COUNCIL AGENDA: 12/10/19
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ITEM: 4.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Kim Walesh
Rosalynn Hughey
John Ristow

SUBJECT: **STATUS REPORT ON AMENDMENTS TO NORTH SAN JOSE AREA DEVELOPMENT POLICY**

DATE: November 25, 2019

Approved D. DSyl

Date 11/27/19

COUNCIL DISTRICT: 3 & 4

RECOMMENDATION

(a) Accept staff's status report on the proposed amendments to the North San José Area Development Policy;

(b) Direct staff to proceed with the proposed approach to the North San José Area Development Policy including the preparation of the appropriate environmental review under the California Environmental Quality Act (CEQA) to facilitate near term development; and

(c) Return to Council shortly after the New Year with specific recommendations on the implementation of recent state legislation advancing residential development that takes effect on January 1, 2020.

OUTCOME

This report is intended to provide the City Council with an understanding of necessary changes to the approach to amending the North San José Area Development Policy to advance housing opportunities in North San Jose including the impact of new State legislation on residential development.

BACKGROUND

On June 12, 2018, Council directed staff to implement a Housing Crisis Workplan that prioritizes implementation and policy actions that facilitate the development of 15,000 market-rate and 10,000 affordable residential units by 2022 citywide. Item #4 on the workplan is the review and update of the North San José Area Development Policy (the Policy) to complete analysis and

proposed policy amendments necessary to advance 8,000 housing units from Phase 2 into Phase 1. At the City Council's priority setting session on March 5, 2019, the North San José Area Development Policy work item was moved up from priority number 11 on the Council's Priority List to number 8.

On May 14, 2019, staff provided an update on the proposed approach to this work. Staff's report proposed to amend the Policy by consolidating the current four development phases into two, without making changes to the total development capacity or land use plan. Staff also recommended that the timing of required transportation improvements be changed to authorize the construction of improvements needed to serve where development has actually occurred. In addition to accepting the report, Council directed staff to also:

1. *Explore options that would more readily enable housing development in North San Jose, and return to Council in early August with a workload and feasibility assessment of various options that forward the goal of advancing housing with an enhanced amount and incentives for affordable housing, including but not limited to the following options:*

    a. *Allowing individual projects to move forward on a case-by-case basis that have conducted their own environmental analysis.*

    b. *Commencing a new programmatic environmental impact study on North San Jose, utilizing statewide adoption of VMT to guide creation of a new development policy.*

2. *Priority for entitlement would be provided to projects producing onsite and/or an enhanced quantity of affordable housing, providing new retail and amenities, and having geographical or functional (i.e., a permanent shuttle) proximity to transit.*

3. *Return with recommendations to incorporate the Daniel Rose Fellowship's proposal[1] into the North San José Neighborhood Plan.*

ANALYSIS

Recent Work to Date

Over the past six months, staff has continued to pursue the proposed approach to amend the Policy's phasing plan. This section of the memorandum describes efforts to date but does not include the impact of new legislation on development in North San Jose which will be discussed later in the following section of this memo. In exploring the appropriate path to achieve the

[1] In 2017, the City was asked by the Urban Land Institute (ULI) and the National League of Cities (NLC) to participate in the Rose Fellowship which focuses on a particular opportunity in participating cities. The Rose Fellowship collects outstanding leaders in city building to assist participating cities reach positive solutions. San José's selected land use opportunity is to develop a strategy to infuse amenities into North San José that will further the City's goals in this key employment area.

City's goals of producing more market-rate and affordable housing in North San Jose, staff has focused on two primary tasks: a) negotiate with the County of Santa Clara and the City of Santa Clara on amendments to the 2006 Settlement Agreements to address the City's proposed rephasing, and b) engage an environmental planning consultant to initiate draft analyses of the required environmental review under CEQA for the proposed amendments to the Policy. Staff has prioritized these two items which are generally needed to make substantial changes to the Policy, such as the advancement of housing capacity or some of the potential changes to the land use policy. The amendments that were outlined in Council's prior direction require negotiation of amendments to the 2006 Settlement Agreements and appropriate CEQA clearance prior to Council consideration of the proposed Policy amendments.

The work to address the Policy-level CEQA review and the Settlement Agreements has been significant, and progress has slowed as staff has come to understand its implications. Additional analysis must be completed to satisfy the requirements of CEQA to provide updated project level clearance for the industrial, commercial, and residential development contemplated by the Policy, as well as amendments to the Policy. In addition, staff is closely monitoring the State's requirement of transition from Level of Service (LOS) to Vehicle Miles Travelled (VMT) and its impact on North San Jose policies.

Staff has continued to coordinate with the County of Santa Clara and the City of Santa Clara to understand its concerns about modifications to the Policy. Staff from the City of Santa Clara have indicated that the proposed approach of combining Phase 1 and 2 raises concerns that the City will not deliver the improvements required by the settlement agreement or the NSJADP EIR because of the advancement of residential development. San Jose staff has provided details of transportation improvements completed to date, and details of additional funding for near term projects in North San Jose; however, the negotiations with the City of Santa Clara have not yielded a clear path to amendment of the 2006 Settlement Agreement to facilitate housing production. Staff has received no significant comments regarding the rephasing proposal from County of Santa Clara staff.

The previously proposed approach represented a risk of delay in the process to advance housing in North San Jose because it involves negotiations with other public agencies over amendments to settlement agreements that cannot be condensed into a specified timeframe. Based upon new state law housing mandates that will be discussed in more detail below, staff advises that the proposed approach to collapse the first two phases into a single phase is no longer necessary.

If Council approves staff's recommendation, residential development may occur in North San Jose regardless of the limitations on residential development in each Policy phase in accordance with state law effective January 1, 2020, so long as each development obtains appropriate CEQA environmental clearance for its project. Moreover, state law encouraging affordable housing development that meets specified criteria is exempt from CEQA and may also move forward.

Recent Housing Legislation

In response to the statewide housing crisis, the State has passed new housing and housing-related land use legislation in a manner that changes the City's planning regulations and the processing of residential development. Much of this legislation builds upon changes to State law over the past two years, with a number of changes effective January 1, 2020. Staff is currently evaluating the full range of implications on City policies and land use regulations. With respect to North San Jose, staff believes the following past and present bills have the most significant ramifications, particularly SB 330:

- **SB 35** (effective January 1, 2018) requires that local agencies provide a ministerial and streamlined process to approve multifamily housing projects that meet defined standards including deed-restricted affordability requirements and the payment of prevailing wage/compliance with workforce standards. Among other criteria, SB 35 requires that local agencies apply only objective zoning and design standards to qualifying projects, but general plan maximum densities apply. In San Jose, 50% of a SB 35 project's housing must be affordable to 80% of area median income and below. Because SB 35 projects are ministerial – meaning that there is no discretionary project approval required – such projects are exempt from CEQA so they do not require CEQA clearance.

- **AB 1485 (Wicks)** made clarifications to SB 35 to broaden the eligibility to qualify for a streamlined, ministerial CEQA-exempt approval process for Bay Area projects that provide 20 percent of their units for moderate-income households (less than 120 percent of area median income), under certain conditions.

- **AB 3194** (effective January 1, 2019) amended the Housing Accountability Act which limits local governments' ability to reject or restrict housing development projects that comply with the applicable objective general plan, zoning, and subdivision standards. As revised by AB3194, if the site's zoning is inconsistent with the general plan, the project cannot be deemed inconsistent with zoning standards and cannot be required to seek a rezoning so long as the project complies with the jurisdiction's objective general plan standards. Additionally, zoning standards and criteria must be applied to facilitate and accommodate development at the density allowed by the general plan designation.

- **SB 2162** (effective January 1, 2019) requires supportive housing to be considered a use "by right" in zones where multifamily and mixed uses are permitted, including non-residential zones permitting multifamily uses, if the housing meets specified criteria. Supportive housing is housing linked to an onsite or offsite service that assists the resident in retaining the housing, improving his or her health status, and ability to live and work in the community. Qualifying criteria related to affordability, long-term deed restrictions, non-residential floor space providing supportive services and other design requirements. Because such uses are allowed 'by right," and are ministerial approvals if the projects meet the requirements of SB 2162, such projects are not subject to CEQA.

- **SB 330** (effective January 1, 2020) includes several new procedural changes and limitations that will impact cities' planning and land use approval processes. Most relevant to the North San Jose Area Development Policy – particularly the restriction on residential development entitlements in each phase of the Policy --is SB 330's prohibition on housing unit caps, population limitations or limitations on approvals of permits for housing. Moratoria and similar restrictions may also not be imposed, with certain exceptions, on housing or mixed-use development. As a result, it appears that residential development with appropriate CEQA clearance may proceed despite the limits and phasing of residential development in the Policy.

The North San Jose Area Development Policy allows residential development to occur in three primary areas: areas with existing residential land use designations (which include Transit Residential, Urban Residential, and Urban Village), areas with the Transit/Employment Residential Overlay, and a limited amount in the Industrial Core – which has been replaced in the General Plan by the Transit Employment Center designation (a primarily employment designation). Staff continues to evaluate how these designations will interact and function with new state law and will suggest changes in the near future to support both housing and employment uses.

Apple Proposal

On November 4, 2019, Apple Inc. announced its intention to commit $2.5 billion to combat the housing crisis in California. Included in Apple's proposal is the objective to make available land the company owns in San Jose worth approximately $300 million for the development of new affordable housing. Apple controls approximately 86 acres inside the North San Jose Industrial Core which currently has approximately 4.3 million square feet of entitlements for Office/R&D development. On January 26, 2016 the City Council approved a Development Agreement which vested these entitlements for 15 years. While this opportunity supports the City's Housing Crisis Workplan goals, staff is evaluating the proposal for consistency with the North San Jose Area Development Policy. The North San Jose Policy envisions Core areas being developed with a mix of employment and residential uses, but with significant emphasis on the creation of jobs. Staff has initiated conversations with Apple regarding the use of their lands in North San Jose and, depending upon what Apple proposes for development, the Policy may require amendment or may take advantage of expedited or abbreviated consideration pursuant to state law depending on the specifics of the proposed project.

Preferred Path to City Goals

In assessing potential paths forward, staff is attempting to balance a number of competing objectives that include:

- A comprehensive and consistent approach to land use and transportation planning in North San Jose.
- An appropriately prepared, thorough, and legally defensible programmatic environmental review under CEQA for changes to the North San Jose Policy and discretionary consideration of subsequent projects.

- The acceleration residential development in the near-term in North San Jose. Such development requires appropriate project-level CEQA clearance unless exempt from CEQA. To the extent that SB 330 has changed the understandings and expectations of the parties to the 2006 Settlement Agreements among the City of San Jose, the City of Santa Clara, and the County of Santa Clara, amendments to those agreements should continue to be negotiated in response to the elimination of housing caps by SB 330 that will take effect on January 1.
- Preservation of the opportunity to develop employment uses consistent with the existing Policy.
- The ability to leverage unique mixed-use development opportunities like those presented by Apple.
- Compliance with new state law regarding residential development (including mixed-use) and suggesting changes to general plan, zoning and other local requirements made necessary or advisable by the new state laws.

Staff has been working to understand how each of these policy priorities can be achieved both individually and collectively. Based on the work completed to date, staff believes that a targeted Policy amendment solution to advance housing capacity in North San Jose will result in continued delays as staff attempts to address and resolve outstanding concerns presented by the City of Santa Clara, but that the advancement of housing can occur effective January 1, 2020 because of the elimination of housing caps by SB 330. Residential projects will need to comply with CEQA, unless the project falls under one of the laws that exempts it from CEQA. Staff recommends the following approach:

1. Stop work on amending the Policy's phasing requirements.

2. Continue to implement transportation projects included in North San Jose Plan and Settlement Agreement.

3. Return to Council in early- to mid-2020 with the first initial group of specific changes to city land use laws, particularly with regard to general plan, policy, and zoning in North San Jose, to respond to the new state legislation.

4. Expand upon draft environmental work to provide adequate analysis to support to the NSJADP EIR to allow industrial and commercial projects consistent with the existing Policy to move forward within an appropriate timeframe, if feasible.

5. Negotiate amendments to the 2006 Settlement Agreement with the City of Santa Clara and the County of Santa Clara to translate the current obligations which are tied to the North San Jose ADP phasing into obligations that are not tied to the phasing that will be invalid on January 1.

6. Develop a longer term work plan to initiate a major Policy revision that appropriately updates the Policy's land use and transportation expectations, and facilitates more development within the area.

7. Allow individual projects to move forward on a case-by-case basis that have conducted their own environmental analysis.

Workload and Resource Assessment

On May 14, 2019 the City Council directed staff to return with a workload and feasibility assessment on the various items included (listed on page 2 of this Memo). Items 1.a. and 2. relate to the processing of residential development projects through the City's existing development review process. This work would fall under the regular work of development review staff and wouldn't require additional staffing or budget resources. However, the changes in state law requiring City land use laws and policies to changes, including but not limited to the elimination of the North San Jose unit caps and the mandate to move residential projects forward, require addition staff and budget resources. Actions to amend the City's land use regulations will require appropriate CEQA clearance prior to Council consideration of any recommended changes and may require additional staff and budget resources at mid-year.

Items 1.b. and 3 of Council's May 14, 2019 direction speak to the need for a more comprehensive approach to updating the Policy. This process is not part of staff's current workplan. These items will be considered as part of staffs work to develop a longer term work plan to initiate a major Policy revision. Through this process, staff would be able to understand and address the necessary workload, staffing, and funding required to initiate a comprehensive new policy for North San Jose.

CONCLUSION

Advancement of housing capacity in North San José is one of the most impactful work items that will move the City towards its goal of having 25,000 housing units built, under construction, or entitled by the year 2022, but the complexity and changing nature of the regulatory environment continues to change and cause revisions to City's work. The elimination of housing caps by SB 330 means that residential development may move forward without changes in the Policy (with compliance with CEQA where required), but at the same time the 2006 Settlement agreements require modification to reflect the elimination of the phases of development in North San Jose. Staff recommends that the proposed approach creates an appropriate balance that can address all of the pressing concerns, and will continue to coordinate with partners and stakeholders to keep them informed of our progress.

EVALUATION AND FOLLOW-UP

This work is anticipated to be completed through early- to mid-2020 with Council consideration of Development Policy amendments and appropriate CEQA clearance.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

The memorandum will be posted on the City's website for the December 10, 2019 City Council agenda.

COORDINATION

The memorandum has been coordinated with the Department of Planning Building & Code Enforcement, the Office of Economic Development, Department of Public Works, the Department of Transportation, the Housing Department, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item has not been brought before a City Commission for recommendation at this point.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

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