

Narrative response to spreadsheet accompanying February 12, 2018 letter from San Jose Residents for Evergreen Senior Homes

The Initiative proposers, called “San Jose Residents for Evergreen Senior Homes” (with major funding from Ponderosa Homes II), submitted a comment letter to the City Clerk regarding the 9212 Report on Monday, February 12 at 2:14pm. Staff reviewed the Initiative proposer’s comment letter. Below is a discussion of are some of issues raised. Additionally, staff has responded to all issues in raised in the comment letter in the spreadsheet in Attachment C.

Planning Director & Council Authority

The proposers of the Initiative comment that the City Council retains discretion to approve or deny General Plan Amendments related to the Citywide Senior Housing Overlay/Citywide Overlay as well as review all approvals for the ESH Specific Plan Permits. This does not acknowledge the ways in which the discretion of the City Council and Director would be diminished by the Initiative if the Initiative is approved by the voters in June.

Regarding the application of the Initiative’s senior housing overlay Citywide, the City Council could approve or deny General Plan amendments seeking to utilize the Senior Overlay, which is the first discretionary and legislative action for projects seeking to build senior housing on underutilized employment lands. The Council is not required by law to make findings to support its approval or denial of a General Plan amendment application. City staff typically recommends approval if the proposal is found to be consistent with the General Plan and does not have significant environmental impacts under CEQA. As discussed below, the Initiative’s significant number of modifications to the current adopted General Plan will make it harder for staff to find inconsistencies with a Senior Housing Overlay proposal and the General Plan as modified by the Initiative. However, because General Plan amendments are legislative in nature, the Council is not required make approval or denial findings for such amendments, and any such amendment application will also be evaluated in accordance with CEQA with Council approval of any amendment being predicated upon appropriate CEQA review and certification or approval by the Council.

For the Initiative’s Evergreen site, under current processes, the Director of Planning, Building and Code Enforcement and City Council retain broad authority to modify and condition discretionary planning permits to address a variety of concerns. The Initiative would limit the findings necessary for the City’s approval or denial of ESP permits, which is included in the Initiative to implement the ESH Specific Plan (Section 8.5 of the ESH Specific Plan), and thus eliminates the extent of discretion afforded to the City currently. The Initiative substantially limits the findings needed to for the City to issue an ESP Permit as compared to similar permits in the City. The Initiative limits the City’s required findings for issuance of the ESP Permit to :

- The ESP Permit, if issued, is consistent with the general plan.

- The ESP Permit, if issued, substantially conforms to the applicable requirements of Chapter 2, and does not conflict with the guidance of Chapters 5, 6, or 7 of the proposed ESHSP.
- The ESP Permit, if issued, is consistent with applicable law.

The Initiative states that the ESP Permit shall be ranked equally with and have the same fee requirements as the City's current Planned Development (PD) Permit (Section 8.5.5 of ESH Specific Plan), so comparison is made between the ESP Permit findings and the City's current PD Permit findings. In addition to requiring General Plan and Zoning conformance, the current PD permit requires the following findings for approval:

- Consistency with the applicable city council policies, or counterbalancing considerations justify the inconsistency.
- The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.
- The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, which even if insignificant for the purposes of CEQA, will not have an unacceptable negative effect on adjacent property or properties.

The ESP Permit does not require findings that are required by PD Permits related to the harmonious interrelationship of uses and buildings on the site, consistency with city council policies, and avoidance of environmental impacts that go beyond CEQA to consider negative effects on neighboring properties. These findings are needed to ensure development meets all the standards that the City Council has on development, that projects are internally compatible with function and form, and that new development or uses have a positive interface with its neighbors.

As several areas of conflict exist between the current adopted General Plan and the Initiative, the Initiative includes 60 amendments to the General Plan to exempt itself from areas of current nonconformance. These mere strike out text changes exempting the Initiative from conformance to the existing General Plan do not demonstrate any efforts to be consistent with the intent of the current adopted General Plan. The proponents of the Initiative claims that should the Initiative be approved by voters, these strike outs exemptions would make the Initiative consistent with the Initiative's consistency with the adopted General Plan, should the Initiative be considered consistent with the Envision San Jose 2040 General Plan, then the first finding for consistency to the Envision San Jose 2040 General Plan would likely be present for ESP Permits, given that the Initiative has exempted the ESH Specific Plan from many areas of existing inconsistency.

As a result, the Director has very little discretion to deny the ESP Permit for implementation of the ESHSP, which has been prepared with no input from the City or public, as would be typical for creation of a Specific Plan under current City process.

The Initiative also Limits the Conditions can be placed on ESP Permits (Section 8.5.6 ESH Specific Plan) only to those that assist the ESP Permit achieve consistency with the General Plan, substantial conformance with the ESH Specific Plan, and compliance with applicable law. This means that conditions related to aesthetic or adjacency issues that are often raised by the

public and neighbors would not likely be able to be required by the Director or Council through conditions of approval of an ESP Permit.

Initiative's Time Horizon

The proposers of the Initiative state that the 9212 Report should not have used the General Plan 2040's build out horizon to analyze the effects of the Initiative given that the Initiative allows modifications by the City Council to the Initiative 10 years after its effective date. While modifications may be possible without a voter approval after 10 years, those actions are dependent on future City Councils, modifications to the Initiative, should it be adopted by the voters, are not certain. The 9212 Report assumes the Initiative has the same time horizon as the General Plan because the General Plan horizon of 2040 is also a time period of progress that has been well studied through the General Plan update process and four year General Plan review process. As such it provides the best measure of comparison to understand the impacts of potential major land use changes, such as the Initiative.

Citywide Overlay Assumptions

The proposers of the Initiative comment that the Citywide impacts identified in the 9212 Report are incorrect because the Report assumes (i) all vacant industrial land would be converted to senior housing, (ii) no jobs associated with such lands would be replaced in San Jose, and (iii) the Initiative would remain in effect for the full General Plan horizon.

The Initiative does not define its own term, "underutilized employment lands," and thus staff for the purposes of analysis used a reasonable definition of vacant lands with General Plan designations that support employment uses to evaluate the impact potential of the Citywide Overlay. While all 3,247 acres of vacant lands with General Plan designations that support employment uses were studied for 100% conversion to senior housing, the fiscal analysis in the 9212 Report also discusses the impacts to employment and housing with 20% conversion and 50% scenarios. Although a broad interpretation of the term "underutilized" could be defined as any employment land not built to maximum floor area ratio (FAR) the City adopts a more reasonable and restrictive interpretation of this Initiative term for the purpose of this Report.

The Initiative assumes that jobs lost from the implementation of the Initiative's Citywide Overlay would be moved to other areas of the city. The 9212 Report assumes that all jobs associated with lands potentially affected are considered lost jobs and are not replaced elsewhere in the city. Relocating up to 129,500 jobs is not a practical assumption given the potential magnitude of traffic impacts, infrastructure needs, land-use compatibility conflicts, the amount of time needed to amend General Plan designations and rezone properties, and potential property owner and community opposition to the redesignation and rezoning of land from residential to employment uses. Redesignation of residential land (or open space) is also not realistic given that the City desires to prevent expensive urban sprawl and there is not an unlimited amount of land available in the City of San Jose.

More significantly, however, is that the Initiative specifically states that the City is prohibited from using any senior housing developed under the Initiative towards the 120,000 unit housing goal in its General Plan. So, the Initiative creates a shuffle between jobs and housing, with two-

pronged impact. First, it requires the City to authorize construction of more housing than needed under the current General Plan because the senior units will not count towards that goal. Second, the Initiative will either reduce the amount of employment land in the City exacerbating the jobs-housing imbalance in San Jose, or will require the conversion of residential land to employment uses reducing the amount of land available for residential development that can be counted towards the City's housing goals required by state law. It is also doubtful that low-margin industrial businesses could compete for land with senior housing developers or businesses that normally occupy higher-density (and more expensive) environments. This is discussed further in the Expected Changes to Land Values section of Chapter IV of the Report.

Fiscal Analysis

The Initiative proposers claim the fiscal analysis is incorrect because it assumes the build out campus industrial project which is currently vacant. They claim development has not occurred on the site for the past 20 years due to no market demand. Other reasons that may also contribute to maintaining vacant land or failing to develop land include price of land and business and investment choices made by the owner.

As described in the Industrial Supply Chain Section to Chapter IV of the 9212 Report, research and development and manufacturing operations serve a critical component of the Silicon Valley supply chain and require larger footprints to allow for materials storage, clean rooms, and heavy equipment. Sites greater than five acres in size are typically needed to support these larger footprint uses. There exists 2,761 acres of vacant employment lands that are comprised of sites that are greater than five acres in size, which is the minimum size of site for these larger footprint uses, and represent 18% of the total employment lands in the city. The potential conversion of the Evergreen site to senior housing will mean the loss of 200 acres available for larger footprint uses, reducing the remaining availability of the acreage for these opportunity sites by 8%. Development on the site is planned for prior to 2040, which is the buildout horizon of the General Plan. Land needs to remain available to accommodate future growth and in order to accomplish the City's balanced jobs-housing goals.

Transportation

The Initiative proposers claim that all inbound and outbound trips for ESH Specific Plan are lower compared to Campus Industrial, even in the peak demand direction. They state that the 9212 Report's conclusion that the trips are reversed is incorrect, since the net effect is a decrease in traffic with the ESH Specific Plan.

As discussed further in Section III.A.4 of the 9212 Report and shown on Table 13 of the Report, although the ESH Specific Plan generates less trips than the Campus Industrial project, the LOS analysis of 910 senior housing resulted in four intersection impacts when compared to LOS analysis of the two million square foot Campus Industrial project which resulted in two intersection impacts.