

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADOPTING THE THIRD ADDENDUM TO THE 2014 GENERAL PLAN FINAL  
EIR AND AMENDMENTS TO CHAPTER 19.80 (PLANNED DEVELOPMENT  
(P) ZONES) OF THE CUPERTINO MUNICIPAL CODE TO CLARIFY  
DEVELOPMENT STANDARDS IN P ZONES

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SECTION I: PROJECT DESCRIPTION

Application No: MCA-2019-005  
Applicant: City of Cupertino  
Location: Citywide  
APN#s: Various

SECTION II: RECITALS

WHEREAS, the City Council FY2019/2020 Work Program directs the City to clarify objective standards within the City's General Plan and Municipal Code; and

WHEREAS, at the October 1, 2019 Council Meeting, the City Council reviewed areas that were identified by staff and the Planning Commission as needing clarity and authorized staff to commence preparation of amendments to the Planned Development (P) Zones to clarify the development standards; and

WHEREAS, the Ordinance amends the City's Municipal Code as set forth in Exhibit MCA to clarify the development standards to be applied to non-residential, residential and mixed-use residential projects within P Zones; 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 City's General Plan (Community Vision 2015-2040); and

WHEREAS, the proposed modifications to allow development in residential P Zones without the adoption of a definitive plan, and to specify development standards for anticipated uses in P Zones when a definitive plan is not proposed or adopted based on existing development standards for those uses in other zones, will not impede the ability to develop the City's Regional Housing Needs Allocation or housing for all income levels as anticipated by the City's Housing Element. The City will thus continue to be able to address the housing needs of the region while clarifying development standards in the P zone; and

WHEREAS, the proposed modifications will not result in any of the conditions requiring preparation of a subsequent EIR as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, the City has prepared a Third Addendum (“Third 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 Municipal Code Amendments to clarify development standards in the Planned Development (P) Zones 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, the Third Addendum provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because there are no substantial changes in the project or the circumstances under which the project is to be undertaken that would result in new or substantially more severe environmental impacts requiring major revisions to the Final EIR, and there is no new information that involves new significant environmental effects or a substantial increase in the severity of previously identified environmental effects that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, in the alternative, adoption of the Ordinance is not a project under CEQA and is exempt from CEQA under Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the clarifying municipal code amendments may have a significant effect on the environment; 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 November 12, 2019 to consider the Ordinance; and

WHEREAS, on November 12, 2019, the Third Addendum was presented to the Planning Commission; and

WHEREAS, on November 12, 2019, by Resolution 6889, the Planning Commission recommended on a 3-0-2 vote (Recused – Moore; Absent – Takahashi) that the City Council adopt the Third Addendum for modifications to the project and the proposed Municipal Code Amendments to clarify development standards in the Planned Development (P) Zones; and

WHEREAS, on December 3, 2019, upon due notice, the City Council has held at least one public hearing to consider the Municipal Code Amendment; 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 Third Addendum, which concludes that no further environmental review is required for the Municipal Code 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 takes the following actions:

#### Section 1.

- A. Finds that 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.
- B. Determines that the Third Addendum reflects the independent judgment of the City.
- C. Adopts the Third Addendum to the Final EIR for the modifications to the Municipal Code Title 19 related to Planned Development (P) Zones;
- D. In the alternative, finds that this Ordinance is not a project under the requirements of the California Environmental 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. 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 that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for 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 to clarify development standards in P zones would have no or only a de minimis effect on the environment because they merely adopt existing development standards for anticipated uses and maintain existing provisions allowing adoption of alternative development standards through approval of conceptual and definitive plans. The foregoing determination is made by the City Council in its independent judgment; and

Section 2. The City Council further 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 General Plan anticipates much of the development in the City would occur as infill development as attached multi-family housing. The General Plan has several policies that support in-fill mixed-use residential development including Policies LU-1.3, LU-1.1, LU-5.2, Strategies LU-1.3.1 and LU-8.3.1 and language to support the concept of mixed-use villages. The proposed amendments do not change allowed uses, but clarify development standards to be applied, where standards are not developed through various zoning plans. Since sites are anticipated to be developed in a mixed-use attached multi-family housing format, the R-3 zoning standards would apply to residential development in the P Zoning districts, unless a property owner elects to prepare a definitive plan. For mixed-use residential development, the standards are clarified to, similarly, indicate that the zoning standards in the related zoning for the type of use proposed would apply. I.e., for property with a mixed-use planned development with commercial and residential uses zoning, the development standards of the General Commercial (CG) zoning and the R-3 zoning would apply. The amendments also clarify that if there are any conflicts in the standards, the most restrictive standard would apply. The amendments thus implement, and are consistent with the General Plan and are internally consistent with Title 19 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 Third 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 Third Addendum, which concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.*

*In the alternative, adoption of the Ordinance is not a project under and is exempt from CEQA under Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the clarifying municipal code amendments may have a significant effect on the environment.*

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).

*All the sites for which the standards are being clarified already 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 developments would need to provide the appropriate utilities to accommodate the development. The proposed amendments do not affect the residential density of property and would implement the Land Use Element of the General Plan by clarifying the development standards for development.*

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

*The proposed Municipal Code Amendments will promote orderly development in the City by allowing development with clear standards.*

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 Municipal Code Amendments are not detrimental to the health, safety, peace, morals and general welfare since these are changes that implement the Land Use Element of the City's General Plan and clarify standards for development. Additionally, where health or safety impacts have been identified in the 2014 General Plan Final EIR, mitigation measures have been identified which would be applicable to any development on P Zone sites.*

Section 3. The City Council further finds the following:

*The proposed amendments will not impede the ability to develop the City's Regional Housing Needs Allocation or housing for all income levels as anticipated by the City's Housing Element. Instead, the amendments allow residential development of properties without approval of a definitive plan if they meet existing zoning standards established in the Municipal Code. The City will thus continue to be able to address its housing needs in compliance with its Housing Element.*

Section 4. The City Council approves the Amendments to the Municipal Code (Application No. MCA-2019-005) as shown in Exhibit MCA and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published Municipal Code.

Section 5. 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 6. The City Clerk shall give notice of adoption of this Ordinance as required by law.

Section 7. This Ordinance shall take effect 30 days after the second reading of the ordinance.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 3<sup>rd</sup> day of December, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the \_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:  _____ _____, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Grace Schmidt, City Clerk	  _____ Date
APPROVED AS TO FORM:  _____ Heather Minner, City Attorney	  _____ Date

**CHAPTER 19.80: PLANNED DEVELOPMENT (P) ZONES**

Section

- 19.80.010 Purpose.
- 19.80.020 Applicability of regulations.
- 19.80.030 Establishment of districts–Permitted and conditional uses and development standards.
- 19.80.040 Zoning or rezoning.
- 19.80.050 Development permit.

**19.80.010 Purpose.**

A. The planned development (P) zoning district is intended to provide a means of guiding land development or redevelopment of the City that is uniquely suited for planned coordination of land uses and to provide for a greater flexibility of land use intensity and design because of accessibility, ownership patterns, topographical considerations, and community design objectives.

B. The planned development zoning district is specifically intended to encourage variety in the development pattern of the community; to promote a more desirable living environment; to encourage creative approaches in land development; to provide a means of reducing the amount of improvements required in development through better design and land planning, to conserve natural features, to facilitate a more aesthetic and efficient use of open spaces, and to encourage the creation of public or private common open space by establishing a process to consider and approve conceptual and definitive plans that provide development standards and regulations to advance these goals.

**19.80.020 Applicability of Regulations.**

No building, structure or land shall be used and no building or structure shall be erected, enlarged or structurally altered, or demolished, in any planned development zoning district, except in accordance with the provisions set forth in this chapter.

**19.80.030 Establishment of Districts–Permitted and Conditional Uses and Development Standards.**

A. Planned development zoning districts may be established, modified or removed from the zoning map, and the regulations applicable to any planned development district may be established, modified or deleted in accord with the procedures described in this chapter.

B. All P districts shall be identified on the zoning map with the letter coding "P" followed by a specific reference to the general type of use allowed in the particular planned development zoning district. For example, a planned development zoning district in which the uses are to be general commercial in nature, would be designated "P(CG)." A planned development zoning district in which the uses are intended to be a mix of general commercial and residential would be designated "P(CG, Res)."

C. Permitted uses in a P zoning district shall consist of all uses which are permitted in the zoning district referenced following the letter "P", unless a conceptual development plan, specific plan, or other zoning plan, further restricts the uses. For example, the permitted uses in a P(CG) zoning district are the same uses which are permitted in the CG zoning district. For sites with a mixed-use residential designation, Section 19.80.030E shall apply.

D. Conditional uses in a P zoning district shall consist of all uses which require the issuance of a conditional use permit in the zoning district referenced following the letter "P," unless a conceptual development plan, specific plan, or other zoning plan, further restricts the uses. For example, the conditional uses in a P(CG) zoning district are the same uses which require a conditional use permit in the CG zoning district. Each conditional use in a P zoning district requires a separate conditional use permit. For sites with a mixed-use residential designation, Section 19.80.030E shall apply.

E. For sites with a mixed-use residential designation the following shall apply:

1. For sites in the Monta Vista Village Special Area, residential shall be a permitted use.
2. If a site is listed as a Priority Housing Site in the City's adopted Housing Element of the General Plan, then residential development that does not exceed the number of units designated for the site in the Housing Element shall be a permitted use.
3. Residential development on sites not designated as Priority Housing Sites in the City's adopted Housing Element of the General Plan and residential development on a Priority Housing Site that exceeds the number of units designated for that Priority Housing Site shall be a conditional use, except as provided in subsection 5, below.
4. Priority Housing Sites shall be shown on the City's zoning map.
5. For sites zoned P(R3, CG), no conceptual or definitive plans shall be required to establish permitted and conditional uses. Multifamily residential use is the primary permitted use. Commercial uses may be incorporated into the development on the ground floor but shall not be the primary permitted use.



F. The development standards and regulations for residential only and mixed-use residential projects in a P zoning district shall consist of the following:

1. All development standards and regulations in the General Plan and any adopted specific plan, conceptual development plan, definitive plan, or other zoning plan, and, to the extent not addressed in those plans, all development standards and regulations for the zoning district referenced following the letter "P." The development standards and regulations for a residential development are those established for the R-3 zoning district.

2. In implementing subsection (1) above, mixed-use projects shall comply with the development standards and regulations in the R-3 zone and the referenced zoning district by proposed use. For example, residential portions of the project shall comply with the development standards and regulations in the R-3 zoning, commercial portions of the project shall comply with the development standards and regulations in the CG zoning, industrial portions of the project shall comply with the development standards and regulations in the ML/MP zoning, whichever is referenced, and office portions of the project shall comply with the development standards and regulations in the OA/OP zoning, whichever is referenced. In the event of any conflicts, the most restrictive standard or regulation shall apply.

G. For projects with no residential component proposed in a P zoning district, the development standards and regulations of the permitted and conditional uses shall be established in conjunction with the approval of conceptual and definitive plans, and such projects shall also comply with any adopted specific plan, or other zoning plan. For sites which require a specific plan prior to development approval, the permitted and conditional uses and all development regulations shall be as shown in the specific plan.

#### **19.80.040 Zoning or Prezoning.**

A. Application. The applicant for zoning, prezoning, or rezoning of property to a P zoning district shall, in addition to information required per Chapter 19.12, at the time of the application, submit to the Director of Community Development a conceptual development plan, which shall include:

1. A general description of the proposed uses,
2. The proposed traffic-circulation system,
3. A topographical map of the site and the neighboring properties,
4. A landscaping plan.

B. Process and Review Authority.

1. Applications for the zoning, rezoning or rezoning of property shall be processed in the manner prescribed in Chapter 19.152.

C. Findings. No such ordinance may be adopted unless, in addition to making the findings required by Chapter 19.152, the following findings are made:

1. That the conceptual development plan attached to the application is consistent with both the General Plan and any underlying zoning designation which regulates the site;

2. That the conceptual development plan provides for an organized and unified system of land uses and land use intensities which would be compatible with the surrounding neighborhood;

3. That the conceptual development plan for a residential use ensures that the proposed development provides adequate active and passive oriented open space within the development to satisfy the needs of future residents and, further, that the proposed development provides adequate landscaping that will function in a manner which will enhance the individual development and the community as a whole;

4. That the conceptual development plan ensures that the location of the site with respect to major thoroughfares and uses outside the zone would not create undue and unreasonable traffic congestion in the area;

5. That the conceptual development plan makes provisions for adequate parking, waste disposal and undergrounding of utilities.

D. Modifications. Any modification of the conceptual plan requires the submission of a rezoning application.

**19.80.050 Development Permit.**

Process and Review Authority - Prior to any development within a planned development zoning district, the applicant must obtain a development permit and a required or requested definitive plan approving the development pursuant to the requirements of Chapter 19.156. A required or requested definitive plan may be reviewed and approved concurrently with the development permit.