

ORDINANCE NO. 25 –

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF CUPERTINO CORRECTING THE ZONING OF A
PRIORITY HOUSING ELEMENT SITE LOCATED AT 20865 MCCLELLAN
ROAD FROM R-3 TO R-3/TH TO ENSURE CONSISTENCY WITH THE
GENERAL PLAN AND HOUSING ELEMENT**

SECTION I: PROJECT DESCRIPTION

Application No: Z-2024-001
Applicant: City of Cupertino
Location: 359 13 019 (20865 McClellan Rd)

SECTION II: RECITALS

WHEREAS, state law requires the City to prepare and adopt an updated Housing Element every eight years to accommodate its fair share of housing and identify housing needs, resources and opportunities;

WHEREAS, pursuant to State Housing Law, the City prepared and presented a draft 6th Cycle Housing Element to the California Department of Housing and Community Development (HCD) on March 28, 2024,

WHEREAS, HCD informed the City in a letter dated April 10, 2024 that the proposed Draft Housing Element is conditionally certified, pending rezoning of the Priority Housing Sites, and any associated rezoning required, to accommodate the City's Regional Housing Needs Allocation (RHNA); and

WHEREAS, pursuant to State Housing Law, the City Council adopted the City's 6th Cycle Housing Element on May 14, 2024 with Resolution 24-039; and

WHEREAS, the Zoning map and Municipal Code were both amended on July 2, 2024, with a second reading on July 16, 2024 to rezone the Priority Housing Element sites to be consistent with the City's General Plan land use map; and

WHEREAS, the City has received a letter dated September 4, 2024 that the adopted Housing Element is certified by the Department of Housing and Community Development;

WHEREAS, the site located at 20865 McClellan Road was part of the rezoning completed to achieve Housing Element compliance and while contemplated to be developed with

townhomes in the text of the Housing Element, the rezoning indicated in the Housing Element inadvertently limited development on the site to multi-family housing (R-3);

WHEREAS, the City wants to correct this error to ensure internal inconsistency between the General Plan and zoning and allow the development of townhomes as contemplated in the Housing Element and desired by the property owner;

WHEREAS, all necessary public notices have been given as required by the Municipal Code of the City of Cupertino and the Government Code for meetings with the Planning Commission and the City Council; and

WHEREAS, the Planning Commission at its duly noticed regular meeting on December 10, 2024 recommended approval of the proposed correction to the Zoning Map with a 3-2 vote (Madhhipatla and Scharf: No); and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on February 4, 2025, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance;

WHEREAS, the City entered into a Stipulated Judgement dated January 8, 2024 pursuant to a lawsuit related to adoption of the Housing Element which included requirements for coming into compliance with state housing element law and exempted the City from the California Environmental Quality Act ("CEQA") pursuant to Government Code section 65759; and

WHEREAS, pursuant to Government Code 65759, the General Plan Amendment to adopt the Housing Element and associated amendments to the General Plan and zoning is fully described and analyzed in the Environmental Assessment, which is incorporated into the General Plan as Appendix G;

WHEREAS, the City Council finds the following:

1. That the proposed zoning is in accord with the Municipal Code and the City's Comprehensive General Plan.

The proposed zoning is in conformance with the General Plan since the City Council adopted amendments to the General Plan, including changes to land use designations, in May 2024 with adoption of the Housing Element. The text in the Housing Element clearly indicates that townhome development is anticipated and desired by the interested developer for this site since 2021. This change is a mere conforming change to the zoning designation to make the City's zoning map conform to the text in the Housing Element of the General Plan.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

Pursuant to Govt. Code Section 65759, the zoning actions related to bringing the City's Housing Element, including any associated rezoning, into compliance with state law are exempt from CEQA. An Environmental Assessment was prepared, also in compliance with state law. This Environmental Assessment identified all feasible mitigation measures and was adopted as Appendix G – General Plan 2040 and Zoning Code Amendments Environmental Assessment of the General Plan as required by state law.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the proposed zoning designation and anticipated land use development.

The site being rezoned has access to utilities and is compatible with adjoining land uses as previously anticipated with adoption of the Housing Element of the General Plan.

4. The proposed zoning will promote orderly development of the City.

The proposed zoning aligns zoning with the City's Housing Element and General Plan land use goals and policies related to locating higher density development close to transit corridors and employment centers (De Anza College, Apple etc.). The sites being rezoned will promote orderly development in the City by allowing similar land uses to be located compatibly as contemplated in the Housing Element text. The proposed changes also allow the City to comply with the requirements of state law related to housing.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes. Additionally, where health or safety impacts have been identified mitigation measures have been identified which would be applicable to any development on these sites, including those implemented through the City's existing Municipal Code requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

Section 1. Rezoning.

That the property described herein has a zoning designation as shown in the following table and in Exhibit Z-1, and is incorporated into the Master Zoning Map of the City of Cupertino:

APN	Acres	Existing Zoning Designation	New Zoning
359 13 019	0.99	R3	R3/TH

Section 2. Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

Section 3. California Environmental Quality Act.

Adoption of these zoning amendments to allow implementation of the Housing Element is exempted from the California Environmental Quality Act ("CEQA") pursuant to Government Code section 65759.

Section 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a special meeting of the Cupertino City Council on February 19, 2025 and **ENACTED** at a regular meeting of the Cupertino City Council on March 4, 2025 by the following vote:

Members of the City Council

AYES: CHAO, MOORE, MOHAN, FRUEN

NOES: WANG

ABSENT:

ABSTAIN:

<p>SIGNED:</p> _____ Liang Chao, Mayor City of Cupertino	 _____ Date
<p>ATTEST:</p> _____ Kirsten Squarcia, City Clerk	 _____ Date
<p>APPROVED AS TO FORM:</p> _____ City Attorney	 _____ Date

EXHIBIT Z-1

