



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 25, 2022

COUNCIL DISTRICT: 1

SUBJECT: FILE NO. GP21-004 & C21-009: GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM NEIGHBORHOOD/COMMUNITY COMMERCIAL TO MIXED USE NEIGHBORHOOD AND A REZONING FROM THE CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO THE MUN MIXED USE NEIGHBORHOOD ZONING DISTRICT ON AN APPROXIMATELY 0.6-GROSS ACRE SITE LOCATED AT 7246 SHARON DRIVE (ASSESSOR PARCEL NUMBERS: 659-05-039, 659-05-021)

STAFF RECOMMENDATION

Recommend that the Council take the following actions:

1. Adopt a resolution adopting the 7246 Sharon Drive GPA and Conforming Rezoning Negative Declaration and associated Mitigation Monitoring and Reporting Plan, for which an Initial Study was prepared, in accordance with the CEQA, as amended.
2. Adopt a resolution denying the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram designation from Neighborhood/Community Commercial to Mixed Use Neighborhood and conforming rezoning from the CP Commercial Pedestrian to MUN Mixed Use Neighborhood Zoning District on a 0.6-gross acre site at 7246 Sharon Drive. (Exhibit A)

PLANNING COMMISSION RECOMMENDATION:

Commissioner Bonilla made a motion to recommend that the Council approve the application for the General Plan amendment and rezoning. Commissioner Garcia seconded the motion. The Planning Commission voted 7-3-1 (Lardinois, Oliverio, and Young opposed; Cantrell absent) to recommend that the City Council take the following actions:

1. Adopt a resolution adopting the 7246 Sharon Drive GPA and Conforming Rezoning Negative Declaration and associated Mitigation Monitoring and Reporting Plan, for which an Initial Study was prepared, in accordance with the CEQA, as amended;
2. Adopt a resolution approving the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood (Exhibit B); and
3. Adopt an ordinance approving the Conforming Rezoning from the CP Commercial Pedestrian Zoning District to the MUN Mixed Use Neighborhood Zoning District (Exhibit C).

BACKGROUND

The Planning Commission held a public hearing on January 12, 2022, to consider the proposed General Plan Amendments and Rezoning. Planning staff recommends that Council adopt a resolution denying the application to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood and the rezoning from CP Commercial Pedestrian to MUN Mixed Use Neighborhood on an approximately 0.6-gross acre site. Instead, the Planning Commission recommends that the City Council adopt a resolution approving the Negative Declaration in accordance with CEQA and adopt a resolution approving the General Plan amendment and an ordinance approving the rezoning.

Staff Presentation

Staff presented a summary of the applicant's General Plan Amendment and Rezoning request including a description of the proposed project and details of the public engagement process and analysis, which is explained in detail in the attached report to the Planning Commission.

Public Testimony

The applicant's representative, Edesa Bitbadal, gave a brief presentation about the proposed project and stated the intent of the applicant is to develop a live-work project. The Mixed Use Neighborhood land use designation would facilitate the live-work concept on this site. She stated that the site is no longer suitable for commercial use and the applicant was unable to lease the site for commercial purposes. The current commercial building is considered a Class C commercial building and it is approximately 60 percent occupied. She stated that the site was more suitable for a live-work concept because the site is isolated and does not have the appropriate frontage and visibility for commercial uses.

One member of the public spoke in support of the proposed project because they believed the site is not suitable for commercial development due to the proximity to residential homes and lack of commercial activity. They stated that more housing was needed and would like to see a live-work concept there in the future.

Ms. Bitbadal emphasized that the project applicant gathered 60 signatures from nearby residents in support of the project and asked Planning Commission to support the proposed project.

Planning Commission Discussion

Commissioner Lardinois asked the applicant why their proposal did not include a project and only included a General Plan Amendment and Rezoning. The applicant responded that the project did not include a development proposal because they would not meet the General Plan Amendment deadline for the 2021 Annual Review cycle if a development was included. Commissioner Lardinois then asked staff to clarify their main concerns for the General Plan Amendment. Staff stated that the main concern was the potential conversion of commercial lands to a 100 percent residential project because the Mixed Use Neighborhood land use designation would not require any commercial square footage. Staff emphasized that a live-work project was not being considered tonight, and if the General Plan Amendment was approved, a different project could potentially be proposed. Also, Michael Brilliot, Deputy Director, stated that housing on the site could preclude potentially larger commercial redevelopment. Commissioner Lardinois thanked the applicant for their extensive outreach effort and stated his support for a live-work concept; however, given the proposal and the strict policies of the General Plan, he stated he would recommend denial, and the City Council could use its authority to make a different decision if it so desires.

Commissioner Casey stated he visited the site and agreed with the applicant that the parcel was landlocked because of the approved hotel development adjacent to the project. He stated that a live-work concept would fit perfectly with the surrounding context of the neighborhood to transition from commercial to residential and asked staff why the project does not fulfill the Mixed Use Neighborhood land use designation. Staff responded that there is not a proposed project. The proposal is only changing the property's General Plan land use designation to a Mixed Use Neighborhood designation which would support a live-work concept or a 100 percent residential project or other land uses consistent with the Mixed Use Neighborhood designation.

Commissioner Young stated that he supported the staff's recommendation and expressed his concern for the project because of how it was presented. He agreed with Commissioner Lardinois' statements and stated the role of the Planning Commission is to ensure projects are consistent with the General Plan. He stated the project was not located within a focused growth area of San José and was far from City services and felt the project would create housing in an area without adequate transportation infrastructure. Commissioner Young stated his concern that the project would not guarantee a live-work development in the future.

Commissioner Caballero agreed with Commissioner Lardinois stating that she would like to see the live-work concept but is unsure of her recommendation. She agreed with Commissioner Casey that the site was very limited and did not have many opportunities.

Commissioner Garcia disagreed with the staff recommendation and stated he believed the City should be adding more residential and that the best use of the site would be for mixed-use residential.

Commissioner Montañez stated that she agreed that the project site was limited and that a live-work concept could be feasible on the site and stated that the Planning Commission should deny the staff recommendation and recommend approval.

Commissioner Ornelas-Wise stated that she supported the proposal and believed a live-work concept would be feasible considering the nature-of-work has changed because of the pandemic. Commissioner Ornelas-Wise asked, during the process, if staff recommend another land use designation. Staff said they did not. A Mixed Use Commercial land use designation would have required a residential project with the equivalent of 0.5 Floor Area Ratio of commercial uses; however, staff would not have supported this land use designation either because it would allow residential uses up to 50 dwelling units to the acre on a site that was still not located in a growth area.

Commissioner Caballero emphasized that the project does not include a live-work concept and is only a change in land use designation. She cautioned the Planning Commission about making a decision based on a future concept that may not be submitted.

Commissioner Torrens stated she felt conflicted because she empathized with the small business owner because the site is underutilized; however, she noted that the project did not include the development. Secondly, she stated that the live-work concept would not be affordable and asked the applicant if the people living above could rent out the commercial space. The applicant clarified that the owners would need to live and work in the space.

Commissioner Casey noted that a previous project converted residential to commercial and therefore it may offset this project's conversion of commercial lands.

Commissioner Bonilla asked the applicant how they decided on the live-work concept. The applicant responded that the concept was developed based on a comment from a Planning Division staff person. Commissioner Bonilla stated that he visited the site and believed that the site would be difficult for any commercial business because of the lack of visibility. Commissioner Bonilla stated that this was a unique opportunity to create housing and he could not support the staff recommendation due to his assessment that any business that would rely on pedestrian traffic would fail at this site.

Commissioner Oliverio asked the applicant to clarify their response that a staff member recommended a live-work concept and asked if there was any documentation that a staff member made this recommendation. The applicant responded that a Planner named Matthew VanOosten sent an email speaking about live-work in 2016. After the meeting, Planning staff found and reviewed all preliminary reviews since 2016 and found that Planning staff stated they would not be supportive of live-work on the site.

Commissioner Bonilla made a motion to recommend that the City Council approve the General Plan amendment and rezoning of the site and Commissioner Garcia seconded the motion.

The Planning Commission voted 7-3-1 (Lardinois, Young, and Oliverio opposed; Cantrell absent) to recommend that the City Council adopt a resolution adopting the Negative Declaration in accordance with the CEQA, adopt a resolution approving the General Plan Amendment to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood and approve an ordinance rezoning certain real property located at the south side of Sharon Drive approximately 220 feet east of South De Anza Boulevard (7246 Sharon Drive) from the CP Commercial Pedestrian Zoning District to MUN Mixed Use Neighborhood Zoning District on an approximately 0.6-gross acre site.

OUTCOME

If the City Council adopts a resolution denying the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram and Zoning District would not be changed. The land use designation would remain as Neighborhood/Community Commercial and the Zoning District would remain as CP Commercial Pedestrian.

Alternatively, if the City Council adopts a resolution approving the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation changes from Neighborhood/Community Commercial to Mixed Use Neighborhood and would be rezoned from CP Commercial Pedestrian to MUN Mixed Use Neighborhood Zoning District.

ANALYSIS

The proposed General Plan Amendment and rezoning are inconsistent with the following General Plan Policies that encourage the retention of employment lands and residential growth in designated Growth Areas:

Major Strategy #3;

Growth Areas Policy LU-2.3;

Commercial Policy LU-4.1;

Efficient Use of Residential and Mixed Use Lands Policy LU-10.3;

Housing – Environmental Sustainability Policy H-4.2; and

Air Pollutant and Emissions Policy MS-10.6;

The project site is not located within an identified Growth Area and proposes to convert an approximately 0.6-gross acre site from a commercial land use designation to a residential land use designation. The site is currently developed with a 10,366 square-foot medical office building. The Mixed Use Neighborhood land use designation does not require any commercial floor area for development and could be developed with solely residential uses. Further, the project site is not near any major transit facilities. The project site is within 1,000 feet of a bus stop that is served by one line with infrequent service; therefore, the development of residential and removal of neighborhood commercial services may encourage more driving and auto dependency. Additionally, the project is bordered on three sides -- north, west, and south -- with the same current General Plan land use designation of NCC and CP zoning as the project site. The amendments requested are not consistent with the commercial nature of the existing uses in the immediate vicinity of the project site and, if approved, may lead to efforts to further convert other sites in the area from commercial to residential uses and reduce employment lands in the City contrary to the General Plan policies cited above.

For a complete analysis, please see the Planning Commission staff report (attached).

CONCLUSION

The Planning Commission voted 7-3-1 (Lardinois, Young, and Oliverio opposed; Cantrell absent) to recommend that the City Council approve the proposed General Plan Amendment and Rezoning. Staff continues to recommend denial of the proposed General Plan Amendment and Rezoning for the reasons stated in the attached Planning Commission staff report.

EVALUATION AND FOLLOW UP

If the application for the General Plan Amendment is approved as recommended by the Planning Commission, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation change from Neighborhood/Community Commercial to Mixed Use Neighborhood and the Zoning District would be changed from CP Commercial Pedestrian to MUN Mixed Use Neighborhood on an approximately 0.6-gross acre site located at 7246 Sharon Drive. A subsequent Planning permit would need to be submitted and approved for the project to obtain a Building and Public Works permit to begin construction.

CLIMATE SMART SAN JOSÉ

The proposed General Plan Amendment and Rezoning does not align with Climate Smart San José's overall goals because the change in land use designation would remove and convert commercial uses near existing residential land uses and would increase vehicle miles traveled and incentivize driving.

PUBLIC OUTREACH/INTEREST

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Below is a general summary of the comments by members of the public.

A community meeting was held to introduce the proposed project to the community. The meeting was held on September 16, 2021, to gather additional feedback, but no one from the community attended the community meeting. Staff stayed online until 20 minutes past the starting time to give people the opportunity to attend and ask questions in the event they were late.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

An Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between November 9, 2021, and December 6, 2021. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. One comment was received from Santa Clara Valley Water recommending edits. The comments did not raise any concern regarding the adequacy of the CEQA documents. The entire ND and Initial Study, public comments, and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under file nos. GP21-004 and C21-009.

/s/

Christopher Burton, Secretary
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, at Michael.Brilliot@sanjoseca.gov or 408-896-0136.

Attachments: Planning Commission Staff Report

Exhibit A: Resolution denying the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram designation from Neighborhood/Community Commercial to Mixed Use Neighborhood and conforming rezoning from the CP Commercial Pedestrian to MUN Mixed Use Neighborhood Zoning District on a 0.6-gross acre site at 7246 Sharon Drive

Exhibit B: Resolution approving the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood

Exhibit C: An ordinance approving the Conforming Rezoning from the CP Commercial Pedestrian Zoning District to the MUN Mixed Use Neighborhood Zoning District



Memorandum

TO: PLANNING COMMISSION
SUBJECT: GP21-004 and C21-009

FROM: Christopher Burton
DATE: January 12, 2022

COUNCIL DISTRICT: 1

Type of Permits	General Plan Amendment (GP21-004) Conforming Rezoning (C21-009)
Project Planner	Robert Rivera
CEQA Clearance	Initial Study/Negative Declaration for 7246 Sharon Drive GPA and Conforming Rezoning
CEQA Planner	Bethelhem Telahun

RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council that it take all of the following actions:

1. Adopt a resolution adopting the 7246 Sharon Drive GPA and Conforming Rezoning Negative Declaration and associated Mitigation Monitoring and Reporting Plan, for which an Initial Study was prepared, in accordance with the CEQA, as amended (Exhibit C); and
2. Adopt a resolution denying the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram designation from Neighborhood Community Commercial to Mixed Use Neighborhood and conforming rezoning from the CP Commercial Pedestrian to MUN Mixed Use Neighborhood Zoning District on a 0.6-gross acre site at 7246 Sharon Drive.

PROPERTY INFORMATION

Location	7246 Sharon Drive (south side of Sharon Drive approximately 220 feet east of South De Anza Boulevard)
Assessor Parcel Nos.	372-21-003
Existing General Plan	Neighborhood/Community Commercial
Proposed General Plan	Mixed Use Neighborhood
Growth Area	n/a
Existing Zoning	CP Commercial Pedestrian
Proposed Zoning	MUN Mixed Use Neighborhood
Historic Resource	No
Annexation Date	December 4, 1969 (Madera No_28)
Council District	1
Acreage	0.6 acres

Floor Area Ratio	n/a
Proposed Density	Unknown – no project on file

PROJECT SETTING AND BACKGROUND

As shown on the attached [aerial map](#) (Figure 1), the project site is located on the southern side of Sharon Drive approximately 220 feet east of South De Anza Boulevard within the City of San José at 7246 Sharon Drive. The project site has a CP Commercial Pedestrian Zoning District, as shown on the attached [zoning map](#) (Figure 4). The 7246 Sharon Drive parcel has a General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial as shown on the [general plan map](#) (Figure 2).

The project site is developed with a 10,366 square-foot commercial building currently used as a medical office and parking lot. One driveway provides access to the site from Sharon Drive.

The project site is bounded by Sharon Drive to the north, commercial buildings to the west, south and north, and small-lot single-family residences to the northeast, and east.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Neighborhood/Community Commercial	CP Commercial Pedestrian	Across Sharon Drive is a preschool
East	Residential Neighborhood	A(PD) Planned Development (PDC83-099)	Small-lot single-family residences
South	Neighborhood/Community Commercial	CP Commercial Pedestrian	Shopping Plaza
West	Neighborhood/Community Commercial	CP Commercial Pedestrian	Retail Commercial (Bike shop)

The applicant, Kirk Tang of Lexicon Development, represented by Edesa Bitbadal, submitted the applications for a General Plan Amendment and Conforming Rezoning on March 5, 2021 and March 15, 2021, respectively. If approved, the General Plan Amendment and Conforming Rezoning would allow the applicant to file a subsequent development permit for a medium-intensity residential project.

General Plan Amendment

The General Plan Amendment would change the General Plan Land Use/Transportation Diagram designation on the 7246 Sharon Drive parcel from Neighborhood Community Commercial to Mixed Use Neighborhood. The new land use would allow the demolition of the existing commercial development and replacement with residential development consistent with the proposed Mixed Use Neighborhood zoning district.

Conforming Rezoning

The conforming rezoning would change the project site's zoning district from the CP Commercial Pedestrian to MUN Mixed Use Neighborhood Zoning District. This would permit residential uses intended to support implementation of the Mixed Use Neighborhood General Plan designation by providing flexibility for the development of employment uses, medium-density housing, and mixed-use development.

Staff recommends denial of the proposed project because it does not retain commercial jobs, does not encourage growth consistent with the Major Strategies of the General Plan and contributes to the City's fiscal imbalance.

ANALYSIS

The proposed General Plan Amendment and Conforming Rezoning are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Zoning District Consistency with the Proposed General Plan Amendment (SB1333)
3. Senate Bill 330
4. City Council Policies
5. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

Existing Land Use Designation

As shown in the attached **General Plan Map** (Exhibit B), the project site has Envision San José 2040 General Plan designation of:

Neighborhood/Community Commercial.

Density: None FAR: Up to 3.5 (1 to 3 stories)

The Neighborhood Community/ Commercial designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. General office uses, hospitals and private community gathering facilities are also allowed in this designation.

Proposed General Plan Land Use Designation

As shown in the attached Proposed General Plan Map (Figure 3), the proposed land use designation is:

Mixed Use Neighborhood

Density: up to 30 DU/AC; FAR 0.25 to 2.0 (1 to 3.5 stories)

This designation is applied to areas intended for development primarily with either townhouse or small lot single-family residences and also to existing neighborhoods that were historically developed with a wide variety of housing types, including a mix of residential densities and forms. This designation supports commercial or mixed-use development integrated within the Mixed Use Neighborhood area. Existing neighborhoods with this designation are typically characterized by a prevalence of atypical lot sizes or shapes and a parcel-by-parcel development pattern where small townhouse development may exist adjacent to more traditional single-family development or more intense multifamily development.

This designation should be used to establish new neighborhoods with a cohesive urban form, to provide transition between higher-density and lower-density neighborhoods, or to facilitate new infill development within an existing area that does not have an established cohesive urban character. Small lot single-family neighborhoods with this designation may involve zero lot-line or other design features not available through a standard subdivision process

General Plan Goals and Policies

The project and the proposed General Plan designation are inconsistent with the following Major Strategies, goals, and policies of the Envision San José 2040 General Plan:

1. Major Strategy # 3 - Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. The Plan focuses significant growth, particularly to increase employment capacity, in areas surrounding the City's regional Employment Center, achieve fiscal sustainability, and to maximize the use of transit systems within the region.
2. Growth Areas Policy LU-2.3: To support the intensification of identified Growth Areas, and to achieve various goals related to their development throughout the City, restrict new development on properties in non-Growth Areas
3. Commercial Policy LU-4.1: Retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San Jose's workers, residents, and visitors.
4. Efficient Use of Residential and Mixed-Use Lands Policy LU-10.3: Develop residentially- and mixed-use designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.
5. Housing – Environmental Sustainability Policy H-4.2: Minimize housing's contribution to greenhouse gas emissions, and locate housing, consistent with our City's land use and transportation goals and policies, to reduce vehicle miles traveled and auto dependency.
6. Air Pollutant and Emission Reduction Policy MS-10.6: Encourage mixed land use development near transit lines and provide retail and other types of service-oriented uses within walking distance to minimize automobile dependent development.

Analysis: The project site is not located within an identified Growth Area and proposes to convert an approximately 0.6-gross acre site from a commercial land use designation to a residential land use designation. The site is currently developed with a 10,366 square-foot medical office building. The Mixed-Use Neighborhood land use designation does not require any commercial floor area for development and could be developed with solely residential uses. Further, the project site is not near any major transit facilities. The project site is within 1,000 feet of a bus stop that is served by one line with infrequent service; therefore, development of residential and removal of neighborhood commercial services may encourage more driving and auto dependency. Additionally, the project is bordered on three sides -- north, west, and south -- with the same current General Plan land use designation of NCC and CP zoning as the project site. The amendments requested are not consistent with the commercial nature of the existing uses in the immediate vicinity of the project site and, if approved, may lead to efforts to further convert other sites in the area from commercial to residential uses and reduce employment lands in the City contrary to the General Plan policies cited above.

Zoning Ordinance Conformance

The proposed rezoning conforms with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the MUC Mixed Use Neighborhood Zoning District as a conforming district to the General Plan Mixed Use Neighborhood Land Use/Transportation Diagram land use designation.

The proposed project is located in the CP Commercial Neighborhood, as shown on the attached Existing Zoning District Map (Figure 3). The proposed rezoning from CP Commercial Pedestrian Zoning District to MUN Mixed Use Neighborhood Zoning District conforms with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the Mixed Use Neighborhood Zoning District as a conforming district to the Mixed Use Neighborhood General Plan land use designation.

The proposed rezoning (Figure 4) would allow the properties to be used and developed in accordance with the allowable uses in Table 20-90, [Section 20.55.200](#), and consistent with the Mixed Use Commercial General Plan land use designation which includes general retail, entertainment and recreation, and mixed use and multifamily residential. The proposed rezoning would be consistent with Senate Bill 1333 mandate that zoning be consistent with the general plan designation, if the proposed General Plan Ament is approved.

The rezoning cannot be approved absent approval of the related General Plan amendment. For the reasons stated above, staff recommends denial of both the General Plan amendment and rezoning.

Senate Bill 330

Senate Bill 330 (SB 330), prohibits a City from changing the land use designation or zoning of a parcel or parcels to a less intensive housing use or reducing the housing intensity of the land use within an existing zoning district below what was allowed under the General Plan land use designation and zoning ordinance of the city unless the City concurrently changes the land use designation or zoning of another parcel or parcels. This is to ensure that there is no net loss in residential capacity within a City. Additionally, SB 940 authorizes the City of San José to proactively change a zoning to a more intensive use (up-zoning) and to use the added capacity to subsequently change the zoning to a less intensive use.

SB 330 calculations are separated into two calculations, the General Plan residential capacity and Zoning District residential capacity. Any increase of residential capacity on the General Plan level could be used to offset any General Plan amendment that may decrease residential capacity if they are concurrently approved. Any increase in residential capacity in the Zoning District can be pooled and used to offset rezonings that may decrease residential capacity in the future. Also, zoning residential capacity calculations are based on theoretical and average residential densities in the City while General Plan residential calculations are based on allowable densities in the General Plan.

If the application is denied as recommended by staff, compliance with SB 330 is not an issue because the site is not designated or zoned for residential uses and there are no existing residential uses on the site.

If the Council were to approve the General Plan amendment and rezoning, this project would change the General Plan land use designation of the 0.6-gross acre site (7246 Sharon Drive) from Neighborhood Community Commercial (0 du/acre) to Mixed Use Neighborhood (30 du/acre) which is a change from no residential allowances to a net increase of residential capacity in the city of approximately 18 units. Therefore, if approved, this project will not result in a loss of residential capacity in the City at the General Plan level.

Approval of the proposed conforming rezoning (C21-009) would result in a decrease of residential capacity by 48 units because the CP Commercial Pedestrian Zoning District on average permits 111 du/acre while the new MUN Mixed Use Neighborhood Zoning District permits 30 du/acre. The City has, however, 15,008 residential units of capacity created through the approval of other rezonings in 2020 (File Nos. PDC19-039, C20-002, C20-014, C21-003, C21-013, C21-015, C21-016, and C21-021). Therefore, consistent with the provisions of SB 940, there would be no net loss of residential capacity in the city resulting from this proposed rezoning action. The 15,008 units of increased capacity is more than enough capacity to cover the loss of 48 units, satisfying the no net loss of residential capacity requirements of Senate Bill 330.

City Council Policy Conformance

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered a significant community interest proposal. Following City Council Policy 6-30, the applicant has posted the on-site sign to inform the neighborhood of the proposed project. A community meeting was held in coordination with the Council District 1 office to discuss the project on September 16, 2021 over Zoom teleconference. No one from the public attended the community meeting.

Staff contact information have also been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between November 9th, 2021 and December 6th, 2021. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. One comment was received from Santa Clara Valley Water recommending edits. The comments did not raise any concern regarding adequacy of the CEQA documents. The entire ND and Initial Study, public comments and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under file nos. GP21-004 and C21-009.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Below is a general summary of the comments by members of public.

A community meeting was held to introduce the proposed project to the community. The meeting was held on September 16, 2021 to gather additional feedback, but no one from the community attended the community meeting. Staff stayed online until 20 minutes past the starting time to give people the opportunity to attend and ask questions in the event they were late.

Project Manager: Robert Rivera

Approved by: /s/ Michael Brilliot, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:

<p>Figures 1 through 5</p> <p>Figure 1 – Vicinity Map</p> <p>Figure 2 – Existing General Plan Land Use Designation</p> <p>Figure 3 – Proposed General Plan Land Use Designation</p> <p>Figure 4 – Existing Zoning District</p> <p>Figure 5 – Proposed Zoning District</p>

Exhibit A: Draft Resolution for Denial
--

Exhibit B: CEQA Resolution

Exhibit C: Initial Study/Negative Declaration

Owner:	Applicant:
Jen-Shyong and Li-Yen Wang 6146 Bollinger Road Unit 171 San Jose, CA 95129	Krik Tang, Lexicon Developments 6565 Danridge Drive San Jose, CA 95129

Figure 1: Aerial of Site



Figure 2: Existing General Plan

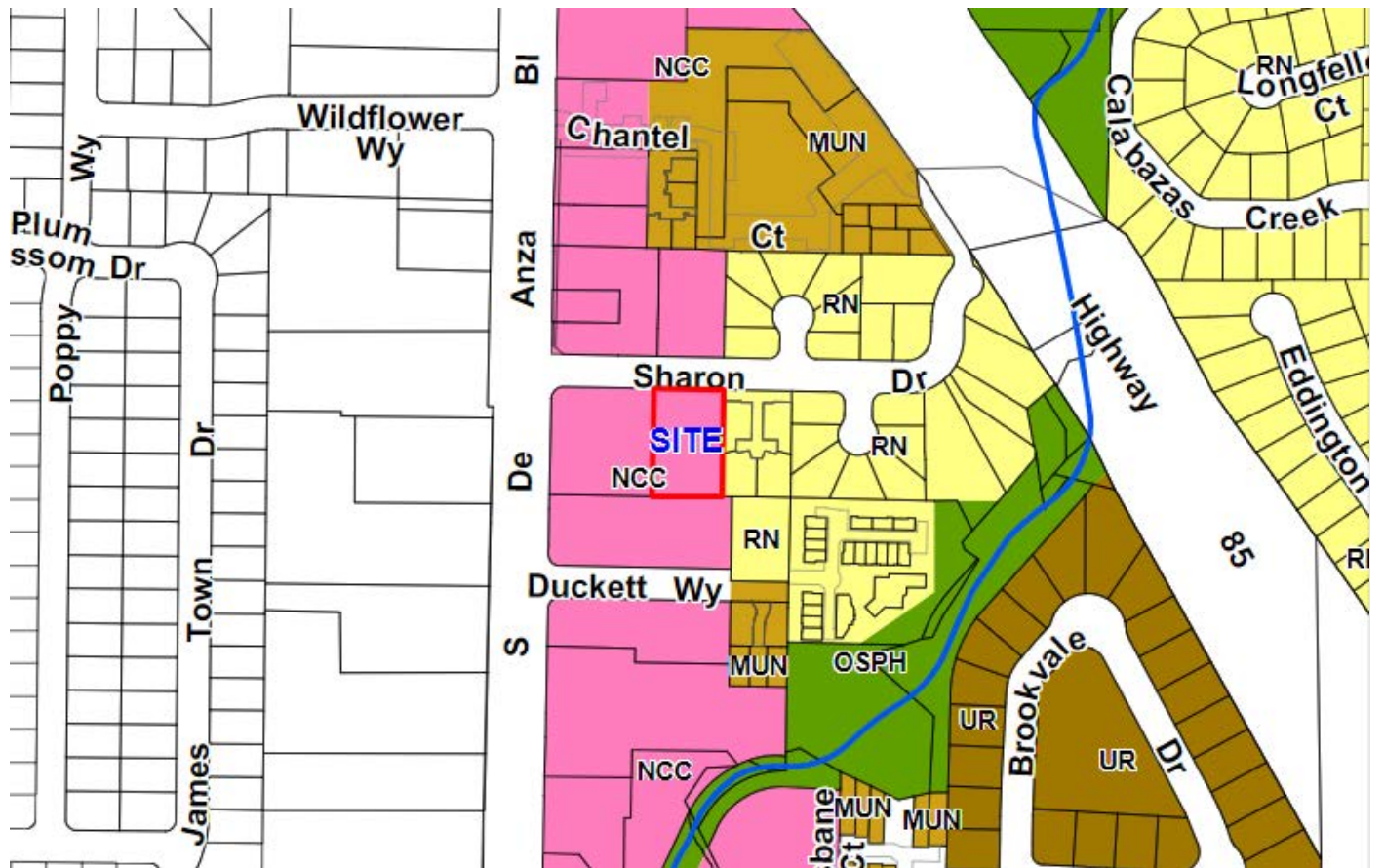


Figure 3: Proposed General Plan

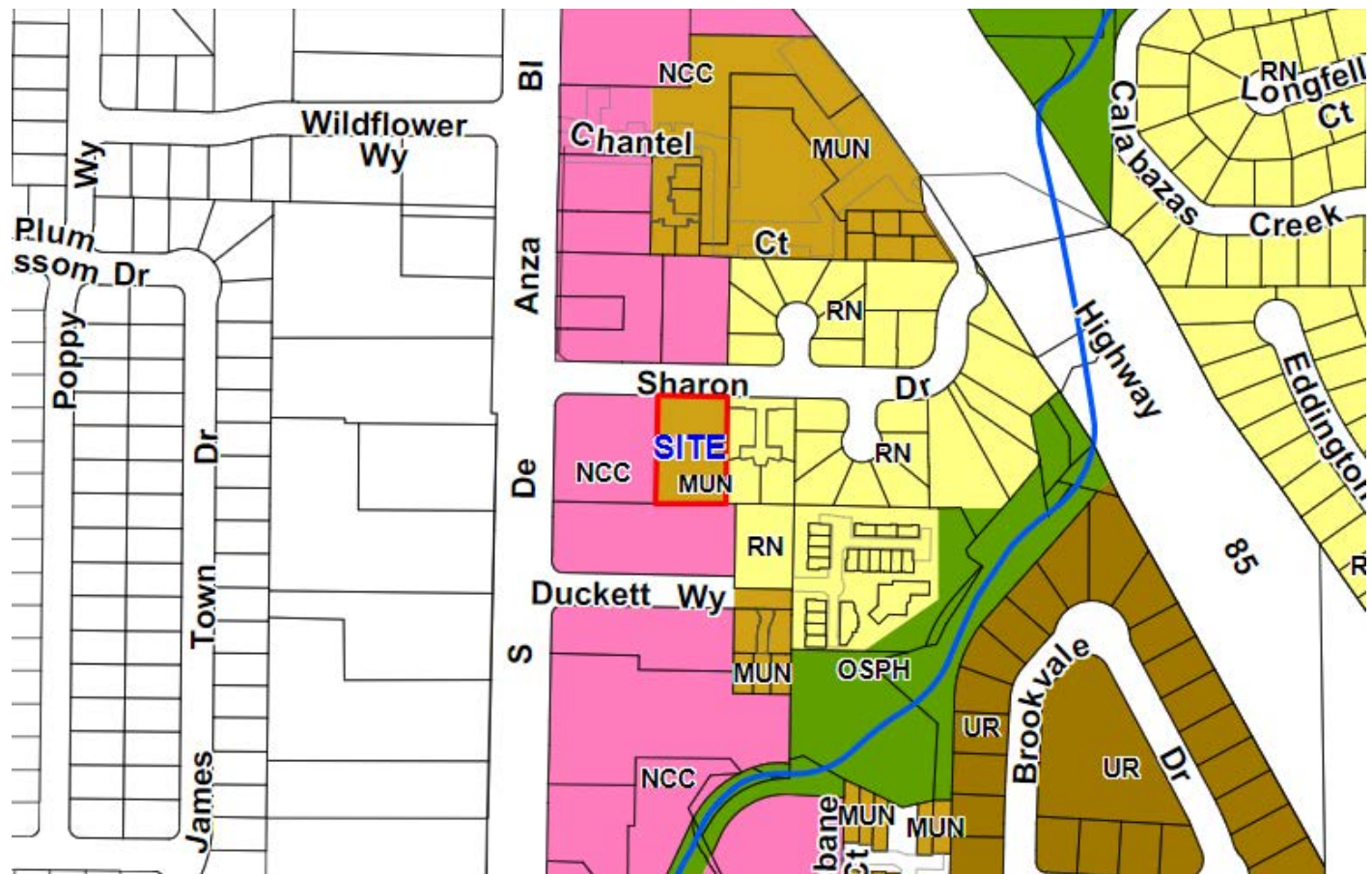


Figure 4: Existing Zoning Map

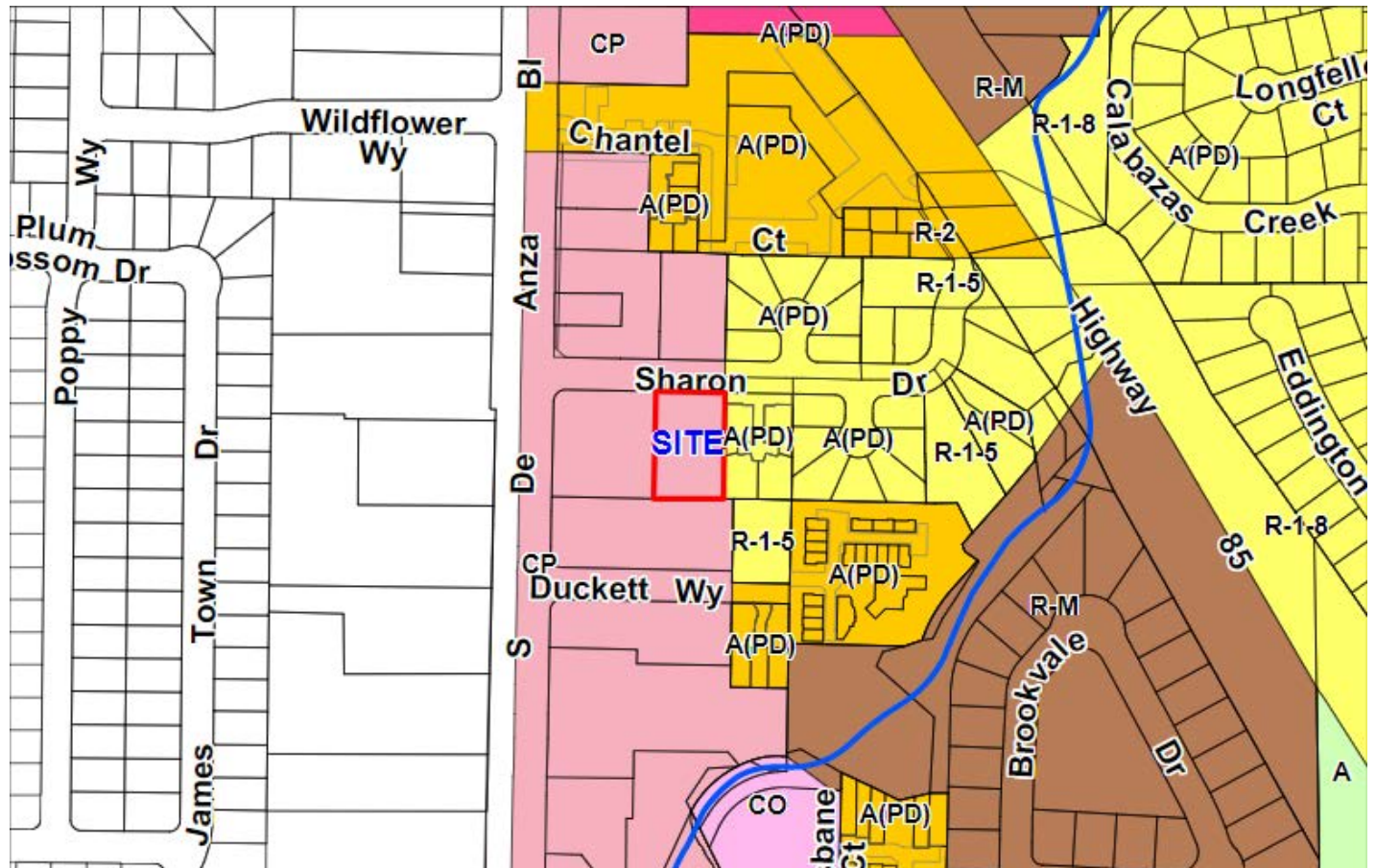
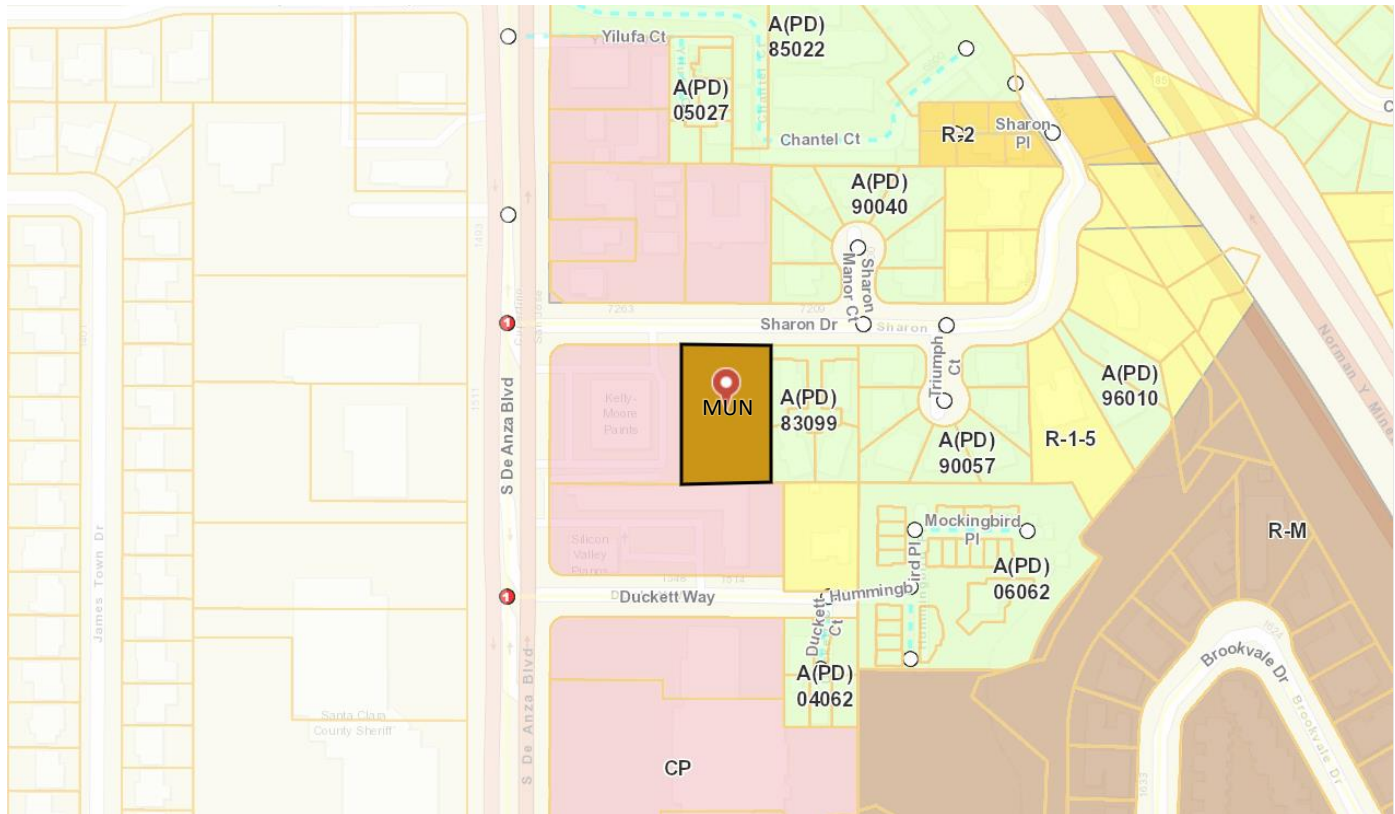


Figure 5: Proposed Zoning Map



GP21-004 & C21-009

Links to Attachments A-C

Click on the title to view document

Exhibit A: Draft Resolution for Denial
Exhibit B: CEQA Resolution
Exhibit C: Initial Study/Negative Declaration

Correspondence received after January 5, 2022

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING THE APPLICATION FOR AMENDMENT OF THE ENVISION SAN JOSE 2040 GENERAL PLAN TO MODIFY THE LAND USE/ TRANSPORTATION DIAGRAM FROM THE NCC NEIGHBORHOOD COMMUNITY COMMERCIAL DESIGNATION TO THE MUN MIXED USE NEIGHBORHOOD DESIGNATION AND AMENDMENT OF THE ZONING FROM THE CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO THE MUN MIXED USE NEIGHBORHOOD ZONING DISTRICT ON AN APPROXIMATELY 0.6-GROSS ACRE SITE LOCATED AT 7246 SHARON DRIVE (ASSESSOR PARCEL NUMBER: 372-21-003)

Winter 2022 General Plan Amendment Cycle (Cycle 1)

GP21-004 and C21-009

WHEREAS, the City Council is authorized by Titles 18 and 20 of the San José Municipal Code and state law to adopt and, from time to time, amend the General Plan and Zoning governing the physical development of the City of San José; and

WHEREAS, on November 1, 2011, the City Council adopted the General Plan entitled, "Envision San José 2040 General Plan, San José, California" by Resolution No. 76042, which General Plan has been amended from time to time (hereinafter the "General Plan"); and

WHEREAS, in accordance with San Jose City Charter section 1000, and Titles 18 and 20 of the San José Municipal Code, all general and specific plan amendment proposals and proposals for rezoning are referred to the Planning Commission of the City of San José for review and recommendation prior to City Council consideration of the amendments; and

WHEREAS, on January 12, 2022, the Planning Commission held a public hearing to consider the proposed amendment to the General Plan File No. GP21-004 ("General Plan Amendment") and rezoning File No. C21-009 ("Rezoning"), at which hearing interested persons were given the opportunity to appear and present their views with respect to said proposed amendments; and

WHEREAS, at the conclusion of the public hearing, the Planning Commission transmitted its recommendations to the City Council on the proposed General Plan Amendment and Rezoning; and

WHEREAS, on February 8, 2022, the Council held a duly noticed public hearing; and

WHEREAS, a copy of the proposed General Plan Amendment and Rezoning is on file with the office of the Director of Planning, Building and Code Enforcement of the City, and available electronically on the Department of Planning, Building and Code Enforcement webpage, with copies submitted to the City Council for its consideration; and

WHEREAS, pursuant to Title 18 of the San José Municipal Code, public notice was given that on February 8, 2022 at 6:00 p.m. the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment and Rezoning; and

WHEREAS, prior to making its determination on the application for the General Plan amendment and Rezoning, the Council reviewed and adopted the 7246 Sharon Drive GPA and Conforming Rezoning Negative Declaration and associated Mitigation Monitoring and Reporting Plan, (Resolution No. _____) in accordance with the California Environmental Quality Act; and

WHEREAS, the proposed General Plan Amendment and rezoning are inconsistent with the following General Plan Policies that encourage the retention of employment lands and residential growth in designated Growth Areas:

Major Strategy #3;
Growth Areas Policy LU-2.3;
Commercial Policy LU-4.1;
Efficient Use of Residential and Mixed Use Lands Policy LU-10.3;
Housing – Environmental Sustainability Policy H-4.2; and
Air Pollutant and Emissions Policy MS-10.6; and

WHEREAS, absent approval of the General Plan Amendment, the Rezoning cannot be approved because it would be inconsistent with the General Plan in violation of state law; and

WHEREAS, the Council is the decision-making body for the proposed General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. The Council hereby denies the application for the General Plan Amendment and Rezoning (File Nos. GP21-004 and C21-009 respectively) because the application is inconsistent with the General Plan for the reasons specified in the Recitals above.

SECTION 2. This Resolution, shall take effect immediately upon adoption.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

)
) ss
)

I hereby certify that the amendments to the San José General Plan specified in the attached Exhibit A were adopted by the City Council of the City of San José on _____, as stated in its Resolution No. _____.

Dated: _____

TONI J. TABER, CMC
City Clerk

DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE ENVISION SAN JOSE 2040 GENERAL PLAN PURSUANT TO TITLE 18 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY THE LAND USE/ TRANSPORTATION DIAGRAM FROM THE NEIGHBORHOOD COMMUNITY COMMERCIAL DESIGNATION TO THE MIXED USE NEIGHBORHOOD DESIGNATION ON AN APPROXIMATELY 0.6-GROSS ACRE SITE LOCATED AT 7246 SHARON DRIVE (ASSESSOR PARCEL NUMBER: 372-21-003)

**Winter 2022 General Plan Amendment Cycle (Cycle 1)
GP21-004**

WHEREAS, the City Council is authorized by Title 18 of the San José Municipal Code and state law to adopt and, from time to time, amend the General Plan governing the physical development of the City of San José; and

WHEREAS, on November 1, 2011, the City Council adopted the General Plan entitled, "Envision San José 2040 General Plan, San José, California" by Resolution No. 76042, which General Plan has been amended from time to time (hereinafter the "General Plan"); and

WHEREAS, in accordance with Title 18 of the San José Municipal Code, all general and specific plan amendment proposals are referred to the Planning Commission of the City of San José for review and recommendation prior to City Council consideration of the amendments; and

WHEREAS, on January 12, 2022, the Planning Commission held a public hearing to consider the proposed amendment to the General Plan File No. GP21-004 ("General Plan

Amendment”), at which hearing interested persons were given the opportunity to appear and present their views with respect to said proposed amendments; and

WHEREAS, at the conclusion of the public hearing, the Planning Commission transmitted its recommendations to the City Council on the proposed General Plan Amendment; and

WHEREAS, on February 8, 2022, the Council held a duly noticed public hearing; and

WHEREAS, a copy of the proposed General Plan Amendment is on file with the office of the Director of Planning, Building and Code Enforcement of the City, and available electronically on the Department of Planning, Building and Code Enforcement webpage, with copies submitted to the City Council for its consideration; and

WHEREAS, pursuant to Title 18 of the San José Municipal Code, public notice was given that on February 8, 2022 at 6:00 p.m. the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment (Exhibit “A”); and

WHEREAS, prior to making its determination on the application for the General Plan amendment, the Council reviewed and adopted the 7246 Sharon Drive General Plan Amendment and Conforming Rezoning Negative Declaration (Resolution No. _____) in accordance with the California Environmental Quality Act; and

WHEREAS, the General Plan Amendment will not result in inconsistent zoning because the MUN Mixed Use Neighborhood Zoning District rezoning (File No. C21-009) is consistent with the General Plan land use and development on-site; and

WHEREAS, pursuant to California Senate Bill (SB) 330, a city is prohibited from enacting a development policy, standard, or condition, as defined, that would have the effect of changing the land use designation or zoning of a parcel or parcels of property to a less intensive residential use or reducing the residential intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018; and

WHEREAS, California Government Code Section 66300(b)(1) allows a city to change a land use designation or zoning ordinance to a less intensive residential use if the city concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity; and

WHEREAS, the City is amending the General Plan land use designation of the property at 7246 Sharon Drive (APN: 372-21-003) from Neighborhood/Community Commercial to Mixed Use Neighborhood, which would result in a net increase of residential capacity in the city of approximately 18 units and therefore, there is no net loss in residential capacity with the change in land use designation set forth herein; and

WHEREAS, the Council is the decision-making body for the proposed General Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. The Council's determination regarding General Plan Amendment File No. GP21-004 is hereby specified and set forth in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The General Plan Land Use Amendment specified in GP21-004, as set forth in Exhibit “A” of this Resolution, shall take effect upon the effective date of the associated rezoning ordinance for File No C21-009. This Resolution shall take effect thirty (30) days following the adoption of this Resolution immediately upon adoption.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

[illegible]

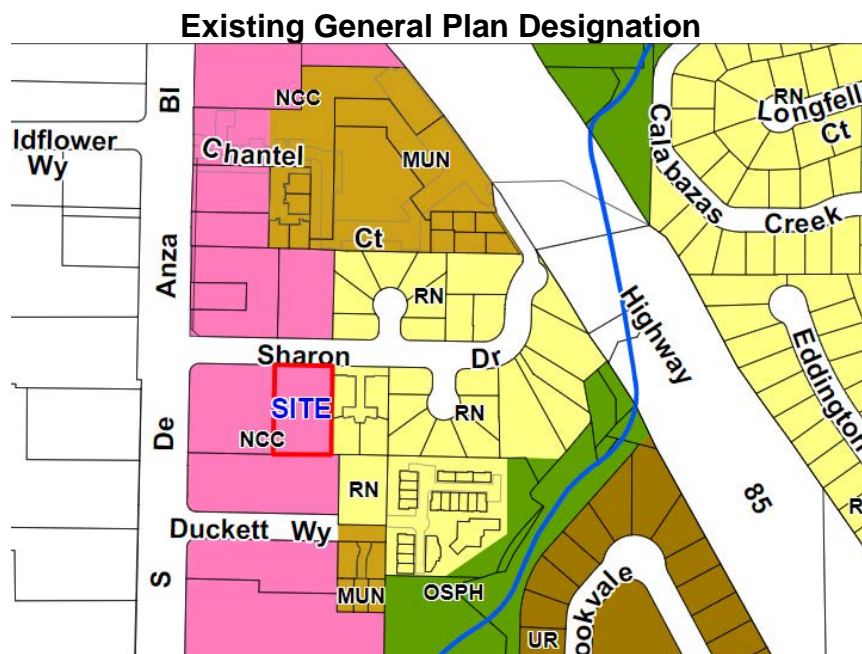
I hereby certify that the amendments to the San José General Plan specified in the attached Exhibit A were adopted by the City Council of the City of San José on _____, as stated in its Resolution No. _____.

Dated: _____

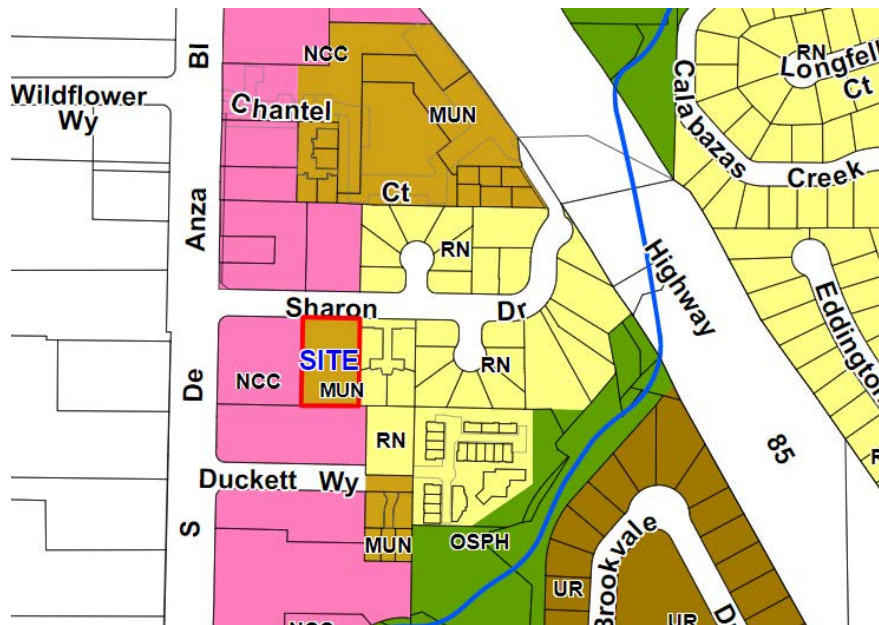
TONI J. TABER, CMC
City Clerk

EXHIBIT “A”

File No. GP21-004. A General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Neighborhood on a 0.6-gross acre site located at 7246 Sharon Drive (Lexicon Development – Applicant).



Proposed General Plan Designation



Council District: 1.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING FROM THE CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO THE MUN MIXED USE NEIGHBORHOOD ZONING DISTRICT, ON THE 0.6 GROSS ACRE SITE LOCATED AT THE SOUTHERN SIDE OF SHARON DRIVE APPROXIMATELY 220 FEET EAST OF SOUTH DE ANZA BOULEVARD (7246 SHARON DRIVE).

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, an Initial Study/Negative Declaration was prepared in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, for the subject rezoning to the CP Commercial Pedestrian Zoning District under File Number C21-009 and GP21-004 (the "IS/ND"); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the Mixed Use Neighborhood Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves the IS/ND as the appropriate environmental clearance for the proposed project prior to acting upon or approving the subject rezoning; and

WHEREAS, the proposed rezoning is consistent with the designation of the site in the applicable General Plan; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned to the to the Mixed Use Neighborhood Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, depicted in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. Any land development approval that is the subject of City File No. C21-009 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"

Exhibit A-1: Existing Zoning District

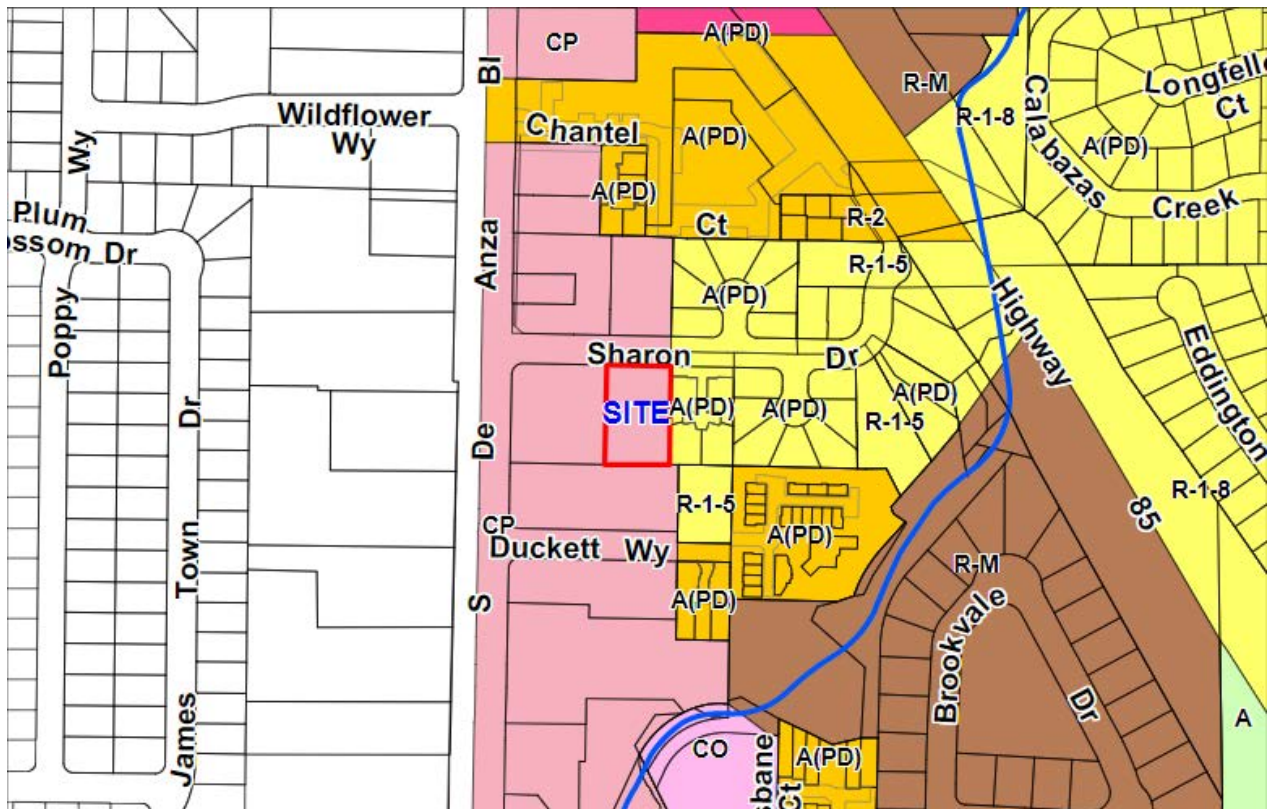


Exhibit A-2: Revised Zoning District

