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**TRANSMITTED VIA EMAIL**

July 24, 2020

2040 General Plan Four-Year Review Task Force  
City of San Jose

Dear General Plan Four-Year Review Task Force Co-chairs, Task Force Members, and City Staff.

**Re: Commercial Requirements for Affordable Housing  
and the 1 ½ Acre Rule (Policy H-2.9)**

I write today to follow up on the conversation at the June Task Force meeting where the topic was the elimination of commercial space for affordable housing developments.

At the January Task Force meeting, staff brought forward a recommendation to eliminate the requirement for affordable housing to incorporate ground floor commercial in Urban Villages. While the Task Force voted to approve the staff recommendation, it was clarified that the Council direction was broader-- to consider elimination of the commercial requirements throughout the city. Staff agreed, and indicated that they would bring the issue back to the future meeting.

At the June Task Force meeting, staff brought forward the recommendation to eliminate the requirement for ground floor commercial for projects that sought to use the 1 ½ acre rule. Again, it was clarified that the Council direction was to consider elimination of commercial requirements throughout the City. The Task Force voted to approve the staff recommendation as it related to the 1 ½ acre rule policy and voted to establish a citywide policy that eliminates a requirement that 100% affordable housing include commercial space.

Because the staff had raised this issue in the context of the 1 ½ acre rule, the Task Force spent a considerable period of time discussing the policy, which was not part of the original Task Force scope. However, because of the conversation that took place there was a resulting recommendation relating to that rule.

Specifically, the Task Force voted that the staff should move quickly to resolve the issues that have kept the 1 ½ acre rule from being fully implemented. As the staff reported, only one project to date has been approved using that rule. The challenge is the wording in the policy that says that an eligible site must be vacant or underutilized. The term 'underutilized' has not been defined.

Policy H-2.9 is a policy of the General Plan 2040, which lays out how affordable housing developments can move forward on small, remnant parcels that are zoned for commercial use. In previous years, the City had several discretionary alternate use policies that were intended to provide flexibility as the City sought to provide

additional affordable housing opportunities and encourage infill development. These policies were key components of the City's Housing Element, one of the mandated elements of the General Plan.

One of these discretionary alternate use policies was the 2-acre rule, which enabled affordable housing to move forward on smaller sites. This policy did not include a requirement that the parcel be vacant or underutilized, though in practice the affordable housing developments that successfully used the policy were mostly (if not all) built on sites that were vacant. There was a limit on the number of acres of land that could be converted each year (no more than 10 acres). Many affordable housing projects serving the City's lower-income residents that are successfully operating today were able to take advantage of the 2-acre rule.

When the City approved the Employment Lands Framework in 2007, the 2-acre rule was eliminated as part of the ban on employment land conversion. Nine years later, during the first four-year review in 2016, the 1 ½ acre rule was proposed and included in the updated General Plan. Two years later, changes were made to the 1 ½ acre rule to make it easier to use, however the question of the definition of underutilized was not addressed. When the Housing Crisis Workplan was approved by the City Council in 2018, it was stated that Planning staff would complete a comprehensive review of GP policy H-2.9, including development of an objective definition of "underutilized" and "viability of surrounding commercial properties." It was expected that this work would be completed by the summer of 2019.

In response to Task Force questions about the number of potential parcels that might take advantage of the 1 1/2 acre rule, staff indicated that they had compiled a list of approximately 1,000 potential parcels. It is important to note that this list has not been scrubbed in any way. It is merely a list of commercial parcels in the City that are 1 ½ acre or less in size. If the list were scrubbed to consider current uses and the appropriateness of the site for affordable housing development, the number of potential properties would be considerably lower. It is also important to note that relatively few affordable housing projects move forward each year given the amount of funding available. When the 2-acre rule was in place, projects did use the rule, but it was a small number overall, and as already mentioned there was a limit on the number of acres that could be converted. It is highly unlikely that the 1 1/2 acre rule-- once the definition of underutilized is agreed upon-- would result in wholesale development of small commercial parcels.

It is time to define underutilized. We have an affordable housing crisis that has been made even more dire due to the current health crisis. **We ask that the Planning Department heed the Task Force request that staff arrive at a definition as soon as possible and not wait until the General Plan four-year review process is completed and presented to the City Council.**

We do know the staff has put some thought into this, and hope that with some additional conversation the definition can be agreed upon and brought forward to the City Council. We are happy, as I would assume other members of the affordable housing community would be, to engage in conversations that lead us to an acceptable definition and that make General Plan Policy H- 2.9 a workable alternative as the City seeks ways it can respond to its affordable housing crisis.

Sincerely,

  
Leslye Corsiglia  
Executive Director

c. Mayor and City Council  
Dave Sykes, City Manager  
Jackv Morales-Ferrand, Director of Housing