

ORDINANCE NO. 2980-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND SECTION 19.22.035 OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE

SECTION 1. SECTION 19.22.035 AMENDED. Section 19.22.035 of Chapter 19.22 (Industrial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.22.035 Requirements for High-Intensity Industrial Development

(a) **Purpose.** The purpose of this section is to mitigate the housing and traffic impacts of high-intensity industrial developments, including the demand for affordable housing created by additional jobs.

(b) **Applicability.** This section applies to high intensity industrial developments in the M-S or M-3 Zoning District. High-intensity industrial developments means any project that creates new floor area exceeding floor area ratio (FAR) thresholds defined in Table 19.32.020 (Building Height, Lot Coverage and Floor Area Ratio) or exceeding 70% FAR in industrial intensification areas defined in Section 19.32.070 (Floor Area Ratio (FAR)).

(c) **Housing Mitigation Fee.** High-intensity industrial developments are subject to a housing mitigation fee.

(1) **Use of Housing Mitigation Fees.** Housing mitigation fees are placed in the City's Housing Fund and used to support the provision of affordable housing within the city. The provision of housing may include funding the creation or acquisition of new units, providing assistance to potential home buyers, and assisting with the maintenance and rehabilitation of existing units.

(2) **Calculation of Fee.** The amount of the fee is set by the City Fee Resolution and is imposed on a per square foot basis for new gross floor area exceeding specified FAR thresholds. For calculation purposes, the floor area allowed is 70% FAR for industrial intensification sites or the FAR limitation in Table 19.32.020 (Building Height, Lot Coverage and Floor Area Ratio) for all other industrial sites. The fee amount is calculated as follows:

(Gross floor area) – (Floor area allowed) multiplied by (per square foot fee) equals (total housing mitigation fee).

(3) **Exemptions to Gross Floor Area.** The following areas are exempt from the gross floor area used in housing mitigation fee calculations:

(A) Recreational facilities such as gyms, showers, indoor pools, locker rooms;

(B) Cafeterias, auditoriums, atria or other special presentation rooms not easily converted to work area;

(C) Architectural design features not utilized for occupancy or storage;

(D) Childcare facilities;

(E) Hazardous materials storage; and

(F) Existing structures that were vacated or demolished no more than 12 months prior to the filing date of the development application.

(4) **Timing of Payment.** Housing mitigation fees shall be paid prior to issuance of the first grading or building permit for the project. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any grading or building permit for each phase.

(5) **Alternative to Payment.** As an alternative to payment of the housing mitigation fee, a developer may request to mitigate the housing impacts through construction of residential units on an appropriate housing site, the dedication of land or the provision of other resources. The Director may approve this request if the proposed alternative furthers affordable housing opportunities in the city to an equal or greater extent than payment of the housing mitigation fee.

(6) **Adjustments to Mitigation Fee.** An adjustment, reduction or waiver of the required housing mitigation fee may be granted at the time the development application is approved under the following circumstances:

(A) **Additions to Existing High FAR Buildings.** For projects adding square footage to existing structures exceeding FAR thresholds, housing mitigation fees shall be paid only on the additional square footage.

(B) **Absence of Nexus.** The approving body may waive housing mitigation fees for projects that have no nexus between development impact and housing need. The applicant bears the burden of proof for this finding. If subsequent use or structure changes occur that trigger the need for housing, the waiver is revoked and housing mitigation payment shall be calculated and due at that time. Notice of this waiver, with the condition regarding subsequent use changes, shall be recorded with the County of Santa Clara.

(d) **Transportation Demand Management Plan.**

(1) **Standard M-S and M-3 Floor Area Ratios.** Projects requiring a Use Permit for floor area ratio may be required to submit a transportation demand management (TDM) plan, at the determination of the approving body.

(2) **Industrial Intensification Areas.** Projects greater than 70% in the industrial intensification areas described in Section 19.32.070 (Floor Area Ratio (FAR)) are required to submit a TDM plan for the entire project site. The TDM plan shall demonstrate that vehicle-trip rates for the project do not exceed the projected trip generation of a 70% FAR project.

(3) **Green Building Incentives.** TDM plans may also be required for projects to use green building incentives, as described in Chapter 19.39 (Green Building Regulations).

SECTION 2. EXEMPTION FROM CEQA. 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 by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each

section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

SECTION 5. 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 15 days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2012, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

Michael D. Martello, Interim City Attorney