



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Joseph Horwedel

**SUBJECT: DENIAL OF PROPOSED
GENERAL PLAN AMENDMENTS**

DATE: April 27, 2006

Approved

Deanna Pafu

Date

4/27/06

Council District: Citywide
SNI: All

INFORMATION

RECOMMENDATION

This is an information memo only. This issue is enabled by State law and does not require Council action.

BACKGROUND

This Information Memorandum explains a process that is available to the Administration for the processing and consideration of early denials of proposed General Plan amendments.

The City receives applications for numerous General Plan amendments each year. The General Plan Amendment process is a lengthy and costly one for many applicants due, in large part, to the need for Environmental Impact Reports and specialized consultant studies to address the significant policy and environmental issues raised by these proposed amendments.

In instances in which the City Departments and the Redevelopment Agency find that proposed land use amendments to the San Jose 2020 General Plan are inconsistent with adopted Council policies, the Administration may bring those amendments to the City Council for consideration of a denial recommendation at the first available General Plan hearing. This approach provides an opportunity at the earliest point in the process for the City Council to consider identified policy issues and to determine whether the applications should be denied based upon those inconsistencies or directed for complete processing, including environmental review. A Council decision to direct staff to complete processing for later consideration during a General Plan Amendment public hearing would in no way indicate how the Council might ultimately vote upon that amendment during that hearing – such a decision would indicate only that the Council is not opposed to considering such a proposal at such later date.

This early consideration process is enabled by state law and requires no Council action to implement it in San Jose. While this is used infrequently in San Jose, the Administration would like

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Denial of Proposed General Plan Amendments

April 27, 2006

Page 2

to remind the Council and the public of its availability. This approach was last used to deny the land use applications associated with the Metcalf Energy Center.

Such Council direction early in the processing of such amendments may save applicants and the City significant time and money in the continued processing of such proposals, as well as provide clarity for future applicants on the types of land use conversions that would generally not be supported by the Administration and/or Council.

ANALYSIS

The information below provides more detail on this approach, which as noted above, is readily available to the Administration as a tool for early General Plan amendment denials.

Procedure

The applications considered for this process would need to meet both of the following criteria:

- A. Identified by the Administration as substantially inconsistent with adopted Council policies; and
- B. Identified by the Director of Planning to require extensive environmental review, including but not limited to an Environmental Impact Report.

The key steps of the process are:

1. Upon submittal, the Administration evaluates the proposed General Plan amendment application to determine its overall consistency with adopted Council policies, including but not limited to, the General Plan, Economic Development Strategy, and other major policy documents.
2. In instances in which all facets of the Administration universally find that the proposal is substantially inconsistent with adopted Council policies, Planning staff notifies the applicant of this determination and its intent to recommend the application for denial at the first available General Plan hearing before the Planning Commission and City Council, respectively. These hearings occur prior to the completion of environmental review documents and other amendment processing activities (including community outreach), such that the only possible Council actions on these applications would be to deny an application or direct the Administration to continue to process the application and bring it back to Council for future consideration as part of a General Plan hearing.
3. Staff provides the applicant with the information that formed the basis for the determination of inconsistency with adopted City policies.
4. During the period prior to the hearing, Planning staff continues with processing activities for each application in the event that the Council decides that it desires the amendment to be considered during a General Plan Amendment public hearing, subsequent to the completion of required environmental review.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Denial of Proposed General Plan Amendments

April 27, 2006

Page 3

5. Planning staff notices the public hearings, and provide a written report to the Planning Commission and City Council documenting the reasons for the recommendation of denial. As with all staff reports, the report is posted on the City's website and distributed to the applicant and other interested parties prior to the noticed hearings.
6. The Planning Commission conducts a public hearing on the proposed denial. The Commission has the option of recommending to the City Council either denial of the amendment, or continuation of processing and the completion of environmental review for consideration of the Amendment at a later General Plan hearing.
7. The City Council conducts a public hearing, and considers the testimony of the applicant and the public, as well as the recommendations of both the staff and Planning Commission.
8. The Council has two options when such a denial is before them:
 - a. Deny the amendment and terminate the processing of the application, or
 - b. Direct staff to continue processing the proposals for consideration during a General Plan Amendment hearing, and consider the merits of the proposed land use amendment after the completion of the environmental documentation and other processing activities (months later).

Current Applications

Planning staff is following the above process for two pending applications and has explained to the currently affected applicants the process by which these applications will be heard by the Planning Commission and Council. Staff recognizes the applicants' concerns about the rapid speed with which their applications are being presented to the Council. However, as noted above, this approach provides an opportunity at the earliest point in the process for the City Council to consider identified policy issues and to determine whether the applications should be denied based upon those inconsistencies or directed for complete processing, including environmental review.

Staff is continuing to process the affected amendments in the event that the Council decides that they would like one or both of the amendments to be available for consideration during a General Plan Amendment public hearing, after the completion of required environmental review. Again, a Council decision to direct staff to process one or both of these amendments for consideration during a General Plan Amendment public hearing would in no way indicate how the Council might ultimately vote upon that amendment during that hearing – such a decision would indicate only that the Council is not opposed to considering such a proposal at such later date.

Council direction early in the processing of such amendments could potentially save applicants time and money in the continued processing of such proposals as well as provide clarity to other potential applicants in the future on the types of land use changes that would generally not be supported by the Council.

PUBLIC OUTREACH

The procedure described herein has been discussed with the currently affected applicants. In addition, Planning staff discussed the procedure with the Developers' RoundTable. The participants suggested (1) clear criteria for determining which applications would go through the early consideration/denial process; (2) early communication with applicants in terms of staff's intentions to pursue an early review of the application by Planning Commission and City Council; and (3) schedule these amendments at the earliest Council hearing. The first two comments have been incorporated in the process described in this memorandum. As to the third comment, the Administration agrees that applications processed through the early review process should be scheduled for Council consideration at the earliest opportunity; however, state law sets forth that the General Plan cannot be amended more than four times per year. Therefore, the early consideration process should be scheduled for the very next General Plan hearing before the Planning Commission and City Council.

General Plan amendments typically involve at least one community meeting as well as notification per the Council's Public Outreach Policy.

COST IMPLICATIONS

If the Council denies an application as described in this memorandum, the applicant will be refunded the appropriate portion of their processing fees.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office. The approach has been discussed with the Redevelopment Agency, Office of Economic Development, and Department of Housing.


JOSEPH HORWEDEL, Acting Director
Planning, Building and Code Enforcement

(408) 535-7800