



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/03/2023

ITEM NO: 10

DATE: September 28, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss and Consider Modifications to the Review Process for Exception Requests to the State Minimum Fire Safe Regulations (Public Resource Code 4290).

RECOMMENDATION:

Discuss and consider modifications to the review process for exception requests to the State Minimum Fire Safe Regulations [Public Resource Code (PRC) 4290].

BACKGROUND:

In 1991, the Board of Forestry (BOF) adopted PRC 4290 (Attachment 1) requiring that the BOF establish minimum fire safety standards applicable to lands located in the State Responsibility Area (SRA) and as of July 1, 2021, within lands classified and designated as Very High Fire Hazard Severity Zones (VHFHSZ) within the Local Responsibility Area (LRA) (Attachment 2). The State Minimum Fire Safe Regulations (Attachment 3), as adopted by the BOF, establish the minimum wildfire protection standards for building and construction related to:

- Road standards and fire equipment access;
- Standards for signs identifying streets, roads, and buildings;
- Minimum private water supply reserves for emergency fire use; and
- Fuel breaks and greenbelts.

California Code of Regulations Title 14 §1270.07 (a) of the State Minimum Fire Safe Regulations outlines a process allowing applicants to request exceptions to the regulations where it is shown that the exceptions provide the same practical effect as the State Minimum Fire Safe Regulations (Attachment 3). In Los Gatos, exception requests are considered by the inspection

PREPARED BY: Jennifer Armer, AICP
Planning Manager

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

BACKGROUND (continued):

authority, which is Santa Clara County Fire Department (SCCFD). As defined in the State Minimum Fire Safe Regulations, same practical effect means an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety, including:

- a. Access for emergency wildland fire equipment;
- b. Safe civilian evacuation;
- c. Signing that avoids delays in emergency equipment response;
- d. Available and accessible water to effectively attack wildfire or defend a structure from wildfire; and
- e. Fuel modification sufficient for civilian and fire fighter safety.

Pursuant to Section §1270.07 (c) of the State Minimum Fire Safe Regulations, when an exception is denied, the applicant may file an appeal to be heard by the local jurisdiction who can establish or utilize an existing appeals process (Attachment 3). Consistent with the Town Code, an appeal of a SCCFD denial of an exception request to the State Minimum Fire Safe Regulations is considered by the Planning Commission.

Pursuant to the State Minimum Fire Safe Regulations, the Planning Commission may grant the appeal upon making the findings that the decision meets the same intent of providing defensible space consistent with the regulations. Section §1270.01 defines defensible space as:

The area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching wildfire or defense against encroaching wildfires or escaping structure fires. The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or development, excluding the physical structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, road names and building identification, and fuel modification measures.

In November 2022, the Town received the first appeal of a SCCFD exception request denial, and a second was received in February 2023. In both cases, the Planning Commission granted the appeal and imposed some additional conditions to ensure that, at a minimum, the SCCFD standards be met. Public concern at the time included a request for the Town to consider alternatives to this appeal process. Since these appeals, the SCCFD staff have worked on numerous exception requests to find solutions for incremental access improvements to mitigate existing, non-conforming conditions, while allowing construction of new homes on existing hillside properties.

DISCUSSION:

When a property is located within the VHFHSZ, the Town's current process for project review includes the following steps:

1. Planning application submittal by applicant;
2. Staff review, including SCCFD review for State Minimum Fire Safe Regulations compliance;
3. Resubmittal by applicant to address SCCFD comments;
4. If full compliance with Fire Safe Regulation requirements cannot be demonstrated, applicant may submit an exception request to SCCFD for review, including proposed alternative(s) to improve fire safety for the subject property and neighborhood;
5. SCCFD reviews exception request and works with applicant, including site visits if needed, to determine if proposed mitigations are sufficient;
6. If the submitted exception request is denied, the applicant can appeal to the Town with justification for the appeal that could involve discussion of whether the requirements would be considered a "taking" and therefore reduced requirements should be granted;
7. Planning Commission is the deciding body for review of appeals. Town staff and SCCFD provide draft conditions of approval for consideration by Planning Commission, including standard SCCFD requirements and potential additional improvements to reduce the fire risk of the development.

In the most recent appeal, considered by Planning Commission on March 8, 2023, the Planning Commission granted the appeal. Staff was able to recommend granting of the appeal in this case because the work between the applicant and SCCFD resulted in conditions of approval that would improve fire safety. While SCCFD was not able to approve the exception request in that case, they were able to attend the Planning Commission meeting and state that, with the additional conditions of approval, they did not object to the granting of the appeal.

This process contrasts with processes now in place for the City of Saratoga and unincorporated Santa Clara County. Both agencies have implemented an initial review of whether the fire safety requirements imposed by the inspection authority (SCCFD or CalFire) are an unconstitutional taking of private property for public benefit. In the case of Santa Clara County, this evaluation occurs after an exception request has been denied and prior to the property owners appealing the denial of an exception. The Saratoga process allows for a "takings" determination to be made prior to submittal of an exception request. While these processes resolve the "takings" question earlier in the process, they remove the opportunity for the agencies to seek incremental fire safety improvements that the Town's current process includes, even when the improvements may fall short of full compliance with the State Minimum Fire Safe Regulations.

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PUBLIC COMMENT:

Attachment 4 contains public comments received on this topic.

CONCLUSION:

For the reasons described above, SCCFD and Town staff recommend continuing with the existing appeal process to retain the opportunity for incremental improvement of existing, non-compliant conditions. By utilizing this approach, applicants can work directly with SCCFD to define beneficial improvements to deficient conditions that more closely align with the scale and scope of the proposed project.

Staff looks forward to the Town Council's discussion and direction on the review process for projects subject to PRC 4290.

COORDINATION:

The Community Development Department coordinated with the Santa Clara County Fire Department, Town Attorney, and Town Manager in the preparation of this report.

ATTACHMENTS:

1. Public Resources Code 4290
2. Fire Hazard Severity Zones Map
3. State Minimum Fire Safe Regulations
4. Public Comment