



**TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE**

MEETING DATE: 07/23/2019

ITEM NO: 3

DATE: July 18, 2019
TO: Council Policy Committee
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss and Provide Direction on the Land Use Appeal Process

RECOMMENDATION:

Discuss and provide direction on the land use appeal process.

BACKGROUND:

On June 25, 2019, the Policy Committee considered changes to the Town Code regarding the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal. The Committee members reached a consensus on the following matters:

- Remove the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on an appeal from Section 29.20.300 of the Town Code in both versions; and
- Revise Section 29.20.275 of the Town Code to require the appellant's notice of appeal to include the error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record; and revise Section 29.20.295 of the Town Code to require the appellant to bear the burden of proof before in proving that the Planning Commission decision was not supported by substantial evidence.

Section 29.20.275 would also be revised to clarify that an appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal.

PREPARED BY: Joel Paulson
Community Development Director

Reviewed by: Town Manager

BACKGROUND (continued):

The Policy Committee did not reach a consensus on whether the Town Council should be able to consider additional information during the appeal process that was not available to the Commission. Therefore, after discussion, the Committee's direction was to move forward without a recommendation on this specific issue, but to include potential changes to Town Code representing the two points of view.

In the first point of view, the changes would clarify that the Town Council may consider additional information during the appeal process that was not available to the Commission. In the second point of view, the changes would clarify that it is the policy of the Town that the application will be returned to the Commission for review in light of the additional information.

DISCUSSION:

The changes that both Policy committee members reached a consensus on are as follows:

Sec. 29.20.275. - Appeals from decisions by the Planning Commission.

Any interested person as defined in section 29.10.020 may appeal to the Council any decision of the Planning Commission. The appellant must file a written notice of appeal in duplicate with the Clerk not more than ten (10) days after the decision is rendered. ~~The notice shall state clearly the reasons why the appeal ought to be granted.~~ The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record. The Council shall only hear the appeal if the notice is filed and all required fees are paid within the ten-day appeal period. ~~Once a notice of appeal has been filed, it may be withdrawn by the appellant prior to the distribution of public hearing notices, but not thereafter.~~ An appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal.

~~Sec. 29.20.300. - Decision.~~

- ~~(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.~~
- ~~(b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:~~
- ~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~
 - ~~(2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission.; or~~

DISCUSSION (continued):

~~(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.~~

~~e) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection~~

~~(b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~

~~(d) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.~~

The potential changes representing the two points of view are as follows:

- *Consider additional information*

Sec. 29.20.295. - Council hearing and decision.

When hearing the appeal, the Council shall consider the record and such additional information as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 275 exist on the appeal for reversing or modifying the Commission determination. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

- *Return application to Commission if additional information is provided*

Sec. 29.20.295. - Council hearing and decision.

When hearing the appeal, the Council shall consider the record and such additional information as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, ~~or may remand to the Planning Commission for further review and determination.~~ The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 275 exist on the appeal for reversing or modifying the Commission determination. If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of additional information that was not readily and reasonably available for submission to the Commission, the application will be returned to the Commission for review in light of the additional information unless the additional information has

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minimal effect on the application. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Staff looks forward to the discussion and direction of the Policy Committee for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's offices.