



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** February 5, 2021

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**SUBJECT: FILE NO. GPT20-005. CITY-INITIATED GENERAL PLAN TEXT AMENDMENT TO THE ENVISION SAN JOSE 2040 GENERAL PLAN TO UPDATE POLICY H-2.9 WITH OBJECTIVE STANDARDS AND MAKE CLARIFYING REVISIONS TO THE NEIGHBORHOOD/COMMUNITY COMMERCIAL LAND USE DESIGNATION.**

## **RECOMMENDATION**

The Planning Commission voted 6-0-1 (Bonilla, 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 revise Policy H-2.9 in Chapter 4 and the Neighborhood/Community Commercial land use designation in Chapter 5 of the Envision San José 2040 General Plan.

## **OUTCOME**

Approval of the proposed General Plan text amendments will revise Policy H-2.9 in Chapter 4 and the Neighborhood/Community Commercial land use designation in Chapter 5 of the Envision San José 2040 General Plan, as described in the attached staff report.

## **BACKGROUND**

On January 27, 2021, the Planning Commission held a public hearing on the proposed text amendments to the San José 2040 General Plan. Staff provided a presentation detailing the proposed revisions to Policy H-2.9 and recommended approval of the proposed revisions. The item was on the public hearing calendar and two members of the public spoke on the item. One

member spoke on the importance of equity and tenant protections. The second person, who spoke on behalf of SV@Home, stated that the organization supports the revision to the policy that eliminates the need to provide commercial uses. He noted that they would like to have access to the map of eligible sites and that Criteria 2.c was not clear as to whether a site must be completely vacant to qualify. Staff responded to public comment noting that Criteria 2.c states that for a property to qualify, there must be no tenants. Additionally, staff shared that an interactive map of the qualifying sites would be available for the public the week following the Commission meeting.

Commissioner Oliverio commented that the policy provides more flexibility and many opportunities to build affordable housing. He requested information on the total acreage that would be subject to the policy. Staff responded that collectively, sites that are equal to or less than 1.5-acres and have a Floor Area Ratio of 0.2 or less, comprise approximately 100 acres. Chair Caballero noted that it was a balanced proposal and hopes the City Council will move the policy forward. The Commission voted 6-0-1 (Bonilla, absent) to recommend approval of staff's recommendation.

On January 27, 2021, the Airport Land Use Commission (ALUC) considered the proposed General Plan text amendments for consistency with the San José International Airport and Reid-Hillview Airport Comprehensive Land Use Plans (CLUPS). The ALUC recommended that the proposed General Plan text amendment would be inconsistent with CLUPS unless the following language is added to Housing Policy H-2.9 criteria:

9. *The polices of safety, height and noise, as defined in either the San Jose International Airport, or Reid Hillview Airport Comprehensive Land Use Plans, shall govern projects within Airport Influence Areas proposed under this policy.*

If the additional policy language recommended by the ALUC is not added to the proposed updates to Housing Policy H-2.9, staff would need to initiate the ALUC override process. Staff recommends adding the additional policy criteria required by the ALUC, but adding additional text clarifying that the City Council can consider an override to an ALUC determination in accordance with state law as follows:

9. *The polices of safety, height and noise, as defined in either the San Jose International Airport, or Reid Hillview Airport Comprehensive Land Use Plans, shall govern projects within Airport Influence Areas proposed under this policy, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.*

The draft resolution has been amended to include the additional criterion.

## **ANALYSIS**

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

## **CONCLUSION**

If the City Council adopts the resolution to approve the proposed General Plan text amendments, it will result in modifications to Policy H-2.9 in Chapter 4 and the Neighborhood/Community Commercial land use designation in Chapter 5 of the Envision San José 2040 General Plan.

## **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 will be effective 30 days from adoption of the resolution by the City Council.

## **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 and emailed to a list of interested groups and individuals. 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**

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

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**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/

ROSALYNN HUGHEY, Secretary  
Planning Commission

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

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** File No. GPT20-005

**DATE:** January 19, 2021

**COUNCIL DISTRICT:** Citywide

<b>Type of Permit</b>	City-initiated General Plan Text Amendment to the Envision San José 2040 General Plan to update Policy H-2.9 with objective standards and make clarifying revisions to the Neighborhood/Community Commercial land use designation.
<b>Project Planner</b>	Ruth Cueto
<b>CEQA Clearance</b>	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.

## RECOMMENDATION

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

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 revise Policy H-2.9 in Chapter 4 and the Neighborhood/Community Commercial land use designation in Chapter 5 of the Envision San José 2040 General Plan.

## PROJECT BACKGROUND

The proposed General Plan Text Amendment will modify Policy H-2.9 of Chapter 4 and the Neighborhood/Community Commercial designation of Chapter 5 in the Envision San José 2040 General Plan as follows in strikethrough/underline format:

1. **Housing Policy H-2.9** (Text reference: Envision San José 2040 General Plan, Chapter 4, “Housing” section, pages 31-32.)

To increase the supply of affordable housing, one hundred percent ~~deed restricted~~ 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), would be allowed on sites outside

of the existing Growth Areas on properties with a Mixed Use Commercial or Neighborhood/Community Commercial land use designation if the development meets the following criteria:

1. The site is 1.5 gross acre or less.
  2. The site is vacant (no buildings or structures) or underutilized. “Underutilized” means the site is one of the following:
    - a. A standalone surface parking lot; or
    - b. Has a structure with a Floor Area Ratio (FAR) of 0.2 or less; or
    - c. If FAR is greater than 0.2, the structure or structures shall be vacant (no tenants) for five (5) years or more.
  3. ~~The site has adjacent properties~~ shares a property line with a parcel that has a residential General Plan Land Use / Transportation Diagram designation on at least one side and the development would be compatible with the surrounding neighborhood.
  4. ~~The development would not impact the viability of surrounding commercial or industrial properties or businesses.~~ The site shall be at least 1,000-feet from any property with a Heavy Industrial or Light Industrial General Plan land use designation, and at least 500-feet from any property with a Combined Industrial Commercial or Industrial Park general plan land use designation.
  5. The site is located within a ~~½ mile~~ one-half (0.5) mile of an existing transit line with a minimum 30-minute peak headway.
  6. ~~The development integrates commercial uses that support the affordable housing project and/or the surrounding neighborhood.~~
  6. ~~7. Development on properties that contain structures that are on, or are eligible for inclusion on the City of San José’s Historic Resources Inventory should adaptively reuse these structures.~~ The development shall adaptively reuse any existing structures on the site that are on, or are eligible for, inclusion on the City of San José’s Historic Resources Inventory.
  7. If the site has existing occupied rental dwelling units that are proposed to be removed, the project shall provide relocation assistance to those tenants, consistent with State and federal relocation laws and the City’s Ellis Act Ordinance, as may be amended from time to time.
2. **Neighborhood/Community Commercial land use designation** (Text reference: Envision San José 2040 General Plan, Chapter 5, “Land Use Designations” section, 10.)

Neighborhood/Community Commercial

Density: FAR Up to 3.5 (1 to 5 stories)

This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. General office uses, hospitals and private community gathering facilities are also allowed in this designation. This designation also supports one hundred percent (100%) deed restricted affordable housing developments that are consistent with General Plan Policy H-2.9 and Policy IP-5.12.

## Background

The first Four-Year Review of the General Plan was initiated in 2015 and concluded in 2016. To address affordable housing challenges, the General Plan Task Force and staff developed a set of policy modifications and additions to support preservation and production of affordable housing. One of the recommended changes was to establish a new policy allowing 100% deed restricted affordable housing developments on sites 1.5 acres or less, outside of the existing Growth Areas, on properties with a Mixed Use Commercial or Neighborhood/Community Commercial land use designation if the development meets defined criteria, including that the site be vacant or underutilized, and the site has adjacent properties with a residential General Plan land use designation on at least two sides.

In his September 28, 2017 memo, *Responding to the Housing Crisis*, Mayor Liccardo proposed a goal of creating 25,000 housing units, with at least 10,000 of those units being for affordable housing. This memo identified work items that could be completed by staff to facilitate the construction of these units. The Council approved this memo at its October 17, 2018 Priority Setting Session, and the actions identified to facilitate housing development became part of the Council's Priority List. The Council's approval of this memo was the impetus for staff's development of the Housing Crisis Workplan. This Workplan identifies several strategies to support and accelerate housing production in San Jose.

One policy item identified in the Housing Crisis Workplan was to amend the "1.5-acre rule", or Housing Policy H-2.9 to identify an objective definition of the words "underutilized" and "viability of surrounding commercial and industrial properties." In addition to defining these terms in Policy H-2.9, staff was given direction by the Council to further amend the "1.5-acre rule" by reducing the requirement that sites be adjacent to properties with a residential General Plan Land Use/Transportation Diagram designation from two sides to one side to increase the number of eligible sites. City Council approved a change to the criteria in December 2018 to allow projects on sites where only one adjacent property has a residential land use designation (and the project meets the other identified criteria).

In June 2019 the City Council approved the 2019 General Plan Four-Year Review scope of work. One of the items was to "explore changes to commercial space requirements for affordable housing developments," which was identified as item #22 in the June 2018 Housing Crisis Workplan. Two policies in the General Plan, Policy IP-5.12, and the subject Policy H-2.9 allow 100% affordable housing on sites that have commercial land use designations. At the June 2020 General Plan 4-Year Review Task Force meeting, staff and the Task Force recommended eliminating the commercial requirement for affordable housing projects that qualify under Policy H-2.9, because the policy's intent is to allow the conversion of commercial properties that are vacant or underutilized and are unlikely to be successful for commercial uses. This update is reflected above in the proposed ~~strikeout~~/underline changes to the Policy.

At its June 2020 meeting, the General Plan Task Force also recommended that staff advance clear guidelines defining the conditions that constitute "underutilized" in Policy H-2.9. They also recommend that their recommendation to eliminate the Policy's commercial requirements be brought to Council earlier than the timeline set for all other General Plan 4-Year Review recommendations to be considered by the Planning Commission and City Council, which are anticipated to be heard in Spring 2021.

Staff's proposed updates to Policy H-2.9 reflect the recommendation from the General Plan Task Force and include other modifications to the criteria to provide more clarity and to include clear requirements to be consistent with recent State legislation, such as SB 35 Affordable Housing Streamlining and AB 2162 Supportive Housing Streamlining, which requires cities to review housing development projects based on objective standards. The proposed criteria includes clear requirements on the distance a site should be from industrial properties and clarity on which transit lines would qualify for the locational criteria. Staff is also proposing a new criterion to address displacement of residents when qualifying commercial properties have existing residential uses that are proposed to be removed. As a follow up action to the

proposed policy changes Staff will publish a list of the approximately 240 sites that meet the underutilized criteria. This list will not include sites that have an FAR greater than 0.2 and that have no tenants, as this data is not readily available at a citywide level, and tenant occupancy is not static and changes day-to-day.

## ANALYSIS

The proposed updates to Policy H-2.9 address the changes outlined in the Housing Crisis Workplan and recommendations from the General Plan 4-Year Review Task Force and include other modifications to the policy to provide clear and predictable criteria. All of the proposed modifications to the policy are discussed below. Updates to the policy include:

*Clarification on the definition of affordable housing development:* This policy is intended to apply to affordable housing projects that are restricted to persons with incomes at or below 80% of the Area Median Income (AMI). The proposed language is consistent with a similar policy, IP-5.12, that provides a path forward for affordable housing developments in Urban Village plan areas that do not yet have an adopted urban village plan.

*Criteria No. 1 (site size criteria):* Staff seeks to clarify that the gross size of a parcel, not net, should be used. No changes are proposed to the size of eligible properties. The property size criterion was discussed by the General Plan Task Force during the first Four-Year Review of the General Plan when Policy H-2.9 was developed. Based on input from the Task Force, including representatives from the affordable housing development community, it was determined that 1.5-acres was adequate for affordable housing projects. Additionally, changing the minimum property size to 2-acres would only result in an increase of 24 potentially eligible sites.

*Criteria No. 2 (definition of “underutilized”):* Since the General Plan promotes denser, urban infill and a shift to multi-modal travel, staff recommends including standalone surface parking lots as an underutilized use. In addition, staff recommends that sites with a floor area ratio (FAR) of 0.2 or less also meet the definition of underutilized. Such a ratio indicates that a substantial portion of the site is not occupied by the existing use and is not consistent with General Plan goals that promote dense, infill development. However, to provide some flexibility and consider parcels with a FAR greater than 0.2, the criteria also considers tenant vacancy as an indicator of underutilization. Staff believes a 5-year timeframe for vacancies accurately captures the cyclical nature of the market. It is not uncommon for sites to be vacant for several years, especially during economic downturns, before finding a tenant. These prolonged periods of vacancy do not mean that commercial is not viable on a site. However, a vacancy for 5-years suggests that there may be deeper market reasons for the vacancy.

*Criteria No. 3 (adjacency to residential designated properties):* Staff recommends clarifying adjacency language to mean that the site in question shares a property line with another site that has a residential General Plan land use designation. If the only adjacency to residential uses is across the street, then a proposed project situated between commercial uses on all other sides could introduce a residential use that could impact the cohesiveness of a commercial area and potentially impact future commercial redevelopment. Streets also vary widely in size from more narrow neighborhood streets to larger major thoroughfares, frequently serving as buffers and transitions from one land use type to another. Additionally, staff proposes removing compatibility language as it is not an objective standard for residential projects.

*Criteria No. 4 (adjacency to industrial designated properties):* Staff recommends a 1,000-foot buffer to guard against encroachment into Heavy and Light industrial areas by residential uses and preclude impacts to the operations of industrial properties. A 500-ft buffer is needed for other industrial designations, such as Combined Industrial Commercial and Industrial Park. Uses in the Heavy and Light Industrial designations



are more likely to need hazardous materials permits that require a larger buffer from residential uses. The intent of the policy is to strike a balance, whereby the City would provide an incentive to build affordable housing by converting commercial lands. However, those conversions should not come at the expense of the continued erosion of the city's limited industrial lands. Proximity of industrial parcels to residential uses could impact current and future viability of industrial lands. The City has experienced this in several areas of the city, one example is along Campbell Avenue near Newhall Street, where a patchwork of residential conversions within a previous industrial area has surrounded industrial sites impacting their operation and viability.

*Criteria No. 5 (adjacency to transit line):* The intent of this criteria is to ensure that projects locate near areas that can support and facilitate transit ridership. The 30-minute headway language would capture most transit lines. According to affordable housing developers it is consistent with most funding sources that encourage housing near transit.

*Criteria No. 6 (adaptive reuse of historic properties):* The modification of criteria language from "should" to "shall" provides a more objective standard and is consistent with the City's Historic Preservation goals. In addition, recent changes in state law, as explained above, require that only objective criteria be applied to residential projects. Therefore, in order to establish objective requirements where no discretion is used by staff, the word "should" is proposed to be replaced with the word "shall" in the criteria where appropriate.

*Criteria No. 7 (displacement of residents):* Given the state of housing and homelessness throughout the City, staff recommends that any project seeking to take advantage of this policy be required to provide relocation assistance to existing residential tenants of the site consistent with State and federal relocation laws and the City's Ellis Act Ordinance, as amended.

The proposed General Plan Text amendments were analyzed with respect to conformance with:

- 1) Envision San José 2040 General Plan
- 2) California Environmental Quality Act (CEQA)

### **Envision San José 2040 General Plan Conformance**

The proposed General Plan Text Amendment to Policy H-2.9 and the NCC Land Use designation is 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 changes to H-2.9 would facilitate the development of affordable housing in San José. Creating an objective definition of vacant or underutilized sites, replacing the commercial and industrial impact criteria with an objective buffer to industrial property, and adjusting the other criteria with measurable standards will provide for a more clear, objective and efficient method of identifying qualifying sites and eliminate the need for subjective determinations of eligibility. Given the impacts of displacement and eviction facing many residents, staff is also recommending adding a new criterion (listed as #7 above) that would ensure any existing tenant on the proposed site receive some type of relocation assistance.*

*While the General Plan typically restricts new development on properties in non-Growth Areas, the proposed General Plan amendment supports Policy H-2.2 by allowing 100% affordable housing projects on underutilized commercial sites meeting certain size, locational, and compatibility criteria.*

*State Law SB 35 creates a streamlined ministerial approval process for certain affordable housing developments. In addition to other criteria, the development project must be on a site where the General Plan or Zoning designation allows residential uses. Because the NCC designation is a commercial designation, it could be understood to mean that an SB 35 project is ineligible on these sites. However, the General Plan allows exceptions for residential uses that are 100% affordable through the use of either Policy H-2.9 or Policy IP-5.12. The proposed General Plan text amendment would clarify that these sites are indeed opportunity sites for developers of affordable housing seeking a ministerial approval.*

## **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**

A virtual meeting with the development community was held on November 18, 2020. Approximately 18 people were in attendance. The following is an overview of the issues raised by attendees:

- Increase the size of parcels from 1.5-acre to 2-acres.
- 5 years of vacancy of property is too lengthy; 2 or 3 years would be adequate to indicate that there's something is wrong with the property.
- For Criteria 3, consider adjacency to include a parcel across the street to be adjacent.
- Consider 200 feet or 250 feet distance for separation from commercial/industrial uses.
- Consider existing residential near industrial uses to determine viability of industrial uses.
- Rather than prohibiting the demolition of existing residential units, consider a criterion that no more than 3 units may be demolished.

As noted in the analysis section above, staff does not believe an increase in parcel size is necessary nor that a reduction in the vacancy rate would accurately capture the conditions of the market. Considering parcels across a street as adjacent does not meet the intent of the overall policy, that seeks to balance the introduction of residential uses in areas planned for commercial.

As noted above, a 1,000-foot and 500-foot buffer would provide a more suitable buffer and continue with the City's goal of the preservation of existing industrial lands. Staff's initial recommendation for Criteria 7 was to avoid any demolition of existing residential units. However, after further consideration and feedback from the public, staff is recommending relocation assistance to tenants of any demolished units.

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 Jose Post Record and posted on the City's website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** Ruth Cueto

**Approved by:** /s/ , Deputy Director for Rosalynn Hughey, 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

## **GPT20-005 List of Attachments**

[Exhibit A- Strikethrough/Underline of General Plan Text Amendment Changes](#)

[Exhibit B- Draft Resolution](#)

[Exhibit C- CEQA Determination of Consistency Statements](#)