

CC 10-05-2021

Study Session #1

Update on Housing  
Element and Housing  
Survey

Presentation

# Update on Housing Element & Housing Survey

City Council  
October 5, 2021



**CITY OF  
CUPERTINO**

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## Background – RHNA & Housing Element

- 6<sup>th</sup> Cycle RHNA & Housing Element: 2023 - 2031
- Housing Element: Required General Plan element
- Update every 8 years
- Current Draft RHNA: 4,588 units
- Final RHNA: December 2021
- Housing Element update due: January 31, 2023

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## **Background – RHNA & Housing Element**

Background regarding development of RHNA methodology and Draft RHNA provided at:

- 5/19/20: City Council study session
- 7/8/20: City Council special meeting
- 11/10/20: Planning Commission study session

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## **Background – Housing Survey**

- FY 20-21 City Work Program- Housing Survey Subcommittee
- 9/20 – 8/21: (9) Public hearings
- 6/21 – 7/21: Survey open to public
- 935 responses
  - 76% homeowners / 17% renters
- Survey will inform Housing Element

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## Housing Element Update

### Outreach Efforts to Date:

- 4/27/21: Joint study session #1
- 5/11/21: Joint study session #2
- 8/9/21: "Let's Talk Housing" community meeting

### Consultant Update

- 9/21/21: City Council awards contract to EMC
- 9/28/21: Housing Element update kick-off meeting

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## Housing Element Update - Timeline

Milestone	Time Frame
Community Education and Engagement	Fall 2021 – Late Winter 2022
Review and Update Goals, Policies, & Technical Analysis	Fall 2021 – Spring 2022
Preparation of Site Inventory	Fall 2021 – Early Winter 2022
Preparation of Environmental Documents	Late Winter 2021 - Summer 2022
Preparation of Draft Housing Element	Late Winter 2021 - Summer 2022
City Council Approval of Draft Sites Inventory	Early Winter 2022
City Council Study Session of Draft Housing Element	Fall 2022
Submit Draft Housing Element to HCD for Certification	Fall 2022
Preparation of Final Housing Element with HCD Feedback	Late Fall 2022
City Council Adoption of Final Housing Element	Winter 2022
Submit Final Housing Element to Required Agencies	By Jan 31, 2023

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## Housing Element Update - Engagement

Proposed Public Engagement Plan:

- **11** Public Meetings & Study Sessions
- **2** Community Meetings
- **3** Stakeholder Meetings
- Online Engagement & Workshops
- Educational Webpage
- Translation/Interpretation Services

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## Housing Element Update – Engagement

Jurisdiction	RHNA	Public Engagement
<b>Mountain View</b>	11,135	<ul style="list-style-type: none"> <li>▪ <b>4</b> public meetings/study sessions</li> <li>▪ <b>2</b> Community meetings/events</li> <li>▪ <b>10</b> stakeholder interviews/meetings</li> <li>▪ <b>1</b> Survey</li> </ul>
<b>Palo Alto</b>	6,086	<ul style="list-style-type: none"> <li>▪ <b>6</b> public meetings/study sessions</li> <li>▪ <b>5</b> Community meetings/workshops</li> <li>▪ <b>3</b> Pop-up events</li> <li>▪ <b>15</b> Citizen/stakeholder working group meetings</li> <li>▪ Online engagement/survey</li> </ul>
<b>Los Gatos</b>	1,993	<ul style="list-style-type: none"> <li>▪ Public meetings/study sessions: <b>TBD</b></li> <li>▪ <b>3</b> Community meetings/workshops</li> <li>▪ Monthly Housing Element Advisory Board Meeting</li> </ul>
<b>Sunnyvale</b>	11,966	<ul style="list-style-type: none"> <li>▪ No Citizen Advisory Committee</li> <li>▪ No outreach plan currently determined</li> </ul>
<b>Saratoga</b>	1,712	<ul style="list-style-type: none"> <li>▪ Outreach in Phases                             <ul style="list-style-type: none"> <li>▪ Phase 1 (staff): <b>12</b> community meetings</li> <li>▪ Phase 2 (Planning Commission): <b>4</b> Community Meetings</li> <li>▪ Phase 3 (Planning Commission): TBD</li> </ul> </li> </ul>

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# Comments/Questions

**Housing Element Update  
Study Session**

**6<sup>th</sup> Cycle**

EMC Planning Group Introduction

CUPERTINO

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**EMC Planning Group Experience**

- 43<sup>rd</sup> year in business in Monterey
- Prepared 5<sup>th</sup> Cycle housing elements for four jurisdictions
- Working on 6<sup>th</sup> Cycle housing elements for five jurisdictions
- Each housing element is custom tailored to the jurisdiction's unique needs

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## AB 686: Equity Analysis + Actions

### *To affirmatively further fair housing*

Public agencies must now examine existing and future policies, plans, programs, rules, practices, and related activities and make proactive changes to promote more inclusive communities.

3

## Public Outreach

- **11** Study Sessions & Public Meetings
- **2** Community Meetings
- **3** Stakeholder Meetings
- Weekly Staff Meetings
- Robust Online Engagement

4



## Examples of Outreach Report Information



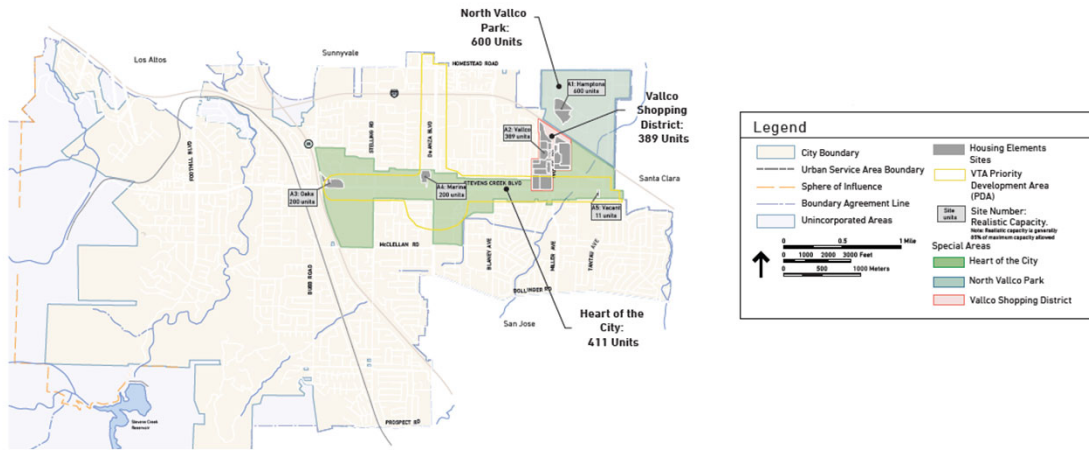
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## Milestone Schedule

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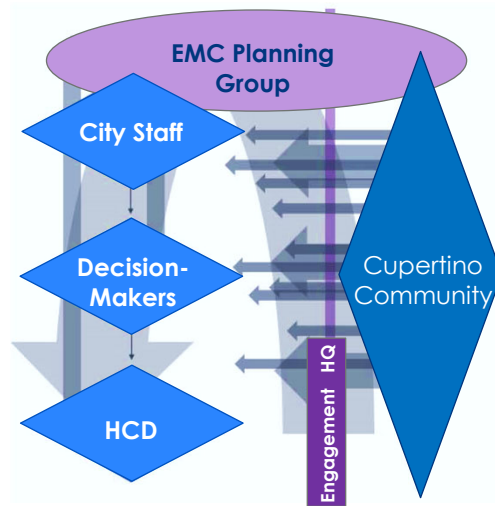
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# 5<sup>th</sup> Cycle Housing Element



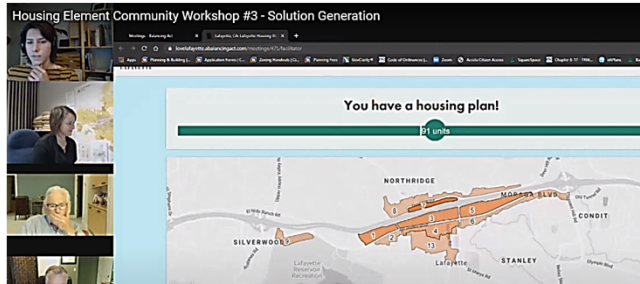
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# Decision-Making Flow Chart



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# Decision-Making Experience



CC 10-05-2021

#9

Appeal of Application  
R-2020-035 & RM-2020-023

Presentation



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### Project Site

- 1506 Primrose Way
- Neighborhood: Monta Vista South
- Zoning District: R1-6

An aerial photograph of a residential neighborhood with a grid of lots. A red rectangular box highlights a specific lot. To the left of the highlighted lot, the letters "PR" are visible, and to the right, "R1-6" is visible, indicating zoning districts.

2

## Project Request

- Two-Story Permit to allow for:
  - New 2,992 sq. ft. two-story home
  - 746 sq. ft. ADU
- Minor Residential Permit to allow for a 115 sq. ft. second-story balcony

3

## Project Timeline

11/29/20	Applicant applies for Two-Story & Minor Residential Permits
2/22/21	City deems project complete
3/5-19/21	Public comment period
4/19/21	Applicant submits revised project
4/19/21	City approves revised project
4/29 – 5/3/21	City receives appeals (Lin & Vadhia) of Director's Decision
6/22/21	Planning Commission upholds the Director's decision
7/2-3/21	City receives appeals (Lin & Vadhia) of Planning Commission's Decision

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## Appeal Context

 Applicant:  
1506 Primrose Way

 Appellants:  
1493 & 1479 Poppy Way



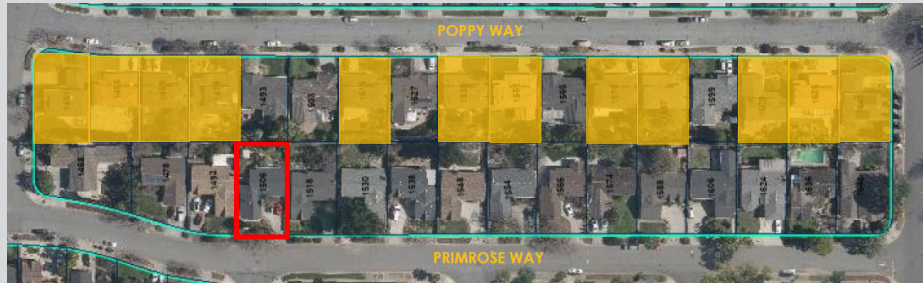
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## Appeal Basis #1: Mass & Bulk

- *“Primrose Way is a community of beautiful single story homes. A two story construction will destroy the look and feel of the neighborhood. It's everyone's responsibility to uphold the integrity and feel of the neighborhood.”*

6

## Response: Mass & Bulk



- Mix of single-story & two-story residences
- Average floor area = approx. 2,822 sq. ft.
- Project is comparable to neighboring homes

 = Two-Story Residence

7

## Response: Mass & Bulk

- No Single-Story Overlay
- Complies with R-1 Ordinance
  - FAR
  - First-Floor Building Envelope
  - Setback Regulations
  - Building Height
- Complies with ADU Ordinance
  - Setback Regulations
  - Height
  - Under 800 SF

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## Appeal Basis #2: Privacy Impacts

- *5' Grade Difference*
- *ADU Windows (1<sup>st</sup> Floor)*
- *Second-Story Balcony*
- *Second-Story Windows*
- *Privacy Plantings – insufficient height*
- *Privacy Plantings - location concerns*

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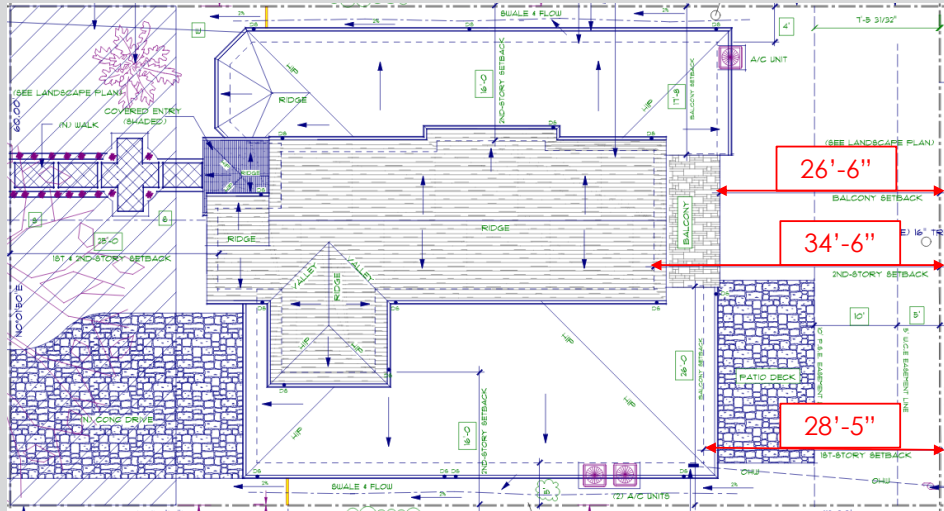
## Response: Privacy Impacts

- Complies with R-1 Ordinance height limitations
  - Proposed height = 23'
  - Max. allowed height = 28'
  - Code does not account for grade differences between properties

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## Response: Privacy Impacts

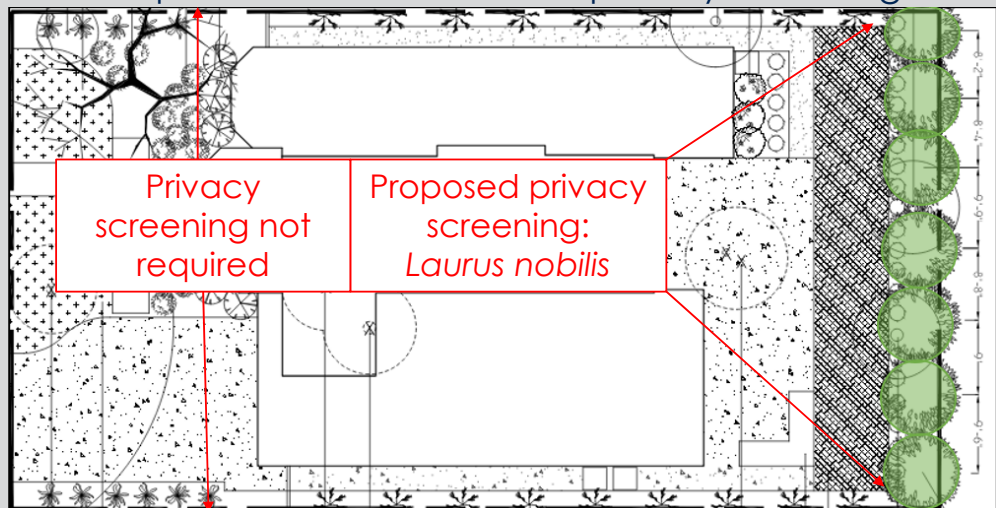
- Complies with R-1 Ordinance setbacks



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## Response: Privacy Impacts

- Complies with R-1 Ordinance privacy screening



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## Appeal Basis #3 & Responses: Other

*"The ADU is planned to be a separate unit even though it's attached to the main residence. Over the long run the applicant has not demonstrated the ADU and main residence will continue to be separate. I see little evidence the City has addressed this long term issue."*

-Response:

- ADU complies with State law & ADU Ordinance
- ADU shall remain separate from main home

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## Appeal Basis #3 & Responses: Other

*"I paid a king's ransom to buy a home in Cupertino with views of the beautiful Cupertino Hills. The two-story proposal totally obscures my views of the beautiful Cupertino hills and skyline. The City's decision has now given my beautiful views to the applicant to enjoy! Does that seem fair? The City's decision discriminates established residents like myself relative to applicants that apparently don't live in Cupertino."*

-Response:

- Preservation of views is not a stated purpose of the R-1 Ordinance

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## Noticing

Notice of Public Hearing & Site Signage	Agenda
Site Signage - posted	Posted on the City's official notice bulletin board
10 notices mailed	Posted on the City of Cupertino's Web site


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## Recommendation

That City Council adopt the proposed draft resolutions to:

- Find that the proposed actions are exempt from CEQA
- Deny the appeals & uphold the Planning Commission's approval of R-2020-035 & RM-2020-023

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# Planning Permit 1506 Primrose Way Cupertino

1

I, Chaman Hafiz and my husband Tariq Khan have been peacefully living with our neighbors at 1506 Primrose Way, Cupertino, CA since 2005.

Our family has gotten bigger, elderly parents, our Children, daughter-in-law as well as grandkids on the way, this small house can't accommodate the big family. It's necessity for our family not a luxury.

We've discussed with neighbors and have got overwhelming support for the construction. Our direct neighbors - front, left, and to the right of the home have waived and declared their support for the rebuilding of this home along with 12 other members from Primrose Way have offered their support with a letter.

2

We submitted our first design to the city in September of 2020 that met all of Cupertino's rules, regulations, and codes and was approved by the Cupertino City planning commission.

After this first submission, we had multiple revisions of the design to respect and meet the back neighbor concerns along with the city's comments. We modified the house design by reducing the height 23ft (even though city allow 28ft), ADU from 800sqft to 746sqft., along with the privacy plan.

We finally received city approval in April of 2021 after much back-and-forth discussions, however now here we are in court due to this same neighbor's complaints again.

3

Our back neighbor complains that Primrose Way is a community of single-story homes. This is a completely false statement.

4 two-story homes (house# 1260, 1272, 1320), 1 beginning of Primrose way  
6 two-story in front of our house on Waterford Drive  
27 two-story on Poppy Way

Additionally, there is a big two-story house recently built in our neighborhood in 2018 with a size of 4086sqft (7411 Wildflower Way).

There are many homes in our neighborhood that are big and two-story. Our final City approved plan main house 1<sup>st</sup> floor only 1551 sqft and garage 462 sq ft and upstairs only 932 sqft. With this sqft is not enough for my big family. I'm not requesting anything extra, the reason why I'm highlighting all of these different homes is that I want to have the same rights that other members of our community had in building a two-story home.

4



In addressing the privacy concerns, we hired a Land scape designer and submitted a privacy plan to address our back neighbor's concerns directly. Although a lot of tall trees in our backyard that will block any view, please see the below backyard trees.



5

After the city permit, we should be happy to put a sign up in front of our house that states we're building this house, but unfortunately putting this sign up means that we have a public hearing against our back neighbor which makes us so upset and breaks our hearts.

6



It should not be this way, neighbors and members of our community should be good friends, well-wishers, and offer support. We've met all city rules and regulations, approved code and even have a privacy plan to maintain our neighbor's privacy. After meeting all the Cupertino city's code, rules, and regulations if we can't build this house than it'll affect in our neighbor's relationship, in our community, and it'll be bad example to our kids and next generation. We've respected everything the city has told us and asked of us, along with what our neighbor's comments. We truly appreciate you taking the time to listen to us.

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So, I humbly ask you all to bless us so that our dream takes fruition! In fact, it will be valuable addition to the neighborhood!

"A home is where love resides, memories are created, friends always belong, and laughter never ends!"

Thank you very much.

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CC 10-05-2021

#10

Density Bonus Ordinance  
MCA-2021-003

Presentation

**Municipal Code Amendment  
Density Bonus Ordinance  
MCA-2021-003**

City Council  
September 14, 2021



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## Subject

Amendments to Cupertino Municipal Code Sections

- 19.56.030 (Table 19.56.030),
- 19.56.030F,
- 19.56.040 (Table 19.56.040A) and
- Add Section 19.56.080

Purpose: Compliance with AB2345



## Background

- Affordable Housing strategies (City Work Program Item FY20/21) updates to City's Density Bonus Ordinance
- AB 2345 increased maximum density bonus for non-100 % affordable projects from 35% to 50% in exchange for a mere 4 to 5% increase in affordability
  - Provided a City could adopt its own "housing program" or ordinance, or both, to incentivize development of affordable housing by allowing bonuses that exceed 35%.



## Background

- CC Ordinance adopted on May 4, 2021
- Department of Housing and Community Development (HCD) expressed concern
  - Adopted program by resolution and ordinance amendments did not create “program” and provided insufficient incentives.

Income Level of unit	Proportion of Total Affordable Dwelling Units	Maximum Density Bonus
Very Low Income	5%	20%
	<del>6% - 12%</del> <u>11%</u> <sup>(1)</sup>	<del>22.5% - 37.5%</del> <u>35%</u>
	<u>12% - 14%</u> <sup>(2)</sup>	<u>38.75% - 46.25%</u>
	<del>13%</del> <u>15%</u> or more	<del>40%</del> <u>50%</u>
Low Income	10%	20%
	<del>11% - 22%</del> <u>20%</u> <sup>(3)</sup>	<del>21.5% - 38%</del> <u>35%</u>
	<u>21% - 23%</u> <sup>(4)</sup>	<u>38.75% - 46.25%</u>
	<del>23%</del> <u>24%</u> or more	<del>40%</del> <u>50%</u>
Moderate Income (Common interest developments)	10%	5%
	<del>11% - 44%</del> <u>40%</u> <sup>(5)</sup>	<del>6% - 39%</del> <u>35%</u>
	<u>41% - 43%</u> <sup>(6)</sup>	<u>38.75% - 46.25%</u>
	<del>45%</del> <u>44%</u> or above	<del>40%</del> <u>50%</u>
<u>Affordable Housing Development</u>	<u>100%</u> <sup>(7)</sup>	<u>80% or as specified in Government Code Section 65915</u>



## Analysis

- Consistently approved density bonus projects (Vallco, Marina, Veranda, and Westport).
- City offers host of incentives to incentivize affordable housing within other parts of Municipal Code
  - Flexible zoning standards in Planned Development Zoning District Ordinance.
  - BMR Housing Program through Chapter 19.172 of Municipal Code and associated administration and other manuals.





## Analysis

- HCD asserts City's existing density bonus program does not comply with AB 2345.
- Evidence based on analysis by HEG and experience of San Diego, developers are most likely to use program by providing very low income housing.
- For projects with very low income housing, AB 2345's maximum bonus of 50 percent for 15 percent very low income units is not much different from City's existing density-for-affordability ratio which would require 17 percent very low income units for 50 percent density bonus.

# Incentives/Concessions

Unit Type	Percent of Affordable Units	Number of Incentives/Concessions
Very Low Income Units	5% or greater	1
	10% or greater	2
	15% or greater	3
Low Income Units	10% or greater	1
	<del>20</del> <u>17</u> % or greater	2
	<del>30</del> <u>24</u> % or greater	3
Moderate Income Units	10% or greater	1
	20% or greater	2
	30% or greater	3
<u>Affordable Housing Development</u>	<u>100%*</u>	<u>4</u>



## New Section

- If any portion of this Chapter 19.56 conflicts with State Density Bonus Law (Government Code Section 65915 et seq.) or other applicable state law, state law shall supersede this Chapter. Any ambiguities in this section shall be interpreted to be consistent with State Density Bonus Law. All code references in this Chapter include all successor provisions.



## CEQA review

- Proposed code amendments: (1) will not result in any direct or reasonably foreseeable indirect physical change in environment (CEQA Guidelines Section 15060(c)) and so (2) do not constitute project under CEQA (CEQA Guidelines Section 15378).
- Amendments can be seen with certainty based on review of facts to have no possible significant effect on environment (CEQA Guidelines Section 15061(b)(3)).



## PC Recommendation

- Met on Aug. 10 and Sept. 14, 2021
- Voted 3-2 (No: Madhhipatla and Wang) to recommend that Council adopt amendments



## Recommended Action

Adopt Ordinance adopting the proposed amendments to the City's density bonus ordinance to incentivize development of affordable housing by allowing for density bonuses and other incentives as provided by state law, and providing that City's ordinance will be interpreted consistent with state density bonus law and find all associated actions exempt from CEQA.



# Questions





CC 10-05-2021

#11

Waste Reduction  
Ordinance

Presentation

# **Ordinance to Mandate Organic Waste Reduction per SB 1383**

October 5, 2021



**CUPERTINO**

## What is SB 1383?

- Short-Lived Climate Pollutant Reduction Strategy for California
- Reduces food and other organics going to landfill
  - Statewide goals:
    - 75% reduction of organics to landfill by 2025
    - 20% increase in recovered edible food
- Most sweeping set of regulations in 30 years
- Specific required actions (instead of just targets)

## Why SB 1383?

- Organics in the landfill generate methane
  - Methane is 72x more potent than CO<sub>2</sub>
  - Landfills are 3<sup>rd</sup> largest source of methane in CA
  - Methane contributes to climate change in CA
- Californians throw away a lot of food
  - 1 in 8 Californians are food insecure
  - 18% of what Californians throw away is food, much of it still edible
- About half of what Californians throw away is organics

# What does SB 1383 require?

## Jurisdiction Responsibilities

**Provide Organics  
Collection Services to All  
Residents and Businesses**



**Conduct Education and  
Outreach to Community**



**Secure Access to  
Recycling and Edible  
Food Recovery Capacity**



**Establish Edible Food  
Recovery Program**



**Procure Recyclable and  
Recovered Organic  
Products**



**Monitor Compliance  
and Conduct  
Enforcement**



## Is Cupertino ready to comply with SB 1383?

- Organics collection service already available to all customers, including multi-family dwellings (since 2018)
  - Businesses may qualify for exemptions – e.g., de minimis
- Food recovery being coordinated at County level:
  - Outreach to Tier 1 and Tier 2 generators
  - Capacity planning
  - Regional model ordinance language
- Outreach began over a year ago, continues

## **Good Timing: New Franchise Agreement**

- Franchise agreement negotiation process (approved Dec 2020) anticipated SB1383
- Includes shared responsibilities for auditing and education
- Includes assurances of adequate processing capacity
- Anticipated additional staffing needs
- Negotiation process included outreach that highlighted requirements needed for SB1383

## Procurement - Compost, Mulch, Electricity, Renewable Gas

- City must acquire “for use or giveaway” large amounts of compliant materials based on population
- Obligation applies to cities and counties – not residential or commercial customers
- Market building purpose
- Will be addressed in future policy – update to existing Environmentally Preferable Purchasing Policy



## **Procurement - Market Building for Compost, Mulch, Electricity, Renewable Gas**

Still strategizing for compliance

- Exploring with SVCE and ABAG: electricity and gas
- Working with CIP group to include compliant compost and mulch in specs
- Exploring regional partnerships for agricultural use

## **Procurement – Recycled-Content Paper**

- Impacts all City departments and types of paper
- Paper products must have recycled content and be themselves recyclable
- We have some choice regarding price sensitivity and performance
- City must keep detailed records for CalRecycle
- Will also appear in future policy – updated EPPP

## Outreach

- 2020 Franchise agreement process – Chamber, customers, web page
- SB1383 web page with requirements listed for all:
  - [cupertino.org/sb1383](http://cupertino.org/sb1383)
- Visited all Tier 1 businesses re: food recovery
- Met with property management company for 5 large apartment complexes, did site visits
- Additional outreach planned, beginning with those businesses that do not have organics service yet

# Education and Enforcement Timeline

## SB 1383 IN ACTION

### INSPECTION AND ENFORCEMENT REQUIREMENTS



Monitor Compliance and Conduct Enforcement

## JURISDICTION REQUIREMENTS

### Ordinance 2022



Adopt an Ordinance  
(Enforceable Mechanism)  
Including Enforcement

### Compliance Monitoring & Education 2022-2023



Annual Compliance Reviews  
Route Reviews & Inspections  
Education and Technical Assistance

### Compliance Monitoring & Enforcement 2024



Route Reviews & Inspections Continue  
Notices of Violations  
Enforcement

## **Use of CalRecycle Model Language**

- Model ordinance language provided by CalRecycle to assist jurisdictions
- Proposed ordinance before you incorporates the bulk of that model, customized for Cupertino
- Current mandatory commercial organics section 6.24.037 will be replaced
- Edits to other sections for clarity
- Addition of many new defined terms
- New section 6.24.038 for food recovery

## Next Steps

- If approved tonight, second reading is tentatively scheduled for October 19, 2021
- If adopted, effective date is 1/1/2022

# Questions?

