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