



City of Sunnyvale

Agenda Item

24-0064

Agenda Date: 2/15/2024

2024 COUNCIL STUDY ISSUE

NUMBER

CDD 24-05

TITLE Review and Evaluate Appeals Fees and Process

BACKGROUND

Lead Department: Community Development

Support Departments: Office of the City Manager

Office of the City Attorney

Sponsor(s): Councilmembers Mehlinger, Cisneros, Sell, Srinivasan, Klein

History: 1 year ago: N/A
2 years ago: N/A

SCOPE OF THE STUDY

What precipitated this Study?

On August 29, 2023, City Council heard an appeal of a proposed condo project at 148 and 156 Crescent Avenue (File Number 2021-7826, RTC No. 23-0724) that had been approved by Planning Commission in May 2023. A nearby resident paid \$290 to file the appeal, requesting that the development be rejected or substantially downsized, despite meeting the City's objective standards, with modest concessions from the State Density Bonus that the City was required to approve.

Subsequently, the City Council heard an appeal on December 5, 2023 (File Number 2022-7168, RTC No. 23-1022) of a proposed project to construct 225 apartment units at 1150-1170 Kifer Road. A labor union filed the appeal (and paid the fee of \$290) expressing concerns about the indoor air quality of the development.

Had Council granted either of the appeals, the City Attorney expressed concern that the City could be held liable for violating the Housing Accountability Act, with substantial attendant damages and attorneys' fees. The developer of the Crescent Avenue project further stated that, as a result of the appeal, their firm had incurred roughly \$150,000 in additional carrying costs.

Allowing stakeholders to appeal land use decisions that they believe to be detrimental is an important part of the democratic process. Appeals can cover a wide range of issues, and developers may themselves appeal against denials or conditions of approval that they consider to be unfair. At the same time, appeals impose costs on the City and can also impose substantial costs on developers. These costs and delays are especially important given recent state efforts to remove local barriers to housing construction, especially on objectively compliant projects. As such, it is worth considering whether additional guardrails in the appeals fees and process would be appropriate.

What are the key elements of the Study?

Review of Appeals Fees (and Processes) - consider whether additional guardrails in the appeals process would be appropriate. Possible policy changes to be considered may include but should not be limited to:

- Streamlining appeal hearing timelines;
- Requiring potential appellants to meet with Staff before filing an appeal;
- Increasing appeal fees to discourage frivolous appeals and better cover staff costs; and
- Other proposals suggested by Staff, Council, and community stakeholders.

Estimated years to complete study: 1-2 years

FISCAL IMPACT**Cost to Conduct Study**

Level of staff effort required (opportunity cost):	Moderate
Funding Required for Non-Budgeted Costs:	\$20,000
Funding Source:	Will seek budget supplement - General Fund

A consultant could assist in providing additional information about the costs to applicants and developers.

Cost to Implement Study Results

Unknown. The Study would include assessment of potential costs, including capital and operating, as well as revenue/savings.

EXPECTED CITY COUNCIL, BOARD OR COMMISSION PARTICIPATION

Council-Approved Work Plan: No
Council Study Session: Yes
Reviewed by Boards/Commissions: Planning Commission

STAFF RECOMMENDATION

Support. This policy issue merits discussion at the 2024 Study Issues Workshop.

As part of this Study Issue, staff would seek input from neighborhood associations and local civil society organizations and would hold study sessions with the Planning Commission and City Council. Staff, Planning Commission and City Council would need to be apprised of other implications of increased fees and changes to the overall appeal process as it relates to the exhaustion of remedies for applicants and appellants. In addition, the process would also need to be evaluated against recent State Laws for residential projects.

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Reviewed by: Trudi Ryan, Director, Community Development Department
Reviewed by: Connie Verceles, Deputy City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Links to Reports to Council (2 appeals)



1. **Document Title:** Report to Council, August 29, 2023

Proposed Project: Appeal by neighbors of a decision by the Planning Commission approving related applications on a 0.85-acre site:

SPECIAL DEVELOPMENT PERMIT: to allow construction of 18 three-story condominium units and the retention of one single-family house (156 Crescent Avenue); and,

TENTATIVE MAP: to create one lot and 19 condominium units

Location: 148 and 156 Crescent Avenue (APNs: 211-35-008 and 211-35-009)

Link: [RTC 23-0724](#)

2. **Document Title:** Report to Council, December 5, 2023

Proposed Project: Appeal by Laborers International Union of North America, Local Union No. 270 (LIUNA) of the Planning Commission decision approving related applications on a 5.82-acre site:

SPECIAL DEVELOPMENT PERMIT: to demolish an existing surface parking lot at the rear of two existing office/R&D buildings and construct 225 apartment units at a density of 112.5 dwelling units per acre in an eight-story building inclusive of three levels of above-ground parking.

TENTATIVE PARCEL MAP: to relocate the existing lot line between the two office/R&D building lots, resulting in a 3.82-acre lot for the office/R&D buildings and a two-acre lot for the apartment development.

Location: 1150-1170 Kifer Road (APNs: 205-50-034 and 205-50-035)

Link: [RTC 23-1022](#)