



Agenda Report

19-765

Agenda Date: 8/14/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Recommendation on an Amendment to the Zoning Code, Santa Clara City Code Chapter 18.76
Architectural Review and other clarifying changes (continued from May 22, 2019)

BACKGROUND

At the May 22, 2019 Planning Commission meeting, the Planning Commission discussed a proposed Zoning Code amendment that would modify the City's Architectural Review process, including the composition of the Architectural Committee, with the goals of addressing potential due process conflicts for Planning Commissioners, establishing clearer policy guidance for appeals, streamlining the review process for non-controversial projects, eliminating double appeals and utilizing standard staff level public hearings practices found to be effective in other jurisdictions.

At the March 5, 2019 City Council meeting, staff received direction from the City Council to amend Chapter 18.76 of the Santa Clara City Code (SCCC) to revise the architectural review procedure, replacing the Architectural Committee with an administrative process. The City Council also provided direction to include design feedback from architectural professionals in the design review process and to maintain the City Council as the hearing authority for all appeals of architectural review public hearing actions. The March 5, 2019 City Council agenda report on this matter is attached (Attachment 2).

DISCUSSION

The Planning Commission discussed the proposal and gave staff direction to revise the proposed ordinance to keep the Architectural Committee as the initial decision maker for public hearing items, but to change the composition of the Architectural Committee to three Planning Commissioners, with all appeals going to the City Council. The Planning Commission also wanted to use the number of bathrooms as a criterion for determining which single-family houses were subject to a public hearing, and to include properties on the historic resources inventory undergoing exterior additions or demolition as hearing items for the Architectural Committee. Those changes have been incorporated into the draft ordinance, which is attached.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time and expense. Should the Council adopt the staff recommendation to add architectural consultation on multifamily projects, the

City would initially charge applicants the time and materials cost for this consultation service. After data is collected on the typical cost of this service, the City would bring forward a new Architectural Consultation fee to be added to the City's Fee schedule.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

Staff previously received input on the architectural review hearing process through outreach at a community workshop at the outset of the comprehensive Zoning Code update and at a Neighborhood University Relations Committee meeting.

RECOMMENDATION

Alternative 1:

Recommend City Council adopt an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to amend the existing Architectural Committee process to modify the composition of the Architectural Committee to be composed of three Planning Commissioners, to clarify which projects are subject to Architectural Review by the Architectural Committee, to clarify that decisions are appealable to the City Council on a *de novo* basis and changes to the appeal procedures so that appeals are available to the applicant, property owners, and residents within 500 feet of the project boundary.

Prepared by: John Davidson, Principal Planner

Reviewed by: Alexander Abbe, Assistant City Attorney

Approved by: Reena Brilliot, Planning Manager

ATTACHMENTS

1. Architectural Review Ordinance, 6-12-2019
2. Agenda Report 18-325 to Planning Commission dated 5-22-2019

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA AMENDING CHAPTER 18.76,
("ARCHITECTURAL REVIEW") OF TITLE 18 ("ZONING")
OF "THE CODE OF THE CITY OF SANTA CLARA,
CALIFORNIA" AND MAKING OTHER CLARIFYING
CHANGES**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Chapter 18.76 ("Architectural Review") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") establishes the procedure for Architectural Review for new construction within the City of Santa Clara;

WHEREAS, SCCC Chapter 18.76 establishes an Architectural Committee, which includes two Planning Commissioners and one appointee by the City Council, who are responsible for the initial decision for Architectural Review approvals;

WHEREAS, the current procedure includes multiple levels of appeals, with an initial appeal to the Planning Commission and ultimately to the City Council; and,

WHEREAS, the City Council now intends to vest the authority for initial architectural review decisions in an Architectural Committee comprised of three members of the Planning Commission, and to provide for the City Council as the singular appeal body for the Architectural Review process.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:

SECTION 1: That Chapter 18.76 (entitled "Architectural Review") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

“Chapter 18.76

ARCHITECTURAL REVIEW

Sections:

18.76.010 Intent.

18.76.020 Architectural review process.

18.76.010 Intent.

The City Council of the City of Santa Clara finds, determines and declares that in order to encourage the orderly and harmonious appearance of structures and property; maintain the public health, safety and welfare; maintain the property and improvement values throughout the City and to encourage the physical development of the City as intended by the general plan; there is hereby established the architectural review process.

18.76.020 Architectural review process.

(a) Architectural review shall be the responsibility shall be the responsibility of the Director of Community Development or designee (“Director”), in combination with the Architectural Committee, composed three members of the Planning Commission appointed by the chairman of said Commission. The appointments shall be made on a rotating basis. (b)

Before action is taken on an application for the issuance of a permit for any sign, building, structure, or alteration of the exterior of a structure in any zone district, plans and drawings of such sign, building or alteration shall be submitted, in such form and detail as the Director may prescribe. The Director shall approve or deny the architectural design without a hearing, unless the type of project is listed in subsection (c).

(c) The Architectural Committee shall conduct a public hearing, after providing notice pursuant to Section 18.112.060, for the following types of projects:

(1) New or expanded single-family homes resulting in:

(A) a two-story structure with four or more bedrooms and four or more bathrooms; or

(B) a one-story structure resulting in six or more bedrooms and five or more bathrooms.

(2) Residential parcel or subdivision maps and any associated development plans.

(3) New multi-family developments of any size.

(4) New non-residential development greater than 5,000 square feet in size.

(5) Modifications or additions to existing non-residential development greater than 5,000 square feet in size.

(6) Demolition, exterior reconfiguration, or expansions to properties on the City's Historic Resources Inventory (HRI).

(7) Any other project not listed above that the Director determines should be considered at a public hearing.

(d) In order to grant architectural approval, the findings and determinations shall be that the proposed development, as set forth in such plans and drawings to be approved, is based on the following standards of architectural design:

(1) That any off-street parking areas, screening strips and other facilities and improvements necessary to secure the purpose and intent of this title and the general plan of the City are a part of the proposed development.

(2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of neighboring developments, and will not create traffic congestion or hazard.

(3) That the design and location of the proposed development is such that it is in keeping with the character of the neighborhood and is such as not to be detrimental to the harmonious development contemplated by this title and the general plan of the City.

(4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

(5) That the proposed development, as set forth in the plans and drawings, are consistent with the set of more detailed policies and criteria for architectural review as approved and updated from time to time by the City Council, which set shall be maintained in the planning division office. The policies and criteria so approved shall be fully effective and operative to the same extent as if written into and made a part of this title.

(e) The Director or the Architectural Committee may require the applicant or owner of any such proposed development, as a condition to the approval of any such proposal, to modify buildings, parking areas, landscaping, signs, and other facilities and improvements deemed necessary to secure the purposes of this title and general plan of the City, and may require guarantees and evidence that such conditions will be complied with by the applicant.

(f) If the Director or Architectural Committee is unable to make the findings and determinations prerequisite to the granting of architectural approval pursuant to subsection (d) of this section, the application shall be denied.

(g) The Director or Architectural Committee shall render a decision on any application for architectural approval within forty (40) days following a determination by the planning division office that the application is complete, except where the applicant consents to an extension of time. Failure to render a decision within said period of forty (40) days and said period of extension consented to by applicant shall be deemed to be a decision of denial.

(h) The granting of any architectural approval, when conforming to the provisions of this section is hereby declared to be an administrative function, and the action shall be final and conclusive, except in the event of an appeal and referral as hereinafter provided.

(i) In the event the applicant or any property owner or tenant within a 500-foot radius from the project boundary are not satisfied with the decision of the Director or Architectural Committee, they may within seven (7) days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk. All appeals of Architectural Review approvals will be heard de novo. The Director of Community Development may refer any application for architectural consideration to the City Council for its decision with the same effect as if an appeal had been taken.

(j) No permit shall be issued, and no structure, building, or sign shall be constructed or used in any case hereinabove mentioned until such plans and drawings have been approved by the Director or designee, or on referral to the Architectural Committee by the Director, and no appeal or review is pending and the time to appeal has expired. In the event of an appeal by the applicant or others affected, or action to review is taken by the City Council, no such permit shall be granted until the matter has been finally acted upon and final approval has been received. All signs, buildings, structures, and grounds shall be in accordance with the plans and drawings as finally approved.

(k) Said approvals shall be on file with the City planning division office.

(l) Any architectural review approval granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within two years of original grant or within the period of any authorized extensions thereof."

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the

effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2019, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

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Agenda Report

19-325

Agenda Date: 5/22/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Recommendation on an Amendment to the Zoning Code, Santa Clara City Code Chapter 18.76
Architectural Review and other clarifying changes

BACKGROUND

Chapter 18.76 of the City Code establishes an architectural review procedure for new construction within Santa Clara. Projects typically subject to the architectural review procedure include new construction or modification of single-family, multi-family, commercial or industrial developments that conform to the zoning district in which they are located. The code in its current form establishes an Architectural Committee, composed of two Planning Commissioners and an appointee of the City Council, which conducts a public hearing and makes a determination to approve, conditionally approve, deny or defer projects considered at that hearing. Decisions made by the Architectural Committee may be appealed by any member of the public to the Planning Commission. The Planning Commission's decision on the appeal in all cases may be appealed to the City Council which acts as the final decision-making body.

While modification of the architectural review procedure was part of the scope of the comprehensive zoning code update in progress, potential modification of the procedure was discussed in advance of the comprehensive update by the City Council on March 5, 2019, prompted by a December 21, 2018 memorandum from the City Attorney's Office regarding Due Process Requirements in Multilevel Reviews of Decisions (Attachment 1). This memorandum identified possible due process issues that might be raised under the current procedure where a member of the Architectural Committee could later hear an appeal of the decision in which he or she had participated.

The memorandum also raised concerns that the City Code does not specify upon what grounds the appellant must base their appeal; who has the right to bring such an appeal; and whether deference is given to the decision being appealed, or whether the appeal is heard *de novo*. (A *de novo* public hearing for the project is conducted as a new, "clean slate" hearing, with no deference given to the prior decision.)

In addition to the memorandum, staff provided the City Council with information on common architectural review procedures employed in neighboring cities (Attachment 2) and proposed a staff-conducted public hearing procedure with a streamlined appeal process where actions taken at the hearing would be appealable to either the City Council or Planning Commission depending upon the type of project. Members of the public speaking at the hearing requested that the City's architectural review procedure include input from professional architects and that the City Council remain the final decision making body for any appeals.

At the March 5, 2019 City Council meeting, staff received direction from the City Council to amend Chapter 18.76 of the Santa Clara City Code (SCCC) to revise the architectural review procedure, replacing the Architectural Committee with an administrative public hearing process. The City Council also provided direction to include design feedback from architectural professionals in the design review process and to maintain the City Council as the hearing authority for all appeals of architectural review public hearing actions. The March 5, 2019 City Council agenda report on this matter is attached (Attachment 3).

DISCUSSION

The Planning Commission is being asked to make a recommendation on a proposed amendment to Chapter 18 of the City Code (the Zoning Code) that would address the concerns raised by the City Attorney and implement the direction provided by the City Council. The proposed amendment clarifies the applicability of the design review procedure, alters the hearing body to address potential due process conflicts for Planning Commissioners, establishes clearer criteria for appeals, and streamlines the review process for non-controversial projects, eliminating double appeals and utilizing staff level public hearings. The proposed Zoning Code amendments are shown in Attachment 6.

Projects subject to Architectural Review

Current Zoning Code language specifies that Architectural Committee review is required for the "issuance of a permit for any sign, building, structure, or alteration of the exterior of a structure in any zone district" (Code Section 18.76.020 (b)). However, over the past thirty years, some levels of construction have been delegated to staff and staff has relied on direction from the City's adopted citywide design guidelines to determine which projects are subject to a public hearing process and which may be reviewed administratively. In recent years, the majority of projects considered by the Architectural Committee have been non-controversial projects that did not require modifications that would warrant the cost of the public hearing process for both the applicant and the City. The proposed code changes would create codified thresholds for a noticed public hearing held by the Director of Community Development, giving greater clarity to applicants and the public, and streamline the review process where experience has shown a public hearing is not required. As proposed, public hearing items would include:

- New or expanded single-family homes resulting in a two-story structure with four or more bedrooms; or a one-story structure resulting in six or more total bedrooms;
- Residential subdivision maps and any associated development plans;
- New multi-family developments of any size;
- New non-residential development greater than 5,000 square feet in size; or
- Modifications or additions to existing non-residential development greater than 5,000 square feet in size.

Architectural Review Hearing

To address due process concerns, consistent with Council direction and standard practices in neighboring jurisdictions, the proposed amendments would establish a new administrative hearing conducted by staff in place of the current Architectural Committee hearing. The new hearing would be titled the Development Review Hearing, with actions taken at that hearing appealable to the City Council without the same potential for conflict of interest that would arise under the current process.

Appeal Procedures

The proposed amendment would eliminate the double appeal process, which creates a burden in terms of cost and time for the community, applicant, and the City. The current process requires General Fund subsidy as appeal fees do not sufficiently cover costs. When actions are appealed to the Planning Commission, a second appeal to the City Council is the likely outcome. If the Planning Commission upholds the initial action, the same appellants will likely then appeal the Planning Commission denial of the appeal to the City Council. If, instead, the Commission overturns the original action, the applicant will most likely appeal that decision to the City Council. The potential for double appeals significantly extends the City's decision-making process, resulting in project delays and additional costs for the applicant and the City, which generally makes the first hearing inconsequential as a second appeal is very likely. The removal of the double appeal process will reduce the number of appeals that need to be placed on the Planning Commission and City Council agendas. Based on direction given by the City Council on March 5, as drafted all appeals would be taken directly to the City Council for action.

The proposed amendment would also limit the standing for an appeal to the applicant and property owners and tenants within a 500-foot radius of the project boundary. Current code language only indicates that "others affected" could appeal the decision without specifying a radius or other method of determining proximity.

The proposed amendment also provides greater clarity on how to conduct the appeal, establishing that the standard of review on appeal will be *de novo*, meaning that the appeal body is able to weigh in on any aspect of the project, without deference to the earlier staff-level determination. The appeal body would still be required to make the findings for Architectural Review approvals per Section 18.76.020(c) of the Zoning Code.

The proposed process would continue to be a duly noticed hearing and noticing would follow the City's Public Outreach Policy for Planning Applications, which was adopted by the City Council on June 27, 2017, and the requirements of City Code Section 18.112.060.

Design Consultation

Based on City Council's direction at the March 5, 2019 meeting, staff is proposing that the City modifies its procedures so that the review of all multi-family/attached residential projects include input from a practicing architect with similar experience and/or practice, the architect would be hired by the City with all costs passed on to the project applicants. Multi-family and attached residential projects (e.g., apartment buildings, condominiums and townhouses) are typically the projects with the greatest community interest in design issues and for which it is more difficult to rely upon codified design standards or the City's design guidelines. These projects often also involve sensitive adjacent land uses where design expertise would be the most helpful. The costs associated with architectural consultation will be borne by applicants through an additional fee charged upon application submittal. As proposed, staff would follow procurement rules in order to retain as consultants two or more licensed, practicing architects with substantial experience with multi-family design and development. The consultants would be provided routed plans submitted with applications and provide comments to staff within the established timeframes to provide feedback to applicants. The architectural consultant would be available to help ensure a project's conformance with adopted design direction contained in the City's design guidelines, General Plan and Specific Plans.

The City will continue to develop policies, including an update to the City's community design

guidelines, single family and duplex design guidelines, and design standards incorporated into Specific Plans or Zoning Ordinance standards, which will further serve as guidance from the Planning Commission and City Council on the City's architectural standards for new development. Design standards and guidelines have been incorporated into the recently adopted Lawrence Station and Tasman East Specific Plans and are part of the scope for the El Camino Real, Patrick Henry and Freedom Circle Specific Plans now under development. The City also maintains and updates generally applicable design guidelines. Staff anticipates future updates to these guidelines as the work program allows to address additional types of development and provide greater clarity where recent projects have indicated such clarity is needed.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time and expense. Should the Council adopt the staff recommendation to add architectural consultation on multifamily projects, the City would initially charge applicants the time and materials cost for this consultation service. After data is collected on the typical cost of this service, the City would bring forward a new Architectural Consultation fee to be added to the City's Fee schedule.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

Staff previously received input on the architectural review hearing process through outreach at a community workshop at the outset of the comprehensive Zoning Code update and at a Neighborhood University Relations Committee meeting.

ALTERNATIVES

1. Recommend City Council adopt an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an administrative public hearing process for Architectural Review appealable to the City Council on a *de novo* basis and changes to the appeal procedures so that appeals are available to the applicant, property owners, and residents within 300 feet of the project boundary.
2. Recommend City Council adopt an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee with other elements.

RECOMMENDATION

Alternative 1:

Recommend the City Council adopt an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee with an administrative public hearing process for Architectural Review appealable to the City Council on a *de novo* basis and changes to the appeal procedures so that appeals are available to the applicant, property owners, and residents within 500 feet of the project boundary.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna Santana, City Manager

ATTACHMENTS

1. Due Process in multilevel reviews 12-21-18
2. Neighboring Cities Hearing Analysis 2-19-19
3. City Council Agenda Report 3-5-18
4. 2001 Architectural Committee Procedures and Excerpt of Council Minutes
5. Architectural Committee Procedures, revised 1-15-19
6. Architectural Review Ordinance 05-07-19



Date: December 21, 2018

To: Honorable Mayor and Council Members

From: Brian Doyle, City Attorney

Subject: Due Process Requirements in Multilevel Reviews of Decisions

SUMMARY

Current City of Santa Clara practices involving multiple levels of review of land use decisions where the same decision-maker is involved with reviewing a decision that he or she was involved in making may deprive an applicant of a due process right to an impartial hearing. This Office recommends amending the City Code to streamline the levels of review of land use decisions and to re-examine who sits on appellate bodies to ensure that due process is complied with.

BACKGROUND

The purpose of this memorandum is to provide advice regarding the due process issues relevant to a decision-maker's multiple decisions on a project in different stages of review or appeal.

Under § 18.76.020(a) of the Santa Clara City Code (SCCC) Santa Clara's Architectural Committee (AC) is composed of two Planning Commissioners and one "member appointed by the City Council." No subject matter expertise is required by Code for serving on the AC. The AC cannot grant approval of any application without first making findings and determinations that the proposal follows generally defined "standards of architectural design," that consider traffic and "character of the neighborhood," among other things. Within 40 days of the submission of the application, the AC must make a decision, unless the applicant consents to an extension, and the failure to render the decision is deemed a denial. The Code does not require that the AC conduct public hearings, though the AC as a practice does conduct hearings during its twice-monthly meetings.

Applicants and "others affected" can appeal a decision of the AC to the Planning Commission (PC). SCCC § 18.76.010(h). Procedures for all PC public hearings are posted to the City's website, which includes appeals of AC actions. A copy of PC "Procedural Items," including Hearing Procedures, is attached hereto as **ATTACHMENT 1**. PC hearing rules, which are ostensibly informal and not required by

Code, specify that the Chair of the PC has discretion to apply “special procedures/time limits ... to any items.” *Id.*, Hearing Procedures, (e).

Actions of the PC on AC application can be appealed “in writing” to the City Council, either by an applicant, “others affected [that] are not satisfied” or by the City Council itself. SCCC §§ 18.76.010(h), 18.108.060(a). An appeal is filed with the City Clerk and a hearing is then set with notice to the Applicant. Within 45 days of the hearing, the City Council must render a decision to affirm, reverse, modify or remand the decision, or else the failure to render a decision is deemed an affirmation.

In addition to applications concerning simpler projects that receive initial examination and action by the AC, the AC also often receives applications for projects that the PC and City Council have already taken action on. The Code does not require that the PC and City Council, when considering an appeal, apply any measure of deference to prior decisions, Planning Office staff reports, or the findings and conclusion of the AC. In practice, the PC and City Council often consider applications *de novo* (entirely new), and consider all evidence and arguments again. As a result, members of PC and City Council may consider the same application more than once if they serve on the AC that initially hears an application, and no deference or presumption of correctness is afforded.

ANALYSIS

I. Procedural Due Process as Applied in Local Government Land-Use

Government bodies that make quasi-judicial decisions, applying facts in individual cases to existing sets of rules or laws, must comply with constitutional procedural due process rights. (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482.)

1. Property Owners Must be Given Sufficient Notice of a Hearing

A decision-making body reviewing a permit application must give the applicant sufficient advance notice of both the information and issues it will examine during a hearing, “so that he may have an opportunity to refute, test, and explain it.” *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171-1172, *as mod.*; *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612. Where members of a decision-making body are required to “make a determination after a hearing,” they “cannot act upon their own information, and nothing can be considered as evidence that was not introduced at a hearing of which the parties had notice or at which they were present.” *Clark, supra*, at 1172. In *Clark*, the city council failed to give notice when it based its decisions on a permit on issues raised after it completed the public hearing.

2. Hearing Officers and/or Panels Must be Impartial and without Conflicts

Procedural due process in an administrative setting requires that the hearing be conducted “before a reasonably impartial, noninvolved reviewer.” *Nasha, supra*, at 483. When a city council acts in an adjudicatory capacity, such as when it makes a decision on land use permits, it must be neutral and unbiased in its decision-making. *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021. Public officials must not be influenced by their personal and/or private interests. See *Clark, supra*, at 1170-1171. “The standard of impartiality required at an administrative hearing is less exacting than that required in a judicial proceeding,” particularly as administrative decision-makers are “drawn from the community at large” and therefore likely “have knowledge of and contact or dealings with parties to the proceeding.” *Nasha, supra*, at 483, citing *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219.

a. Hearing Officers Are Not Impartial if they have Previously Expressed or Taken a Position

A decision-maker cannot be a “reasonably impartial, noninvolved reviewer” if he or she publically advocated for a specific position on an application before the hearing. *Nasha, supra*, at 483-484. In *Nasha v. City of Los Angeles*, a planning commissioner’s involvement in the hearing on a specific project violated the applicant’s right to a fair hearing because that commissioner had previously authored a persuasive “newsletter” advocating for the denial of the permit. That same commissioner also made the motion to review the planning department’s decision. *Id.* In *Woody’s Group*, a city council member had an unacceptable probability of actual bias as evidenced by his “taking a position” on the permit when he emailed a notice of appeal of the planning commission’s decision, and expressed his strong opposition to the permit application. *Woody’s Group, Inc., supra*, 1022-1023; see also *Clark, supra* [Council member’s letter years earlier when he was a private citizen opposing a prior version of the project].

Here, because of the composition and review of the AC, there may be substantial risk that a decision-maker develops and expresses an opinion on an application at or around the time it receives consideration before the AC, such that he or she lacks impartiality if and when the application is appealed and subsequently reviewed by either the PC or City Council. It is foreseeable that a planning commissioner serving on the AC expresses an opinion or viewpoint regarding an application either during an AC meeting or in writing afterwards. Although such an expression would be reasonably within the deliberative process, it could nevertheless signal that the decision-maker’s mind is already made up and the subsequent review will not be fair and impartial. The more instances a decision-maker participates in consideration of an application, the greater the risk to impartiality.

b. A Panel that Initiates an Appeal then Hears the Appeal Creates the Perception of Not Being Impartial

A city council that initiates the appeal of a subordinate commission's decision and then reviews that same decision creates at least the "appearance" of a conflict of interest. *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 559. But, it does not violate procedural due process as long as the superior body is authorized by statute or ordinance to initiate and hear the appeal. See § II, *infra*.

Here, the City Council as a body is explicitly authorized by the City Code to initiate the appeal of PC decisions. So long as the act of appealing follows the Code and is not combined with evidence of impartiality, such as biased statements, it does not violate procedural due process. However, it does create the perception of bias regarding the appealed decision, which could amplify other indications that the applicant will not receive a fair and impartial hearing, should other indications exist.

In *Cohan v. City of Thousand Oaks*, developers applied for a planning permit for a proposed 47-acre development. The city's planning commission approved the permit at a public hearing. After the ordinance-imposed deadline for an appeal passed, the city council received substantial public input opposing the project. Thereafter, the council itself appealed the planning commission's decision even though the city ordinance only permitted individual persons to appeal. A hearing was held on emergency notice under the Brown Act, and the council ultimately overturned the planning commission's decision and denied the permit. The applicant developers then petitioned for a writ of mandamus in Superior Court, which the trial court denied. The Court of Appeal ordered a writ of mandamus nullifying the denial of the permit because "the cumulative effect of Council's actions resulted in a violation of appellants' substantive and procedural due process rights":

- The council failed to give notice of the grounds for the appeal to the applicant.
- The council's appeal of the lower commission's decision, which violated the express review procedures of the city ordinances, created "at least the appearance of conflict of interest in the proceedings."
- The council failed to announce in writing its decision on the appeal within the period of time set forth in both the city ordinance and the Subdivision Map Act.

In *Clark v. City of Hermosa Beach*, the Clarks applied for a building permit to renovate their residence, including building a portion of their home up to 35-feet high. At the time, a neighbor who later served as a member of the city council who rented a home nearby wrote a letter to the city opposing the Clark's 1989 permit. The city approved the application and issued a permit, but it later expired. Thereafter, the city adopted a new set-back requirement.

In 1992, the Clarks revised their plans and reapplied with a similar proposed improvement that complied with the new set-back requirement. The 1992 application was approved by the planning commission. Neighbors appealed the decision to the city council. Around the same time the council heard the appeal, it had debated, but then failed to pass, a moratorium on buildings over 30-feet because it lacked the three fifths of votes needed.

At the hearing, following the public input portion, the council raised new issues of whether the proposed improvement left sufficient open space on the lot and whether it exceeded maximum lot coverage, which the council acknowledged as new issues that were not considered by the planning commission. The council ultimately reversed the planning commission's decision and denied the application without prejudice. At a subsequent council meeting, while considering whether to rehear the appeal, council members expressly recognized they had denied the Clark's permit because it exceeded the 30-foot limits of the failed moratorium, and that they had also denied permits for other buildings that would have similarly exceeded 30-feet. The Clarks petitioned the Superior Court for a writ, which the court granted and reinstated the planning commission's ruling. The city appealed.

The Court of Appeal held that the city deprived the Clarks of a fair hearing under the state standard for administrative writs. First, the council was not impartial. The individual council member who rented and resided at a home near the proposed project had a conflict of interest due to the potential personal impact of the proposed permit on his residence, even if he was not the owner, which was evidenced in part by his 1989 opposition letter. Second, the council failed to give the Clarks proper notice and an opportunity to be heard on the two issues of open space and lot coverage, which were decided against them. Third, the council had an institutional bias against the Clarks because it attempted to implement the 30-foot moratorium (by majority) against individual applicants rather than adopt it city-wide for which it lacked the necessary (three fifths) votes.

II. Appeals

1. Rules for Hearing Appeals

A quasi-adjudicative decision-making body should only employ a review process that is set forth in statute, and should not rely on informal policies and practices, however longstanding. *Woody's Group, Inc., supra*, at 1028. Review of an appeal either without clear authority to do so in the city's ordinance, or in direct violation of code-prescribed procedures, may be so arbitrary and highhanded as to violate an applicant's due process rights. *Id.* at 1029.

The City Council may only initiate the appeal of the decision of a subordinate board or commission, and review the decision itself, if the appeal is authorized by ordinance(s) or

rule(s) that govern appeals. Those same ordinances or rules should specify grounds for appeal and burdens of proof.

Here, vagueness and ambiguity in the City Code language that defines the appeals process and procedures could be problematic. The PC does not have separate bylaws for hearing appeals, and its posted rules for public hearings do not specify that appeals are heard differently. Its rules also allow that "[s]pecial procedures/time limits may be applied to any items as prescribed by the Chair." **ATTACHMENT 1**, Hearing Procedures, (e).

The Code allows for an appeal based on dissatisfaction with a decision by the AC and PC, and it defines who may initiate the appeal and how. It also states that the appeal is "written," and must be made within a specific timeframe. But beyond that, it does not specify upon what grounds the appellant must base their appeal (e.g., how the AC applied a City standard); whether deference is given to the decision being appealed, including that the appeal could be heard *de novo*; and that the applicant continues to carry the burden of proof in the subsequent review hearing regardless of who initiates the appeal. As a result, applicants and appellants, should they be different, may not be advised of their respective roles in the hearing, including sequence of arguments, and their right to present information (including types of evidence – e.g. testimony from other neighbors) and argument. Moreover, without clear guidelines, the PC or City Council considering an appeal is left to develop its own informal policies and customary practices, and also has substantial discretion to deviate therefrom.

CONCLUSION

The City's current procedures for appeal of land use decisions are in substantial need of revision to ensure adequate due process for parties to the appeal. This Office recommends the following:

1. Direct the City Attorney and City Manager to draft amendments to the City's Zoning Code to provide for improved due process of appeals and to ensure impartiality of the decision-making body by eliminating the possibility of the same person sitting on multiple levels of an appeal.
2. Consider revising procedures for appeals to create only one level of appeal and clearly define the required basis for appeal and the level of review, i.e. *de novo* or abuse of discretion, as well as clear written procedures for hearings on appeals.

Brian Doyle /CEE

Brian Doyle

City Attorney

cc: Deanna Santana, City Manager
Manuel Pineda, Assistant City Manager
Andrew Crabtree, Director, Community Development Department

ATTACHMENT 1



City of Santa Clara PLANNING COMMISSION

PROCEDURAL ITEMS

DATE, TIME, and LOCATION OF MEETINGS

The City of Santa Clara Planning Commission holds its regular meetings generally on the second (2nd) and fourth (4th) Wednesdays of the month, with some exceptions, at 7:00 p.m. in the Council Chambers, City Hall, 1500 Warburton Avenue. Please refer to the schedule of meetings available in the Planning Division office and as provided in the City calendar. From time to time the Commission may hold a study session on special items.

SUBMITTAL OF MATERIALS/AVAILABILITY OF STAFF REPORTS

Interested parties may submit materials for the Commission's consideration. Materials submitted by Thursday at 5:00 p.m. of the week prior to the meeting can be included in the Commissioners' packets. Materials received late or at the public hearing may not be considered due to time constraints, unless special circumstances apply. Staff reports for items being heard by the Planning Commission are available the week of the meeting at the Planning Division Office located in the West Wing of City Hall. The Division's hours are 8:00 a.m. to 5:00 p.m., Monday – Friday; please phone (408) 615-2450 for more information.

STATUS OF PLANNING COMMISSION ACTIONS

Recommendations to the City Council:

The Commission's decisions on rezoning, prezoneing and subdivision applications, Ordinance amendments and certain other items are recommendations to the City Council, which will hold public hearings on these items, normally 13 days following the Planning Commission's decision.

Decisions final at the Planning Commission hearing:

Decisions by the Commission on use permits, variances and other applications that are final at the Planning Commission hearing are administrative decisions. However, an administrative decision by the Planning Commission:

1. may be appealed to the City Council by the applicant(s) or opponent(s) of the item by filing a written appeal at the Office of the City Clerk [City Hall, 1500 Warburton Avenue (East Wing)] within seven (7) calendar days of the action, or
 2. may be appealed by the City Council on its own motion.
- City Zoning Ordinance Article 54

JUDICIAL REVIEW/STATUTE OF LIMITATIONS

Administrative decisions granting, denying or revoking an application for a permit, license, or other entitlement are subject to a ninety (90) calendar day statute of limitations for judicial review pursuant to California Code of Civil Procedures Sec. 1094.6 (City Ord. No.1630). For purposes of commencement of the ninety- (90) calendar day statute of limitations, an administrative decision by the Planning Commission is final at the time it is announced. If the decision is continued to a later time upon the close of the

Planning Commission hearing on the matter, the date, time, and place of the announcement of the decision shall be provided at this hearing.

SCOPE OF CHALLENGE TO A PLANNING COMMISSION DECISION

If you challenge land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to the public hearing. (California Government Code Sec.65009)

HEARING PROCEDURES

Public hearings are conducted by the Chair in accordance with the following procedures:

- a) The Chair of the Commission directs all activity during the hearings. All comments shall be addressed to the Commission.
- b) Any item on this agenda may be continued to a subsequent hearing.
- c) Applicants will be allotted up to ten (10) minutes to present and justify proposals, following staff presentation of the item; other speakers will be given up to four (4) minutes; the applicant is allotted up to five (5) minutes for rebuttal of comments.
- d) No additional comments will be accepted upon the close of the public hearing, although the Commission reserves the right to direct questions to any speaker on any matter.
- e) Special procedures/time limits may be applied to any items as prescribed by the Chair.
- f) Appeal of Commission actions must be filed in writing within seven (7) calendar days.

ORAL PETITIONS and ANNOUNCEMENTS

(15 minutes maximum)

Members of the public are provided with an opportunity to address the Commission on unagendized items within the jurisdiction of the Commission. Each speaker may be allotted up to 4 minutes. The law does not permit agency action on or extended discussion of any item not on the agenda except under special circumstances. Matters may be agendized for a subsequent meeting.

AMERICANS WITH DISABILITIES ACT (ADA)

In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible to the maximum extent feasible. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure full and equal access for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office at (408) 615-3000 to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities. For individuals with a Hearing Impairment, the Council Chambers has a headset system, which allows one to hear more clearly from any seat in the room. Ask a City staff member for details.

Neighboring Cities Hearing Level and Process Analysis

| City | Hearing Body Approval Name | Approval Body Members | Decision Appeale | Type of Permits |
|-------------|---|---|--|--|
| Santa Clara | Architectural Committee | 1 City Council Member; 2 Planning Commissioners | Planning Commission with double appeal of Planning Commission decision to City Council permissable | Single-Family House; Development permits for: Multifamily, Mixed Use, Non-Residential; Landscape Master Plans; Master Sign Programs |
| Morgan Hill | Director Hearing | Staff | Planning Commission | Administrative Use Permits; Design Permits Historic Alteration Permits; Sign Permits; Temporary Use Permits; Minor Exceptions; RA; Zoning Clearance |
| Campbell | Director Hearing | Staff | Planning Commission | Stealth wireless telecommunication facilities; Most of the Single-Family Houses; |
| Sunnyvale | Zoning Administrator (Director) Hearing | Staff | Planning Commission | Variances; Design Review; Tentative Maps; Use Permits; Special Development Permits |
| San Jose | Director Hearing | Staff | Planning Commission | Single-Family House Permitted with certain conditions; Development Permits - New Constrcution; Special Use Permits; Reasonable Accomodations; Tree Removals; Tentative Maps; Variances |

Neighboring Cities Hearing Level and Process Analysis

| City | Hearing Body Approval Name | Approval Body Members | Decision Appeale | Type of Permits |
|---------------|--|--|---------------------|---|
| Mountain View | Zoning Administrator Hearing | Staff* [Separate Development Review Committee, comprised of staff Deputy Zoning Administrator and two consulting architects recommend approval of certain projects to the Staff Zoning Administrator.] | City Council | Development Review Permits, Conditional Use Permits, Variances, and Planned Unit Developments with a Parcel Map; Single-family residential major floor area ratio exceptions; Special Design Permits |
| Palo Alto | Director of Planning and Community Environment Hearing | Staff* [Separate Architectural Review Board recommends approval of certain projects to Staff/Director of Community Development. If the Director disagrees with the Board's recommendation, the project will be sent back to the ARB or to the City Council.] | Planning Commission | Major Site Design Review: New building or building addition over 5,000 square feet, Use Permits, multiple-family residential construction, Variances, Construction of three or more adjacent single-family homes or duplexes, signs and sign programs; Minor Site Design Review: New building or building addition of fewer than 5,000; signs; landscaping; wireless facilities |



Agenda Report

19-175

Agenda Date: 3/5/2019

REPORT TO COUNCIL

SUBJECT

Direction to Prepare an Amendment to the Zoning Code, SCCC Chapter 18.76 Architectural Review

BACKGROUND

Chapter 18.76 of the Santa Clara City Code (SCCC) establishes an architectural review procedure whereby the Santa Clara Architectural Committee (AC) acts as the review body for specified new land use development projects not otherwise subject to Planning Commission or City Council review or other proceedings established within the City Code. Projects typically considered by the AC include additions to single-family residences and new construction within commercial and industrial districts. The City Code currently provides that the AC be composed of one member appointed by the City Council and two members of the Planning Commission appointed by the Chair of the Commission. In recent years the City Council has appointed a member of the Council to serve on the AC along with the two Planning Commissioners.

AC meetings are conducted one or more times monthly, typically on a Wednesday evening when the Planning Commission is not meeting. The AC meetings are noticed as public hearings but conducted in an informal setting with AC members, staff and the applicant seated around a table where they discuss the project design prior to the AC members' vote on approval, approval with conditions, deferment for redesign, or denial of the project. Members of the public may participate in the discussion. Per the City Code, decisions made by the AC may be appealed by any member of the public to the Planning Commission. The Planning Commission's decision on the appeal is in all cases appealable to the City Council.

On May 8, 2001, the City Council adopted voting procedures and guidelines for the AC, which provided that the AC could only take action with a quorum of two members present (Attachment 1). The adopted procedures did not specify that the two members making up the quorum must include a Councilmember, but sometime around 2003, the AC meeting agendas began to include an attached statement of procedures with the statement: "[a]t least one City Council member and at least one Planning Commissioner must be present in order to establish a quorum for voting purposes."

On December 21, 2018, the City Attorney's Office issued a Memorandum on Due Process Requirements in Multilevel Reviews of Decisions (Attachment 2), which identified possible due process issues that might be raised if a member of the AC then hears an appeal of the decision in which he or she had participated. Therefore, staff recommended that the City Council direct the City Attorney and the City Manager to draft amendments to the Zoning Code to resolve these issues. The Memorandum also raises concerns that the City Code does not specify upon what grounds the appellant must base their appeal; whether deference is given to the decision being appealed, or whether the appeal is heard *de novo*; and whether the applicant continues to carry the burden of proof in the subsequent review hearing regardless of who initiates the appeal. A *de novo* public

hearing for the project is conducted as a new “clean slate” hearing with no regard to the prior decision.

On January 15, 2019, following consultation with the City Attorney, the City Council adopted new procedures for the AC (Attachment 3), restoring the 2001 Council-adopted language. As restored, the procedures state that any two members of the AC constitute a quorum. This allows for the Council to appoint someone other than a Councilmember to serve on the AC.

DISCUSSION

Staff is recommending further changes to the City’s Architectural Review process, including the composition of the AC, with the goals of addressing potential due process conflicts for Planning Commissioners, establishing clearer policy guidance for appeals, streamlining the review process for non-controversial projects, eliminating double appeals and utilizing standard staff level public hearings practices found to be effective in other jurisdictions.

While staff had contemplated proposing these improvements as part of the comprehensive update to the Zoning Code now underway, the release of the City Attorney’s Memorandum warrants consideration of process changes in advance of the City Council’s consideration of the comprehensive update anticipated for late 2019 or early 2020. Staff has previously received input on the AC hearing process through outreach at a community workshop at the outset of the comprehensive Zoning Code update and at a Neighborhood University Relations Committee meeting.

Composition of the Architectural Committee

The City Attorney and staff are recommending that the AC members should not be current members of the Planning Commission or of the City Council.

A survey of neighboring jurisdictions indicates that it is more common for staff to conduct an administrative public hearing subordinate to the Planning Commission, with decisions made at the staff level appealable to the Planning Commission and/or City Council. Staff is recommending that Santa Clara adopt a similar administrative hearing process for the City’s Architectural Review. Such an approach would maintain the authority currently exercised by the Commission and Council in the Architectural Review process, through appeals, while allowing routine land use actions to be completed administratively. Under the current process most projects are approved as consent items or with minimal discussion by the AC, suggesting that there is little benefit for those projects from the time and effort required to conduct a public hearing, the cost of which is passed on to the applicant. As many of the land use actions performed at the AC level can be non-controversial, members of the Planning Commission and City Council could focus on items, identified through an appeal process, that most warrant a higher level City review.

Staff is not recommending that the AC continue as an appointed body comprised of three community members. While this approach would be similar to the current Architectural Review process, it may be challenging on an ongoing basis to find three well qualified community members, in addition to the Planning Commission membership, able to commit the required amount of time to serve on the AC.

The City will continue to develop policies, including an update to the City’s community design guidelines, single family and duplex design guidelines, and design standards incorporated into Specific Plans or Zoning Ordinance standards, which will further serve as guidance from the Planning

Commission and City Council on the City's architectural standards for new development. Design standards and guidelines have been incorporated into the recently adopted Lawrence Station and Tasman East Specific Plans and are part of the scope for the El Camino Real, Patrick Henry and Freedom Circle Specific Plans now under development. The City maintains and updates generally applicable design guidelines as well and staff anticipates future updates to these guidelines as the work program allows to address additional types of development and provide greater clarity where recent projects have indicated such clarity is needed.

Appeal Procedures

The Code allows for an appeal based on dissatisfaction with a decision by the AC or Planning Commission, and it defines who may initiate the appeal and how. It also states that the appeal needs to be in writing and must be made within a specific timeframe. But beyond that, it does not specify upon what grounds the appellant must base their appeal; whether deference is given to the decision being appealed, or whether the appeal is heard *de novo*; and whether the applicant continues to carry the burden of proof in the subsequent review hearing regardless of who initiates the appeal.

To provide greater clarity, staff is recommending amendment of the City Code to establish that the standard for appeal be *de novo*, and that the appeal body be able to weigh in on any aspect of the project. The appeal body would still be required to make the findings for Architectural Review approvals per Section 18.76.020(c) of the Zoning Code.

Staff is also recommending elimination of the double appeal process. The current AC appeal process can be very time consuming and requires General Fund subsidy as appeal fees are not cost recovery. When AC actions are appealed to the Planning Commission, a second appeal to the City Council is the likely outcome. If the Planning Commission upholds the AC action, the same appellants will likely then appeal the Planning Commission approval to the City Council. If, instead, the Commission overturns the AC action, the other party will most likely appeal that decision to the City Council. The potential for double appeals significantly extends the City's decision making process resulting in project delays and additional costs for the applicant and the City and generally makes the first hearing inconsequential as a second appeal is very likely. The removal of the double appeal process will reduce the number of appeals that need to be placed on Planning Commission and City Council agendas.

Therefore, staff recommends the elimination of the current double appeal process and to distinguish which AC actions are appealable to either the Planning Commission or to the City Council, but not to both in succession. Staff recommends that AC actions on single family projects would be appealable to the Planning Commission. AC actions on all other projects, including industrial and commercial developments, would be appealable to the City Council only. (Attachment 4)

Survey of Standard Practices

The City of Santa Clara AC is unique when compared to neighboring cities which do not have a separate body, other than a Planning Commission, responsible for development and land use approvals. As summarized in the attached table (Attachment 5), neighboring jurisdictions instead utilize staff-level review processes for minor architectural approvals. The criteria for a minor approval vary by jurisdiction, but typically include site and architectural review approvals for single-family, multi-family, commercial and industrial projects and some use permits. This approach appears to be generally accepted within those communities and is beneficial in that it enables a more predictable

review process and reduces the load upon volunteer or elected community members. Some cities, such as Mountain View and Palo Alto, include an Architectural Review Board (ARB) in their design review process. The ARB may be composed of design professionals and/or community volunteers. In the two local examples the ARB acts in an advisory capacity to City staff which then conduct an administrative hearing in the same manner as other local cities, with the exception of Santa Clara.

Conclusion

Staff recommends amending Chapter 18.76 Architectural Review of the SCCC to replace the AC process with an administrative hearing process (Development Review Hearing), streamline the approval and appeal process and remove due process conflicts. An administrative hearing process would eliminate due process conflicts and ensure impartiality of the decision-making body by eliminating the possibility of the same person making decisions on multiple levels of an appeal. The proposed process would continue to be a duly noticed hearing and noticing would follow the City's Public Outreach Policy for Planning Applications, which was adopted by the City Council on June 27, 2017.

This potential amendment would revise procedures for appeals to allow only a single appeal, determined by the project type, and clearly define the required basis for appeal and the level of review. The potential amendment would create a process where AC actions on single family projects would be appealable to the Planning Commission. AC actions on all other projects, including industrial and commercial developments, would be appealable to the City Council only.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) including identifying the permits or projects subject to the approval of the Administrative Level Hearing Process, Planning Commission, or the City Council; identifying the hearing body that is responsible for the review on

appeal based on the types of permit or project; and limiting any planning application to a maximum of one potential appeal.

2. Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) with only some or other components as identified in the staff report.

RECOMMENDATION

Alternative 1:

Direct staff to prepare an Ordinance to amend Chapter 18.76 Architectural Review of the City of Santa Clara Zoning Code to replace the existing Architectural Committee process with an alternate Administrative Level Hearing Process (Development Review Hearing) including identifying the permits or projects subject to the approval of the Administrative Level Hearing Process, Planning Commission, or the City Council; identifying the hearing body that is responsible for the review on appeal based on the types of permit or project; and limiting any planning application to a maximum of one potential appeal.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. 2001 Architectural Committee Procedures and Excerpt of Council Minutes
2. Due Process in multilevel reviews 12-21-18
3. Architectural Committee Procedures, revised 1-15-2019
4. Architectural Review Process Diagram
5. Neighboring Cities Hearing Level and Process Analysis

Meeting Date: 5-8-01

Council ☒
Agency ☐
SOSA ☐

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 74.10



Date: April 18, 2001
To: City Manager for Council Action
From: Director of Planning and Inspection
Subject: Architectural Committee Procedures

EXECUTIVE SUMMARY

There has been discussion regarding the Architectural Committee's procedure for voting on matters brought before the Committee. Article 38 of the Zoning Ordinance establishes the Architectural Committee and defines that it shall be "composed of a member appointed by the City Council and two members of the Planning Commission appointed by the Chairman of said Commission. The appointments shall be made on a rotating basis." The Committee has utilized the concept of alternatives when regular appointed members cannot be present.

This question was brought into focus recently with a question on the matters at the Architectural Committee meeting of March 21, 2001. In the interest of the Council, Committee members, staff and the public all having an assurance of consistency in the process, the following guidelines might be considered.

- Any appointed member who cannot attend a scheduled meeting may be replaced by an alternate, which shall be appointed by a decision making body. An alternate for any member shall be from the same body as the member replaced.
- The Committee may only take action with a quorum present and a majority vote (Brown Act). Only a Committee member may vote.
- Each member or alternate acting on behalf of a member shall have one vote, for up to three votes on any action. A tie vote of two members shall be considered no action. (Section 38-2(f) addresses failure to render a decision).
- Any item may be continued by a vote of the Committee.
- Any other City Council or Commission member who attends the Architectural Committee meetings may provide advice to the Committee.

ADVANTAGES AND DISADVANTAGES

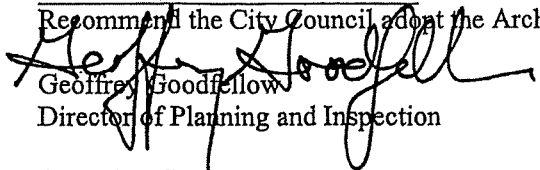
This approval would clarify Architectural Committee voting procedures and provide consistent guidelines for the Committee members and the public.

ECONOMIC/FISCAL IMPACT

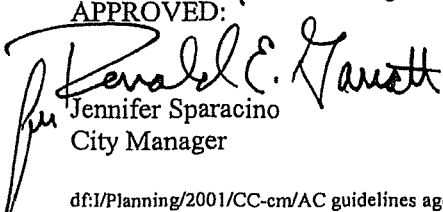
None associated with this request.

STAFF RECOMMENDATION

Recommend the City Council adopt the Architectural Committee voting procedures and guidelines.


Geoffrey Goodfellow
Director of Planning and Inspection

APPROVED:


Jennifer Sparacino
City Manager

MOTION was made by Diridon, seconded and unanimously carried, that, per the Director of Electric Utility (5/2/01), the Council **approve** the use of City Electric forces for the installation of facilities at 2199 Ronald Street and at Mathew Street, Reed Street and Lafayette Street. [File: City Forces]

MOTION was made by Diridon, seconded and unanimously carried, that, per the Director of Planning and Inspection (4/18/01), the Council **adopt the voting procedures and guidelines for the Architectural Committee.** [File: Planning and Inspection Department Miscellaneous]

MOTION was made by Diridon, seconded and unanimously carried, that, per the Director of Planning and Inspection (4/30/01), the Council **approve** and authorize the City Manager to execute an Agreement with Psomas in an amount not to exceed \$131,125 for development of a Geographic Information System plan. [File: Psomas Geographic Information System]

MOTION was made by Diridon, seconded and unanimously carried, that the Council **note and file** the following Informational Memos: Positive Federal Assessment of the City's Community Development Block Grant and HOME Programs (Director of Planning and Inspection - 4/30/01) [File: Community Services Federal Funding] and Extension of Term for Decision on Award of the Northern Receiving Station - 115KV Project (Contract #2242B) (Director of Electric Utility - 5/2/01) [File: Electric Department Miscellaneous].

MOTION was made by Diridon, seconded and unanimously carried, that the Council **note and file** the Minutes of the Board of Library Trustees for the meeting of April 2, 2001, and the Sesquicentennial Steering Committee for the meeting of April 2, 2001. [Files: Board of Library Trustees Minutes and Sesquicentennial Steering Committee Minutes]

PUBLIC HEARING: The Mayor declared the hearing open for consideration of the Water Rate Schedule for Fiscal Year 2001-02. The Director of Water and Sewer Utilities reviewed his memo (4/24/01) and recommendation for approval of Water Rate Schedule 2001-1 resulting in a 8% increase effective July 1, 2001. The Director of Water and Sewer Utilities made an electronic presentation regarding the justification for the proposed increase. Bob Mortenson addressed the Council regarding the increase. There being no further public input, MOTION was made by Diridon, seconded and unanimously carried, that the public



City of Santa Clara

ARCHITECTURAL COMMITTEE PROCEDURES

[REVISED 1-15-2019]

LOCATION, DATE, and TIME OF MEETINGS

The Architectural Committee is comprised of three members and typically meets in the City Council Chambers, 1500 Warburton Avenue, Santa Clara, CA 95050. The meetings usually occur on Wednesday evenings at 6:00 p.m., according to a schedule published by the Planning Division.

AMERICANS WITH DISABILITIES ACT (ADA)

In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible to the maximum extent feasible. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure full and equal access and enjoyment of all programs and activities for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office (408) 615-3000, to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities.

COMMITTEE POLICIES AND PROCEDURES

The Committee's policy is to limit discussion of each item to 15 minutes, except for complex proposals, at the Committee's discretion. The public may address the Committee on any item on the agenda when the Committee opens the item for comment. Members of the public are also provided with an opportunity to address the Committee on items within the jurisdiction of the Committee under Oral Communications at the end of the agenda. The Committee is precluded from action or extended discussion but may place an Oral Communications matter on the agenda of the next regular meeting. All Architectural Committee decisions are final unless appealed in writing to the Planning Division within seven days; appeals will be set for hearing before the Planning Commission. The Committee may only take action with a quorum present and a majority vote. Only a Committee member may vote. At least two Committee members must be present in order to establish a quorum for voting purposes. If you have any questions, please contact the Planning Division at (408) 615-2450.

COMMITTEE FINDINGS AND ACTIONS

In accordance with the provisions of the City of Santa Clara Zoning Ordinance, Sections 18.76.010 through 18.76.020 of the City Code for the City of Santa Clara, in order to grant architectural approval, the findings and determinations of the Architectural Committee shall be that the proposed development, as set forth in such plans and drawings to be approved, is based on the following standards of architectural design:

- (1) That any off-street parking areas, screening strips and other facilities and improvements necessary to secure the purpose and intent of this ordinance and the General Plan of the City are a part of the proposed development.
- (2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of neighboring developments, and will not create traffic congestion or hazard.
- (3) That the design and location of the proposed development is such that it is in keeping with the character of the neighborhood and is such as not to be detrimental to the harmonious development contemplated by this ordinance and the General Plan of the City.
- (4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development, and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.
- (5) That the proposed development, as set forth in the plans and drawings, are consistent with the set of more detailed policies and criteria for architectural review as approved and updated from time to time by the City Council, which set shall be maintained in the Planning Division office. The policies and criteria so approved shall be fully effective and operative to the same extent as if written into and made a part of this ordinance.

The Architectural Committee may require the applicant or owner of any such proposed development, as a condition to the approval of any such proposal, to modify buildings, parking areas, landscaping, signs, and other facilities and improvements as the Architectural Committee deems necessary to secure the purposes of this ordinance and General Plan of the City, and may require guarantees and evidence that such conditions will be complied with by the applicant. If the Architectural Committee is unable to make the findings and determinations prerequisite to the granting of architectural approval pursuant to the standards described above, the application shall be denied.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA AMENDING CHAPTER 18.76,
("ARCHITECTURAL REVIEW") OF TITLE 18 ("ZONING")
OF "THE CODE OF THE CITY OF SANTA CLARA,
CALIFORNIA" AND MAKING OTHER CLARIFYING
CHANGES**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Chapter 18.76 ("Architectural Review") of Title 18 ("Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") establishes the procedure for Architectural Review for new construction within the City of Santa Clara;

WHEREAS, SCCC Chapter 18.76 establishes an Architectural Committee, which includes two Planning Commissioners and one appointee by the City Council, who are responsible for the initial decision for Architectural Review approvals;

WHEREAS, the current procedure includes multiple levels of appeals, with an initial appeal to the Planning Commission and ultimately to the City Council; and,

WHEREAS, the City Council now intends to vest the authority for initial architectural review decisions in the Director of Community Development, and to provide for the City Council as the singular appeal body for the Architectural Review process.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA, AS FOLLOWS:

SECTION 1: That Chapter 18.76 (entitled "Architectural Review") of Title 18 (entitled "Zoning") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

“Chapter 18.76

ARCHITECTURAL REVIEW

Sections:

18.76.010 Intent.

18.76.020 Architectural review process.

18.76.010 Intent.

The City Council of the City of Santa Clara finds, determines and declares that in order to encourage the orderly and harmonious appearance of structures and property; maintain the public health, safety and welfare; maintain the property and improvement values throughout the City and to encourage the physical development of the City as intended by the general plan; there is hereby established the architectural review process.

18.76.020 Architectural review process.

(a) Architectural review shall be the responsibility of the Director of Community Development or designee (“Director”).

(b) Before action is taken on an application for the issuance of a permit for any sign, building, structure, or alteration of the exterior of a structure in any zone district, plans and drawings of such sign, building or alteration shall be submitted, in such form and detail as the Director may prescribe. The Director shall approve or deny the architectural design without a hearing, unless the type of project is listed in subsection (c).

(c) The Director shall conduct a public hearing, titled the “Development Review Hearing,” after providing notice pursuant to Section 18.112.060, for the following types of projects:

- (1) New or expanded single-family homes resulting in:
 - (A) a two-story structure with four or more bedrooms; or
 - (B) a one-story structure resulting in six or more bedrooms.

(2) Residential parcel or subdivision maps and any associated development plans.

(3) New multi-family developments of any size.

(4) New non-residential development greater than 5,000 square feet in size.

(5) Modifications or additions to existing non-residential development greater than 5,000 square feet in size.

(6) Any other project not listed above that the Director determines should be considered at a public hearing.

(d) In order to grant architectural approval, the findings and determinations shall be that the proposed development, as set forth in such plans and drawings to be approved, is based on the following standards of architectural design:

(1) That any off-street parking areas, screening strips and other facilities and improvements necessary to secure the purpose and intent of this title and the general plan of the City are a part of the proposed development.

(2) That the design and location of the proposed development and its relation to neighboring developments and traffic is such that it will not impair the desirability of investment or occupation in the neighborhood, will not unreasonably interfere with the use and enjoyment of neighboring developments, and will not create traffic congestion or hazard.

(3) That the design and location of the proposed development is such that it is in keeping with the character of the neighborhood and is such as not to be detrimental to the harmonious development contemplated by this title and the general plan of the City.

(4) That the granting of such approval will not, under the circumstances of the particular case, materially affect adversely the health, comfort or general welfare of persons residing or working in the neighborhood of said development and will not be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

(5) That the proposed development, as set forth in the plans and drawings, are consistent with the set of more detailed policies and criteria for architectural review as approved and updated from time to time by the City Council, which set shall be maintained in the planning division office. The policies and criteria so approved shall be fully effective and operative to the same extent as if written into and made a part of this title.

(e) The Director or designee may require the applicant or owner of any such proposed development, as a condition to the approval of any such proposal, to modify buildings, parking areas, landscaping, signs, and other facilities and improvements deemed necessary to secure the purposes of this title and general plan of the City, and may require guarantees and evidence that such conditions will be complied with by the applicant.

(f) If the Director or designee is unable to make the findings and determinations prerequisite to the granting of architectural approval pursuant to subsection (d) of this section, the application shall be denied.

(g) The Director or designee shall render a decision on any application for architectural approval within forty (40) days following a determination by the planning division office that the application is complete, except where the applicant consents to an extension of time. Failure to render a decision within said period of forty (40) days and said period of extension consented to by applicant shall be deemed to be a decision of denial.

(h) The granting of any architectural approval, when conforming to the provisions of this section is hereby declared to be an administrative function, and the action shall be final and conclusive, except in the event of an appeal and referral as hereinafter provided.

(i) In the event the applicant or any property owner or tenant within a 500-foot radius from the project boundary are not satisfied with the decision of the Director or designee, they may within seven (7) days after such decision, appeal in writing to the City Council, in accordance with the procedures set forth in SCCC 18.108.060(b). Said appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk. All appeals of Architectural

Review approvals will be heard de novo. The Director of Community Development may refer any application for architectural consideration to the City Council for its decision with the same effect as if an appeal had been taken.

(j) No permit shall be issued, and no structure, building, or sign shall be constructed or used in any case hereinabove mentioned until such plans and drawings have been approved by the Director or designee, or on referral to the City Council by the Director, and no appeal or review is pending and the time to appeal has expired. In the event of an appeal by the applicant or others affected, or action to review is taken by the City Council, no such permit shall be granted until the matter has been finally acted upon and final approval has been received. All signs, buildings, structures, and grounds shall be in accordance with the plans and drawings as finally approved.

(k) Said approvals shall be on file with the City planning division office.

(l) Any architectural review approval granted in accordance with the terms of this title shall be automatically revoked and terminated if not used within two years of original grant or within the period of any authorized extensions thereof.”

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2019, by
the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

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