

ORDINANCE NO. 3160-20

**AN UNCODIFIED ORDINANCE OF THE CITY OF
SUNNYVALE TO AUTHORIZE ONE-YEAR EXTENSIONS
OF LAND USE ENTITLEMENTS AND LEGAL NON-
CONFORMING USES DUE TO THE COVID-19
EMERGENCY.**

WHEREAS, Title 19 (Zoning) of the Sunnyvale Municipal Code establishes permit types, specific plan districts and general procedures including approval process, life of permit and extensions; and

WHEREAS, Section 19.98.110 of the Sunnyvale Municipal Code provides that permits shall become null and void if not exercised within two (2) years from the date of approval by the final review authority except that Miscellaneous Plan Permits and Tree Removal Permits shall become null and void if not exercised within one (1) year; and

WHEREAS, Section 19.98.120 of the Sunnyvale Municipal Code allows the director of community development to approve extensions of time up to one (1) year to exercise any permit initially considered at a public hearing if requests for an extension of time are received and approved prior to the expiration of the original permit; and

WHEREAS, Section 19.98.110 of the Sunnyvale Municipal Code provides that any use that requires a permit that is discontinued for more than a year shall expire and become null and void; and

WHEREAS, Chapter 19.27 of the Sunnyvale Municipal Code incorporates the Peery Park Specific Plan, which contains provisions Book 2, Section 2.7(9)(b) that permits expire if not exercised within two (2) years of the final decision date, or if the use, activity or structure authorized by the permit is discontinued for more than one (1) year; and

WHEREAS, Chapter 19.29 the Sunnyvale Municipal Code includes provisions for the Moffett Park Specific Plan zoning district and the Moffett Park Specific Plan development reserve and provides that permits for entitlement to development reserve square footage shall be valid for two years from the date of final approval by the approval authority and that two separate one-year extensions may be requested through the filing of a miscellaneous plan permit prior to the permit's expiration. The extension may be granted at the discretion of the director of community development; and

WHEREAS, Chapter 19.29 of the Sunnyvale Municipal Code also includes provisions for the Moffett Park Specific Plan zoning district and the Moffett Park Specific Plan development reserve and provides that an applicant may obtain an extended, seven-year entitlement by a non-refundable prepayment of a portion of the transportation impact fee applicable to the project; and

WHEREAS, Section 19.50.100 of the Sunnyvale Municipal Code provides that if a legal non-conforming use is abandoned or discontinued for six months or more in the case of an unenclosed

use, or one year in the case of a use in a building or part of a building, the right to continue the legal non-conforming use is extinguished; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency in the State of California due to the number of confirmed cases of COVID-19 in the State; and

WHEREAS, on March 16, 2020, the Health Officer of Santa Clara County issued the first in a series of orders requiring all businesses and governmental agencies within the county to cease non-essential operations at physical locations, and requiring all persons to remain home except when engaged in certain essential activities as defined by the order; and

WHEREAS, on March 12, 2020, the City Manager acting as the Director of Emergency Services proclaimed the existence of a local emergency within the City, which was confirmed by the City Council on March 17, 2020, by Resolution No. 979-20; and

WHEREAS, the City of Sunnyvale has approved numerous permits of varying scale pursuant to Title 19 of the Municipal Code. Such permits have been reviewed and approved by the director of community development, planning commission or city council. Current timelines established by Title 19 will result in the expiration of such permits within the near future or they have expired in the recent past; and

WHEREAS, as a result of the suspension of non-essential construction and development activities for periods of time during the COVID-19 pandemic crisis, and the effect of the crisis on the wider economy, the current timeline established for these permits is an undue hardship on applicants and property owners, and the City Council finds that it is desirable to extend the life of such permits.

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

SECTION 1.

Permit extensions and legal non-conforming uses - Uncodified Ordinance

(a) All permits, approved pursuant to the provisions of the City of Sunnyvale Municipal Code, Title 19, that are valid as of March 16, 2020, through March 15, 2021, are granted an additional one (1) year in which to exercise the permit.

(b) In addition to the provisions in (a) above and all other extensions of time that are available pursuant to Title 19 of the Sunnyvale Municipal Code, any permit that was initially considered at a public hearing (administrative hearing, planning commission, heritage preservation commission or city council) and is valid as of March 16, 2020, through March 15, 2021, may be granted up to an additional one (1) year extension by the Director of Community Development if approved before the pending expiration date of the permit.

(c) All uses that have been legally established by permit pursuant to Title 19 and that have been discontinued for a period of one (1) year, with any portion of that year occurring between March 16, 2020, through March 15, 2021, and that would otherwise expire and become null and void, are hereby authorized to re-establish within two (2) years from date of the discontinuance of the use to maintain the validity of the permit.

(d) If a use of property was a legal non-conforming use pursuant to Section 19.50.060 of the Sunnyvale Municipal Code on March 16, 2020, and the use is abandoned or discontinued after March 16, 2020, the period of abandonment or discontinuance shall not be counted for purposes of Section 19.50.100 until the locally declared COVID-19 emergency is terminated, or one (1) year after the first day of the abandonment or discontinuance, whichever is shorter.

(e) Nothing in this ordinance shall affect other performance or time requirements imposed or associated with the subject permit (Conditions of Approval).

SECTION 2. 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 3. 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 4. 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 June 9, 2020, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on June 23, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk

Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney