



**TOWN OF LOS GATOS  
COUNCIL POLICY COMMITTEE REPORT**

MEETING DATE: 09/24/2019

ITEM NO: 2

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DATE: September 12, 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:

- 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 to clarify that the appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal;
- Revise Section 29.20.295 of the Town Code to require the appellant to bear the burden of proof in proving that the Planning Commission decision was not supported by substantial evidence; and
- 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.

**PREPARED BY:** JOEL PAULSON  
Community Development Director

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Reviewed by: Town Manager

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BACKGROUND (continued):

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~~

~~(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.~~

BACKGROUND (continued):

Regarding Section 29.20.295 of the Town Code, the Policy Committee did not reach a consensus on whether the Town Council should be able to consider additional information during the appeal process. Therefore, after discussion, the Committee's direction in June was to move forward without a recommendation on this specific issue, after returning to the Committee with the potential changes to Town Code representing the two points of view. On July 23, 2019, and again on August 27, 2019, the Committee did not agree that the revised ordinance language provided accurately represented the second point of view, and therefore provided direction to return with revised ordinance language representing the second point of view.

DISCUSSION

The Committee agreed that the following language accurately represented the first point of view, wherein the existing ordinance language that the Town Council may consider the record and such additional information as may be offered by anyone during the appeal process, would be retained:

**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 ~~in~~ 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.

The Committee did not agree that the revised ordinance language provided in August accurately represented the second point of view, and therefore provided direction to return with the following revised ordinance language clarifying that the application will be remanded to the Planning Commission if new 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 application will be remanded to the Commission if new information is provided that was not readily and reasonably available for submission to the Commission, unless the new information has minimal effect on the application. The

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appellant bears the burden of proof before the Council ins 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.

Staff looks forward to the Policy Committee review of the revised language, discussion, and direction for next steps.

COORDINATION:

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