

Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

**SUBJECT: POTENTIAL JUNE 5, 2018
BALLOT MEASURES**

DATE: March 5, 2018

Approved

Date

3-5-18

RECOMMENDATION

1. Approve Item 3.7 (a), (b), (c), and (g) as outlined on the Council Agenda for March 6, 2018;
2. Adopt a resolution of the City Council calling and giving notice, on its own motion, for a Special Municipal Election to be held on June 5, 2018, to submit a City Charter Amendment to the electors of the City of San José titled: An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas, and attached herewith;
3. Authorize the Mayor to:
 - i. Submit an argument in favor of the City Charter Amendment (by March 13, 2018) in the June 5, 2018, Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election; and,
 - ii. Submit a rebuttal argument in favor of the City Charter Amendment (by March 20, 2018) in the June 5, 2018, Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election.
4. Authorize the City Attorney to:
 - iii. Prepare an impartial analysis (by March 20, 2018) pursuant to Elections Code Section 9280; and
5. Authorize the City Clerk to:
 - iv. Include the full text of the proposed City Charter Amendment in the June 5, 2018, Voter's Sample Ballot, to be incorporated in the resolution calling the election.

BACKGROUND

Pursuant to the San Jose City Charter Article V, Section 501, I have authored a City Charter Amendment entitled: An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas, which - if approved by the electorate - shall effectively limit sprawl on properties that are 5-acres or more and located within one mile inside of the Urban Growth Boundary in any of the following five Planning Areas, Almaden Valley, Calero, Coyote Valley, Evergreen foothills and San Felipe ("Qualifying Parcels"), for the next 20 years. The entire Charter Amendment is attached to this memo as Exhibit A.

The proposed City Charter strengthens our commitment to our future, reinforcing the policies and goals of the *Envision San José 2040 General Plan* which a 37-member Task Force developed over four years - through 51 meetings and embracing the comments of over 5,000 community members.

In 2011, the City Council unanimously adopted the *Envision San José 2040 General Plan* and a framework that focused significant new growth – 382,000 new jobs and 120,000 new housing units – such that the City would achieve its goals for economic growth, fiscal sustainability and environmental stewardship. This jobs and housing growth is specifically allocated to “Growth Areas” such as Downtown, North San José, Specific Plan Areas, Employment Lands, Transit Corridors, and Transit Urban Villages, Commercial Center Urban Villages, and Neighborhood Urban Villages. It emphasizes development that supports walking, biking, opportunities for retail and other services to be included in a mixed-use format near transit. No growth or intensification is planned outside of the urban growth boundary or within the South Almaden and Coyote Valley Urban Reserves.

This Charter Amendment will limit urban sprawl and preserve the City’s threatened employment lands as the provisions of the Charter Amendment will prevail over all conflicting laws, including the proposed Evergreen Senior Homes initiative measure. It does not apply to lands with the Public/Quasi Public designation, the Agricultural designation and lands that are acquired for parks, trails and other public uses.

In the event that developers propose to convert Qualifying Parcels from employment uses to other uses, under the Charter Amendment, the City must first comply with certain requirements. The City, at the applicant’s cost, must have a Fiscal and Jobs/Housing Balance Impact Study (“Impact Study”) prepared. Upon consideration of the Impact Study, the City Council will determine whether the proposed conversion, as compared to the buildout that could otherwise occur at the site, could impact the City in terms of loss of revenue, reduced economic benefit or employment reduction. If the Council determines that any of these impacts could result, then the City Council shall not approve the proposed conversion unless it determines that the benefits of the proposal outweigh the specified impacts.

In the event that developers proceed with conversion of Qualifying Parcels to residential use, then the developers will be required, among things, to:

- provide additional affordable housing (50% for for-sale projects and 35% for rental projects),
- comply with conditions imposed by the City to address environmental impacts, including payment of fees for road improvements to reduce traffic impacts,
- comply with all applicable laws related to building energy efficiency standards such as Zero Net Energy standards, and to the maximum feasible, and subject to all applicable federal and state laws, provide support services for the development’s intended residents.

The following is the recommended ballot question to be placed in the resolution calling for the Charter Amendment to be placed before the voters:

Shall San José’s Charter be amended, notwithstanding any measure on the June 5, 2018 ballot or other San José law, to restrict development of non-employment uses on designated lands in outlying areas near San José’s Urban Growth Boundary, including Almaden Valley, Coyote Valley and Evergreen foothills, unless the City Council determines such development will not adversely affect the City financially, will satisfy increased affordable housing requirements, and will mitigate environmental impacts and pay appropriate fees for road improvements to address traffic impacts?

EXHIBIT A

EXHIBIT A TO RESOLUTION NO. _____ OF THE CITY OF SAN JOSÉ

The citizens of the City of San José do hereby enact the following amendments to the City Charter which may be referred to as: “An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas.”

Article XIX

An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas.

Section 1901. Findings and Purpose.

The people of the City of San José find and declare as follows:

- (a) San José’s experience with rapid growth has provided hard lessons regarding the economic and environmental costs of urban sprawl. The City’s sprawling pattern of residential development has led to excessive dependence upon the automobile, and makes more environmentally friendly alternatives such as transit, walking, and cycling more costly and less efficient. It results in higher levels of greenhouse gas emissions, and it burdens residents with higher transportation costs and worse health outcomes than in-fill, transit-oriented residential development.
- (b) In the past, residential development at the City’s edge has also led to destruction of precious hillside open spaces and adverse impacts on traffic, water quality, water supply, air quality, and wildlife preservation. Since the mid-1990’s, the City has sought to limit these economic costs and adverse environmental impacts through use of an Urban Growth Boundary (UGB) that discourages urban sprawl and establishes the ultimate limit on urbanization within the City. The City’s first UGB was adopted by a unanimous vote of the City Council in 1996. The City’s voters subsequently adopted Measure A in 2000, establishing the UGB with procedures for its future modification.
- (c) The City has found that urban development at its edge, particularly residential development, also does not generate sufficient revenues to cover the costs of providing urban services—such as police and fire response—and infrastructure—such as roads and sewers—at longer distances.
- (d) San José has been described as one of the largest “bedroom communities” in the United States. San José has a population of over one million residents with a ratio of only 0.8 jobs per employable resident, which means that there are fewer people in San José during the day than at night. The relatively low number of employers within San José forces thousands of San José residents to commute to jobs in other cities like Santa Clara, Sunnyvale, Mountain View, and Palo Alto.
- (e) The jobs-housing imbalance in the area contributes to congestion on streets and freeways in San José, as well as the regional transportation grid, and adds significant time and

distance to commutes because a disproportionate number of San José residents drive to jobs outside of the City of San José.

- (f) The San José General Plan identifies improvement of the City's jobs-housing imbalance, or "Jobs/Employed Residents Ratio," as a critical policy goal. In light of this objective, the General Plan seeks to support the generation of 380,000 new jobs through 2040, focusing employment growth in the Downtown area and on existing employment lands citywide like North San Jose, Edenvale, the Monterey Corridor, Evergreen, North Coyote Valley, urban villages, neighborhood business districts, and major commercial corridors along existing and future transit corridors. The General Plan places a strong emphasis on protecting employment lands, and recognizes that further employment land conversions would have significant negative environmental, fiscal and economic implications, contrary to the General Plan's policies.
- (g) The current General Plan, including the Housing Element of the General Plan, also identifies available land that is designated and zoned for 120,000 new housing units consistent with state law, and the City's Housing Element is certified as adequate by the California Department of Housing and Community Development.
- (h) In order to support the development of all types and income levels of housing, including affordable housing at moderate, low, and very-low income levels pursuant to the City Inclusionary Housing Ordinance (San José Municipal Code Chapter 5.08), while also preserving and enhancing the quality of the City's neighborhoods and strengthening the Urban Growth Boundary, the General Plan focuses residential development primarily in specifically identified Growth Areas in order to avoid urban sprawl and the costs of City infrastructure and services associated with such sprawl. Accordingly, most new housing development will be achieved through higher-density development in existing urbanized areas.
- (i) The policies in the City's current General Plan were adopted unanimously by the City Council in 2011 after significant review and input (which included 51 public meetings for a 37-member task force leading the drafting of the General Plan and approximately 5,000 community stakeholder comments over a four-year period) in order to achieve a balance between the need for housing and the creation of jobs in San José for San José residents and to achieve fiscal sustainability. Efforts to alter that balance should be subject to extensive community outreach and environmental review.
- (j) The purpose of this Act is to support existing City policies that limit urban sprawl and to ensure that any future conversion of threatened employment lands to non-employment uses meet specified criteria. These criteria are designed to prevent reduction in City General Fund revenues, City services, and quality of life while assuring that any such conversion provides a substantial public purpose and benefit, including the construction of significant numbers of affordable housing units. The City would be required to consider the requirements of this Act when it evaluates applications from developers or other proposals to convert specified lands that are currently designated and/or zoned for employment purposes to residential or other uses.

- (k) The purpose of this Act is also to enhance the ability of the City Council. in considering future land use changes, to determine and designate appropriate uses of land in a manner that encourages more informed public input and involvement while preserving areas of the City for appropriate future growth, discouraging urban sprawl, creating a balance among various types and forms of development, advancing overall community health, and promoting a fiscally strong City.

Section 1902. Definitions.

For purposes of this Act, the following definitions shall apply:

- (a) “Threatened Employment Lands” shall mean all Qualifying Parcels that are designated in the San José General Plan, as it existed on March [insert date of resolution], 2018, as any of the following: Combined Industrial/Commercial, Commercial Downtown, Heavy Industrial, Industrial Park, Light Industrial, Mixed Use Commercial, Neighborhood/Community Commercial, Regional Commercial, Transit Employment Center, Urban Village, and Urban Village Commercial. Notwithstanding the foregoing, “Threatened Employment Lands” shall not include lands with the San José General Plan designation of Public/Quasi-Public or Agriculture or land acquired or designated for public parks, public trails, public open space, or other public uses.
- (b) “Qualifying Parcel” shall mean any parcel or contiguous parcels in common ownership or control that individually or collectively are both:
 - (1) five acres or greater in size; and
 - (2) partially or wholly located within one mile inside of the City of San José Urban Growth Boundary in any of the following five Planning Areas: Evergreen, Coyote, San Felipe, Almaden, and Calero, as those areas are depicted on the October 2012 map entitled “San Jose Planning Areas.” The San Jose Planning Areas Map is attached hereto as Exhibit 1 and incorporated by this reference into the Act. This map shall be maintained as part of the City Charter.

Section 1903. City Policy to Support Urban Growth Boundary by Limiting Conversion of Threatened Employment Lands Supersedes All Conflicting Provisions.

Since 1996, the City of San José has had an Urban Growth Boundary (UGB) that discourages urban sprawl and establishes the ultimate limit on urbanization within the City. It is also the policy of the City of San José that employment lands be protected from conversion to non-employment uses. In furtherance of these policies, and because sensitive employment lands in certain areas adjacent to the UGB are also threatened by sprawl, land use designations for threatened employment lands and the allowable uses for those lands in the San José General Plan, any master plan or specific plan, any development policy, any Municipal Code provision, any zoning ordinance, or Urban Village Plan shall not be changed in a manner that allows non-employment uses unless all of the requirements set forth in Section 1904 are satisfied.

The provisions of this Act shall prevail over all other conflicting or inconsistent provisions in the City's Charter, ordinances, resolutions, or other enactments, including initiative enactments, existing as of the effective date of this Act. Any ordinance, resolution, or other enactment adopted on or after the effective date of this Act that purports to allow non-employment uses on threatened employment lands in a manner that does not comply with the provisions of this Act shall be of no force or effect.

Any initiative measure adopted at the June 5, 2018 primary election that purports to impose, create, or apply a non-employment use designation or an overlay designation on threatened employment lands to allow residential development on those lands shall be void in its entirety, notwithstanding any contrary provision of that initiative measure.

Section 1904. Requirements for Conversion of Threatened Employment Lands to Non-Employment Uses.

Before any proposed General Plan amendment, master plan, specific plan, development policy, urban village plan, amendment to the Municipal Code or zoning ordinance, or any other legislative enactment that would allow non-employment uses on threatened employment lands ("proposed legislative change") is considered for approval by the City, the City shall comply with all of the following requirements:

- (a) The City, at the applicant's cost, shall prepare a Fiscal and Jobs/Housing Balance Impact Study ("Impact Study") addressing the potential impacts specified in paragraphs (1) through (3) of this subsection (a), as well as any other fiscal, employment, or jobs/housing balance impacts that may result from non-employment development allowed by the proposed legislative change. The Impact Study shall be made available for public review. The City Council shall consider the Impact Study at a duly noticed public hearing.

Upon consideration of the Impact Study, the City Council shall determine whether approval of the proposed legislative change, as compared to buildout of the employment development that otherwise could occur on the site proposed for development pursuant to applicable underlying land use designations, could result in any of the following impacts:

- (1) An annual net loss of revenue to the City in any fiscal year;
- (2) A reduced annual economic benefit in any fiscal year, considering the direct, indirect, and induced effects of employment, labor income, and economic output, during either construction or operation of the development; or
- (3) Any measureable reduction in the City's Jobs/Employed Resident ratio in any fiscal year or any reduction in long-term employment.

If the City Council determines that the proposed legislative change could result in any of the impacts described in paragraphs (1) through (3) of this subsection, the City Council shall not approve the application for the proposed legislative change unless it determines that the benefits

to the City of the proposal outweigh the specified impacts. The City Council shall retain the power to deny, approve, modify, or approve with conditions the proposed legislative change.

- (b) The City shall require any residential development on threatened employment lands allowed by the proposed legislative change to comply with all applicable inclusionary housing requirements, except that notwithstanding any contrary provisions in those requirements, the minimum number of affordable housing units in the residential development shall be as follows and construction of the units shall be concurrent and proportional to the construction of market rates units in the development:
 - (1) For-sale residential development: fifty percent (50%) of the total dwelling units in the residential development shall be made available for purchase at an affordable housing cost to those households earning no more than one hundred ten percent (110%) of the area median income. Such units may be sold to households earning no more than one hundred twenty percent (120%) of the area median income.
 - (2) Rental residential development: thirty-five percent (35%) of the total dwelling units in the residential development shall be made available for rent at an affordable housing cost to moderate income households, and twenty percent (20%) of the total dwelling units in the residential development shall be made available for rent at an affordable housing cost to very low income households.
- (c) Notwithstanding any provision of the proposed legislative change that purports to limit or could be interpreted as limiting the City's duty or ability to comply with the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"), the City shall require compliance with CEQA to the fullest extent permitted by law. Specifically, but not by way of limitation of the foregoing, the City shall retain discretion whether to certify or approve CEQA documents related to any application and to approve, deny, or impose conditions on any proposed development as necessary to avoid, minimize, reduce, rectify, or eliminate any significant environmental impacts of the development, including, without limitation, the payment of appropriate fees for road improvements to address traffic impacts.
- (d) The City shall require that any residential development on threatened employment lands allowed by the proposed legislative change to comply with the City Municipal Code and all laws relating to design and construction including but not limited to building energy efficiency standards, including all applicable Zero Net Energy requirements.
- (e) The City shall require that all landscaping in any non-employment development allowed by the proposed legislative change shall be maintained using recycled/reclaimed water where the site is in an area served by recycled/reclaimed water for those uses.
- (f) To the maximum extent feasible, and subject to all applicable federal and state laws, the City shall require that any residential development on threatened employment lands allowed by the proposed legislative change includes provision of support services, at no cost to the City, as appropriate to serve the intended resident population. Support services may include, but are not necessarily limited to, the following: (1) assisted living; (2)

memory care; (3) nursing care; (4) shuttle service to and from transit centers, medical providers, or social service providers; (5) meal delivery; (6) physical therapy; and (7) primary medical care.

Section 1905. Implementing Legislation.

The City Council is authorized to adopt implementing ordinances or resolutions, as necessary, to further the purposes of this Act.

Section 1906. No Conflict With State or Federal Housing Laws.

Notwithstanding any other provision of this Act, this Act shall not apply to a proposed legislative change that the City determines is required to implement or comply with state or federal housing law, including laws related to the provision of affordable housing.

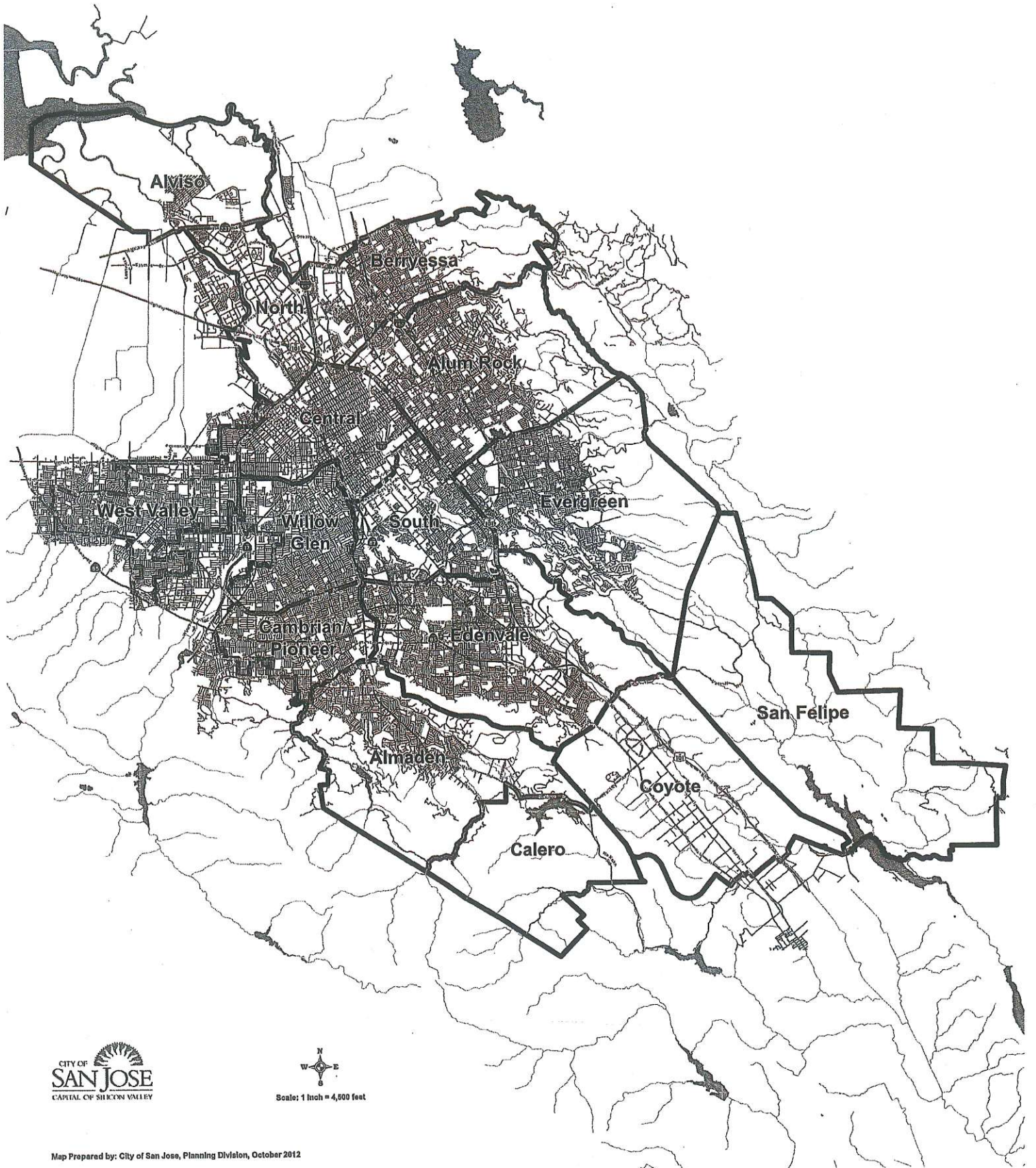
Section 1907. Interpretation and Severability.

This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion (“portion”) of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Act. The voters hereby declare that this Act, and each portion thereof, would have been adopted or passed even if one or more portions of the Act were declared invalid or unconstitutional. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect without the invalid application.

Section 1908. Sunset.

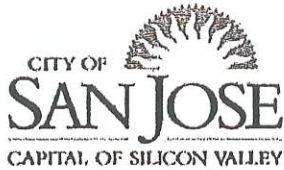
The provisions of this Act shall be operative for twenty (20) years following the effective date of this Act, and shall thereafter be inoperative unless extended by a duly enacted amendment to this Charter. This date shall be tolled for a period equal to the period during which any litigation or a similar action challenging this Act has been filed and until final judgment or dismissal.

San Jose Planning Areas



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Scale: 1 Inch = 4,000 feet

EXHIBIT B



**CALIFORNIA ENVIRONMENTAL QUALITY ACT [CEQA]
DETERMINATION FOR PROPOSED AMENDMENTS TO THE SAN JOSE CITY
CHARTER ENTITLED "AN ACT TO LIMIT URBAN SPRAWL AND THE FISCAL AND
ENVIRONMENTAL EFFECTS OF SPECIFIED DEVELOPMENT IN OUTLYING AREAS"**

Project Name: Resolution of the San Jose City Council proposing amendments to the City Charter, entitled "An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas."

Pursuant to Elections Code sections 9255 and 1415, and Government Code section 34458, the City Council is proposing amendments to the City Charter referred to as "An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas." ("Act"). The City Council is permitted to submit a proposition to a vote of the people, without a petition therefor, on its own motion.

Location: Citywide.

Council District: All Council Districts

DETERMINATION OF EXEMPTION

The proposed amendments to the City Charter entitled "An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas," are determined not to be subject to environmental review under the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA") and the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. ("Guidelines").

CEQA applies only where a public agency approves or undertakes a "project," which is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Public Resources Code ("PRC") §§ 21065, 21080(a); Guidelines, § 15378(a). In addition, a project that does not have the potential for causing a significant effect on the environment is exempt from CEQA. Guidelines, § 15061(b)(3). CEQA review is also not required for certain projects that are consistent with the applicable general plan and whose impacts have already been analyzed in an environmental impact report. PRC §§ 21166; Guidelines, §§ 15162(a), 15183.

Placement of the Act on the ballot is not subject to CEQA because it will not cause any direct or reasonably foreseeable indirect physical changes to the environment and it does not have the potential to cause significant environmental impacts. Moreover, the Act is fully consistent with the City of San José's adopted General Plan, Envision San José 2040 ("General Plan"). The Act does not

modify any land use designations set forth in the General Plan and supports the General Plan's existing land use policies. These designations and policies were fully analyzed in the 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Supplemental Environmental Impact Report (Resolution No. 77617), and addenda thereto, and no additional review is required at this time.

ANALYSIS

California law requires each city and county to adopt and maintain a general plan that establishes permissible land uses and maximum development densities and intensities for all properties within the jurisdiction. The City's current General Plan was adopted on November 1, 2011. The City prepared the 2040 General Plan Final Program Environmental Impact Report for the General Plan's adoption, certified on November 1, 2011 by Resolution No. 76041 ("FEIR"), and a Supplemental Environmental Impact Report, which it certified on December 15, 2015 by Resolution No. 77617 ("SEIR"). These EIRs and addenda thereto fully analyzed the impacts of all existing policies and land use designations set forth in the General Plan.

The Act does not change any land use designations in the General Plan or approve any development. Rather, the Act seeks to ensure that any *changes* to existing employment land use designations in certain specified planning areas are consistent with the General Plan's policies to focus employment growth in the Downtown area and on existing employment lands citywide; improve the City's jobs-housing imbalance; support the development of all types and income levels of housing, including affordable housing; avoid urban sprawl and the costs of City infrastructure and services associated with such sprawl; and conserve water.

To achieve this goal, the Act requires that future proposals to convert certain lands designated for industrial, commercial and other employment uses in the General Plan to other uses must meet specified requirements. These requirements include complying with inclusionary housing requirements, providing minimum numbers of affordable housing units, complying with all City Municipal Code and other laws relating to design and construction, providing landscape maintenance using recycled/reclaimed water where the site is in an area served by recycled/reclaimed water, and providing reasonable support services appropriate to serve the intended resident population. The Act also requires the City to consider a Fiscal and Jobs/Housing Balance Impact Study and make certain determinations before approving legislative enactments for conversions of employment lands.

Because the Act merely supports existing land use designations and does not change any land use designations or densities, it does not have the potential for causing a significant effect on the environment, either directly or indirectly. It is therefore not a project under PRC section 21065 and Guidelines section 15378. Even if the Act were a project, it would be exempt from CEQA under Guidelines section 15061(b)(3) because, for the reasons stated in this determination, it can be seen with certainty that there is no possibility the Act may have a significant impact on the environment. Moreover, to the extent the Act could conceivably have indirect impacts, these impacts would be entirely speculative and not reasonably foreseeable. The requirements set forth in the Act apply only to future proposals to change certain employment lands designated in the existing General Plan to other uses. Because the Act's requirements apply only to future land use amendments, it is unclear how the requirements would shape future hypothetical proposals whose nature, scale and potential impacts are currently unknown. Such speculative indirect impacts are not subject to review under CEQA. Guidelines, § 15064(d)(3).

CEQA also provides that where an EIR has been prepared for a project, additional environmental review

is not required unless there has been a substantial change in the project. PRC § 21166; Guidelines § 15162(a). Here, the City's existing policies and land use designations were fully analyzed in the 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Supplemental Environmental Impact Report (Resolution No. 77617) and addenda thereto. Because the Act supports these existing policies and designations, and proposes no changes to them, no further CEQA documentation is required under PRC section 21166 and Guidelines section 15162(a). Furthermore, activities which are consistent with the existing general plan policies for which an EIR was certified are not subject to additional environmental review, except with regard to project-specific significant effects. Guidelines, § 15183(a). Here, the Act is entirely consistent with the General Plan; it does not modify any existing development densities or designations, but rather establishes requirements for *changing* existing employment lands to other uses. The Act has no project-specific impacts because it does not approve or promote any change in land use for any specific parcel, but rather maintains the status quo. Thus, the Act is not subject to further CEQA review under Guidelines section 15183.

Moreover, the Act applies only to future proposals to amend employment land use designations. To the extent the Act would indirectly impact development under such future amendments, that development will be subject to independent CEQA review. The Act affirmatively supports future CEQA compliance by providing that where a proposed legislative change could be interpreted as limiting the City's duty or ability to comply with the CEQA, the City "shall require compliance with CEQA to the fullest extent permitted by law."

CONCLUSION

For the reasons set forth above, approval of the Act is not subject to CEQA under PRC section 21065 and Guidelines sections 15378 and/or is exempt from CEQA under Guidelines section 15061(b)(3). The City's determination that no CEQA review is required is further supported by PRC sections 21166 and Guidelines sections 15064(d)(3), 15162(a) and 15183.

Dated: March 5, 2018



Rosalynn Hughey, Acting Director