



AGENDA SUMMARY EUREKA CITY COUNCIL

TITLE: Design Review

DEPARTMENT: Development Services

PREPARED BY: Cristin Kenyon, AICP, Development Services Director

PRESENTED FOR: Action Information only Discussion

RECOMMENDATION

Receive report and provide direction.

FISCAL IMPACT

No Fiscal Impact Included in Budget Additional Appropriation

COUNCIL GOALS/STRATEGIC VISION

2040 General Plan Policy LU-1.21: Remove Obstacles. Monitor Eureka's development regulations (e.g., zoning and subdivision ordinance) to ensure that these regulations support the goals of the General Plan and do not create barriers to the implementation of the City's development objectives.

2040 General Plan Policy E-1.1: Business Friendly Environment. Work to remove both real and perceived barriers to development and continually reinforce a business-friendly reputation by ensuring...(c) Flexibility to adjust to unique circumstances...(g) Continuous evaluation and modernization of City regulations and procedures...

2040 General Plan Policy H-1.1: Flexible and Accommodating Regulations. Regularly evaluate and modify City development-related regulations, standards, and residential density maximums to allow for a diverse range of housing options. Actively strive to eliminate unnecessary and burdensome government regulations that restrain or impede the development of housing.

DISCUSSION

At City Council's regular meeting on June 4, 2024, Council requested a future agenda item to discuss the Design Review Committee and Design Review process. This report provides relevant background information and options for change.

Background on Design Review Committee (DRC)

Committee Member Selection

Design Review Committee (DRC) Members are appointed by the Mayor with the approval of Council and serve for four-year terms with no limit on the number of terms. Individuals interested in serving can complete an application at any time. Members are unpaid volunteers; they are donating their time to help their community.

Like all City boards, committees, and commission members, DRC Members must either be a registered voter of the City of Eureka or the Humboldt Community Services Area, or own a business in the City of Eureka (Eureka Municipal Code [EMC] §33.006). In addition, because the DRC is established to review and approve the design of proposed development projects, DRC Members must have professional experience in a design-related profession, such as architecture, land development, city planning, real estate, or landscape architecture (EMC §155.404.060.B.2). If DRC membership does not include an architect, the DRC may, by unanimous agreement, invite an architect, who may or may not be a resident of the city, to serve in an advisory capacity.

Quasi-Judicial Role

The DRC reviews and acts on applications for Design Review as well as Creative and Master Sign Permits. The DRC's role is to apply the approval criteria outlined in the City's regulations (i.e., rules adopted by City Council) to a proposed project (i.e., a specific factual situation) to determine whether the project: 1) meets the approval criteria and can be approved, (2) can meet the approval criteria with the imposition of conditions and can be conditionally approved, or (3) is inconsistent and must be denied. Their role is similar to a judge applying the law to a particular case and is therefore referred to as a "quasi-judicial" role.

The DRC, acting on behalf of the City Council, must support its quasi-judicial decisions with the adoption of findings articulating the reasons for the decisions based on the evidence in the record; this ensures the City is acting fairly and reasonably in its permitting authority. DRC Members must base their decisions on whether or not a project is consistent with the approval criteria outlined in the code, not based on personal opinion of what the approval criteria should be.

Discretionary Design Review Approval

When is Design Review Required?

Design Review is a discretionary process required for new buildings and building additions adding 30% or more to the existing floor area in multi-family residential and mixed-use zoning districts. Design Review is also required for wireless telecommunication facilities, and for any exterior modifications to a street-facing building façade located on a Pedestrian-Focused Frontage (there are Pedestrian-Focused Frontage designated in Downtown, Downtown West, and Henderson Center where the City wants to maintain and enhance an active and engaging pedestrian environment). As part of the last Inland Zoning Code annual cleanup amendment in 2023, City Council added an exemption to Design Review for transitional, supportive, emergency and farmworker housing, as well as for all housing development projects with four or fewer

residential units, including mixed-use projects with at least two-thirds of the square footage designated for residential use.

The Approval Criteria for Design Review

There are different approval criteria outlined in the City's municipal code for each application type (e.g., Design Review, Creative Sign Permits, Conditional Use Permits, Historic Preservation Review, etc.). For Inland Design Review applications, there are 7 approval criteria outlined in EMC §155.404.060.J (Design Review Criteria):

1. **Surrounding Context.** The overall project and associated buildings enhance the design quality of the area where they are located, and enhance Eureka's unique character and distinctive sense of place. New buildings may "fit in" with traditional architecture that complements the surrounding context or "stand out" with a contemporary and contrasting style. All buildings must minimize adverse impacts on neighboring properties when possible.
2. **Pedestrian Environment.** Buildings incorporate design features that support an active public realm and an inviting pedestrian environment.
3. **Architectural Style.** Buildings demonstrate a coherent and successfully executed architectural style. Building architecture may be traditional or modern. Buildings are not required to conform to any dominant architectural style or local vernacular. Creative architectural and artistic expression is encouraged.
4. **Articulation and Visual Interest.** Building facades are distinctive, create visual interest, and relate to the human scale through vertical and horizontal articulation, varied building planes, distinctive building elements, and/or noticeable architectural details. Building elements such as roofs, doors, windows, and porches are part of an integrated design and relate to the human scale. Architectural details such as articulation, trim, eaves, window boxes, and brackets contribute to the visual interest of the building.
5. **Materials.** Building facades feature high-quality materials that are appropriate to the architectural style, enhance building articulation, and are compatible with surrounding development.
6. **Safety.** The project promotes public safety and minimizes opportunities for crime through design features such as property access controls (e.g., placement of entrances, fences), increased visibility, and features that promote a sense of ownership of outdoor space.
7. **Landscaping.** Landscaping features low-water-use plants appropriate for the local climate, contains native plants in compliance with 155.328.050.D (Native Plants), and does not include any invasive species that would be harmful to native plants and habitat, in compliance with 155.328.050.E (Invasive Plants).

To approve a Design Review application, the DRC must find the proposed project complies with all applicable Design Review Criteria.

The Design Review Process

Pursuant to EMC §155.412.040.H, the DRC acts on the Design Review application at a noticed public hearing with notice mailed to all property owners within 300 feet of the project site. The fee for an Inland Design Review application is currently \$950. Much of the fee is related to the cost of public notice and hearing; the fee would be much more if the City were charging the full cost of City Staff time to review the application and write and edit the Staff report findings (Staff writes recommended consistency findings for all approval criteria for the DRC).

The DRC's decision on a Design Review application is appealable to the Planning Commission and then to City Council. If the project requires additional permits from the Planning Commission (e.g., a Conditional Use Permit), or the City Council (e.g., a Zoning Map amendment), all applications are heard by the highest review authority (i.e., Design Review is conducted by Planning Commission or City Council rather than by the DRC so that all applications for the project can be considered together at one hearing).

In addition to the subjective Design Review Criteria considered by the DRC in Design Review approval, the Inland Zoning Code includes objective design standards for the street-facing facades of buildings (§155.312), with additional standards for Pedestrian-Focused Frontages (EMC §155.208.040). The Inland Zoning Code also includes a variety of other objective standards that affect design, such as standards for outdoor lighting, screening of waste/recyclable material storage, fences and walls, landscaping, signs, and parking. City Staff ensures a proposed project is consistent with all applicable objective standards prior to accepting a Design Review application as complete and scheduling the application for DRC hearing.

Limitations on Scope of Design Review

There are significant limitations imposed on the scope of the DRC's review authority when it comes to Design Review applications.

Limitations Imposed by the City's Zoning Code

EMC §155.412.040.I (Scope of Design Review) states that when acting on a Design Review Application, the DRC must only consider those project features directly related to the 7 Design Criteria and may not require a modification to a project feature that complies with mandatory development standards in the Zoning Code:

“For example, if a project complies with the minimum setback requirement, the review authority may not require an increased setback as a condition of Design Review approval. Design Review is intended to address only aesthetic considerations not otherwise regulated by the Zoning Code.” (EMC §155.412.040.I.3 [Scope of Design Review])

Additionally, EMC §155.412.040.I prohibits DRC from considering exterior building colors or other color choices, and from requiring project changes to improve economic viability of a business as perceived by the review authority.

Limitations Imposed by State Law

The Housing Accountability Act (Government Code §65589.5) prohibits a local government from denying, reducing the density of, or making infeasible housing development projects which are consistent with objective written General Plan, zoning, and health and safety standards. California Government Code §65589.5(h)(9) defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”

The City’s 7 Design Review Criteria are not objective standards and therefore, under the Housing Accountability Act, the DRC may not deny a housing project based on these standards. The DRC can add conditions to their approval of a housing project as long as those conditions don’t reduce the number of housing units or make the project infeasible.

Example of Limitations

At least one DRC Member has clearly voted to not approve a Design Review application for a multi-family housing project based on their opinion that the housing project does not propose enough off-street parking spaces, even though the projects meet the objective minimum parking standards of the code. This is in conflict with:

1. The DRC Member’s quasi-judicial role. The DRC Member is basing their opinion on what they think the rules should be, rather than on the 7 Design Review Criteria in the Inland Zoning Code adopted by City Council.
2. The scope of Design Review outlined in the code. The DRC Member wants to require additional parking spaces even though the number of parking spaces is not an aesthetic consideration and the project complies with the minimum parking space requirements of the code.
3. The California Housing Accountability Act. The DRC Member is voting to deny a housing project even though the project is consistent with all applicable objective written standards.

What is in the DRC Member’s purview in this case? If a parking lot is proposed as part of a multi-family housing project, the DRC should be focused on the appearance of the parking lot, rather than on whether the number of spaces is adequate for the proposed use. The DRC must approve the housing project, but they can impose conditions on their approval of the housing project based on aesthetic considerations related to the 7 Design Review Criteria as long as the conditions do not require a modification to a project feature that complies with mandatory development standards in the Zoning Code, nor result in a reduction in the number of housing units, nor render the project infeasible.

These significant limitations on the scope of DRC can be frustrating to DRC Members and to property owners who receive notice of a hearing on a project in their neighborhood and expect the DRC to be able to address a wider array of issues or even deny the use.

Options for Changes to Design Review

Staff has brainstormed a number of potential changes that could be made to Design Review:

Option 1. Working to ensure DRC Members stay within the scope of their authority (no change to municipal code required): Staff could dedicate more time to educating DRC Members about the scope of their review authority, and could work with the City Attorney and City Council to notice members when they act outside their scope, and remove members who continue to disregard the limitations of their role. Any member of a board, commission, or committee may be removed with or without cause by a majority vote of the City Council (EMC §33.006).

Option 2. No longer have a DRC and instead have Planning Commission assume the DRC's role (this option requires changes to the municipal code): Under this option, the City would no longer have a DRC, and Planning Commission would review applications for Design Review and Creative and Master Sign Permits in addition to their other duties. Staff does not recommend this option because this would be too much to ask of Planning Commission given Planning Commission and DRC's current combined workloads, and would not address the conflict between subjective design standards and the Housing Accountability Act.

In addition to reviewing applications, the DRC conducts free pre-application review, during which they provide non-binding opinions and ideas about how to make a future project successful. For example, when IHOP wanted a pole sign that deviated from sign type and area standards, the DRC helped them in a pre-application review brainstorm how to design the sign to meet the criteria for Creative Sign Permit approval, which ultimately resulted in IHOP submitting a successful application. Planning Commission not only does not have the time for pre-application review, but also Planning Commission's current membership does not have the expertise to problem-solve design issues. Planning Commission currently has no architects, graphic designers or other design-related professionals, and instead has more expertise in city planning, historic preservation, economic development, and natural resource protection.¹

Option 3. Reduce DRC's role in discretionary Design Review approval (this option requires changes to the municipal code): Under the City's old Inland Zoning Code (and current Coastal Zoning Code), there was no notice to surrounding property owners required for Design Review, and the DRC either approved the design drawings or submitted a written report to the Planning Commission recommending conditional approval, modification, or disapproval. If the Committee approved the drawings, or the Committee's conditions or modifications were acceptable to the applicant, then the Design Review process was complete. If the DRC recommended conditions or

¹ Pursuant to EMC §155.404.050.B.2, Planning Commission Members must have interest and/or experience in city planning, land development, land use law, architecture, urban design, natural resource protection, real estate, transportation planning, economic development, or other relevant planning-related fields.

modifications not acceptable to the applicant, or if the DRC recommended disapproval, the application was automatically elevated to Planning Commission. Failure of the DRC to act within 21 days of a complete application was deemed approval of the drawings. The City could re-adopt this former process or something similar. Not requiring notice would reduce the application fee for Design Review (Coastal Design Review does not require notice and is only \$360), but would not save significant Staff time, nor address the conflict between subjective design standards and the Housing Accountability Act.

Option 4. Exempt all housing projects (including mixed-use projects that are at least 2/3rds housing) from Design Review (this option requires changes to the municipal code): The City could exempt all housing development projects (as defined by the Housing Accountability Act) from the discretionary Design Review application process to prevent conflicts with State Law. Because Design Review is often the only discretionary approval required for housing projects outside the Coastal Zone, if Design Review is no longer required, housing projects would likely be allowed in the City by-right, without a noticed public hearing or environmental review under the California Environmental Quality Act, which could reduce public participation and transparency. City Staff would continue to ensure each project's consistency with the objective design-related standards of the code during the Building Permit process and when processing any other required permit applications for the project. Property owners and developers would be able to read and understand development requirements directly from the code, rather than wait for a public hearing to learn if their roof pitch "enhances the design quality of the area." Property owners and developers would have assurance that the City would not deny a project that follows the City's written rules.

Option 5. Do away with subjective Design Review altogether (this option requires changes to the municipal code): Under this scenario, a Design Review application and noticed public hearing would no longer be required for any type of development project and the 7 subjective Design Review Criteria would be removed from the code. Option 5 would have the same consequences as Option 4, except that commercial development would also be affected, in addition to residential development. This would relieve business and property owners on Pedestrian-Focused Frontages in Downtown, Downtown West and Henderson Center from having to pay \$950 and go through discretionary review for any alteration to their street-facing façade, which would likely be positive for economic development.

If City Council selects this 5th option, Staff recommends retaining a discretionary Design Review application process just for those projects that do not (or for some reason cannot) comply with the objective design standards written in the code, to allow for flexibility and creativity in design. This would mirror the City's sign approve process: currently, signs that meet the objective sign standards in the code are approved ministerially by Staff; if an applicant wishes to deviate from standards, they can instead apply for a discretionary Creative or Master Sign Permit with a noticed public hearing in front of the DRC. The DRC would still hear Design Review applications; their workload would just be significantly reduced.

If Council selects this option, Staff also recommends reviewing and strengthening the objective standards of the code. With State adoption of the Housing Accountability Act and Housing Crisis Act², and with growing awareness of social justice/equity issues related to subjective review by an appointed body of individuals that may not be representative of the larger community, many cities and counties throughout California are currently grappling with their Design Review process, and a number of local jurisdictions have done away with subjective Design Review. Therefore, there are a growing number of examples of objective design standards/processes that City Staff can utilize to strengthen Eureka's objective design standards.

² Pursuant to the Housing Crisis Act of 2019 (CA Govt. Code §66300), City Council is prohibited from adopting any new subjective design and development standards for housing until the Act is slated to expire January 1, 2030.