



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: May 14, 2024

Subject

6th Cycle Housing Element and Associated General Plan Amendments

Recommended Action

That the City Council adopt a draft resolution (Attachment 1) adopting proposed General Plan Amendments, including but not limited to, the Chapter 3 (Land Use and Community Character Element), Chapter 4 (Housing Element), Chapter 5 (Mobility Element), Appendix A (Land Use Definitions, Appendix B (Housing Element Technical Appendix), and Appendix G (Community Vision 2040 General Plan and Zoning Amendments Environmental Assessment).

Background

The City has been preparing the 6th Cycle Housing Element update, which covers the planning period of 2023 to 2031, since April 2021. The Housing Element is one the required elements that makes up the Cupertino's General Plan and identifies the policies and programs necessary to meet the housing needs of the City's current and future residents, at all levels of income. State law requires that every city and county in California update its Housing Element every eight years, unlike other required General Plan elements. The Housing Element must identify adequate sites, with appropriate zoning and development standards, to accommodate the City's share of the regional housing needs for each income level and identify housing policies, which support and encourage the development of housing, particularly affordable housing development, within the City.

In December 2021, the Association of Bay Area Governments (ABAG) adopted the final Regional Housing Needs Allocation (RHNA) for each of the Bay Area's 109 cities and counties. As background, the nine county ABAG region must accommodate approximately 441,000 housing units, of which Santa Clara County must accommodate 129,577 units (~30%). Cupertino must accommodate slightly more than one percent of ABAG region's RHNA (4,588 units). The table on the following page shows Cupertino's 6th Cycle RHNA by income category.

Income Group	Units	% of total
Very Low Income (<50% of AMI)	1,193	26.0
Low Income (50%-80% of AMI)	687	15.0
Moderate Income (80%-120% of AMI)	755	16.5
Above Moderate Income (>120% of AMI)	1,953	42.5
Total	4,588	100

The current draft Housing Element was prepared in compliance with state law, including extensive outreach efforts, which are more fully described in the Housing Element (Exhibits GPA-2 & GPA-5), and multiple revisions¹ to the initial Draft Housing Element, based on comments received from the California Department of Housing and Community Development (HCD) and the public. On April 10, 2024, HCD informed the City (See Attachment 2) that the revised third draft of the Housing Element, submitted to HCD on March 28, meets the statutory requirements of state law, subject to rezoning of the sites that are listed in the Housing Element as Priority Housing Sites.

The deadline for ABAG jurisdictions to adopt a Housing Element compliant with state housing law was January 31, 2023, meaning Cupertino’s Housing Element has been out of compliance for over one year. Since the City is over one year late in adopting its updated Housing Element, completion of the rezoning is required to be found fully compliant with state law. Therefore, adoption of the Housing Element and completion of rezoning of the sites will bring the City into compliance with state housing law, preventing the City’s loss of land use local control, potential exposure to litigation, and other adverse consequences resulting from not having a compliant Housing Element.

Discussion:

The contents of the Housing Element are dictated by state law and include several analyses: specifically, housing needs, housing constraints and fair housing. These analyses result in the development of the two main components of the Housing Element, 1) Priority Housing Sites, and 2) Housing Policies, which have also been of the most interest to the community, as evidenced in the comments received at numerous public meetings and the required public comment periods for each of the Housing Element drafts.

Priority Housing Sites:

Priority Housing Sites indicate Cupertino’s commitment for where housing will most likely be developed to meet the City’s fair share of housing for the 6th Cycle planning period (Regional Housing Needs Allocation or RHNA). The proposed identification of Priority Housing Sites also considers the “no net loss” provision of State Housing Element Law (SB 166). This provision provides that, at all times during the planning

¹ Prior iterations of the Draft Housing Element are available online at www.cupertino.org/housingelement

period, the City must have an inventory of Priority Housing sites to accommodate its RHNA *by income level*. If at any time during the planning period, housing does not develop at the income levels, or density, that are projected to be developed on the proposed sites, resulting in a shortfall, the City would be required to identify additional Priority Housing Sites. To avoid such a shortfall, the draft Housing Element includes a buffer of approximately 35%. Accordingly, the draft Housing Element identifies sites to accommodate approximately 6,200 units on 36 sites (62 parcels in total).

Consistent with direction from the Council in July 2023, Priority Housing Sites are located primarily along the arterials and major collectors in the City, such as Stevens Creek and DeAnza Boulevards, with a few sites located within established, predominantly single-family neighborhoods (e.g. the Evulich Ct./Linda Vista and Adriana Ave. sites) in the western portion of the City. The Housing Element process includes the establishment of minimum required densities and building heights on the Priority Housing Sites to ensure that the City can meet the RHNA requirements of the 6th Cycle. The list of Priority Housing Sites and relevant data, such as acreage, proposed densities, and zoning, is identified in Appendix B-4 of the General Plan (see Exhibit GPA-5).

About 70% of the 62 parcels that comprise the Housing Priority Sites have a minimum density of 50 units per acre, consistent with the parcels' locations along major transportation corridors and state and regional policies related to linking land use, housing development and transportation. Therefore, the updated Housing Element requires the establishment of four new land use designations for residential densities greater than 35 dwelling units per acre – Residential - High Density (35.01 – 50 dwelling units/acre), Residential - High/Very High Density (50.01 – 65 dwelling units/acre), Residential - Very High Density (65.01 – 80 dwelling units/acre) and Residential - Highest Density (80.01 – 95 dwelling units/acre). It should be noted that because of the new density categories, additional refinements were made for the existing “commercial/residential” land use designation to incorporate some of these higher residential densities. Due to this, some properties, while not designated as Priority Housing Sites, are identified with a different land use designation on the land use map (see Exhibit GPA-7) to ensure internal consistency. However, *these do not* result in any change to development standards or residential density for any of these sites.

Other minor clarifying and conforming edits have been made in the Land Use and Community Character Element (see Exhibit GPA-3) and Appendix A Land Use Definitions (see Exhibit GPA-4).

Housing Policies:

Upon completion of the analysis related to housing needs within the community over the 2023-2031 planning period and an evaluation of the City's performance on its 5th Cycle Housing Element goals and policies, updates have been made to the City's existing 5th

Cycle housing policies and new policies have been added to address policy gaps necessary to address state law and/or the needs of the community.

Many of the updates to existing Housing Element policy revolve around compliance with state law on various housing types (e.g. supportive housing and emergency shelters), additional technical support to be provided by City staff to developers and housing services organizations, pursuit of grant funding to support affordable housing, adjusting the Below Market Rate program requirement to apply to for-sale developments with 5 or more new units and the review and update of development standards related to parking and parkland dedication fees. In addition to policies related to furthering housing development, the City must also comply with state law related to taking actions to Affirmatively Further Fair Housing (AFFH).

To that end, upon HCD review and input, a policy (Strategy HE-1.3.6) has been added to *affirmatively* further fair housing by allowing “missing middle” housing typologies within portions of the City’s primarily single-family neighborhoods. As a result, the City is looking to permit duplex development with two accessory dwelling units (ADUs) (for a total of four units) on all corner lots within the R1 zoning district and on all R1 zoned lots that abut property zoned and used for commercial uses. This strategy applies to approximately 1,680 parcels in the R1 zoning district, which would be eligible to develop using R2 – duplex – development standards, with two primary units and two ADUs. It is hoped that properties that have the option to develop, or redevelop, consistent with Strategy HE-1.3.6 will provide housing types with smaller floor areas that are more affordable by design, such as duplexes, triplexes, and fourplexes to allow a gentle increase of density within established neighborhoods with compatible building forms. Strategy HE-1.3.6 will not involve the rezoning of any properties. Only sites identified as Priority Housing Sites will be rezoned to implement the Housing Element’s adoption and comply with state housing law.

It should be noted that recent changes to the City’s ADU ordinance, adopted by the City Council in January 2024, allow the development of one primary unit and up to three ADUs on any parcel zoned R1 and two primary units and two ADUs on any parcel zoned R2. Therefore, in terms of the total number of units, the new policy would continue to allow a maximum of four units (just under slightly more flexible R2 development standards) on these specified lots within the R1 zoning district.

Mobility Element:

Updates have been made to the Mobility Element to ensure that the City is compliant with existing state law and locally adopted Vehicles Miles Traveled (VMT) thresholds by implementing policies that support reduced VMT including but not limited to, safety and convenience for alternative modes of travel (see Exhibit GPA-3).

Planning Commission:

At a special meeting of the Planning Commission held on April 29, 2024, the Commission adopted PC Resolution No. 2024-05 recommending approval of the proposed changes, with a minor edit to remove one site from the Priority Housing Sites list, on a 3-2 vote (Madhhipatla and Scharf: No). The Commission discussed two policies at length – the missing middle strategy related to duplex development on certain R1 lots and the parkland dedication fee study. Both policies were incorporated in the draft Housing Element to address HCD comments related to Affirmatively Furthering Fair Housing and housing constraints. Ultimately, the Commission did not recommend any changes to these policies.

Eight members of the public spoke at the meeting. Comments included concerns about the validity of the RHNA numbers, the missing middle strategy and associated parking impacts, the continued use of Below Market Rate Affordable Housing Funds for residential rehabilitation projects without any specified income level restrictions, ensuring that the policies cover programs for seniors, a request to include prevailing wage requirements for development projects, and questions about environmental review. None of the comments received at the hearing warranted any changes to the draft Housing Element or the associated general plan amendments.

Next Steps

Staff will prepare a final version of the General Plan, which may include amendments to figures in Chapter 2, Planning Areas, for publication on the City’s website. In addition, as noted earlier, HCD’s April 10 determination that the City’s Housing Element is compliant with state law is contingent on the rezoning identified in the Housing Element being completed. This rezoning will be presented to the Planning Commission for its recommendation, and to the City Council for adoption, in order to ensure that the City will be fully compliant with state law, shortly. The zoning changes required to implement the Housing Element are described in the Housing Element policies and include, but are not limited to, the creation of new zoning districts for the higher density uses, regulations for emergency shelters and updating allowed uses in several zoning districts.

Sustainability Impact

None

Fiscal Impact

None

California Environmental Quality Act

On February 3, 2023, the California Housing Defense Fund and Yes in My Backyard (YIMBY) Law sued the City for missing the January 31, 2023 deadline for adoption of the 6th Cycle Housing Element. In January 2024, the City entered into a stipulated judgment

to settle the lawsuit. As a result, pursuant to Government Code Section 65759(a), any actions that the City takes to adopt a compliant housing element, including rezoning actions to implement the Housing Element, are exempt from the California Environmental Quality Act (CEQA). In lieu of CEQA compliance, Government Code section 65759 requires that an environmental assessment (EA) in the form of a Draft Environmental Impact Report (EIR) be prepared and adopted as part of the City's General Plan. As required, the EA closely resembles a Draft EIR but, unlike a Draft EIR, the City is not required to circulate the document for public comment or prepare responses to comments received, or make corrections/edits to the Draft EIR, leading to the preparation of a Final EIR. The EA will be adopted, in accordance with state law, as Appendix G of the General Plan (see Exhibit GPA-6).

Prepared by: Piu Ghosh, Planning Manager

Reviewed by: Luke Connolly, Assistant Director of Community Development
Benjamin Fu, Director of Community Development

Approved for Submission by: Pamela Wu, City Manager

Attachments:

Attachment 1 – Draft City Council Resolution

Exhibit GPA-1 – Chapter 3: Land Use and Community Character Element

Exhibit GPA-2 – Chapter 4: Housing Element

Exhibit GPA-3 – Chapter 5: Mobility Element

Exhibit GPA-4 – Appendix A: Land Use Definitions

Exhibit GPA-5 – Appendix B: Housing Element Technical Appendix (includes appendices B-1 through B-6)

Exhibit GPA-6 – Appendix G: Environmental Assessment

Exhibit GPA-7 – Land Use Map

Attachment 2 – Letter from HCD dated 4.10.2024