

**ORDINANCE NO. 3031-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CERTAIN SECTIONS OF THE SUNNYVALE MUNICIPAL CODE RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION AMENDED. Section 19.54.030 of Chapter 19.54 (Wireless Telecommunication Facilities) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.54.030. General requirements.**

The following general requirements apply at all times to all wireless telecommunication facilities located on private or public property in all zoning districts:

- (a) – (c) [Text unchanged.]
- (d) – (f) [Renumbered; Text unchanged.]

SECTION 2. SECTION AMENDED. Section 19.54.040 of Chapter 19.54 (Wireless Telecommunication Facilities) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.54.040. Design requirements.**

In addition to all other requirements set forth in this chapter, all wireless telecommunication facilities shall meet the following design requirements:

- (a) – (f) [Text unchanged.]
- (g) Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function. No such antenna shall be located in any front yard, nor in a corner side yard unless the antenna is screened from pedestrian-level view. No such antenna exceeding thirty-nine inches in diameter shall be located within a required setback unless approved through a miscellaneous plan permit upon a showing that no reasonable alternative location is available.
- (h) – (o) [Text unchanged.]
- (p) Freestanding facilities, including towers, lattice towers, and monopoles, shall be restricted to a maximum height of sixty-five feet when located adjacent to residentially zoned properties. New facilities located on private property shall be setback at a ratio of two horizontal feet for every one foot in height. Facilities located on private property shall not be readily visible to the nearest residentially zoned property.
- (q) [Text unchanged.]
- (r) Except as approved by use permit, no component of any facility shall be located within required front or side yard setbacks, except for facilities mounted on poles in the public right-of-way, or facilities and related equipment not readily visible mounted on existing or new structures already allowed by the

Municipal Code. No facility component shall be located so that it straddles a property line.

(s) [Text unchanged.]

**SECTION 3. SECTION AMENDED.** Section 19.54.160 of Chapter 19.54 (Wireless Telecommunication Facilities) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby repealed and superseded by adding new Section 19.54.160 to read as follows:

**19.54.160. Telecommunication Facilities in the Public Right-of-way.**

(a) Design Criteria. The city council shall, by resolution, establish criteria and various guidelines (“Design Criteria”) for design review of wireless telecommunication facilities in the public right-of-way.

(b) Design Review without a Public Hearing. An application for a wireless telecommunication facility in the public right-of-way shall be considered by the director of community development following the procedures in Chapter 19.98 (General Procedures) if the facility:

(1) Meets the adopted Design Criteria for wireless telecommunication facilities on joint poles or light poles, and

(2) Will be placed on a pole located more than 300 feet from any property line of a public park, public school or heritage resource or landmark.

(c) Design Review Requiring a Public Hearing. An application for a wireless telecommunication facility in the public right-of-way shall be considered by the planning commission following the procedures in Chapter 19.98 (General Procedures) if the facility:

(1) Does not meet the adopted Design Criteria for wireless telecommunication facilities on joint poles, or

(2) Will be placed on a pole located within 300 feet of a public park, public school or heritage resource or landmark, or

(3) If the director determines, in his or her discretion, that it is in the public interest to have the application referred to the planning commission for hearing.

(d) Findings. The director or planning commission may approve any design review upon such conditions, in addition to those expressly provided in other applicable provisions of this code, as it finds desirable in the public interest, upon finding that the approval will either:

(1) Attain the objectives and purposes of the Design Criteria; or

(2) Ensure that the general appearance of proposed facilities will not materially impair the visual aesthetics of adjacent properties.

(e) Any company that proposes to install a wireless facility on City light structures or other City poles must first initiate a lease (including lease rate) before making application for a planning permit.

(f) Carriers shall defend, indemnify, and hold harmless the City and its agents, officers, and employees (“indemnified parties”) from any claim, action, or proceeding against the City or indemnified parties to attack, set aside, void, or annul the Project or any prior or subsequent related development approvals or Project condition imposed by the City or as a result of the City granting any permits for the Project, or to impose liability against the City or indemnified parties resulting from the grant of any permits for the Project, which claim, action or proceeding is brought within the time period provided by law, including any

claim for private attorney general fees claimed by or awarded to any party against the City.

**SECTION 4. SECTION AMENDED.** Section 19.98.040 of Chapter 19.98 (General Procedures) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.98.040. Notice Requirements.**

(a) Design Review Not Requiring a Public Hearing. The director of community development may take an action without public notice or hearing except as provided herein:

(1) – (2) [Text unchanged.]

(3) Wireless Telecommunication Facilities in the Public Right-of-way. Prior to any action being taken on any design review application for wireless telecommunication facilities in the public right-of-way, notice of the pending application shall be given by mail to owners and tenants of properties located within three hundred feet of the subject property, stating that the application is available for review and comment for fourteen days following the date on the notice.

(b) Design Review Requiring a Public Hearing. For design reviews requiring a public hearing, the following notification is required:

(1) – (2) [Text unchanged.]

(3) Wireless Telecommunication Facilities in the Public Right-of-way. For design reviews requiring action by the planning commission in accordance with Section 19.54.160(b), notice of the time and place of the public hearing shall be given at least ten calendar days prior to the day of the hearing in the following manner:

(A) By posting a copy of the notice of hearing:

(i) At a conspicuous location at the site location which is the subject of the application,  
(ii) On the public notice bulletin board at the Sunnyvale City Hall;

(B) By mailing a copy of the notice to:

(i) The owner and applicant, and  
(ii) The owners of all properties within three hundred feet of the subject property;

(C) By publishing at least once in a newspaper of general circulation in the city, a copy of the notice.

(c) – (m) [Text unchanged.]

**SECTION 5. SECTION AMENDED.** Section 19.98.070 of Chapter 19.98 (General Procedures) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.98.070. Appeals.**

(a) Appeal of Design Review Permits.

(1) Design Review by Director. An applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Section 19.98.040, aggrieved by a design review decision of the director of community development with regard to nonconformance with applicable design guidelines may file an appeal to the planning commission by

five p.m. on the fifteenth calendar day following such action. All proceedings initiated by the decision of the director of community development shall be suspended pending a determination by the planning commission on the merit of the appeal. The decision of the planning commission is final.

(2) Design Review with Public Hearing. An applicant, the owner of the subject property, or the owner of a property within the required noticing radius as described in Section 19.98.040, aggrieved by a design review decision of the planning commission made pursuant to Section 19.80.040(c) with regard to nonconformance with applicable design guidelines may file an appeal to the city council by five p.m. on the fifteenth calendar day following such action. All proceedings initiated by the decision of planning commission shall be suspended pending a determination by the city council on the merit of the appeal. The decision of city council is final.

(b) [Text unchanged.]

(c) [Text unchanged.]

(1) Any decision by the director of community development may be appealed to the planning commission and city council, except:

(A) Miscellaneous plan permits and design reviews of wireless telecommunications facilities in the public right-of-way, where the decision of the planning commission is final; except that decisions by the director on findings of convenience or necessity may be appealed directly to the city council.

(B) – (G) [Text unchanged.]

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

(d) [Text unchanged.]

**SECTION 6. 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 7. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

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

**SECTION 9. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on December 3, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on December \_\_\_\_, 2013, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney