



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** December 8, 2022

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**SUBJECT: FILE NO. GPT22-003. CITY-INITIATED GENERAL PLAN TEXT AMENDMENT TO AMEND THE ENVISION SAN JOSE 2040 GENERAL PLAN TO 1) STATE THAT ANY COMMERCIAL SPACE REQUIREMENTS INTENDED TO CREATE A MIXED-USE DEVELOPMENT NO LONGER APPLY TO 100% DEED-RESTRICTED AFFORDABLE HOUSING CITYWIDE, AND 2) RELATED REVISIONS TO SECTIONS OF THE GENERAL PLAN, APPROVED URBAN VILLAGE PLANS, AND SPECIFIC PLANS.**

## **RECOMMENDATION**

The Planning Commission voted 9-0-1 (Garcia, absent) to recommend that the City Council:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San Jose General Plan Final Program Environmental Impact Report (Resolution No. 77617) and Addenda thereto, in accordance with the California Environmental Quality Act as amended; and
2. Adopt a resolution approving the General Plan Text Amendment to amend the Envision San José 2040 General Plan to 1) state that any commercial space requirements intended to create a mixed-use development no longer apply to 100% deed-restricted affordable housing citywide, and 2) related revisions to sections of the General Plan, approved Urban Village Plans, and Specific Plans.

## **OUTCOME**

Approval of the proposed General Plan text amendment will create a new Policy H-2.11 in Chapter 4, with related revisions to policies and land use designations in the General Plan, approved Urban Village Plans, and Specific Plans, as described in the attached Planning Commission staff report.

## **BACKGROUND**

On December 7, 2022, the Planning Commission held a public hearing on the proposed text amendments to the Envision San José 2040 General Plan. The Director of Planning, Building and Code Enforcement recommended approval of the General Plan Text Amendment. The item remained on the consent calendar and was approved by the Planning Commission with no discussion.

Commissioner Rosario made a motion to approve the recommendation as part of the consent calendar. The motion passed unanimously 9-0-1 (Garcia, absent).

The Planning Commission recommended that the City Council consider the Determination of Consistency and approve the proposed General Plan Text Amendment.

## **ANALYSIS**

A complete analysis of the proposed General Plan text amendments is included in the attached Planning Commission staff report.

## **CONCLUSION**

The Planning Commission voted 9-0-1 (Garcia, absent) to recommend to the City Council to approve the staff recommendation.

## **EVALUATION AND FOLLOW-UP**

If the proposed General Plan text amendments are approved by City Council, the amendments to the Envision San José 2040 General Plan, approved Urban Village Plans and Specific Plan shall take effect upon the effective date of the associated zoning ordinance amendments.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

Public outreach for this proposal complies with the City Council Public Outreach Policy 6-30 and the Municipal Code. A public hearing notice, including the Planning Commission and City

Council hearing dates, was published in the San José Post-Record. Staff posted the hearing notice, staff report, and draft resolution on the Department website. Staff has been available to discuss the proposal with interested members of the public.

### **COORDINATION**

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

### **CEQA**

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that the proposed General Plan text amendment is within the scope of the approved Envision San José 2040 General Plan, and the Final Program EIR for the Envision San José 2040 General Plan and Supplemental EIR to the Envision San Jose 2040 General Plan EIR, for which findings were adopted by City Council Resolution Nos. 76041 and 77517 respectively, that adequately describe the activity for the purposes of CEQA.

/s/  
Christopher Burton, Secretary  
Planning Commission

For questions, please contact Michael Brilliot, Deputy Director, at [michael.brilliot@sanjoseca.gov](mailto:michael.brilliot@sanjoseca.gov) or 408-896-0136.

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Chris Burton

**SUBJECT:** File No. GPT22-003

**DATE:** November 23, 2022

**COUNCIL DISTRICT:** Citywide

<p><b>Type of Permit</b></p>	<p>City-initiated General Plan Text Amendment to amend the Envision San Jose 2040 General Plan to 1) state that any commercial space requirements intended to create a mixed-use development no longer apply to 100% deed-restricted affordable housing citywide, and 2) related revisions to sections of the General Plan, approved Urban Village Plans, and Specific Plans.</p>
<p><b>Project Planner</b></p>	<p>Laura Maurer</p>
<p><b>CEQA Clearance</b></p>	<p>Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San Jose General Plan Final Program Environmental Impact Report (Resolution No. 77617) and Addenda thereto.</p>

## RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council to:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San Jose General Plan Final Program Environmental Impact Report (Resolution No. 77617) and Addenda thereto, in accordance with the California Environmental Quality Act as amended; and
2. Adopt a resolution approving the General Plan Text Amendment to amend the Envision San José 2040 General Plan to 1) state that any commercial space requirements intended to create a mixed-use development no longer apply to 100% deed-restricted affordable housing citywide, and 2) related revisions to sections of the General Plan, approved Urban Village Plans, and Specific Plans.

## PROJECT BACKGROUND

In June 2018, City Council approved the Housing Crisis Workplan to facilitate the goal of developing 15,000 market-rate and 10,00 affordable housing units by 2022. This workplan identified several strategies to support and accelerate housing production in San José and prioritized these strategies based on their effectiveness and feasibility. To address the challenge of providing commercial space in mixed-used

affordable housing developments, the Housing Crisis Workplan identified strategy item #22 to review commercial space requirements for affordable housing development.

### Commercial space requirements for housing projects

Requiring commercial space in residential developments is beneficial for the city as a whole and the residents who live in or nearby such mixed-use developments. Residents and neighbors benefit by having a more complete community, with amenities and jobs within walking distance. Ground floor commercial space for restaurants, stores, and services contribute to vibrant and attractive streetscapes. Mixed-use development benefits the City by maintaining an economic base while allowing housing in areas that were previously commercial only. This facilitates the City's fiscal sustainability by maintaining the jobs to employed resident ratio, or even increasing it where a larger mixed-use development replaces an underutilized commercial one. The City also sees environmental benefits in reduce vehicle miles traveled and reduce air pollution when jobs and amenities are in close proximity to housing.

While the City benefits by having commercial space within residential developments, there are several significant challenges that it creates that are unique to affordable housing developments. Affordable housing lenders often do not provide funding for the commercial portion of mixed-use development. This can mean that some projects cannot get financing, and others may need to find multiple streams of funding to finance different portions of a development, which adds complication into the development process. If affordable housing development can find funding for the commercial portion of the development, often these spaces can be difficult to rent or can only procure low rents. These commercial spaces also often need separate management from the residential space since affordable housing management often is restricted from managing commercial tenants. This also adds complications to the development process and increases the financial risk to the developers. Lastly, required commercial space in mixed-use developments means that space cannot be used for other beneficial uses, such as more affordable housing units or amenity areas for residents. This can in turn create feasibility issues as well as increase per unit subsidy requirements.

### Prior actions to reduce commercial requirements for affordable housing

The first phase of review of commercial requirements for affordable housing development was undertaken as part of the second General Plan Four-Year Review process that took place during 2019-2020. This work revisited the two General Plan policies that allowed 100% affordable mixed-use projects on commercial land use designations or on mixed-use land use designations but with a reduced commercial square footage requirement. These policies are intended to provide opportunities for affordable housing to be developed on land designated for commercial uses while maintaining the economic, mixed-use and placemaking benefits of the commercial space.

Specifically, Policy H-2.9, allows 100% affordable housing on Mixed Use Commercial and Neighborhood/Community Commercial land use designations if they meet certain criteria, and Policy IP-5.12 allows 100% affordable housing development in commercial land use designations within Urban Villages that do not have approved plans. As originally crafted, these policies only allowed mixed-use affordable housing developments and a certain amount of commercial space had to be included in the development. On February 9, 2021, Council approved City staff and General Plan Task Force recommendation to remove all commercial requirements for 100% affordable housing developments as part of Policy H-2.9 (the "1.5-acre rule"). While staff recommended to retain but reduce commercial requirement for 100% affordable housing development in unapproved Urban Villages as part of Policy IP-5.12, Council approved the Task Force recommendation to remove all commercial requirements from this policy on December 14, 2021.

Upon adoption of the amendment to Policy IP-5.12, Council directed staff to return with a second phase of work to expand the removal of commercial requirements for 100% affordable housing developments citywide. This means that commercial requirements in the General Plan and Zoning Ordinance and/or commercial requirements in an approved Urban Village Plan or Specific Plan would no longer apply to 100% affordable housing developments as long as 100% of the residential units are deed-restricted affordable.

### Commercial Requirements and State Density Bonus Law

While review of the commercial requirements for affordable housing as part of the Four-Year Review was underway, staff received development applications for affordable housing projects that included a request under the State Density Bonus Law to eliminate all commercial space. These applications were for projects that were in mixed use or commercial zones where 100% housing developments without a commercial component were not allowed. Under the State Density Bonus Law, a concession can be used to modify or eliminate a development standard if the applicant can demonstrate that such modification or removal would reduce the cost of providing affordable units. Development standards include things such as building setbacks, height, open space, or parking requirements.

Eliminating the commercial space in a mixed-use development changes the underlying use of the property from mixed-use to residential. It was not clear if such request to change the allowed uses on a property was authorized under State Density Bonus law, so staff reached out to the California Department of Housing and Community Development (HCD) for an opinion. On Dec 14, 2021, staff received a response letter from HCD which determined the requirement for a project to be mixed-use and not 100% residential is, in fact, a regulatory requirement that can be waived using a concession under the State Density Bonus Law. The City would be required to make one of three findings to deny such concession request. Since developers could use the State Density Bonus concession to no longer provide the commercial space, this determination effectively removed the commercial requirement for affordable housing projects.

These proposed amendments to the General Plan, Urban Village Plans, and Specific Plans, address City Council's direction to expand the removal of commercial requirements for 100% affordable housing development citywide. These changes would also align the City's requirements with what is already allowed under the State Density Bonus Law.

## ANALYSIS

Outside of policies H-2.9 and IP-5.12, which have already been modified as discussed above, there are many other policies and provisions specified in the General Plan, approved Urban Village Plans, and Specific Plans where both market-rate and affordable housing can only be built in the form of a mixed-use residential/commercial development. This means that per these requirements any residential development in these areas must provide commercial space.

To address Council direction, staff proposes this General Plan Text Amendment to create one new overarching policy to wholistically remove any commercial requirement for 100% affordable housing developments citywide. If this amendment is adopted, a new Policy H-2.11 would be added in Chapter 4 of the Envision San José 2040 General Plan as follows:

**Housing Policy H-2.11:** To increase the supply of affordable housing, commercial space requirements for residential developments found in the General Plan, approved Urban Village Plans, and Specific Plans do not apply to one hundred percent (100%) affordable housing developments that are deed-restricted by a public agency for a period not less than 55 years to low-income residents (earning 80% or less of the Area Median Income).

Related revisions to other policies and land use designations in the General Plan, approved Urban Village Plans and Specific Plans to no longer apply commercial space requirements for certain 100% affordable housing developments would be based on this new policy and are described below. City staff are also working to separately bring the related revisions in the Zoning Ordinance to Council soon and are described below.

### Other General Plan Text Amendments

There is one land use designation and two overlays in the General Plan that allow residential development only in the form of mixed-use residential/commercial development: the Mixed Use Commercial Land Use Designation, the Neighborhood Business District Overlay, and the Downtown Employment Priority Area Overlay. The proposed General Plan Amendment will also modify these land use designations and overlays.

- The Mixed Use Commercial Land Use Designation only allows housing in the form of a mixed-use development with a commercial square footage requirement of 0.50 Floor Area Ratio (FAR), unless the project meets the requirements of Land Use Policies H-2.9 or IP-5.12 (discussed earlier in this report). Through this General Plan Text Amendment, the Mixed Use Commercial land use designation will be updated to specify that the commercial FAR requirements do not apply to any 100% affordable housing developments pursuant to the new Policy H-2.11.
- The Neighborhood Business District Overlay was created during the most recent General Plan Four-Year Review in 2021 to allow additional residential capacity in three Neighborhood Business Districts: Japantown (Taylor St only), 13<sup>th</sup> Street, and Willow Glen. This overlay requires that a development on a site that contained commercial uses must replace the existing commercial square footage if it is demolished through the project. If a site did not previously contain commercial square footage but is adjacent to a commercial property any new residential development must also propose new commercial square footage. The Neighborhood Business District Overlay will be updated to specify that the replacement of existing commercial space or the addition of commercial space requirements do not apply to 100% affordable housing developments pursuant to the new Policy H-2.11.
- The Downtown Employment Priority Area Overlay is applied to a portion of Downtown sites planned for intensive job growth because of the area's proximity and good access to the future Downtown BART station. To ensure that the downtown area near BART maintains its focus on job-generating uses while also accommodating housing, properties in the overlay area must meet a minimum of 4 FAR of commercial space before residential uses would be allowed. The Downtown Employment Priority Area Overlay will be updated to specify that the minimum 4 FAR of commercial space requirements do not apply to 100% affordable housing developments pursuant to the new Policy H-2.11.

### Urban Village Plans and Specific Plan Amendments

Fourteen of the sixteen approved Urban Village Plans and two Specific Plans contain commercial requirements in some areas where residential development is allowed. Each Plan has different commercial requirements based on land use designations, if the property is located on a particular street, and/or if there is existing commercial development on the property. One of the most common commercial requirements is a minimum Floor Area Ratio (FAR) that is addition to the normal requirements of the respective land use designation within the General Plan. These requirements vary from plan to plan, with FARs ranging from 0.20-0.75 FAR. Another common commercial requirement specifies that the ground floor of a residential development must be dedicated to commercial space. Ground floor commercial is often required only on certain streets or areas within the Urban Village or Specific Plan. Lastly, some plans require that new development replace any existing commercial that will be demolished. For a complete breakdown of the commercial requirements by plan, see the attached table contained in Exhibit "D".



The proposal will modify the land use designations and policies in the approved Urban Village Plans and Specific Plans as listed in the attached table. The land use designations and policies will be updated to specify that these commercial requirements do not apply to 100% affordable housing developments pursuant to the new Policy H-2.11.

### Zoning Ordinance Amendments

Though not a part of this proposed General Plan Amendment, a subsequent Zoning Ordinance Amendment is also being worked on by staff to make necessary changes in the Zoning Ordinance to ensure consistency with the new Policy H-2.11 in the General Plan.

There are three zoning districts and one overlay in the Zoning Ordinance that currently have commercial requirements where residential development is allowed: (MS-G) Main Street - Ground Floor Commercial and (MS-C) Main Street – Commercial in the Alum Rock Urban Village, (MUC) Mixed Use Commercial, and the (AUAO) Active Use Area Overlay in the Downtown Zoning District. Each Zoning District or Overlay has different commercial requirements, either requiring ground floor commercial or a minimum commercial FAR.

Should this proposed General Plan Text Amendment be adopted staff will return to the Planning Commission and Council with amendments to the Zoning Ordinance to specify that these commercial space requirements do not apply to 100% affordable housing developments.

## ENVISION SAN JOSE 2040 GENERAL PLAN CONFORMANCE

The proposed General Plan Text Amendment changes are consistent with the following General Plan Affordable Housing Policies:

1. Affordable Housing Policy H-2.1: Facilitate the production of extremely low-, very low-, low, and moderate-income housing by maximizing use of appropriate policies and financial resources at the federal, state, and local levels; and various other programs.
2. Affordable Housing Policy H-2.2: Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the *Envision General Plan*.

*Analysis: The proposed Policy H-2.11 and associated Land Use Designations, Land Use Overlays, Urban Village Plans, and Specific Plans changes would facilitate the development of affordable housing in San José, including in identified growth areas, by no longer applying commercial space requirements for 100% affordable housing developments, thereby removing the financial challenges that providing commercial space can impose. Not providing commercial space would allow affordable housing projects to potentially provide more units in a development and would also make it easier for affordable housing projects to get funding since many affordable housing lenders often won't fund mixed-use developments. Therefore, the new Policy H-2.11 conforms to Policy H-2.1 as it facilitates the production of affordable housing.*

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San Jose General Plan Final Program Environmental Impact Report (Resolution No. 77517), in accordance with the California Environmental Quality Act as amended the proposed General Plan Text Amendment does not include any construction, demolition, or other activity that has the potential to negatively impact the environment. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the approved Envision San José 2040 General Plan, and the Final



Program EIR for the Envision San José 2040 General Plan and Supplemental EIR to the Envision San Jose 2040 General Plan EIR, for which findings were adopted by City Council Resolution Nos. 76041 and 77517 respectively, that adequately describe the activity for the purposes of CEQA.

## **PUBLIC OUTREACH**

The proposed amendment is a continuation of the work that was undertaken for the General Plan Four-Year Review process. Extensive public outreach was conducted by the Four-Year Review Task Force and addressed many of the strategies listed in the Housing Crisis Workplan. Two of the ten Four-Year Review Task Force meetings pertained to policy changes to address commercial requirements for affordable housing. The meetings were held on January 30, 2020, and June 25, 2020, with 25 and 105 members of the public in attendance, respectively. The following is an overview of the issues raised by attendees:

- Commercial space requirements limit the number of affordable units a project can supply
- Developers cannot get funding for the non-residential portion of mixed-use development
- Concern for the loss of small businesses and complete communities
- Commercial requirements should be removed citywide

While Staff agrees with the concern of small business displacement and the loss of complete communities when mixed-use development is replaced with residential-only development, the State Density Bonus Law already allows 100% affordable housing developments to use a concession to remove the commercial requirement, which supersedes any existing City policies. Effectively, a 100% affordable housing development can already proceed without commercial space provided they use one of their concessions under State Density Bonus Law. Therefore, the proposed new policy H-2.11, and the two existing policies H-2.9 and IP-5.12 streamline the development process. The Office of Economic Development is working on anti-displacement strategies to try to address the issue of business displacement.

The proposed General Plan Amendment is addressing the call from the Task Force, affordable housing developers and advocates, as well as Council direction, to go further by extending the removal of commercial requirements for 100% affordable housing developments citywide to facilitate the creation of more affordable housing in more places throughout the city.

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published in the San José Post Record and on the City's website. The staff report is also posted on the City's website and staff has been available to respond to questions from the public.

## **CONCLUSION**

The proposed amendment to no longer apply commercial space requirements for 100% affordable housing developments fulfills the Housing Crisis Workplans strategy to change commercial requirements for affordable housing to help facilitate the production of affordable housing by removing the financial barriers that commercial space requirements place on affordable housing developers. In addition, this proposed amendment fulfills the Council's direction to expand the removal of commercial space requirements citywide after these requirements were previously removed from Policy H-2.9 and IP-5.12. Lastly, this proposed amendment aligns the City's policies with what is already allowed under State Density Bonus Law.

**Project Manager:** Laura Maurer

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

<b>ATTACHMENTS:</b>	
Exhibit A:	Strikethrough/Underline of General Plan Text Amendment Changes
Exhibit B:	Draft Resolution
Exhibit C:	CEQA Determination of Consistency Statement
Exhibit D:	Table of Urban Village Plans and Specific Plans Commercial Requirements

# **GPT22-003**

## **Links to Attachment A-D**

Click on the title to view document

Exhibit A: <a href="#">Strikethrough/Underline of General Plan Text Amendment Changes</a>
Exhibit B: <a href="#">Draft Resolution</a>
Exhibit C: <a href="#">CEQA Determination of Consistency Statement</a>
Exhibit D: <a href="#">Table of Urban Village Plans and Specific Plans Commercial Requirements</a>