



City of Sunnyvale

Agenda Item

25-0191

Agenda Date: 2/24/2025

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project:

Introduce an ordinance to Amend Chapter 19.67 (Inclusionary Below Market Rate Ownership Housing Program) and Chapter 19.77 (Inclusionary Below Market Rate rental housing) of Title 19 (Zoning) of the Sunnyvale Municipal Code to Modify Requirements for Qualified Retail Preservation Projects, Adopt a Resolution to establish a retail preservation incentive program for certain village center sites and Find that the Proposed Amendments Are Consistent with the Environmental Impact Report for the Land Use and Transportation Element (LUTE) and Do Not Require Additional Environmental Review Pursuant to CEQA Guidelines Section 15162.

Location: Citywide Village Center Sites

File #: PLNG-2025-0001

General Plan Land Use: VMU (Village Center Mixed Use)

Project Planner: Trudi Ryan, (408) 730-7435, tryan@sunnyvale.ca.gov

REPORT IN BRIEF

Village Centers are a newer type of land use for Sunnyvale, first adopted in the 2017 Land Use and Transportation Element (LUTE). Subsequent changes in state housing laws allow developers of Village Center sites to build housing without all of the envisioned features and amenities, including retail/commercial space. The loss of retail in some neighborhoods means residents will need to travel further to access neighborhood serving retail such as grocery stores. Staff has prepared an amendment to the Zoning Code that would provide a financial incentive for smaller sites to provide more commercial/retail in neighborhoods with limited proximity to commercial/retail by reducing or eliminating the Below Market Rate (BMR) inclusionary housing requirement.

BACKGROUND

Since 1984, Sunnyvale has required new residential developments to provide a portion of the new housing units as Below Market Rate to low and moderate income households (depending on whether the housing is rental or for sale). The percentage of units has increased to 15% and the affordability levels have been modified to include a portion of rental units for very-low income households.

In 2017, the City adopted the Land Use and Transportation Element (LUTE) that introduced the concept of mixed-use Village Centers (Attachment 4 is a comprehensive list of references to Village Mixed Use and Village Centers in the LUTE). Page 3-35 of the LUTE describes a Village Center as:

... a specifically identified neighborhood crossroad or district nucleus that is planned to become the focus of activity and future transformative change for nearby neighborhoods. It is designed to support a lifestyle with less reliance on a private automobile. It is an active, pedestrian-oriented place with neighborhood-serving commercial uses that are close to residents and are mixed with residential uses. It serves as a meeting place for the community and may also support public and quasi-public services to reduce the need for automobile trips.

Page 3-36 adds this discussion about Village Mixed-Use:

A Village Center will not consist of any single new development. Rather, it is intended to be a multi-acre, most likely multi-site or multi-corner area, typically at a major street intersection and strategically located near the crossroads of a neighborhood. Most areas identified to become Village Centers are occupied by existing older commercial uses with outdated, auto-oriented development forms. Development of the Village Centers will be market-driven over the lifespan of Horizon 2035 and beyond, but will be encouraged and facilitated by the zoning designations and development standards put in place by the City to implement the desired changes.

Features and amenities of a Village Center include the following:

- *Supportive of a lifestyle without a private automobile*
- *Neighborhood-serving or community-serving commercial core*
- *Pedestrian-oriented design: active ground-floor uses and generous outdoor spaces*
- *Activated by mixed use (commercial with residential)*
- *Easily accessed by pedestrian and bicycle networks*
- *Regular transit service*
- *Reduced need for parking*
- *Unique design guidelines to address form*
- *Neighborhood gathering spaces (e.g., plazas, coffee shops, community gardens, taverns)*

Page 3-88 further states this about Village Mixed-Use:

This category provides neighborhood-serving commercial uses integrated with residential uses. In the future, most residents can expect to have a mixed-use Village Center within one-quarter to one-half mile of their homes. The Village Centers should typically be located at a crossroad of arterials or major collector streets and have excellent pedestrian and bicycle connections. Commercial uses are a crucial component of these sites, and future mixed uses should include commercial components equal to a minimum Floor Area Ratio (FAR) of 10% of the entire site lot area, up to a maximum FAR of about 25%.

EXISTING POLICY

GENERAL PLAN

LAND USE AND TRANSPORTATION ELEMENT (LUTE)

A comprehensive list of LUTE references to Village Mixed Use and Village Centers is included in Attachment 4.

GOAL LT-5 CREATION, PRESERVATION, AND ENHANCEMENT OF VILLAGE CENTERS AND NEIGHBORHOOD FACILITIES THAT ARE COMPATIBLE WITH RESIDENTIAL

NEIGHBORHOODS - Support the development of Village Centers that create an identity and “sense of place” for residential neighborhoods, provide neighborhood gathering places, and allow a vibrant mix of public, commercial, and residential activities. Through development review and other permitting processes, ensure adequate protection is provided to residential neighborhoods when new uses and development projects are considered.

Policy LT-5.1 Strengthen the image that the community is composed of cohesive residential neighborhoods, each with its own individual character and Village Center; allow change and reinvestment that reinforces positive neighborhood concepts and standards such as walkability, positive architectural character, site design, and proximity to supporting uses.

- *LT-5.1a Promote land use patterns and urban design in Village Centers that reflect context and iconic aspects of the surrounding neighborhood to strengthen the sense of uniqueness and community.*
- *LT-5.1c Allow mixed-use development at appropriate Village Centers while preserving sufficient commercial zoning to serve neighborhood retail and service needs.*
- *LT-5.1d Provide public gathering places with appropriate amenities for residents, such as Village Centers and neighborhood and community parks.*

GOAL LT-11 SUPPORTIVE ECONOMIC DEVELOPMENT ENVIRONMENT - Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

Policy LT-11.2 Support a full spectrum of conveniently located commercial, mixed use, public, and quasi-public uses that add to the positive image of the community.

Policy LT-12.4 Attract and retain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy and provide a range of job opportunities.

- *LT-12.4a Promote a variety of commercial, retail, and industrial uses, including neighborhood shopping, general business, office, clean technology, and industrial /research and development.*

Commercial Uses and Shopping Centers

Policy LT-13.4 Support a full spectrum of conveniently located commercial uses and shopping centers that add to the positive image of the community.

Policy LT-13.5 Support convenient neighborhood-serving commercial centers that provide services that reduce automobile dependency and contribute positively to neighborhood character.

HOUSING ELEMENT

GOAL H-2: AFFORDABLE HOUSING AND HOME BUYER ASSISTANCE - Assist in the provision of affordable housing to meet the diverse needs of Sunnyvale's lower- and moderate-income households.

Policy H-2.2 Below Market Rate Housing Program. Continue to implement and consider revisions to the Below Market Rate (BMR) Housing program to increase the amount of affordable housing built in the city, while ensuring the program remains consistent with current market trends, does not impede development, and is appropriate for the Bay Area region.

Policy H-2.3 Integration of Below Market Rate Housing. Utilize the Below Market Rate (BMR) Housing requirements as a tool to integrate affordable units within market rate developments and increase the availability of affordable housing throughout the community.

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ENVIRONMENTAL JUSTICE

Policy EJ-1.6 Support the development of healthy food establishments, grocery stores, and local food growers, particularly in communities that lack access to healthy food.

Policy EJ-1.7 Support existing specialty markets and facilitate the establishment of new culturally derived markets within walkable distances to low-income communities.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) Guidelines Section 15162 provide that when an Environmental Impact Report (EIR) has been certified for a project, no subsequent EIR needs to be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that substantial changes are proposed to the project, or with respect to the circumstances under which the project is undertaken, that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The certified Environmental Impact Report (EIR) (State Clearinghouse No. 2015062013) for the 2017 LUTE analyzed the environmental impacts of the creation of mixed use Village Center sites. (see Attachment 9 for links to the General Plan and related Environmental Documents). The proposed retail preservation program will create an incentive for certain Village Center sites to develop with uses that are more consistent with the mixed uses in Village Centers that were studied in the LUTE EIR. Therefore, no further environmental review is required under CEQA Guidelines Section 15162.

DISCUSSION

Village Centers were added to the General Plan Land Use and Transportation Element (LUTE) in 2017 to increase housing, create more walkable neighborhoods, reduce reliance on the automobile, provide a focus for community gathering and retain neighborhood serving retail and service uses. Village Mixed Use areas were envisioned to have a mix of housing types with lower densities near existing single-family homes and higher densities closer to the public streets. The average density is described as “about 18 units per acre.” The floor area ratio of commercial was envisioned as 10% to 25%; a technical correction was made to the General Plan in 2024 to clarify the FAR was to be measured against the entire village center site, not just the land where commercial was being located. A map of the LUTE Village Mixed Use areas is in Attachment 5 and a map of the seven Village Center sites is in Attachment 6.

The City’s implementation programs in the LUTE include amending the zoning code and zoning map to incorporate mixed-use zoning districts on designated parcels within Village Centers, having developers of the designated Village Centers sites prepare a public engagement program followed by a master plan for each of the Village Centers and finally submitting a development proposal for review. The first application associated with a Village Center (for a public engagement program) was received in 2018; the developer later withdrew that aspect of their application and availed themselves of State housing laws that result in eliminating the requirement for a council approved public engagement program (as well as effectively modifying other aspects of the LUTE process for Village Centers). Since that time, five additional development applications have been filed for Village Center sites; three of which have received approval. The General Plan residential densities on all six sites is “approximately 18 units per acre.” The status of the six applications and the amount of existing and proposed commercial FAR is summarized in the follow table.

Village Center #	Location	Commercial FAR		Application Status
		Existing	Proposed	
A Portion of 2	166 E Fremont Av	15.6%	6.7%	Construction nearing completion
A Portion of 2	102 E Fremont Av	35.3%	4.2%	Approved 8/9/2022
All of 1	877 W Fremont Av ¹	28.7%	13.3%	Approved 8/14/2023
A Portion of 3	731 S Wolfe Rd	25.6%	3.7%	SB330 Preliminary Application expired
A Portion of 6	1123 Lawrence Exp ²	25.5%	4.3%	Pending
All Of 5	911-929 E Duane Av ²	27.4%	~2%- ~11% ³	Pending

1. Underlying zoning is Office (O) and approved commercial is Office.
2. Sites that qualify for BMR reduction under staff recommended program.
3. Amount could increase if this program is adopted.

A portion of Village Center 7 (northeast corner of Fair Oaks and Tasman Avenues) was already developed as a mixed-use commercial/residential site when the LUTE was adopted in 2017. The remaining, eastern, parcel is about 6.45 acres and includes about 51,308 s.f. of commercial/retail and 290 housing units at a density of 45 units per acre and a commercial FAR of about 18%. The second (western) parcel in Village Center 7 is a 3.2-acre lot with a 48,000 s.f. one-story building.

Since 2019, numerous State laws have been adopted with the goal to facilitate the development of housing. These laws include provisions for housing developers to utilize waivers and concessions from local zoning requirements for developments with specified amounts of affordable housing; these provisions restrict a city's ability to deny a residential development due to lack of commercial uses on mixed-use designated sites.

On a very high level, the local development requirements such as required commercial space and inclusionary housing units would be factored into what a developer would be willing to pay for land acquisition. However, many property owners can afford to wait to sell their property until they can obtain the desired sales price. In order to stay in business a developer needs to find property to purchase and develop - the higher land prices can cause tension with local development standards.

Due to the decline of brick and mortar retail, the development of commercial square footage can be an economic constraint on the project, especially on smaller sites. Of the three projects approved in

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Village Centers to date, two have used a Density Bonus waiver to reduce the amount of required commercial/retail space (the third site has an underlying zoning of Office and proposed offices which better lend themselves to two-story development). The requirement to provide Below Market Rate (BMR) units is also an economic factor for developers because these units lower the return on investment. To make the project pencil out, developers have an incentive to build the maximum number of units that will fit on the site, of the most profitable housing type (currently townhomes), and eliminate or greatly reduce commercial and retail space.

As planned in the Housing Element (Program H3), staff is exploring higher densities on some of the Village Center sites, particularly in the highest resource areas (also called Opportunity Areas, primarily located south of El Camino Real) and bring that analysis forward for Planning Commission recommendation and City Council consideration later in 2025. A revision to a higher density will result in a different product type that should be able to provide both of these desired land uses. Staff will continue to advocate for more commercial on all Village Center sites.

Staff is proposing an amendment to the Zoning Code (Attachment 2) to incentivize projects on smaller Village Center sites to provide more commercial/retail located in neighborhoods with limited proximity to commercial/retail by reducing or eliminating the BMR requirement (details outlined below). Staff is also proposing to adopt an incentive program by resolution (Attachment 3) that would allow for concessions and waivers of development standards similar to concessions and waivers allowed by the Density Bonus law. If there is other retail nearby, the negative impact to the neighborhood of reduced or eliminated commercial space would be less. Larger sites are thought to have more flexibility in siting commercial uses amongst the residential units. Below are the recommended eligibility requirements to participate in this program, with staff comments. The site would have to meet all of the following:

1. Has a General Plan land use designation of Village Mixed Use;
 - This program is only for Village Mixed Use sites and does not include sites designated for mixed use in area plans such as Downtown, El Camino Real, Lawrence Station and Moffett Park due to the quantity and proximity of commercial only designations in those plan areas.
2. Is not identified in the Housing Element as available for lower income housing;
 - Sites considered available for lower income housing are those with higher densities (over 30 dwelling units per acre and above). Currently the Village Centers as designated in the LUTE require an average of 18 units per acres, however, this provision makes it clear that there is no intention to reduce the affordable housing requirement on sites designated for lower income households.
3. Is not located within 1,700 feet (approximately 1/3 of a mile) walking distance via public street from any property zoned C-1, C-2 or MP-AC (excludes sites associated with the same Village Center) (see Attachment 8 for maps of walking distances);
 - If there are commercial sites within walking distance, neighborhood residents will still have an option for shopping and the BMR units should not be forfeited.
 - Village Centers 1, 5 and 6 meet this requirement. Village Center 1 is south of El Camino Real and may be considered for higher density in the future per Housing Element Program H3 (see eligibility requirement 5, below). Higher densities would potentially qualify the site as planned for lower income housing (see item 2. above).
4. Is located north of El Camino Real;

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- All areas south of El Camino have a highest resource area designation in the Housing Element. It is desirable to retain the provisions of affordable housing in these areas and to implement Housing Element Program H3 to increase the residential densities of these sites. A map of the Opportunity Areas with resource levels from the Housing Element and an updated 2025 map of Opportunity/Resource Areas are provided in Attachment 10.
 - Village Centers 3, 4, 5, 6 and 7 meet this requirement.
5. Is located entirely within a Village Center and that Village Center is no more than 6.0 acres in size.
- Larger sites have more siting options to include retail.
 - Village Centers 5 and 6 meet this size requirement.

Below is a summary of the seven Village Center sites' compliance with the five criteria above. Only Village Centers 5 and 6 would qualify for reduced or waived BMRs in the staff recommended program (see Attachment 7 Details and Maps for Village Center Sites). Together these sites could produce up to about 180 housing units and up to 27 BMR units (affordable to moderate income households if they are for-sale units, consistent with the pending applications). Without the proposed Program to increase the amount of commercial development there are two pending Village Center applications with less than 5% FAR of commercial. The developers are intrigued with the program and are actively exploring exchanging BMRs for commercial development.

Village Center #	VMU	Not HE Lower Income Site	Approximate Distance to Nearest Commercially zoned property (ft.)		Distance >1,700 ft.	North of ECR	Village Center <6 acres
			Closest	Farthest			
1	✓	✓	4,277	6,125	✓		
2	✓	✓	140	950			
3	✓	✓	1,478	2,904	✓	✓	
4	✓	✓	53	1,637		✓	
5	✓	✓	3,168	4,435	✓	✓	✓
6	✓	✓	1,690	3,115	✓	✓	✓
7	✓	✓	1,320	2,112	✓	✓	

If a site meets all five criteria the project would be eligible for a reduction or waiver of the 15 % BMR requirement under the following provisions. Only Village Centers 5 and 6 meet all five criteria of the staff recommended program.

Incentive for Commercial

There are a number of items that affect the cost of development

- Price of land
- Price of materials and labor for design and construction
- Cost of money (interest rates)
- Time to develop (permits, availability of labor/materials)
- Complexity of design

- Developer’s profit
- Local impact fees and development requirements

The City has little influence on many of these factors; however the local development requirements and impact fees are under the City’s control. Staff reviewed the cost of impact fees and the value of BMR units to a developer and evaluated the cost to construct commercial/retail space. It was determined that a fair exchange could be reached by reducing or eliminating the BMR units as an incentive to providing commercial square footage. Based on the feasibility analysis, and discussion with potential participants in the program, it was determined that reduction and elimination of BMR requirements would incentive the provision of additional commercial square footage. Staff recommends the following incentives:

FAR of Commercial / Retail uses	Reduced BMR requirement
Over 5% to 10% FAR	<u>Ownership:</u> 7.5% - affordable to Moderate income <u>Rental:</u> 5.0% - affordable to Low income 2.5% - affordable to Very Low income
Over 10% FAR	No BMR requirement

Waivers and Concessions of Development Standards

The above program would reduce or eliminate the affordable units, making the housing projects ineligible for State Density Bonus law provisions, including waivers and concessions. Staff has prepared a draft resolution (Attachment 3) that enables qualifying projects to utilize the same waivers identified in state density bonus law as if they provided the 15% BMR units as well as one concession per project.

FISCAL IMPACT

The fiscal impact of the recommended action would be minimal. There would be a small fiscal impact to not requiring BMR units on the specific sites as a BMR in-lieu fee is typically collected for partial units and that fee would not be paid if the BMR requirement is waived. Market rate units have a slightly higher assessed value and therefore slightly higher property tax revenue. If fewer housing units are built to accommodate the commercial square footage there could be a decrease in potential future property taxes collected. Retail sales tax from participating sites could be slightly higher than it would be from currently pending applications; however, there would still be an overall reduction in commercial square footage from the existing conditions and corresponding reduction in potential retail sales tax.

PUBLIC CONTACT

2320 notices were mailed property owners and current tenants within 300 feet of the Village Centers. 34 Developers, neighborhood associations and other interested parties were notified by email. Staff has received questions on the item from three people. In addition, the notice of the Public Hearings was published in the *Sun* newspaper.

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Public contact was made by posting the agenda on the City's official-notice bulletin board at City Hall. In addition, the agenda and report are available at the City Hall reception desk on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours) and on the City's website.

ALTERNATIVES

Recommend to City Council:

1. Introduce an ordinance to amend Chapter 19.67 (Inclusionary Below Market Rate Ownership Housing Program) and Chapter 19.77 (Inclusionary Below Market Rate rental housing) of Title 19 (Zoning) of the Sunnyvale Municipal Code relating to modified requirements for qualifying retail preservation projects in Attachment 2, Adopt a Resolution (Attachment 3), and find that the ordinance and Resolution are consistent with the certified Land Use and Transportation Element (LUTE) EIR and no further environmental review is required under CEQA Guidelines 15162.
2. Alternative 1 with modifications.
3. Do not introduce an ordinance or adopt the resolution and provide direction to staff.

STAFF RECOMMENDATION

Recommend to City Council, Alternative 1: Introduce an ordinance to amend Chapter 19.67 (Inclusionary Below Market Rate Ownership Housing Program) and Chapter 19.77 (Inclusionary Below Market Rate rental housing) of Title 19 (Zoning) of the Sunnyvale Municipal Code relating to modified requirements for qualifying retail preservation projects in Attachment 2, Adopt a Resolution (Attachment 3) and find that the ordinance and Resolution are consistent with the certified Land Use and Transportation Element (LUTE) EIR and no further environmental review is required under CEQA Guidelines 15162

The inclusion of deed restricted affordable housing is an important component of the City's programs for assuring availability of housing with a range of affordability. However, the availability of conveniently located shopping is also important for the convenience of residents and to reduce vehicle miles traveled. The City's General Plan includes a number of economic development and environmental justice objectives and policies that promote a variety of commercial environments and job opportunities while also ensuring that residents have access to fresh, healthy food in various retail environments, especially in low resource areas. On balance staff finds that this program would benefit neighborhoods by incentivizing the provision of retail space on Village Center sites and result in a limited loss of affordable units due to limited eligibility requirements of the ordinance.

LEVINE ACT

The Levine Act (Gov. Code Section 84308) prohibits city officials from participating in certain decisions regarding licenses, permits, and other entitlements for use if the official has received a campaign contribution of more than \$500 from a party, participant, or agent of a party or participant in the previous 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

An "X" in the checklist below indicates that the action being considered falls under a Levine Act category or exemption:

SUBJECT TO THE LEVINE ACT

Land development entitlements*

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Other permit, license, or entitlement for use

Contract or franchise

*Legislation with narrow scope affecting small number of specific sites

EXEMPT FROM THE LEVINE ACT

Competitively bid contract*

Labor or personal employment contract

Contract under \$50,000 or non-fiscal

Contract between public agencies

General policy and legislative actions

Prepared by: Trudi Ryan, Director of Community Development

Reviewed by: Connie Verceles, Deputy City Manager

Approved by: Tim Kirby, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Ordinance
3. Draft Resolution
4. References to Village Mixed Use and Village Centers in the LUTE
5. Map - General Plan Chapter 3 LUTE Mixed Use Areas
6. Map of all Village Centers (from Draft Village Center Master Plan)
7. Details and Maps of Village Center Sites
8. Maps with Zoning and Walking Distance to Commercial from Village Centers
9. Links to General Plan and Environmental Documents
10. Maps of Resource/Opportunity Areas