ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING PORTIONS OF CHAPTER 19.94 (TREE PRESERVATION); CHAPTER 19.56 (SOLAR ACCESS); AND CHAPTER 19.98 (GENERAL PROCEDURES) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE

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

SECTION 1. SECTION 19.56.030 AMENDED. Section 19.56.030 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.56.030. Impairment of solar access by vegetation—Public nuisance.

(a) No person or entity owning or in control of real property shall allow any tree or shrub thereon to interfere with solar access to any rooftop or to any active solar collector located on a nearby or adjacent property. Vegetation interfering with solar access to any rooftop or active solar collector, including vegetation shading the area of nearby properties where rooftops or active solar collectors subsequently are placed, shall be trimmed or removed to the extent necessary to provide solar access thereto.

(b) The provisions of this section shall not apply so as to require ~~trimming or~~ the removal of vegetation determined by such procedure as the city council may specify, to have cultural, horticultural or ~~historical~~ heritage significance. Additionally, the provisions of this section shall not require the removal of any significant sized tree or tree required to be preserved as a condition of approval of a land use permit. Reasonable trimming of any vegetation otherwise exempted by this section may be allowed if no harm occurs to the vegetation and the trimming does not endanger its cultural, horticultural or heritage significance.

(c) Violations of this section comprise a public nuisance, and whenever any enforcement officer of the city of Sunnyvale determines that any such condition exists upon any premises, he or she may require or provide for the abatement thereof pursuant to the procedures set forth in Chapter 9.26 of this code, and may make the costs of abatement of the nuisance a lien upon the property.

SECTION 2. SECTION 19.94.030 AMENDED. Section 19.94.030 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.94.030. Definitions.*

For the purpose of this chapter the following definitions apply:

(1) "Damage" means any intentional action or gross negligence which causes injury, death or disfigurement of a tree. Actions include, but are not limited to, cutting, girdling, poisoning, overwatering, unauthorized relocation or

transportation of a tree or trenching, excavating, altering the grade or paving within the dripline of a tree.

(2) "Dripline" means the outermost line of the tree's canopy projected straight down to the ground surface. As depicted in a plan view, the dripline appears as an irregularly shaped circle.

(3) "Protected tree" means a tree of significant size.

(4) "Significant size" means a tree thirty-eight inches or greater in circumference measured four and one-half feet above ground for single-trunk trees. For multi-trunk trees "significant size" means a tree which has at least one trunk with a circumference thirty-eight inches or greater measured four and one-half feet above ground level, or in which the measurements of the circumferences of each of the multi-trunks, when measured four and one-half feet above the ground level, added together equal an overall circumference one hundred thirteen inches or greater.

(5) "Tree" means any woody plant which has a trunk thirteen inches or more in circumference at four and one-half feet above ground level.

(6) "Tree Removal" means the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action, including excessive trimming, pruning, or mutilation that sacrifices the health, destroys, or diminishes the aesthetic quality, or diminishes the life expectancy of the tree.

* **Editor's Note:** The definitions in Section 19.94.030 also appear in Ch. 19.12.

SECTION 3. SECTION 19.94.050 AMENDED. Section 19.94.050 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.94.050. Permits required.

(a) In order to remove any protected tree from private property in any zoning district, or from any city owned golf course or park, it is necessary to obtain a protected tree removal permit from the department of community development. Any tree which has been designated as a heritage landmark, pursuant to the provisions of Chapter 19.96, shall not be removed without obtaining a tree removal permit in addition to a landmark alteration permit in accord with Chapter 19.96.

(b) Tree removal permits shall be filed at least ~~seven~~ ten working days prior to the proposed date of tree removal.

(c) Removal of orchard trees as part of farming operations or upon order of the county agricultural inspector are exempt from the provisions of this chapter.

SECTION 4. SECTION 19.94.060 AMENDED. Section 19.94.060 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.94.060. Standards and criteria.

One or more of the following standards must be met before a protected tree removal permit may be approved:

(a) The tree is diseased or damaged;

(b) The tree represents a potential hazard to people, structures or other trees;

(c) The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property owner's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:

(1) The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;

(2) The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;

(3) The approximate age of the tree relative to its average life span;

(4) The potential effect of removal on soil erosion and stability where the tree is located;

(5) Current and future visual screening potential;

(6) The property has become over landscaped with trees so that they are too numerous, crowded, and unreasonably restricts the property owner's ability to use their land. In this event, selective removal can be approved in conjunction with acceptable arborist's practices;

(7) The tree has outgrown its useful landscape value due to its inappropriate species, size and location, relative to the existing structures on the property;

(8) Any other information the director of community development finds pertinent to the application.

SECTION 5. SECTION 19.94.110 AMENDED. Section 19.94.110 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.94.110. Requirements concerning protected trees during site development or modification.

When site development or modification is occurring and a discretionary permit and a public hearing are required, the developer or owner shall meet the following requirements:

(a) Tree Survey. A tree survey conducted by an arborist who has been certified by the International Society of Arboriculture shall be submitted as part of the required application materials for all use, design or special development permits on developing or redeveloping property. The survey shall show the location, size, and species (both common and Latin names required) of all trees (protected and unprotected) on the site, and shall include a calculation of the value of each tree. A written letter shall be included when a protected tree(s) is proposed to be removed explaining why the tree(s) cannot be relocated or the design of the structures altered to maintain the trees.

(b)-(d) [Text unchanged.]

(e) Tree Bonds. The approving body shall have the authority to require a developer to post a bond with the City for the value of any tree required

to remain as a condition of permit approval during development activities on a site.

(1) The bond may be for a maximum period of five years.

(2) The value of the tree shall be determined by the director of community development.

(3) The bond will be released back to the developer if the tree remains in good health through the end of the bond period.

(4) In the event the tree dies or begins to decline in poor health, the bond will be used by the City to replace the aesthetic value of the tree that was lost.

(f) Soil Mitigation. The approving body shall have the authority to require underground soil or planting measures, such as structural soils, in any location deemed appropriate for future or existing tree growth.

SECTION 6. SECTION 19.94.160 AMENDED. Section 19.94.160 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.94.160. Penalties for violation.

(a) Any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, shall be liable for a civil penalty assessed and recovered in a civil action brought by the city attorney.

(~~b~~1) In the event that the violation results in any substantial injury or damage to a protected tree, the civil penalty shall be not less than five thousand dollars nor more than twenty-five thousand dollars. In the event that the violation results in the destruction or improper removal of a protected tree, the civil penalty shall be not less than ten thousand dollars nor more than fifty thousand dollars. The appropriate penalty shall apply separately to each tree affected by the improper action.

(~~c~~2) In any civil action brought to seek such civil penalties, and/or to obtain injunctive relief for violation of any provision of this chapter, in which the city prevails, the court shall determine and impose reasonable expenses, including attorneys' fees incurred by the city in the investigation and prosecution of the action.

~~(d) The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.~~

(b) The director of community development or his designee shall have the authority to require an administrative hearing for any violations of the provisions of this chapter, including but not limited to, illegal tree removal.

(1) The administrative hearing shall be set for a date that is not less than fifteen calendar days and not more than thirty calendar days from the date the "Notice of Violation" is served in accordance with section 1.08.100.

(2) The hearing officer may impose such fines, reasonable expenses and landscaping deemed necessary to replace the aesthetic value of the tree based on generally accepted arborist's practices.

(3) The hearing officer may consider any relevant evidence and the decision must be supported by the weight of the evidence. Strict rules of evidence shall not apply.

(4) The hearing officer shall issue a written decision within fifteen days of the hearing date. The hearing officer may continue the hearing and request additional information from City staff or the recipient of the "Notice of Violation" before issuing a written decision.

(5) If the hearing officer imposes a fine for a violation of this chapter and the fine has not been satisfied within ninety days or has not been appealed, then the obligation shall become a lien against the real property on which the obligation occurred.

(6) The failure of any recipient of a "Notice of Violation" to appear at the administrative hearing shall constitute a waiver of any objections to the imposition of a fine or other appropriate remedy imposed by the hearing officer and constitutes a failure to exhaust administrative remedies.

(7) The decision of the hearing officer may be appealed to the Planning Commission within fifteen days of the date of service of the written decision. The decision of the Planning Commission shall be final.

(c) The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

SECTION 7. SECTION 19.98.020 AMENDED. Section 19.98.020 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.98.020. Applications.

(a)-(e) [Text unchanged]

(f) Tree removal permits shall be filed at least ~~seven calendar~~ ten working days prior to the proposed date of tree removal and shall include:

(1) The number, location(s), size(s), quality, species and variety of tree(s) to be removed;

(2) A written explanation about why the tree(s) must be removed;

(3) A time schedule for the proposed work;

(g)-(h) [Text unchanged]

SECTION 8. SECTION 19.98.070 AMENDED. Section 19.98.070 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.98.070. Appeals.

(a) Appeal of Design Review and Tree Removal Permits.

(1) An applicant, or the owner of the subject property, aggrieved by a design review decision of the director of community development with regard to nonconformance with the "City Wide Design Guidelines" may file an appeal to the planning commission after the date of such decision. 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) An applicant, or the owner of the subject property, or the owner of

an adjacent property, aggrieved by a design review decision of the planning commission made pursuant to Section 19.80.040(c) with regard to nonconformance with the "City Wide Design Guidelines" may file an appeal to the city council after the date of such decision. 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.

(3) The owner of the subject property, aggrieved by a tree removal permit decision of the director of community development may file an appeal to the planning commission after the date of such decision. 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.

(b)-(c) [Text unchanged.]

SECTION 9. SECTION 19.98.110 AMENDED. Section 19.98.110 of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.98.110. Expiration.

A permit shall expire and become null and void in the event that the permit has not been exercised:

(a) Within two years after the date such permit was approved by the final review authority except that miscellaneous plan permits and tree removal permits shall expire after one year.

(b) If the use is discontinued for more than one year.

SECTION 10. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15308 (Class 8), 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. The Council therefore directs that a Notice of Exemption be filed with the Santa Clara County Clerk in accordance with Section 14 of the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 11. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 12. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper 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 _____, 2006 and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David Kahn, City Attorney