

ORDINANCE NO. 2904-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CERTAIN SECTIONS OF CHAPTERS 19.12 (DEFINITIONS), 19.18 (RESIDENTIAL ZONING DISTRICTS), 19.32 (BUILDING HEIGHTS, LOT COVERAGES AND FLOOR AREA RATIOS), 19.38 (REQUIRED FACILITIES), AND 19.56 (SOLAR ACCESS) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO ALTERNATIVE ENERGY SYSTEMS

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 19.12 AMENDED. Section 19.12.240 of Chapter 19.12 (Definitions) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.12.240. “W”

(1) “Warehousing” means the storage of inventory items or materials comprising the principal stock in trade of an affected use, within an enclosed structure, provided that at least ninety percent of the floor area designed for warehouse use shall be designed, physically suited, and actually used for storage. Areas used for storage of office supplies, equipment, and materials used incidentally to a nonwarehouse use shall not be considered a warehouse use.

(2) “Wind energy system” means a private, non-commercial wind energy conversion system consisting of one wind turbine, a supporting structure and associated control or conversion equipment specifically designed to convert kinetic wind energy to electric power to reduce onsite consumption of utility power, and has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Program administered by the California Energy Commission. A wind energy system that exceeds the allowable rated capacity under the Emerging Renewables Program or that is used for commercial purposes shall be prohibited in all zones.

(a) “Wind energy system, height” means the vertical distance measured from the lowest point along the base of the tower to the highest point of the tower, the wind turbine or the tip of the wind turbine blade at its highest point, whichever is greatest.

(b) “Wind energy system, tower” means the support structure of the wind turbine. The tower can be freestanding or mounted on a building.

(c) “Wind turbine” means a device consisting of blades and associated mechanical and electrical conversion components mounted on a tower and used to convert wind energy into electric power.

(3) “Wireless telecommunication facility” or “telecommunication facility” means a facility that transmits and/or receives electromagnetic signals, including antennas, microwave dishes, parabolic antennas, directional antennas and other types of equipment for the transmission or reception of such signals, towers or similar structures supporting the equipment, equipment buildings, shelters, cabinets, parking area, and other accessory development.

SECTION 2. CHAPTER 19.18 AMENDED. Table 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

TABLE 19.18.030

Permitted, Conditionally Permitted and Prohibited Uses in Residential Zoning Districts

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- MPP** = Miscellaneous Plan Permit required
- UP** = Use Permit required
- SDP** = Special Development Permit required
- N** = Not permitted, prohibited

RESIDENTIAL ZONING DISTRICTS	R-0/R-1	R-1.5	R-1.7/PD	R-2	R-3	R-4	R-5	R-MH
<i>1. Residential through 6. Temporary Uses [Text unchanged]</i>								
7. Other Uses								
A. Administrative, professional and medical offices, and medical clinics	UP	UP	UP	UP	UP	UP	UP	N
B. Adult business establishments	N	N	N	N	N	N	N	N
C. Electric distribution substations	UP	UP	SDP	UP	UP	UP	UP	UP
D. Electric transmission substations	N	N	N	N	N	N	N	N
E. Massage establishments	N	N	N	N	N	N	N	N
F. Public service buildings and accessory uses	UP	UP	SDP	UP	UP	UP	UP	UP
G. Public utility buildings and service facilities	UP	UP	SDP	UP	UP	UP	UP	UP
H. Recycling centers	N	N	N	N	N	N	UP	N
I. Storage of materials, supplies or equipment used for nonresidential purposes	N	N	N	N	N	N	N	N
J. Storage of materials or equipment between the face of the main building and a street-unless fully screened from view ⁵	N	N	N	N	N	N	N	N
K. Any use which is obnoxious, offensive or creates a nuisance	N	N	N	N	N	N	N	N
L. Automobile/vehicle repair ⁷	N	N	N	N	N	N	N	N
M. Manufacture of biodiesel fuel	N	N	N	N	N	N	N	N

1. For use by owner and/or operator only.
2. For use by mobile home park occupants only.
3. Maximum of two dwelling units per parcel.
4. Processing requirements vary, see Chapter 19.40.
5. Does not apply to vehicles which are currently licensed and operable. Screening must meet requirements of Chapter 19.46.
6. Required to comply with setback, height, and lot coverage requirements of underlying zone.
7. Automobile/vehicle repair may only be allowed pursuant to Section 19.18.050

SECTION 3. CHAPTER 19.32 AMENDED. Section 19.32.030 of Chapter 19.32 (Building Heights, Lot Coverages and Floor Area Ratios) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.32.30. Building heights—Increased—When.

Towers, spires, chimneys, machinery penthouses not exceeding twenty-five percent of the roof area on which the penthouse is located, scenery lofts, cupolas, water tanks, telecommunications facilities, wind turbines and towers, high bay test facilities, and similar architectural and utility structures, including equipment screening, and necessary mechanical appurtenances, may exceed the maximum building height in any zoning district by a maximum of twenty-five feet, unless otherwise permitted pursuant to Chapter 19.54 (Wireless Telecommunication Facilities) or Chapter 19.56 (Alternative Energy Systems). Provided however, that no such architectural or utility structure, equipment screening, or necessary mechanical appurtenance shall be erected, maintained, or located between the face of the main building and any public street, nor in any required side or rear yard.

SECTION 4. CHAPTER 19.38 AMENDED. Section 19.38.020 of Chapter 19.38 (Required Facilities) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.38.020. Screening of equipment.

(a) General requirements.

(1) Except as otherwise provided in subsection (b) and (c), exterior mechanical, electrical or other type equipment, whether installed on the ground, roof or walls shall be screened from view from adjoining streets or property.

(2) - (5) [Text unchanged.]

(b) Mechanical, electrical or other type equipment. All roof, wall or ground mounted mechanical, electrical or other type equipment which exceeds sixteen inches in any dimension shall be screened except:

(1) - (9) [Text unchanged.]

(10) Wind energy systems as determined by Chapter 19.56

(c) [Text unchanged.]

SECTION 5. CHAPTER 19.56 AMENDED. Chapter 19.56 (“Solar Access”) is hereby amended of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Chapter 19.56.

ALTERNATIVE ENERGY SYSTEMS

19.56.010. Solar Energy Systems—Permitted use.

19.56.020. Solar Energy Systems—Impairment of solar access by structures.

19.56.030. Solar Energy Systems—Conditions of tentative map.

19.56.040. Solar Energy Systems—Variances.

19.56.050. Solar Energy Systems—Accommodation for solar energy systems.

- 19.56.060 Wind Energy Systems—Purpose and intent.**
- 19.56.070 Wind Energy Systems—Permitted use.**
- 19.56.080 Wind Energy Systems—Design requirements.**
- 19.56.090. Wind Energy Systems—Permits.**
- 19.56.100. Wind Energy Systems—Exemptions.**
- 19.56.110. Wind Energy Systems—Deviations to height.**
- 19.56.120. Wind Energy Systems—Abandonment of use.**
- 19.56.130. Wind Energy Systems—Indemnity and liability for damages.**
- 19.56.140. Installation of solar energy systems and wind energy systems in commonly-held areas.**
- 19.56.150. Incentives for installation of alternative energy systems.**

19.56.010. Solar Energy Systems--Permitted use.

The use of solar energy systems and active and passive solar collectors for the purpose of providing energy to the structure upon which they are placed, whether as a part of such a structure or incidental thereto, is a use which may be established without the necessity for any discretionary land use approval, within all zoning districts, notwithstanding any provision of this title to the contrary.

19.56.020. Solar Energy Systems—Impairment of solar access by structures.

(a) No building permit shall be issued for any construction, the effect of which when completed would be to interfere with solar access to the rooftop of any structure or to any preexisting active solar collector on nearby property. Solar access means the absence of shadows blocking or reducing exposure to the sun to an extent greater than ten percent daily during the hours between nine a.m. to three p.m., Pacific Standard Time, throughout any solar cycle. Nothing contained herein shall require modification to any structure, the shade pattern of which would impair solar access to rooftops or active solar collectors established later in time.

(b) The provisions of this chapter shall not apply to structures or uses within the DSP zoning district.

19.56.030. Solar Energy Systems—Conditions of tentative map.

Each tentative subdivision map approved pursuant to the procedures set forth in Title 18 of this code shall be conditioned so as to prohibit new construction of structures that would interfere with passive or active natural heating or cooling opportunities available to structures capable of being built on adjoining parcels, in accordance with all site development and zoning regulations in effect at the time of such approval. No such conditions shall be imposed, however, which would result in reducing allowable residential unit densities or the percentage of lot area which may be occupied by a building or structure under those applicable land use regulations in effect at the time such a tentative subdivision map is filed. Positive conditions, covenants and restrictions shall be provided as a part of each tentative map. Adverse conditions, covenants and restrictions shall not be included therein, and, to the extent that they may be contained in subdivision documents approved prior to the effective date of this chapter, they are hereby declared to be contrary to the public welfare and to the public policies set forth herein.

19.56.040. Solar Energy Systems—Variances.

(a) Variances may be granted from restrictions imposed by this title on the height, setback and location of structures, in the public interest, upon a showing by the applicant, made pursuant to the procedures set forth in Chapter 19.84:

(1) That the proposed construction or alteration is necessary for the purpose of placing or constructing an active or passive solar collector as defined herein;

(2) That the proposed design complies in all material respects with the provisions of Title 16 of this Code;

(3) That the proposed construction or alteration has been designed, located, and screened in a manner calculated to minimize adverse visual, audible, and other effects on surrounding properties; and

(4) That the granting of such a variance will not be materially detrimental to the public welfare.

(b) Applications for variances from the regulations imposed by this chapter shall be considered in accordance with the standards and procedures set forth in Chapter 19.84.

19.56.050 Solar Energy Systems—Accommodation for solar energy systems.

To accommodate the installation of solar energy systems, including systems located on top of parking structures, the maximum height may be increased by two feet, and required setbacks for front, side and rear yards may be reduced by up to one foot upon application and approval of a miscellaneous plan permit granted at the discretion of the director of community development pursuant to Chapter 19.82.

19.56.060. Wind Energy Systems—Purpose and intent.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of standards for the development, siting and installation of wind energy systems. The regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of the city as set forth within the goals, objectives and policies of the general plan and the city-wide design guidelines, while at the same time providing for the safe, effective and efficient use of wind energy systems to reduce the onsite consumption of utility supplied electricity and reduce dependence on nonrenewable energy sources.

19.56.070. Wind Energy Systems —Permitted use.

Wind energy systems, as defined in Section 19.12 of this code, shall be a permitted ~~and or~~ conditionally permitted accessory use to any permitted principal use as set forth in Table 19.56.090 and subject to all of the following requirements:

(a) Number of Systems. ~~For properties with a lot size of one acre or less, no more than one wind energy system shall be permitted. For property sizes of more than one acre, two or more wind energy systems may be conditionally permitted with approval of a use permit. The number of systems on a property is limited as follows:~~

(1) One wind energy system shall be permitted for properties with a lot size of one acre or less and located in or adjacent to a property in a residential zoning district.

(2) Two or more wind energy systems may be conditionally permitted with approval of a use permit for properties with a lot size of more than one acre and located in or adjacent to a property in a residential zoning district.

(3) There is no limit on the number of systems for all other properties.

(b) Setback. The minimum setback from all property lines to the base of the tower shall be equal to the height of the wind energy system, as defined in Section 19.12, except that the minimum setback for a freestanding wind energy system in or adjacent to a property in a residential zoning district shall be equal to twice the height of the wind energy system.

(c) Noise. Wind energy systems shall comply with the noise requirements set forth in Section 19.42.030.

(d) Approved Wind Turbines. The system shall use a wind turbine that has been approved by the California Energy Commission as qualifying under its Emerging Renewables Program or has been certified by a national program recognized and approved by the California Energy Commission. The applicant shall present proof of qualification or certification of the wind turbine.

(e) Electrical Wires. All onsite electrical wires associated with a wind energy system shall be located within the tower and underground, except where necessary to connect the system with a public utility company transmission line.

(g) Braking Systems. All systems shall be designed with braking, governing, or feathering systems to prevent uncontrolled rotation, over-speeding, and excessive pressure on the support structure, rotor blades and system components.

(h) Lighting. Exterior lighting on any tower or turbine associated with the wind energy system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

(i) Compliance with Federal Aviation Administration. All wind energy systems shall comply with applicable Federal Aviation Administration rules and regulations. The applicant shall present proof of compliance with Federal Aviation Administration rules and regulations.

(j) Electromagnetic Interference. The system shall be operated such that no disruptive electromagnetic interference is caused to off-site telecommunications, surveillance or other similar systems. If it has been demonstrated that a system is causing such disruptive interference, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.

(k) Signs. All signs on any structure or component associated with a wind energy system that is visible from any public road shall be prohibited, except for the manufacturer's or installer's identification, appropriate warning signs, or owner identification.

(l) Utility Notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned wind energy system.

19.56.080 Wind Energy Systems—Design requirements.

In addition to all other requirements set forth in this chapter, all small wind energy systems shall meet the following design requirements:

(a) Based on potential aesthetic impact, the order of preference for the design of a wind energy system tower is: building mounted, then freestanding. If a freestanding tower is proposed, the application must include an explanation as to why other facility types are not being considered.

(b) Based on potential aesthetic impact, the order of preference for the type of wind turbine is: vertical axis wind turbine, then horizontal axis wind turbine.

(c) All systems shall be designed to minimize the visual impact to the greatest extent feasible, considering technological requirements, by means of placement and camouflage, to be compatible with existing architectural elements and building materials, and other site characteristics.

(ed) Towers shall be of a monopole design and shall be self-supporting without the use of guy wires or other similar features.

(de) Colors and materials for small wind energy systems shall be chosen to minimize visibility. Facilities shall be painted using colors to match or blend with the primary background.

(ef) All facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions which would result in hazardous conditions, visual blight or attractive nuisances.

(fg) A freestanding structure, shall not be located in any required front, side or rear yard, nor shall they be located between the face of a building and a public street, bikeway or park, except for approved building-mounted systems located on existing or new permitted structures in accordance with this section.

19.56.090. Wind Energy Systems—Permits.

The provisions of this chapter identify and prescribe specific procedures and requirements for the filing, processing and consideration of the installation of wind energy systems. These provisions shall be used in conjunction with the general requirements and procedures identified in Chapter 19.98 including requirements and procedures for applications, fees, notification, appeals, conditions of approval, modifications, expiration, extensions and revocations.

The type of permit required for wind energy systems, and any applicable exemptions, are set forth in Table 19.56.090.

Table 19.56.090

Permits Required For Wind Energy Systems

Wind Energy Systems Permits Zoning Districts	Exemptions	Miscellaneous Plan Permits	Minor Use Permits	Major Use Permits
<p>Residential R-0, R-1, R1.5, R1.7, R-2, R-3, R-4, R-5, RMH, DSP (residential blocks)</p> <p>Commercial and Office C-1, C-2 C-3, C-4, O, DSP (office and mixed use blocks)</p>	<p>For all properties:</p> <p>1) Wind turbine with a diameter of 39” or less; building-mounted system with <u>a</u> height of no more than up to 15 feet above the structure ridgeline; and is not located in a heritage district or on a heritage building.</p>	<p>1) Building-mounted system with a height of no more than up to 15 feet above the structure ridgeline, including otherwise exempted wind energy systems located in a heritage district or on a heritage building</p>	<p>For all properties:</p> <p>1) Building-mounted system with a height of more than 15 feet above the structure ridgeline but not more than 65 feet, as measured from existing grade</p> <p>For properties with nonresidential uses:</p> <p>1) Freestanding system up to 65 feet in height</p>	<p>1) Requests for height deviations pursuant to Section 19.56.110</p>
<p>Industrial M-S, M-3, MP-I, MP-TOD, MP-C</p> <p>Public Facilities PF</p>	<p>Same as for residential and commercial zoning districts.</p>	<p>1) Building-mounted system with a height of no more than up to 15 feet above the structure ridgeline</p> <p>2) <u>Freestanding system¹ up to 65 feet in height if located more than 1,000 feet from the right-of-way of a freeway, expressway or arterial street</u></p>	<p>1) Building-mounted system with a height of more than 15 feet above the structure ridgeline</p> <p>2) Freestanding system¹ > 65 feet but < 90 feet high and located more than 1,000 feet from the right-of-way of a freeway, expressway or arterial street</p>	<p>1) Freestanding system¹ of any height located less than 1,000 feet from the right-of-way of a freeway, expressway or arterial street</p> <p>2) Freestanding system¹ equal to or > 90 ft. high</p> <p>3) Requests for height deviations pursuant to Section 19.56.110</p>

¹ Freestanding (not building-mounted) wind energy systems shall be restricted to a maximum height of sixty-five (65) feet when located adjacent to residentially zoned properties.

19.56.100. Wind Energy Systems—Exemptions.

Installation of any wind energy system identified in Table 19.56.090 as exempt which complies with all applicable provisions of Title 16 of this code (Building and Construction) and which does not pose a threat to the safety of any person does not need a land use permit. The building official is authorized to determine whether special measures may be required to ensure that the wind energy system will not pose a threat to public safety, including, but not limited to, compliance with electrical and fire code requirements, and secure installation.

19.56.110. Wind Energy Systems—Deviations to height.

The planning commission may allow a deviation from the height limits defined in Table 19.56.090 only, subject to compliance with the following requirements:

(a) The applicant shall demonstrate proof of substantial wind obstruction preventing maximum efficiency of the wind energy system at the maximum allowable height.

(b) The applicant shall include a visual impact analysis of the proposed wind energy system as installed, which shall include, at a minimum, a photographic simulation and any visual screening incorporated into the development that is intended to lessen the system's visual prominence.

(c) The proposed device shall satisfy all other requirements set forth in Section 19.56.070 and 19.56.080, including the required setback.

19.56.120. Wind Energy Systems—Abandonment of use.

A wind energy system which is not used for twelve (12) consecutive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

19.56.130. Wind Energy Systems—Indemnity and liability for damages.

(a) The small wind energy system operator shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating in the defense. Nothing contained in this stipulation shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

(b) Operators shall be strictly liable for any and all sudden and accidental pollution and gradual pollution resulting from their use within the city. This liability shall include cleanup, intentional injury or damage to persons or property. Additionally, operators shall be responsible for any sanctions, fines, or other monetary costs imposed as a result of the release of pollutants from their operations. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes materials to be recycled, reconditioned or reclaimed.

19.56.140. Installation of solar energy systems and wind energy systems in commonly-held areas.

A letter from the owners association approving the application shall be submitted for installation of solar energy systems and wind energy systems in commonly-held areas where the owners association is responsible for maintenance and repairs in condominium or other common interest developments.

19.56.150. Incentives for installation of solar and wind energy systems.

(a) To provide incentives for the installation of solar, wind or solar-wind hybrid energy systems, lot coverage may be exceeded by up to one percent, and/or floor area ratio or the threshold triggering design review may be exceeded by up to one percent, as the case may be, upon approval of a miscellaneous plan permit granted at the discretion of the director of community development and subject to subsection (b) below.

(b) For single-family residential, the incentives provided in subsection (a) above for the installation of solar, wind or solar-wind hybrid energy systems shall be based on providing a minimum monthly energy output of 270 kWh or a minimum of fifty gallons for solar hot water systems. For all other uses, the incentive shall be based on a minimum system size of ten percent of the anticipated or average electrical energy use.

SECTION 6. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision 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 7. CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, that this ordinance and the Negative Declaration have been prepared and are in compliance with the requirements of CEQA and hereby adopts the Negative Declaration.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 9. 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 newspaper for 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 October 20, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney