ATTACHMENT E
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OFFICE OF THE CITY ATTORNEY

CITY OF SUNNYVALE

April 18, 2005

TO: Trudi Ryan, Planning Officer

FROM: Joan A. Borger, Interim City Attorney

SUBJECT: Study Issue: Extending Approval of Wright Avenue Single Story Combining District

The City Council ranked a study issue this year entitled "Extending Approval of Wright Avenue Single Story Combining District." (CDD-29) The Wright Avenue Single Story Combining District was approved by the Council effective July, 2001. Under the terms of the ordinance authorizing single story overlays, "all single story combining districts shall expire automatically seven years after their effective date. Upon expiration of a single-story combining district, property owners within the district may apply for another single-story combining district, following the same procedures as for an original application." (SMC §19.26.200.) Accordingly, the Wright Avenue district will automatically expire in July, 2008, at which time the residents may apply for renewal under the ordinance.

The stated purpose of the study issue is to consider whether Council can initiate an extension of this combining district on behalf of the neighbors prior to the time it would automatically expire. You have asked for an opinion as to Council's authority to initiate such an extension under the existing ordinance.

SMC Section 19.26.200, permitting the establishment of single story overlays, was adopted by the Council in November of 2000 as part of an overall response to growing neighborhood concerns related to development of large single family homes perceived to be inconsistent with neighborhood character. (Council Study Issue: "Consideration of Changes to Single Family Design Criteria and Development Standards.") The Council was sensitive to the competing interests involved in the creation of single story limitations – neighborhood character versus individual's property rights - and adopted a legislative scheme which allows individual neighborhoods to determine whether a single story overlay is appropriate by requiring a majority of residents in a defined area to petition the Council to create the single story zone. Recognizing that the make-up of neighborhoods change as people move in and out, and the substantial investment people have in their homes today, Council included a provision in the ordinance that provided for automatic termination of the overlay zone after 7 years, with an opportunity for renewal by the neighborhood at that time. This provision is typical of this type of ordinance, and is found in many of our surrounding cities. The policy underlying this provision is that the neighborhood would have an opportunity to reassess itself periodically to determine whether a majority of residents still believed the restriction was desirable.

The current study issue as stated would allow Council to initiate a renewal of the Wright Avenue single story overlay district well in advance of its expiration date and without neighborhood

majority consent. As the ordinance is currently drafted, such action is not permissible. According to SMC Section 19.26.200 (d) (1), "An application to establish a single-story combining district shall be initiated by owners of property within the proposed district. In order to apply, the applicants must demonstrate, by providing documentation, including a written list of signatures, that at least sixty-seven percent of the property owners in the proposed district support creation of the district and that they understand they are requesting a zoning map amendment. An application to repeal an existing single story combining district must also be supported by sixty-seven percent of the property owners within the district."

I do not know what issue or concern generated this study issue. I recall that at the time the Wright Avenue single story overlay was initiated by the residents, representatives of the neighborhood petitioned the City Council to waive the application fee for the zoning action. (RTC 01-129) Their request was denied. I do not know if this has any relevance to the current study issue. There may be some concern on Council's part that the application/renewal fee is too high. At any rate, if Council desires to amend the ordinance to change the process for creation of single-story overlay districts, or to examine the amount of the fee charged for such, the study issue should be modified to clarify this intent and give direction as to what type of amendment is requested.

Please let me know if you have any further questions.

Cc: City Manager
Gerri Caruso
Jamie McLeod
Robert Paternoster
Rebecca Moon