

Serving on the Planning Commission: An Overview



City of Cupertino | March 25, 2025

1

Presentation Overview

- **Source of Power to Regulate Land Use**
- **Regulatory Tools**
 - General Plans
 - Other Plans
 - Zoning
 - California Environmental Quality Act (CEQA)
- **Role of the Planning Commission**
- **Suggestions for Commissioners**

City of Cupertino - March 25, 2025

Serving on the Planning Commission

2

Land Use Regulation

- Arose from “good government” movements as a response to unsanitary urban conditions
- Embodied desire to rein in private market excesses through government regulation
- Based on local government’s Police Power: health, safety and welfare



City of Cupertino - March 25, 2025

Serving on the Planning Commission

3

Key Milestones -- Nationwide

- 1909 Los Angeles imposes first zoning ordinance limiting industrial uses (not comprehensive)
- 1916 New York imposes first comprehensive zoning ordinance
- 1922 Standard State Zoning Enabling Act (SZEA)
- 1926 Euclid v. Ambler – upholds constitutionality of zoning



City of Cupertino - March 25, 2025

Serving on the Planning Commission

4

Land Use Regulation Today

- **Only two plan types are defined in California law:**
 - **General Plans** lay out a jurisdiction's future development plans through a series of policy statements in text and map form
 - **Specific Plans** are a special set of development standards that apply to a particular geographical area
- **Zoning provides detailed land use and design regulation.**
- **Other planning documents include Master Plans, Area Plans, Vision Plans, etc., but these are not defined in the law.**

City of Cupertino - March 25, 2025

Serving on the Planning Commission

5

Policy Plans and Regulations



City of Cupertino - March 25, 2025

Serving on the Planning Commission

6

General Plans

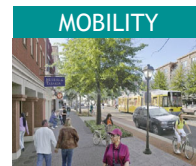
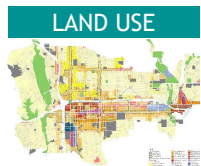
- Bedrock of California planning.
- Required by State Law
- The “constitution” for planning, development, and conservation
- Provides long-range vision (20 to 30 year horizon)
- Basis for local land use decisions and other policies
- Identifies important community issues
- Sets the ground rules

7

Cupertino General Plan Elements

Required Elements

Optional Element



ENVIRONMENTAL RESOURCES AND SUSTAINABILITY

RECREATION AND COMMUNITY SVCS

HEALTH AND SAFETY

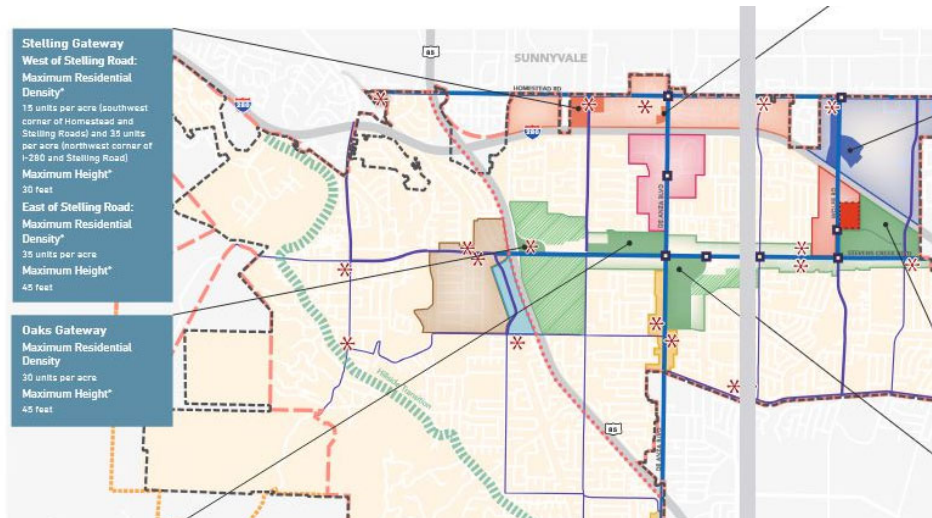


8

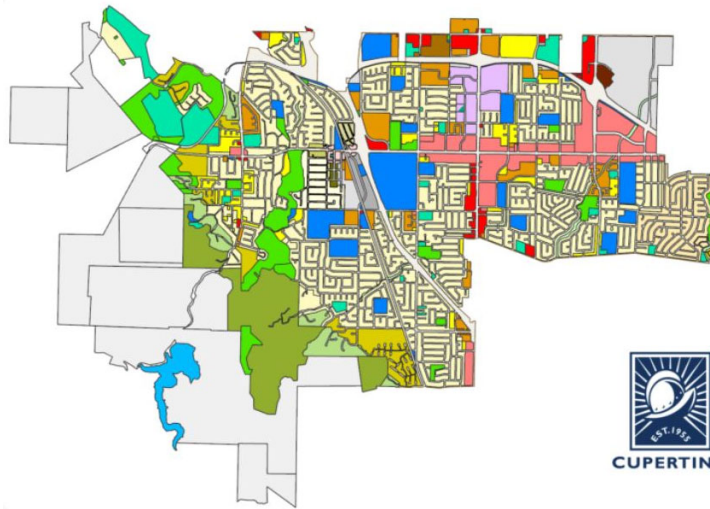
Cupertino General Plan Organization



Cupertino General Community Form Diagram



Cupertino General Plan Land Use Map

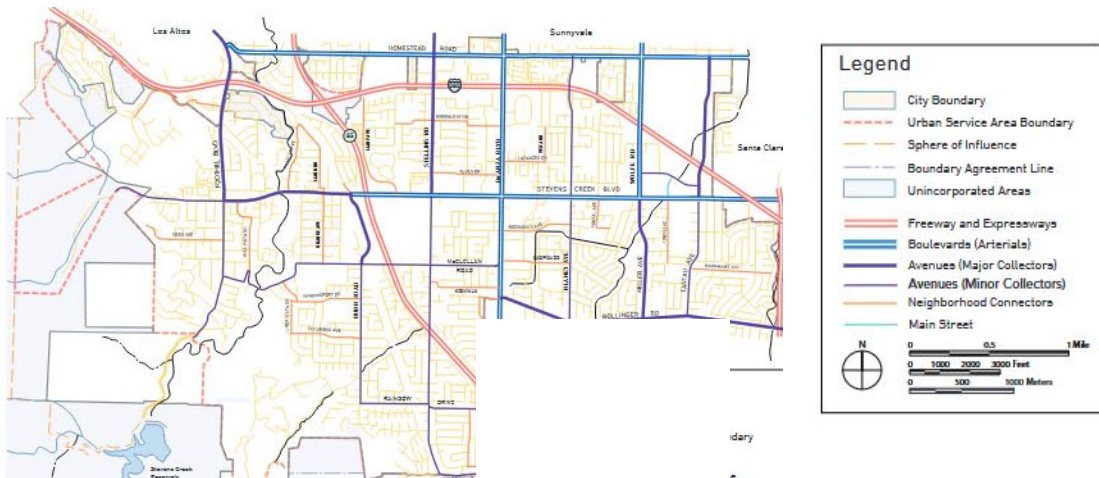


City of Cupertino - March 25, 2025

Serving on the Planning Commission

11

Cupertino General Plan Circulation Network



City of Cupertino - March 25, 2025

Serving on the Planning Commission

12

Housing Element

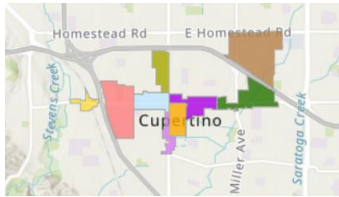
- Updated based on schedule in State law (8 years)
- Certified by the State's Department of Housing and Community Development (HCD)
- Annual Progress Report to the State on implementation
- Key Required Contents:
 - Regional Housing Needs Assessment (RHNA)
 - Housing need by income category
 - Specific sites zoned for housing at appropriate densities
 - Policies to facilitate housing development
 - Actions to remove barriers to housing production

City of Cupertino - March 25, 2025

Serving on the Planning Commission

13

Other Cupertino Planning Documents



- **Heart of the City Specific Plan (first adopted 1995)**
 - West Stevens Creek Blvd
 - Crossroads
 - Central Stevens Creek Blvd
 - City Center
 - East Stevens Creek Blvd
- » **North and South Vallco Area Planning Documents**
 - South Vallco Master Plan (2008)
 - South Vallco Connectivity Plan (2014)
 - North Vallco Park Master Plan (2007) – not adopted, advisory only
- » **North De Anza Blvd Conceptual Plan (1976)**
- » **South De Anza Blvd Conceptual Plan (1985)**
- » **South Sunnyvale-Saratoga Conceptual Zoning Plan (1981)**
- » **Wireless Facilities Master Plan (2003)**
- » **Monta Vista Design Guidelines (1978)**

City of Cupertino - March 25, 2025

Serving on the Planning Commission

14

Zoning

- **Ordinance that implements and is consistent with General Plan policies**
- **Prescribes allowable land uses and development standards including:**
 - Building uses.
 - Building size (height, lot coverage and setbacks).
 - Landscaping.
 - Signs and billboards.
 - Parking requirements.
 - Other performance standards.

Zoning

- **Traditional “Euclidean” Zoning**
 - Based on identification and separation of uses.
 - Focuses on:
 - Uses
 - Intensity
 - Setbacks
 - Less emphasis on building form

Form Based Zoning

- **Focuses on:**
 - Building design and mass.
 - Building scale, type and context.
 - Relationship of buildings to public space.
 - Design of streets and public realm.
- **Key Components**
 - Building form.
 - Building frontage.
 - Building type.
 - Roadways.
 - Public spaces.
 - Architectural detail.



City of Cupertino - March 25, 2025

Serving on the Planning Commission

17

California Environmental Quality Act (CEQA)

Goals

- Inform decision-makers about environmental effects.
- Identify ways to avoid environmental damage.
- Prevent avoidable environmental damage.
- Disclose to the public, why a project is needed, even if it results in environmental damage.

City of Cupertino - March 25, 2025

Serving on the Planning Commission

18

Types of CEQA Documents

- **Exemption**
 - Available when project meets one of many criteria found in State law.
 - Recent San Diego court case suggests must be used if available.
- **Negative Declaration (ND)**
 - If project found to have no significant effect on the environment.
- **Mitigated Negative Declaration (MND)**
 - Specifies revisions to project plans that can avoid or mitigate effects.
- **Environmental Impact Report (EIR)**
 - If project would have significant effects that cannot be eliminated through redesign or mitigation.

City of Cupertino - March 25, 2025

Serving on the Planning Commission

19

Role of the Planning Commission

- **Long Range Planning (Legislative Function):**
 - Creation and Amendment of Plans and Regulations
- **Current Planning (Adjudicatory Function):**
 - CEQA Document adoption
 - Project Review
 - Project Approval
 - *Generally, for discretionary projects only.*
 - *For ministerial projects, only review of Objective Design Standards (ODS).*
 - *Must be based on adopted plans and regulations.*



Andy Abeyta/The Desert Sun

City of Cupertino - March 25, 2025

Serving on the Planning Commission

20

Role of the Planning Commission

Thanks to Seema Patel,
City of San Mateo Planning Commission,
for the following slides



Andy Abeyta/The Desert Sun

City of Cupertino - March 25, 2025

Serving on the Planning Commission

21

Follow the rules.

- Be mindful of the Brown Act.
- Be mindful of due process.
- Parliamentary procedures are your friend.
- Take trainings and file forms in a timely manner.
- State law is not optional.

**LAW &
ORDER**
CITY GOVERNMENT UNIT

City of Cupertino - March 25, 2025

22

Always be prepared.

- Review the agenda materials.
- Visit the site (if applicable).
- Meet with the applicant (if you'd like).
- Meet with residents and community groups (if you'd like).
- ...but don't forget the Brown Act & due process.



City of Cupertino - March 25, 2025

23

Triage large packets.

- Staff report.
- Technical reports.
- Design drawings.
- Other materials.
- Public comment.



City of Cupertino - March 25, 2025

24

Set staff up for success.

- Ask clarifying questions in advance.
- Raise concerns in advance.
- Be mindful of the burden of your requests.
- Direct communication through liaison.



City of Cupertino - March 25, 2025

25

Leave personal opinion out of decision making.

- Base findings on City regulations.
- Be objective.
- Be data driven.
- Provide clear and solutions-oriented feedback.



City of Cupertino - March 25, 2025

26

Serving on the Planning Commission: An Overview



City of Cupertino | March 25, 2025

27



California's Housing Laws

Barbara E. Kautz
Goldfarb & Lipman LLP
City of Cupertino Planning Commission
Meeting
March 25, 2025

28

Presentation Overview

- Introduction: State Housing Policy
- Housing Element and 'By Right' Approvals
- Key Laws Affecting Application and Process
- Density Bonuses
- The Builder's Remedy
- Ministerial Approvals: SB 35, AB 2011, ADUs, SB 9, SB 4, and Others
- Litigation, HCD, and the Courts

29

29

State Housing Policy

30

30

Making It Hard to Deny Housing Projects

“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively *curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects*. This intent has not been fulfilled.”

31

31

Housing Element and ‘By Right’ Approval

32

32

Sixth Cycle Regional Housing Needs Assessment

- RHNA MUCH higher this cycle
- Examples:
 - SCAG: +226%
 - SACOG: +46%
 - SANDAG: +6%
 - ABAG: +150%

33

33

Sixth Cycle Housing Element

- **Cupertino RHNA increased from 1,064 to 4,588 units. Required to upzone sites to create capacity for 3,237 more units.**
- Finally approved by HCD on September 4, 2024 after all rezoning completed
- Contains 48 programs with strict timelines for completion. HCD may withdraw approval, or advocates may file suit, if City does not complete programs.

34

34

Each Upzoned and “Reused Site” is Eligible for ‘By Right’ Approval

- Eligibility:
 - 20% affordable to lower income households
 - No subdivision
- Then:
 - **NO CEQA**
 - ONLY design review based on objective standards.

35

35

Key Laws Affecting Application and Process

36

36

Preliminary Applications (“SB 330 Applications”)

“Preliminary application” freezes development standards as of date all required info was submitted

- Consists of an abbreviated planning application with minimal information
- But project must meet these timelines:
 - Project application must be filed within 180 days
 - Applicant must complete application within 90 days of receiving incomplete letter [subject of current litigation]

BUT: Conditions and ordinances may be applied to mitigate environmental impacts

37

37

Other Key Processing Provisions

- Once complete, staff must notify applicant in short time (30 or 60 days) if there are any “inconsistencies” - or “deemed consistent” with all City standards
 - If staff determines consistency, the project is deemed consistent even if Planning Commission/City Council disagrees

38

38

Five-Meeting Limit

Project limited to 5 public meetings organized by City

- **Exceptions:**

- Meetings held before application is complete.
- Project not consistent with objective standards.
 - **Builder's Remedy projects now considered consistent with objective standards.**
- Projects that require legislative approvals.
- Additional meetings required by CEQA (such as a scoping hearing).
- Meetings not conducted by the City.

39

39

Housing Accountability Act: Key Provisions

Denial or reduction in density only if:

- Project doesn't comply with "objective standards" OR
- Results in "specific adverse impact" on public health & safety
 - A "significant, quantifiable, direct, and unavoidable impact, based on **objective, identified, written public health or safety standards**" that can't be mitigated

Still subject to review under CEQA unless eligible for an exemption

40

40

Density Bonuses

41

41

Density Bonus Law

- Eligible project: 5% to 100% affordable housing
- Eligible projects entitled to receive:
 - A **density bonus** [20 - 100%, or unlimited];
 - 1 - 7 “**incentives / concessions**” [reduce costs]
 - **Unlimited waivers** of development standards
 - Reduced **parking** requirements.
- **Density Bonus project = consistent with City standards**

42

42

Density Bonus law

- Entitled to consider the HIGHEST density as “base density”
 - Example: General Plan and zoning allows 20 to 60 units per acre. “Base density” is 60 units per acre. **Could receive 100% density bonus and achieve 120 units per acre.**

43

43

Waivers and Concessions

- **Waivers:** modifications of development standards (height, setbacks, open space, design standards); must be provided for project “as designed”
- **Concessions:** modifications to standards that result in “identifiable and actual cost reductions” to provide affordable housing
 - NOT required to waive development fees or dedication requirements

44

44

Waivers and Concessions

Strict standards for denial

Both:

- “Specific, adverse health or safety impact”
- Contrary to state or federal law

Concessions:

- Does not result in identifiable and actual cost reductions

Waivers:

- Adverse impact on real property on California Historic Register

45

45

Density Bonus Law

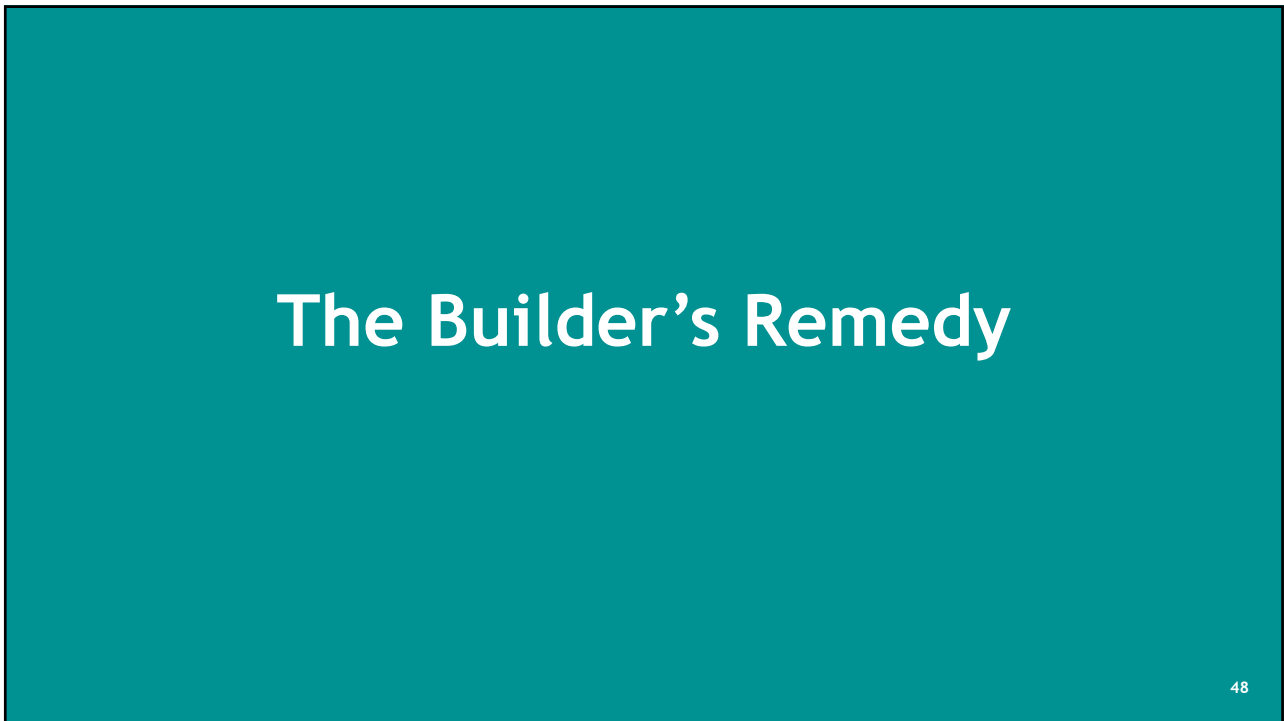
- Inclusionary units can qualify project for density bonus (*Latino Unidos v. County of Napa*)
- Example:
 - City requires 15% to 20% lower or moderate income units in projects with 5 or more units
 - All of these projects are eligible for a density bonus (plus parking reductions, one or more concessions, and unlimited waivers)

46

46



47



48

Key Provisions



Applies to “affordable” projects with:

- 13% of base density affordable to low-income households; or
- 10% to very low income; or
- 7% to extremely low income; or
- Project with 10 or fewer units; on site less than 1 acre; at 10 du/A or more

49

49

The Builder’s Remedy Provision

Additional finding to deny “affordable” projects:

- City meeting RHNA numbers;
- Specific adverse impact to public health and safety;
- Deny to comply with state or federal law;
- Proposed on agricultural land or water/sewer inadequate, OR
- **Inconsistent with Zoning Ordinance & GP land use designation; BUT must have a housing element in substantial conformance with state law, and not on a site designated in housing element for lower or moderate income housing if consistent with housing element density.**

50

50

Builder's Remedy

City without Housing Element substantially compliant with state law cannot deny, or condition to infeasibility, qualifying “housing development projects” based on lack of conformance with local plans

Proposed projects can be non-compliant with general plan and zoning



51

51

New Legislation: Key Provisions

- **Base density in Cupertino is greatest of:**
 - 45 du/acre
 - 3x maximum density (e.g. 90 du/acre if max density is 30 du/acre)
 - Density consistent with housing element
- Plus 35 du/acre in high opportunity areas
- At least 80 units/acre throughout Cupertino
 - But Cupertino projects do not exceed this density
- **May be doubled under density bonus law**

52

52

Key Provisions

- **Very important for City to maintain HCD approval of housing element**
 - HCD can revoke approval with no notice

53

53

**Ministerial Approvals:
SB 35, AB 2011, ADUs, SB 9,
SB 4, and Others**

54

54

Discretionary v. Ministerial Defined

- Discretionary –
 - Requires judgement, deliberation and decision making
- Ministerial –
 - Exercising no personal judgement
 - Project review and approval limited to whether it meets agency's objective standards
 - **Commission may never see**

55

55

Major Ministerial Approvals

- SB 35 - Adopted in 2017: streamlined approval
- ADUs - Starting in 2017 must be ministerial
- SB 9 - Adopted in 2021: 4 units on single-family lots
- AB 2011 - Adopted in 2022: housing in commercial areas
- SB 4 (YIGBY) - Adopted in 2023: housing on religious/university sites
- AB 684 - Adopted in 2023: approval of subdivision maps for 10 or fewer units on 5 acres or less, or 1.5 acres or less in single-family zones

56

56

SB 35 Projects (“Streamlined Review Process”)

Qualifying Projects:

- Multifamily residential with **50% lower income** in Cupertino
- 2/3 residential square footage
- General plan or zoning allows residential or mixed use
- No housing occupied by tenants within last 10 years
- **More than 10 units = prevailing wages**
- Consistent with objective standards; but can request density bonus waivers if not

57

57

Residential Development in Commercial Zones

AB 2011 and SB 6 allow multi-family residential development where it may not have been permitted previously:

- Applies in zones where commercial, retail or parking are principally permitted uses
- AB 2011: SB 35 timelines
- SB 6 allows SB 35 to be used on sites zoned commercial, with only 50% residential

58

58

Implications for Cupertino

- City is required to accept and approve plans that conform with state law
 - Even if inconsistent with City's adopted policies
 - Regardless of City or community concerns

59

59

Litigation, HCD, and the Courts

60

60

HCD and Attorney General Enforcement

- HCD Housing Accountability Unit with at least 25 staff
- Broader and broader authority
- Letters of Technical Advice
- Notices of Violation
- Referral to Attorney General
- Attorney General has 12-person strike force that acts independently

61

61

Active Third-Party Litigants

- Have sued many cities (Californians for Homeownership, YIMBY, California Housing Defense Fund) on housing elements, builder's remedy, HAA, and other issues
 - CHDF sued Cupertino when housing element was not adopted
- Often join in, or are plaintiffs, in litigation related to denials of housing development

62

62

HCD Authority

- HCD has broad authority to enforce most housing laws and refer cities to the Attorney General
- **In particular, HCD may “de-certify” a housing element if an “action or inaction” is inconsistent with housing element**
- **Effective January 1, 2025: housing elements are only consistent with state law if a court or HCD says so**

63

63

Attorney General Involvement and Civil Fines

- AG may intervene in most housing cases; or may bring suit itself
- If fail to approve project after court order, penalty of up to \$10,000/unit
- If HCD or the AG sue regarding housing element or ministerial approval, possible penalty of \$10,000/month from date of violation if arbitrary or unlawful

64

64

Housing Cases in General

- Courts:
 - Generally, very pro-housing
 - Uphold housing approvals
 - Overturn denials
- City risks:
 - Significant attorneys fees exposure
 - High defense costs
 - Possible damages



65

65

**What's Left for Planning
Commissioners Reviewing
Housing Projects?**

66

66

Remaining Discretion on *Some* Housing Projects

- May use subjective standards to apply conditions of approval if standards adopted before January 1, 2020 and don't effectively reduce the density or deny the project (and if no specific restriction on use of these standards)
- Also: often still subject to CEQA review

67

67

Q & A

68

68