



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 1/16/2023

ITEM NO: 16

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DATE: January 11, 2024  
TO: Mayor and Town Council  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Provide Direction Regarding Potential Amendments to the Historic Preservation Committee Ordinance and Enabling Resolution

**RECOMMENDATION:**

Provide direction regarding potential amendments to the Historic Preservation Committee Ordinance and Enabling Resolution.

**BACKGROUND:**

Town Code Section 29.80.225 currently provides that the Historic Preservation Committee acts as an advisory body to the Planning Commission on all matters pertaining to historic preservation. Section 29.80.225 also provides that two Planning Commissioners are to be appointed to serve on the Historic Preservation Committee.

**DISCUSSION:**

Town Code Section 29.80.227 provides that Historic Preservation 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 Community Development 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.

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

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DISCUSSION (continued):

- 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 Historic Preservation Commission renders decisions with regard to some minor residential and commercial exterior alterations. By practice, the Historic Preservation 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 Historic Preservation Committee decisions to the Planning Commission.

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.4<sup>th</sup> 1152 (1996)]. It will be challenging for Planning Commissioners to hear an appeal of a decision in which they initially participated or for which they made a recommendation and appear unbiased. In order to provide a “fair hearing” when an appeal is

DISCUSSION (continued):

filed, the best practice is that any decision-maker who participated in the original decision recuse themselves from the appeal of that decision.

Given these recommendations, the Town Council's options are to:

- 1) Amend Town Code Section 29.80.225 (a) to remove Planning Commissioners from the composition of the Historic Preservation Committee; or
- 2) Retain Town Code Section 29.80.225 (a) which provides that Planning Commissioners serve on the Historic Preservation Committee, revise Town Code Section 29.80.227 to provide that the Historic Preservation Committee is advisory in nature, and advise Planning Commissioners serving on the Historic Preservation Committee to recuse themselves when Historic Preservation Committee decisions are appealed to the Planning Commission.

CONCLUSION:

Staff recommends option #2 because experience has shown that it is helpful to have Planning Commissioners on the Historic Preservation Committee. Staff also recommends that the Council direct staff to draft amendments to the Town Code to codify that it is the duty of the Historic Preservation Committee to review and make recommendations to the Community Development Director on requests for removal of properties from the Historic Resources Inventory.

If the Council should provide alternate direction to staff, any amendments to the Town Code should include assigning the duty of making determinations on requests for removal of pre-1941 properties from the Historic Resources Inventory to the appropriate deciding body as determined by the Council.

COORDINATION:

The Town Attorney's Office, Town Manager's Office, and the Community Development Department coordinated this report.

FISCAL IMPACT:

The discussion and/or direction will not affect the Town's Budget.

ENVIRONMENTAL ASSESSMENT:

Providing direction to staff is not a project defined under CEQA, and no further action is required.