REPORT TO MAYOR AND COUNCIL

NO: 13-047

Council Meeting: February 26, 2013

SUBJECT: 2010-7148 Discussion and Possible Action on Retooling the Zoning Code (Title 19 of the Sunnyvale Municipal Code) with Focus on Organizational Structure and Article 1 (Purpose, Applicability, Administration and Nonconforming Uses, Structures and Lots).

REPORT IN BRIEF

Staff is in the process of reorganizing, revising and "retooling" the entire Zoning Code (Title 19 of the Sunnyvale Municipal Code). Staff introduced this project to the City Council and Planning Commission in November 2011 (RTC 11-260). The project will produce a Zoning Code that it is easier to understand and accessible to everyone, not just professional staff. As part of this project, staff also seeks to improve and streamline land use permitting and site design review procedures for residents and businesses. Because of its scale, this project will be presented to City Council in phases. Formal repeal of the current Zoning Code and adoption of the "retooled" Zoning Code will occur at the final phase of the project, tentatively scheduled before the end of this year. Community Development Department staff is working closely with the Office of the City Attorney on this effort.

This first phase is to establish a new organizational structure (Attachment A, Proposed Zoning Code Structure) and the contents of Article 1 (Attachment B, Draft Article 1). Article 1 includes the chapters that provide the purpose, applicability and administration of the Zoning Code. These components form the foundation of the Zoning Code. Article 1 also includes a chapter on the application of current regulations on legal nonconforming structures, uses, and lots. In the course of reorganizing and clarifying the chapter on nonconformities, substantive policy questions have been raised regarding replacement of nonconforming structures, which would benefit from further direction from Council.

The Planning Commission considered this item at a public hearing on February 11, 2013 (Attachment F, Draft Planning Commission Public Hearing Minutes of February 11, 2013). Staff has incorporated the Planning Commission's recommendations for minor wording changes in the proposed organizational structure. The Planning Commission also gave further direction on the issues relating to replacement of nonconforming structures and requested additional Council input. This discussion is further described in the body of the report.

Staff requests Council approve the proposed organizational structure of the Zoning Code included in Attachment A, as well as the draft language included in Attachment B on the purpose, applicability, and administration of the Zoning Code. Further, staff requests Council direction on the policy issues related to nonconforming structures.

BACKGROUND

In November 2011, staff introduced the project to reorganize, revise, and "retool" the entire Zoning Code (RTC 11-260), named "Retooling the Zoning Code". The main goal of the project is to produce a Zoning Code that is accessible to all users, including staff, boards and commissions, City Council and the general public. As part of this project, staff also seeks to improve and streamline land use permitting and site design review procedures for residents and businesses. No substantive changes to allowable uses or densities in zoning districts or development standards (setbacks, height, lot coverage, etc.) are anticipated. Any potential substantive changes will be presented to Planning Commission and City Council for policy direction. This project will be presented to Council in phases, with the last phase including formal repeal of the current Zoning Code and adoption of the new Zoning Code.

This project evolved from earlier Zoning Code amendments that included minor corrections, word changes and streamlining of permit requirements for certain uses in October 2009 (RTC 09-263 and RTC 09-266). Since 1963, the Zoning Code has been reviewed in its entirety only once when it was restructured in 1999-2001. The 1999 restructure included minimal changes to code language and procedures. The primary benefit of the restructure was the creation of land use tables to more clearly describe permitted, conditionally permitted and prohibited uses. Many outdated definitions and complex language have remained, and subsequent amendments to the Zoning Code have resulted in obscurely located regulations and increasingly complex permitting processes. These factors all add to difficulties in public understanding and staff administration.

Staff has held six study sessions with the Planning Commission for guidance on developing a general tone and on the new organizational structure. Staff has also explored possible permitting schemes and streamlined procedures with the Planning Commission, which will be presented to Council in the next phase of this project. Staff held one study session with the City Council on November 20, 2012 to reintroduce the project and provide updates on its progress.

DISCUSSION

PROPOSED ORGANIZATIONAL STRUCTURE

The most common complaint received from the public is difficulty in finding needed information under the current organizational structure (Attachment C, Current Zoning Code Structure). In some cases, the current structure

separates closely-related regulations. In other cases, it groups dissimilar regulations, or locates regulations in chapters users would not think to search in. For example, regulations on allowable structural extensions into the required setbacks are separated from the minimum setback regulations for each zoning district, and located in a completely different chapter (Ch. 19.48, Fences, Distances between Buildings and Extensions into Yards).

This disorganization has caused ongoing frustration and inefficiencies for both the public and staff. Staff has created brochures and handouts to group related information together as a remedy, but this requires resources to maintain with each newly adopted ordinance and may be prone to mistakes.

The proposed new organizational structure will consist of eight parts called articles. Each article will be a grouping of chapters containing similar types of regulations. Users will be able to know where to look for information, and staff will be able to better categorize future regulations.

- **Article 1, Purpose, Applicability, and Administration**, contains the administrative regulations of the Zoning Code including establishing its purpose, authority, applicability, enforcement, interpretation of provisions, regulation of legal nonconforming uses, structures and lots, and structure and content of the Zoning Code. Details of this article are provided in the next section of this report.
- **Article 2, Definitions**, contains definitions of terms that apply throughout the Zoning Code. Definitions that apply only to specific chapters will be contained within those chapters for maximum ease-of-use. Only terms that are unique to the Zoning Code will be defined. The new version of Definitions will also serve as an index by referencing chapter-specific definitions.
- **Article 3, Base Zoning Districts, Uses and Related Zone-Specific Development Standards**, contains land use and development regulations specific to base zoning districts such as setbacks, lot coverage, floor area ratio, and building height.
- **Article 4, Combining Districts and Specific Plan Districts**, contains land use and development regulations specific to combining districts and specific plan districts. The Downtown Specific Plan and Moffett Park Specific Plan District chapters and regulations for future special districts will reside in this article.
- **Article 5, Specific Land Use Regulations**, contains land use and development requirements specific to uses, such as operational noise limits, shopping center uses, accessory living unit standards, home-based business operation requirements, outdoor seating and display standards, restrictions on concentration of certain uses, and duration of temporary unenclosed uses.

- **Article 6, Site Planning, Structure and Sign Regulations**, contains regulations for standard development requirements common to multiple zoning districts, such as landscaping, parking, green building standards, signs, fences, wireless telecommunications facilities, trash enclosures and alternative energy systems.
- **Article 7, Special Housing Provisions**, contains regulations for specific housing uses such as below-market-rate dwelling unit requirements, condominium conversion standards, and mobile home park conversion requirements.
- **Article 8, Permits and Procedures**, contains the purpose and required findings for each permit type, detailed procedures for application, processing and decisions for permits and amendments to the Zoning Code or the General Plan.

Staff will be capitalizing on the use of cross references to link related regulations and the use of hyperlinks in the online version of the Zoning Code.

Chapter Structure

In order for a Zoning Code to be fully comprehensible and to maximize its user-friendliness, it is equally as important to have a standard chapter structure with sections that answer key questions. Each chapter within each article will be drafted with the following sequence of sections. This structure has been used for recently adopted ordinances such as Art in Private Development, Below Market Rate Housing and Mobile Home Park Conversions.

- **Purpose –** This section states the intent of the regulations. Key questions addressed in this section are: *Why* does the City have these regulations? *What* are the regulations trying to accomplish?
- **Definitions –** This section contains terms that apply only or primarily to the regulations in the chapter. Key question addressed in this section is: *What* do we mean by the terms used in this chapter?
- **Applicability –** This section establishes the extent to which the regulations apply. Key questions addressed in this section are: *When* do these regulations apply? *Which* uses, structures, or projects are subject to these regulations?
- **Standards/Requirements –** This part is the "meat" of the chapter and may consist of one or more sections. Key questions addressed in these sections: *What* are the limits, controls or standards? *What* is allowed and *what* is prohibited? *How* big or *how* small? *Where* can a structure be built or *where* can a use be located? *Which* permit is required, if any?
- **Subject-Specific Procedures –** Almost all chapters will point to Article 8 (Permits and Procedures) for required findings and permitting procedures. In a few rare cases, these sections will be included if specific procedures are required for the subject matter, such as conversion of a

mobile home park to another use. Key questions addressed under procedures within the chapters are: *How* do I obtain a permit? *Who* makes the decision? *How* is the decision made?

ARTICLE 1, PURPOSE, APPLICABILITY AND ADMINISTRATION

Article 1 provides the "ground rules" for the administration of the Zoning Code. It contains chapters that provide information such as the basic foundation for code authority, how to interpret regulations, and how calculations of fractions and measurements of distances are applied. With the exception of the chapter on nonconforming uses, structures and lots (see next section), staff has written Article 1 clearly and succinctly, and has included provisions that address frequent questions about how the Zoning Code is interpreted and applied. For example, Article 1 will now clearly state at what stage a project is subject to a revised ordinance. Community Development Department staff has worked closely with the Office of the City Attorney to ensure that it is clear, legally defensible and consistent with City practice.

Regulation of Nonconforming Uses, Structures and Lots

One of the five chapters in Article 1 addresses nonconforming uses, structures and lots. However, this individual chapter is not ready for review at this time. This chapter posed particular challenges due to the complex language and lack of coherent organization. Questions of a much more substantive nature have surfaced as staff began to clarify and reorganize this chapter. These questions require further direction from the Planning Commission and City Council prior to proceeding further.

"Nonconforming" means a use, structure, or lot that was legally established but that no longer conforms to the current Zoning Code regulations. Nonconformity can result from many factors such as changed zoning requirements for lot size, setback, height or permissible land uses. Nonconformities may also result when a government agency acquires property for public purposes (e.g. roadway widening). Cities typically have a "nonconforming chapter" in their zoning code that governs nonconformities and lays out very specific provisions for when (and if) a use, structure or lot is required to change and be brought into conformance with the current regulations.

The current nonconforming chapter of the Zoning Code is confusing and unclear (Attachment D, Current Regulations on Nonconformities). The regulations do not systematically deal with situations, but jump from subject to subject, sometimes in the same sentence. This leaves large gaps in regulations, many times on a regularly occurring type of issue. The language is especially difficult to unravel. The combination of confusing and contradictory language and gaps in regulations has interfered with application of the requirements.

As part of Retooling, staff is looking to clarify language and fill in the gaps in the nonconforming chapter. On January 14, 2013, the Planning Commission

considered these questions at their study session (Attachment E, Notes from Planning Commission Study Session on Nonconforming Uses, Structures and Lots). Staff is also seeking further direction from Council. This report will briefly review the main questions. The primary issues of concern relate to the regulation of nonconforming structures, which are framed with the following questions. While changes to regulations on nonconforming ***structures*** are necessary, ***no*** substantive changes for nonconforming ***uses*** and ***lots*** are envisioned.

What is the purpose of the nonconforming chapter?
Currently, there is only one statement that describes the intent of the regulation of nonconformities:

> "Provide for the elimination of incompatible and nonconforming uses of land, buildings and structures which are adversely affecting the character and value of desirable development in each zoning district" (SMC 19.002.030 (10)).

However, the actual regulations do not necessarily match this statement.

Should the regulations allow nonconforming structures to be replaced?
One surprising feature of the current regulations is that it permits nonconforming structures to be repaired, altered, enlarged or *replaced*. Compared to other cities, it is very unusual to have a provision that specifically permits intentional replacement of nonconforming structures that are not accidentally destroyed. Allowing nonconforming structures to exist in perpetuity is in direct conflict with the purpose statement described above and undermines the point of regulating nonconformities. At their February 11 public hearing, Planning Commission confirmed the current purpose statement, recommending that structures should become conforming "as quickly as possible" (Attachment F).

The current regulations contain a separate section that addresses involuntary or accidental damage or destruction (e.g., fire, earthquake, etc.). The regulations allow nonconforming residential structures to be completely rebuilt in the original state in cases of accidental damage or destruction, while nonresidential structures damaged more than 50 percent of the structure value must be rebuilt to conform to current code. Provisions that allow replacement of an accidentally damaged or destroyed nonconforming structure is typical in most cities. At a recent study session with the Planning Commission, almost all commissioners agreed that the current provisions on replacement of accidentally destroyed nonconforming structures are reasonable and do not need to be changed. However, the commissioners shared concerns about the provisions that allow intentional demolition and replacement of a nonconforming structure.

Intentional replacement of nonconforming structures is typically prohibited in other cities. Allowing replacement of nonconforming structures does not provide for future conformity with current regulations under any scenario. If Council were to prohibit replacement of nonconforming structures, this policy would require the regulations to make an important distinction between repair work and replacement. At the study session with the Planning Commission, it was suggested that any construction over 50% of the value of the structure would constitute replacement and should not be allowed. Although this definition may be appropriate, there is still the question on how to calculate the value of the structure.

What is the difference between repairing and replacing?

If nonconforming structures are allowed to be repaired but not replaced, defining replacement is a challenging issue. Cities have defined it in a variety of ways. Several methods are used which have both advantages and drawbacks. These methods include:

1. Construction cost as a percentage of building valuation: Defining replacement as a function of valuation requires all significant remodels to either submit valuation estimates for the existing nonconforming structure and proposed remodeling or rely on standard valuation tables typically based on square footage. Submittal of valuation estimates could slow down Sunnyvale's streamlined permit process as well as introduce significant confusion and consistency issues for applicants and staff. While the standard valuation method could be simpler, it may not capture significant repairs or upgrades, including structural work.
2. Structural repairs versus non-structural repair: If replacement is classified as any work that involved structural repairs, this could inadvertently discourage needed safety repairs. Examples of structural repairs could include installation of a new roof and support system that covers 100 percent of the floor area or substantial foundation work for seismic retrofitting.
3. Percentage of rebuilt square footage: While this method could be the most straightforward approach, limiting replacement to a certain percentage of the original structure square footage could penalize property owners with smaller buildings. Additionally, similar to the building valuation method, it could affect the ability to replace or upgrade the portion of the structure that is conforming (e.g. where only a small portion is nonconforming with regard to setback or height.)

At the study session, the Planning Commission discussed the issue in depth but did not reach consensus on how to define repair versus replacement. At their February 11, 2013 public hearing, the Planning Commission suggested that replacement of nonconforming detached garages should be allowed if the structures provide required parking for the property. However, other structures, such as homes and garden sheds should be required to meet

current standards if replaced. The Commission discussed limiting structures to their "useful life" which could include limitations on structural repair, but may also include construction cost as a percentage of building valuation. No consensus was reached, and the Planning Commission is requesting further Council comment and staff analysis prior to making a formal recommendation.

NEXT STEPS

Staff will rewrite the nonconforming chapter after obtaining Council direction and then start the next phase of Retooling the Zoning Code. This next phase will clarify or create necessary definitions, simplify the current use tables, and improve and streamline permitting procedures. Planning Commission and City Council have seen examples of the use tables at study sessions, and participated in discussions on the permit types and procedures. The final phase will tackle the reorganization and clarification of the zoning district chapters, site planning standards and any remaining sections that were not covered in the earlier phases. These items will be covered in subsequent Council meetings prior to presenting the final draft of the Zoning Code for adoption.

FISCAL IMPACT

No fiscal impact is expected. This project is being completed with City staff using the operating budgets for Planning and the Office of the City Attorney. It is anticipated that the long-term benefit of this project is less time spent in interpreting and administering zoning regulations and processing permits for residents and businesses.

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 Web site.

Staff has held study multiple sessions with the Planning Commission on this project to guide the effort. A study session was held with the City Council on November 20, 2012.

The Planning Commission reviewed this item at their hearing of February 11, 2013. No members of the public spoke on the item (Attachment F).

The project webpage *(ZoningCode.inSunnyvale.com*) has been continually updated to keep the public informed on the project's progress.

ALTERNATIVES

1. Approve the new organizational structure (Attachment A) and draft language of Article 1 as recommended by the Planning Commission (Attachment B), and direct staff to proceed with the next phases of Retooling the Zoning Code.
2. Approve the organizational structure and draft language of Article 1 with modifications, and direct staff to proceed with the next phases of Retooling the Zoning Code.
3. Provide direction to Planning Commission and staff on the preferred approach to addressing the policy questions on nonconforming uses, structures and lots.

RECOMMENDATION

Staff recommends Alternative 1 and Alternative 3. Based on City Council direction on Alternative 3, the Planning Commission and staff will further evaluate the issues and present a recommendation to the City Council at a later date on nonconforming structure regulations. Additionally, if the Council believes that more discussion is necessary prior to providing direction, a Council study session could be scheduled on this topic.

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City Manager

Attachments

A. Proposed Zoning Code Structure
B. Draft Article 1 (Purpose, Applicability and Administration)
C. Current Zoning Code Structure
D. Current Regulations on Nonconformities
E. Notes from Planning Commission Study Session on Nonconforming Uses, Structures and Lots
F. Draft Planning Commission Public Hearing Minutes of February 11, 2013

Proposed Zoning Code Organizational Structure

Article 1 – Purpose, Applicability and Administration

Chapter 19.02	Authority and Purpose
Chapter 19.04	Interpretation of Regulations
Chapter 19.06	Nonconforming Uses Structures, and Lots
Chapter 19.08	Rules of Measurement
Chapter 19.10	Structure of the Zoning Code

Article 2 - Definitions

Chapter 19.12	Definitions

Article 3 – Base Zoning Districts, Land Uses and ~~Zone-Specific~~ Development Standards

Chapter 19.14	Precise Zoning Plans
Chapter 19.16	Allowable Land Uses and Permits Required
Chapter 19.18	Residential Zoning Districts and Development Standards
Chapter 19.20	Commercial and Office Zoning Districts and Development Standards
Chapter 19.22	Industrial Zoning Districts and Development Standards
Chapter 19.24	Public Facility Zoning District and Development Standards
Chapter 19.26	[Reserved]

Article 4 – Combining Districts, ~~and~~ Specific Plan Districts, Land Uses and Development Standards

Chapter 19.28	Site and Project-Based Specific Plan Districts
Chapter 19.30	Combining Districts
Chapter 19.32	Downtown Specific Plan District
Chapter 19.34	Moffett Park Specific Plan District
Chapter 19.36	[Reserved]
Chapter 19.38	[Reserved]

Article 5 –Specific Land Use Regulations

Chapter 19.40 Noise, Air Quality and Other Operating Standards
Chapter 19.42 Specific Primary Use Regulations
Chapter 19.44 Uses Accessory to a Permitted Residential Use
Chapter 19.46 Uses Accessory to a Permitted Nonresidential Use
Chapter 19.48 Development Impact Mitigation Fees
Chapter 19.50 Accessory Living Units
Chapter 19.52 Temporary Unenclosed Uses
Chapter 19.54 Shopping Centers
Chapter 19.56 Live/Work Units
Chapter 19.58 Adult Business
Chapter 19.60 [Reserved]
Chapter 19.62 [Reserved]

Article 6 – Site Planning, Structure and Sign Regulations

Chapter 19.64 Exterior Improvements, Storage and Equipment
Chapter 19.66 Green Building Regulations
Chapter 19.68 Landscaping, Irrigation and Usable Open Space
Chapter 19.70 Parking
Chapter 19.72 Signs
Chapter 19.74 ~~Sheds and Other~~ Accessory Structures and Sheds
Chapter 19.76 Temporary Accessory Structures
Chapter 19.78 Wireless Telecommunication Facilities
Chapter 19.80 Solar Energy Systems
Chapter 19.82 Wind Energy Systems
Chapter 19.84 Artwork Required in Private Developments
Chapter 19.86 Official Plan Lines
Chapter 19.88 [Reserved]
Chapter 19.90 [Reserved]

Article 7 – Special Housing Provisions

Chapter 19.92 Below Market Rate Ownership Housing Requirements
Chapter 19.94 Existing Below Market Rate Rental Housing
Chapter 19.96 Conversion of Rental Housing to Ownership Housing
Chapter 19.98 Conversion of Mobile Home Parks to Other Uses
Chapter 19.100 Reasonable Accommodation Procedures
Chapter 19.120 [Reserved]

Article 8 – Permits and Procedures

Chapter 19.140 Common Procedures for All Permits
Chapter 19.150 Zoning Clearances
Chapter 19.160 Plan and Design Reviews
Chapter 19.170 Use Permits
Chapter 19.180 Planned Development Permits
Chapter 19.190 Variances
Chapter 19.200 Tree Removal Permits
Chapter 19.210 Heritage Preservation Nominations and Permits
Chapter 19.220 Street Name Changes
Chapter 19.230 Development Agreements
Chapter 19.240 Amendments (General Plan, Zoning Code, Zoning Map and Specific Plans)

(Italic text at the end of each section indicates whether the provision is existing or new. If existing, the text will reference sections in the current Zoning Code. If new, it has been included because of common practice or per State law.)

ARTICLE 1
PURPOSE, APPLICABILITY AND ADMINISTRATION

Chapter 19.02 Authority and Purpose
Chapter 19.04 Interpretation of Regulations
Chapter 19.06 Rules of Measurement
Chapter 19.08 Nonconforming Uses, Structures and Lots
Chapter 19.10 Structure of the Zoning Code

Chapter 19.02 – Authority and Purpose

19.02.010 Title
19.02.020 Adoption Authority
19.02.030 Purpose of the Title
19.02.040 Applicability of the Zoning Code
19.02.050 Responsibility for Administration
19.02.060 Violations
19.02.070 Responsibility for Enforcement
19.02.080 Partial Invalidation of Zoning Code

19.02.010 Title

This title is known and may be cited as the Sunnyvale Zoning Code, or "Zoning Code." *(19.02.010 with amendments)*

19.02.020 Adoption Authority

This title is adopted pursuant to the powers of the City of Sunnyvale as a charter city as provided in Article IV of the City Charter, and as authorized by Section 6 of Article XI of the Constitution of the State of California. *(19.02.020)*

19.02.030 Purpose of the Title

The purpose of this Zoning Code is to implement the Sunnyvale General Plan by: *(19.02.030 with amendments)*

(a) Classifying and regulating the uses of land and structures within the City of Sunnyvale;
(b) Protecting and promoting the public health, safety, peace, comfort and general welfare;
(c) Protecting the character and stability of neighborhoods and districts and conserving property values;
(d) Promoting orderly and beneficial development; and
(e) Conserving and protecting the City's natural resources.*(new)*

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19.02.040 Applicability of the Zoning Code

This Zoning Code applies to all property within the City of Sunnyvale limits, including all uses, structures and land.

(a) **Governmental Agencies.** Governmental agencies are exempt from the provisions of this Zoning Code only to the extent that such property may not be lawfully regulated by the City of Sunnyvale. *(19.16.040, amended)*

(b) **Other Requirements May Apply**. Nothing in this Zoning Code eliminates the need for obtaining any permit, approval, or entitlement required by other provisions of the Sunnyvale Municipal Code or complying with the regulations of any City department, or any local, State or federal agency.

Conflicting Requirements. Any conflicts between different requirements of this Zoning Code, or between this Zoning Code and other regulations, must be resolved in compliance with Section 19.04.060 (Conflicting Requirements).

19.020.050 Responsibility for Administration *(Consolidates provisions throughout current code)*

The City Council, the Planning Commission, the Heritage Preservation Commission, the Director of Community Development, the Community Development Department, and other boards and commissions, staff, groups, or individuals identified in this Zoning Code administer the Zoning Code. This section describes the authority and duty of elected and appointed officials and City staff to perform functions related to this Zoning Code.

(a) **City Council.** The duties of the City Council are to:

(1) **Adoption and Amendments.** Adopt, and amend as necessary, the General Plan, Zoning Code, Zoning Map, specific plans, precise plans, and environmental guidelines;

(2) **Appeals.** Be the final appellate body on matters identified in this Zoning Code; and

(3) **Environmental Review.** Determine that there has been adequate environmental review under the provisions of CEQA and environmental guidelines for all matters under the Council's consideration.

(b) **Boards and Commissions.** The duties of the Planning Commission, the Heritage Preservation Commission, and other boards and commissions are to review and make decisions in compliance with Section 19.xx (Review Authority), in addition to any adopted City policy.

(c) **Director of Community Development.** The duties of the Director of Community Development are described below:

(1) **Zoning Administrator.** Serve as Zoning Administrator pursuant to State law (Government Code Sections 65901 et seq.) and perform the duties prescribed in this Zoning Code, including the initial review of land use applications, interpret the applicability of any provision of this Zoning Code, and

(2) **Determine Conformance.** Evaluate proposed land uses, structures and subdivisions for conformity to the General Plan, specific plans, precise plans, this Zoning Code, and other City policies and guidelines and report the findings, together with recommendations for approval, conditional approval, or denial to commissions and Council;

(3) **Administrative Permits.** Approve or deny applications for all administrative permits and approvals administered by the Department;

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(4) **Environmental Review**. Ensure adequate environmental review of projects, in compliance with CEQA and environmental guidelines, and recommend changes to, or the adoption of, environmental guidelines;

(5) **Defer Actions**. Defer action on a decision subject to the Director's authority and refer the application directly to the Planning Commission or other commission as deemed appropriate;

(6) **Design Review.** Review and make a determination of consistency for design review for nondiscretionary projects and projects for which the Director is the Review Authority as prescribed in this Zoning Code;

(7) **Documents.** Execute agreements, deed restrictions, and other legal documents required by this Zoning Code and as determined appropriate; and

(8) **Duties as Assigned.** Perform other responsibilities assigned by the City Manager.

(9) **Delegation of Duties.** The Director may delegate duties to be carried out by a Department staff person under the supervision of the Director, or designate a Department staff person to perform the duties in addition to the duties of their permanent position.

(d) **City Officials and Employees.** All officers, officials and employees of the City who are vested with the duty or authority to issue permits or licenses must conform to the provisions in the Zoning Code. (*19.98.180)*

19.02.060 Violations

(a) **Public Nuisance.** It is unlawful and it is declared a public nuisance for any person to establish, occupy, maintain, construct, reconstruct, alter, replace or allow any use of land or structure that does not comply with the requirements of this Zoning Code. *(19.98.200)* An existing land use is lawful only if it was legally established in compliance with regulations applicable at the time the use was established and if it is operated and maintained in compliance with all applicable provisions of this Zoning Code, including Chapter 19.08 (Nonconforming Uses, Structures and Lots). (*New)*

(b) **Approvals in Violation.** Any permit, license or approval issued in conflict with this title is null and void. *(19.98.180)*

(c) **Penalty and Abatement.** Illegal uses must be discontinued and illegal uses and structures must obtain applicable permits, be removed or abated. Failure to comply with the Zoning Code or an applicable permit is punishable as provided in Title 1 (General Provisions). *(19.98.140)*

19.02.070 Responsibility for Enforcement

The Director of Community Development and designated officers, officials and employees enforce the provisions of this Zoning Code. *(19.98.180)*

19.02.080 Partial Invalidation of Zoning Code

If any part of this Zoning Code is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this Zoning Code. The Sunnyvale City Council declares that this Zoning Code and each part would have been adopted without regard to whether one or more parts would later be declared invalid, unconstitutional, or unenforceable. *(New. Variations of this clause have been used and repeated in many ordinances. Placing it here will no longer require it to be repeated in every ordinance.)*

Chapter 19.04 – Interpretation of Regulations

19.04.010 Purpose
19.04.020 Applicability
19.04.030 Interpretation or Determination by the Director
19.04.040 Rules of Interpretation
19.04.050 Conflicting Requirements
19.04.060 Effect of Zoning Code Changes on a Project in Progress

19.04.010 Purpose

This chapter establishes the rules for the meaning or applicability of any part of this Zoning Code. The provisions in this chapter are intended to ensure the consistent application and interpretation of the provisions of this Zoning Code. *(New)*

19.04.020 Applicability

The rules of this chapter apply to any interpretation or determination of the applicability of any Zoning Code provision.

19.04.030 Interpretation or Determination by the Director

(a) **Authority.** The Director of Community Development has the authority to interpret any definition not expressly identified or determine the applicability of any provision of this Zoning Code. The Director may issue an official written interpretation or determination in accordance with the procedures in this section. The Director may refer an interpretation or determination directly to the Planning Commission or other commission as deemed appropriate. *(New)*

(b) **Request for Interpretation or Determination.** A request for an official written interpretation or determination by the Director must be submitted to the Department and must include all information required by the Department, subject to any applicable fees.

(c) **Findings, Basis for Interpretation or Determination.** The issuance of an interpretation or determination by the Director will include findings stating the basis for the decision. The basis for an interpretation or determination may include technological changes or new industry standards, in addition to the following findings:

(1) This interpretation or determination is consistent with the applicable provisions of this Zoning Code; or

(2) If the use, structure or required facility is nonconforming, that the proposed modification will not negatively impact or degrade the operation of the use, site or adjoining properties; and

(3) This interpretation or determination will not be detrimental to the property or the public convenience, health, interest, safety, or general welfare of the City; and

(4) This interpretation or determination is consistent with the general land uses, objectives, policies, and programs of the General Plan, any applicable specific plan, precise plan, and the intent of this Zoning Code.

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(d) **Record of Interpretations.** Official interpretations must be in writing and quote the provisions of this Zoning Code being interpreted, the applicability in the particular or general circumstances that caused the need for interpretations, and the determination.

(e) **Amendment.** Any provision of this Zoning Code that is determined by the Director to need refinement or revision will be corrected by amending this Zoning Code when feasible. Until an amendment can occur, the Director will maintain a complete record of all official interpretations as an appendix to this Zoning Code, which are indexed by the number of the chapter or section that is the subject of the interpretation.

(f) **Referral of Interpretation.** The Director has the option of forwarding any interpretation or determination of the meaning or applicability of any provision of this Zoning Code directly to the Planning Commission for consideration.

(g) **No Appeal.** Any interpretation of this Zoning Code by the Director, or by the Planning Commission if referred by the Director, is final. There is no option to appeal.

19.04.040 Rules of Interpretation.

(a) **Abbreviated Titles and Phrases.** For the purpose of brevity, and unless otherwise indicated, the following phrases, names of personnel and decision-making bodies are shortened in this Zoning Code: *(New)*

(1) The City of Sunnyvale is referred to as the "City."
(2) The Community Development Department is referred to as the "Department."
(3) The Director of Community Development or the director's designee is referred to as the "Director."
(4) The City Council is referred to as the "Council."
(5) The State of California is referred to as the "State." The County of Santa Clara is referred to as the "County."
(6) The City of Sunnyvale Municipal Code is referred to as "the Municipal Code."
(7) The California Environmental Quality Act is referred to as "CEQA."
(8) The California Subdivision Map Act is referred to as the "Map Act."

(b) **Language.** Unless the context clearly indicates otherwise, the following rules apply to the language used in this Zoning Code: *(New)*

(1) The words "shall," "will," "is to," "must" and "are to" are always mandatory.
(2) The words "should" and "encourage" are not mandatory but are strongly recommended or discretionary; "may" is permissive.
(3) The present tense includes the past and future tenses; and the future tense includes the present.
(4) The singular number includes the plural number, and the plural the singular.
(5) The words "include," "includes" and "including" mean "including but not limited to . . ."
(6) The word "and" indicates that all connected subjects apply.
(7) The word "or" indicates that the connected subjects may apply individually or in any combination.
(8) The words "either…or" indicates that the connected subjects apply individually and not in combination.
(9) The words "amend," "modify," "revise," and "alter" all mean "to change."

(10) The words "waive" means "to provide justified relief a requirement."

(11) The use of the word "approval" includes approval with conditions.

(12) The words "appropriate" or "applicable" means "as determined by the applicable Review Authority or if not identified, by the Director."

(13) The word "structure" includes "buildings or structures." The term "square feet" means "square feet in area."

(14) The words "deemed complete" means "determined to be complete by the Director," or "considered complete due to statutory provisions in State or federal law."

(15) The words "with a permit" means "with approval of a permit."

(c) **Number of Days**. Whenever a number of days is specified in this Zoning Code, or in any permit, condition of approval or notice issued or given as provided in this Zoning Code, the number of days will be consecutive calendar days. For example, when counting the number of days from a decision, Day 1 would be the day after the decision. A time limit will extend to 5 p.m. on the following business day where the last of the specified number of days falls on a day that the City is not open for business.*(new)*

(d) **State Law Requirements**. Where this Zoning Code references applicable provisions of State law (for example, the California Government Code, Public Resources Code, etc.), the reference will be interpreted to be the applicable State law provisions as they may be amended from time to time.*(New)*

(e) **Minimum Requirements**. All provisions of this Zoning Code must be considered minimum requirements, unless stated otherwise (for example, height limits and lot coverage requirements are maximums, not minimums). The Director may require standards that are more restrictive or in addition to those required by this Zoning Code as a condition of approval of any discretionary permit.

19.04.050 Conflicting Requirements

Any conflicts between different requirements of this Zoning Code, or between this Zoning Code and other regulations, will be resolved as follows.

(a) **Zoning Code Provisions**. In the event of any conflict between the provisions of this Zoning Code, the most restrictive requirement controls, except in the case of a conflict between the zoning district regulations of Article 4 (Combining Districts and Specific Plans) and other portions of this Zoning Code, the provisions in Article 4 control.*(New)*

(b) **Development Agreements, Precise Plans, or Specific Plans.** In the event of any conflict between the requirements of this Zoning Code and standards adopted as part of any development agreement, precise plan or specific plan, the requirements of the development agreement, precise plan or specific plan control. In the event of any conflict between the requirements of a development agreement and a precise plan or specific plan, the requirements of the development agreement control. *(New)*

(c) **Municipal Code Provisions.** In the event of any conflict between requirements of this Zoning Code and other regulations of the City, the most restrictive requirement controls, or as otherwise determined by the Director.*(New)*

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(d) **Mitigation Measures**. In the event of any conflict between the requirements of this Zoning Code and mitigation measures adopted as part of a certified environmental impact report or approved negative declaration, the mitigation measures control.*(New)*

(e) **Private Agreements**. This Zoning Code and its requirements do not interfere with, repeal, abrogate, or annul any easement, covenant, or other agreement that existed at the time, or was entered into after the ordinance codified in this Zoning Code became effective. This Zoning Code applies to all land uses and development in the City regardless of whether a private agreement or restriction imposes a greater or lesser restriction on the development or use of a structure or land. If a requirement of this Zoning Code is more restrictive, this Zoning Code will apply; this Zoning Code, however, does not affect the applicability of any agreement or restriction. The City will not enforce any private covenant or agreement unless it is a party to that covenant or agreement.*(New)*

19.04.060 Effect of Zoning Code Changes on a Project in Progress

The enactment of this Zoning Code or any amendment to its requirements may have the effect of imposing different standards on new land uses than existing development. (For example, this Zoning Code or a future amendment could require more off-street parking spaces for a particular land use than former regulations.) The following provisions determine how the requirements of this Zoning Code apply to a proposed project that is in progress as of the date the ordinance becomes effective, but is not in compliance with the newly effective ordinance. *(New)*

(a) **Project with a Pending Application.** Zoning applications that are not deemed complete as of the effective date of the ordinance are subject to the changed regulations. A zoning application that is deemed complete may be processed according to the requirements in effect on the date of application completeness.*(New)*

(b) **Approved Projects with a Valid Permit.** A project with a valid permit approved before the effective date of the ordinance, including projects under construction, is not subject to the amended ordinance. *(New)*

Chapter 19.06 – Rules of Measurement

19.06.010 Purpose
19.06.020 Applicability
19.06.030 Fractions
19.06.040 Measuring Distances Between Lots
19.06.050 Measuring Distances on a Lot
19.06.060 Measuring Setbacks
19.06.070 Measuring Building Height and Other Structures
19.06.080 Determining Floor Area and Floor Area Ratio
19.06.090 Determining Lot Coverage
19.06.100 Measuring Lot Width and Depth
19.06.110 Measuring Signs

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19.06.010 Purpose

This chapter establishes how various measurements and calculations referred to in this Zoning Code are calculated. *(New)*

19.06.020 Applicability

The rules of this chapter apply to all calculations and measurements in the Zoning Code unless otherwise specifically defined in another chapter. *(New)*

19.06.030 Fractions

When provisions of this Zoning Code require calculations to determine applicable requirements, any results containing a fraction of a whole number is rounded as follows:

(a) **Minimum Lot Area and Number of Lots.** In calculating the number of lots allowed through subdivision, any result with a fraction of a whole number is rounded down to the nearest whole number. For example, a 23,000-square foot lot in the R-0 zoning district can be subdivided into 3 lots based on the required minimum lot area of 6,000 square feet net. *(New)*
Calculation example: 23,000 sq. ft. / 6,000 sq. ft. = 3 lots (rounded down from 3.8). *(New)*

(b) **Residential Density.** In calculating the number of dwelling units allowed on a site, any result with a fraction of a whole number is rounded down to the nearest whole number. For example, a 17,000-square foot lot in the R-2 zoning district is allowed a maximum of 4 dwelling units based on the density limit of 3,600 square feet of lot area per dwelling unit.
Calculation example: 17,000 sq. ft. / 3,600 sq. ft. = 4 dwelling units (rounded down from 4.7) *(New)*

(c) **Parking.** When any fraction of a parking space is required, the entire space must be provided. For example, if a 1,400-square foot building is required to provide 5 spaces per 1,000 square feet of building area, 8 parking spaces are required (rounded up from 7.4). *(19.46.020(a))*

(d) **All Other Calculations**. For all calculations required by this Zoning Code other than those specified above, any result with a fraction of a whole number must be rounded up to the nearest whole number when the fraction is 0.5 or more, and rounded down to the nearest whole number when the fraction is less than 0.5. *(19.34.030 footnote 8 (setbacks) and 19.67.040)*

19.06.040 Measuring Distances Between Lots

a) **Adjacent**. Lots are adjacent if their boundary lines touch at any point. "Adjacent includes lots that are separated by a street, except highways and expressways. *(From existing definitions related to adjacent lots 19.12 and 19.67)*

b) **Within Specified Radius of a Use or Lot**. When a radius distance is described between uses or lots, that distance is measured from all points along the lot line of the subject lot. If only a portion of the lot is located within the radius distance, the entire lot is considered to be within the specified radius. *(New)*

Figure 19.06.040 Measuring Distances Between Lots
[Placeholder for graphic]

19.06.050 Measuring Distances on a Lot *(New)*

(a) **Measurements are Shortest Distance.** When measuring a required distance, the measurement is made at the shortest distance between the two objects.

(b) **Distances are Measured Horizontally.** When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography or slope of the land.

(c) **Measurements Involving a Structure.** Measurements involving a structure are made to the closest support element of the structure. Structures or portions of structures that are entirely underground are not included in measuring required distances.

19.06.060 Measuring Setbacks

(a) **General.** Setbacks are measured as the shortest distance between the nearest lot line and the closest point of a structure support element. Setbacks shall be unobstructed from the ground to the sky except where allowed in in this Zoning Code. *(New)*

(b) **Side Setbacks for Multiple Buildings.** In any residential zoning district where two main buildings cross the same plane, the required minimum and total side setbacks are applied as if the two buildings were one building. Accessory structure setbacks are calculated independently of the main structure, regardless of placement. (*19.34.100(b))*

(c) **Front Setbacks from Official Plan Lines.** For lots where an official plan line is established, the required front setback is measured from the plan line to the structure. *(19.12.260 (a) partial)*

(d) **Side Setbacks as a Percentage of Lot Width.** See Section 19.xx.xxx (Total Side Yard Setback for Single-Family and Two-Family Dwellings) for information on how to calculate a proportional side yard setback. *(New)*

FIGURE 19.06.060 Measuring Setbacks

[Placeholder]

19.06.070 Measuring Building Height and Other Structures

(a) **Main Building Height.** Building height is measured from the top of the curb closest to the main building to the highest point of the main building. If there is no curb, building height is measured from the highest point of the street adjacent to the main building. *(19.12.030 (10)).*

(b) **Accessory Structure Height.** See Chapter 19.xx (Sheds and Other Accessory Structures).

(c) **Height of Pool, Spa, Decks and Patios.** See Section 19.xx.xxx (Pools, Spas, Decks and Patios).

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(d) **Fence Height.** See Section 19.xx.xxx (Fences).
(e) **Telecommunications Facility Height.** See Chapter 19.xx (Wireless Telecommunications Facilities).
(f) **Solar Energy Systems Height.** See Chapter 19.xx. (Solar Energy Systems).
(g) **Wind Energy System Height.** See Chapter 19.xx (Wind Energy Systems).

19.06.080 Determining Floor Area and Floor Area Ratio

(a) **General Floor Area Calculations**. The term "floor area" refers to gross floor area unless otherwise specified in the Zoning Code. Floor area is the sum of the areas measured from the outside dimensions of a building, including supporting columns and unsupported wall projections. The following features are exempt from floor area calculations: *(19.12.080(12))*
   (1) Eaves,
   (2) Uncovered balconies and decks,
   (3) Uncovered porches and patios,
   (4) Covered porches associated with the main entrance, on the ground floor,
   (5) Uncovered stairways, fire escapes or landing places,
   (6) Fireplaces
   (7) Enclosed and unenclosed roofed patios where the roof is no more than 50 percent solid, and
   (8) Similar architectural features.

(b) **Additional Requirements for Single-family and Two-Family Dwellings.** Floor area of single-family and two-family dwellings is calculated in the manner described in subsection (a) with the following clarifications and modifications: *(19.12.080(12))*
   (1) Garages and carports are included in floor area calculations.
   (2) Any area with an interior ceiling height exceeding 15 feet is counted twice for the purpose of calculating floor area.
   (3) Basements are exempt from floor area calculations if the finished ceiling is no more than 2 feet above grade.

(c) **Additional Requirements for Commercial, Industrial, Other Nonresidential Uses and Multi-family Uses.** Floor area of commercial, industrial, multi-family and other uses is calculated in the manner described in subsection (a), and includes mezzanine floors. Areas devoted to covered parking are excluded from floor area calculations. (*19.12.070 (8)).*

(d) **Floor Area Ratio (FAR).** Floor area ratio is the ratio of the building floor area to the lot area. For example, a 5,000 square foot building on a 10,000 square foot lot has a floor area ratio of 50%. See Figure 19.06.080 (Determining Floor Area Ratio). *(19.12.070(8))*

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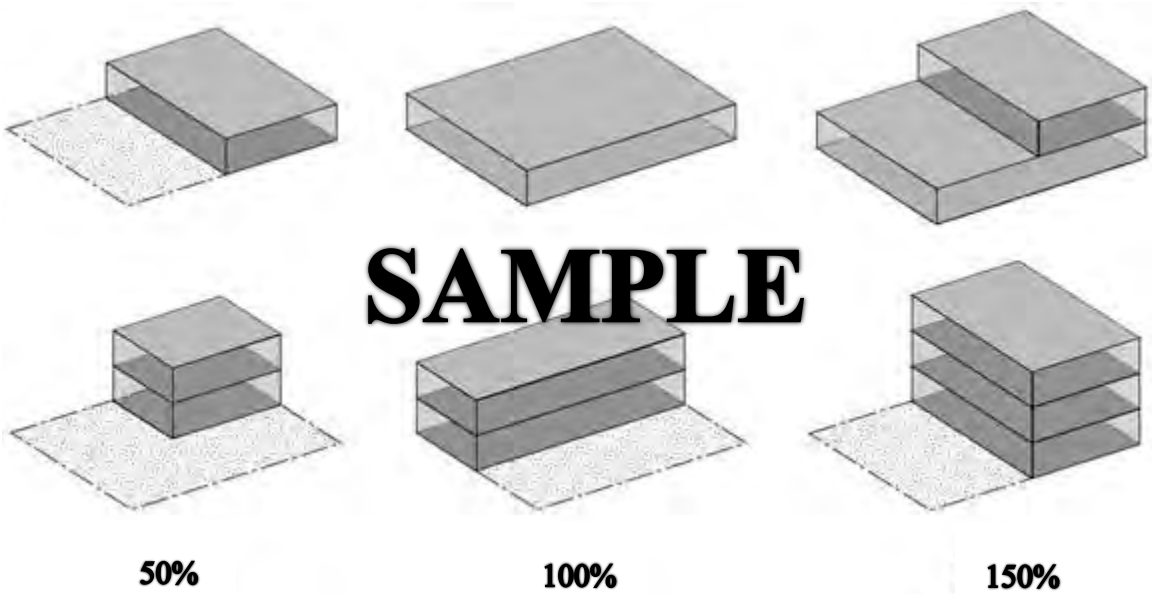
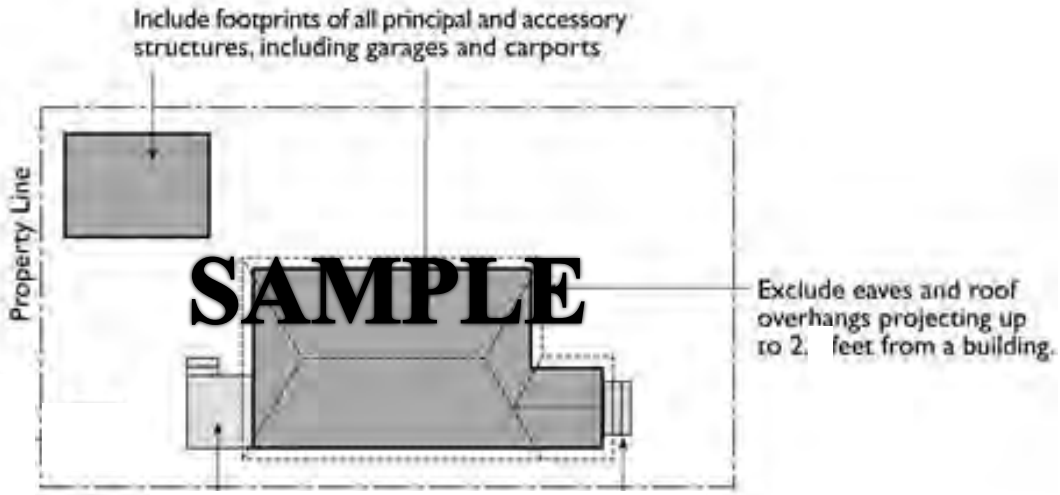
FIGURE 19.06.080 Determining Floor Area Ratio





19.06.090 Determining Lot Coverage

Lot coverage is the sum of the land areas covered by all buildings on the lot measured from the outside dimensions of the building, including corridors, supporting columns and unsupported wall projections. See Figure 19.06.090 (Determining Lot Coverage). The following features are exempt from lot coverage calculations. *(19.12.130 (14))*

(a) Eaves,
(b) Uncovered balconies and decks,
(c) Uncovered porches and patios
(d) Uncovered stairways, fire escapes or landing places,
(e) Fireplaces,
(f) Enclosed and unenclosed roofed patios where the roof is more than 50% percent solid,
(g) Decorative architectural features, and
(h) Underground parking structures which do not protrude above finished grade.

FIGURE 19.06.090 Determining Lot Coverage
[Placeholder]

19.06.100 Measuring Lot Area and Width

(a) **Lot Area.** Lot area requirements refer to net lot area unless otherwise specified in the Zoning Code. Lot area is the portion of a lot exclusive of any portion located within an official plan line, natural watercourse, creek, waterway, channel or dedicated public right-of-way. *(19.12.130(13))*
(b) **Lot Width**. Lot width is the distance between side lot lines, or in the case of lots with only one side lot line, the distance between that side lot line and the front lot line immediately opposite the side lot line. This distance is measured at the required front setback line. *(19.12.130 (16)).*

FIGURE 19.06.100 Measuring Lot Area and Width
[Placeholder]

19.06.110 Measuring Signs

Sign measurements are located in Chapter 19.xx (Signs).

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Chapter 19.08 – Nonconforming Uses, Structures and Lots

REQUIRES FURTHER PLANNING COMMISSION AND CITY COUNCIL DIRECTION

Chapter 19.10 – Structure of the Zoning Code

19.10.010 Purpose
19.10.020 Structure and Types of Zoning Regulations
19.10.030 Project Planning Checklist

19.10.010 Purpose

This chapter establishes the types and organization of regulations contained in this Zoning Code. These types of regulations are implemented to achieve the stated objectives in Section 19.02.030 (Purpose of the Title). *(New)*

19.10.020 Structure and Types of Regulations

(a) **Articles.** The Zoning Code consists of eight parts called Articles. Each article is a grouping of chapters containing similar types of zoning regulations: *(New)*

(1) **Article 1, Purpose, Applicability and Administration.** Article 1 contains the administrative regulations and operational rules of the Zoning Code, including its purpose, authority, applicability, enforcement, interpretation, regulation of legal nonconformities, structure and organization.

(2) **Article 2, Definitions.** Article 2 contains definitions of terms that apply throughout the Zoning Code, and references those definitions that apply only, or more commonly, to specific chapters or sections where they are contained.

(3) **Article 3, Base Zoning Districts, Uses and Related Zone-Specific Development Regulations.** Article 3 contains land use and development regulations specific to base zoning districts.

(4) **Article 4, Combining Districts and Specific Plan Districts**. Article 4 contains land use and development regulations specific to combining districts and specific plan districts.

(5) **Article 5, Specific Land Use Regulations.** Article 5 contains land use and development requirements specific to uses, such as operational noise limits, shopping center uses, accessory living unit standards, home-based business operation requirements, outdoor seating and display standards, restrictions on concentration of certain uses, and duration of temporary unenclosed uses.

(6) **Article 6, Site Planning, Structure and Sign Regulations**. Article 6 contains regulations for standard development requirements common to multiple zoning districts, such as landscaping, parking, green building standards, signs, fences, wireless telecommunications facilities, trash enclosures and alternative energy systems.

(7) **Article 7, Special Housing Provisions**. Article 7 contains regulations for specific housing uses such as below market rate dwelling units, condominium conversions, and mobile home park conversions.

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(8) **Article 8, Permits and Procedures**. Article 8 contains the purpose and required findings for each permit type, detailed procedures for application, processing and decisions for permits and amendments to the Zoning Code or the General Plan.

(b) **Chapters and Sections.** Each chapter contains the following sequence of sections. This structure may also apply within sections for chapters that contain regulations for distinct yet related subjects:

(1) **Purpose.** The purpose section states the intent of the regulations and is the first section of every chapter.

(2) **Definitions.** The definitions section defines terms that apply only or primarily to the regulations in the chapter.

(3) **Applicability.** The applicability section establishes the extent to which the regulations apply.

(4) **Standards and Requirements.** Following the purpose, definition and applicability sections are the limits, controls, standards and permitting requirements, if any, for the chapter subject. This part of the chapter may consist of one or more sections.

(5) **Subject-Specific Procedures.** Following the purpose, definition, applicability and standards and requirements sections is the process for entitlements. Almost all chapters reference Article 8 (Permits and Procedures), which contains required findings and procedures for all permits. Specified procedures are only in the chapter if they are required for the chapter subject, such as the public hearings and noticing procedures for conversion of a mobile home park to another use.

19.10.030 Project Planning Checklist

For ease of use in meeting all the provisions of the Zoning Code, this section provides an overview of the types of regulations that apply to new development, changes in use, or structure alterations. *(New)*

(a) **Zoning District or Specific Plan District and Uses Allowed.**

(1) Zoning Map.

(2) Use Tables (Chapter 19.xx, Allowable Land Uses and Permits Required), DSP Use Tables (Section 19.xx.xxx) or MPSP Use Tables (Section 19.xx.xxx) and specific plan goals and policies, as applicable.

(3) Specific Use Regulations for Primary Uses (Article 5 (Specific Use Regulations)).

(b) **Required Standards for New or Altered Structures**

(1) Setbacks, Lot Coverage, Building Height and Floor Area Ratio (Chapters 19.xx through 19.xx, depending on the zoning district or specific plan district).

(2) Green Building Requirements (Chapter 19.xx).

(3) Exterior improvements such as fences, pools, and equipment storage (Section 19.xx.xxx).

(4) Accessory Structures (Section 19.xx.xxx (Temporary Accessory Structures) and Section 19.xx.xxx (Permanent Accessory Structures).

(5) Solar Access (Chapters 19.xx through 19.xx, depending on the zoning district).

(6) Design guidelines (Chapter 19.xx Plan and Design Reviews).

(7) Specialized structures such as signs, wind energy systems, solar energy systems, and wireless telecommunication facilities (Chapters 19.xx through 19.xx).

(c) **Required Facilities and Site Improvements.**

(1) Landscaping and Usable Open Space (Chapter 19.xx).

(2) Parking (Chapter 19.xx).

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(3) Recycling and Solid Waste Facilities (Section 19.xx.xxx).
(4) Amenities for Multiple-Family Residential (Section 19.xx.xxx).
(5) Artwork for Private Development (Chapter 19.xx).
(6) Sidewalks for Industrial Development (Section 19.xx.xx).
(7) Stormwater Runoff Requirements (Chapter 12.60).
(8) Official Plan Lines (Chapter 19.xx).

(d) **Mitigation Fees**

(1) Park Dedication Fees for Rental Housing (Section 19.xx.xxx).
(2) Park Dedication Fees for Subdivisions (Chapter 18.xx).
(3) Transportation Impact Fees (Chapter 3.50).
(4) Housing Mitigation Fees for High-Intensity Industrial Development (Section 19.xx.xxx).
(5) Sense of Place Fees (Section 19.xx.xxx).

(e) **Special Housing Provisions**

(1) Below Market Rate Ownership Housing Requirements (Chapter 19.xxx).
(2) Conversion of Rental Housing to Ownership Housing (Chapter 19.xxx).
(3) Conversion of Mobile Home Parks to Other Uses (Chapter 19.xxx).

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Current Zoning Code Organizational Structure

Article 1 general provisions

Chapter 19.02	Adoption and Purpose
Chapter 19.04	General Plan
Chapter 19.06	Official Plan Lines
Chapter 19.08	Grant of Landscape Easements Along El Camino Real and Mathilda Avenue

Article 2 – Definitions

Chapter 19.12	Definitions

Article 3 – Zoning Districts, Uses and Related Development Regulations

Chapter 19.16	Precise Zoning Plans—Zoning Districts-Zoning Maps
Chapter 19.18	Residential Zoning Districts
Chapter 19.20	Commercial Zoning Districts
Chapter 19.22	Industrial Zoning Districts
Chapter 19.24	Office and Public Facilities Zoning Districts
Chapter 19.26	Combining districts
Chapter 19.27	Site and Project-Based Specific Plan Districts
Chapter 19.28	Downtown Specific Plan District
Chapter 19.29	Moffett Park Specific Plan District
Chapter 19.30	Lot Area and Lot Width
Chapter 19.32	Building Heights, Lot Coverages and Floor Area Ratios
Chapter 19.34	Front, Side and Rear Yards

Article 4 – General Development Standards

Chapter 19.37	Landscaping, Irrigation and Useable Open Space
Chapter 19.38	Required Facilities
Chapter 19.39	Green Building Regulations
Chapter 19.40	Accessory Structures
Chapter 19.42	Operating Standards
Chapter 19.44	Signs
Chapter 19.46	Off-Street Parking and Loading
Chapter 19.48	Fences, Distances Between Buildings and Extensions Into Yards
Chapter 19.50	Nonconforming Buildings and Uses
Chapter 19.52	Art In Private Development
Chapter 19.54	Wireless Telecommunication Facilities
Chapter 19.56	Alternative Energy Systems
Chapter 19.58	Day Care Facilities
Chapter 19.60	Adult Businesses and Massage Establishments
Chapter 19.62	Distribution of Medical Marijuana

Article 5 – Special Housing Issues

Chapter 19.64 Residential Care Facilities and Congregate Residences
Chapter 19.65 Reasonable Accommodation Procedures
Chapter 19.67 Below Market Rate Ownership Housing
Chapter 19.68 Mobile, Accessory, and Single Room Occupancy Living Units
Chapter 19.69 Existing Below Market Rate Rental Housing
Chapter 19.70 Conversion of Rental Housing to Community Housing Projects
Chapter 19.72 Conversions of Mobile Home Parks to Other Uses
Chapter 19.74 Park Dedication Fees For Rental Housing Projects

Article 6 – Discretionary Permits and Procedures

Chapter 19.78 Mobile Vendor Permits
Chapter 19.80 Design Review
Chapter 19.81 Streamside Development Review
Chapter 19.82 Miscellaneous Plan Permit
Chapter 19.84 Variances
Chapter 19.88 Use Permits
Chapter 19.90 Special Development Permits
Chapter 19.92 General Plan Amendments and Change of Zone
Chapter 19.94 Tree Preservation
Chapter 19.96 Heritage Preservation
Chapter 19.98 General Procedures

Chapter 19.50. NONCONFORMING BUILDINGS AND USES

19.50.010. Nonconforming lots.

The owner of legally created lots which do not meet current minimum lot area or lot width, providing the owner does not own sufficient adjoining land to permit compliance, may obtain a building permit to construct a building which complies with applicable zoning regulations. (Ord. 2623-99 § 1 (part): prior zoning code § 19.36.060).

19.50.020. Nonconforming residential building.

(a) A building legally built and occupied as a dwelling, in all zoning districts except R-1 and R-2, which does not meet current development standards except for lot area per dwelling unit, may be repaired, altered, enlarged or replaced without requiring a variance provided:

(1) No increase in nonconformities will result; and

(2) Any required permits are obtained.

(b) A building legally built and occupied as a single-family or duplex dwelling in the R-0, R-1 and R-2 zoning districts may be repaired, altered, enlarged or replaced without a variance even if it does not meet current development standards for lot area per dwelling unit, provided all other current development standards are met and any required permits are obtained. (Ord. 2745-04 § 1: Ord. 2623-99 § 1 (part): prior zoning code § 19.28.005).

19.50.030. Nonconforming nonresidential building.

(a) A building legally built and used for nonresidential purposes, in any zoning district, which does not meet current development standards may be repaired, altered, enlarged or replaced without requiring a variance provided any repair, alteration, addition or enlargement must comply with the latest applicable zoning standards. Any required permits must be obtained.

(b) If the existing building is damaged to the extent that repairs would exceed fifty percent of the value of the building, as determined by the building official, the entire building must comply with the latest applicable zoning standards. Any required permits must be obtained.

(c) If the existing building is damaged by a catastrophic event to the extent that repairs would exceed fifty percent of the value of the building, as determined by the building official, a use permit may be obtained to allow reconstruction to its configuration prior to damage by the catastrophic event. An application for such a use permit to replace the nonconforming structure shall be heard by the planning commission and is subject to the procedures set forth in Chapter 19.88. The application must be submitted within six months of the catastrophic event. Failure to apply for a building permit within three months of the issuance of the use permit, or failure to begin construction within three months of the issuance of a building permit, shall be deemed to be discontinuation or abandonment of the use permit. In granting a use permit, the planning commission must take the following factors into account:

(1) The building may be reconstructed or replaced only for occupancy or use by a conforming use;

(2) The nonconforming portion may be replaced or reconstructed to its previous configuration, provided it will not create, cause, or increase any nonconformity beyond that which existed prior to destruction;

(3) Except as otherwise provided in this section with regard to replacement or reconstruction of a portion of a facility to its previous nonconforming condition, all reconstruction shall be subject to all applicable laws, regulations, and procedures otherwise governing construction on the site at the time the construction is undertaken.

(4) The planning commission may impose such conditions as determined necessary to insure compatibility with surrounding properties, including, but not limited to, improvements or modifications to existing improvements on the property such as landscaping, parking, etc., limitation on nature of operations and a specified term of years for which the use permit shall be granted. (Ord.

2673-01 § 4; Ord. 2623-99 § 1 (part): prior zoning code § 19.28.007).

19.50.040. Nonconforming floor area ratio.

Nothing contained in this chapter shall be construed to prohibit alterations to a building or use made nonconforming with respect to maximum floor area ratio, or with respect to maximum floor area ratio permitted without a use permit, due to the establishment or change of a zoning district or modification of the maximum floor area ratio limitations of Chapter 19.32, provided that such building or use was lawful at the time of such change and provided that the alteration does not increase the floor area ratio or the floor area occupied by the use made nonconforming. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.080).

19.50.050. Nonconforming required facilities.

Except as provided in Section 19.50.020, a use which was lawfully established and which becomes nonconforming, including residential uses that do not meet minimum lot area per dwelling unit requirements, may be continued so long as no enlargement of the area, space or volume occupied by such use occurs. (Ord. 2745-04 § 2: Ord. 2623-99 § 1 (part): prior zoning code § 19.46.010).

19.50.060. Continuance of an existing nonconforming use.

A use which was lawfully established and which becomes nonconforming, including residential uses that do not meet minimum lot area per dwelling unit requirements, may be continued so long as no enlargement of the area, space or volume occupied by such use occurs. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.010).

19.50.070. Change of a nonconforming use.

Nonconforming use of a building may be changed to another type of nonconforming use provided:

(a) No structural alterations are made.

(b) The new use is the same type as, or no more incompatible with the zoning district than, the previous use. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.020).

19.50.080. Additions or alterations.

Nothing contained in this chapter shall be construed to prohibit such additions or alterations to a building occupied by a nonconforming use as may be reasonably necessary to comply with any lawful order of any public authority made in the interest of the public health, safety or general welfare. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.070).

19.50.090. Damage or destruction of a nonconforming use.

(a) Except as otherwise provided in subsection (b), if any building occupied by a nonconforming use has been damaged or destroyed to the extent that the cost of repairs to the building would exceed fifty percent of the value of the building, then the repaired or reconstructed building shall not thereafter be occupied by a nonconforming

use. If any part of a building occupied by a nonconforming use has been damaged or destroyed to the extent that the cost of repairs to that part of the building occupied by a nonconforming use would exceed fifty percent of the value of that part of the building, then the repaired or reconstructed part of the building shall not thereafter be occupied by a nonconforming use. The determination of the cost of repairs and the value of the building or part thereof shall be made by the building official.

(b) Any nonconforming residential use that was in conformity at the time it was constructed or added to, located in any residential or commercial zoning district, that is damaged or destroyed may be reconstructed within one year of such damage or destruction with the same number of units, provided that the reconstructed portion does not enlarge the area, space, volume or increase the nonconformity.

(c) Any covered residential parking built within one year of damage or destruction to replace covered parking shall not require more than a one-for-one replacement. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.050).

19.50.100. Abandonment or discontinuance of a nonconforming use.

(a) In the event an unenclosed nonconforming use is abandoned or is discontinued for a period of six months or more, subsequent use of such land shall comply with the provisions of this title.

(b) Any building or part thereof which has been vacated by a nonconforming use and subsequently occupied by a conforming use shall not thereafter be occupied by a nonconforming use. In the event a nonconforming use of any building or part thereof has been abandoned or discontinued for a period of one year or more, subsequent use of such building or part thereof shall comply with the provisions of this title. (Ord. 2623-99 § 1 (part): prior zoning code § 19.28.030, 19.28.040).

19.50.110. Nonconforming signs.

Except as noted in 19.44.130, signs lawfully established may continue to be displayed, maintained and repaired. (Ord. 2623-99 § 1 (part)).

19.50.120. Conversion of single-family garage.

As provided for in Section 19.46.230 any conversion of a single-family residential garage for which a building permit was obtained is considered a legal nonconforming use. (Ord. 2623-99 § 1 (part): prior zoning code § 19.48.180(g)).

19.50.130. Nonconforming status in the ITR (industrial to residential) district.

The nonconforming status of existing uses in the ITR are determined as set forth in Chapters 19.18 and 19.22. (Ord. 2623-99 § 1 (part): prior zoning code § 19.20.354).

19.50.140. Nonconforming status in the downtown specific plan.

The nonconforming status of buildings or uses in the downtown specific plan are determined as set forth in Chapter 19.28. (Ord. 2623-99 § 1 (part): prior zoning code § 19.30.050(c)).

Retooling the Zoning Code
Notes from Planning Commission Study Session on Nonconforming Uses, Structures and Lots
January 14, 2013

Purpose

- Draft purpose statement doesn't match the provisions. Why allow repairs if the purpose is to eliminate nonconformities? It says the ordinance provides for the eventual elimination of nonconformities. Perhaps **rephrase "elimination" to "not allow expansion of nonconformities…**"
- Glen Hendricks (GH) – Leaning towards property owner's right to reasonable use of property
- Bo Chang (BC) – Just allow intended useful life of a nonconforming structure. Once structural alterations are involved in repair or maintenance, that nonconforming structure has reached its limit and should be removed

Conversion of a Nonconforming Accessory Structure into Habitable Space (Scenario 1)

- 3 out of 6 Commissioners agreed that an accessory structure such as a shed or detached garage with a nonconformity (i.e. setback) should not be allowed to be converted into habitable space. This constitutes an intensification of use and expansion of nonconformity
    - 1 believes it should be allowed because this was a legally built structure, and 2 were on the fence
- Russ Melton (RM) – If it's a really old building, why not just tear it down and rebuild to current standards? Prolonging the life of the structure and converting it into habitable space is an unreasonable impact to surrounding properties
- GH – If it's really old and has been there for a long time, the impact the structure has made to surrounding properties and the impact it would make if it were to be converted may be the same.
- GH and Ken Olevson (KO) – Not allowing conversion to habitable space may lead to negative incentives and discourage homeowner from maintaining the structure
- BC – Use of the nonconforming structure does not make an impact unless it doesn't meet some health and safety requirement

Repair versus Replace, Where's the line? (Scenario 2)

- RM – Nonconformities should not be allowed to be replaced even if accidentally damaged or destroyed
- BC – **Structural repair = Replace**. Tie the definition to building code requirements
- KO – **50%** of anything, in this case valuation, seems to be a widely accepted trigger
- GH – Treat main structures separately from accessory structures. Property owners have the presumed right to continue the existence of whatever they bought.

Required Facilities: *Landscaping, Parking, etc.* (Scenario 3)

- GH – Any change of use or new construction should trigger bringing every requirement up to conformance, especially for parking. Requiring the proportional increase in parking triggered by the change of use or new construction is acceptable. In other words, if a site was already short 10 spaces, and a project triggers the need for 5 more parking spaces, the site would only be required to provide 5 more spaces instead of all 15.
- RM – Also okay with requiring only that incremental increase in parking triggered by a project. For a site that does not meet landscaping, meeting parking requirements is priority above landscaping, as long as the nonconforming landscaped area isn't further reduced.
- May need a general statement regarding City discretion on when and how much of a required facility to require

3.	**File #:**	**2010-7148**
	Location:	**Citywide**
	Proposed Project:	Discussion and Possible Action on Retooling the Zoning Code (Title 19 of the Sunnyvale Municipal Code) with Focus on Organizational Structure and Article 1 (Purpose, Applicability, Administration and Nonconforming Uses, Structures and Lots).
	Staff Contact:	Diana O'Dell, (408) 730-7257 dodell@sunnyvale.ca.us Rosemarie Zulueta. (408) 730-7437 rzulueta@sunnyvale.ca.gov
	Notes:	*This item is scheduled to be considered by City Council on February 26, 2013.*

Diana O'Dell, Senior Planner, presented the staff report. She said staff would like the Planning Commission to provide input regarding nonconforming uses, structures and lots and policy regarding transitioning these to a conforming status.

Comm. Hendricks discussed with staff whether the retooling of Title 19 should include reserving space for the Lawrence Station Area Plan (LSAP) with staff saying at least two chapters have been reserved for Specific Plans. Comm. Hendricks discussed with staff the current policy on nonconforming uses, structures and lots with staff. Comm. Hendricks discussed with staff: whether the policy is aiming to eliminate nonconforming structures; the balance of allowing some repair to a nonconforming structure so a structure does not become dilapidated; and possibly changing the use would be one of the keys towards requiring conformation. Comm. Hendricks commented that his feedback is that if the use is staying the same that the property owner could be allowed to rehabilitate the structure; however if the use is changing then the use, structure or lot would need to be brought into conformance with the code.

Comm. Olevson discussed the legal nonconforming issue and repair versus replacement. He said that a legal nonconforming structure could be destroyed, e.g. a natural disaster, at no fault of the owner and that with the use, staying the same, the structure could be rebuilt. He said that a change in use might be the demarcation for determining when a nonconforming structure would be required to conform.

Comm. Melton commented on the discussion about nonconforming uses at a recent Study Session. He said if he were providing feedback to City Council on this subject it would be that nonconforming uses, structures and lots be brought into conformance as soon as possible and that the policy be set up to achieve this. He said he likes Comm. Hendricks' suggestion about change of use, and intensification of use. Comm. Melton said Comm. Chang had brought up the subject of "useful life" which was also an option to consider.

Vice Chair Dohadwala confirmed with staff that there is an assumption that if a site has a particular use that the use could continue as that use. **Trudi Ryan**, Planning Officer, added that if a legal nonconforming use is not active for a period of time, then that use may not be allowed to continue. Ms. O'Dell commented that there are three separate sections in the code for nonconforming use, structures, and lots. Vice Chair Dohadwala commented that she thinks it would be fair that nonconforming uses, structures or lots should be allowed to be repaired, however not altered, enlarged or replaced. Vice Chair Dohadwala said there should be a clear definition of "repairing" in the code.

Chair Larsson discussed with staff replacement of nonconforming structures in residential settings and that new homes should conform to all requirements. He discussed primary buildings, and secondary structures, e.g. required garages versus non-required garden sheds. He said he liked Comm. Hendricks comments about the change of use. Ms. Ryan asked if detached garages should be considered as a separate category.

Comm. Olevson said he thinks having a carve-out for required garages, would be a good idea.

Comm. Hendricks discussed with staff Comm. Olevson's discussion of structures being damaged in a natural disaster confirming with staff that there would be a separate set of policies. Comm. Hendricks confirmed with staff that the input from the Commission regarding nonconforming uses, structures and lots is information-collecting and not a recommendation for City Council at this time. Ms. Ryan noted that if the Commission reaches a consensus that the consensus could be taken forward to Council.

Vice Chair Dohadwala commented about the Organizational Structure of Article 1 suggesting clarification to some of the titling. She said, as an exercise, she tried locating varied information. She asked about locating basic information, e.g. lot area and widths, that she could not find. Ms. O'Dell explained that with the new structure the idea is that all the basic information for a particular zoning would be in one place rather than different chapters. Vice Chair Dohadwala said if she does not comment on something in the new organization that means she likes the change. Vice Chair Dohadwala made specific suggestions regarding titles such as operating standards, accessory structures and impact fees. Ms. O'Dell clarified how definitions are located in the new structure.

Comm. Hendricks discussed with staff the direction of document types, which still include paper versions. Ms. O'Dell said staff would work with the Municipal Code vendor to electronically link the code with hyperlinks including to other design and related development documents.

Chair Larsson asked further about nonconforming structures destroyed by natural disaster confirming with staff that possibly an urgency ordinance would be created, however this situation does not have to be addressed here.

Chair Larsson opened and closed the public hearing as no one requested to speak.

Comm. Hendricks moved for Alternative 2, to approve the organizational structure and draft language of Article 1 with modifications and direct staff to proceed with the next phases of Retooling the Zoning Code with the modifications being the clarifications on chapter titles as suggested by Vice Chair Dohadwala. Comm. Melton seconded the motion and asked for a Friendly Amendment that this motion be a recommendation to Council. Comm. Hendricks accepted the Friendly Amendment and confirmed that this motion does not include anything about nonconforming uses, structures and lots.

Comm. Hendricks commented that staff has been discussing the retooling in Study Sessions for a while adding that he is pleased with the retooling, acknowledging that this is a difficult task. He said staff has clearly articulated the problems and has been responsive to the Commission's feedback. He said Sunnyvale wants to be a leader and this is an opportunity to take a leadership position. He said he highly recommends to City Council to move forward with these efforts.

Comm. Melton said it takes courage and check-in points to bring long-range projects to fruition. He said Sunnyvale is maintaining the competitiveness of the City with these efforts and encouraged his fellow Commissioners to vote yes.

Comm. Olevson said it was time to retool these documents. He said he likes the proposal for the organization as it puts similar things in the same spot. He encouraged staff to keep the peddle-to-the-metal to bring these changes to fruition.

Chair Larsson said he would be supporting the motion and that the changes will make the zoning code more accessible. He said he is pleased there are more diagrams and that this is more user-friendly.

Vice Chair Dohadwala said she would be supporting the motion. She said she thinks this is a positive organizational step and she likes the electronic links.

Comm. Kolchak thanked Vice Chair Dohadwala for her clarification suggestions and said he would be supporting the motion. He said he thinks these changes are helpful and move in a good direction.

Chair Larsson asked if there is a second motion on the table.

Comm. Hendricks said he is not sure that the Commission is ready to make a motion regarding the nonconformance piece.

Comm. Melton said he would make a motion for Alternative 3, to recommend that City Council provide direction to the Planning Commission and staff on the preferred approach to addressing the policy questions on nonconforming uses, structures and lots with the augmentation that it include a policy statement that the City desires to get rid of nonconforming uses as quickly as possible and to direct staff to implement the policies. The motion died for lack of a second.

Comm. Larsson asked if there were any comments about carve-outs for garages.

Comm. Hendricks said he is not sure we need a motion about carve-outs for garages even though he likes the idea. Ms. Ryan said that the Commissioner comments will be provided to the Council r staff will include in the report the comments about potential carve-outs and accidental damage. Comm. Hendricks said he is comfortable with staff's ability to bring back language on the nonconforming issue.

Vice Chair Dohadwala said she thinks that nonconforming structures should be allowed to be repaired and she would like to see good definitions of repair and replacements. She thinks a good definition of repair would include "for maintenance of structural and life safety."

Chair Hendricks said he would punt to this to staff to bring together the multiple comments regarding nonconformance and let staff try to find a happy medium of the many comments. Ms. O'Dell said staff would return to the Commission with something more concrete.

ACTION: Comm. Hendricks made a motion on 2010-7148 for Alternative 2 to recommend to City Council: to approve the organizational structure (Attachment A) and draft language of Article 1 (Attachment B) with modifications, and direct staff to proceed with the next phases of Retooling the Zoning Code with clarifications on chapter titles as suggested by Vice Chair Dohadwala. Comm. Melton seconded. Motion carried 6-0, with Comm. Chang absent.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the February 26, 2013 City Council meeting.