



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**PLANNING COMMISSION STAFF REPORT**

Meeting: April 29, 2024

**Subject**

6<sup>th</sup> Cycle Housing Element and Associated General Plan Amendments

**Recommended Action**

That the Planning Commission adopt a draft resolution (Attachment A) recommending that the City Council adopt the 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 6<sup>th</sup> Cycle Housing Element update, which covers the planning period of 2023 to 2031, since April 2021. The Housing Element is part of Cupertino's General Plan and identifies policies and programs to meet the housing needs of the City's current and future residents at all income levels. State law requires that every city and county in California adopt a Housing Element every eight years. The Housing Element must identify adequate sites, with appropriate zoning and development standards, to accommodate the local jurisdiction's share of the regional housing needs for each income level and identify housing policies which will support and encourage the housing development, particularly affordable housing development, within the City.

In December 2021, ABAG adopted the final Regional Housing Needs Allocation (RHNA) for each of the Bay Area's 109 jurisdictions. As background, the nine county ABAG region has to 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 6<sup>th</sup> Cycle RHNA by income category.

<b>Income Group</b>	<b>Units</b>	<b>% of total</b>
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
<b>Total</b>	<b>4,588</b>	<b>100</b>

The most current draft Housing Element was prepared after multiple outreach efforts, which are more fully described in the Housing Element (Exhibits GPA-2 & GPA-5), and multiple revisions<sup>1</sup> to the initial Draft Housing Element as a result of comments from the California Department of Housing and Community Development (HCD) and the public. On April 10, 2024, HCD informed the City (See Attachment B) that the revised third draft of the Housing Element, submitted to HCD on March 28, meets 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.

Adoption of the Housing Element and rezoning of the sites will bring the City into compliance with state law and prevent the City's loss of land use local control, potential exposure to litigation, and other regulatory limitations resulting from not having a compliant Housing Element. 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 with state law for over a year. The City must adopt a Housing Element that complies with state law and complete rezoning of Priority Housing Sites at the density specified in the Housing Element to come into compliance.

### **Discussion**

Based on comments received through numerous public meetings and required public review periods on the various Housing Element drafts, there are two main components of the Housing Element of most interest to the community: 1) Priority Housing Sites (sites, and associated standards for, where housing is expected to develop in the planning period between 2023 and 2031, located in Appendix B4 of the Housing Element (see Exhibit GPA-5)); and 2) Housing Policies – how the City will develop and expend staffing and other resources and provide technical expertise to develop new standards in a variety of areas that encourage and will result in new and more diverse housing developments, with a focus on affordable housing.

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<sup>1</sup> Prior iterations of the Draft Housing Element submitted to HCD are available online at [www.cupertino.org/housingelement](http://www.cupertino.org/housingelement)

### ***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 6<sup>th</sup> Cycle planning period. The proposed designation of Priority Housing Sites also takes into account the "no net loss" provision of State Housing Element Law (SB 166). This provision provides that at all times during the planning period, the City must have an inventory of sites available in the Priority Housing sites list to accommodate its RHNA by income level. If there is a shortfall of sites at any time during the planning period, the City would be required to identify additional Priority Housing Sites if housing does not develop at the income levels or density that are projected to be developed on the proposed sites. To avoid such a shortfall, staff continues to recommend a buffer of 25-35% be included in the Housing Element site inventory. Accordingly, the draft Housing Element identifies 36 sites to accommodate up to approximately 6,200 units (62 parcels in total).

The 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 site and Adriana Ave site). The Housing Element process includes the establishment of minimum required densities and building heights on all of the Priority Housing Sites to ensure that the City is able to meet the RHNA requirements of the 6<sup>th</sup> Cycle. The list of Priority Housing Sites is identified in Appendix B-4 of the General Plan.

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 land use 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 as a result of the new density categories, additional refinements have been added for the existing "commercial/residential" land use designation to incorporate some of these higher residential densities. As a result of these refinements, some properties, while not designated as Priority Housing Sites, may be identified with a different land use designation on the land use map 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 and Appendix A Land Use Definitions.

### ***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 housing goals and policies from the 5<sup>th</sup> Cycle Housing Element, updates have been made to the policies from the 5<sup>th</sup> Cycle Housing Element and new policies have been proposed 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 additional technical support to be provided by City staff to developers and housing services organizations, pursuit of grant funding to support affordable housing, 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 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 4 units) on all corner lots within the R1 zoning district and on all R1 zoned lots that abut property zoned or 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.

It should be noted that recent changes to the City's ADU ordinance, adopted by the City Council in January, 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 lots within the R1 zoning district, without requiring the need to rezone the sites.

### **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.

### **Environmental Assessment**

On February 3, 2023, the California Housing Defense Fund and Yes in My Backyard (YIMBY) filed a lawsuit alleging that the City missed the January 31, 2023 deadline for adoption of the 6<sup>th</sup> 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 closely resembles a Draft EIR but, unlike an EIR, the City is not required to circulate the document for public comment or prepare responses to comments, or make corrections/edits to the Draft EIR leading to the preparation of a Final EIR. The EA is attached as Exhibit 4 of Attachment A and will be adopted, in accordance with state law, as Appendix G of the General Plan.

### **Next Steps**

The rezoning of Priority Housing Sites required to ensure that the Housing Element can be implemented will be presented to the Planning Commission for its recommendation in order to ensure that the City will be fully compliant with state law. As noted earlier, HCD's April 10 determination that the City's Housing Element is compliant with state law is contingent on the rezoning being completed.

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Prepared by: Piu Ghosh, Planning Manager

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

### **Attachments:**

Attachment A – Draft Planning Commission Resolution

Exhibit GPA – 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 B – Letter from HCD dated 4.10.2024