



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance to Repeal Section 19.42.080 of Title 19 (Zoning) Regarding Private Security Cameras, and Find that the Project is Exempt from the Requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3)(Planning File: 2015-7148; Study Issue CDD 15-08)

#### **BACKGROUND**

During their January 2015 study issues workshop, the City Council directed staff to study policies regarding private security cameras (CDD 15-08, Attachment 1), consisting of two key elements:

1. Effectiveness of the current regulation in Sunnyvale Municipal Code (SMC) Title 19 (Zoning) regarding placement of security cameras on private property; and
2. Feasibility of implementing a voluntary security camera registration program to be administered by the Department of Public Safety (DPS).

Title 19 (Zoning) of the Sunnyvale Municipal Code (SMC) requires that private security cameras be placed no higher than the height of a property line fence/wall if mounted on a building. The provision also requires that there be no field-of-vision intrusion onto adjacent residential properties. While the existing provisions serve to address the potential for security cameras to impact the privacy of adjacent properties, concerns have been raised that these provisions are too restrictive to effectively provide a sense of security for those wishing to install security camera systems.

Council determined that with the increase in security camera used by private citizens, this is a good time to review the standards and regulations, as well as to consider options for allowing law enforcement to use the recordings for criminal investigations, such as through a voluntary security camera registration program.

#### **EXISTING POLICY**

##### **GENERAL PLAN:**

##### **Land Use and Transportation Chapter**

**GOAL LT-4 Quality Neighborhoods and Districts** - Preserve and enhance the quality character of Sunnyvale's industrial, commercial, and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

Policy LT-4.1: Protect the integrity of the City's neighborhoods; whether residential, industrial or commercial.

##### **Safety and Noise Chapter**

**GOAL SN-3: Safe and Secure City** - Ensure a safe and secure environment for people and property in the community by providing effective public safety response and prevention and education

services.

Policy SN-3.4: Reduce crime and fear by strengthening the police/community partnership.

## **SUNNYVALE MUNICIPAL CODE:**

**Section 19.42.080. Surveillance cameras-Restrictions.** Exterior surveillance cameras located on private property must be placed and aimed so that there is no field-of-vision intrusion onto adjacent residential properties. If a surveillance camera is mounted on a building, it must be placed so that it does not exceed the height of the property line fence or wall at its lowest point.

## **ENVIRONMENTAL REVIEW**

Although amendments to the municipal code are generally considered a project under the California Environmental Quality Act (CEQA), staff has concluded that adopting the proposed ordinance is exempt from CEQA under Guideline 15061(b)(3) because it can be seen with certainty that it will not have a significant effect on the environment.

## **DISCUSSION**

### **Origin and Purpose of Existing Regulation**

The City regulation on the placement of private security cameras was adopted in 2002 as part of a broader City Council-sponsored study issue regarding the privacy of residential properties adjacent to nonresidential developments (RTC 02-395). The 2002 study originated from neighborhood concerns about a two-story industrial building constructed in 1999 at 370 San Aleso Avenue, which was directly adjacent to single-family homes. The security camera regulation was only one of several code amendments and changes to permitting procedures adopted as part of the study to protect residential privacy and provide more opportunities for residents to comment on proposed nonresidential developments within their vicinity.

Prior to 2002, there were no code or policy requirements for the use of private security cameras. The regulation was created to address residents' concern that their privacy would be impacted if cameras were mounted on an industrial building and pointed in the direction of (or could be seen from) adjacent residential properties. DPS Crime Prevention noted during the 2002 study that exterior security cameras discourage crime and reduce the attractiveness of the site to criminal activity. It was also noted that reducing the potential for criminal activity on one property also protects neighboring properties.

### **Application of the Code**

The 2002 code amendment (Section 19.42.080) applies to security cameras installed on any property, regardless of the use or zoning designation. It states:

“Exterior surveillance cameras located on private property must be placed and aimed so that there is no field-of-vision intrusion onto adjacent residential properties. If a surveillance camera is mounted on a building, it must be placed so that it does not exceed the height of the property line fence or wall at its lowest point.”

The first sentence of SMC Section 19.42.080 specifically applies when the installation site is adjacent to a residential property. Although the study issue at the time was considering impacts from commercial properties onto adjacent residential properties, the Section is broadly written and applies to residential properties as well. For example, a single-family resident wishing to install a camera to capture their front yard cannot aim it in such a way that the camera view includes any portion of the

yards of neighboring homes on either side or across the street. This limitation can be difficult to achieve since security cameras are typically designed with a wide-angle or fish-eye lens to be more efficient and capture a wider span of area.

A strict interpretation of the code results in a few paradoxical situations. For example, if a resident of a single-family house had a three-foot tall fence in the front yard, the existing code would limit a camera mounted on the front of the adjacent house to be no higher than three feet above ground level. Security cameras are typically mounted at the highest point of the wall under the roof eave (often over garage doors) to ensure cameras are above landscaping and not easily within reach for someone to disable, vandalize or point elsewhere. If a resident or business owner would like to mount cameras higher than the property line fence, the code allows cameras mounted on poles without the same height restriction as building-mounted. As a result, security cameras can be mounted on poles at the perimeter of the site, which could have even more of a visual impact to adjacent properties than building-mounted cameras. Because of the broad application of Section 19.42.080 to all zoning districts, it is likely that the majority of the private exterior security camera systems installed throughout the City are not in compliance.

### **Violations and Enforcement**

The existing regulation could be amended to apply only to nonresidential properties adjacent to residential properties. There have been no complaints regarding the placement of cameras on nonresidential buildings directly adjacent to residential properties. However, complaints have been filed regarding possible violations between residential neighbors. Since 2002, there have been four cases on record with the Neighborhood Preservation Division (NP) relating to the installation of exterior security cameras on residential property. In general, the complaints were reported by residents who can see their next door neighbor's security cameras. They felt that they were pointed directly at their front or rear yards, therefore potentially violating their privacy. NP staff was able to work with the neighbors to either relocate the cameras or change the direction in which they were aimed to an agreeable state for the parties involved. In one case, the security cameras were simply removed for full compliance.

### **California Law and Reasonable Expectation of Privacy**

There are no California laws specifically about the use or placement of private security cameras similar to the City's regulation. However, California law provides both civil and criminal remedies for unlawful invasion of privacy for a person who is filmed without their consent while in a private place. California Civil Code 1708.8 specifically provides that it is an invasion of privacy to film someone's "private, personal and familial activity" under circumstances where the person has a "reasonable expectation of privacy". Similarly, Penal Code 647(j)(1) makes it a criminal offense to use a camera or other means in order to view "the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside".

The key to establishing either civil or criminal liability is that the person was in a location where he or she had a "reasonable expectation of privacy." Under the legal rules mentioned above, whether a security camera is unlawfully invading a neighbor's privacy depends on the circumstances. For example, if the camera's field of view only shows a neighbor's front yard or portions of the front yards, that is not an area where the courts have found there to be a reasonable expectation of privacy since these areas are in view of anyone passing by. However, if the camera records images of the interior of the home, or areas that are behind a fenced area such as one's backyard, it could

possibly be an invasion of privacy and one could pursue a claim under state law.

In addition, it might be unlawful to film neighbors in publicly visible areas of their yard if it is intended as harassment. Penal Code 646.9 makes it a crime to engage in harassment that “seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose” and is combined with “a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family”.

The existing zoning code regulation could be amended to prohibit exterior security cameras from being positioned directly to view inside of a neighboring home or back yard; however, such an effort would only be duplicating state law. For a serious offense such as harassment or one’s intention to violate another person’s privacy, it may be more appropriate to seek criminal punishment or punitive damages under state law, rather than the standard enforcement procedures for compliance with the Zoning Code. A person violating Civil Code 1708.8 can be liable for punitive damages and a civil fine of \$5,000 to \$50,000. If a citizen felt they were being filmed by their neighbor, or an adjacent business owner, as a form of harassment, he or she could contact the police and could also seek a restraining order to stop the harassment.

### **Other Cities**

The restrictions on the placement of security cameras on private property seem to be unique to Sunnyvale, at least within the region. Staff was not able to find any similar regulations in neighboring cities.

### **Voluntary Security Camera Registration Program**

To enhance crime prevention and public safety within their jurisdictions, several cities in the Bay Area, including San Jose, Los Gatos, Fremont and San Mateo, have implemented a voluntary private security camera registration program, and resulting video surveillance footage and stills have been successful in identifying suspects. The programs are strictly voluntary. There is no direct connection between the police and the registered cameras. The programs provide a database of private security camera locations, and police contact registered participants only if a crime occurs within the vicinity of a registered security camera system.

Upon review, DPS has found that these programs are beneficial, and has determined that their implementation is an operational matter. DPS plans to implement a voluntary security camera registration program in Sunnyvale once the City’s website redesign project is completed. The program can be accommodated within the DPS operating budget, without requiring any budget modifications. Members of the public are currently able to submit crime reports through the City’s website, and the vendor that provides this software is developing the capability for it to also accommodate a voluntary registration program. Once the software is live, residents and business owners wishing to participate will be able to register directly through the City’s website.

### **Ordinance**

Staff has prepared an ordinance to repeal the existing regulation and not regulate the placement of security cameras (Attachment 2). In an attempt to balance the two objectives of preventing crime and protecting the privacy of neighboring properties, staff explored possible code amendments such as requiring that cameras not be directly positioned to view the inside of adjacent homes or back yards, or clarifying that the regulation only applies to nonresidential uses adjacent to residential uses, as originally intended. As previously discussed, it is difficult to prevent a security camera from capturing

a partial view of an adjacent neighbor's property. Additionally, such amendments would not directly address the core concerns of citizens regarding privacy rights. Staff believes that serious violations relating to invasion of privacy or harassment can more effectively be pursued through the civil and criminal remedies already available under state law.

### **FISCAL IMPACT**

No fiscal impact is expected if the existing regulation regarding placement of private surveillance cameras is repealed. DPS plans to implement the voluntary security camera registration program within their operating budget, and does not require any budget modifications.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

Staff held a study session with the Planning Commission on July 27, 2015. Staff provided an overview of the origin of the existing regulation and the objectives of the study issue. Commissioners discussed with staff the difficulty a resident or business owner could have in complying with the existing regulation while still being able to effectively use such systems for security. Commissioners also discussed the potential privacy impacts of security cameras on adjacent properties, and requested that staff provide information on the state law remedies regarding unlawful invasion of privacy.

The Planning Commission considered this item at a public hearing on October 12, 2015 and voted unanimously to recommend the Council adopt the staff recommendation (Attachment 3).

### **ALTERNATIVES**

1. Introduce an ordinance to repeal Sunnyvale Municipal Code Section 19.42.080 regarding the installation and location of private surveillance cameras.
2. Find that the project is exempt from CEQA pursuant to CEQA Guideline 15061(b)(3).
3. Provide direction on other amendments to the zoning code to address private security camera use and placement.
4. Make no changes to the current regulations and policies.

### **STAFF RECOMMENDATION**

Alternatives 1 and 2: (1) Introduce an ordinance to repeal Sunnyvale Municipal Code Section 19.42.080 regarding the installation and location of private surveillance cameras; and (2) Find that the project is exempt from CEQA pursuant to CEQA Guideline 15061(b)(3).

Staff believes that the existing regulation on the placement of private security cameras limits their effectiveness in discouraging criminal activity and providing residents or business owners with a sense of security. The regulation also reduces the potential of security cameras to provide valuable evidence to DPS for solving crimes. The provisions are difficult to enforce and in many circumstances, impractical. Staff recognizes the intent of the regulation to protect the privacy of neighbors. Staff believes that any direct violation of one's privacy through the use of cameras more appropriately warrants the civil and criminal remedies provided under state law, and not the standard enforcement procedures under the Zoning Code. No recommendation is provided for the voluntary private security camera registration program as DPS will be implementing it within their existing

budget as part of their operations.

Prepared by: Rosemarie Zulueta, Associate Planner  
Reviewed by: Trudi Ryan, Planning Officer  
Reviewed by: Hanson Hom, Director, Community Development  
Reviewed by: Frank Grgurina, Director, Public Safety  
Reviewed by: Kent Steffens, Assistant City Manager  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Study Issue Paper
2. Draft Ordinance
3. Planning Commission Minutes from October 12, 2015