal Seating (benches , couches, etc.)
  - Individual seats

### CROSSOVER DISCUSSION

- Seat regulations:
  - Types of businesses allowed to have seats
  - Calculation of seats based on parking, square footage, or fire occupancy code.
  - Placement of seats (indoor vs outdoor)
  - Non-food establishments looking for ancillary seating/gathering opportunities
- Consider the consistency and clarity in all Formula Retail, Specialty Food Retail and Restaurant use definitions
- Hybrid businesses
  - How to define hybrid businesses now and moving forward in the absence of a defined use category
- Plan for applying any changes that may lessen regulations on implemented CUPs.
  - Grouping CUP modifications

## **CURRENT FORMULA RETAIL DEFINITION AND RECOMMENDED AMENDMENTS**

### CURRENT DEFINITION:

*Formula retail business means a retail business which, along with seven (7) or more business locations, is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services décor, uniforms, architecture, colors, signs or other similar features.*

### PROPOSED DEFINITION:

Formula Retail Businesses are defined as a type of retail sales establishment or restaurant which, along with 10 or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise or menu, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a standardized layout, a trademark or a servicemark.

1. Standardized means both identical and substantially the same.
2. Array of merchandise or menu shall be defined as 50% or more of in-stock merchandise or menu items.
3. Façade shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.
4. Decor shall be defined as the style of interior finishings, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.
5. Color Scheme shall be defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.
6. Uniform Apparel shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.
7. Signage shall be defined as business signs pursuant to section 29.10.135 of the Town Code.
8. Trademark shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.
9. Servicemark shall be defined as word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

## Formula Retailers in Downtown Los Gatos

Business Name	Address
Gymboree	5 N. Santa Cruz
Benefit Cosmetics	7 N. Santa Cruz
Apple Store	23 N. Santa Cruz
Restoration Hardware	26 N. Santa Cruz
Powell's Sweet Shoppe	35 N. Santa Cruz
Verizon Wireless	50 N. Santa Cruz
Site for Sore Eyes	53 N. Santa Cruz
Pharmaca	54 N. Santa Cruz
J. Crew	105 N. Santa Cruz
We Olive	112 N. Santa Cruz
Willams Sonoma	122 N. Santa Cruz
Bellini Furniture	155 N. Santa Cruz
Mike's Bikes	201 N. Santa Cruz
Title Nine	218 N. Santa Cruz
California Closets	349 N. Santa Cruz
Rural Supply	110 S. Santa Cruz
Joseph A. Bank	150 W. Main Street
Sur La Table	23 University Ave.
Banana Republic	25 University Ave.
Francesca's Collection	29 University Ave.
GAP	35 University Ave.
White House/Black Market	50 University Ave.
Blue Illusion	50 University Ave.
Papyrus	50 University Ave.
Talbots	50 University Ave.
Anthropologie	50 University Ave.
Lucy Activewear	50 University Ave.
Chicos	50 University Ave.

\*Formula retailers currently represent approximately 10% of the tenant in the C-2 zone.

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**PLANNING DEPARTMENT POLICY  
TOWN OF LOS GATOS**

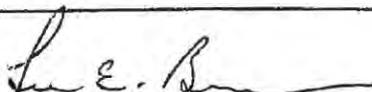
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Subject: Description of Restaurants and Specialty Retail Businesses That Offer Food Products

Page:            Section Number:

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Approved:



Effective Date:

Revised Date:

Lee E. Bowman, Planning Director

August 1, 1996

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PURPOSE

To provide guidelines for determining whether a business serving food products is specialty retail or restaurant.

POLICY

It is best to obtain a written description of a proposed business from the applicant to provide a "paper trail" and avoid possible misunderstanding. If a proposed business is not described below staff shall obtain a written description of a proposed business from the applicant so the Planning Director may make the final determination.

Specialty Retail - Specialty Retail include those businesses which offer pre-packaged foods (e.g. pre-made sandwiches, candy, donuts and other bakery items, frozen pizza to go, bagels without condiments, etc.). No seating for customers is allowed in any business where food products are sold.

Restaurant - A definition of restaurant is contained in the Zoning Ordinance (§ 29.10.020). Restaurants include those businesses offering food or drinks that are ordered by a customer and prepared while the customer waits (e.g. bagels with condiments, gourmet coffee shops (except sales of whole bean or ground coffee), sandwiches, ice cream, yogurt, pizza or Chinese to-go, health drinks, etc.). Any business that sells food products and offers seating for customers is considered a restaurant.

NADEVBUDIPOLICY.

## SEATING CHART CALCULATIONS BASED ON SQUARE FOOTAGE

### RECOMMENDATION:

**Specialty Food Retail** businesses are defined as a business providing a specialty food or beverage intended for off-site consumption. Specialty food retail uses typically have few types of items, but often offer a variety of options within the single item type. Items are paid for before consumption and include uses such as juice bars, frozen dessert shops, coffee/tea shops, bagel/donut shops, bakeries, sandwiches, and similar uses. Specialty Retail locations are subject to formula retail use restrictions and may not offer more than 1 seat per 200/250 square feet of gross floor area.

### SEAT CALCULATIONS FOR CONSIDERATION

BUSINESS SQUARE FOOTAGE	RESTAURANT SEATS ALLOWED IN C2 WITHOUT SEP. BAR (SF/300*4)	RESTAURANT SEATS ALLOWED OUTSIDE OF C2 (SF/235*3)	SPECIALTY FOOD RETAIL, SEATS TO CONSIDER AT 1 PER 200 SF	SPECIALTY FOOD RETAIL, SEATS TO CONSIDER AT 1 PER 250 SF	SPECIALTY FOOD RETAIL, SEATS TO CONSIDER AT 1 PER 300 SF
<u>500</u>	<u>6.7</u>	<u>6.4</u>	<u>2.5</u>	<u>2.0</u>	<u>1.7</u>
<u>750</u>	<u>10.0</u>	<u>9.6</u>	<u>3.8</u>	<u>3.0</u>	<u>2.5</u>
<u>1000</u>	<u>13.3</u>	<u>12.8</u>	<u>5.0</u>	<u>4.0</u>	<u>3.3</u>
<u>1250</u>	<u>16.7</u>	<u>16.0</u>	<u>6.3</u>	<u>5.0</u>	<u>4.2</u>
<u>1500</u>	<u>20.0</u>	<u>19.1</u>	<u>7.5</u>	<u>6.0</u>	<u>5.0</u>
<u>2000</u>	<u>26.7</u>	<u>25.5</u>	<u>10.0</u>	<u>8.0</u>	<u>6.7</u>
<u>2250</u>	<u>30.0</u>	<u>28.7</u>	<u>11.3</u>	<u>9.0</u>	<u>7.5</u>
<u>2500</u>	<u>33.3</u>	<u>31.9</u>	<u>12.5</u>	<u>10.0</u>	<u>8.3</u>
<u>2750</u>	<u>36.7</u>	<u>35.1</u>	<u>13.8</u>	<u>11.0</u>	<u>9.2</u>
<u>3000</u>	<u>40.0</u>	<u>38.3</u>	<u>15.0</u>	<u>12.0</u>	<u>10.0</u>
<u>3500</u>	<u>46.7</u>	<u>44.7</u>	<u>17.5</u>	<u>14.0</u>	<u>11.7</u>
<u>4000</u>	<u>53.3</u>	<u>51.1</u>	<u>20.0</u>	<u>16.0</u>	<u>13.3</u>

## CURRENT RESTAURANT USE DEFINITIONS AND RECOMMENDED AMENDMENTS

### CURRENT USE DEFINITIONS:

#### **Sec. 29.10.020. - Definitions.**

Restaurant means a retail food service establishment in which food or beverage is prepared, served and sold to customers for on-site or take-out consumption.

Restaurant, *drive-in* means a restaurant where food or beverages are sold to be eaten in vehicles whether on or off the premises or are delivered directly to the occupants of vehicles.

Restaurant, *fast food* means a restaurant with a large carry-out clientele, long hours of service, some open for breakfast but all open for lunch and dinner, and high turnover rates for eat-in customers.

Restaurant, *high turnover (sit-down)* means a restaurant with turnover rates generally of less than one (1) hour, is usually moderately priced and frequently belong to a restaurant chain, generally serve breakfast, lunch and dinner, and are sometimes open twenty-four (24) hours a day.

Restaurant (*minor*) means any restaurant that satisfies the following criteria:

- (1) Provides less than 25 seats;
- (2) Serves no alcoholic beverages;
- (3) Proposes no significant exterior changes that would alter the architectural character of the building; and
- (4) Provides a net increase of less than five peak hour traffic trips.

Restaurant, *quality* means a restaurant of high quality and with turnover rates usually of at least one (1) hour or longer, generally do not serve breakfast, may not serve lunch, but always serve dinner.

### SUGGESTED AMENDMENTS FOR RESTAURANT USE DEFINITIONS

**Restaurant** means a retail food service establishment in which full meals are available, prepared, served, and sold to customers for on-site or take-out consumption, and provide indoor and/or outdoor seating.

**Restaurant with Alcohol Service** means any restaurant where alcohol is available to customers during meal service, or while waiting for a table for meal service, and in designated bar and food service area while meal service is available. Restaurants with alcohol service typically do not provide late night entertainment.

**Restaurant, *minor*** means any restaurant that satisfies the following criteria:

1. Provides less than 25 seats;
2. Serves no alcoholic beverages;



MEETING DATE: 09/01/15  
ITEM NO: 11

**DESK ITEM**

**COUNCIL AGENDA REPORT**

DATE: SEPTEMBER 1, 2015  
TO: MAYOR AND TOWN COUNCIL  
FROM: LES WHITE, INTERIM TOWN MANAGER   
SUBJECT: PROVIDE DIRECTION ON THE TOWN'S DEFINITIONS AND POLICIES FOR FORMULA RETAIL, SPECIALTY RETAIL, AND OUTDOOR SEATING.

REMARKS:

After the initial Staff Report was distributed on August 27, 2015, staff received several questions from Council Members, which are addressed below.

- 1. I'm curious what regulations/ordinances were looked at in determining "best practices," particularly in light of the following litigation: Subway v. Springdale, Utah, and Island Silver & Spice, Inc. v. Islamorada. Is our ordinance even legal? If so, what is the litigation risk?**

The best practice research (benchmarking) conducted by staff discussed in the report refers to information gathered on California cities with existing Formula Retail restrictions, including San Francisco, Malibu, Arcata, Sausalito, Benicia, Ojai, San Juan Batista, Coronado, Calistoga, Carmel, Pacific Grove, Sausalito, Solvang and Sonoma.

Staff's research and analysis of other jurisdictions that have a formula retail ordinance establishes a common element in their definition of a "formula" business. Typically, the definition states that formula businesses are those that are required to maintain certain standardized features, such as products and services, menus, uniforms, décor, architecture, and signage. The ordinances are worded so that if any of these features are standardized, the business meets the "formula" definition.

PREPARED BY: MONICA RENN   
Economic Vitality Manager

Reviewed by:  Assistant Town Manager  Town Attorney N/A Finance

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REMARKS (cont'd):

Most of the Court decisions regarding formula retail ordinances deal with the property owners' contention that the law discriminates against out-of-state companies and thereby violates the Constitution's dormant commerce clause.

As mentioned by the Council Member, a federal court did overturn a formula business ordinance adopted by the town of Islamorada, Florida. Islamorada's ordinance limited formula businesses to no more than 2,000 square feet and 50 linear feet of storefront. Although the court said that preserving distinctive community character was a legitimate public purpose for enacting a formula business ordinance, it ruled that Islamorada had not demonstrated that this was in fact the purpose of the law. Local officials had instead revealed that the true purpose was protecting particular local businesses. Moreover, the court noted that Islamorada, which has no downtown or other historic commercial district and consists instead of strip development along U.S. Highway 1, had taken no other steps to develop or protect its distinctive character.

In contrast to the Florida case, in an unpublished court decision, the court upheld Coronado's formula retail ordinance after several property owners challenged the law. The court ruled that the ordinance does not violate the US Constitution's commerce and equal protection clauses, and is a valid use of municipal authority under California state law. The court found that the law does not in fact "impose different regulations on interstate as opposed to intrastate businesses, nor does it distinguish between those businesses that are locally owned and those that are owned by out-of-state interests." The court noted the law focuses on whether the store is contractually required to have standardized features, regardless of whether it is part of a national chain or owned by a California resident. The court also ruled that the law did not have a discriminatory purpose. The ordinance's lengthy preamble states that the city seeks to maintain a vibrant and diverse commercial district, and that the unregulated proliferation of formula businesses would frustrate this goal and lessen the commercial district's appeal. The court concludes that this is a legitimate purpose, noting that "the objective of promoting a diversity of retail activity to prevent the city's business district from being taken over exclusively by generic chain stores is not a discriminatory purpose under the commerce clause." The court also dismissed the equal protection and state law challenges, stating that the ordinance is rationally related to a legitimate public purpose.

The Town's Ordinance does not impose different regulations on interstate as opposed to intrastate businesses, nor does it distinguish between those businesses that are locally owned and those that are owned by out-of-state interests. Instead, its regulations are evenhanded - any business that meets the definition of a Formula Retail is required to obtain a CUP before it opens a business. By treating all interstate and intrastate businesses evenhandedly, "there is no "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."

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REMARKS (cont'd):

The Town's Formula Retail Ordinance was also not imposed or established for discriminatory purpose. In the "Whereas" preamble section, the Ordinance sets forth the nondiscriminatory purposes of the law by explaining that "the Town of Los Gatos has long been recognized as having a unique retail environment with an unusual mix of retail businesses in terms of type, ownership and appearance, that distinguishes it from other retail areas and has contributed to its long time vibrancy and financial success... an increase in the existing number of formula businesses potentially threatens the Town's unique retail environment in a number of ways, including, but not limited to, the replacement of small, locally owned businesses that often feature unique physical appearances and offer unusual or uncommon products or product lines." The "Whereas" preamble section goes on to state that "the Town's General Plan contains numerous goals, policies and implementing strategies intended to preserve its unique retail environment...a mixture of community-oriented commercial goods, services and lodging, that is unique in its accommodation of small town style merchants and the maintenance of a small town feel and character... a goal to maintain mixture of goods and services, identity, environment and commercial viability and a policy to "[e]ncourage the development and retention of small businesses..."

These stated purposes do not reflect the Town Council enacted the Ordinance with the intent to discriminate against interstate commerce or out-of-state entities. Instead, these recitals disclose the Town Council's primary purpose was to provide for an economically viable and diverse downtown commercial area that is consistent with the ambiance of the Town, and that it believed the best way to achieve these goals was to subject to greater scrutiny those retail stores that are contractually bound to use certain standard processes in displaying and/or marketing their goods or services. These declared purposes of the Ordinance are not discriminatory under the commerce clause because they treat interstate businesses the same as they treat intrastate or local businesses.

- 2. On page 3, paragraph 2 of the Staff Report, there is a reference to the "Town's own intent with the establishment of Formula Retail regulations." Where is that "intent" documented/to be found?**

Ordinance 2107 (Attachment 7) was adopted in 2002 and reflects this as the Council's intent:

*WHEREAS, Council's intent in adopting this ordinance is to ensure the exercise of greater control over the location of new formula retail businesses in the Town in order to meet the goals, policies and implementing strategies of the Town's General Plan and avoid the transition of the Town's unique retail environment into one that is homogenous with retail in other communities.*

REMARKS (cont'd):

- 3. This entire discussion needs to include the 29.10.020 definition of "retail" which theoretically supersedes, as well as overlaps the Staff-generated "specialty retail," which then gets reflected in the traffic impact policy. All of these things need to be integrated and consistent.**

**Section 29.10.020 defines retail:**

*Retail use means providing on site sales directly to the consumer for consumer or household use, including but not limited to the following: small markets/businesses which sell meat, vegetables, dairy products, baked goods, candy and/or other food products, household cleaning and maintenance products, cards, stationary, notions, books, cosmetics, specialty items, hobby materials, toys, household pets and supplies, apparel, jewelry, fabrics, cameras, household electronic equipment, CD music and movies, sporting equipment, kitchen utensils, home furnishings, home appliances, art supplies and framing, art work, antiques, paint, wallpaper, carpet, floor covering, office supplies, musical instruments, hardware, homeware, computers and related equipment/supplies, bicycles, automotive parts and accessories (excluding service and installation), and flowers, plants and garden supplies (excluding nurseries). Retail sales that are incidental to the primary use will not satisfy this definition.*

Council could consider amending the Retail use definition to include elements of the Specialty Retail definition.

- 4. Seems like the Staff Report should point out that none of the Code sections cited in paragraph 3 in the Outdoor Seating section of the report actually address Outdoor Seating and that the only anything that exists in Town right now that refers to outdoor seating appears at Paragraph 8 of the still-extant Alcohol Policy: "Alcoholic beverage service in approved outdoor seating areas may be permitted if adequate separation from public areas is provided as determined by the Town Manager. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area."**

In addition to the comment above, Section 29.20.185 contains the Table of Conditional Uses, and item (1) j. reflects the zones where outdoor seating may occur with an approved CUP.

- 5. Item 11, Attachment 5 regarding seating charts: Why would we include "intended for off-site consumption" when we're talking about seating?**

During the Strategic Goals discussion at the last Council meeting, the Council discussion identified "hybrid businesses" as a category of emerging businesses to discuss. In addition, industry trends show that consumers seek the opportunity to meet and socialize in various settings, not just restaurants. Seats may or may not be something the Council wishes to consider regulating for Specialty Retailers. If Council does wish to consider seats as an option,

REMARKS (cont'd):

the information provided in the staff report may be helpful as a starting point for this discussion. Additionally, the Town's Traffic Impact Policy allows seating for those businesses that meet the Impulse or Specialty Retail without associating trips to the seats whereas with restaurant calculations trips may be associated with either seats or square footage.

**6. Why would formula use restrictions apply to these? The Town doesn't do it now in considering Starbucks, Peets, Philz, etc.**

Staff provided this as an option for the Council to consider given that most other jurisdictions researched included restaurants with their policies because they found the intent of their Formula Retail Policy was true for all business merchants. This option could also play a role depending on if/how the Council defines Specialty Retail, and where merchants such as those listed above will end up being classified.

**7. On page 2, Formula Retail, 1st paragraph, "In contrast, within other commercial zones, only those Formula Retailers larger than 6,000 square feet must obtain a CUP." Can you provide 2 or 3 examples of Formula Retailers that are typically 6,000 square feet?**

Pier1 Imports and ACE Hardware, both on Los Gatos Blvd. meet the Formula Retail definition and occupy spaces larger than 6,000 square feet.

**8. Can you confirm that we have a prohibition on drive through restaurants? If so, could you provide a reference so that should the discussion tomorrow want to tighten the drive through definition we can have it readily available?**

Drive through restaurants are a prohibited use by section 29.10.045 (Uses Prohibited), and are defined in section 29.10.020 (Definitions) as: "Restaurant, drive in means a restaurant where food or beverages are sold to be eaten in vehicles whether on or off the premises or are delivered directly to the occupants of vehicles."

**9. If changes are to be made, what is the process? i.e., General Plan Committee/Planning Commission/Council?**

Any changes made to the Town Code would need to go to both the Planning Commission and Town Council. Policy level modifications or additions may be acted upon by the Council alone.

**10. Mention has always been made to the parking district/payment into the parking district. What are the limitations, if any, relating to restaurants/retail/whatever, and payment into the parking district? To the availability of parking?**

REMARKS (cont'd):

Downtown properties have parking credits based on their square footage either onsite or within the Parking Assessment District (PAD). At one point, properties with smaller buildings and the potential to expand were given the opportunity to purchase parking credits within the PAD up to the FAR of .60, which is equal to the maximum FAR for new construction. Some property owners took advantage of this and thus have more credits in the PAD than they would if their parking credits were calculated based on existing square footage alone. The PAD notes the following land use categories for each parcel: retail, office, restaurant, or residential. While parking is currently linked to square footage and seating capacity, with the absence of a PAD, Council could choose to amend the way seats are currently used to calculate parking for an establishment so long as any changes did not reduce the number of spaces that are currently vested with property owners.

**11. On the list of suggested amendments to restaurant definitions –**

- **Minor restaurant -- why no alcohol/no architecture changes? Is this to avoid a CUP?**

All restaurants, including minor restaurants require a CUP. Minor Restaurants are defined as such because those outside of the C-2 zone are considered by the Development Review Committee rather than the Planning Commission or Town Council.

- **Why include a definition for drive-in restaurants, when drive-ins are specifically NOT allowed per Town Code?**

Council may choose to amend or eliminate the current definition for drive-in restaurants. The Town Code does contain other definitions for prohibited uses, and having this definition allows staff and businesses to define the use. Depending on the Specialty Retail discussion and outcomes, Council may wish to amend or eliminate this prohibition.

**12. I know that the Formula Retail restrictions really are only applied to the Downtown area, though in re-checking the Code, there's nothing I can find that restricts the application.**

Formula Retail is defined in section 29.10.020, then regulated by zone within the Table of Conditional Uses in section 29.20.185 with findings addressed in section 29.20.190. All Formula Retailers in the C-2 must obtain a CUP. Formula Retailers looking to locate in the CH, C-1, or LM must obtain a CUP if they will occupy a space larger than 6,000 square feet.

COORDINATION:

The preparation of this Desk Item was coordinated with the Town Attorney and the Community Development Department.

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Attachments 1- 6 (Previously received with the Staff Report dated August 20, 2015):

1. Illustration of relationship between the regulations that affect business uses
2. Formula Retail: current definition and recommended amendments
3. List of current Formula Retailers in the Downtown
4. Specialty Retail Administrative Policy
5. Recommendation for Specialty Food Retail definition and seating ratio calculations
6. Current Restaurant Use definitions and recommendations for amendments

Attachment 7 (Received with this Desk Item):

7. Ordinance 2107

**ORDINANCE 2107**

**AN ORDINANCE OF THE TOWN OF LOS GATOS AMENDING THE ZONING  
ORDINANCE OF THE TOWN CODE REGARDING  
SECTIONS 29.10.020, 29.20.185, AND 29.20.190.**

**WHEREAS**, the Town of Los Gatos has long been recognized as having a unique retail environment with an unusual mix of retail businesses in terms of type, ownership and appearance, that distinguishes it from other retail areas and has contributed to its long time vibrancy and financial success.

**WHEREAS**, an increase in the existing number of formula businesses potentially threatens the Town's unique retail environment in a number of ways, including, but not limited to, the replacement of small, locally owned businesses that often feature unique physical appearances and offer unusual or uncommon products or product lines. This can occur either by the replacement of existing retail businesses with new formula retail businesses, or by retail businesses with the capacity to overwhelm existing businesses. An over concentration of formula retail business can result in a retail environment that is indistinguishable from those located elsewhere in the region, the state and the nation.

**WHEREAS**, the Town's General Plan contains numerous goals, policies and implementing strategies intended to preserve its unique retail environment. For example, the land use designation CBD for the Central Business District (2.4.2) is described as "[encouraging] a mixture of community-oriented commercial goods, services and lodging, that is unique in its accommodation of small town style merchants and the maintenance of a small town feel and character, " while descriptions of the Mixed Use, Neighborhood and Service Commercial districts emphasizes maintaining and servicing the needs of the small town residential scale and natural environments of adjacent residential neighborhoods. Elsewhere, concerning the historic downtown area, is a goal to maintain mixture of goods and services, identity, environment and commercial viability (L.G.6.2) and a policy to "[e]ncourage the development and retention

of small businesses and locally-owned stores and shops that are consistent with small town character and scale” (L.P.6.2).

**WHEREAS**, Council’s intent in adopting this ordinance is to ensure the exercise of greater control over the location of new formula retail businesses in the Town in order to meet the goals, policies and implementing strategies of the Town’s General Plan and avoid the transition of the Town’s unique retail environment into one that is homogenous with retail areas in other communities.

**THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

**SECTION I**

Town Code section 29.20.020 is amended to read as follows:

*Formula retail business* means a retail business which, along with one or more other business locations, is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services, decor, uniforms, architecture, colors, signs or other similar features.

*Nursery school / Day Care Center* means a school for pre-elementary school age children which provides controlled activities and instruction.

**SECTION II**

Town Code section 29.20.185 Table of Conditional Uses is amended as follows:

Replace existing Conditional Use Permit Table with Conditional Use Permit Table attached hereto as Exhibit A.

**SECTION III**

Town Code section 29.20.190 is amended to read as follows:

- (a) The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of this chapter if it finds that:
  - (1) The proposed uses of the property are essential or desirable to the public convenience or welfare;
  - (2) The proposed uses will not impair the integrity and character of the zone;

- (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
  - (4) The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of this chapter.
  - (5) A hazardous waste facility proposal is subject to the California Health and Safety Code, Article 8.7, Section 25199--25199.14 and shall be consistent with the Santa Clara County Hazardous Waste Management Plan.
- (b) The deciding body, on the basis of the evidence submitted at the hearing, may deny a conditional use permit for a formula retail business if the following findings are made:
- (1) The proposed use of the property is not in harmony with specific provisions or objectives of the general plan and the purposes of this chapter; and
  - (2) The proposed use will detract from the existing balance and diversity of businesses in the commercial district in which the use is proposed to be located.

**SECTION IV**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on October 21, 2002, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on November 4, 2002 This ordinance becomes effect 30 days after it is adopted.

**COUNCIL MEMBERS:**

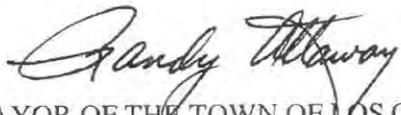
AYES: Steven Blanton, Sandy Decker, Joe Pirzynski,  
Mayor Randy Attaway.

NAYS: Steve Glickman.

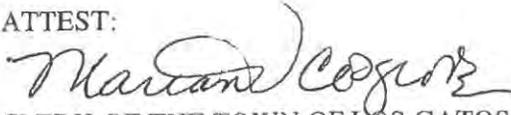
ABSENT: None.

ABSTAIN: None.

SIGNED:

  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA



MEETING DATE: 10/27/16  
ITEM NO: 3

## POLICY COMMITTEE REPORT

DATE: OCTOBER 21, 2016  
TO: POLICY COMMITTEE  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: REVIEW AND DISCUSS TRAFFIC IMPACT FEES

### RECOMMENDATION:

Review current Traffic Impact Fee Policy and consider next steps for potential amendments.

### BACKGROUND:

In May 2014, the Town Council adopted amendments to the Town's Traffic Impact Mitigation Fees (TIF) and adopted modifications to a corresponding Traffic Impact Policy. The resolution with the Policy is attached (Attachment 1). The purpose of the updated Policy and Fee was to make sure that new uses are paying their fair share towards future transportation improvements based on vehicle trips generated by the businesses. Some of the provisions related to the assessment of TIFs on businesses that previously did not pay (such as specialty retail) or the fee became significantly higher (such as a change in use from retail to restaurant). After receiving public feedback that the fee structure was discouraging small businesses from locating in Los Gatos, the Council, at their March 13, 2016 meeting, directed the Policy Committee to review and provide a recommendation on potential amendments to the Policy that does not make locating in Los Gatos so cost prohibitive for small businesses.

### DISCUSSION:

TIF are collected for new developments and change of uses by the Town at the time building permits are issued for a project. If a business does not need building permits, then the fee may be assessed when a Certificate of Use and Occupancy is submitted for a change of use in a building. A new business may be asked to complete a traffic questionnaire (Attachment 2) that the Town Engineering Department then uses to calculate the business' Average Daily Trips (ADTs) and determine if there is an increase in the number

PREPARED BY: MONICA RENN  
Economic Vitality Manager

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Reviewed by:  N/A  Assistant Town Manager  NA  Town Attorney  NA  Finance

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DISCUSSION (cont'd):

of trips associated with the new use. For each trip that is in excess of the prior use, a fee of \$902 per trip is assessed to the business. Prior to 2014, businesses were given a discount for all additional trips generated in excess of ten. Attachment 3 illustrates the rates for a business changing uses currently and prior to July 1, 2014.

TIFs that are collected are placed into the Town's Traffic Impact Mitigation fund to advance future projects that improve roadways and mitigate any impacts that the new development or intensified use causes to the Town's streets due to the expected increased number of cars travelling on the road for that particular business.

For many businesses, this fee has been cost prohibitive and has become a determining factor of not locating in Los Gatos, and adversely affecting the overall commercial health and economic vitality of the Town. Additionally, some building owners are seeking uses that would not generate a TIF, such as services. Service businesses also generate little to no sales tax revenue. Should the Policy Committee recommend changes to the application of the Traffic Impact Policy on businesses or business areas, consideration should be given to the tradeoff of losing the one time fees assessed through TIF, although gaining the ability to grow a stronger business community.

Staff recommends discussing the Traffic Impact Policy and associated mitigation fees from three different perspectives. Additional topics or amendments may arise out of this discussion and staff can prepare subsequent information for the Policy Committee as directed. These discussion points include:

1. The implications and application of the amendments made in 2014 on businesses;
2. Aligning the definitions in the Traffic Impact Policy with those in Chapter 29 of the Town's Zoning Code and related use defining policies; and
3. The application of the Traffic Impact Policy on specific areas including Downtown and shopping centers.

**The implications and application of the amendments made in 2014 on businesses**

After the amendments to the mitigation fees associated with the Traffic Impact Policy in May of 2014, it became apparent that the changes had a negative effect on businesses trying to locate or expand in Los Gatos; in particular, those which are owned and operated by individuals such as independent small businesses and franchisees. It has long been the character of the Town to attract and house small local "mom and pop" type independent businesses that foster the small Town charm of Los Gatos. The amended fees were creating situations where businesses were being driven away by the cost of the new fees, particularly those in the food service industry.

Attachment 3 depicts traffic impact fees that were assessed before the amendments in 2014 and are currently being assessed for different types of businesses.

DISCUSSION (cont'd):

**Aligning the definitions in the Traffic Impact Policy with those in Chapter 29 of the Town's Zoning Code and related use defining policies**

In addition to the fee increase, there is a disconnect between how business uses are defined in Section 29.10.020 of the Town Code, in Town Policies such as the Specialty Retail Policy (Attachment 4), and how they are defined by the Institute of Traffic Engineers (ITE), the method in which the Town uses to calculate average daily trips for specific uses.

For example, the Town defines a specialty retailer from a land use perspective as a business that serves pre-packaged food without seating or condiments, and specifically excludes business types such as ice cream shops, sandwiches, yogurt, pizza, bagels with condiments, coffee shop, and health drinks.

While from a traffic impact fee perspective, a specialty retail business may have a limited number of seats, and includes the following:

*Walk-in, impulse businesses such as juice bars, coffee shops, yogurt shops and donut shops, which do not serve meals as primary use, shall be considered Specialty Retail for purposes of calculating new vehicle trips (Peak Hour and ADT).*

Based on our experience implementing these different regulations, it becomes very complicated to apply two different definitions on one use permit application for customers and the deciding body. It would be most beneficial if the definitions use to generate the TIF matched those that are used to define the businesses use in the Town Code. While the ITE uses terms such as "Quality Restaurant" to define the amount of time average customers stay at one restaurant, definitions could reflect the same information without using an adjective that reflects the quality of a business.

**The application of the Traffic Impact Policy on specific areas including Downtown and shopping centers**

In addition, a shopping center rate may be applied for some businesses that occupy a space in a shopping center under the idea that many customers travel to this one location and visit more than one business. The criteria for using this rate is not included in the Town's Traffic Impact Policy, rather interpreted from the ITE's definition.

When there is a new commercial development with new uses, it may continue to make sense to apply a TIF to mitigate the impact of the new uses and the customer load that will increase on the nearby streets and roadways, however for shopping centers and developments that are fully built out, whom have paid several iterations of TIF over time, it may not be as relative to assess TIF.

CONCLUSION AND NEXT STEPS:

As directed by the Council and at the request of the Policy Committee, staff is bringing the current Traffic Impact Policy forward for discussion. Before drafting amendments, staff is looking for direction from the

CONCLUSION AND NEXT STEPS (cont'd):

Policy Committee. Because this is a Council Policy, recommendations may go directly to the Council for specific action without further Committee or Commission review. Some of the options for the Committee's consideration include the following:

- Direct staff to draft amendments the Traffic Impact Policy clearly defining and identifying shopping centers, and omit TIF for change of uses in existing shopping centers that do not yield additional building square footage.
- Discuss and consider defining those businesses in the C2/Downtown to be charged the same rate as a shopping center given that customer behavior in downtown is similar to that of a shopping center where customer most often park once and visit multiple business uses. Direct staff to draft amendments in the Traffic Impact Policy that reflect this discussion.
- Direct staff to draft other amendments to the Traffic Impact Policy and return them to the Policy Committee for further discussion and review, or return them directly to the Council for discussion and action.

Attachments:

1. Resolution 2014-059, Traffic Impact Policy
2. Traffic Questionnaire
3. Calculation of TIF on businesses
4. Specialty Retail Policy

**RESOLUTION 2014-059**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF LOS GATOS  
AMENDING THE TRAFFIC IMPACT POLICY  
AND RESCINDING RESOLUTION 1991-174**

**WHEREAS**, on August 5, 1991, the Town of Los Gatos adopted Resolution 1991-174 adopting a Traffic Impact Policy; and

**WHEREAS**, Chapter 15, Article VII of the Town of Los Gatos Town Code provides for the establishment of Traffic Impact Mitigation Fees; and

**WHEREAS**, on March 24, 2014, the Town Council at a duly noticed Public Hearing considered and took action on the specific amount to be charged for traffic mitigation fees; and

**WHEREAS**, on May 19, 2014, the Town Council adopted Resolution 2014-017 confirming actions taken by the Council on March 24, 2014 amending the Town's Traffic Impact Mitigation Fees; and

**WHEREAS**, on May 19, 2014, the Town Council, in conjunction with amending the Town's Traffic Impact Mitigation Fees also adopted a number of additional provisions related to the assessment of Traffic Impact Mitigation Fees, including provisions related to specialty retail uses, traffic credit for existing or former uses, secondary dwelling units, low income housing, and credit for payment and construction of Traffic Mitigation Improvement Projects; and

**WHEREAS**, a revision of the 1991 Traffic Impact Policy is needed to conform the Town's Traffic Impact Policy with the recent changes to the Town's Traffic Impact Mitigation Fees enacted with the adoption of Resolution 2014-017.

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California that the attached Traffic Impact Policy (Exhibit A), dated August 19, 2014 is hereby adopted.

**FURTHER RESOLVED**, this resolution rescinds provisions of Resolution No. 2002-175 related to Community Benefit offerings for projects generating more than five new peak hour trips.

**FURTHER RESOLVED**, the elimination of Community Benefit shall only apply to traffic impacts and not to Community Benefit requirements for projects set forth elsewhere in Council Policy or Town Code.

**FURTHER RESOLVED**, this resolution rescinds Resolution No. 1991-174.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos held on the 19<sup>th</sup> day of August, 2014 by the following vote:

COUNCIL MEMBERS:

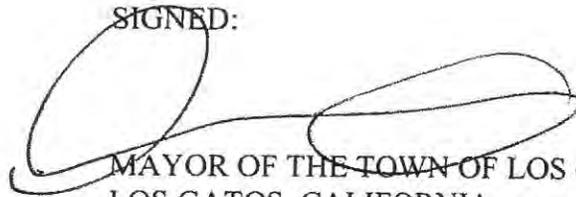
AYES: Marcia Jensen, Diane McNutt, Joe Pirzynski, Barbara Spector, Mayor Steven Leonardis

NAYS:

ABSENT:

ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

## Exhibit A

### TOWN OF LOS GATOS TRAFFIC IMPACT POLICY Approved August 19, 2014

#### I. DEFINITIONS

*Average Daily Trips.* Average Daily Trips (ADT) are the total number of trips, both in-bound and out-bound, within a 24 hour weekday period, generated by a particular use or development.

*Pass-By Trip.* Trips generated by the proposed Project that would be attracted from traffic passing the proposed project site on an adjacent street that contains direct access to the Project.

*Peak Hour Trip.* Peak Hour Trips are vehicle trips, both in-bound and out-bound, occurring during a one hour period either during the A.M. Peak (7 A.M. to 9 A.M.) or the P.M. Peak (4 P.M. to 6 P.M.), generated by a particular use or Project.

*Project.* A Project subject to this policy encompasses all land use development projects affecting the built environment, including changes in occupancy or intensification of existing uses, over which the Town has administrative or legislative authority, that require review and approval and issuance of a building permit, certificate of use or occupancy, or other land use approval by Town staff, Commissions, or Council.

*Specialty Retail.* Specialty Retail uses are defined as walk-in and impulse businesses such as juice bars, yogurt shops, coffee shops, donut shops, and similar uses which do not generally serve meals and have limited or no seating. Specialty Retail uses are defined under this policy for purposes of establishing trip generation data and this definition does not provide any land use or zoning guidance.

#### II. GENERAL CONDITIONS AND APPLICABILITY

1. This policy is intended to provide guidance to Town staff and the development community in implementing the provisions of the Town Municipal Code, Chapter 15, Article VII, Traffic Impact Mitigation Fees.
2. Projects that are determined by the Town to generate one or more new net Average Daily Trips are subject to this policy.
3. Projects that will generate 20 or more new Peak Hour Trips shall be required to complete a comprehensive traffic impact analysis report as described in more detail in Section VI, TRAFFIC IMPACT MITIGATION REPORT.
4. Consistent with Transportation Impact Analysis (TIA) Guidelines adopted by the Santa Clara County Transportation Authority (VTA) Congestion Management Program, Pass-by Trips shall not be considered in calculating the 20 new Peak Hour Trip threshold that triggers the requirement for conducting a comprehensive traffic impact analysis report.
5. In order to determine how much new traffic a Project will generate, the Town will use applicable trip generation rates and pass-by trip data from the most recent edition of the Institute of Traffic

Engineers (ITE) *Trip Generation Manual*. Alternatively, trip generation rates from the following resources may be used if determined by the Town to be more appropriate than the available ITE rates: San Diego Association of Governments (SanDAG); California Department of Transportation (Caltrans); or the City of San Jose. A Town-sponsored or peer-reviewed traffic study may also be used to determine trip generation rates.

6. Nothing in this Policy shall prohibit or restrict a Project applicant from completing a traffic study for a Project anticipated to generate less than 20 new Peak Hour trips.

### III. TRAFFIC IMPACT MITIGATION FEES

1. All Projects that generate one or more new Average Daily Trips are required to pay Traffic Impact Mitigation Fees.
2. All required Traffic Impact Mitigation Fees shall be paid in full to the Town in association with and prior to issuance of a building permit. If no building permit is required, the fee shall be paid in full prior to issuance of a certificate of use and occupancy, or similar entitlement. The amount due shall be calculated based on the fee in place as approved by the Town Council by resolution at the time the fee is paid.
3. The per trip amount of the fee shall be as set forth by the Town Council by resolution, pursuant to Town Municipal Code, Chapter 15, Article VII, Traffic Impact Mitigation Fees.
4. Fees shall be calculated by multiplying net new ADT by the per trip amount in place at the time the fees are paid.
5. ADT shall be determined by using the applicable trip generation rate and pass-by trip data from the most recent edition of the Institute of Traffic Engineers (ITE) *Trip Generation Manual*. When a use is not listed in the ITE *Trip Generation Manual*, or where ADT data is not available, the Town Traffic Engineer shall use available Peak Hour Trip data or select the most appropriate trip generation rate and pass-by trip classification for use in calculating ADT. Trip generation rates from alternate sources may be used if determined by the Town Traffic Engineer to be more appropriate than the available ITE rates. Examples of alternate sources of data include: San Diego Association of Governments (SanDAG); California Department of Transportation (Caltrans); City of San Jose; comparable store/business traffic studies.

### IV. CREDIT FOR EXISTING TRIPS

1. In calculating new Peak Hour Trips for purposes of determining whether or not a traffic impact analysis report is required pursuant to this Policy, trip credit shall be granted for an existing use or the most recent former use within the past five years prior to submittal of a Project application.
2. In calculating new Average Daily Trips for purposes of determining the amount of the Traffic Impact Mitigation Fee due, trip credit shall be granted for an existing use or the most recent former use within the past five years prior to submission of a Project application.

3. Where the property is vacant, the most recent former use within the past five years prior to submission of a Project application shall be used. If the property has been vacant for more than five years, no credit shall be given. Vacancy for purposes of Fee Credit shall include any vacant or unoccupied property, structure or building where no active, approved use is currently present.
4. Where a portion of the space is changing use, credit will apply to the proportionate square footage of the space under review.
5. Where the change in use results in fewer trips than the existing or former use, no credit or refund will be due the applicant.

#### V. CREDIT FOR TRAFFIC MITIGATION IMPROVEMENTS

1. Credit against Traffic Impact Mitigation Fees due shall be granted up to the amount of the Estimated Project Cost shown on Attachment 1, Town of Los Gatos Traffic Mitigation Improvements Project List, for any listed projects for which the developer, as a condition of approval, is required to either construct at the developer's sole cost, or contribute a fixed or percentage amount of funding toward future construction of the listed improvement. Where construction is fully funded and completed by the developer, said credit shall be equal to the Project Cost as shown in Attachment 1. Where payment is a fixed amount or a percentage of Project Cost, credit shall be equal to the actual amount due, whether the project is constructed by the developer or others.
2. No credit shall be given for any public right-of-way dedication required for completion of projects listed on Attachment 1.
3. Credit will be given on a case-by-case basis and shall not exceed the impact fee payable. Any request for credit shall be made prior to the payment of the Traffic Impact Mitigation Fees. No credit shall be given for installation of Town-standard frontage improvements, Project access improvements, or internal circulation improvements.
4. Credit shall only be granted for payment of costs or construction of projects listed in Attachment 1, unless otherwise approved by the Town Council.

#### VI. TRAFFIC IMPACT ANALYSIS REPORT

1. Traffic impact analysis reports required pursuant to this policy shall be prepared consistent with the Transportation Impact Analysis (TIA) Guidelines adopted by the Santa Clara County Transportation Authority (VTA) Congestion Management Program (August 2009), or as such Guidelines may be amended or updated from time to time, except that the threshold for preparation of a traffic report under this policy is 20 new Peak Hour trips, whereas the VTA TIA threshold is 100 new Peak Hour Trips.
2. Traffic impact analysis reports shall be funded in full by the project applicant. Project applicants shall deposit funds with the Town in an amount deemed necessary to cover the cost of an independent consultant report, plus staff administrative and review costs. Following deposit of funds, the Town will hire a professional transportation consultant to complete the required study.

Alternatively, the project applicant may hire their own professional engineering or transportation consultant to complete a traffic study, in which case they must deposit with the Town funds sufficient for the Town to hire a professional firm to conduct a peer review of the applicant-prepared traffic report, plus staff administrative and review costs.

3. The Town shall conduct an open, competitive process to establish a list of firms which are qualified to prepare traffic reports and/or conduct peer review of traffic studies under contract to the Town. The list of firms shall be selected in accordance with the Town Purchasing Policy. A new list shall be created at a minimum of once every five years.

#### VII. OTHER PROVISIONS

1. The Institute of Traffic Engineers (ITE) *Trip Generation Manual* trip generation rates for Specialty Retail Center shall apply to all Specialty Retail uses as defined in this policy.
2. A secondary dwelling unit with a floor area of six hundred square feet or less shall be exempt from this policy.
3. The Town Council may exempt housing developments for very low, low and moderate income residents (as defined by Town Ordinance, General Plan, or statute) from all or a portion of the traffic impact mitigation fee upon making a finding that the development provides a significant community benefit by meeting current needs for affordable housing.

Attachment 1

**Town of Los Gatos Traffic Mitigation Improvements Project List**

Source	Description	Estimated Project Cost (2014 \$)	Growth Related Project Cost	Mitigation Impact Fee Eligible Cost
GP/V TP 2035	Blossom Hill Rd and Union Ave Intersection Improvements	\$ 1,200,000	90.00%	\$ 1,080,000
GP/V TP 2035	Los Gatos - Almaden Rd Improvements	\$ 3,000,000	50.00%	\$ 1,500,000
GP/V TP 2035	Los Gatos Blvd Widening - Samaritan Dr to Camino Del Sol - Road widening, new sidewalks and bike lanes	\$ 4,000,000	50.00%	\$ 2,000,000
GP/V TP 2035	Union Ave Widening and Sidewalks - complete ped and bike routes	\$ 3,000,000	50.00%	\$ 1,500,000
GP/V TP 2035	Wood Rd Gateway on Santa Cruz Ave - roundabout	\$ 1,200,000	50.00%	\$ 600,000
GP/V TP 2035	Central Traffic Signal Control System	\$ 750,000	9.68%	\$ 72,600
GP/V TP 2035	Hwy 9 Los Gatos Creek Trail connector - new path and bridge for	\$ 1,000,000	50.00%	\$ 500,000
GP/V TP 2035	Hwy 9/N Santa Cruz Ave Intersection Improvements	\$ 1,400,000	90.00%	\$ 1,260,000
CIP	Roberts Road Improvements from bridge to University	\$ 600,000	50.00%	\$ 300,000
CIP	Pollard Road Widening from Knowles to York Avenue	\$ 2,500,000	50.00%	\$ 1,250,000
CIP	Sidewalks infill - Van Meter, Fischer and Blossom Hill Schools	\$ 1,000,000	50.00%	\$ 500,000
CIP	Winchester Blvd/Lark Avenue Intersection Improvements	\$ 850,000	90.00%	\$ 765,000
CIP	Westbound Lark to Hwy 17 northbound ramps - add two right-turn	\$ 3,750,000	90.00%	\$ 3,375,000
CIP	Unfunded Deferred Street Maintenance (Annual PMS Survey)	\$ 10,500,000	9.68%	\$ 1,016,400
GP	Lark/Los Gatos Intersection Improvements - Add Third Left Turn Lanes for Eastbound and Northbound Approaches	\$ 1,200,000	90.00%	\$ 1,080,000
GP	Complete Street Improvements - Lark from Garden Hill to Los Gatos	\$ 2,100,000	50.00%	\$ 1,050,000
GP	Complete Street Improvements - SR 9 from University to Los Gatos	\$ 650,000	50.00%	\$ 325,000
GP	Complete Street Improvements - Blossom Hill Road from Old Blossom Hill Road to Regent Drive	\$ 3,000,000	50.00%	\$ 1,500,000
GP	Complete Street Improvements - Knowles from Pollard to Winchester	\$ 2,000,000	50.00%	\$ 1,000,000
GP	Complete Street Improvements - Winchester from Blossom Hill to Lark	\$ 1,500,000	50.00%	\$ 750,000
GP	Blossom Hill Road widening over Highway 17	\$ 2,000,000	50.00%	\$ 1,000,000
GP	Local Bikeway Improvements	\$ 750,000	50.00%	\$ 375,000
Notes:		Total		\$ 22,799,000
				\$ 47,950,000

VTP = Valley Transportation Plan, 2035 by Santa Clara Valley Transportation Authority.  
 Town CIP = Town of Los Gatos, Capital Improvement Program and pending construction project list.  
 Source: Town of Los Gatos.



**TOWN OF LOS GATOS  
TRAFFIC INFORMATION QUESTIONNAIRE**

Project Address: \_\_\_\_\_ Application No.: \_\_\_\_\_

Brief Project Description: \_\_\_\_\_

**Existing or Previous Development**

1. Use: \_\_\_\_\_ Gross Floor Area: \_\_\_\_\_

Hours of Operation: \_\_\_\_\_ Seats (for restaurants): \_\_\_\_\_

Description of Use: \_\_\_\_\_

2. Use: \_\_\_\_\_ Gross Floor Area: \_\_\_\_\_

Hours of Operation: \_\_\_\_\_ Seats (for restaurants): \_\_\_\_\_

Description of Use: \_\_\_\_\_

**Proposed Development**

3. Use: \_\_\_\_\_ Gross Floor Area: \_\_\_\_\_

Hours of Operation: \_\_\_\_\_ Seats (for restaurants): \_\_\_\_\_

Description of Use: \_\_\_\_\_

4. Use: \_\_\_\_\_ Gross Floor Area: \_\_\_\_\_

Hours of Operation: \_\_\_\_\_ Seats (for restaurants): \_\_\_\_\_

Description of Use: \_\_\_\_\_

(Attach additional sheets as necessary)

Owner/Developer: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Completed by: \_\_\_\_\_ Email: \_\_\_\_\_ Date: \_\_\_\_\_

## Traffic Impact Fee Comparisons

**EXAMPLE IS FOR A 2,200 SQUARE FOOT SPACE LOCATED IN DOWNTOWN/C2  
(After Traffic Fee Credit for 2,200 sf of Specialty Retail)**

New Use	Fee in 2016	Fee prior to July 1, 2014
<b>Fast Food (29 Seats)</b>	\$223,676	\$31,629
<b>High Turnover Sit-down Restaurant (29 Seats)</b>	\$13,970	\$2,554
<b>Quality Restaurant (29 Seats)</b>	\$0	\$0
<b>Specialty Retail</b>	\$0	\$0
<b>Group Classes including fitness, arts, cooking, etc.</b>	\$0	\$0

**EXAMPLE IS FOR A 2,200 SQUARE FOOT RESTAURANT LOCATED IN A SHOPPING CENTER  
(After Traffic Fee Credit for 2,200 sf of Shopping Center)**

New Use	Fee in 2016	Fee prior to July 1, 2014
<b>Fast Food (37 Seats)</b>	\$225,797	\$31,843
<b>High Turnover Sit-down Restaurant (37 Seats)</b>	\$16,091	\$2,768
<b>Quality Restaurant (37 Seats)</b>	\$0	\$0
<b>Specialty Retail</b>	\$0	\$0
<b>Group Classes including fitness, arts, cooking, etc.</b>	\$0	\$0

**ITE Definitions:**

**Fast Food:** Fast food restaurant is characterized by a large carry-out clientele, long hours of service for lunch and dinner (some are open for breakfast and some are open late at night or 24 hours per day) and high turnover rates for eat-in customers. These establishments do not provide table service. Patrons generally order at a cash register and pay before they eat.

**High turnover Restaurant:** High-turnover restaurants consists of site-down, full-service eating establishments with typical duration of stay of approximately one hour. This type of restaurant is usually moderately priced and frequently belongs to a restaurant chain. Generally, these restaurants serve lunch and dinner, they may also be open for breakfast and are sometimes open 24 hours per day. These restaurants typically do not take reservations. Patrons commonly wait to be seated, are served by a waiter/waitress, order from menus and pay for their meal after they eat.

**Quality Restaurant: *Quality restaurant consists of high quality, full-service eating establishments with typical duration of stay of at least one hour. Quality restaurants generally do not serve breakfast, some do not serve lunch, all serve dinner. This type of restaurant often requests and sometimes requires reservations and is generally no part of a chain. Patrons commonly wait to be seated, are served by a waiter/waitress, order from menus and pay for meals after they eat.***

The Town's Traffic Impact Policy defines "Walk-in, impulse businesses such as juice bars, coffee shops, yogurt shops and donut shops, which do not serve meals as primary use, shall be considered Specialty Retail for purposes of calculating new vehicle trips (Peak Hour and ADT)".

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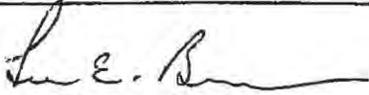
**PLANNING DEPARTMENT POLICY  
TOWN OF LOS GATOS**

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Subject: Description of Restaurants and Specialty Retail Businesses That Offer Food Products  
Page:                      Section Number:

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Approved:



Effective Date:

Revised Date:

Lee E. Bowman, Planning Director

August 1, 1996

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PURPOSE

To provide guidelines for determining whether a business serving food products is specialty retail or restaurant.

POLICY

It is best to obtain a written description of a proposed business from the applicant to provide a "paper trail" and avoid possible misunderstanding. If a proposed business is not described below staff shall obtain a written description of a proposed business from the applicant so the Planning Director may make the final determination.

Specialty Retail - Specialty Retail include those businesses which offer pre-packaged foods (e.g. pre-made sandwiches, candy, donuts and other bakery items, frozen pizza to go, bagels without condiments, etc.). No seating for customers is allowed in any business where food products are sold.

Restaurant - A definition of restaurant is contained in the Zoning Ordinance (§ 29.10.020). Restaurants include those businesses offering food or drinks that are ordered by a customer and prepared while the customer waits (e.g. bagels with condiments, gourmet coffee shops (except sales of whole bean or ground coffee), sandwiches, ice cream, yogurt, pizza or Chinese to-go, health drinks, etc.). Any business that sells food products and offers seating for customers is considered a restaurant.

NADEVBUDIPOLICY.