



City of San Leandro

Meeting Date: March 18, 2019

Staff Report

File Number: 19-157

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a City of San Leandro City Council Resolution to Amend the City of San Leandro Administrative Code to add Chapter 8 to Title 5 to Permit City Elected and Appointed Officials and City Employees the Option to Have Planning Applications that Affect Their Personal Economic Interests be Reviewed by Independent Third Parties

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council consider and approve the proposed resolution to amend the City of San Leandro Administrative Code to add administrative regulations that allow the option of an independent third party plan review for Community Development Department applications in which City of San Leandro elected officials, appointed officials, and employees may have an involved personal economic interest.

BACKGROUND AND ANALYSIS

From time to time, City elected and appointed officials, and employees ("City public official") either voluntarily submit or must submit applications (for example, to address Code violations on their property) to the Community Development Department ("CDD application") that affect real property in San Leandro in which they have a personal economic interest. To address any actual or perceived conflicts of interest under relevant State laws, and/or counter any claims of bias for or against the City public official and/or the City public official's CDD application, staff recommends to the City Council that it would be prudent to provide an option to have these CDD applications reviewed for compliance with City Codes and CDD application procedures by an independent third party, and not City staff.

All fees and costs for the independent third party's review services would be paid for by the applicant in addition to all applicable City and CDD application fees. The City would approve and contract with a list of independent third party reviewers whose fees and costs would be passed through the City to the applicant. The independent third party would analyze the City public

official's application against the relevant City Codes, and provide services to the applicant similar to what the City staff would do for any other applicant.

The independent third party reviewer would ultimately make a recommendation to the relevant City approving body. The City public official would have to seek their own conflicts of interest analysis as to whether they should or should not participate in the making of any decision. Thus, although it is possible that a City public official would be recused from participating in any City decision concerning their CDD application, this option could effectively eliminate any claims that a City public official was using their City public official position to influence a governmental decision through all stages of the application process.

The availability of this option could assist public officials in the performance of their duties, and help preserve the integrity of the City's planning and building application approval processes.

Previous Actions

None

Current Agency Policies

City Council Goals:

- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro's infrastructure.

Applicable General Plan Procedures

This action complies with Chapter 11 of the General Plan, specifically City Operating Procedures, Pages 11-9, 11-10.

Legal Analysis

The resolution and staff report to add Title 5, Chapter 8 to the City of San Leandro Administrative Code were co-drafted between the City Attorney's Office and the Community Development Department, and approved as to form by the City Attorney.

Fiscal Impacts

No fiscal impacts are anticipated since this will be a cost recovery program

PREPARED BY: Andrew Mogensen, AICP, Planning Manager, Community Development Department and Richard D. Pio Roda, City Attorney



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Resolution - Council

File Number: 19-158

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TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: RESOLUTION of the City of San Leandro City Council to Add Chapter 8 to Title 5 of the City of San Leandro Administrative Code Related to Providing an Option for City Elected and Appointed Officials and Employees to Have Their Community Development Department Applications Reviewed by an Independent Third Party

WHEREAS, the City Council believes it prudent for the effective administration of City government, and the provision of City services, to provide City elected and appointed officials, and employees the option to have independent third parties provide plan check services when such officials and employees submit planning applications; and

WHEREAS, providing such an option would not change or affect the respective public officials' legal and ethical obligations related to State conflicts of interest statutes and common law.

NOW, THEREFORE, the City Council of the City of San Leandro does **RESOLVE** as follows:

- The addition of Chapter 8 to Title 5 of the San Leandro Administrative Code attached hereto as Exhibit A, and made a part of this resolution, is approved; and
- The City Council declares that the aforementioned addition of Chapter 8 to Title 5 of the San Leandro Administrative Code shall take effect immediately.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LEANDRO
ADDING CHAPTER 8 TO TITLE 5 OF THE CITY OF SAN LEANDRO
ADMINISTRATIVE CODE RELATED TO PROVIDING AN OPTION FOR CITY
ELECTED AND APPOINTED OFFICIALS AND EMPLOYEES TO HAVE THEIR
COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS REVIEWED BY
AN INDEPENDENT THIRD PARTY**

NOW THEREFORE, the City Council of the City of San Leandro hereby **RESOLVES** that:

1. The addition of Chapter 8 to Title 5 of the San Leandro Administrative Code attached hereto as Exhibit A, and made a part of this resolution, is approved; and
2. The City Council declares that the aforementioned addition of Chapter 8 to Title 5 of the San Leandro Administrative Code shall take effect immediately.

APPROVED by the City Council of the City of San Leandro at a regular meeting duly held on the ___ day of _____, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Pauline Russo Cutter, The Honorable Mayor

ATTEST:

Leticia Miguel, City Clerk

EXHIBIT A

Addition of Chapter 8 to Title 5 of the Administrative Code

8.5.100 INDEPENDENT THIRD PARTY PLAN REVIEW AND CHECK

Independent third party plan review, including but not limited to a recommendation to a City approving body, for all Community Development Department permits shall be available as an option to any and all current City of San Leandro elected official, appointed official, or employee only. This procedure does not apply to any other Community Development Department permit applicant. The City shall make available to interested applicants the approved list of third party plan reviewers.

8.5.105 SUBMITTAL

A permit application must be submitted and associated City fees paid and/or City accounts opened prior to sending the plans and supporting documentation to the independent third party plan reviewer. Please note that the approved third party plan reviewer will not accept plans that have not been stamped received by the City of San Leandro and do not have a San Leandro Community Development Department Permit application number.

8.5.110 FEES

The applicant is responsible for paying all fees charged by the third party plan reviewer. The applicant must pay the City or replenish its City account, which shall pass through the payment paid by the applicant directly to the third party plan reviewer.

8.5.115 REVIEW AND RECOMMENDATION

The review of the application, including any proposed development, shall be in accordance with all of the City's Codes by the third party plan reviewer. Proposed development applications not compliant with City Codes shall be revised to meet the requirements and reviewed by the third party plan reviewer.

A concurrent review by the City of San Leandro's departments and/or consultants for application or proposed development may be required. The comments and requirements from the departments or consultants will be sent to the third party plan reviewer and are to be incorporated into the plans.

The City of San Leandro's Planning Manager, Building Official, or Zoning Enforcement Official will provide all code interpretations. The Alameda County Fire Department Fire Marshal or designee may require submittal for a permit and plan review.

8.5.120 ISSUANCE

The plans will be sent directly to the City from the third party plan reviewer once all comments and requirements from all reviewing parties have been addressed and approved. City staff will

prepare the plans and supporting documents for issuance and notify applicant when a permit is ready to be issued. A permit will not be issued until the ACFD, the Community Development Department, and the Engineering Department Division have approved the project if their review is required.

DRAFT