



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

Meeting: June 23, 2026

#### **Subject**

Study Session on Housing Element update to add capacity at all income levels

#### **Recommended Actions**

Receive staff's presentation and provide direction on housing site selection strategies to add capacity to accommodate the City's moderate- and lower-income Regional Housing Needs Allocation (RHNA), as required by state law.

#### **Discussion**

##### *Background*

The Housing Element is a State-mandated General Plan element that identifies and quantifies the City's housing needs and establishes strategies, including identification of prospective housing sites, to address the City's obligations under State law. The City's current Housing Element was adopted in May 2024 to address a Regional Housing Needs Allocation (RHNA) of 4,588, of which 57.5% were assigned to affordable income levels, including Moderate income or Lower income households. The City's Below Market Rate (BMR) housing requirements for new development are 15 to 20%, depending on the type of occupancy.

The California Department of Housing and Community Development (HCD) recommends, but does not require, that jurisdictions maintain a buffer of 15 to 30% above their RHNA to ensure an adequate housing capacity exists at all income levels, as required by Government Code Section 65863 (SB166). Accordingly, the City's adopted Housing Element includes a total residential capacity of 5,881 units, representing an overall buffer of 28%. However, the buffer is much smaller in the affordable categories: only 8% (157 units) in the Very low- and Low-income category and 12% (92 units) in the Moderate-income category. By contrast, the above moderate/market rate income category had a 53% buffer (1,044 units).

There are 58 individual properties in the Priority Housing Sites Inventory, 40 of which have an adopted minimum residential density greater than 50 dwelling units per acre.

However, several residential developments on Priority Housing Sites have recently been proposed and approved at lower densities and with proportionally fewer Low- and Moderate-income units than anticipated in the Housing Element (SummerHill I, Dividend I, Toll Brothers, Harvest Properties). In addition, modifications to State law allowed the City's largest pipeline project, Vallco Town Center/Rise Development, to modify its affordability requirements. Additionally, the Hamptons entitlement for 600 new rental units is approaching expiration. As a result, the City is reviewing its Priority Housing Sites inventory to ensure continued compliance with State law. Under Government Code Section 65589.5, the City has 180 days from the date that it was initially unable to make the required housing inventory findings to identify additional sites and/or upzone existing Priority Housing sites. An informational memo was provided to the City Council in January 2026 as background on this issue and a Study Session was held with the City Council on March 3, 2026.

The identification and rezoning of new housing sites and/or upzoning of existing sites requires an amendment to the Priority Housing Sites Inventory in the Housing Element of the General Plan. Pursuant to Government Code section 65585(b), the amended document must be reviewed and certified by HCD, similar to the process the City followed for its 2024 Housing Element update.

#### *Analysis*

The City has three sources of credit for housing units developed at specified income levels:

1. **Deed-restricted units through State or County programs in affordable housing projects** – Since adoption of the Housing Element, only two projects on Priority Housing Sites have been proposed as entirely affordable housing developments – Mary Ave Villas (entitled on property owned by the City) and the Wolfe Road Teacher Housing (under review on property controlled by the County). At the same time, the approval and development of townhome ownership units, on both Priority Housing Sites and non-Priority Housing Sites, have consistently added Moderate-income units through the City's BMR program. As a result, the City has less of a concern meeting Moderate-income housing goals than its Lower-income housing goals, which remain the primary ongoing concern.
2. **Deed-restricted units through the City's Below Market Rate (BMR) Housing Mitigation Program** - The City's BMR housing requirements are 15% Lower income units, including Very Low-income units, for new rental developments, such as apartments, and 20% Moderate income units, including Median- and Moderate-income units, for new owner-occupied developments, such as townhomes and condominiums. However, the City's RHNA requires the City to

plan for 57.5% of the 6<sup>th</sup> Cycle Housing Element units to be affordable to Very Low, Low and Moderate income households. This mismatch between RHNA affordability targets and the City's BMR requirements creates an inevitable gap as sites develop, unless projects on Priority Housing sites develop largely as affordable housing projects or provide affordable units at percentages greater than the City's BMR Program, both of which are unlikely.

3. **Non-deed restricted units which are available at income levels akin to deed-restricted levels.** An example of non-deed restricted units for which the City could get credit is higher-density apartment units which rent at levels verifiably affordable to Low or Moderate income households - essentially, units that are affordable by design due their smaller size and higher density. At present, the City has only one project (Hanover, located at Stevens Creek/Finch Avenue) under review that potentially meets these criteria. However, this type of development project offers the best opportunity to add a greater number of both total and affordable housing units.

#### Current Development Patterns

To date, the City has not seen any interest in 100% affordable housing projects, despite ongoing efforts in outreach with affordable housing developers, other than the two affordable housing projects described above. Both Mary Avenue Villas and Wolfe Road Teacher Housing are proposed right at the 50-unit per acre density, which is the minimum for their land use designations. Prior discussions with other affordable housing developers suggest that development at a substantially higher density would be necessary for competitive applications for tax credit programs beyond what is typically available.

The City has seen a significant interest in ownership townhome projects at or below the 20-unit per acre density, which is currently the most lucrative and prevalent project type in the South Bay Area. Examples include Dividend II, Dividend III (*Pacific Resources Center*), SummerHill II (*Evulich*), SummerHill III (*Bandley*). The City has additionally seen the use of State law (SB330) by developers to lock in densities *lower* than anticipated on Priority Housing Sites in order to develop this more lucrative building type (Toll Brothers (*United Furniture*), SummerHill I (*Fontana/Staples*), Dividend I). This housing type has effectively become the modern, vertical equivalent of a single-family subdivision.

On the other end of the spectrum, Hanover is proposing 363 units on a 2.67 acre site (~136 du/ac) (19220 and 19300 Stevens Creek Blvd). Due to the small size of the proposed units (e.g., the majority of the units are either studios or one-bedroom), the potential future rents at this development may allow the City to claim lower income level categorization for some or many of these units, even though these not deed restricted affordable housing. This affordability determination would be subject to HCD's agreement, but other jurisdictions have successfully used this approach.

### *Policy Considerations*

Based on current development patterns and other related policy efforts underway in the City, several key considerations emerge:

1) There are enough sites in Cupertino (much of the City already allows residential development through existing land use designations) to accommodate new townhome-style development outside the City's Priority Housing Sites Inventory. Since the City approved several townhome projects over the last year, it continues to maintain a buffer at the Moderate income level. Although not necessary, the City could consider adding a limited number of housing sites to help maintain an adequate buffer across all income categories.

2) Although the City cannot control the use of state law, one important factor in affordable housing production is that, while the Housing Element establishes minimum residential density standards for Priority Housing Sites, the City does not currently require minimum residential densities on sites that are not designated as Priority Housing Sites. This creates an incentive to develop at the density that is most financially attractive for certain project types, which is currently townhomes at roughly 20 units per acre. These owner-occupied projects are only required to provide moderate-income units under the City's BMR program, not lower-income units, and they do not add a meaningful number of total units toward the City's RHNA targets.

State law, specifically AB 2011, already allows residential development at specified minimum densities along defined, major commercial corridors. However, because that law includes labor requirements, developers have used it infrequently. The City could consider adopting a local version of similar regulations — without the labor requirements — to allow higher-density residential development along major transportation corridors, while excluding selected commercial sites that the City wishes to retain as retail or service centers. The City could also consider establishing minimum densities along these corridors, as well as higher maximum densities on some sites, to encourage this type of development.

3) Continued development at 20 units per acre is not productive for lower-income housing and would require the City to identify substantially more sites and land area for residential development. For example, the City could upzone a minimum of 20 acres in the 65-80 units per acre range (this is the City's most dense land use range) to get to an adequate buffer of lower-income units. By contrast, if sites were developed at only 20 units per acre, the City would need more than 80 acres to produce the same number of units. In addition, because the City's BMR requirements for ownership housing do not require lower-income units, simply establishing a minimum density of 20 units per acre on Priority Housing Sites would not ensure any lower-income production. For these

reasons, the City should consider densities of at least 65 units per acre to better support lower-income housing production.

4) With proposed projects on two Priority Housing Sites within neighborhoods, one on a neighborhood connector (Linda Vista Drive) and the other on a minor collector (McClellan Road), there has been heavy neighborhood opposition. Similar, and sustained opposition has continued due to the upzoning of a site at the terminus of Adriana Avenue within the Pharlap neighborhood. To reduce future neighborhood opposition, the City should focus on sites located along or adjacent to major transportation corridors and avoid adding new Priority Housing Sites within neighborhoods. Corridor sites can generally support greater density and make a stronger contribution toward the City's RHNA targets. At the same time, the City continues to implement Housing Element policies and state laws that allow more modest increases in neighborhood density.

5) A State mandated evacuation study prepared as part of an ongoing Health and Safety Element update has indicated that, in the event of a catastrophic emergency, the evacuation network is capacity-constrained in several west-side neighborhoods, primarily west of Highway 85. The City should therefore avoid increasing density within these neighborhoods or along the following evacuation routes: Bubb Road north of Hyannisport Drive, McClellan Road up to Bubb Road, Foothill Blvd, and Stevens Creek Boulevard west of Highway 85.

6) State law requires cities to offer an in-lieu BMR fee option that allows developers of rental projects to pay a fee instead of providing BMR units on site. This could further reduce the actual production of lower-income housing units. To offset this risk, the City should have an in-lieu fee that is high enough to compensate for the lost unit production, which it currently does not have. The City will be commencing an update to its BMR fees shortly to ensure that adequate fees are established.

Taken together, these considerations support the following actions:

1. Identify new or upzone existing Priority Housing Sites at minimum densities of 65 units per acre or higher;
2. Site selection:
  - a. Focus on or adjacent to arterials and avoid neighborhoods;
  - b. Avoid streets that have existing capacity constraints in the event of emergencies;
3. Establish a minimum density of 20 dwelling units per acre, or a similar density, for non-Priority Housing Sites along major corridors;
4. Adopt a local program to allow higher density residential development on non-Priority Housing Sites, with exclusions for commercial properties, akin to AB2011.

### Retention of Retail Considerations

Since 2014, the City has experienced an ongoing loss of retail uses, which historically generated significant sales tax revenue. As a result, the City has faced declining sales tax revenue over that period. A notable example is the former Vallco Mall, which was once the single largest sales tax generator for the City, but became increasingly vacant in the years following Valley Fair Mall's expansion and the development of Santana Row in west San Jose and Santa Clara, which accelerated with the broader rise of internet sales and retailers. Although there remains steady interest in personal services<sup>1</sup> and in food uses<sup>2</sup>, there is currently limited demand for traditional retail stores that generate sales tax revenue for the City. In addition, some retail businesses may not choose to locate in Cupertino because established, successful, mid-size retail nodes located outside the City, such as West Gate Shopping Center in San Jose and Sunnyvale Downtown, already serve the broader "trade area"<sup>3</sup>. Finally, although the City has historically retained office uses, since 2024 it has seen several office and retail buildings proposed for housing redevelopment due to changes in state housing law, including SB 330, and reduced office demand following COVID. If all the office buildings approved for housing redevelopment through June 2026 are demolished, the City would lose approximately 238,000 square feet of office space. Similarly, since 2022, the City has approved housing development which would demolish 87,000 square feet of retail/commercial space. This equates to a loss of nearly 1,000 jobs.<sup>4</sup> As a result, the City Council added a Work Program item in 2025 to identify strategies to retain retail development within the City.

With respect to using residential densities as a tool to retain retail uses within the City, the City could consider a strategy that concentrates allowable residential density to one portion of the site while maintaining commercial development on another portion. This approach could support the long-term viability of on-site retail by pairing it with higher-density housing. More directly, existing commercial sites could be rezoned or redesignated to eliminate the potential of residential development. This approach, however, would have to occur in conjunction with upzoning related to Priority Housing Sites to maintain compliance with State laws designed to prevent the overall loss of residential development. While residential development on commercial sites can help the City meet its RHNA targets, allowing residential development without minimum density requirements may instead result in widespread townhome development that neither

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<sup>1</sup> Examples include foot spa, massage, childcare, specialized schools (such as karate, martial arts, etc.), beauty uses (botox and other clinics)

<sup>2</sup> These include specialty food (boba tea), fast food/casual restaurants (mainly take out) and sit-down restaurants

<sup>3</sup> A trade area in real estate is the geographic region from which a business or property draws the majority of its customers.

<sup>4</sup> The 2014 General Plan EIR assumed an office occupancy of 300 square feet per employee and a commercial occupancy of 450 square feet per employee in the analysis.

meaningfully advances RHNA compliance — particularly for lower-income units — nor preserves retail and service uses for the community.

#### *Potential Sites*

Over the past several months, City staff has been contacted by several property owners interested in adding sites to the Priority Housing Sites Inventory. These include:

- Kimco Property (Cupertino Village) for some portions of their site (e.g. existing hotel site) at much higher densities – Recommended to be upzoned.
- Marina Plaza – increased density requested for the entire site to a minimum density of 65 du/ac across the 5.03-acre site to accommodate 300+ units – Recommended to be upzoned.
- AlphaX – four sites on the northeast corner of the intersection of N. Foothill Blvd and Stevens Creek Blvd, including three parcels which allow residential development at an existing density of 15 units per acre and one parcel with a land use density and zoning that allows single family (R-1) uses – This, however, is not recommended due to proximity to constrained evacuation routes and limited number of units generated.
- The Villages/Prometheus – verbally indicated an interest to allow development on the parcel containing the clubhouse and amenity space for the apartment complex – There is no recommendation on this site at this time.

Staff has prepared maps showing a broad range of sites that could potentially be added to the Priority Housing Sites Inventory, upzoned as existing Priority Housing Sites, and/or considered for retail retention strategies (See Attachments 1, 2 and 3). The range of sites is intentionally broad because this is the beginning of the discussion regarding where additional housing sites should be identified and where existing capacity should be increased.

#### **Next Steps**

Staff will prepare a list of sites based on these strategies for the Commission's consideration.

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Community Development

Attachments:

- 1 – Map 1 (East, Central and Northern parts of City)
- 2 – Map 2 (Western part of City)
- 3 – Map 3 (Southern part of City)