



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: April 6, 2021

#### Subject

Consider amendments to Cupertino Municipal Code Sections 19.56.030A (Table 19.56.030) and 19.56.030F (Density Bonus Ordinance) to incentivize the development of affordable housing by allowing for density bonuses of up to 40 percent (Application No: MCA-2021-002; Applicant: City of Cupertino; Location: Citywide.

#### Recommended Action

That the City Council conduct the first reading of Ordinance No. 21-[REDACTED], "An Ordinance of the City Council of the City of Cupertino Amending Cupertino Municipal Code Section 19.56.030A (Table 19.56.030) and 19.56.030F (Density Bonus Ordinance) to Incentivize the Development of Affordable Housing by Allowing for Density Bonuses of up to 40 Percent," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

#### Discussion

##### *Background*

Under Government Code Section 65915, a housing development is eligible for a density bonus based on the percentage of very low, low, or moderate-income units provided in the development. The City's FY2019/2020 Work Program includes an item to incentivize affordable housing production, in part by updating the City's density bonus ordinance.

In the 2020 legislative session, AB 2345 was adopted, which increases the maximum density bonus from 35 percent to 50 percent in exchange for a 4 to 5 percent increase in affordability (Government Code § 65915(f).<sup>1</sup>) However if the City adopts its own "housing program" or ordinance, or both, that incentivizes the development of affordable housing by allowing bonuses that exceed 35 percent, the City may enforce its own program and ordinance rather than the bonus program and the incentives and concession requirements imposed by AB 2345. (§ 65915(s).)

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<sup>1</sup> All further references are to the Government Code.

On December 15, 2020, the City Council, by Resolution No. 20-141, adopted a housing program to allow density bonuses up to 40 percent and initiated a zoning code amendment to incorporate those changes into the City's density bonus ordinance. Those zoning changes are now being presented to the City Council upon a recommendation from the Planning Commission. The Planning Commission reviewed the proposed changes at its February 23, 2021 regular meeting and adopted Resolution No. 6919 by a 4-1 vote (Kapil – no) recommending that the Council adopt the proposed changes. The Commission discussed the proposed changes and agreed that the proposed amendments would implement the Council-adopted housing program that would incentivize more affordable housing (*see reasons discussed below*).

*Proposed Amendments*

AB 2345 provides in § 65915(s) that a city may implement a housing program in place of that modified by AB 2345 if it adopts an ordinance or housing program or both that incentivizes the development of affordable housing and allows for density bonuses that exceed 35 percent.

The housing program adopted by the City Council allows increased density for the same proportional increases in affordability as did § 65915 (Density Bonus Law) before AB 2345 was enacted: 2.5 percent for every 1 percent increase in very low-income units; 1.5 percent increase for every 1 percent increase in low-income units, and 1 percent increase for every 1 percent increase in moderate-income units, up to a 40 percent maximum density bonus, as illustrated below. To codify the housing program already adopted by the City Council, the zoning code would be amended by replacing current Table 19.56.030 in the zoning ordinance as follows.

Income Level of Units	% of Base Density Dwelling Units	Maximum Density Bonus
Very Low Income <sup>(1)</sup>	5%	20%
	6% - 12%	22.5% - 37.5%
	13% or more	40%
Low Income <sup>(2)</sup>	10%	20%
	11% -22%	21.5% - 38.5%
	23% or more	40%
Moderate Income <sup>(3)</sup> (Common interest developments)	10%	5%
	11% - 44%	6% - 39%
	45% or above	40%

<sup>(1)</sup> For each 1% increase over 5% of the target units, the density bonus shall be increased by 2.5%, up to a maximum of 40%.

<sup>(2)</sup> For each 1% increase over 10% of the target units, the density bonus shall be increased by 1.5%, up to a maximum of 40%.

<sup>(3)</sup> For each 1% increase over 10% of the target units, the density bonus shall be increased by 1%, up to a maximum of 40

In addition, other conforming changes would be made in Section 19.56.030F to show a maximum density bonus of 40 percent.

### *Analysis*

The purpose of the City's housing program is to incentivize the development of affordable housing within the City. To verify that the City's program would incentivize affordable housing, the City asked Ms. Sally Nielsen of the Hausrath Economics Group to evaluate the program (See Attachment B.) Ms. Nielsen concluded the following:

- The City's program will incentivize rental housing production containing more very low income and low-income affordable units. The 40 percent density bonus provided by the City will enable developers to produce enough additional market rate units to offset the additional cost of providing more very low-income units and will improve the overall feasibility of rental development projects.
- The improvement in rate of return is particularly notable for higher density rental apartment development, making these projects more clearly feasible with a higher percentage of affordable housing and larger density bonus.
- For condominium development, neither the City's program nor the program in AB 2345 improve the rate of return over that of the current City requirements, which require a developer to provide 20 percent median and moderate income affordable units, for which the developer is entitled to a 15 percent density bonus.
- Overall, as density bonuses are currently structured, they are most successful in incentivizing very low-income housing. AB 2345 was modeled after a City of San Diego program providing bonuses of up to 50 percent. In San Diego, developers "overwhelmingly" used very low-income units to obtain density bonuses regardless of tenancy; all of the mixed income developments utilizing San Diego's program have included very-low and low income housing rather than moderate income housing. Similarly, in Cupertino, the developers of Vallco, Marina, and Westport have all obtained bonuses by providing very low and low income housing. Cupertino's proposed program, like the San Diego program, will incentivize very low income rental housing, serving households with the greatest need.

In conclusion, the City's adopted housing program and proposed ordinance will achieve their purpose of incentivizing the development of affordable housing, especially very low income housing.

At the time it adopted the housing program, the City Council also noted several reasons why it preferred the City's housing program to provisions of AB 2345:

- Cupertino's housing program allows increased density for the same proportional increases in affordability as the existing statute, which has provided adequate incentives to Cupertino developers to include affordable housing in their projects. Prior to the adoption of its housing program, market-rate developers in the City of San Diego were not using state density bonus law to any significant extent; by contrast, Cupertino developers are familiar with density bonus law and use it regularly. All but one of the developers of Cupertino's housing element sites have applied for density bonuses using the incentives provided prior to the passage of AB 2345, including the developers of Vallco, Marina, and Westport.
- The program in AB 2345 could disincentivize the production of affordable housing, by providing a 50 percent bonus for only 15 percent very low income housing, while a 100 percent affordable project receives only an 80 percent bonus. The legislative history for AB 1763, adopted in 2019, which authorized the 80 percent bonus, shows that one purpose of the bill was to enable affordable developers to compete for a site against market-rate developers. The California Rural Legal Assistance Foundation (CRLAF) and the Western Center on Law & Poverty both opposed the formula contained in AB 2345 because they were concerned that AB 2345 might disincentivize the production of very low income units contained in 100 percent affordable projects. They instead advocated for maintaining the density for affordability ratio following the same pattern as density bonus law prior to the passage of AB 2345 (See Attachment C.)

Land costs in the City are very high, almost \$200,000 per unit for the affordable Veranda project, making it very difficult to create affordable housing. The City's program will moderate any increases in land costs due to the additional density bonus provided, as compared to the program included in AB 2345.

As demonstrated by the City's consistent history of approving density bonus projects, this pattern has undeniably incentivized the use of density bonus law in Cupertino. As recommend by the Western Center and CRLAF, the pattern of increases in the City's housing program follows the same pattern as the density for affordability ratio existing in density bonus law prior to the passage of AB 2345. The proposed Ordinance codifies the Council-adopted housing program by adding its provisions to the City's density bonus

ordinance. This will also advance the Affordable Housing Strategies item on the Council's FY20/21 Work Program, which includes updates to the City's density bonus ordinance.

**Sustainability Impact**

No sustainability impact.

**Fiscal Impact**

No fiscal impact.

**California Environmental Quality Act (CEQA) Status**

The proposed zoning code amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that adoption of the amendments may have a significant effect on the environment. Therefore, the proposed action is not subject to CEQA. The ordinance amendments will not allow any increase in density greater than that allowed by the housing program adopted by the City Council in December 2020. The density bonus increase to 40 percent contained in the proposed amendments does not increase the number of units that may be constructed on any property, because this increase in density has already been adopted by the City Council as part of the adopted housing program.

**Conclusion**

The Planning Commission recommends that the City Council introduce and adopt the draft Ordinance to amend the City's density bonus ordinance to incorporate a housing program to incentivize the development of affordable housing by allowing for density bonuses up to 40 percent. The proposed Ordinance codifies the previously Council-adopted housing program in the City's density bonus ordinance. This will also advance the Affordable Housing Strategies item on the Council's FY20/21 Work Program, which includes updates to the City's density bonus ordinance.

**Next Steps**

The second reading of the ordinance is tentatively scheduled for April 20, 2021. The ordinance will go into effect 30 days after the second reading.

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Prepared by: Piu Ghosh, Planning Manager

Reviewed by: Albert Salvador, Acting Director of Community Development

Approved for Submission by: Dianne Thompson, Assistant City Manager

**Attachments:**

A – Draft Ordinance

Adoption of Zoning Code Amendments Implementing a Housing  
Program to Incentivize Affordable Housing

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B – Sally Nielsen, Hausrath Economics Group, *Economic Evaluation of City of Cupertino Housing Program to Incentivize the Production of Affordable Housing* (February 2021).

C – California Rural Legal Assistance Foundation and Western Center on Law & Poverty, Letter in Opposition to AB 2345 (July 17, 2020).