



City of San Leandro

Meeting Date: May 20, 2019

Staff Report

File Number: 19-277

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.I.

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 check 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 officials") either voluntarily submit or must submit applications (for example, to address Code violations on their property) to the Community Development Department ("CDD applications") 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, staff previously prepared a proposed resolution to amend the City of San Leandro Administrative Code to add administrative regulations that allow the option of independent third party plan review for CDD applications in these types of situations.

If a City public official chooses to have his or her CDD application reviewed by a third party reviewer, the application would be forwarded to a third party reviewer with whom the City had contracted for this service. 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 City staff would normally do for any other applicant. The independent third party reviewer would

ultimately make a recommendation to the relevant City approving body for final action. The costs of the third party reviewer would be passed through the City to the applicant.

The City Council considered the resolution at its March 18, 2019 meeting, and directed that the item be referred to the Rules Committee for additional review and discussion. The Rules Committee considered the proposed resolution at its April 11, 2019 meeting. At that meeting, staff provided clarification regarding the following issues:

1. Who is eligible for this alternative review?

The proposed changes would make the option of review by an independent third party available to City elected and appointed officials, as well as City employees.

2. Is the process optional?

The proposed resolution creates the option for CDD applications to be reviewed by independent third party plan reviewers. The option would allow the applicant to decide whether he/she wanted his/her application reviewed by a third party to address actual or perceived conflicts of interest or claims of bias.

3. What is the cost of the independent review?

Regardless of whether an application is reviewed by City staff or an independent third party, the applicant is required to pay the actual costs of such review. In some situations, third party review may actually be cheaper because the hourly rate of third party reviewers utilized by the City is often less than the hourly rate of available City staff.

4. What types of applications are eligible for the third party review?

The proposed changes to the Administrative Code would make any CDD application eligible for third party review, and it would be the applicant's decision whether or not to elect to have an application reviewed by an independent third party reviewer. An applicant may find it unnecessary to select the third party review option for applications subject to ministerial approval. An application is subject to ministerial approval if staff uses no discretion in reviewing and approving the application. For example, a building permit is a ministerial approval, since applications that meet the requirements of the Building Code are required to be approved. Ultimately, it is the decision of the applicant whether or not to use an independent third party reviewer.

The Rules Committee recommended that the proposed resolution be changed to provide that in no event would the cost paid by the applicant for the third party plan review be greater than the amount the applicant would have paid if the application was reviewed by City staff. In situations where the cost of the third party plan review was greater, the applicant would pay an amount equal to what he or she would have paid if the application was reviewed by City staff, as estimated by the Community Development Director. This change was recommended to prevent City public officials from having to pay more for their applications to be reviewed as a result of their position or employment. The Rules Committee unanimously recommended the City Council consider the proposed resolution with this modification.

Previous Actions

The City Council considered the resolution at its March 18, 2019 meeting, and directed that the item be referred to the Rules Committee for additional review and discussion. The Rules Committee considered the proposed resolution at its April 11, 2019 meeting and unanimously recommended approval by the City Council.

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 Chapter 8 to Title 5 to the City of San Leandro Administrative Code was co-drafted by the City Attorney's Office and the Community Development Department, and approved as to form by the City Attorney.

Fiscal Impacts

No significant fiscal impacts are anticipated since this will be a cost recovery program. In cases where the cost of the third party review is greater than the cost would have been if City staff reviewed the application, the City will pay that difference. Since the hourly rate of the third party reviewers utilized by the City is often less than the hourly rate of available City staff, it is anticipated that this cost to the City will be minimal.

PREPARED BY:

**Andrew J. Mogensen, AICP, Planning Manager, Community Development Department
and Richard D. Pio Roda, City Attorney**

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City of San Leandro

Meeting Date: May 20, 2019

Resolution - Council

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FROM: Jeff Kay
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Community Development Director

FINANCE REVIEW: Not Applicable

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

WHEREAS, it is in the interest of the City Council of the City of San Leandro to enable measures that provide the public with confidence in the integrity of their governance and to reinforce the transparency and credibility of the decision making process; and

WHEREAS, establishing a process to allow applications submitted by elected and appointed officials and City employees to be administered and reviewed by an independent third party is an important measure to preserve and improve the integrity and transparency of our local government.

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.

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. 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. Notwithstanding the foregoing, in no event shall the total amount paid by the applicant for the third party plan review be greater than the amount the applicant would have paid if the application had been reviewed by Community Development Department staff. If requested by the applicant, it shall be the responsibility of the Community Development Director to determine, in his or her sole judgment, what the cost would have been if the application had been reviewed by City staff.

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.

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