

DRAFT 10/24/14 JB

ORDINANCE NO. ____-14

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING TITLE 19 (ZONING)
REGARDING THE APPEAL PROCESS FOR LAND USE
PROJECTS**

WHEREAS, the City Council has reviewed the provisions in the zoning code related to the appeal process for land use decisions, and desires to make certain changes to the code for the purpose of clarity and administrative efficiency.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION AMENDED. Section 19.44.140 of Chapter 19.44 (Sign Code) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.44.140. Appeals, judicial review.

(a) Any action of the director regarding signs may be appealed pursuant to the procedures contained in ~~Section-Chapter 19.98.070(e) (Appeal of all other permits and actions) (General Procedures).~~

(b) ~~Status Quo. During the pendency of review or appeal, the status quo of the subject sign(s) shall be maintained. Stay of Proceedings. The request for appeal shall automatically stay the proceedings until a final decision is rendered on the action, permit or determination being appealed, except This does not apply~~ whenever a sign, by virtue of its physical condition, constitutes an immediate and significant threat to public safety.

(c) [Text unchanged.]

SECTION 2. SECTION AMENDED. Section 19.52.050 of Chapter 19.52 (Art in Private Development) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.52.050. Art permit.

(a) – (d) [Text unchanged.]

(e) Appeals. Actions of the arts commission may be appealed by any aggrieved person in accordance with Chapter 19.98 (General Procedures).; ~~including an arts commissioner or city councilmember. Written appeals shall be filed within fifteen calendar days of the date of the action. The appeal shall state the grounds for the appeal. All proceedings initiated by the action of the arts commission will be suspended pending a final determination by the city council of the appeal's merits at a public hearing.~~ The city council, based on the finding, may either:

(1) – (2) [Text unchanged.]

(f) [Text unchanged.]

SECTION 3. SECTION AMENDED. Section 19.58.060 of Chapter 19.58 (Family Child Care Homes) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.58.060. Director approval or use permit required.

Except as otherwise modified in this chapter, the requirements and procedures identified in Chapter 19.98 (General Procedures) apply.

(a) Director Approval—Single-Family Dwelling in Residential Zoning District. Each licensee is required to obtain approval by the director of community development for operation of a large family child care home in a single-family dwelling in any residential zoning district. Without public notice or hearing, the director may approve or deny a large family child care home application upon determining its conformance with Section 19.58.050 (Standards for Large Family Child Care Homes) and applicable provisions of this title. The decision of the director shall be final.

(b) – (c) [Text unchanged.]

SECTION 4. SECTION AMENDED. Section 19.58.070 of Chapter 19.58 (Family Child Care Homes) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.58.070. Revocation of use permit by the planning commission.

A use permit for a large family child care home may be revoked by the planning commission, after a public hearing thereon, by an affirmative vote of a majority of its voting members, when the planning commission finds a violation of or noncompliance with the conditions of approval of the permit. The decision by the planning commission to revoke a use permit for a large family child care home is appealable to the city council under the requirements and procedures in Chapter 19.98 (General Procedures).

SECTION 5. SECTION AMENDED. Section 19.80.040 of Chapter 19.80 (Design Review) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.80.040. Procedures and decisions.

(a) Design Review without Public Notice or Hearing by Director. For design review applications listed in this subsection, the director of community development may, without public notice or hearing, approve the application as requested or as changed, modified or conditioned by the director or deny the design review application based on Section 19.80.050 (Finding). The following design review applications shall require design review without public notice or hearing:

(1) New single-story single-family or duplex residence in the R-0, R-1 or R-2 zoning district which does not exceed either the FAR or gross floor area threshold established in Section 19.32.020;

(2) Single-story exterior modification or addition to a single-family or duplex residence in the R-0, R-1 or R-2 zoning district which does not exceed either the FAR or gross floor area threshold established in Section 19.32.020; and

(3) As otherwise required by this title.

(b) Design Review with Public Notice and No Hearing by Director. For design review applications listed in this subsection, the director of community development may, after providing public notice as described in ~~Section~~ Chapter 19.98.040 (Public Notice General Procedures) and a 14-day public comment period, approve the application as requested or as changed, modified or conditioned by the director, or deny the design review application based on Section 19.80.050 (Finding). Onsite postings for single-family or duplex projects shall include a streetscape elevation showing the proposed home and one adjacent home on each side. The following design review applications shall require design review with public notice and no hearing:

(1) New two-story single-family or duplex residence in the R-0, R-1 or R-2 zoning district which does not exceed either the FAR or gross floor area threshold established in Section 19.32.020;

(2) Second-story exterior modification or second-story addition to a single-family or duplex residence in the R-0, R-1 or R-2 zoning district which does not exceed either the FAR or gross floor area threshold established in Section 19.32.020;

(3) New nonresidential building adjacent to a residential zoning district and which is not subject to any other discretionary permit in this title;

(4) Exterior modification or addition to a nonresidential building adjacent to a residential zoning district and which is not subject to any other discretionary permit in this title; and

(5) As otherwise required by this title.

(c) Appeal of Decision by Director. A decision by the director of community development on a design review pursuant to subsections (a) and (b) may only be appealed by the applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Chapter 19.98 (General Procedures). After receiving an appeal from the decision of the director ~~of community development on a requested design review~~, and following a public hearing, the planning commission by the affirmative vote of a majority of its voting members may:

(1) – (2) [Text unchanged.]

(d) Design Review with Public Hearing by Planning Commission. For design review applications listed in this subsection, the planning commission may, after holding a public hearing, approve the application as requested or as changed, modified or conditioned by the commission, or deny the design review application based on Section 19.80.050 (Finding). Onsite postings for single-

family or duplex projects shall include a streetscape elevation showing the proposed home and one adjacent home on each side. The following design review applications shall be require design review at a public hearing by the planning commission:

(1) New single-family or duplex residence in the R-0, R-1 or R-2 zoning district which exceeds either the FAR or gross floor area threshold established in Section 19.32.020;

(2) Addition to a single-family or duplex residence in the R-0, R-1 or R-2 zoning districts which exceeds the FAR or gross floor area threshold established in Section 19.32.020;

(3) Multiple-family projects of 3 to 50 units. in the R-2, R-3, R-4, R-5 and R-MH zoning districts and which is not subject to any other discretionary permit or action by this title; and

(4) As otherwise required by this title.

(e) Appeal of Decision by Planning Commission. A decision by the planning commission on a design review pursuant to subsection (d) may only be appealed by the applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Chapter 19.98 (General Procedures). After receiving an appeal from the decision of the planning commission, ~~on a requested design review,~~ and following a public hearing, the city council by the affirmative vote of a majority of its voting members may:

(1) – (2) [Text unchanged.]

SECTION 6. SECTION REPEALED. Section 19.82.030 of Chapter 19.82 (Miscellaneous Plan Permit) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby repealed as follows:

~~19.82.030. Procedures.~~

~~Upon a decision by the city council to approve or deny an application on appeal for a determination of a finding of convenience or necessity, the director of community development is authorized to prepare a letter addressed to the applicant on behalf of the city, declaring that the city has made a determination that the public convenience or necessity would or would not be served by issuance of a permit for the purposes of Business and Professions Code Section 23958.4(b)(2), and that such determination shall be final.~~

SECTION 7. SECTION AMENDED. Section 19.82.040 of Chapter 19.82 (Miscellaneous Plan Permit) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby renumbered and amended to read as follows:

19.82.040030. Procedures and Decisions.

(a) Review without Public Notice or Hearing by Director. Except for those applications listed in subsection (b), the director of community development, without notice or hearing, may:

(1) Approve the miscellaneous plan permit as requested or as changed, modified or conditioned by the director, if the director finds that the use or project as approved meets at least one of the required findings.

(2) Deny the miscellaneous plan permit if the director finds that the use or project would not meet either of the required findings.

(b) Review with Public Notice and No Hearing by Director. For miscellaneous plan permit applications listed in this subsection, the director of community development may, after providing public notice as described in ~~Section—Chapter~~ 19.98.040 (~~Public Notice~~General Procedures) and a 14-day public comment period, approve the application as requested or as changed, modified or conditioned by the director, or deny the application based on the required findings. The following miscellaneous plan permit applications shall require review with public notice and no hearing:

- (1) Accessory structures as regulated in Chapter 19.40;
- (2) Donation centers for used goods;
- (3) Medical clinics; and
- (4) As otherwise required by this title.

(c) Appeal of Decision by Director—General. After receiving an appeal from the decision of the director of community development on a miscellaneous plan permit, and following a public hearing, the planning commission, whose decision is final, by the affirmative vote of a majority of its voting members may:

- (1) – (2) [Text unchanged.]

(d) Appeal of Decision by Director—Determination of Convenience and Necessity. The decision by the director of community development on a determination of a finding of convenience or necessity may be appealed directly to the city council. After receiving an appeal from the decision of the director on a requested determination of convenience or necessity and following a public hearing, the city council by the affirmative vote of a majority of its voting members may:

- (1) – (2) [Text unchanged.]

(3) Upon a decision by the city council to approve or deny an application on appeal for a determination of a finding of convenience or necessity, the director of community development is authorized to prepare a letter addressed to the applicant on behalf of the city, declaring that the city has made a determination that the public convenience or necessity would or would not be served by issuance of a permit for the purposes of Business and Professions Code Section 23958.4(b)(2), and that such determination shall be final.

SECTION 8. SECTION AMENDED. Section 19.82.050 of Chapter 19.82 (Miscellaneous Plan Permit) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby renumbered to read as follows:

19.82.050040. Findings.

- (a) – (b) [Text unchanged]

SECTION 9. SECTION AMENDED. Section 19.84.040 of Chapter 19.84 (Variances) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.84.040. Actions.

- (a) [Text unchanged.]
- (b) After receiving either an application for a variance, or an appeal from the decision of the director of community development on a requested variance, and following a public hearing, the planning commission by the affirmative vote of a majority of its voting members may:

(1) – (2) [Text unchanged.]

The decision of the planning commission on appeal shall be final.

- (c) [Text unchanged.]

SECTION 10. SECTION AMENDED. Section 19.88.040 of Chapter 19.88 (Use Permits) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.88.040. Actions.

- (a) [Text unchanged.]
- (b) After receiving either an application for a use permit, or an appeal from the action of the director of community development on a requested use permit, and following at least one public hearing, the planning commission by the affirmative vote of a majority of its voting members may:

(1) – (2) [Text unchanged.]

The decision of the planning commission on appeal shall be final.

- (c) [Text unchanged.]

SECTION 11. SECTION AMENDED. Section 19.90.040 of Chapter 19.90 (Special Development Permits) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.90.040. Decisions.

- (a) [Text unchanged.]
- (b) After receiving either an application for a special development permit, or an appeal from the decision of the director of community development on a requested special development permit, and following a public hearing, the planning commission by the affirmative vote of a majority of its voting members may:

(1) – (2) [Text unchanged.]

The decision of the planning commission on appeal shall be final.

- (c) [Text unchanged.]

SECTION 12. SECTION ADDED. Section 19.94.065 of Chapter 19.94 (Tree Preservation) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as follows:

19.94.065. Decisions and procedures.

(a) Review by Director. The director of community development may, without notice or hearing, approve the tree removal permit as requested, or as changed, modified or conditioned by the director, or deny the tree removal permit application, consistent with the standards and criteria set forth in Chapter 19.94;

(b) Appeal of Decision by Director. A decision by the director of community development on a tree removal permit may only be appealed by the owner of the subject property. After receiving an appeal from the decision of the director on a tree removal permit, and following a public hearing, the planning commission by the affirmative vote of a majority of its voting members, pursuant to the criteria in this Chapter, may approve the tree removal permit as requested, or as changed, modified or conditioned, or may deny the tree removal permit application. The decision of the planning commission shall be final.

SECTION 13. SECTION AMENDED. Section 19.96.065 of Chapter 19.96 (Heritage Preservation) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby repealed and replaced in its entirety to read as follows:

19.96.065. Ranking of heritage resources, alteration process.

(a) – (c) [Text unchanged.]

(d) No person shall carry out or cause to be carried out on a heritage resource or in a heritage resource district any material change in exterior appearance of such resource or district through alteration, construction, relocation, or demolition without a resource alteration permit issued by the heritage preservation commission as described in Section 19.96.095. Minor modifications to heritage resources or heritage resource districts may be processed by city staff through the miscellaneous plan permit process set forth in ~~Chapter Section~~ 19.82.030(a) of this code, provided, however, that appeal of such decision shall be made to the heritage preservation commission rather than the planning commission, and the decision of the heritage preservation commission shall be final.

SECTION 14. SECTION AMENDED. Section 19.98.070 of Chapter 19.98 (General Procedures) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby repealed and replaced in its entirety to read as follows:

19.98.070. Appeals and Calls for Review.

(a) Authorization to Appeal. Unless otherwise modified or limited by specific provisions of this title, or otherwise required by state law, decisions may be appealed as follows:

(1) Appeal of Director Decision to Planning Commission. Any person aggrieved by a final decision of the director of community development

may appeal the decision to the planning commission, whose decision on appeal shall be final.

(2) Appeal of Commission Decision to City Council. Any person aggrieved by a final decision of the heritage preservation commission, arts commission, or planning commission may appeal the decision to the city council, provided, however, that a commission decision on a matter appealed from a decision of the director shall be final and may not be appealed to the city council.

(3) Members of the Planning Commission and City Council. City councilmembers and planning commissioners may call up a decision for review pursuant to subsection (e), and may not appeal a decision unless they are the applicant on the project.

(4) Appeals may be filed by more than one person.

(b) Timing and Filing of Appeal. An appeal shall be initiated as follows:

(1) Appeal Period. Any appeal shall be filed by 5:00 p.m. of the fifteenth day following the decision being appealed. A meeting which extends past midnight is considered to occur on the day it began. When the appeal period ends on a weekend or holiday, the time limits shall be extended to the next working day.

(2) Filing Requirements. An appeal shall be submitted in writing, and shall be accompanied by the required fee, as set by resolution of the city council, and shall state the decision appealed from, the facts and basis for the appeal, and the relief or action sought. Appeals of decisions by the director of community development to the planning commission shall be filed with the community development department. Appeals to the city council shall be filed with the city clerk.

(c) Appeal Stays Action. The timely filing of an appeal shall automatically stay the operative effect of the action, permit, decision or determination from which the appeal has been taken until a final decision is rendered on the appeal.

(d) Withdrawal of Appeal. An appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal, in which case the appeal shall not move forward and the decision that was the subject of the appeal shall be the final decision.

(e) Call for Review. Decisions may be called up for review to the next higher decision-making body as follows:

(1) City Council Requests. Any two councilmembers may request city council review of any decision appealable to the city council, as prescribed in this title.

(2) Planning Commission Requests. Any two planning commissioners may request planning commission review of a final decision made by the director of community development after holding a public hearing, if the decision is appealable to the planning commission, as prescribed in this title.

(3) Timing and Filing of Call for Review. To initiate a review, written requests shall be filed prior to the end of the appeal period prescribed in subsection (b). No reasons shall be stated in the written request for review and no

appeal fee shall be required. If councilmembers or planning commissioners call for a review of a decision as provided in this section, there is a presumption that the reason for the review is that the action is of significant importance to the community. No inference of bias shall be made or implied due to such a request for review being filed by a decision-maker.

(4) Procedures and Decisions. Upon receiving a request for city council review of a decision from at least two councilmembers within the designated timeframe, the item shall be placed on the next appropriate agenda, as determined by the city manager. Upon receiving a request for review from at least two planning commissioners within the designated timeframe, the item shall be placed on the next appropriate agenda, as determined by the director of community development. Any matter called up for review pursuant to this section shall be heard in the same manner as an appeal as prescribed in subsection (f).

(5) Call for Review Stays Action. The timely filing of a call for review shall automatically stay the operative effect of the action, permit, decision or determination from which the call has been made until a final decision is rendered on the matter.

(f) Procedures and Decisions. The procedure for the public hearing on the appeal or call for review shall be conducted as follows:

(1) Public Notice. Public notice of the appeal hearing shall be provided as prescribed in Section 19.98.040 (Public Notice).

(2) Scope of Hearing. Consideration of appeals and calls for review shall be de novo. The reviewing body is not bound by the decision that has been appealed or limited to the issues raised on appeal by the appellant.

(3) Decision of Review Body. After the hearing, the reviewing body shall affirm, modify, or reverse the original decision based on the evidence and findings.

(g) Effective Date of Decision. A decision by the city council or planning commission regarding an appeal or review becomes final on the date of the decision.

~~19.98.070. — Appeals.~~

~~(1) — Design Review by Director. An applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Section 19.98.040, aggrieved by a design review decision of the director of community development with regard to nonconformance with applicable design guidelines may file an appeal to the planning commission by five p.m. on the fifteenth calendar day following such action. All proceedings initiated by the decision of the director of community development shall be suspended pending a determination by the planning commission on the merit of the appeal. The decision of the planning commission is final.~~

~~(2) — Design Review with Public Hearing. An applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Section 19.98.040, aggrieved by a design review decision of the planning commission made pursuant to Section 19.80.040(c) with regard to nonconformance with applicable design guidelines may file an appeal to the city council by five p.m. on the fifteenth calendar day following such action. All proceedings initiated by the decision of~~

~~planning commission shall be suspended pending a determination by the city council on the merit of the appeal. The decision of city council is final.~~

~~b) — Appeal of Tree Removal Permits. The owner of the subject property, aggrieved by a tree removal permit decision of the director of community development may file an appeal to the planning commission after the date of such decision. All proceedings initiated by the decision of the director of community development shall be suspended pending a determination by the planning commission on the merit of the appeal. The decision of the planning commission is final.~~

~~(e) — Appeal of All Other Permits and Actions. Any person aggrieved, including a member of the planning commission or city council, by the decision of the director of community development, heritage preservation commission or planning commission may file an appeal after the date of such decision. The appeal shall be in writing stating the grounds therefor. All proceedings initiated by the decision of the director of community development or planning commission shall be suspended pending a determination on the merit of the appeal.~~

~~(1) — Any decision by the director of community development may be appealed to the planning commission and city council, except:~~

~~(A) — Miscellaneous plan permits and design reviews of wireless telecommunications facilities in the public right-of-way, where the decision of the planning commission is final; except that decisions by the director on findings of convenience or necessity may be appealed directly to the city council.~~

~~(B) — A decision by the director on a tree removal permit, where the decision by the planning commission is final.~~

~~(C) — A decision by the director on an application for reasonable accommodation, where the decision by the planning commission is final.~~

~~(D) — A decision by the director on a variance request on the maximum height of a ground sign, where the decision by the planning commission is final.~~

~~(E) — A decision by the director on an application to operate a large family child care home in a single family dwelling, where the decision of the director is final.~~

~~(F) — A decision by the director that a mobile home park is undergoing a conversion due to reduced occupancy under Chapter 19.72 (Mobile Home Park Conversions) where the appeal is directed to the city council.~~

~~(G) — A decision by the director regarding a heritage landmark, heritage resource or property located within a heritage landmark district or heritage resource district, where the appeal is directed to the heritage preservation commission, whose decision may be appealed to the city council.~~

~~(2) — Any action by the planning commission may be appealed to the city council, other than those noted in this section as final with the planning commission.~~

~~(3) — The following decisions by the heritage preservation commission may be appealed to the city council:~~

~~(A) — A determination made of whether to recommend designation as a proposed heritage resource or heritage resource district;~~

~~(B) — The decision to approve, approve as modified, or to deny a landmark alteration permit.~~

~~_____ (4) Appeals of decisions by the director of community development to the planning commission shall be filed with the department of community development:~~

~~_____ (A) By five p.m. on the fifteenth calendar day following such decision;~~

~~_____ (B) By the fifteenth calendar day by a planning commission or city council member on the record at a public hearing. A meeting which extends past midnight is considered to occur on the day it began.~~

~~_____ (5) Appeals to the city council shall be filed with the city clerk:~~

~~_____ (A) By five p.m. on the fifteenth calendar day following such action;~~

~~_____ (B) By the fifteenth calendar day by a planning commissioner or city council member on the record at a public hearing. A meeting which extends past midnight is considered to occur on the day it began.~~

~~_____ (d) Appeal of arts commission permit for installation of artwork. Any person aggrieved by an action of the arts commission under Section 19.52.060, including any arts commissioner or city council member, may appeal such action to the city council by filing a written appeal with the city council within fifteen calendar days after the date of such action, in accordance with the procedures for filing appeals to the city council, as set forth in subsection (b)(5) of this section.~~

SECTION 15. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 16. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 17. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 18. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2014, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney