

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE ZONING MAP TO REZONE 13.1 ACRES WITHIN THE
VALLCO SHOPPING DISTRICT SPECIAL AREA TO MIXED USE PLANNED
DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL ZONING
P(R3,CG) AND GENERAL COMMERCIAL USES AND THE REMAINDER OF
THE SPECIAL AREA TO GENERAL COMMERCIAL (CG)

SECTION I: PROJECT DESCRIPTION

Application No: Z-2019-01
Applicant: City of Cupertino
Location: 10101 to 10333 N Wolfe Rd
APN#s: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council's consideration of the Master Zoning Map amendments, the Council adopted Resolution No. _____, approving a General Plan Amendment to remove

office uses as a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. _____, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Master Zoning Map apply the new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)) created in MCA-2019-01 to the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. [XXXX]) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and _____, upon due notice, the City Council has held at least two public hearings to consider the Master Zoning Map Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. [XXXX], the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

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

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Master Zoning Map amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Master Zoning Map amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. _____ and _____) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

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

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which

concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.

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 requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

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

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

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 that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves amendments to the Master Zoning Map as shown in Exhibit A.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more

other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.

INTRODUCED this 20th day of August, 2019, at a Regular Meeting of the City Council of the City of Cupertino and ENACTED at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Steven Scharf
Mayor, City of Cupertino

[Designate 13.1 acres of site as P(R3,CG) and remainder of site as CG.]

APN	Zoning Prior to Ord. Z-2018-2178 Adoption	Zoning Proposed by Ord. Z-2018-2178 ¹	New Zoning
316-20-080	P(CG)	Vallco Town Center	CG
316-20-081	P(CG)	Vallco Town Center	CG
316-20-088	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-092	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-094	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-095	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-099	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-100	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-101	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-104	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-105	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-106	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]
316-20-107	P(Regional Shopping)	Vallco Town Center	[CG or P(R3, CG)]

The zoning on assessors' parcels in the table below was amended in September 2018 (Ord. Z-2018-2178) in connection with the City's approval of the Vallco Specific Plan. The adoption of that Zoning Ordinance has been challenged and thus the validity of the zoning code amendments therein is uncertain. *See, e.g., Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765. The table shows the zoning as adopted in September 2018, and the parcels' zoning as existing before that date.