

SUPPLEMENTAL

Council Agenda: 01/08/08

Item: 4.2(a)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel, Director

SUBJECT: SEE BELOW

DATE: December 21, 2007

Approved

Paul Kruth

Date

12/21/07

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUPPLEMENTAL MEMO

SUBJECT: GP07-T-07. GENERAL PLAN TEXT AMENDMENT TO ALLOW SOLAR PANELS AND OTHER STRUCTURES, WHERE HEIGHT IS AN INTRINSIC PART OF THE STRUCTURE'S FUNCTION, TO HAVE A MAXIMUM ALLOWABLE HEIGHT NOT TO EXCEED 100 FEET OR THE MAXIMUM ALLOWABLE BUILDING HEIGHT IN THE SAN JOSÉ 2020 GENERAL PLAN, WHICHEVER IS GREATER.

REASON FOR SUPPLEMENTAL

This supplemental memo is to: 1) provide the City Council with additional information; 2) suggest alternatives for Council consideration of the proposed General Plan text amendment, GP07-T-07, to address the concerns of the Santa Clara County Airport Land Use Commission (ALUC) (Attachment 1); and 3) to recommend "approval of all General Plan amendment actions." This supplemental memo also transmits a letter from ALUC staff, dated December 19, 2007 (Attachment 2) and suggests language recommended by Planning staff for Council consideration to address comments by ALUC staff (Attachment 2).

RECOMMENDATION

Approve GP07-T-07, General Plan text amendment, as recommended by Planning staff (see Attachment 1).

OUTCOME

By considering the proposed General Plan text amendment on January 8, 2008, the City Council will address the 60-day response period requirement for referrals to the ALUC. If approved, the proposed General Plan text amendment will allow solar panels and other structures, where height is an intrinsic part of the structure's function, to have a maximum allowable height not to exceed 100 feet or the maximum allowable building height in the *San José 2020 General Plan*, whichever is greater.

BACKGROUND

All proposed General Plan amendments are required to be referred to the ALUC for review and comment. After referral, ALUC has 60 days from the date the City referred the item to ALUC to advise the City if the proposal is not consistent with the ALUC land use plan. The ALUC typically meets for a regularly scheduled meeting every two months.

On November 5, 2007, the ALUC received the subject General Plan text amendment request, GP07-T-07, that Planning staff had referred to the ALUC by certified mail. On December 7, 2007, ALUC staff notified Planning staff that the item did not make the ALUC November 28, 2007 agenda. On December 14, 2007, ALUC staff sent a letter via e-mail to Planning staff requesting an extension of the response period beyond the required 60 days in order to take action on the item, GP07-T-07, at the next regularly scheduled ALUC meeting on January 23, 2007. The 60-day required review period for the ALUC mandatory referral of GP07-T-07 ends on January 4, 2008.

On December 18, 2007 the City Council voted to continue the item to the City Council hearing on January 8, 2008. On December 20, 2007 Planning staff received a letter from ALUC staff dated December 19, 2007 (Attachment 2) requesting that Council continue the item from January 8, 2008 to the first Council meeting in February 2008 to allow more time for the ALUC to schedule the item for the next regularly scheduled ALUC meeting on January 23, 2008. In the letter, ALUC staff stated that the ALUC cannot obtain a quorum to hold a Special Meeting prior to the City Council meeting on January 8, 2008. In addition, ALUC staff stated that if an extension cannot be granted, the following are ALUC staff comments for consideration by the City Council:

Objects that penetrate the FAA Part 77 surfaces are, by definition, inconsistent with the ALUC's Comprehensive Land Use Plan. Therefore, to the extent this policy would allow objects to penetrate those surfaces, the proposed General Plan amendment is inconsistent with the CLUP.

ANALYSIS

The ALUC staff request for an extension of time beyond January 23, 2008 — and preferably to February 2008 — for response to the referral will add at least another 25 days to the required 60-day response period, assuming a Council hearing on January 29, 2008. Planning staff proposes instead to maintain the 60-day response period and augment the proposed text to clarify the ALUC and Federal Aviation Agency (FAA) requirements for future proposed structures.

Specifically, Planning staff now suggests that after the text that reads, "The maximum height of the structures as measured from the ground level to the top of the structures may not exceed 100 feet or the maximum allowable building height in the General Plan, whichever is greater." that the following text be added:

Proposed structures that require review by the FAA under Title 14 of the Code of Federal Regulations, Part 77, will need to obtain a "no hazard" determination from the Federal Aviation Administration prior to City consideration. Proposed structures also need to comply with height restrictions set forth in any recorded aviation easements that the City may hold over the property as well as comply with any other applicable local, State, and Federal requirements including any requirements for referral to the Santa Clara County Airport Land Use Commission for determination prior to City consideration.

EVALUATION AND FOLLOW-UP

If Council considers GP07-T-07 on January 8, 2008 then Council may take action on that date to approve or deny the proposed text amendment, and adopt a final resolution for all the General Plan amendments considered on December 18, 2007 through January 8, 2008.

The ALUC has the opportunity to review and provide responses to future proposed zoning changes that are within the ALUC referral area and can consider height issues as a part of that review.

POLICY ALTERNATIVES

Alternative No. 1: Grant an extension of time per the ALUC request and defer the final adoption of General Plan amendments by City Council to January 29, 2008 or a later date.

Pros: This alternative addresses the ALUC request.

Cons: This alternative will delay by at least an additional 21 days the processing of all General Plan amendments proposed for consideration during the Fall 2007 General Plan hearings.

Reason for not recommending: This alternative will unnecessarily delay the processing of all General Plan amendments proposed for consideration during the Fall 2007 General Plan hearings.

Alternative No. 2: Defer the proposed text amendment to the next General Plan amendment hearing cycle.

Pros: This alternative addresses the ALUC request.

Cons: This alternative will delay by an undetermined time City Council consideration of the proposed text amendment.

Reason for not recommending: This alternative may delay consideration of proposed structures that could be eligible for additional height if the proposed text amendment is approved in January 2008.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, a notice of public hearings for the proposed General Plan text amendment was published in the San José Post-Record and posted on the Planning Division's webpage. Correspondence with the ALUC regarding the referral has been ongoing since receipt of the referral by the ALUC on November 5, 2007. This correspondence has included phone calls, emails supplemented with informational attachments, and letters by mail.

COORDINATION

Staff has coordinated with the City Attorney's Office regarding the content of the proposed text amendment and ALUC required referral timelines.

HONORABLE MAYOR AND CITY COUNCIL

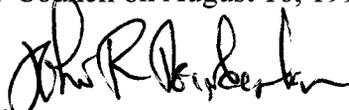
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CEQA

The proposed text amendment is covered by Reuse of the San José 2020 General Plan Final Environmental Impact Report, certified by the City Council on August 16, 1994, Resolution No. 65459.


FOR JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jenny Nusbaum at 408-535-7872.

Attachments: Attachment 1, GP07-T-07 Proposed text, dated December 20, 2007
Attachment 2, Letter from ALUC dated December 19, 2007

ATTACHMENT 1

Proposed General Plan Text Amendment revised December 20, 2007

GP07-T-07

Description: Amend the General Plan, Chapter IV. Goals and Policies, Community Development, Urban Design Policy No. 11, page 75

Chapter IV. Goals and Policies
Community Development
Urban Design Policy No. 11, page 75

Urban Design Policy No. 11, page 75

11. For structures, other than buildings, and including structures on top of buildings, such as solar panels, other energy-saving devices, roof landscaping, steeples, bell towers, wireless communication antennae, and associated structures, where substantial height is intrinsic to the function of the structures and where such structures are located to avoid significant adverse effects on adjacent properties, and where such structures are not to accommodate human occupancy and are in conformance with the City of San José Zoning Ordinance and compatible with the surrounding neighborhood, height limits may be established in the context of project review; however, the maximum height of the structures as measured from the ground level to the top of the structures may not exceed 100 feet or the maximum allowable building height in the General Plan, whichever is greater. Proposed structures that require review by the FAA under Title 14 of the Code of Federal Regulations, Part 77, will need to obtain a “no hazard” determination from the Federal Aviation Administration prior to City consideration. Proposed structures also need to comply with height restrictions set forth in any recorded aviation easements that the City may hold over the property as well as comply with any other applicable local, State, and Federal requirements including any requirements for referral to the Santa Clara County Airport Land Use Commission for determination prior to City consideration.

For communication structures (such as towers, antennae, and monopoles, but not buildings) located outside the Downtown Core Area and regulated by the Public Utilities Commission, maximum height may be 100 feet on sites with non-residential or non-urban land use designations, and 160 feet on sites with an existing PG&E substation or high tension line corridor exceeding 200 KV, if all the following criteria are met:

- The site and structure are located to minimize public visibility.
- The project provides visual amenities, such as landscaping, to offset the potential visual impacts associated with the project.
- There is adequate evidence that technical necessity requires greater height and, in the case of cellular facilities, the increase height will result in a reduction in the number of future freestanding monopoles.

ALUC

SANTA CLARA COUNTY
AIRPORT LAND USE
COMMISSION

Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA
95110
(408) 299-5786 FAX (408) 288-9198

ATTACHMENT 2

December 19, 2007

To: Jenny Nusbaum, Senior Planner
City of San José Planning Division
200 East Santa Clara Street
San José, CA 95113-1905

Re: Proposed General Plan text amendment to allow solar panels and other structures to have a maximum allowable height not to exceed 100 feet, or the maximum allowable height in the General Plan, whichever is greater. (City of San Jose File Number GP07-T-07).

Dear Ms. Nusbaum:

Thank you, for requesting that the San Jose City Council continue the above-referenced project to allow more time for the ALUC to review the proposed project. I understand that the General Plan Amendment has been continued to the January 8, 2008 City Council meeting. However, due to the holiday season, the ALUC cannot obtain a quorum to hold a Special Meeting prior to that City Council meeting.

Therefore, the ALUC hereby requests continuance of the item to the first meeting in February 2008, to allow time to schedule the item for the next regularly scheduled ALUC meeting on January 23, 2008. If this extension cannot be granted, the following are staff comments for consideration by the City Council:

Objects that penetrate the FAA Part 77 surfaces are, by definition, inconsistent with the ALUC's Comprehensive Land Use Plan. Therefore, to the extent this policy would allow objects to penetrate those surfaces, the proposed General Plan amendment is inconsistent with the CLUP.

Should you have any questions, please feel free to contact me at 408-299-5786.

Respectfully,

Mark J. Connolly
ALUC Staff Coordinator
Cc; City of San Jose City Council
Rachel Roberts
Michael Lopez; Santa County Clara Planning Manager; ALUC