



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 02/14/2024

ITEM NO: 3

DATE: February 9, 2024
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding the Powers and Duties of the Historic Preservation Committee. The Proposed Amendments also include Revisions to Chapter 29 Regarding Assignment of Duties of the Planning Director and Appeals of Decisions of the Historic Preservation Committee. The Proposed Amendments to the Town Code are Not Considered a Project Under Section 15378 of the California Environmental Quality Act. Town Code Amendment Application A-24-001. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council on amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding powers and duties of the Historic Preservation Committee. The proposed amendments also include revisions to Chapter 29 regarding assignment of duties of the Planning Director and appeals of decisions of the Historic Preservation Committee.

CEQA:

The proposed amendments to the Town Code are not considered a project under Section 15378 of the California Environmental Quality Act.

FINDINGS:

- The proposed amendments are Exempt Pursuant to CEQA, Section 15061(b)(3); and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

PREPARED BY: Sean Mullin, AICP
Senior Planner

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

BACKGROUND:

Section 29.80.225 of the Town Code provides that the Historic Preservation Committee acts as an advisory body to the Planning Commission on all matters pertaining to historic preservation. Additionally, this Section requires that two Planning Commissioners are to be appointed to serve on the Committee alongside three members of the public appointed by the Town Council.

Town Code Section 29.80.227 provides that the Committee's powers and duties consist of the following:

- 1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters pertaining to historic preservation which come before the Planning Commission.
- 2) Review and make recommendations to the Planning Director concerning the determination of a minor residential development permit for properties with a Landmark and Historic Preservation (LHP) overlay zone or structures which were built prior to 1941.
- 3) Determine and issue approval for minor residential and commercial exterior alterations not covered under the architecture and site approval process or the minor residential development permit, for designated properties with a LHP overlay zone pursuant to subsection 29.20.485.
- 4) Upon request of the Planning Director, review pending or proposed building permits dealing with historic structures when it is questionable that the work proposed meets the guidelines for pre-1941 structures.
- 5) May, on request of the property owner, advise with respect to any proposed work requiring or not requiring a Town permit on any historic structure, a designated landmark site, or in a designated historic district. Examples of the work referred to are additions, demolitions, painting and repainting of exterior surfaces, roofing, fencing, landscaping, glazing, and installation of lighting fixtures. In advising, the Historic Preservation Committee shall be guided by the purposes and standards specified in this division and other applicable ordinances and/or development standards. This subsection does not impose regulations or controls on any property.

While most of the powers and duties are advisory only, Subsection (3) does provide that the Committee renders decisions regarding some minor residential and commercial exterior alterations. By practice, the Committee also makes determinations on requests to remove pre-1941 properties from the Historic Resources Inventory. In accordance with Town Code Section 29.20.258, these decisions and determinations are appealable to the Planning Commission. Such appeals are rare. In 2023, there were two appeals of Committee decisions to the Planning Commission.

BACKGROUND (continued):

Government Code Section 1099 codifies the common law “incompatible offices” doctrine and prohibits individuals from serving on both an initial decision-making legislative body and a legislative body with the ability to review those decisions. Government Code Section 1099 applies only to decision-making bodies and does not apply when one of the legislative bodies is advisory in nature.

In addition, Procedural Due Process principles require that applicants for quasi-adjudicatory planning approvals receive “notice and a fair hearing.” Quasi-adjudicatory decisions are those that require a decision-maker to apply the law to facts and make findings. A “fair hearing” requires unbiased decision-makers [*Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152 (1996)]. A challenge could arise for Planning Commissioners when hearing an appeal of a decision in which they initially participated or for which they made a recommendation and appear unbiased. To provide a “fair hearing” when an appeal is filed, the best practice is that any decision-maker who participated in the original decision recuse themselves from the appeal of that decision.

On January 16, 2024, the Town Council considered a request for direction on potential amendments to the Historic Preservation Committee Ordinance and enabling resolution to address the challenges that can arise when a decision by the Committee is appealed to the Planning Commission. After considering multiple options, the Council directed staff to prepare amendments to the Town Code and Enabling Resolution to provide that the Committee is advisory in nature.

DISCUSSION:

The following changes to the Town Code are necessary to provide that the Committee is advisory in nature:

A. ARTICLE II, DIVISION 7. POST-APPROVAL ACTIONS

Section 29.20.255. Appeals from the decision by the Planning Director.

A new Subsection (6) would be added to provide that the determinations of the Director on matters of historic preservation are appealable to the Planning Commission.

Section 29.20.258. Appeals from decisions of the Historic Preservation Committee.

Consistent with Council direction and Section 29.80.225 of the Town Code, these amendments will provide that the Committee is advisory in nature, making recommendations on matters of historic preservation to the Planning

DISCUSSION (continued):

Director and the Planning Commission. These recommendations of the Committee are not subject to appeal. Therefore, Section 29.20.258 which sets forth the process to appeal a decision of the Committee, is not needed and would be removed from the Town Code. The decisions of the Planning Director and the Planning Commission on matters of historic preservation will continue to be subject to appeal.

B. ARTICLE II, DIVISION 7. ASSIGNMENT OF DUTIES

Section 29.20.700. Planning Director.

A new Subsection (35) would be added to provide that the Planning Director determines matters pertaining to historic preservation described in Section 29.80.227 that are not assigned to the Planning Commission.

Section 29.20.750. Planning Commission.

A new Subsection (25) would be added to provide that the Planning Commission determines matters pertaining to historic preservation described in Section 29.80.227 that are not assigned to the Planning Director.

C. ARTICLE VIII, DIVISION 3. HISTORIC PRESERVATION AND LHP OR LANDMARK AND HISTORIC PRESERVATION OVERLAY ZONE

Section 29.80.220. Powers and duties of the Planning Commission.

Subsection (5) would be revised to state that the Planning Commission shall seek and consider a recommendation from the Committee, rather than seek and consider a report.

Section 29.80.222. Powers and duties of the Planning Director.

This Section would be added to provide that, upon recommendation from the Committee, the Planning Director determines matters pertaining to historic preservation not assigned to the Planning Commission.

Section 29.80.225. Historic Preservation Committee.

Subsection (a) would be revised to note that the Committee is an advisory body to both the Planning Commission and Planning Director, reflecting the powers and duties of the Committee as detailed below.

DISCUSSION (continued):

Section 29.80.227. Powers and duties of the Historic Preservation Committee.

- Revise Subsection (3) to provide that the Committee review and make recommendations to the Planning Director on minor residential and commercial exterior alterations not covered under the architecture and site approval process or the minor residential development permit, for designated properties with a LHP overlay zone pursuant to subsection 29.20.485; and
- Add a new Subsection (6) to provide that the Committee review and make recommendations to the Planning Director on requests for removal of a pre-1941 property from the Historic Resources Inventory.

D. Historic Preservation Committee Enabling Resolution

The initial enabling resolution for the Committee was adopted by the Council in 1988, describing the Committee as advisory to the Planning Commission and establishing a framework for Committee membership and operations consistent with the Town Code. This resolution was amended in 1995, 2010, 2011, and 2021. To reflect the proposed amendments to the Town Code concerning the Committee described above, a draft Enabling Resolution showing additional language underlined is included as Attachment 3.

PUBLIC COMMENTS:

Staff conducted outreach through the following media and social media resources, as well as direct communication with stakeholders as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account; and
- The Town's NextDoor page.

CEQA DETERMINATION:

The proposed amendments to the Town Code are not considered a project under Section 15378 of the California Environmental Quality Act.

CONCLUSION:

A. Summary

The Draft Ordinance will provide that the Historic Preservation Committee is an advisory

CONCLUSION (continued):

body to the Planning Commission and the Planning Director. As an advisory body, the Committee's recommendations are not subject to appeal; however, the decisions of the Planning Commission and Planning Director are appealable. The Draft Enabling Resolution reflects the changes proposed in the Draft Ordinance.

B. Recommendation

Staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance Amendments (Exhibit 1) and the Draft Enabling Resolution (Exhibit 2). The Planning Commission should also include any comments or recommended changes to the Draft Ordinance and Draft Enabling Resolution in taking the following actions:

1. Make the finding that the Proposed Amendments to the Town Code are not considered a project under Section 15378 of the California Environmental Quality Act (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1); and
3. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance (Exhibit 1) and approval of the Draft Enabling Resolution (Exhibit 2).

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance and/or the Draft Enabling Resolution with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code and/or the Draft Enabling Resolution; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Draft Ordinance Amendments
2. Draft Enabling Resolution