



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 04/02/2024

ITEM NO: 17

ADDENDUM

DATE: April 1, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive a Report on the Transportation Impact Fee and Provide Direction

REMARKS:

Attachment 3 contains public comment received before 11:01 a.m. on Monday, April 1, 2024.

Attachments Previously Received with the Staff Report:

1. Asset Based Transportation Impact Fees in California (Partial List)
2. Summary of Alternatives

Attachment Received with the Addendum:

3. Public Comment received before 11:01 a.m. on Monday, April 1, 2024.

PREPARED BY: Nicolle Burnham, Parks and Public Works Director
Gabrielle Whelan, Town Attorney

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

From: Phil Koen

Sent: Saturday, March 30, 2024 10:13 AM

To: Mary Badame <MBadame@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Rob Moore <RMoore@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>

Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Wendy Wood <WWood@losgatosca.gov>

Subject: Agenda Item # 17 - public comment

[EXTERNAL SENDER]

Dear Honorable Mayor and Members of the Town Council,

I recommend the Town Council repeal the actions taken on January 16, 2024, and redo the Nexus Study by adopting Option #3. The Nexus Study is fatally flawed in that it does not provide any reasonable allocation of future infrastructure investment to new development based on a nexus finding that establishes a reasonable relationship according to need, benefit, and proportionality.

A traffic impact fee can only be used to mitigate the impacts of new development on facilities or infrastructure and can only be spent on capital projects that improve or expand facilities to accommodate growth in service demand from new development. Fee revenues cannot be used for rehabilitation unless related to a major capital project upgrade nor can they be used for maintenance or operating costs. The Nexus study must allocate the fair share of facility costs to new development. The study prepared for the Town fails to do this.

The major failing of the study is that it is purposely designed to “tax” new development to fund all the cost of certain transportation projects the Town Council wishes to develop

over the next 20 years, regardless of whether they are truly required to accommodate growth. For example, State Route 17 Corridor Congestion Relief Project accounts for \$10.5m or 25% of the total new infrastructure investment listed in the Nexus study. The reason for this project was outlined in an October 4, 2023, Staff Report to the Town Council. The report stated, “the project was requested by the Town in an effort to improve traffic flow on Highway 17, discourage cut through traffic in Los Gatos, and improve pedestrian and bicycle safety along Highway 9 near the on and off ramps to Highway 17”. These are largely existing conditions with minimal relationship to incremental impacts from future development. And yet 100% of the cost of this project was included in the TIF project cost summary.

Worse, when asked by the Town Council if this project could be removed from the list, Staff replied if the project is removed there would be no known funding source for the 10% Town match requirement for the Measure B Congestion Management Funds. If removed, the impact fee in every land use category would be materially reduced. For example, the impact fee for multi-family dwelling units would be reduced by 30% or \$4,274 per dwelling unit. Based on this, the true intent of the Nexus Study was not to allocate the fair share of this project cost to new development but rather to allocate all the project cost to new development regardless of the true proportionality. Simply put, the goal was to extract maximum fee revenue from new development regardless of true proportionality.

I would also request that the Town release to the public all documents received from the third party legal and technical advisers who reviewed the Nexus Study. I previously requested these documents and was informed by the Town Attorney that “attorney-client privileged information on this topic has been provided to the Town Council. Staff anticipates sharing public information at a future Town Council meeting”. There is no reason to withhold these documents from the public given the importance of this analysis and the public good that would come from sharing this information.

One last comment I would respectfully request the Council to consider. When the Nexus Study was discussed at the January 16, 2024 Town Council meeting, one member of the Town Council thoughtfully suggested the Nexus Study be reviewed by the Finance Commission. This suggestion was not accepted by a majority of the Council members for reasons that are still not entirely clear. In retrospect, this was unfortunate because of where we now find ourselves.

I am pointing this out because the role of the Finance Commission is to independently advise the Council on important financial issues. The Commission is capable and willing to act as an independent advisor to the Town Council, if requested. A nexus study is a technical document and needs to be a well-organized and factually correct report that can be relied upon when making the required findings in accordance with the relevant sections of the Government Code. This report has severe shortcomings which could have been pointed out to

the Town Council if the Finance Commission had been engaged. I would encourage the Town Council to honor the people's wishes when they approved the Finance Commission and ask for the commission's input before making critical financial