



City of Sunnyvale

Agenda Item

21-0380

Agenda Date: 4/12/2021

REPORT TO PLANNING COMMISSION

SUBJECT

Recommend that the City Council Introduce an Ordinance Making Minor Amendments to Chapters 19.18 (Residential Zoning Districts), 19.20 (Commercial Zoning Districts), and 19.79 (Accessory Dwelling Units) of the Sunnyvale Municipal Code and Amending Chapter 19.98 (General Procedures) of the Sunnyvale Municipal Code to Create a Procedure for Appealing Incompleteness Determinations, Adopt a Resolution to Amend the 2020/21 Citywide Fee Schedule Related to Appeals to Planning Commission, and Find that these Actions are Exempt from CEQA

BACKGROUND

In recent years the State legislature has adopted numerous bills that affect how local agencies must handle applications for residential development. Zoning code modifications were adopted by the City Council to address:

- Residential Development in Non-residential Zoning Districts (Ordinance Introduced November 5, 2019, RTC No. 19-1162)
- Accessory Dwelling Unit (ADU) regulations (Ordinance introduced December 10, 2019, RTC No. 19-1249)

Staff has been able to address additional State requirements administratively; however, based on more experience with these State codes, staff finds that it is prudent to adopt amendments to the Zoning Code to more clearly address the State provisions. The proposed Ordinance makes several minor changes to the Sunnyvale Municipal Code (SMC), Title 19 (Zoning), primarily affecting residential development:

- Authorize the Director of Community Development to create forms and requirements for processing Density Bonus applications.
- Clarify that a residential project on a commercially zoned site will be subject to residential zoning standards.
- Make minor technical amendments and clarifications to the City's Accessory Dwelling Unit Ordinance.
- Create a process for appealing a staff determination that a development application is incomplete.

The City Council is scheduled to consider this item on May 4, 2021.

EXISTING POLICY

SUNNYVALE GENERAL PLAN
Land Use and Transportation Element

21-0380

Agenda Date: 4/12/2021

Policy LT-4.2b - Amend the Zoning Code and Zoning Map to incorporate mixed-use zoning districts in appropriate portions of Village Centers and Corridor Mixed-Use designations.

Policy LT-4.3 - Enforce design review guidelines and zoning standards that ensure the mass and scale of new structures are compatible with adjacent structures, and also recognize the City's vision of the future for transition areas such as neighborhood Village Centers and El Camino Real Nodes.

Goal LT-5 - Creation, preservation, and enhancement of Village Centers and neighborhood facilities that are compatible with residential neighborhoods. Support the development of Village Centers that create an identity and "sense of place" for residential neighborhoods, provide neighborhood gathering places, and allow a vibrant mix of public, commercial, and residential activities. Through development review and other permitting processes, ensure adequate protection is provided to residential neighborhoods when new uses and development projects are considered.

Housing Element

Policy HE-4.7 - Take advantage of existing infrastructure and public improvements to provide additional housing by allowing accessory living units within residential neighborhoods.

ENVIRONMENTAL REVIEW

The actions being considered do not require environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) because the proposed amendments are technical and administrative in nature and do not change the uses or intensity of development allowed within the City. Therefore, it can be seen with certainty that there is no possibility that the proposed actions will have an impact on the environment.

DISCUSSION

Staff is proposing several minor modifications to SMC Sections of Chapter 19.18 (Residential Zoning Districts), 19.20 (Commercial Zoning Districts), 19.79 (Accessory Dwelling Units), and 19.98 (General Procedures) of Title 19 (Zoning). The draft Ordinance can be reviewed in Attachment 2. In addition, staff is also proposing to create a new fee for appeals of incompleteness decisions (Attachment 3). The proposed changes are described below in detail.

Density Bonus Application Guidelines

Historically, Sunnyvale received very few requests for incentives, concessions or waivers under the Density Bonus Law (Government Code Section 65915). However, many residential projects in Sunnyvale now include a Density Bonus component, most of which include minor concessions or waivers. In order to facilitate staff's ability to process these requests, and to ensure that the City's requirements are clear and understood by developers, staff proposes an amendment to SMC Section 19.18.025 that will authorize the Director of Community Development to establish guidelines, forms and requirements for the filing, processing, and consideration of Density Bonus applications. The proposed amendment will also remove a reference to a maximum 35% density bonus, as this is no longer consistent with state law.

Residential Projects in Commercial Zones

In 2017, when the City updated the Land Use and Transportation Element (LUTE) of the General Plan, certain properties within the C-1 (Neighborhood Business) zoning district were designated for future mixed-use Village Centers. At the LUTE adoption, the properties were not rezoned to a compatible residential or mixed-use zoning designation because it was anticipated that the rezoning

21-0380

Agenda Date: 4/12/2021

would occur during the process for future area plan preparation and redevelopment of the property. Provisions in the State Legislature's 2019 housing package (Senate Bill 330) included limitations for the ability of a jurisdiction to deny residential projects on sites that have been designated for residential under the jurisdiction's General Plan, even if the underlying zoning does not permit residential uses. Sunnyvale's Land Use and Transportation Element (adopted 2017) contemplated the preparation of area plans for the Village Centers which would establish development standards for each site. Under the California Housing Accountability Act (as amended in 2017), a local agency cannot deny an application for a residential development unless it is inconsistent with the agency's objective development standards. SB 330 broadened this requirement to state that a residential project is allowed if it is consistent with either the General Plan designation or zoning. Although the LUTE contemplated future adoption of Village Center plans before a residential project would be approved, the LUTE designated the Village Centers for residential development at an average density of 18 dwelling units per acre. Although this aspect of SB 330 has not yet been tested in court, adoption of a Village Center plan likely does not meet the definition of an "objective standard" under the Housing Accountability Act because the requirements are not knowable to the developer. Therefore, the proposed amendment to Sunnyvale Municipal Code Section 19.20.040 clarifies that when state law requires the City to allow a residential project on a commercially zoned site, the project is subject to the compatible residential standards that apply to a project of equivalent density.

Accessory Dwelling Units

The State Legislature's 2019 housing package included major changes to the Accessory Dwelling Unit (ADU) law (Government Code Section 65852.2). In response, the City Council adopted new ADU regulations in early 2020, codified as SMC Chapter 19.79. Over the past year, staff has identified several items of the ADU Ordinance that need to be clarified. The proposed revisions include the following:

- Amend SMC Section 19.79.020(d) to clarify that applicants are not required to replace covered parking spaces that are removed or demolished as a result of the construction of an ADU (such as a garage conversion). Staff intended to mirror the text of the state law, but inadvertently omitted the word "covered".
- Add a definition of "multi-family dwelling structure" to SMC Section 19.79.030(a) to be consistent with the state law governing ADUs on multi-family properties. Sunnyvale's Zoning Code defines a multi-family dwelling as a building with three or more units, and duplexes are a separate category. For purposes of ADU regulations, state law defines a multi-family dwelling structure as a building with two or more attached dwelling units.
- Amend SMC Section 19.79.030(b) to clarify that at least one ADU may be created from non-liveable interior space in a multi-family dwelling structure. Also, clarify that only standard ADUs (SADUs) are allowed in multi-family dwellings, not junior ADUs (JADUs).
- Amend the first line of SMC Section 19.79.030(c) to clarify that the requirements in that subsection apply to ADUs that are converted from interior space in accessory structures as well as in single family homes.
- Amend SMC Section 19.79.030(c)(6) to clarify that a JADU may be included with either an existing or proposed single family dwelling.
- Add a reference to "required rear yard maximum lot coverage" in SMC Section 19.79.040 to clarify that this is one of the zoning standards that applies to non-streamlined ADUs.
- Correct a typographical error in SMC Section 19.79.060.

Appeals of Incompleteness Determinations

21-0380

Agenda Date: 4/12/2021

When a development application is received, staff reviews the application to determine if it contains all the required submittal information. If required submittal material is missing, staff notifies the applicant that the application is “incomplete.” Once this determination is made, the project does not move forward in the process until the applicant submits the missing information or otherwise corrects the deficiencies in their application.

The Permit Streamlining Act (Government Code Section 65943) requires agencies to provide a way for applicants to appeal a determination that their application is incomplete. Sunnyvale never adopted a specific appeal process for incompleteness determinations because these appeals were very rare. State law historically gave city staff broad discretion to determine what information was needed in an application, so developers had little to gain by appealing. However, as a result of the recent changes to state housing law, staff has less discretion and must comply with stricter processing requirements for residential applications. For example, the items listed on the notice of incompleteness must be based on objective standards that were disclosed to the applicant on the City’s submittal checklist. As a result, residential developers may be more inclined now to appeal incompleteness determinations. Recently, staff was faced with this situation, but was able to resolve the issue without an appeal hearing.

SMC Section 19.8.070 allows any person aggrieved by a decision of the Director of Community Development to appeal the decision to the Planning Commission. Furthermore (unless modified by another section of the Code), any decision of the Planning Commission can be appealed or called up by City Council. Under the Permit Streamlining Act, appeals of incompleteness determinations must be decided within 60 days, *including* any subsequent appeal to a higher body. This creates a very short timeline for both hearings. Depending on the Planning Commission and City Council schedules, the City may have to call special meetings to meet the 60-day deadline.

The proposed Ordinance would add a new appeal process to SMC Chapter 19.98 (General Procedures). Applicants will be required to file a written appeal within 15 days of being notified that the application was incomplete. The appeal will be heard by the Planning Commission within 60 days as required by state law. The Planning Commission’s decision shall be final (i.e., there would be no further appeal to the City Council). The proposed Ordinance includes findings that mirror the requirements set forth in the Permit Streamlining Act.

Fees for Appealing Decisions to Planning Commission

The City’s Master Fee Schedule does not include a specific fee for appealing a decision of the Director of Community Development to the Planning Commission, such as an appeal of an incompleteness determination. Staff proposes to amend the Fee Schedule to add a fee of \$206 for such appeals (plus the appellant would be subject to the Technology Surcharge fee of \$22.25 which applies to any Planning application filed). This fee is the same amount as “Appeal of Non-Public Hearing Decision of staff” which is considered by the Planning Commission.

FISCAL IMPACT

A small amount of revenue may be generated by the proposed fee depending on the number of appeals filed. Appeal fees have typically been kept lower than actual cost to enable community members to participate in the discretionary review process. The staff is currently working on a comprehensive update to the Development Services fees and all appeal fees, including this new fee, will be examined as part that effort.

21-0380

Agenda Date: 4/12/2021

PUBLIC CONTACT

As of the date of staff report preparation, staff has received no comments on the item.

Notice of Public Hearing

- Published in the *Sun* newspaper

Staff Report

- Posted on the City's website

Agenda

- Posted on the City's official notice bulletin board
- Posted on the City's website

ALTERNATIVES

Recommend that the City Council:

1. Introduce an Ordinance to Amend Certain Sections of Chapter 19.18, 19.20, 19.79, and 19.98 of Title 19 (Zoning) of the Sunnyvale Municipal Code, Adopt a Resolution to Amend the 2020/21 Citywide Fee Schedule Related to Appeals to Planning Commission, and Find that these Actions are Exempt from CEQA.
2. Introduce an Ordinance with modifications.
3. Do not introduce the Ordinance and do not amend the fee schedule.

STAFF RECOMMENDATION

Alternative 1: Introduce an Ordinance to Amend Certain Sections of Chapter 19.18, 19.20, 19.79, and 19.98 of Title 19 (Zoning) of the Sunnyvale Municipal Code, Adopt a Resolution to Amend the 2020/21 Citywide Fee Schedule Related to Appeals to Planning Commission, and Find that these Actions are Exempt from the California Environmental Quality Act .

Making the proposed changes to the Sunnyvale Municipal Code will help staff provide information to the community and applicants that is clear and understandable. The modifications associated with the Village Center properties will help protect existing neighborhoods by allowing compatible residential development, and the City by creating an appeal process for incompleteness determinations. Staff has seen an increase in the number of applications for Accessory Dwelling Units and has struggled with explaining the sections proposed for amendment to the public, these changes will clarify the standards for staff and the public and make the process more seamless.

Prepared by: Amber Blizinski, Principal Planner

Reviewed by: Andrew Miner, Assistant Director, Community Development

Reviewed by: Trudi Ryan, Director of Community Development

Reviewed by: Tim Kirby, Director of Finance

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. *Reserved for Report to Council*
2. Draft Ordinance
3. Draft Fee Resolution

21-0380

Agenda Date: 4/12/2021
