



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: February 10, 2020

Approved

Date

Feb. 12, 2021

**SUBJECT: STATUS REPORT ON URBAN VILLAGE ZONING DISTRICTS AND A
REVISED AMENITIES FRAMEWORK**

RECOMMENDATION

Accept the status report on Urban Village zoning districts and revised amenities framework and provide comments on the current efforts and future work to be initiated.

BACKGROUND

The development of urban villages is among the major strategies in the Envision San José 2040 General Plan, the blueprint for how development unfolds in the City. Urban villages provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth, consistent with the General Plan's environmental goals. Information on the 12 approved urban village plans and three plans in preparation can be found at: www.sanJoseca.gov/urbanvillages.

A. INITIAL URBAN VILLAGE IMPLEMENTATION AND AMENITIES FRAMEWORK

General Plan Urban Village Planning Policy IP-5.1 directs staff to consider special financing mechanisms to deliver public improvements, affordable housing, and amenities envisioned within an urban village plan. As part of the 2013 General Plan Annual Review, the City Council gave direction to the administration that urban village plans presented to the City Council for adoption in the future include an Implementation Financing Strategy for each area that describes the proposed infrastructure improvements and funding mechanisms. The result was the adoption of the Urban Village Implementation and Amenities Framework (Implementation Framework) by the City Council on May 22, 2018. The Implementation Framework uses the increase in land value afforded to a development applicant by rezoning properties within urban villages from a commercial or industrial zoning district (both job-producing districts) to a residential or

residential mixed-use zoning district. Development applicants were required to share the increase in the value of their land from the conversion of jobs-producing lands to residential use by constructing, providing, or otherwise funding amenities and public improvements as identified in the applicable urban village plan and in accordance with the Implementation Framework. Amenities that were offered in the Implementation Framework are listed in the table below.

Implementation Framework Amenities
Privately Owned and Maintained/Public Open Spaces (POPOS)
Commercial Space above and beyond what is required in the applicable Urban Village plan
Deed restricted commercial space for “non-formula” employment uses (i.e. mom and pop) and community facilities
Place making art installations
Additional off-site streetscape amenities or improvements above and beyond what is required
Contributions towards, or construction of, unfunded projects identified in the applicable Urban Village Plan
Construction of additional public open space amenities and park facilities above and beyond the City’s Parkland Dedication Ordinance (PDO) and the Parks Impact Ordinance (PIO) fees and dedication requirements

Projects exempt from the Implementation Framework included: Wholly commercial projects; 100% deed restricted affordable housing projects; Signature Projects (defined under General Plan Policy IP-5.10); and planned development zonings and discretionary development permits on file prior to adoption of the Implementation Framework. The Alum Rock Urban Village was also not subject to the Implementation Framework as the planning area has already been rezoned to allow housing development (Alum Rock Formed Based Zoning).

During the creation of the original Urban Village Implementation and Amenities Framework, the City Council tasked staff with exploring other options for financing strategies to fund improvements within urban village areas. Attachment A is a table of the options not pursued for urban village implementation as the new zoning districts were ultimately pursued in response to State law mandates.

B. ASSEMBLY BILL 3194, SENATE BILL 1333, AND SENATE BILL 330

The State of California adopted [Assembly Bill \(AB\) 3194](#), commonly referred to as the “Housing Accountability Act,” (adopted September 28, 2018 and effective January 1, 2019) to address the State’s housing shortage crisis due to lack of supply and increasing unaffordability. Staff’s [November 4, 2019 informational memo](#) detailed the law and its implications. In summary, AB 3194 prohibits local agencies from requiring a rezoning of properties to facilitate housing projects if the General Plan land use designation supports housing. Since the rezoning requirement is no longer allowed and many General Plan land use designations in urban villages allow housing, the rezoning can no longer be used to create a value capture mechanism to facilitate building additional public improvements and amenities as was envisioned by the Implementation Framework.

As such, the City must find alternative ways to facilitate the construction of amenities and further implement the Envision San José 2040 General Plan Urban Village Major Strategy.

Furthermore, [Senate Bill \(SB\) 1333](#) requires charter cities' (like San José, that are governed by a city charter rather than by general law) zoning ordinances to be consistent with their adopted general plans. The Planning Division's Ordinance and Policy team is completing a comprehensive update of the Zoning Ordinance (Title 20) to align the allowed uses with those of the General Plan (phase 1), and the creation and implementation of urban village zoning districts and multifamily and mixed-use zoning districts (phase 2). The first phase of this work was completed in June 2019 with City Council approval of a comprehensive package of Zoning Ordinance updates to ensure allowed uses in zoning districts are consistent with the General Plan land use designations associated with that district. The second phase of this work to create new urban village, multifamily, and mixed-use zoning districts is in progress and described in more detail in the Analysis section below.

Once the new zoning districts are established, staff will commence City-initiated rezoning of private property in conformance with the General Plan. Careful analysis is required to ensure that any rezoning completed by the City complies with the [Senate Bill \(SB\) 330 \(The Housing Crisis Act\)](#) provision that prohibits downzoning or changes to a property's general plan land use designation where housing is an allowable use to a less intensive use compared to what was allowed as of January 1, 2018. This prohibition also includes reductions to development capacity of a particular site through the imposition of development standards like open space or setbacks (see State Code Section §66300(b)(1)(A)¹). SB330 also prohibits cities from applying subjective standards to housing projects², and prohibits the addition of new development standards that would prevent a housing project/site from building to the maximum allowable General Plan density. However, cities may limit a property to less intensive uses if the City simultaneously "up zones" or changes the General Plan land use designation on properties elsewhere in the City to ensure no net loss in residential capacity.

Under the new state laws, staff must reframe the implementation of the General Plan's Urban Village Major Strategy and the associated public benefits/amenities sought in the approved urban village plans. Planning staff's work plan currently includes the creation of urban village zoning districts as directed by the City Council with the adoption of the Implementation Framework, and consistent with the mandates of state laws SB1333 and SB330.

¹ §66300(b)(1)(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

² Under SB330 a "housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or (C) Transitional housing or supportive housing.

ANALYSIS

In response to the City Council's direction to create urban village zoning districts, and in response to the state's invalidation of the Council approved Implementation Framework approach due to AB3194 and SB1333 (see Background section of this memo), staff has been analyzing the feasibility of incorporating the Implementation Framework amenities into the new urban village zoning districts as objective standards, thereby ensuring that urban villages and the surrounding communities may continue to obtain the public benefits/amenities which were previously attained through the application of the Implementation Framework. Staff is proposing five new zoning districts which incorporate amenities as part of residential and residential mixed-use projects. These districts include a commercial-only district and four mixed-use districts based on the four urban village types³ defined in the General Plan:

- Urban Village Commercial (UV-Commercial)
- Urban Village Regional Transit (UV-RT)
- Urban Village Local Transit (UV-LT)
- Urban Village Commercial Corridor and Center (UV-CC)
- Urban Village Neighborhood (UV-N)

The proposed districts are intended to achieve an increased density and flexible mix of uses, fostering an active, walkable, bicycle friendly, transit-oriented, urban setting for housing and job growth within the urban villages. Allowed uses and development standards for each of the five districts vary based on the type of urban village, and are comprised of objective standards, pursuant to the requirements of SB330.

Jurisdictions across the United States incorporate a variety of public benefits/amenities into their zoning codes, typically through incentive programs for housing projects that provide bonus increases in Floor Area Ratio (FAR), density, height, or reduction of other site development standards in exchange for providing public benefits/amenities (see Attachment B for examples of benefits and development bonuses across 16 different jurisdictions). Since San José already has generous FAR, density, height, and similar requirements, an increased allowance of these development standards would not likely result in the desired amenities. Instead, staff proposes that the zoning code require, as a standard requirement, that residential and mixed-use development provide amenities as part of the project. The code would then establish the specific and objective standards for each amenity that would need to be met. Flexibility would be provided, however, by allowing the applicant to choose a specified number of amenities from an established list within the zoning code. Providing applicants with this flexibility would allow projects to include amenities that are appropriate for a site and project and would allow development to tailor the amenities provided to the community priorities identified as part of the Urban Village planning process.

³ The four types of urban villages are Regional (e.g., Berryessa BART), Local Transit (e.g., East Santa Clara Street), Commercial Corridor and Center (e.g., South Bascom), and Neighborhood (e.g., 24th and William).

A general description of each of the proposed amenity options is summarized below:

Amenity	Description
POPOS	Publicly-accessible common open space areas located at ground level
Commercial Space above and beyond	Commercial square footage above and beyond the urban village or general plan requirement
“Non-formula” retail	Typically, commercial uses with fewer nationwide locations like “mom and pop” shops
Place making art installations	Artwork as part of a project in a publicly-viewable area
Off-site streetscape amenities	Such as enhanced streetscape decorative paving, sidewalk furniture, or sidewalk planters
Public park in accordance with PIO/PDO requirements*	Provide public park land donation or turnkey park consistent with PIO/PDO requirements
* Staff is proposing new amenities not originally considered in the adopted Implementation Framework.	

All but two of the original Implementation Framework amenities are proposed to be included in the new urban village zoning districts. The two amenities which are not proposed to be incorporated into the new zoning districts are “contributions towards, or construction of, unfunded projects identified in the applicable Urban Village Plan” and “construction of additional public open space amenities and park facilities above and beyond the City’s Parkland Dedication Ordinance (PDO) and the Parks Impact Ordinance (PIO) fees and dedication requirements.” These amenities are not objective standards or clearly defined, difficult to implement, and therefore are not recommended to be included.

Urban Village Plans and Design Guidelines

Since the suite of new State legislation limits local agencies from evaluating housing projects for subjective standards, Planning staff anticipates the need to update currently approved urban village plans to incorporate more robust objective standards to ensure residential and mixed-use residential projects incorporate design criteria and amenities envisioned by the Plans. For the urban village plans currently under development (N. 1st St. and Berryessa BART), staff plan to incorporate objective design standards, as appropriate, to facilitate development of amenities as identified by the community during the planning process. Additionally, the Planning Division is currently in the process of creating the Citywide Design Standards and Guidelines, which will include objective design guidance for projects within and outside of urban villages, which would apply universally to all urban village planning areas regardless of if they have an approved plan.

NEXT STEPS

Staff will further refine the draft Urban Village zoning districts with incorporated amenities, incorporate urban village-specific objective standards in the Citywide Design Standards and Guidelines, and continue community and stakeholder outreach efforts.

To date, the following outreach efforts have been planned, and additional outreach meetings will be scheduled.

Outreach Effort	Target Date
Community & Economic Development (CED) Council Committee	February 24, 2020
Community Meeting(s) and Developer Focus Group(s)	February - April 2020
Developers' Roundtable	April 17, 2020
Tentative Airport Land Use Commission Referral	March/April 2020
Tentative Planning Commission Hearing*	May 2020
Tentative City Council Hearing*	June 2020
*Updates to Title 20 to add Urban Village Zoning District. May also include, but not limited to: Updates to adopted urban village plans for consistency with new objective standards and General Plan Text Amendments.	

IMPLEMENTATION

Once the Urban Village Zoning Districts are created and added to the Zoning Ordinance, they would only be applicable to properties in urban villages. Planning staff is in the process of a multi-phased effort to update the Zoning Ordinance to align with the General Plan, including City-initiated rezoning of private property in conformance with the General Plan. Through this work, the new zoning districts would be applied to properties within urban villages.

In the interim, before properties within urban village boundaries are rezoned to the new Urban Village Zoning Districts, proposed residential and residential mixed-use projects will be analyzed and processed as if they are located in an Urban Village Zoning District, consistent with AB 3194. For example, if a housing development application for a property within an urban village requested a 10-story building and was zoned CP Commercial Pedestrian and had an Urban Village General Plan Land Use designation, Planning staff would process the application as if it was located in an Urban Village Zoning District.

COORDINATION

Work as described in this memorandum has been coordinated with the City Attorney's Office, Department of Public Works, and Department of Transportation.

/s/
Rosalynn Hughey, Director
Planning, Building and Code Enforcement

For questions please contact Michael Brilliot, Deputy Director, at 408-535-7831.

ATTACHMENT A

Financing Strategies to Fund Improvements within Urban Villages		
Methodology	Description	Explanation
Impact fee	Monetary exaction (not tax or special assessment) charged by the city on an applicant's development project to obtain all or portion of the cost of public amenities relating to development project. Fee must be reasonably related to cost of amenities provided by the local agency (aka a nexus).	<ul style="list-style-type: none"> • Nexus study required providing link between development project and imposed exactions • Funds cannot be flexibly spent • Must study and identify all improvements or amenities needed and associated cost • One uniform fee would be difficult to apply citywide as community needs are different • If fee only paid by residential development, full infrastructure costs will not be covered
Development Agreements (DAs)	Vest land use regulations in effect at time of approval in exchange for a project to provide extraordinary public benefits.	<ul style="list-style-type: none"> • Voluntary from development community • Longer processing timelines/staff intensive • Requires ongoing monitoring • Increased development risk for development community • Case-by-case negotiation
Community Facilities District (CFD)	Establishes special property tax that can be used for maintenance services or to issue tax exempt bonds for development of public facilities and infrastructure. Requires a 2/3 vote of registered voters or by vote of the property owners if there are less than 12 registered voters in the district.	<ul style="list-style-type: none"> • Voluntary action - Cannot be required to participate • Legal limit on amount of money generated • Unlikely to fund full cost of improvements and additional funding for improvements will need to be identified • Requires significant start-up funding for formation • Requires voter approval and could have a limited lifespan • Maximum tax amount must be set at initial formation • List of authorized improvements and maintenance services must be identified at initial formation • Requires engineer's report of the cost of improvements and maintenance prior to initial council action • Limited to charging for improvements listed in the required engineer's report • Fair and reasonable allocation, not impact or benefit-based • Funding not available until development
Improvement Districts	Establishes special assessment on benefitting properties that can be used to issue tax exempt bonds for development of public infrastructure. Simple majority vote of the property owners within the district.	<ul style="list-style-type: none"> • Voluntary action - Cannot be required to participate • Legal limit on amount of money generated • Unlikely to fund full cost of improvements and additional funding for improvements will need to be identified • Requires significant start-up funding for formation and Benefit Analysis • Requires majority voter approval • Are very susceptible to court challenge • Only Special Benefit can be assessed • Can be terminated any time through a majority petition unless bonds have been sold • Requires engineer's report of the cost of improvements prior to initial council action • Limited to charging for improvements listed in the required engineer's report • General Benefit must be paid from generally available City funds • Amount of assessment must be directly related to Benefit received (Difficult to quantify) • City property/ other agencies subject to assessment and other public agencies • List of authorized improvements must be identified at initial formation

ATTACHMENT B

16 Total Jurisdictions with Amenities Programs	
<i>Of the 16 jurisdictions surveyed, there were 14 amenity categories provided by development projects. This table details the specific jurisdictions who seek specific amenities through land use controls.</i>	
<i>Amenity</i>	<i>Jurisdiction</i>
Affordable Housing (including for seniors, disabled)	Seattle, WA; Los Gatos, CA; Emeryville, CA; Brighton, NY; Santa Rosa, CA; Pittsburgh, PA; Chicago, IL; Reno, NV; Bellevue, WA; Santa Monica, CA; Tampa, FL
Open Space (parks, plazas, POPOs)	Seattle; Middlesex County, VA; San Diego, CA; Brighton, NY; Pittsburgh, PA; Chicago, IL; Roseville, CA; Bellevue, WA; Santa Monica, CA
Green Infrastructure (LEED or other certification, eco roof, environmentally friendly development)	Seattle, WA; San Diego, CA; Pittsford, NY; Pittsburgh, PA; Chicago, IL; Bellevue, WA; Tampa, FL
Street and Public Improvements (public works and utilities)	Seattle, WA; Pittsford, NY; Brighton, NY, Chicago, IL; Bellevue, WA; Tampa, FL
Other facilities or fees determined by City	Pittsford, NY; Brighton, NY; Chicago, IL; San Diego, CA; Santa Monica, CA; Tampa, FL
Historic or Environmental Preservation	Seattle; Pittsford, NY; Brighton, NY; Roseville, CA
Transportation Demand Management & Transit Oriented Development	Los Gatos, CA; Pittsburgh, PA; Chicago; Santa Monica, CA
Public Art (includes water features)	Pittsburgh PA; Chicago, IL; Roseville, CA; Bellevue, WA;
Other housing (includes larger units, market rate, etc.)	Middlesex County, VA; San Diego, CA; Santa Rosa, CA
Infill or Mixed-Use Development	Roseville, CA; Dinuba, CA; Santa Monica, CA
Childcare or Eldercare	Seattle; Brighton, NY; Bellevue, WA
Parking Benefits for Community	San Diego, CA; Chicago, IL; Tampa, FL
Commercial, Employment, Retail Uses	San Diego, CA; Roseville, CA; Dinuba, CA
Other Public Recreation Amenities	Pittsford, NY