



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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PLANNING COMMISSION STAFF REPORT

Meeting: June 11, 2024

Subject

Municipal Code, Specific Plan, Below Market Rate Mitigation Manual and Zoning Map Amendments related to implementing the 6th Cycle Housing Element (Application No.(s): MCA-2023-001, SPA-2023-001, CP-2024-002, Z-2024-001, EA-2024-001; Applicant: City of Cupertino; Location: city-wide)

Recommended Action

That the Planning Commission recommend that the City Council adopt draft resolutions allowing for consistency with the 6th Cycle Housing Element, and minor edits for clarity, as follows:

1. Municipal Code Amendments (Attachment A), including but not limited to:
 - a. Adoption of three new Chapters, Chapter 19.38 (Multiple-Family Residential (R-4) Zones), Chapter 19.46 (Townhome (TH) Combining District), Chapter 19.50 (Emergency Shelters) and
 - b. Amendments to Chapter 19.08 (Definitions), Chapter 19.12 (Administration), Chapter 19.16 (Designations and Establishment of Districts), Chapter 19.20 (Permitted, Conditional and Prohibited Uses in Agricultural and Residential Zoning Districts), Chapter 19.28 (Single Family Residential (R-1) Zones), Chapter 19.36 (Multiple Family Residential (R-3) Zones), Chapter 19.76 (Public Building (BA), Quasi-Public Building (BQ), and Transportation (T) Zones), Chapter 19.80 (Planned Development (P) Zones), Chapter 19.100 (Accessory Buildings/Structures), Chapter 19.124 (Parking), Chapter 19.156 (Development Permits, Conditional Use Permits, and Variances), Chapter 19.168 (Architectural and Site Approval Permits), Chapter 14.15 (Landscape Ordinance) and Chapter 17.04 (Standard Environmental Protection Requirements); and
2. Adopt (Attachment B):
 - a. Amendments to the Heart of the City Specific Plan;
 - b. Amendments to the Below Market Rate (BMR) Mitigation Manual; and
3. Zoning Map Amendments (Attachment C) to reflect changes to Priority Housing Sites and other minor changes for internal consistency.

Background

The City Council adopted the 6th Cycle Housing Element ¹, which covers the planning period of 2023 to 2031, on May 14, 2024. The Housing Element is a required element of Cupertino's General Plan and identifies policies and programs and prospective housing sites to meet the housing needs of the City's current and future residents at all income levels, through 2031. The 6th Cycle Housing Element anticipates that Cupertino will accommodate its Regional Housing Needs Allocation (RHNA) of 4,588 units plus a buffer of approximately 28%, for a total exceeding 5,800 units, on 58 parcels, referred to as Priority Housing Sites. The Priority Housing Sites are located primarily along the City's arterials and major collectors, 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 site and Adriana Ave site). While the residential densities of the Priority Housing Sites varies, over two-thirds - 40 properties - have densities of 50 units per acre or more and 15 have densities between 20-35 units per acre. Only three of the 58 sites allow densities under 20 units per acre. The complete list of Priority Housing Sites is included in Appendix B-4 of the General Plan.

On April 10, 2024, the State of California's Department of Housing and Community Development (HCD) informed the City² that the draft Housing Element submitted to HCD on March 28 (prior to adoption), met the statutory requirements of state law, **subject to the completion of rezoning of the sites that are listed in the Housing Element as Priority Housing Sites**. Therefore, the actions taken by the City to rezone the Priority Housing Sites and the associated amendments to the Municipal Code, Heart of the City Specific Plan, and the BMR Mitigation Manual will bring the City into compliance with state law. Compliance with state housing law averts the City's potential loss of land use local control, exposure to litigation, and other regulatory limitations resulting from not having a compliant Housing Element. The rezoning and related actions also allow internal consistency between policy documents and a seamless implementation of the policies in the Housing Element. Even though the City adopted its Housing Element on May 14, the rezoning of Priority Housing Sites at the densities specified in the Housing Element must be completed in order to come into compliance with state law.

Discussion:

Municipal Code Amendments (see Attachment A)

New Chapters

- *Chapter 19.38 (Multiple-family Residential (R-4) Zones):* Nearly 70% of the 58 parcels that comprise the Housing Priority Sites have a minimum density of 50 units per acre. This increased density required the establishment of new General Plan land use

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

² Available online: www.cupertino.org/housingelement

designations (i.e., “High/Very High” and “Very High” density) for residential densities greater than 35 dwelling units per acre. These new land use designations were adopted on May 14 as part of the Housing Element adoption. The establishment of new General Plan land use designations for residential development greater than 35 dwelling units per acre has in turn necessitated the establishment of a new zoning designation, R-4, to accommodate development at these higher densities.

R-4 zoned properties would allow buildings up to 5 stories tall, with a maximum height of 70 feet, as adopted with the General Plan updates in May 2024. The City’s General Plan establishes a setback to height ratio (slope line) for properties that abut an arterial (e.g. De Anza, Stevens Creek Blvd). With the General Plan amendments in conjunction with the adoption of the Housing Element, this standard was modified such that housing development projects on Priority Housing Sites do not have to meet the slope line requirement. However, they continue to have to meet front, rear and side setbacks for structures as established in the ordinance. Since many of the parcels being zoned R-4 are located in the Heart of the City Specific Plan area, the front setback standard is designed to meet the Heart of the City standards. Rear and side setbacks are somewhat modified from the existing applicable Heart of the City Specific Plan standards. Additionally, as identified in the Housing Element, the standards also establish certain universal design standards that must be incorporated in residential projects to affirmatively further fair housing for people of all ages and abilities. Finally, standards are identified for the maintenance of common open spaces and landscaping.

- *Chapter 19.46 – Townhome (TH) Combining District:* As described in the recently adopted Housing Element, in order to accommodate a variety of housing types on the same property and to encourage the provision of a buffer for existing single-family homes/neighborhoods, some Priority Housing Sites are zoned with the TH Combining District. Historically, the Planned Development (P) zoning district used to act as a combining zoning designation. However, with recent changes to state law that require the establishment and applicability of objective standards in housing developments, the Townhome (TH) Combining District is being proposed. A combining district is one that may only be used in conjunction with a base zoning district designation. As proposed, the TH combining District may only be used in conjunction with either the R-3 or R-4 base zoning district designations.

The TH combining district allows for the same front setback as the underlying R-3 or R-4 zoning it is combined with. Therefore, proposed development projects will have to meet the front setback of the R-3 or R-4 zoning district that the TH designation is combined with for purposes of urban streetscape consistency. In addition, rear and side yard setbacks are established to ensure adequate safety requirements are met and a more gradual transition scale occurs between existing neighborhoods and the higher density development anticipated for the Priority Housing Sites. A few basic design

standards are also included as part of the zoning, such as requiring front stoops and entry features to face streets. Private open spaces are required in accordance with the underlying R-3 or R-4 zoning for all properties within the TH Combined District.

- *Chapter 19.50 – Emergency Shelters:* State law (AB 2339) requires the City to allow emergency shelters by right in at least one zoning district. In order to comply with state requirements standards have been established through inclusion of a new Municipal Code chapter, Chapter 19.50, to allow ministerial review of such facilities, should they be proposed.

Amendments to existing Chapters

In order to ensure consistency with state law and the City’s adopted Housing Element, changes have been made to various chapters of Title 19 of the Municipal Code, as follows:

- *Chapter 19.08 (Definitions):* to ensure consistency with state law and to assist with objective application of standards new definitions or modified definitions have been added for various types of housing addressed by state law that is required to be permitted by the City within certain zoning districts – whether by right (e.g. residential care facilities) or via a discretionary permitting process (e.g. Single Room Occupancy – allowed with CUP in R-4 zoning districts).
- *Chapter 19.12 (Administration):* minor edit to consolidate requirements and to codify a specific development review process required pursuant to state law (Govt. Code Section 65589.5), for certain projects, as identified below. This specific language was presented to HCD staff for review and they have indicated that the proposed language is acceptable and complies with state housing law:
 - Residential projects proposed on Priority Housing Sites at a minimum density of 20 dwelling units/acre with a minimum of 20% of the total number of units in the development affordable to lower income households. However, it should be noted that any additional permits required must follow the processes of state law (e.g. if a subdivision accompanies a project, the Tentative Map Permit must follow all state and local processes for approval of the subdivision).
 - Low barrier navigation centers and supportive housing with up to 50 units/beds.
- *Chapter 19.16 (Designations and Establishment of Districts):* to establish the new R-4 Residential Zoning District and TH (Townhome) Combining District.
- *Chapter 19.20 (Permitted, Conditional and Excluded uses in Agricultural and Residential Zones) and Chapter 19.76 (Public Building (BA), Quasi-Public Building (BQ), and Transportation (T) Zones):* to comply with state law, for internal consistency and clarity related to the establishment of standards for emergency shelters.
- *Chapter 19.28 (Single Family Residential (R-1) Zones):* to allow duplex development on corner lots and lots abutting commercial corridors in certain areas in compliance with Housing Element Strategy HE-1.3.6. This would allow the development of up to 2

primary units and 2 accessory dwelling units on these lots, for a maximum of 4 units, with an Administrative Conditional Use Permit.

- *Chapter 19.32 (Multiple-family Residential (R-3) Zones)*: to accommodate additional building height for certain Priority Housing Sites as identified in the Housing Element, amended side and rear setbacks, and private open space requirements which align with Heart of the City requirements, since many of the sites are located along transportation corridors. Additionally, similar to the R-4 zoning district, universal design standards have been incorporated into the development standards. Existing language in the Municipal Code regarding maintenance of common open areas, homeowners' associations and conditions, covenants and restrictions are added to this Chapter to ensure these are maintained.
- *Chapter 19.80 (Planned Development (P) Zones)*: for internal consistency due to the establishment of the Multiple Family Residential (R-4) and the Combining Townhome (TH) zoning districts, and consistency with state law regarding permitted uses in the P zoning district.
- *Chapter 19.124 (Parking)*: to lower the required parking requirements in the R-3 zoning district and establish parking standards for Emergency Shelters and for the new R-4 and TH zoning districts. It should be noted that a recent change to state law does not allow the City to require parking within Transit Priority Areas, defined as properties within ½ mile of major transit stops (AB2097, Friedman)^{3,4}. At present, there are five existing and planned major transit stops, by Bay Area Metro, covering most of the area along Stevens Creek Boulevard east of Highway 85.
- *Chapter 19.156 (Development Permits, Conditional Use Permits and Variances)*: to implement a commitment in the Housing Element identified by HCD related to findings for housing developments. This change makes the findings required to approve housing development projects more objective.
- *Chapter 19.168 (Architectural and Site Approval)*: to adopt findings necessary to approve housing development projects that are required to be reviewed pursuant to the by-right process of state law for certain housing developments with 20% affordable units for lower income households on Priority Housing Sites.

In addition to the proposed edits in Title 19, edits are also proposed to Chapter 14.15 (Landscape Ordinance), for internal consistency, and to allow implementation of the water efficient landscape requirements for Townhome developments. An edit is also proposed to Chapter 17.08 (Standard Environmental Protection Requirements) in order to correct an error.

³ Online at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2097.

⁴ Major transit stops are defined in state law. See online at: [Transit Priority Areas \(2021\) | Transit Priority Areas \(2021\) | Metropolitan Transportation Commission \(ca.gov\)](#)

Specific Plan Amendments

Proposed amendments to the Heart of the City Specific Plan are limited solely to text and map edits necessary for consistency with the required rezoning for Priority Housing Sites (*see Attachment B*).

Below Market Rate (BMR) Housing Mitigation Manual

Amendments to the BMR Housing Mitigation Manual are solely to update the BMR program to be consistent with the recently adopted Housing Element. The BMR program would be amended to require that the threshold at which an in-lieu of fee is paid would be reduced from six units to four units. Therefore, new residential projects consisting of five or more units would have to provide BMR units in their development. (*See Attachment B*).

Zoning Map Amendment

Amendments are proposed to maintain internal consistency between the General Plan Land Use Map and the Zoning Map and to reflect the zoning for the Priority Housing Sites. The Priority Housing Sites are also labeled on the map for ease of identification. Other minor edits have been made to the various colors and labels on the map for improved clarification and consistency, which do not change applicable development standards or zoning for any properties (*See Attachment C*).

Environmental Assessment

On February 3, 2023, the California Housing Defense Fund and Yes in My Backyard (YIMBY) filed a lawsuit due to the City 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 *et seq.*, 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 General Plan. The EA was prepared and adopted as Appendix G of the General Plan on May 14, 2024.

Next Steps

The Planning Commission's recommendation will be presented to the City Council for final action in July 2024. In addition to the zoning changes presented at this meeting, ongoing Housing Element implementation work will continue with the preparation of Objective Design Standards for multi-family and mixed-use development which will be presented to the Commission for its review and recommendation later in 2024.

Reviewed and Approved by: Luke Connolly, Assistant Director of Community Development

Attachments:

A – Draft Resolution – Municipal Code Amendments

B – Draft Resolution – Heart of the City Specific Plan and BMR Mitigation Manual Amendments

C – Draft Resolution – Zoning Map Amendments