



# City of Sunnyvale

## Agenda Item

24-0385

Agenda Date: 2/26/2024

### REPORT TO PLANNING COMMISSION

#### **SUBJECT**

**Proposed Project:** Consider actions related to implementation of the 2023-2031 Housing Element to amend the By-Right Approval process for certain parcels within the City:

**A. Introduce an Ordinance** to Amend By-Right Approvals (Chapter 19.73 of the Sunnyvale Municipal Code) to clarify ministerial review of projects as it relates to proposed subdivisions.

**File #:** PLNG-2024-0105

**Location:** Citywide

**Applicant:** City of Sunnyvale

**Environmental Review:** Non-discretionary project (Public Resources Code Section 21080(b)(1), CEQA Guidelines Sections 15268, 15357)

**Project Planner:** Julia Klein, (408) 730-7463, jklein@sunnyvale.ca.gov

#### **REPORT IN BRIEF**

**General Plan:** Various, including Moffett Park Specific Plan, Transit Mixed-Use, El Camino Real Specific Plan, Residential High Density

**Existing Zoning:** Various, including MP-R, DSP-4, DSP-14, DSP-16, MXD-IV, ECR-MU42, ECR-MU54, Split (ECR-MU54 and ECR-C) and R-4/PD

**Existing Site Conditions:** Various Uses, including Residential, Office, Commercial and Industrial

**Surrounding Land Uses:** Various

**Issues:** Compliance with the Adopted 2023-2031 Housing Element and State Laws and the 60-day review by the State Department of Housing and Community Development.

**Staff Recommendation:** Recommend to City Council Alternatives 1 and 2:

1. Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15268 and 15357.
2. Introduce an Ordinance in Attachment 2 to amend By-Right Approvals (Chapter 19.73 of the Sunnyvale Municipal Code) to clarify ministerial review of projects as it relates to proposed subdivisions.

#### **BACKGROUND**

On January 30, 2024 the City Council adopted an Urgency Ordinance and Introduced an Ordinance that, among other amendments, add By-Right Approvals (Chapter 19.73) to the Sunnyvale Municipal Code. The second reading of the ordinances was held on February 6, 2024 (see link in Attachment 2). The new ordinance section was adopted to address comments from California Department of Housing and Community Development (HCD) and requirements of State Laws as it relates to Housing Element certification. This action was required because the City did not have a certified Housing Element by the statutory deadline of January 31, 2023.

The draft Urgency ordinance was sent to HCD on January 25, 2024 (a few days before the City

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Council considered the Urgency and regular ordinances). Staff followed up and sent the adopted Urgency ordinance on January 31, 2024; HCD acknowledged receipt of the ordinance. Overall, the adopted Housing Element met the State criteria. However, on February 12, 2024 HCD provided one comment on the adopted By-Right Zoning regarding the review of ministerial projects as it relates to proposed subdivisions. At this time, the City's Housing Element is not certified as being in compliance. Staff is bringing forward a change to the newly adopted By-Right Approvals (SMC 19.73) section to address HCDs comments.

An Urgency Ordinance will be brought to the City Council on February 27, 2024 with the same changes proposed in Attachment 2. This would be an interim measure until the formal Ordinance contained in this report goes into effect if adopted.

### **EXISTING POLICY**

For more information on applicable City policies see the staff report link in Attachment 3. Below is the most applicable policy from the Housing Element.

### **HOUSING ELEMENT**

- **Policy H-4.5** By-right Housing on Previously Identified Housing Sites. Allow housing developments with at least 20 percent affordable housing by-right, consistent with objective development and design standards, on lower-income sites counted in previous housing cycles, consistent with Government Code Section 65583.2.
- **H2. Rezone Program.** As of the start of the planning period (January 31, 2023), the City has an unmet RHNA of 1,535 lower-income and 3,280 above moderate-income units. The City shall approve a specific plan for the Moffett Park area to accommodate the City's RHNA shortfall by January 31, 2024, and shall ensure that sites rezoned to meet the City's unmet lower-income RHNA meet specific.

### **ENVIRONMENTAL REVIEW**

The proposed action does not require environmental review under the California Environmental Quality Act (CEQA) because it implements a state-mandated program and is therefore not a discretionary project subject to CEQA (Public Resources Code Section 21080(b)(1), CEQA Guidelines Sections 15268, 15357).

### **DISCUSSION**

#### **Housing Element Implementation**

As noted above, the adopted Housing Element has not been certified yet. HCD requested one additional change to the By-Right Approval section of the Zoning Code. Specifically, it pertains the processing of ministerial reviews as they relate to proposed subdivisions. HCD has interpreted the City's adopted code revisions to state that projects that include subdivisions cannot go through the By-Right Approval process. That was not the intent of the City's adopted ordinances. The adopted ordinances do not prevent an applicant from seeking By-Right Approval after a subdivision application is submitted and approved, but the Subdivision Map Act has requirements for public hearings and appeals. Staff have proposed minor changes to adopted ordinances and requested that HCD review the changes before we move forward. City staff has worked with HCD staff to perfect the language of the revisions; the ordinance includes recommended revisions from HCD.

This amendment does not change the list of by-right parcels currently shown in Chapter 19.73; but

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would apply to future projects on said parcels. For the list of parcels and maps, refer to January 30, 2024 staff report in Attachment 3.

### **Adopting Ordinances**

The schedule for the Formal Ordinance and Urgency Ordinance is:

- 2/26/2024 - Planning Commission meeting - make recommendation to City Council to amend to Chapter 19.73 (By-Right Approval).
- 2/27/2024 - City Council - Urgency Ordinance; and if adopted, would be effective for 45 days (or thru 4/12/2024).
- 3/19/2024 - City Council meeting - Ordinance introduction to amend Chapter 19.73.
- 3/26/2024 - City Council meeting - 2nd reading of Ordinance to amend Chapter 19.73; and if adopted, would go into effect in 30 days (or on 4/25/2024).
- 4/9/2024 - City Council meeting - Urgency Ordinance Extension; and if adopted, would extend urgency ordinance until 4/25/2024.

The formal Ordinance would go into effect by the time the Urgency Ordinance would expire. These actions would keep the City in compliance with the Adopted Housing Element.

Although it is normally the City's practice to take urgency zoning ordinances to Planning Commission for a recommendation, Government Code Section 65858 allows the City Council to adopt an urgency ordinance "[w]ithout following the procedures otherwise required prior to the adoption of a zoning ordinance." Due to the extreme urgency of this situation, the Planning Commission will only be asked to review the regular (non-urgency) ordinance.

### **FISCAL IMPACT**

No fiscal impact is anticipated due to the recommended action; however, failure to adopt the proposed Ordinances could result in HCD finding the City's Housing Element out of compliance.

### **PUBLIC CONTACT**

Public contact was made by posting the Planning Commission agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. Email notifications were sent to interested parties, including housing advocacy organizations and neighborhood groups. The hearing date was included on the City's Housing Element Update webpage and published in the *Mercury News* newspaper. Notices were mailed to property owners and tenants within 300 feet of the sites eligible for By-Right approvals. The agenda and report are available at the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

Recommend to the City Council:

1. Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15268 and 15357.
2. Introduce an Ordinance in Attachment 2 to amend By-Right Approvals (Chapter 19.73 of the Sunnyvale Municipal Code) to clarify ministerial review of projects as it relates to proposed

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subdivisions.

3. Alternative 2 with modifications.
4. Do not Introduce the Ordinance and provide direction to staff on desired changes.

### **RECOMMENDATION**

Recommend to City Council:

1. Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15268 and 15357.
2. Introduce an Ordinance in Attachment 2 to amend By-Right Approvals (Chapter 19.73) to the Sunnyvale Municipal Code.

The proposed Ordinance implements the 2023-2031 Housing Element H2. Rezone Program by amending the By-Right Approval (Chapter 19.73) to clarify that projects with subdivisions would be subject to a ministerial review process and would need to comply with the Subdivision Map Act. Additionally, staff will be bringing a Revised Urgency Ordinance and an Extension to the Urgency Ordinance to City Council to implement the proposed minor changes (as noted above in the Discussion section).

Prepared by: Julia Klein, Principal Planner  
Reviewed by: Shaunn Mendrin, Planning Officer  
Reviewed by: Trudi Ryan, Director of Community Development  
Reviewed by: Connie Verceles, Deputy City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Reserved for Report to Council
2. Draft Ordinance
3. RTC 24-0266, January 30, 2024, By-Right Zoning Introduction
4. HCD Letter Dated February 12, 2024