

Council Agenda: 12/18/07  
Item: 10.1(c)  
&10.7



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joe Horwedel, Director

**SUBJECT:** SEE BELOW

**DATE:** December 18, 2007

Approved

Date

12/18/07

**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) request a continuance of the General Plan hearing including item 10.1.c., GP07-T-07; 3) defer item 10.7, "Approval of all General Plan amendment actions" to the afternoon of January 8, 2008; and 4) to suggest alternatives for Council consideration of the proposed General Plan text amendment, GP07-T-07 to address the 60-day response period requirement for referrals to the Santa Clara County Airport Land Use Commission (ALUC). This supplemental memo also transmits a letter from ALUC staff, dated December 14, 2007 and suggests language recommended by Planning staff for Council consideration to address concerns raised by ALUC staff.

## **RECOMMENDATION**

Continue the discussion of item 10.1.c. (GP07-T-07) and defer item 10.7 to January 8, 2008 for final adoption of a resolution for all General Plan amendments tentatively considered from December 18, 2007 to January 8, 2008.

## **OUTCOME**

By continuing item 10.1.c for consideration to January 8, 2008, the City Council will address the 60-day response period requirement for referrals to the ALUC. By deferring item 10.7 for consideration to January 8, 2008 all General Plan amendments tentatively approved on December 18, 2007 will be considered for final approval by a resolution on January 8, 2008.

## **BACKGROUND**

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 mail. On November 13, 2007 Planning staff provided e-mail responses to ALUC staff to address the questions that ALUC staff had raised in phone conversations with Planning staff. On November 13, 2007 ALUC staff informed City Planning staff that the proposed General Plan text amendment would be heard at the ALUC meeting scheduled for November 28, 2007. 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 at the next regularly scheduled ALUC meeting on January 23, 2007. The 60-day required review period for ALUC mandatory referrals will end on January 4, 2008.

## **ANALYSIS**

The ALUC staff request for an extension of time for response to the referral will add another 19 days to the required 60-day requirement. Planning staff proposes instead to maintain the 60-day response period and augment the proposed text with text that clarifies the ALUC and Federal Aviation Agency (FAA) requirements for future proposed structures.

Planning staff has corresponded with ALUC staff by telephone and e-mail several times since the City's initial referral to the ALUC to explain the subject General Plan text amendment request and address any questions or issues that the ALUC might have regarding the subject amendment. In response to ALUC staff concerns that future structures greater than 50 feet and up to 100 feet in height proposed in the City of San Jose may create issues that the Federal Aviation Agency (FAA) or ALUC may wish to review and comment upon, Planning staff has proposed an addition to the proposed text originally recommended by Planning staff and the Planning Commission. Specifically, Planning staff 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:

If the structure is within an FAA or ALUC referral area, the structure must first obtain any applicable FAA determination, under Title 14 of the Code of Federal Regulations, part 77 and ALUC determination as may be required prior to City consideration.

### **EVALUATION AND FOLLOW-UP**

If Council continues item 10.1.c. and defers item 10.7 to January 8, 2008, then Council would take action on that date to approve or deny the proposed text amendment, and would adopt a final resolution for all the General Plan amendments considered on December 18, 2007 through January 8, 2008.

### **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.

**Pros:** This alternative addresses the ALUC request.

**Cons:** This alternative will delay by 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 delay by an additional 21 days 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)**

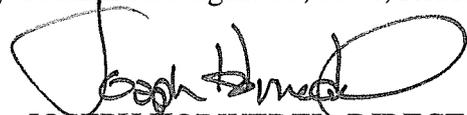
Although this item does not meet any of the above criteria, a notice of public hearings for the proposed General Plan text amendment was published in the San José Post-Record and posted on the Planning Division's webpage. Correspondence with the ALUC regarding the referral has been ongoing since receipt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

### **COORDINATION**

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

### **CEQA**

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



JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Jenny Nusbaum at 408-535-78472.

Attachments:  
Proposed General Plan text  
Correspondence from ALUC dated December 14, 2007

# Proposed General Plan Text Amendment

## GP07-T-07

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

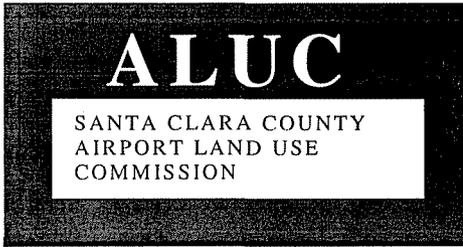
### **Chapter IV. Goals and Policies Community Development Urban Design Policy No. 11, page 75**

#### **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. If the structure is within an FAA or ALUC referral area, the structure must first obtain any applicable FAA determination, under Title 14 of the Code of Federal Regulations, part 77 and ALUC determination as may be required 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.



## Airport Land Use Commission

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

December 14, 2007

To: City of San Jose City Council

**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)**

Honorable Mayor and City Council Members:

Thank you, for the referral of the above-referenced project. The referral was received in the County Planning Office on November 5, 2007. County Staff then requested additional information on the proposal. On November 13, 2007, the referral was complete for ALUC scheduling purposes. However, the item could not be scheduled for the November 28, 2007 ALUC meeting. Also, the ALUC does not meet in December.

Pursuant to State Law, General Plan Amendments are required referrals to the ALUC. The ALUC is required to take action on referred projects within 60 days of the referral date. Staff understands that the item is scheduled for the December 18, 2007 City Council meeting, which would be prior to the end of the required 60-day review period, (January 4, 2008).

Therefore, the ALUC hereby requests continuance of the item 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 ALUC will consider holding a Special Meeting in early January to meet the required 60-day review period.

Respectfully,

Mark J. Connolly  
ALUC Staff Coordinator

Tms/mjc

Cc; Rachael Roberts; Project manager