

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, OCTOBER 27, 2009**

**7 P.M. COUNCIL MEETING**

**CALL TO ORDER**

**SALUTE TO THE FLAG**

Mayor Spitaleri led the salute to the flag.

**ROLL CALL**

**PRESENT:**

Mayor Anthony Spitaleri  
Vice Mayor Christopher Moylan  
Councilmember John Howe  
Councilmember Ron Swegles  
Councilmember Melinda Hamilton  
Councilmember David Whittum (by teleconference)  
Councilmember Dean Chu

**ABSENT:**

None

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Director of Community Development Hanson Hom  
Director of Community Services David Lewis  
Director of Public Safety Don Johnson  
Director of Public Works Marvin Rose  
City Clerk Kathleen Franco Simmons

**SPECIAL ORDER OF THE DAY**

Mayor Spitaleri recognized David Mills, Participant in NOVA's 2009 ARRA-Funded Summer Youth Employment Program with a Certificate of Congratulations.

## **PUBLIC ANNOUNCEMENTS**

Councilmember Hamilton announced that the Unique Boutique, the Sunnyvale Senior Center's annual holiday sale will be open November 5 and 6.

Michael Flores thanked everyone interested in Sunnyvale and supporting and monitoring the election. He asked for support and invited anyone interested in attending upcoming gatherings. Mayor Spitaleri stated that Public Announcements is not typically the place to make announcements regarding an individual's election. He asked the City Attorney if any other candidate currently running should be offered the same opportunity.

Councilmember Howe asked the City Attorney to make a ruling on the issue. City Attorney David Kahn stated the appropriate subject of public announcements is anything relevant to the City's business, and it is generally not the time for political announcements. He stated the speaker made a statement which would not generally be appropriate, but it may not be appropriate for the others to do the same.

Councilmember Howe commended the other candidates for honoring the City Attorney's advice.

## **CONSENT CALENDAR**

Councilmember Whittum disclosed his vote will not be on 1.E as he lives within 500 feet.

Mayor Spitaleri reported a member of the public requested removal of Item 1.F from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve the Consent Calendar, with the exception of Item 1.F.

VOTE: 7 - 0

### **1.A. MOTION Approval of Information/Action Items – Council Directions to Staff**

#### **Fiscal Items**

### **1.B. MOTION List of Claims and Bills Approved for Payment by the City Manager – RTC 09-274 List No. 476**

Staff Recommendation: Review the attached lists of bills.

### **1.C. MOTION Reallocation of Federal Economic Stimulus Surface Transportation RESOLUTION Program Funds for Local Streets and Roads Rehabilitation Projects RTC 09-273 – Resolution of Support, Cooperative Agreement with the City of Cupertino, and Approval of Budget Modification No. 10**

Staff Recommendation: Approve the Resolution of Support for Federal Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects; Authorize the City Manager to execute the Cooperative Agreement with the City of Cupertino for repairs to Homestead Road; and Approve Budget Modification No. 10 to re-appropriate funds from the Wolfe Road Caltrain Overcrossing Project to the Homestead Road Asphalt Overlay Project and the Sunnyvale Avenue Asphalt Overlay Project.

**1.D. MOTION Authorization to Participate in the Proposition 1A Securitization  
RESOLUTION Program  
RTC 09-276**

Staff Recommendation: Approve participation in the Proposition 1A Securitization Program to mitigate any associated effects of delaying \$3,992,151 in property tax receivables and adopt all resolutions and agreements needed to participate.

**Contracts: SunnyvaleWorks!**

**1.E. MOTION Award of Sunnyvale Works! Contract for Construction Management  
RTC 09-279 Services for the Mathilda Avenue Overhead Bridge Rehabilitation  
Project (F0808-08)**

Staff Recommendation: Award a contract in an amount not to exceed \$2,819,425 to HNTB Corporation for construction management services for the Mathilda Avenue Overhead Bridge Rehabilitation project.

**Other Items**

**1.F. ORDINANCE Adoption of Ordinance No. 2904-09 Amending Certain Sections of  
NO. 2904-09 Chapters 19.12 (Definitions), 19.18 (Residential Zoning Districts),  
19.32 (Building Heights, Lot Coverages and Floor Area Ratios),  
19.38 (Required Facilities), and 19.56 (Solar Access) of Title 19  
(Zoning) of the Sunnyvale Municipal Code Relating to Alternative  
Energy**

Public comment opened at 7:13 p.m.

Magda Gabali indicated she intended to speak on Item 5 and will speak at that time.

Public comment closed at 7:14 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to approve the second reading of Ordinance No. 2904-09.

VOTE: 7 - 0

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None.

**PUBLIC COMMENTS**

Michael Flores stated he was going to read an e-mail from a citizen, but indicated he will e-mail it instead.

Mayor Spitaleri inquired if it was information he wanted Council to respond to. Flores indicated it was a general comment. Mayor Spitaleri requested Mr. Flores make a copy and provide it to all Councilmembers.

**PUBLIC HEARING/GENERAL BUSINESS**

2. **MOTION**            **Request by Staff for Continuation to November 24, 2009 -**  
**RTC 09-271**            **Amendment of General Plan Open Space and Recreation Sub-**  
**Element to Incorporate New Policies Identified During Parks of the**  
**Future Study – Resolution and General Plan Amendment**

Director of Community Services David Lewis presented the staff report.

Councilmember Swegles inquired if Items 2 and 3 can be voted on together. City Attorney Kahn indicated it would be acceptable to vote on them both at the same time, since they are being continued to the same date.

Public hearing opened at 7:18 p.m.

No speakers.

Public hearing closed at 7:18 p.m.

MOTION: Councilmember Chu moved and Councilmember Swegles seconded the motion to continue Items 2 and 3 to November 24, 2009.

VOTE: 7 - 0

3. **MOTION**            **Request by Staff for Continuation to November 24, 2009 - Sunnyvale**  
**RTC 09-272**            **Municipal Code Chapters 18.10 and 19.74 Relating to Park**  
**Dedication: Consider Raising the Park Facility Standard from 1.25**  
**Acres per 1,000 Population to 3.0 Acres per 1,000 Population**

Public Hearing opened at 7:18 p.m.

No speakers.

Public hearing closed at 7:18 p.m.

MOTION: Councilmember Chu moved and Councilmember Swegles seconded the motion to continue Items 2 and 3 to November 24, 2009.

VOTE: 7 - 0

4. **ORDINANCE**        **2009-0469 - Updates to the Sunnyvale Municipal Code for Minor**  
**MOTION**            **Corrections and Work Changes Associated Primarily with Title 19**  
**RTC 09-266**        **(Zoning)**

Councilmember Whittum disclosed he lives within 500 feet of blocks one and two and confirmed with staff that he does not have a conflict.

Community Development Director Hom stated there is one item having to do with amendments to the entire downtown specific plan district, and not just specific blocks.

City Attorney Kahn stated that given the amendments are generic to the entire area, he does not believe he would be required to recuse himself.

Councilmember Hamilton disclosed she lives about five feet outside the 500 foot radius of block 13 but does not have a conflict.

Community Development Director Hom and Planning Officer Trudi Ryan provided the staff report.

Councilmember Howe inquired about Attachment A, page 6, and how permits for a water heater, roof, or room addition would be treated and would they be required to get a variance, should the 45% lot coverage on single story R-2 dwellings and 40% on two-story dwellings be approved. Planning Officer Ryan indicated a non-conforming situation would not be created. Councilmember Howe verified that Council set that policy at a previous meeting dealing with the size of single family properties in various zoning districts.

Councilmember Hamilton inquired about parking for one bedroom and studio apartments.

Planning Officer Ryan stated that in 1993 when the first downtown specific plan was adopted, a standard of one parking space for a one bedroom unit was adopted. Through the conversation with the community about the downtown, a number of people raised concerns that one parking space was not enough and 0.75 was included in the downtown specific plan. It was never compared against the Citywide standard and it went forward as 0.75, which was an oversight.

Councilmember Hamilton inquired about the parking requirements for blocks 14-17 along Charles Street. Planning Officer Ryan stated that a single family home built in blocks 8-12 is allowed one covered and one driveway space.

Councilmember Hamilton inquired about the parking requirements across the street from Carroll Street. Planning Officer Ryan stated that outside the downtown specific plan, it's a different zoning district and it is two garage spaces and two driveway spaces.

Public Hearing opened at 7:33 p.m.

Adam Montgomery, representing Silicon Valley Association of Realtors, commented in reference to Table 19.32.020 on Attachment A, page 6 that lot coverage is going down for second story homes, so there may be a non-conforming issue going from 45% lot coverage to 40% lot coverage and other issues that may arise due to the change.

Patrick Grant asked Council to consider the infrastructure for non-cars as well as parking issues. Grant asked Council to consider keeping the current requirements, and stated that he's spoken to others who feel the same.

Public hearing closed at 7:37 p.m.

Councilmember Howe confirmed that R-0 which is presently at 45% FAR is going down to 40% on two-story dwellings and asked how a water heater, roof, etc. permit would be handled for existing properties at 40%, since permits are sometimes held up for non-conforming properties.

Community Development Director Hom clarified that building permits for minor improvements would not be held up since those improvements would not change the existing Floor Area Ratio (FAR).

Councilmember Howe confirmed with Director Hom that a plan to expand floor area or make a significant change to an existing non-conforming building, new requirements would apply. Councilmember Howe confirmed that this information is in the zoning code. Planning Officer Ryan stated the information is in the section on non-conforming development which staff hopes to bring to Council next year for review and approval.

Planning Officer Ryan confirmed that anything that's legal non-conforming, meaning it's built with permits, can remain as long as you don't increase the non-conforming you can approve or at to the property.

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton seconded the motion to introduce an ordinance to amend the Municipal Code to make minor corrections and word changes in Title 19 (Zoning) and Title 10 (Vehicles and Traffic).

FORMAL AMENDMENT: Councilmember Hamilton moved and Councilmember Whittum seconded the motion to leave the parking requirements in Table 19.28.100(d) for blocks 8 through 12 for single-family residential at two covered and two uncovered.

Councilmember Hamilton stated that the lots in that area are fairly large, and we have a policy of requiring new projects to completely self-park. On Charles Street where the lots are smaller and there are a lot of older homes with single car garages, she believes one uncovered and one covered makes more sense. Councilmember Hamilton added that she hopes there will not be spillover into the neighborhood once the downtown is completed.

VOTE on AMENDMENT: 6 - 1 (Vice Mayor Moylan dissented)  
Motion carried.

Vice Mayor Moylan stated this item was supposed to be a clean-up, not adopting new policy, and he would prefer to stick with the staff recommendation, since all of the other issues were debated elsewhere when the issues were noticed properly, and those interested could come down and talk about it. He stated changing any of it now is not ideal.

VOTE on MAIN MOTION: 7 - 0  
Motion carried.

City Clerk Kathleen Franco Simmons read the Ordinance title for the record.

**5. ORDINANCE 2009-0666 - Updates to the Sunnyvale Municipal Code Title 19  
MOTION (Zoning) to Streamline Processes  
RTC 09-263**

Planning Officer Trudi Ryan presented the staff report.

Councilmember Chu confirmed that three feet is the maximum allowed fence height in a front yard. Planning Officer Ryan stated that currently fences under three feet require a miscellaneous plan permit with no fee. Above three feet, a miscellaneous plan permit is required. Above six feet requires a use permit. The proposal is to change it to four feet as it seems to be a desirable standard in the community. Currently, all front yard fences require some level of staff review. Staff is suggesting that if a fence is 4 feet or less, no staff review would be required.

Councilmember Chu inquired if there is still a different height requirement depending on what the setback is. Planning Officer Ryan stated the requirement is not codified but has been applied as a rule of thumb to keep taller fences further from the sidewalk. The suggestion here is that the front yard would have the standard four feet allowed and the reducible front yard starting at six feet with a 2:1 ratio.

Councilmember Chu inquired about how the vision triangle applies to the four foot fence height. Planning Officer Ryan stated that the vision triangle still needs to be observed. The current vision triangle is three feet. There is a potential study issue the Council can consider in January to examine the corner vision triangle and the driveway vision triangle.

Councilmember Howe confirmed that staff thinks it's reasonable for open house and directional signs to be in all zoning districts. Planning Officer Ryan stated the current code does allow that. Councilmember Howe inquired about how open house sign violations are enforced. Planning Officer Ryan stated it depends on the circumstances, but if the sign is placed on a sidewalk and its impairing travel, the enforcing staff would move it or confiscate it if necessary. If a sign is placed in the median, it would be confiscated. If there is a pattern of one agent or company, staff would have a conversation with them about the regulations. Enforcement might be different if it was a repeat offense. Councilmember Howe asked if enforcement falls under Neighborhood Preservation. Planning Officer Ryan said yes, except for if it's in the median, in which it would be Department of Public Safety or Public Works staff. Councilmember Howe confirmed with staff that the fine depends on which number offense it is and the severity.

Councilmember Howe requested to add "or removed from market" within 10 days to 19.44.125 8) i) c and d.

Councilmember Hamilton inquired about Attachment A, page 3 of 3, Telecom Facilities. Councilmember Hamilton asked staff to explain the difference between a permit review and providing certification. Planning Officer Ryan explained that in a permit review, staff would ensure that the most up to date technology and aesthetic enhancements are being applied. The other information is requiring verified test information that they're not exceeding the noise levels or emission levels that are prescribed. Councilmember Hamilton asked if that certification is currently provided every year. Planning Officer Ryan indicated that they do not currently, therefore this is an enhancement to the ordinance. Councilmember Hamilton confirmed that if this was approved tonight, when current cell tower providers come back for review in five-10 years, the new standard will be applied to them.

Councilmember Hamilton inquired about Attachment A, page 3 of 3, Row 21 and asked for clarification on the types of projects that can use CEQA exemptions for in-fill development to be reviewed at an Administrative Hearing.

Planning Officer Ryan stated they could be housing projects, commercial projects, or any projects consistent with the General Plan designation. They need to be under 100 units, under five acres. There are a number of parameters. A housing project on a major street and an acoustical analysis was needed to assure compliance with the noise sub-element, then it wouldn't be able to take advantage of this particular exemption.

Councilmember Hamilton inquired about the noticing requirements. Planning Officer Ryan stated the current standard for items subject to an administrative hearing is property owners and tenants on adjacent properties, noticing in the newspaper and posting at the site.

Councilmember Swegles inquired about any special considerations for real estate signs on frontage roads. Planning Officer Ryan indicated the sign code applies throughout the community, with some differences in industrial zoning districts. When a property is adjacent to a freeway and it's a freeway-oriented business, a taller ground sign is permissible. The only kind of variance a property is eligible for is a height variance. These types of variances have been granted when there is a wall or some other obstruction that would prohibit adequate view of ground signs.

Councilmember Swegles inquired if digital ground signs could be considered for an area such as that. Planning Officer Ryan stated Council could study having different sign regulations for different parts of the community.

Councilmember Swegles confirmed with staff that the allowable start time for bounce houses is 12:01 a.m. Saturday.

Councilmember Chu inquired if there is a limit to the number of balloons in balloon archways, as some organizations use them. Planning Officer Ryan indicated an arch of balloons can be proposed, with some size restrictions. Councilmember Chu stated that some schools use balloon archways for a Walk-a-Thon. Planning Officer Ryan clarified that schools are not subject to zoning regulations when they are conducting school-related business.

Councilmember Chu confirmed that there is no height restriction for a real estate sign in front of a residence.

Councilmember Whittum inquired about the language which has been stricken out regarding legal non-conforming fences on Attachment B, page 16. Planning Officer Ryan indicated that staff has reorganized the information, and some of the language appears in strike-out for that reason. The information has been stricken out because the date for a fence is difficult to pin down, so staff prefers not to have that kind of information for a fence which tends to be worked consistently over time. Councilmember Whittum confirmed that a homeowner with a non-conforming fence needing to make a repair may need to make it conforming.

Councilmember Whittum inquired about page two, on the table under paragraph C relating to restaurants and fast food restaurants serving alcoholic beverages, whether there would be a disruption to the permitting process as it is now if there was an amendment made to Line C, such that it would read "UP" for each of the commercial districts.

Planning Officer Ryan clarified that line C would apply to restaurants with no kind of alcoholic beverage service or restaurants that have beer and wine. Planning Officer Ryan explained that there were a number of zoning code modifications in 1999 and Planning Commission and/or Council requested that we change from the prior standard that restaurants with beer and wine did not need a use permit, and in the last 10 years when we've had a use permit for a restaurant with beer and wine, staff's been able to add conditions, but we don't get members of the public who show up with comments, questions or concerns. Staff is recommending it go back to what it was 10 years ago because we now have the experience of understanding that it's perhaps not as large of a community concern. Planning Officer Ryan confirmed that a use permit is currently required.

Councilmember Whittum stated he was thinking of some instances where there were areas where there were both on sale and off sale and some conflicts.

Community Development Director Hom reiterated that when staff looked at this issue, they reviewed the history. Standard conditions are placed on restaurants with beer and wine, and it's able to be controlled with a MPP. From an economic development standpoint, beer and wine is a common item at a restaurant and the use permit process is not necessary. For full alcohol, a use permit would still be required.

Councilmember Whittum confirmed that fences greater than 6 feet in height require a building permit and that no modifications are being recommended.

Councilmember Whittum confirmed that there are no proposed modifications to political sign requirements.

Councilmember Whittum confirmed that the cell tower test results provided must be current.

Councilmember Whittum inquired about the "downgrading" of the review process for telecommunications sites in industrial zoning districts. Planning Officer Ryan stated the recommendation is a more streamlined review process for certain industrial areas.

Public Hearing opened at 8:13 p.m.

Magda Gabali stated she felt that the changes would cause an increase in bureaucracy and objected to the proposed changes. Councilmember Hamilton clarified that she believed the intent of the proposed changes was to reduce bureaucracy, and requested examples of how Ms. Gabali feels it would add to bureaucracy. Ms. Gabali stated the new process adds another layer to the decision-making and administrative process.

Planning Officer Ryan clarified the existing processes – public hearings in front of the Planning Commission, public hearings at the Administrative Hearings and a staff level review of permits. The proposed recommendation is that some items no longer require Planning Commission review. There are a number of other items that currently require a public hearing and the recommendation is they go to staff level review which can be appealed to the Planning Commission. The bigger the public hearing, the more expensive it is for the applicant and for the City. The proposed changes should streamline the process for the applicant.

Mayor Spitaleri confirmed with Planning Officer Ryan that all of the proposed options would be appealable.

Mei-Ling Stefan, Sunnyvale resident, stated concerns with the changes to the telecom permitting process and opposed the proposed changes.

Adam Montgomery, representing Silicon Valley Association of Realtors, explained how his organization handles sign violations and expressed concern about how the removal of grandfathering provisions for non-conforming fences may affect property owners.

Michael Flores concurred with Mei-Ling Stefan's comments and suggested synchronizing the testing at cell towers so that the entire site gets tested to reduce cost and possibly allow more testing to be done more often.

Public hearing closed at 8:25 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to introduce an ordinance to amend the Title 19 (Zoning), including: simplify and streamline permit review, make regulations more clear and less open to discretion and eliminate planning permits on non-controversial uses; **including** changes to the sections on Open House Directional Signs and For Sale Real Estate Signs: on Attachment B, page 15, 8) (i) (d) and 8) (ii) (c) to add the phrase "as removed from the market", to state: "...removed within ten (10) days after the advertised property has been sold..., rented, leased, or removed from the market" or something similar to that, and to include that temporary directional signs should not have balloons on them.

AMENDMENT: Councilmember Hamilton moved an amendment to Attachment B, pp. 24-25: Section 19.90.020 (a) 2, to not strike exemptions for CEQA Classification 32; and to leave the process as it is. Councilmember Howe accepted the amendment.

Councilmember Swegles confirmed with Planning Officer Ryan that a study issue would be required to further study sign requirements on frontage roads.

Councilmember Hamilton asked staff to distill the impact on the cell phone provider, the applicant, the City, and those living or working near the towers. Planning Officer Ryan explained that in an effort to reduce the amount of time associated with processing a request, staff proposed an increase to the number of facilities that could be reviewed at an administrative hearing. Councilmember Hamilton inquired if the administrative hearing decisions were appealable. Planning Officer Ryan stated they are appealable to the Planning Commission, whose decision is appealable to Council. The proposed provisions are slightly more restrictive on commercial properties in deference to the fact that most of the commercial properties are adjacent to residentially used properties. For industrial properties, the City's preferred location for telecommunications facilities, the process is streamlined by reducing the level of review and increases the number of facilities that can be reviewed by staff before going to public hearing.

Councilmember Hamilton inquired as to who can appeal an administrative hearing outcome. Planning Officer Ryan stated any member of the public, Planning Commission, or Council can appeal an administrative hearing outcome.

Councilmember Whittum referred to page 19 of Attachment B, Table 19.54.080 and inquired if stricken out item two), "two or more multi user and co-located facilities not on an existing monopole or tower" has moved to Minor Use Permits.

Councilmember Whittum made a motion to amend page 16 of Attachment B (1) on legal non-conforming fences, to restore the language in strikeout paragraph (1). Councilmember Whittum stated keeping the existing language would avoid owners of legally built fences being put in a predicament because of a change in code.  
Motion died for lack of a second.

Planning Officer Ryan clarified that any legally built fence is legal non-conforming and can remain with no obligation to remove a fence that may no longer be conforming. Planning Officer Ryan further clarified that the new regulations likely will not render any fence non-conforming, but it's an attempt to legalize a lot of existing fences and regularize the status of those fences. The provision for 50% has been removed because administratively it was too difficult to understand if 50% had been removed or not.

Councilmember Whittum expressed concern about 6 foot and shorter fences which may not have had a permit initially.

Councilmember Whittum made a motion to amend page 19 of Attachment B, Table 19.54.080 on Telecommunication Facilities Permits, to restore "any facility or equipment which when installed, would result in two or more telecommunications facilities at the same property" back into the "Major Use Permits" column.  
Motion died for lack of a second.

Councilmember Chu stated he considered seconding Councilmember Whittum's last motion but because the administrative hearings are appealable, it does not seem necessary to make that change.

Councilmember Howe reiterated that he wants to be sure that the open house directional signs are allowed in all zoning districts, the real estate signs don't have a height limit, and that once removed from market, there are 10 days to remove the sign.

City Clerk Kathleen Franco Simmons read the Ordinance title for the record.

VOTE on MAIN MOTION as amended: 6 -1 (Councilmember Whittum dissented)  
Motion carried.

**6. ORDINANCE 2007-0764: Zoning Code Amendments for Accessory Structures  
MOTION  
RTC 09-275**

Planning Officer Trudi Ryan presented the staff report.

Councilmember Hamilton confirmed that legal existing structures are grandfathered in.

Councilmember Hamilton inquired if a variance would be required to build a structure in the backyard if you have a substandard lot size for your zoning. Planning Officer Ryan stated that a variance can be applied for if there is difficulty meeting setback requirements, with three findings necessary: hardship, it's not adversely affecting other property, and it's not a grant of special privilege.

Councilmember Hamilton inquired about play structures in the backyard which are visible from the front yard. Planning Officer Ryan stated the suggested regulations protect the area from the types of structures which are normally backyard structures.

Councilmember Howe referred to Attachment A, page 4 of 12 and verified with Planning Officer Ryan that townhouses and mobile homes can have accessory structures.

Councilmember Swegles confirmed with Planning Officer Ryan that a single mobile home may be built on a single family lot, but a mobile home park is subject to the jurisdiction of the state after any use permit had been issued by the City.

Councilmember Whittum confirmed that the way the proposed ordinance is written, play sets would not be permitted in reducible front yards or the front yard, and they are currently not permitted without a use permit. Councilmember Whittum asked if Council were to decide tonight that play equipment can be permitted in the reducible front yard with a use permit screened by a permitted fence, would staff foresee any problems implementing that. Planning Officer Ryan stated she could not recall an instance when a use permit for a play set has been granted, based on aesthetics.

Public Hearing opened at 8:51 p.m.

No speakers.

Public hearing closed at 8:51 p.m.

**MOTION:** Councilmember Hamilton moved and Councilmember Chu seconded the motion to approve Attachment A Introduce an ordinance to amend Title 19 (Zoning) modifying the height, setback, size, location, and permitting requirements for accessory structures including utility buildings (sheds), open garden features, open outdoor equipment, detached parking and detached habitable space.

Councilmember Whittum moved to amend to allow play equipment in the front yard or reducible front yard if it is screened by a permitted fence.  
Motion died for lack of second.

Councilmember Hamilton verified that in the proposed ordinance, play equipment is not allowed even if a permitted fence exists. Planning Officer Ryan stated that if Council wanted to allow this nature of accessory building in the front or reducible front yard, staff would suggest that it be fully screened by a permitted fence.

Councilmember Whittum stated he would vote against the motion and suggested it would be a mistake to outlaw play sets in front yards and reducible front yards, as it may be the only place to put one. Some neighborhoods don't have parks and some of the parks don't have play sets, so if someone goes to the trouble of making one and putting a permitted fence around it, it seems like poor judgment to tell them they have to take it out. In the more extreme case of a non-aesthetic play set, it doesn't look beautiful, but he's glad that children have a place to play.

City Clerk Kathleen Franco Simmons read the ordinance title for the record.

VOTE: 6 - 1 (Councilmember Whittum dissented)

**7. ORDINANCE 2007-0764: Zoning Code Amendments: 2007-0764 Single-Family  
MOTION Home Development Standards  
RTC 09-277**

Planning Officer Trudi Ryan presented the staff report.

Vice Mayor Moylan inquired if, given staff's concerns about the effect of the Council directive on the R-1 zoning area, would it have been simpler to change the number four to the number six and have six feet be the minimum Citywide rather than go back to separate tables depending on the zoning district. Planning Officer Ryan stated there are a number of properties in the City developed with 5,000 square foot lots under a different zoning code, with two five-foot side yards and which are legal non-conforming because they don't meet the total side yard requirement. Imposing the six foot side yard on a narrower lot would increase the challenge of putting an addition on the back.

Vice Mayor Moylan confirmed there is a trade off between either going back to having different side yard setbacks for different zoning areas, or having a large number of properties be legal non-conforming.

Councilmember Whittum verified with staff that the building height would be relative to the grade.

Councilmember Whittum inquired about how it is determined that a neighborhood is transitioning. Planning Officer Ryan stated it would be judged if a number of improvements are occurring in the neighborhood and it would change over time. Raynor Park was provided as an example as that neighborhood is undergoing a dramatic change in home size. Councilmember Whittum questioned whether once this ordinance is approved, neighborhoods would not start transitioning. Planning Officer Ryan stated it may discourage more transition in other neighborhoods, but these regulations are not rigid.

Councilmember Whittum referred to Attachment A, page 5, 19.98.040 and confirmed that the proposal is that the Community Development Director can take an action without public notice if the property is a duplex in an R-2. Planning Officer Ryan stated the section does suggest that, and if Council wanted to include duplexes, it would be appropriate to add it to this section.

Councilmember Whittum inquired about what the \$47,000 cost figure. Planning Officer Ryan stated the \$47,000 is a modification to the costs that would be incurred with the recommended changes. Councilmember Whittum confirmed with Ryan the \$64,000 is an estimate of planning staff hours for the permit process. Councilmember Whittum inquired if the fee schedule would be revised to cover these costs in the following year. Planning Officer Ryan stated that Community Development and Public Works staff have been working with Finance staff on a detailed comprehensive analysis of development fees and will bring it to Council before the next fiscal year. Councilmember Whittum inquired if the \$64,000 should be thought of as a one-time cost of making some changes, and the next time the fee schedule is revised, the fees will cover the costs. Community Development Director Hom clarified that this is not a one time cost, but an estimated annual cost for staff hours to implement the code revisions if adopted. Councilmember Whittum inquired if the cost of a Miscellaneous Plan Permit (MPP) covers the best estimate of the cost to the City of handling the MPP. Planning Officer Ryan replied that it does not cover the cost and provided the example that there is no fee for single family design review if it does not go to a public hearing. If it does go to public hearing, there is a fee of approximately \$100, but it's considerably more expensive than that to process a permit that goes to a public hearing.

Councilmember Whittum stated it was startling that 30% of properties in the City could have set backs that are non-conforming with the new requirement, and inquired if anything like this had been passed before. Planning Officer Ryan cited the re-zoning in the Raynor Park area as an example in which a lot of properties were rendered non-conforming due to a legislative action by the Council. Planning Officer Ryan explained that the staff recommendation may reduce the percent of properties which would be rendered non-conforming. Councilmember Whittum verified that the staff recommendation is not 30%. Planning Officer Ryan said that staff does not believe there would be very much in the way of non-conforming with the hybrid version that staff has proposed. Councilmember Whittum confirmed that was the same as alternatives 1, 2 and 3.

Councilmember Swegles verified that staff would feel more comfortable with a setback of five feet or less. Planning Officer Ryan clarified that staff would be more comfortable with retaining the minimum four-foot side yard for R-0 and R-2 and the minimum 6 foot without the percent.

Public Hearing opened at 9:19 p.m.

Michael Flores expressed concern about design changes and the changes to setback requirements.

Public hearing closed at 9:21 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton seconded the motion to approve staff recommendation:

1. Introduce an ordinance to amend Title 19 (Zoning) to implement changes to the single-family home development standards regarding vaulted ceilings, design review applicability, threshold for Planning Commission review and increased notification;
2. Introduce an ordinance to amend Title 19 (Zoning) for proportional sideyard setbacks;
3. Adopt the modifications to the Single Family Home Design Technique.

**including** to make sure that there is consistency across all of the ordinances adopted this evening.

Vice Mayor Moylan stated it is not a concern to him to have a number of properties legal non-conforming, because the City is trying to address a problem a lot of people have brought forward as a result of the way Prop 13 has impacted the way home-owners transition from small to larger homes. He stated that this process has resulted in neighborhoods with less and less privacy between houses, making it now necessary to tighten setback requirements.

AMENDMENT: Councilmember Hamilton moved to amend the requirements that would apply to single-family dwellings to also apply to duplexes: on Attachment A, page 5 of 8, 19.98.040 paragraph (A) add the phrase "or duplex" to read: "...application for single family home or duplex". Vice Mayor Moylan accepted the amendment.

Councilmember Whittum moved an amendment to Attachment A, page 7, 19.98.070 Appeals, add the phrase "may be appealed to Council" where paragraph (1) says: "The decision of the planning commission is final" to read: "The decision of the Planning Commission may be appealed to Council."  
Motion died for lack of a second.

Councilmember Whittum moved an amendment to Attachment A, page 7, 19.98.070 Appeals, add the phrase "may be appealed to council" under the section: Appeal of Tree Removal Permits, to read: "The decision of the planning commission may be appealed to Council."  
Motion died for lack of a second.

City Clerk Kathleen Franco Simmons read the Ordinance title for the record.

VOTE: 6 - 1 (Councilmember Whittum dissented)

**8. COUNCIL Intergovernmental Committee Assignments: Santa Clara County  
DISCUSSION Housing Bond Committee Appointments**

City Manager Luebbers reported and Councilmember Howe concurred that this item has been removed from the agenda.

**COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Chu, member of the Metropolitan Transportation Commission, announced that the Bay Bridge is closed due to an accident involving the repairs made to the bridge over the Labor Day weekend.

**NON-AGENDA ITEMS & COMMENTS**

**Council:**

Councilmember Swegles asked if Council would co-sponsor a study issue regarding signage in areas that front highways. Councilmember Howe co-sponsored the study issue.

Councilmember Swegles reminded everyone to vote on Tuesday.

Councilmember Swegles asked the city manager about the status of the Proven People program at the Senior Center. City Manager Luebbers stated the program is transitioning from a funded program to a volunteer program, and Community Services Director Lewis and Assistant City Manager Walker are spearheading the effort. City Manager Luebbers added that he addressed the seniors last Friday. The program will not go away, but it will take another form.

**Staff:**

City Attorney David Kahn clarified that the citizen who appeared earlier in the evening during the public comments period intended to read a letter from an individual who is not present, advocating for a slate of Council candidates. The Council does have jurisdiction to limit comments to anything the Council has jurisdiction to affect, and this would not be in that jurisdiction. City Attorney Kahn clarified that he spoke to the citizen and informed him that under the First Amendment, he and all citizens of the City have the right to speak to Council on any matter affecting the City's policies, procedures, programs and services. If the citizen felt he wanted to address something in the jurisdiction of Council, he should be given the opportunity to do that.

City Manager Luebbers responded to an inquiry from Councilmember Hamilton regarding artifacts, indicating that they have been located and the handprint is still in place. He added that the artifacts that have been removed for construction are in the City's possession.

City Manager Luebbers reported that Target will open on November 10. In conjunction with the opening, McKinley from Mathilda Avenue to Sunnyvale Avenue, Taaffe Street from Iowa Avenue to Washington Avenue, Murphy Avenue from McKinley Avenue to Iowa Avenue, and the new parking structure on Taaffe Street will all be open.

Mayor Spitaleri announced that the pet parade was a success and thanked everyone involved.

**INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of September 17, 2009
- RTC 09-278 Opportunity for Council to appeal decisions of the Planning Commission of October 12, 2009 and the Administrative Hearing of October 14, 2009
- Draft Minutes of the Housing and Human Services Commission Meeting of September 23, 2009

**ADJOURNMENT**

Councilmember Howe honored lifetime Sunnyvale resident Mike Skeeters who passed away last week after a long illness. Mayor Spitaleri called for a moment of silence and adjourned the Council meeting at 9:38 p.m.

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Kathleen Franco Simmons  
City Clerk

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Date