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PLANNING COMMISSION STAFF REPORT

Date: July 28, 2026

Subject

Municipal Code Amendment to Chapter 19.08 (Definitions) to revise definitions of “attic” and “garages” and establish a new definition of “square footage” to align with state law, and associated Environmental Review. (Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the Planning Commission adopt the draft resolution (Attachment 1) recommending that the City Council adopt an ordinance to:

1. Amend Chapter 19.08, Definitions; and
2. Find that the proposed actions are exempt from the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Discussion

Background

The City's evaluation of recent housing developments under state law, required calculations for residential to office space ratios, which highlighted a gap between the City's Municipal Code and state law. Under the streamlined ministerial approval process of California Government Code Section (GCS) 65913.4 (Senate Bill 35), the City is required to verify that at least two-thirds of the project's total "square footage" is designated for residential use. However, because the Municipal Code lacks a formal, standalone definition for "square footage," staff has historically relied on the existing code definition for "floor area" in its Municipal Code Section 19.08.030(F) for this calculation.

While substituting "floor area" for “square footage” served as a functional way forward in previous project evaluations, it exposed areas of the Municipal Code where further clarification would provide greater certainty thereby avoiding potentially costly and time consuming litigation to decide the result. State housing laws and local development standards calculate and use spatial metrics differently. The reliance on a "floor area" framework, designed for standard local zoning rather than state-mandated ministerial

pathways, particularly for multi-family and mixed-use developments, underscores the need for a distinct definition of "square footage" for future state-streamlined applications.

To prevent future interpretation conflicts and ensure code consistency, the City Attorney recommends adding a clear definition for "square footage" and updating definitions of "attic" and "garage, residential." Modifying these secondary definitions ensures that unconditioned or auxiliary residential zones, such as low-clearance attic spaces and specialized residential parking structures, are explicitly accounted for or exempted correctly depending on the specific calculation metric applied. These revisions leave unchanged the applicability of the definition to the type of residential housing (e.g., single family, townhome, duplex). Codifying these revisions will align Cupertino's local ordinances with evolving state housing legislations, streamline the review of complex development programs, and protect the City from future administrative ambiguities.

Analysis

The primary reason for adopting a standalone definition of "square footage" is to align local regulations with state housing laws like GCS 65913.4 and 65589.5 without disrupting local planning metrics. Currently, Cupertino's local definition of "floor area" is designed to regulate floor area ratios (FAR) and "development allocations" for commercial, office, and hotel spaces. Development allocation is a system built into the City's General Plan which establishes a citywide floor area for non-residential development rather than a parcel level FAR. A project is granted development allocation, if analysis determines that environmental impacts, particularly transportation impacts, are adequately addressed. Environmental impacts of development are not impacted by accessory facilities such as structured or surface parking – since these facilities by themselves do not generate traffic. Therefore, accessory parking facilities were not intended to be included within these metrics and modifying the existing local "floor area" definition to accommodate state streamlining ratios would compromise the City's long-standing environmental and zoning frameworks.

A specific definition of "square footage" resolves ambiguities regarding the treatment of mixed-use spaces and aboveground parking structures. State law, including the Building Code, requires that square footage calculations cannot include underground spaces, but it remains permissive regarding aboveground parking facilities. The proposed definition complies with the requirements of state law. The proposed definition additionally clearly establishes how areas like shared elevators, hallways, and lobbies are proportionally allocated based on the ratio of exclusively residential to non-residential spaces to dispel any ambiguity. Note that this change would apply only to new applications after its effective date.

Amending the definition of a "residential garage" is necessary to correctly distinguish the intended application of this definition. The original intent of including residential garages in floor area calculations was to ensure that development within lower density

neighborhoods would be limited in size and mass. However, because the existing code vaguely defines a garage as any enclosed building storing motor vehicles, residential structured parking facilities (garages) were technically "included" in the project's floor area, while it excluded any non-residential structured parking facilities – which was not the intent of the definition. The revised definition explicitly narrows a residential garage to single level or detached structures serving small-scale residential units, and excluding parking structures with drive aisles and maneuvering areas from the standard floor area calculation – aligning with the original intent of the municipal code.

Finally, refining the definition of an "attic" provides objective physical parameters to prevent using unconditioned spaces to manipulate floor area metrics. The current definition simply identifies an attic as an unconditioned and uninhabitable area between the ceiling and the roof. The proposed update adds enforceable criteria: an attic must be unfinished, lack permanent stairs from the floor below, and feature no operable windows. If an upper-level space fails to meet these parameters, it cannot be categorized as an exempt attic and must instead be fully counted as both floor area and square footage, ensuring accurate building volume calculations.

California Environmental Quality Act

This Ordinance is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

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Reviewed by:

Floy Andrews, Interim City Attorney

Piu Ghosh, Planning Manager

Approved for Submission by: Luke Connolly, Acting Director of Community Development

Attachments:

1 – Draft Resolution