



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO PLANNING COMMISSION

SUBJECT

Forward a Recommendation to the City Council to Introduce an Ordinance Amending Chapters 19.20 (Commercial Zoning Districts), 19.22 (Industrial Zoning Districts), and 19.24 (Office and Public Facilities Zoning Districts) and Adopt a Resolution to Amend the Land Use and Transportation Element of the General Plan to Clarify the Allowance of Residential Uses in Non-Residential Zoning Districts and Find that the Action is Exempt from the California Environmental Quality Act

BACKGROUND

The Sunnyvale Municipal Code currently allows the consideration of residential uses in the C-1 (Neighborhood Business), C-3 (Regional Business), M-S (Industrial and Service), M-S/POA (Industrial and Service/Place of Assembly), M-3 (General Industrial), and P-F (Public Facilities) zoning districts through the request of a Use Permit. Residential uses are rarely approved in these districts without rezoning the parcel(s) to a residential designation, except in conjunction with the primary use (such as a caretaker's unit on a site with a religious use or a self-storage facility).

The purpose of the proposed amendments is to preserve the City's ability to regulate residential development in the specified commercial, industrial, and public facilities zoning districts. California Senate Bill 330 (Attachment 4), which was signed on October 9, 2019, and goes into effect on January 1, 2020, prohibits local jurisdictions from "downzoning" or denying applications for residential development on parcels where residential uses were allowed by the existing zoning or General Plan designations. While it is unclear if SB 330 would apply to non-residential zoning districts that only allow residential uses with a Use Permit, the wording of the law is concerning. Therefore, staff believes it is prudent for Sunnyvale to make reasonable changes that clarify intent and past practice ahead of the January 1, 2020 deadline for the non-residential zoning districts. In this case, the allowance of residential uses in the above-mentioned non-residentially zoned property with a use permit may be interpreted as an allowed use, which could create a condition where the City could not deny that request.

Staff recommends amending the above-mentioned permitted use tables and associated descriptions in the Land Use and Transportation Element (LUTE) to clarify that a caretaker's unit (a residential use ancillary to a primary use) is the only type of residential use the City will consider in these zoning districts without a formal request for a General Plan Initiation (GPI), or in the case of some C-1 properties, a rezoning to C-2 (Highway Business) designation (where limited residential uses are allowed).

These changes will not impact the City's Housing Element or reduce the sites identified for residential development in the City's housing inventory.

The City Council is scheduled to consider this item on November 5, 2019.

EXISTING POLICY

Sunnyvale General Plan, Chapter 3: Land Use and Transportation

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-11.3: Promote business opportunities and business retention in Sunnyvale.
- Policy LT-12.7: Maintain an adequate supply of land zoned for office, industrial, and retail development to meet projected needs.

GOAL LT-7 DIVERSE HOUSING OPPORTUNITIES - Ensure the availability of ownership and rental housing options with a variety of dwelling types, sizes, and densities that contribute positively to the surrounding area and the health of the community.

- Policy LT-7.4: Promote new mixed-use development and allow higher-residential density zoning districts (medium and higher) primarily in Village Centers, El Camino Real nodes, and future industrial-to-residential areas.

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.

GOAL LT-12 A BALANCED ECONOMIC BASE - Develop a balanced economic base that can resist downturns of any one industry and provides revenue for City services.

- Policy LT-12.5: Encourage land uses that generate revenue while preserving a balance with other community needs, such as housing.
- Policy LT-12.7: Maintain an adequate supply of land zoned for office, industrial, and retail development to meet projected needs.
- Policy LT-12.8: Provide quality neighborhood, community, and regional retail centers/uses to meet the needs of residents.

GOAL LT-13 PROTECTED, MAINTAINED, AND ENHANCED COMMERCIAL AREAS, SHOPPING CENTERS, AND BUSINESS DISTRICTS - Achieve attractive commercial centers and business districts and buildings that are maintained and allow a full spectrum of businesses that operate unencumbered.

- Policy LT-13.1: Identify valuable physical characteristics and business aspects, and protect the uniqueness and integrity of all business areas and districts.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed amendments to the LUTE and Municipal Code are intended to clarify that residential development projects are not permitted by right in these non-residential zoning districts. The amendments will not authorize any development activity that could have an environment impact.

DISCUSSION

The City's land use pattern was established to ensure a healthy mix of uses, compatible development pattern, protection of use types, and the creation of neighborhoods. For example, it was not intended for residential uses to be incorporated in industrial areas due to potential compatibility issues; the intent was to maintain an area for industrial uses to operate away from more sensitive uses, such as residential.

Large portions of the City are zoned for residential and with more limited areas zoned for non-residential uses to maximize the residential opportunities and provide a reasonable amount of non-residential uses. For instance, the amount of land with the C-1 designation is very small in comparison to those areas zoned residential. Given that comparison, it is important to maintain those fewer neighborhood commercial areas to provide the mix of uses and convenient locations desirable for a healthy city.

In the past, the City could use the Use Permit application process to evaluate residential uses and surrounding compatibility to determine whether a project should be approved or denied. The Zoning Code allowance of a residential use with a Use Permit was a discretionary act, one where the permit could be denied if determined it was an inappropriate use for the area. Recent amendments to the California Government Code associated with SB 330 now create confusion on whether a jurisdiction could use the Use Permit process to evaluate, and ultimately deny, a housing project in the City. The concern is that SB 330 would determine that a residential use with a Use Permit is a permitted use, one that could not be rejected.

The new language associated with SB 330 goes into effect on January 1, 2020, and although the State has said it will release a technical document on the bill's language before January 1, 2020, it will not be released in enough time for the City to pass an ordinance that would go into effect prior to the deadline. Therefore, the following action is recommended to maintain land use authority for these types of situations:

- Amend the permitted use tables in the Neighborhood Business (C-1), Regional Business (C-3), Industrial and Service (M-S), Industrial and Service/Place of Assembly (M-S/POA), General Industrial (M-3), and Public Facilities (P-F) zoning districts (Attachment 3) to limit residential uses to a caretaker's unit, ancillary to the primary use.

The zoning code modifications (draft ordinance in Attachment 3) also requires amendments to the Land Use and Transportation Element of the General Plan to clarify the intent and create consistency between the zoning code and the General Plan (draft resolution in Attachment 2).

These modifications would prohibit a property owner from applying to develop a non-residentially zoned property to residential; residential development would only be allowed through the General Plan Amendment process (or through a rezoning on commercially zoned sites where the General Plan map shows the opportunity for a Village Center). This clarifying language is appropriate since the land use pattern expected in each district would be respected and only changed if City Council determines the change is compatible and warranted.

Commercial Zoning Districts

The proposed permitted use table amendments discussed in this report for commercial zoning districts only apply to properties that are zoned C-1 and C-3. C-2 (Highway Business) zoned properties, mainly those along El Camino Real, will continue to allow residential uses through the Use Permit process, but will likely be modified or updated with the future adoption of the El Camino Real Corridor Specific Plan in mid-2020. C-3 (Regional Business) currently has no properties with this zoning designation; however, since it is still mentioned in the Sunnyvale Municipal Code staff is modifying the allowance to match that of C-4, which already only allows caretaker's units, and as proposed for C-1. In addition, staff is also recommending modifying the LUTE to provide consistency.

The LUTE specifies most of the larger C-1 zoned properties as potential Village Centers, which will likely contain residential uses in the future. However, before these properties can support residential uses a specific or area plan must be processed for the individual areas, or properties, and a rezoning to a mixed-use designation must occur. Therefore, the modifications proposed today do not hinder an applicant from proceeding with that process, which is already consistent with the language in the LUTE.

Industrial Zoning Districts

Industrial areas are permitted to contain uses that are not compatible with sensitive receptors such as residential and school uses, such as those that use hazardous materials in their day to day operations. However, the City has allowed a caretaker's unit on a few properties zoned M-S/POA, most commonly in conjunction with a religious use. Allowing non-caretaker residential development projects in industrial zoning districts (M-S, M-S/POA, or M-3) would be better analyzed through the GPI process or as part of an area plan. This modification also requires staff to make minor modifications to the LUTE to ensure the two documents are consistent.

Public Facilities Zoning District

The purpose of the public facilities zoning district is for the use and occupancy of governmental, public utility, educational buildings and facilities, and other uses compatible with the public character. Staff has received applications for residential uses (none approved) on P-F zoned properties in recent history, but those were submitted through the GPI process and not through a Use Permit request. Therefore, modifying the P-F permitted use table to only allow for a caretaker's unit, but still allowing applicants to request a General Plan Amendment (GPA) through the GPI process is consistent with current practices.

Current City Efforts for Residential

Staff understands the importance of balancing an increase in the housing supply in the City and the need to preserve service commercial and industrial zoning for uses where that is the only location in the City they can locate. The City has taken several steps to increase the number of housing units in the City. The following are current and recent efforts to increase the housing supply in the City:

- The 2017 LUTE planned for growth of **12,800** housing units throughout the City.
 - There are currently over **5,000** net new housing units in the development pipeline (inclusive of applications with pending Planning approval, projects which recently were approved, applications in building permit plan check and projects under construction);
- Several area plans located at significant transit locations are under review; updates to these plans could further increase the number of residential units in the City, especially at transit-rich locations. The maximum number of units being considered for addition to the plans (above the currently adopted 12,800 in the General Plan and Specific Plans) include:

- **Downtown Specific Plan** update: **750** additional units;
- Lawrence Station Area Plan update: 2,323 units allowed in adopted Plan and LUTE, plus an additional **3,607** being studied for a total of 5,930;
- **El Camino Real Specific Plan** update: The 2017 LUTE would allow an additional 4,200 housing units over existing along El Camino Real; the “Residential Plus” alternative will consider a potential of an additional **2,700** residential units along this transit corridor;
- **Moffett Park Specific Plan** update: will consider adding residential units to the plan area.

FISCAL IMPACT

The modifications to the Sunnyvale Municipal Code as described in this report will have no fiscal impact on the City.

PUBLIC CONTACT

Public contact regarding this item was made through posting the agenda for the Planning Commission on the City’s official notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City’s website and with publication in the *Sun* newspaper, at least 10 days prior to the hearing.

ALTERNATIVES

Forward a Recommendation to the City Council to:

1. Introduce an Ordinance Amending Chapters 19.20 (Commercial Zoning Districts), 19.22 (Industrial Zoning Districts), and 19.24 (Office and Public Facilities Zoning Districts) (Attachment 3 to this report) and Adopt a Resolution to Amend the Land Use and Transportation Element of the General Plan to Clarify the Allowance of Residential Uses in Non-Residential Zoning Districts (Attachment 2 to this report) and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
2. Introduce an Ordinance and/or Amend the Land Use and Transportation Element of the General Plan with modifications and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
3. Take no action and do not amend the Sunnyvale Municipal Code or the Land Use and Transportation Element of the General Plan.

RECOMMENDATION

Recommend to City Council, Alternative 1: Introduce an Ordinance Amending Chapters 19.20 (Commercial Zoning Districts), 19.22 (Industrial Zoning Districts), and 19.24 (Office and Public Facilities Zoning Districts) (Attachment 3 to the report) and Adopt a Resolution to Amend the Land Use and Transportation Element of the General Plan to Clarify the Allowance of Residential Uses in Non-Residential Zoning Districts (Attachment 2 to the report) and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

The housing crisis was mentioned as the impetus for the numerous recent State housing bills. The bills state that cities are not providing sufficient opportunity for housing. Unfortunately, many cities do not provide their fair share of residential opportunities. The City of Sunnyvale is clearly not one of those cities. As described above, the City is pursuing several approaches to increasing the housing number, most focused on transit locations. Given the very aggressive, yet balanced approach Sunnyvale is taking in providing more opportunities for housing, it is important to ensure each resident has opportunities to access retail, employment, worship and community gathering, and all types of commercial businesses in the City. One method of ensuring this is to protect the limited areas zoned for those uses is to clarify the zoning code for what is allowed in those areas.

The City will be better protected from the potential for residential development being established near incompatible uses or removing conveniently located retail/commercial and public facilities sites. Residential uses can still be considered by looking at the larger land use perspective through a General Plan Amendment or rezoning. The current Use Permit process may not allow the City to deny a project in some of the non-residential zoning districts. The modifications to the Sunnyvale Municipal Code also clarifies existing practices, and allowances for caretaker's units in non-residential zoning districts. Furthermore, the changes to the LUTE create consistency between the two documents and leave no loophole for a housing developer to propose a residential use in an area that may not be suitable for that use.

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Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Resolution to Amend the Land Use and Transportation Element of the Sunnyvale General Plan
3. Draft Ordinance
4. Link to SB 330