



## City of Sunnyvale

## Agenda Item

17-0845

Agenda Date: 10/2/2017

**REPORT TO PLANNING COMMISSION****SUBJECT**

Recommend that City Council adopt an ordinance to amend Sunnyvale Municipal Code Sections 19.92.050 and 19.92.060 (votes required for Planning Commission recommendations) and an ordinance to amend Section 19.38.040 (individual lockable storage space for multiple-family residential) and find that the actions do not require environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

**REPORT IN BRIEF**

This staff report includes two unrelated amendments to Title 19 of the Sunnyvale Municipal Code (Zoning). The proposed amendments involve: (1) the votes required for Planning Commission to make recommendations for approval or denial of General Plan and zoning amendments; and (2) correction of a drafting error in the recently adopted lockable storage ordinance. The items are presented together for convenience, as the first item is a procedural matter and the second is a minor clean-up.

This item will be considered by the City Council on November 7, 2017.

**EXISTING POLICY****GENERAL PLAN****Land Use and Transportation**

- *Implementation Action LT-2.1a:* Prepare and update land use and transportation policies, design guidelines, regulations and engineering specifications to reflect community and neighborhood values.

**ENVIRONMENTAL REVIEW**

The proposed amendments to the Zoning Code do not require review under the California Environmental Act in that it can be seen with certainty that there is no possibility that these changes will have a significant impact on the environment. (CEQA Guidelines Section 15061(b)(3))

**DISCUSSION****Votes Required for Planning Commission Actions**

The role and duties of the Planning Commission are governed by the City Charter and Chapter 19 (Zoning) of the Municipal Code. Section 1010 of the Charter provides that the Planning Commission shall "recommend to the City Council the adoption, amendment, or repeal of Master, General, or Precise Plans, or any part thereof, for the physical development of the City". The Planning Commission may also "[e]xercise such functions with respect to land subdivisions, planning, and zoning as may be prescribed by ordinance". The Charter does not specify the number of votes required for the Planning Commission to make recommendations to City Council.

To implement the City Charter, the City Council adopted Sections 19.92.050 and 19.92.060 of the Sunnyvale Municipal Code. These sections require that the City Council receive a recommendation from the Planning Commission before it can consider a general plan or zoning amendment. Sections 19.92.050(c) and 19.92.060(d) further provide that “the planning commission shall, by the affirmative vote of a majority of its members . . . make a recommendation to the city council to approve or deny” the proposed amendment. This means that 4 votes are always required for the Planning Commission to make a recommendation, regardless of how many members are present, and regardless of whether the motion is for approval or denial.

When there are absences or vacancies on the Commission, impasses can potentially occur because the vote is tied (a tie vote is legally considered “no action”), or splits 3-2 or 3-1. If this occurs, a commissioner may have to switch his or her vote for the item to proceed to the City Council. Alternatively, the item has to be continued to another meeting when more members are present, which is inconvenient for applicants and members of the public who have come to speak on the project. There is currently no mechanism in place for the City Council to act on a proposed General Plan or zoning amendment if the Planning Commission fails to make a recommendation.

It isn’t uncommon for cities to require that a majority of the entire Planning Commission vote to recommend approval of a general plan or zoning amendment, but typically a recommendation for denial can be by a majority of a quorum. That means that only 3 votes are needed to recommend denial when 4 or 5 members are present. This is consistent with the Government Code provisions that apply to general law cities. In particular, Government Code 65354 provides that a recommendation to approve a general plan amendment “shall be made by the affirmative vote of not less than a majority of the total membership of the [planning] commission.” There is no equivalent voting requirement for recommending denial. By default, unless a statute requires otherwise, a legislative body can take action by a majority vote of the members present.

In order to address the situations discussed above, staff recommends that Sunnyvale Municipal Code Sections 19.92.050(c) and 19.92.060(d) be amended (as shown in Attachment 2) to allow the Commission to recommend the denial of general plan and zoning amendments by a majority of members present. This means that if 4 or 5 members are present, and the motion to recommend approval fails with a 1-3 or 2-3 vote, the motion to recommend denial can pass with a 3-1 or 3-2 vote.

Staff also recommends amending Sections 19.92.050(d) and 19.92.060(e) to provide that if a tie vote cannot be resolved by subsequent motions, it will be deemed a recommendation for denial. This will allow the item to proceed to the City Council for a decision.

### **Lockable Storage**

A recent amendment to Sunnyvale Municipal Code Section 19.38.040 regarding the requirements for lockable storage in multifamily residential projects, inadvertently deleted an exception for dwelling units that include 2-car garages. Even without this provision, staff can find on a case-by-case basis that a 2-car garage has sufficient storage capacity to meet the lockable storage requirement. Nevertheless, staff recommends putting the exception back into the ordinance for clarity. (Attachment 3)

### **FISCAL IMPACT**

None.

**PUBLIC CONTACT**

Public contact regarding this item was made in the following ways:

1. Posting the Agenda for Planning Commission on the City's official-notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website;
2. Publication in the Sun newspaper, at least 10 days prior to the hearing; and
3. E-mail notification of the hearing dates sent to all interested parties and neighborhood associations.

This item will be considered by the City Council on November 7, 2017.

**ALTERNATIVES****Recommend that the City Council:**

1. Make the finding that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and introduce an ordinance (Attachment 2) to adopt the proposed amendments to Sunnyvale Municipal Code Sections 19.92.050 and 19.92.060 (votes required for Planning Commission to recommend General Plan and zoning amendments).
2. Make the finding that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and introduce an ordinance (Attachment 3) to adopt the proposed amendments to Sunnyvale Municipal Code Section 19.38.040 (individual lockable storage space for multiple-family residential).
3. Do not make the finding that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and do not adopt the proposed amendments to Sunnyvale Municipal Code Sections 19.92.050 and 19.92.060 (votes required for Planning Commission to recommend General Plan and zoning amendments).
4. Do not make the finding that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and do not adopt the proposed amendments to Sunnyvale Municipal Code Section 19.38.040 (individual lockable storage space for multiple-family residential).

**STAFF RECOMMENDATION**

Recommend Alternatives 1 and 2 to the City Council: Make the finding that the actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) and introduce two ordinances (Attachments 2 and 3 of the report) to adopt the proposed amendments to Sunnyvale Municipal Code Sections 19.92.050 and 19.92.060 (votes required for Planning Commission to recommend General Plan and zoning amendments) and Section 19.38.040 (individual lockable storage space for multiple-family residential).

Prepared by: Rebecca Moon, Sr. Asst. City Attorney

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Trudi Ryan, Director of Community Development

Reviewed by: Andrew Miner, Planning Officer

Approved by: Kent Steffens, Assistant City Manager

**ATTACHMENTS:**

1. Not Used (Reserved for Report to Council)
2. Proposed ordinance to amend Sunnyvale Municipal Code Sections 19.92.050 and 19.92.060.

3. Proposed ordinance to amend Sunnyvale Municipal Code Section 19.38.040