



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 8, 2022

SUBJECT: FILE NO. GPT22-004: A CITY-INITIATED GENERAL PLAN TEXT AMENDMENT TO AMEND THE ENVISION SAN JOSÉ 2040 GENERAL PLAN TO REQUIRE PRIVATELY-INITIATED GENERAL PLAN AMENDMENT APPLICATIONS TO BE REVIEWED CONCURRENTLY WITH A DEVELOPMENT PERMIT APPLICATION, AND ASSOCIATED MINOR REVISIONS IN THE GENERAL PLAN.

PLANNING COMMISSION RECOMMENDATION:

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

Adopt a resolution to approve a City-initiated General Plan Text Amendment to amend the Envision San José 2040 General Plan to require privately-initiated General Plan Amendment applications to be reviewed concurrently with a development permit application, and associated minor revisions in the General Plan.

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 Planning Commission made a recommendation to the City Council to consider the exemption in accordance with CEQA and adopt resolutions to approve the proposed City-initiated General Plan Amendment.

Staff presented a summary of the staff analysis which is explained in detail in the attached Planning Commission staff report. No members of the public spoke.

Commissioner Lardinois asked a question about the number of General Plan hearings in a year. He also asked staff's opinion about whether this policy might slow down the entitlement process. Division Manager Martina Davis responded that the policy change will streamline the review process and will reduce the overall time needed for entitlement of a development project requiring a General Plan Amendment because currently the public hearing process and CEQA review for the General Plan Amendment and Development Permit is separate, where this would require one unified process.

Commissioner Young expressed his support for this proposed policy change, stating that the Commission had struggled during making decisions on General Plan Amendments that did not have development permits attached. Commissioner Young went on the record to condemn the correspondence submitted by Mr. Gary Schoennauer regarding the proposed amendment due to its combative and disrespectful tone.

Commissioner Ornelas–Wise made a motion to recommend that the Council approve the application for the General Plan amendment. Commissioner Ahluwalia seconded the motion.

OUTCOME

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 by adding a new policy IP-3.11 and modifying policy IP-3.3.

ANALYSIS

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

CONCLUSION

The Planning Commission unanimously voted to recommend that the City Council approve the staff's 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, shall take effect upon the effective date of the resolution.

CLIMATE SMART SAN JOSÉ

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

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 published in the San José Post-Record, and on the City website. The staff report was also posted on the City website. On October 27, 2022, staff held a stakeholder meeting and invited 200 guests from the development and lobbyist communities.

COORDINATION

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

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
Christopher Burton, Secretary
Planning Commission

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

Attachment: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION
SUBJECT: File No. GPT22-004

FROM: Christopher Burton
DATE: November 23, 2022

COUNCIL DISTRICT: Citywide

Type of Permit	A City-initiated General Plan Text Amendment to amend the Envision San José 2040 General Plan to require privately-initiated General Plan Amendment applications to be reviewed concurrently with a development/use permit application and associated minor revisions in the General Plan.
Project Planner	Sanhita Ghosal
CEQA Clearance	Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take the following action:

Adopt a resolution approving a City-initiated General Plan Text Amendment to (i) amend the Envision San José 2040 General Plan to require privately-initiated General Plan Amendment applications to be reviewed concurrently with development permit applications and (ii) other associated minor revisions in the General Plan.

The proposed General Plan Text Amendment will add a new policy IP-3.11 (Text reference: Envision San José 2040 General Plan, Chapter 7, p. 11); and modify policy IP-3.3 (Text reference: Envision San José 2040 General Plan, Chapter 7, p. 8-9) as follows in underlined format:

1. IP-3.11: For all privately-initiated General Plan Amendment proposals, applicants shall be required to submit a concurrent development/use permit application with the privately-initiated General Plan Amendment application. The two applications shall be considered concurrently by the Planning Commission and City Council, and both applications shall go to those hearings together. Applicants, at their discretion, can apply for early consideration by the City Council of their proposed General Plan amendment. Early Consideration applications do not need to include a Development Permit application. At the early consideration hearing, Council can either deny the proposed General Plan Amendment or direct staff to complete CEQA review and process such an application if formally submitted with a permit application.
2. IP-3.3 Consider only during the Annual Review any non-City-initiated General Plan Amendment proposals to modify the Land Use / Transportation Diagram or to make minor modifications to the Urban Growth Boundary or expansion of the Urban Service Area. One (1) separate General Plan hearing may be held for the Planning Commission and the City Council to review and consider non-City proposed amendments for 100% deed-restricted affordable housing projects as defined in General Plan Policy IP-5.12. Early consideration for continued processing or denial may be considered outside of the General

Plan Annual Review process for projects involving the conversion of employment land to non-employment uses, or other projects that are fundamentally inconsistent with the General Plan, or in response to a request for early consideration by the project applicant for privately-initiated General Plan amendments submitted pursuant to General Plan Policy IP-3.11.

BACKGROUND

The Envision San José 2040 General Plan (General Plan) is a comprehensive policy document that guides the physical and economic development of the City based on twelve major strategies and numerous goals and policies. Building on the General Plan's Vision and Major Strategies, the Land Use /Transportation Diagram (Land Use Diagram or Diagram) identifies locations, types, and intensities of residential, employment-generating, and mixed-use growth throughout San José. The Land Use Diagram gives geographic reference and a spatial context to the goals and policies of the General Plan. The Diagram also illustrates the inextricable link between land uses and the transportation network.

General Plan land use designations indicate the City's intent for the appropriate future land use, development character and transportation network facilities for a designated area. The Land Use Diagram must be used in conjunction with the goals, policies, and implementation actions in the General Plan for correct and comprehensive implementation of the General Plan. By law, the Diagram also must be consistent with the General Plan goals and policies. All substantial new development activity within San José also must conform to the Land Use Diagram and by State law, zoning designations for a given parcel must conform to the General Plan Land Use designation. Goal IP-1.1 and policies IP-1.1 to IP-1.11 of the General Plan outlines the implementation framework of the Land Use Diagram.

General Plan's *Major Strategy#2: Form-Based Plan* mentions that the General Plan Land Use Diagram designations in conjunction with the Plan's Goals and Policies address the form, character and land uses for the future development of San José. Land Use Diagram designations enable the General Plan to:

1. Clearly articulate a vision for San José's future urban form
2. Provide greater flexibility for economic activity
3. Address neighborhood concerns about compatibility of new development
4. Promote the ongoing development of complete, cohesive neighborhoods

Land Use Designations

To translate the Vision, goals, and policies of the General Plan into the Land Use Diagram, and to promote successful implementation of the General Plan, the Land Use Diagram includes 29 discrete land use designations, including six overlay designations. The Land Use Designations are generally applied to whole areas and not individual properties or small groupings of properties. The designations are also important for implementing strategies such as the Growth Areas Strategy and the development of mixed-use, high-density Urban Villages.

The description of each of these 29 land use designations include the general intended land use, and also incorporates flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the General Plan. In order to provide flexibility and opportunity for the physical and economic development of the city, some of these land use designations provide a range of uses, densities for residential uses and floor area ratios for non-residential uses.

Amendment of the General Plan Land Use diagram

The City, private property owners, developers or members of the public may request changes to the General Plan Land Use Diagram. State law allows General Plan amendments a maximum of four times each calendar year. Per General Plan policy, privately-initiated General Plan Amendments are heard only during the Annual Review hearing to facilitate a comprehensive review of the cumulative implications of proposed amendments. In addition, another hearing cycle is allowed for Amendments facilitating 100%-deed restricted affordable housing projects. During the Annual Review hearing, the Planning Commission and the City Council review proposed General Plan Amendments based on the evaluation of these proposals' consistency with its major strategies, Goals, and Policies, and based on the cumulative effects all the proposed General Plan amendments in the Annual Review.

State Housing Laws

Since 2018, The State of California has enacted three laws that require cities to evaluate certain housing projects through a *streamlined ministerial process*. These laws are: Senate Bill (SB) 35 as amended by Assembly Bill (AB) 1485, AB 2162 and AB 101. Under these laws, qualifying housing projects must be approved if they meet the State law requirements, without any subjective judgment from planners at the local agency. Since the projects get approval through a ministerial process, an environmental impact analysis is not required for these projects under the California Environmental Quality Act. In addition, Governor Gavin Newsom signed SB 6 and AB2011 into law on September 28, 2022. These laws will be effective July 1, 2023. These laws allow residential development on lands designated for commercial purposes when the proposed project meets certain specific criteria. The implementation of these two laws broadens the development opportunity and possible development outcome on sites with a commercial land use designation by enabling housing developments on commercially-designated parcels, that would otherwise not be consistent with the General Plan.

ANALYSIS

Currently, privately initiated General Plan Amendment (GPA) requests are not required to submit a development permit application to be considered concurrently with the GPA application. An overwhelming majority of GPA applications in San José that were scheduled for hearing during the last five years were submitted without a development permit application, while a handful included a PD rezoning which provided some additional clarity on the potential development. The review and consideration of General Plan Amendments submitted without a project creates several challenges.

1. CEQA Review Process

In compliance with CEQA, the City's current approach to CEQA analysis conducted for proposed stand-alone General Plan Amendments identifies future reasonable development that may occur on-site as a result of the General Plan Amendment and indicates that any future development would be subject to project specific CEQA review. Without processing a joint Planning permit and/or Planned Development rezoning with a GPA, the City is unable to conduct a more thorough CEQA analysis to make sure project level analysis and mitigations are analyzed and considered by the City Council prior to making a decision on the proposed General Plan Amendment.

Currently, stand-alone General Plan Amendment environmental analysis includes an overview of General Plan Policies, City Council Policies, Municipal Code requirements, and City Standard Permit Conditions that would apply to future Planning permits and/or Planned Development rezonings in order to reduce potential environmental impacts. However, as mentioned earlier, recent State law changes, including SB 35, AB 2162 and AB 101, provide a ministerial path to streamline certain types of housing projects without CEQA review. In this new landscape of ministerial permitting for qualified housing projects, the General Plan Amendment process would be the only opportunity to analyze and disclose the environmental impacts of the future housing development facilitated by the General Plan Amendment. Absent a specific project, the CEQA analysis would continue to discuss future reasonable development that could occur on-site, but qualified housing projects,

supported under the new General Plan Amendments in support of housing, would be able to proceed under a ministerial review process without CEQA analysis if the General Plan Land Use Designation allows residential development and if the project would be in conformance with the new State housing laws. Adoption of this General Plan Text Amendment to require that GPA's be considered concurrently with a development application would ensure that the CEQA analysis conducted for future General Plan Amendments would consider the specific development anticipated for the site, including any housing proposals, and would provide a planning permit or Planned Development Zoning to ensure that Standard Permit Conditions and mitigation measures are implemented.

Additionally, for projects not subject to the State housing streamlining laws, the concurrent review of a Planning project with a privately initiated General Plan Amendment would reduce total review times for environmental documents and reduce applicant costs. Currently, a full CEQA review must be conducted for the General Plan Amendment, which is usually processed in about 9 – 12 months. After adoption of the General Plan Amendment, new environmental studies are required once the applicant decides on a project to provide project-level CEQA clearance, which can take an additional 9 – 12 months (or more). With concurrent review, the General Plan Amendment and Planning project will be evaluated in one document and the applicant will have environmental clearance to proceed with their project after project approval. This process will help reduce the applicant's total cost and timeline and will reduce staff workload.

The policy change will make the General Plan Amendment process wholistic so that staff, decision-makers, members of the public, and the applicant have a full picture of the development details and what is required for CEQA to approve both the privately initiated General Plan amendment application and the Development/Use Permit application concurrently. Additionally, the joint application and processing through hearing would allow decision makers to make a formal decision on the EIR, Statement of Overriding Considerations, General Plan Amendment, and Development/Use Permit in one hearing providing certainty for the applicant, community, and City.

2. *The Public Hearing Process*

Many General Plan land use designations are intentionally broad and could result in developments with widely varying densities, massing, heights, and uses. When the Planning Commission and Council consider General Plan Amendments without a project, they do not have clarity on the specific of a development that may occur as a result of their recommendation or decision to "change the color on the map." As part of review and hearing process, issues and concern are at times raised by community members, staff, and the Council. Developers will often verbally state that what they intend to build if the Council approves a General Plan Amendment and often state the project design features or uses that they intend to include to address identified concerns; however, these project specifics cannot be locked in or conditioned at the General Plan Amendment stage. By considering both a project with the GPA, the Council can formally condition the proposal to address their and the community's identified needs and concerns. In the case of housing projects that could take advantage of streamlined approval under state law, the only opportunity for the Planning Commission to recommend, and the City Council to condition a proposed project would be if the development permit is considered concurrently with the GPA. If a General Plan amendment for residential is approved without a project, then a subsequent housing project that qualifies for streamlining could go through a ministerial approval process with no public hearing and no opportunity to condition the project to address potential design or other issues.

It must be acknowledged that a developer could re-entitle a given site down the road with a different project, including potentially a housing project using a streamlined ministerial approval process. However, approval of a General Plan Amendment with a project does still give more clarity on the project likely to be built, and a housing developer that already has entitlements for a housing project would not be as motivated to re-entitle through a streamlined ministerial process. Furthermore, a combined GPA and development permit process would have analyzed and disclosed some project impacts that would probably be similar to those resulting from a subsequent entitlement processed through a ministerial permit.

Proposed Changes to the General Plan Amendment Review Process

Planning staff is proposing the following changes to the land use designation General Plan Amendment process:

- Applicants of privately-initiated General Plan amendments must submit the complete development permit application to be reviewed concurrently with their General Plan Amendment and rezoning applications. Since the scope of project-level environmental analysis needs to consider the project details, the development review application should be submitted as early in the process as possible. The proposed General Plan amendment, rezoning and development permit application will be considered together, at the same public hearings, by the Planning Commission and City Council.
- General Plan policy IP-3.3 identifies a process for early consideration for continued processing or denial of General Plan request involving the conversion of employment land to non-employment uses or other projects that are fundamentally inconsistent with the General Plan. Planning staff proposes to expand the use of this early consideration process to provide further input to the applicant about the merit of their proposal. Providing such opportunity to applicants will allow them to get some direction from Council prior to their investing in the development of a full permit application, which requires site, architectural, grading, storm drainage, landscaping and other plans. The application for early consideration will not require a rezoning or a development permit application and does not need an environmental analysis. Early consideration applications may be scheduled for hearing by the City Council anytime, outside of the General Plan annual review cycle. If Council provides direction for continued processing of the GPA, then a complete application package including the required CEQA analysis, rezoning and development permit application must be submitted. The application would then be considered by the Planning Commission and the City Council at the next Annual Review cycle after the project review and CEQA analysis would be completed.

If Council approves the proposed General Plan amendments described in this memorandum, this policy change is proposed to go into effect for General Plan Amendments (GPAs) that would be considered as part of the 2024 Annual Review Cycle onwards except the following : (a) privately initiated General Plan Amendment applications filed with the Planning Department for previous Annual Review cycles and (b) newly-filed privately initiated General Plan Amendment applications submitted before March 31, 2023 that would be able to complete their CEQA analysis and clearance and can be scheduled for the 2023 Annual Review cycle.

Consistency with Envision San José 2040 General Plan Policies

The proposed General Plan Text Amendment will make the General Plan Amendment process holistic so that staff, decision-makers, members of the public, and the applicant have a complete picture of the development details and environmental impacts. This process will facilitate building of complete, cohesive and compatible neighborhoods. Staff has identified that addition of this policy is consistent with the following General Plan Policies

IP-4.4 Analyze proposed General Plan Amendments based on the merits of individual proposals as well as in the context of cumulative trends and consistency with the General Plan Vision and City Design Concepts.

Goal IP-12 – Environmental Clearance Use the Environmental Clearance process to further implement Envision General Plan goals and policies related to the minimization of environmental impacts, improving fiscal sustainability and enhancing the delivery of municipal services.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC OUTREACH

Staff held a virtual meeting on October 27, 2022 to discuss this proposed text amendment. Invitation for this meeting was sent to around 200 members of the development community via email. Seventeen developers attended the meeting. Staff received written comment from one developer which is attached in Exhibit C. The attendees expressed concern about submitting a development permit application at the start of the General Plan Amendment application process because it makes it more challenging for the developers to complete the entitlement process. In most cases, the developers want to secure the General Plan Amendment before taking the risk of investing in project development and architectural design phases. Some attendees mentioned that since the range of development options available to a tenant or buyer could be increased or modified under the amended land use designation, they prefer the multi-step process. They also like to have flexibility in the entitlement process. Some attendees expressed interest in increasing General Plan amendment hearings to more than once a year.

One developer was supportive of this proposed change. His firm plans for future specific projects before requesting a GPA; hence this proposed process change will not create additional work for his firm's operation.

In addition, two developers inquired with staff whether this policy change would affect their existing applications.

In response to the feedback staff received, language has been added to clarify the option for the applicant to request early consideration with a stand-alone General Plan Amendment application, one that does not include a development permit application. A pipeline provision has also been included so that the new policy will not impact General Plan Amendments that have already been submitted.

Alex Shoor of Catalyze SV provided verbal comments to staff via phone call. He was generally supportive. He expressed that the members of Catalyze SV would like to see what a developer plans to build, which would garner public support early in the project life cycle.

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City's website and published in the San José Post-Record and emailed to a list of interested groups and individuals. This staff report and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Sanhita Ghosal

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

ATTACHMENTS:	
Exhibit A:	Strikethrough/Underline of General Plan Text Amendment Changes
Exhibit B:	Draft Resolution
Exhibit C:	Comment Email from Developer

GPT22-004

Links to Attachment A-C

Click on the title to view document

Exhibit A: Strikethrough/Underline of General Plan Text Amendment Changes
Exhibit B: Draft Resolution
Exhibit C: Comment Email from Developer