



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

December 3, 2019

#### Subject

Municipal Code Amendments to Chapter 19.80 to clarify development standards in the Planned Development (P) Zoning Districts (Application No. MCA-2019-005; Applicant: City of Cupertino; Location: In P zoning districts located City-wide); Adoption of the Third Addendum to the 2014 General Plan Final EIR; and Finding the Actions Are Not a Project Under and Exempt from CEQA.

#### Recommended Action

That the City Council conduct the first reading of the Draft Ordinance: "An Ordinance of the City Council of the City of Cupertino adopting the Third Addendum to the 2014 General Plan Final EIR and Amendments to Chapter 19.80 (Planned Development (P) Zones) of the Cupertino Municipal Code to Clarify Development Standards in P Zones." (Attachment A).

#### Discussion

##### *Background*

The FY2019/20 City Council Work Program directs the City to clarify objective standards within the City's General Plan and Municipal Code. The Planning Commission and City Council reviewed areas that were identified by staff as needing clarity through Summer 2019. At the October 1, 2019 City Council meeting, the Council authorized staff to commence amendments identified in Phase 1 as follows:

- Community Form Diagram Text Box related to Heart of the City
- Community Form Footnotes related to building planes (slope lines)
- Cross-reference policies related to Heart of the City subareas
- Chapter 19.80 to clarify development standards in Planned Development (P) zones

The proposed amendments are to address the development standards in P zones. The proposed amendments have been identified with strikethroughs and underlines (as appropriate) in Attachment B.

### *Planning Commission Review*

The proposed amendments were presented to the Planning Commission at its Regular meeting on November 12, 2019. The Commission received public comments, reviewed the Third Addendum to the Final EIR and the proposed amendments, and voted 3-0-2 (recused – Moore; absent – Takahashi) to adopt Resolution No. 6889 recommending that the City Council adopt the proposed Ordinance (see Attachment C).

### *Analysis*

Chapter 19.80 of the Municipal Code governs Planned Development (P) Zones. The Zoning Map identifies properties zoned Planned Development with a “P” designation followed by a zoning reference for the allowed use. For example, P(CG) or P (CG, Res). The Zoning Map is available online at [www.cupertino.org/gis](http://www.cupertino.org/gis). “Conceptual development plans” with broad development standards are proposed and adopted when a property is zoned Planned Development. “Definitive plans” with more specific development standards are proposed and adopted at the time of development within the P Zone.

The proposed amendments do not change the allowed uses in P Zones. They merely clarify the development standards. Specifically, for residential P zoning districts, the amendments allow residential and mixed-use residential development to occur without adoption of a definitive plan. The proposed amendments specify that where development standards are not established in a definitive plan (or other plans), the development standards for residential uses shall be those prescribed for the R-3 (multi-family) zone, and the development standards for non-residential uses shall be those prescribed for the zoning districts referenced in the parenthetical following “P” on the zoning map. For non-residential development projects, the development standards would be established through the required conceptual and definitive plans for the site. Residential and mixed-use residential projects could also still propose definitive plans if desired.

For residential development, the General Plan anticipates that much of the anticipated development would occur as attached multi-family housing infill developments. The General Plan includes several policies that support infill mixed-use residential development including:

- **Policy LU-1.3:** Land Use in all Citywide Mixed-Use Districts. Encourage land uses that support the activity and character of mixed-use districts and economic goals.
- **Strategy LU-1.3.1:** Commercial and Residential Uses. Review the placement of commercial and residential uses based on the following criteria:

“... 2. All mixed-use residential projects should be designed on the “mixed use village” concept discussed earlier in this Element...”

- **Policy LU-1.1:** Land Use and Transportation. Focus higher land use intensities and densities within a half-mile of public transit service, and along major corridors.
- **Policy LU-5.2:** Mixed-Use Villages. Where housing is allowed along major corridors or neighborhood commercial areas, development should promote mixed-use villages with active ground floor uses and public space. The development should help create an inviting pedestrian environment and activity center that can serve adjoining neighborhoods and businesses.
- **Strategy LU-8.3.1:** Mixed-Use. Consider mixed-use (office, commercial, residential) in certain commercial areas to encourage reinvestment and revitalization of sales-tax producing uses, when reviewing sites for regional housing requirements.
- The General Plan also envisions the development of sites with mixed-use zoning within the Special Areas to redevelop in a “mixed-use village” concept which encourages residential development in a mix of units for young professionals, couples and/or active seniors who like to live in an active “mixed-use village” environment.

Since the General Plan anticipates the development of sites with multi-family developments in a mixed-use format through infill development, multi-family (R-3) zoning standards would generally apply to residential development being included in the P zoning districts. For mixed-use residential development, the standards are clarified to, similarly, indicate that the zoning standards in the related zoning for the type of use proposed would apply i.e., for property with a mixed-use planned development with commercial and residential uses zoning, the development standards of the General Commercial (CG) zoning and the R-3 zoning would apply. The amendments also clarify that if there are any conflicts in the standards, the most restrictive standard would apply.

The proposed amendments will not impede the ability to develop the City’s Regional Housing Needs Allocation or housing for all income levels as anticipated by the City’s Housing Element. They instead allow development of properties without approval of a definitive plan as long as they meet existing zoning standards established in the Municipal Code. Residential and mixed-use residential projects could also still propose definitive plans if desired. The City will thus continue to be able to address its housing needs in compliance with its Housing Element.

### *Environmental Assessment*

In 2014, the City Council certified a Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), which was a program EIR prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The Final EIR analyzed land use alternatives that included citywide development allocations (as well as building heights and densities) in connection with the adoption of the Cupertino Community Vision 2015-2040 (General Plan). The following is a timeline of amendments to the project since adoption of the EIR in 2014. The General Plan and Associated Rezoning were adopted in December 2014, the Housing Element Update was adopted in May 2015, and modifications to the text and figures of the General Plan were adopted in October 2015 following adoption of an Addendum to the EIR and again, in August 2019 following adoption of a Second Addendum to the EIR.

When a lead agency has certified an EIR, Public Resources Code Section 21166 and CEQA Guidelines 15162 provide that no subsequent environmental review shall be required unless specified conditions have occurred (substantial changes in the project, substantial changes with respect to the circumstances under which the project is undertaken, or new information of substantial importance which was not known and could not have been known when the EIR was certified) and would result in new significant environmental effects or a substantial increase in the severity of significant environmental effects requiring major revisions to the EIR. CEQA Guidelines Section 15164 further states that if some changes or additions to a previously certified EIR are needed, but subsequent review is not required under CEQA Guidelines 15162, an addendum shall be prepared.

The City has prepared a Third Addendum to the Final EIR to evaluate whether the proposed modifications to Chapter 19.80 of the Municipal Code described in this Staff Report would require major revisions to the Final EIR or a subsequent EIR due to new significant environmental effects or a substantial increase in the severity of significant environmental effects previously identified in the EIR. The Third Addendum, which is included as Attachment D, provides analysis and cites substantial evidence in support of the conclusion that no subsequent environmental review is required because none of the conditions that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

Therefore, it is recommended that the Planning Commission recommend adoption of the Third Addendum, and no further environmental review is required for the modifications to Chapter 19.80 - Planned Development (P) zones in the Municipal Code described in this Staff Report.

In the alternative, adopting the proposed amendments to the Municipal Code is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that the Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. As the proposed amendments merely clarify the development standards that would apply in certain limited circumstances based on existing standards in the event alternative standards are not applied for, they will have no significant impact on the environment.

***Public Noticing & Outreach***

The following noticing has been conducted for this project:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i></li> <li>▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board <i>(four days prior to hearing)</i></li> <li>▪ Posted on the City of Cupertino's Web site <i>(four days prior to hearing)</i></li> </ul>

Fiscal Impact

There are no fiscal impacts of this Municipal Code Amendment.

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Approved for Submission by: Deborah Feng, City Manager

**ATTACHMENTS**

- A. Draft Ordinance
- B. Redline document indicating changes in Chapter 19.80.
- C. Planning Commission Resolution No. 6889
- D. Third Addendum to the Final EIR