

CC 10-17-2021

#17

General Plan Amendment
(GPA-2021-001)

Municipal Code
Amendment
(MCA-2021-004)

Presentation

General Plan Amendment (GPA-2021-001) Municipal Code Amendment (MCA-2021-004)

City Council
October 19, 2021



**CITY OF
CUPERTINO**

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GPA-2021-001 & MCA-2021-004

- Amendments to Cupertino General Plan to add:
 - Clarity to existing language in Chapter 3 (Land Use) in Figure LU-2, Policy LU-1.1 and Goal LU-13, and
 - Emphasis to existing language in Chapter 6 (Environmental Resources and Sustainability) (Strategy ES-6.1.1),
- Amendments to Cupertino Municipal Code Title 17, Environmental Regulations, (add new Chapter) to adopt standard environmental protection requirements for construction, development and other similar or related activities.

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Background

- Changes in state law – require some housing developments to comply with objective standards in City's general plan and zoning
- FY19/20 Work program – update GP and zoning to include objective standards
- CAO identified some items – include prior updates to Park Land dedication and Planned Development zones chapters
- PC and CC invited public to suggest areas
- Large number of items collected

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Background

- Sept 18, 2019, CC authorized staff to commence on items identified by staff and CAO
- Oct. 1, 2019, CC delegated task of prioritizing items to CM and CAO
- SB330 enacted in September 2019
 - No reduction intensity of housing development on some properties without increase in intensity elsewhere

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Background

- Items prioritized with this background as:
 - **Immediate completion – being presented now**
 - Current Work Program Items - underway
 - Completed
 - Possible Housing Element update
 - Possible Future Work Program
 - On Hold – not recommended by PC or consider with future comprehensive GP update

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Proposed GPA - Footnotes

Chapter 3 Figure LU-2

Building Planes:

- Maintain the **primary** building **bulk** below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area. Architectural features that do not include usable area may encroach into the slope line.
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For projects outside of the Vallco Shopping District Special Area that are adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review. Where slope lines or other applicable height and setback limits for projects adjacent to residential areas is not established in a specific plan, conceptual zoning plan or land use plan and in any adopted design guidelines, this will be established during project review.
- For projects within the Vallco Shopping District Special Area that are adjacent to the North Blaney/Portal neighborhood: Maintain the building below a 2:1 slope line drawn from the adjacent residential property line.
- For the North and South Vallco Park areas: Maintain the **primary** building **bulk** below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line. Architectural features that do not include usable area may encroach into the slope line.

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Proposed GPA – text boxes

Chapter 3 Figure LU-2

Homestead Special Area

Maximum Residential Density

Up to 35 units per acre per General Plan Land Use Map.
15 units per acre (two parcels at southeast corner of Homestead Rd and Blaney Ave).
All other areas - Maximum density as indicated in the General Plan Land Use Map or 35 units per acre where none indicated.

Maximum Height 30 feet, or 45 feet (south side between De Anza and Stelling)

South De Anza Special Area

Maximum Residential Density

North of Bollinger Rd - maximum density is 25 units per acre (north of Bollinger)
South of Hwy 85 - maximum residential is 5-15 units per acre (south of 85)

Maximum Height
30 feet

Heart of the City Special Area

Maximum Residential Density

Up to 25 units per acre per General Plan Land Use Map or
South Vallco - 35 units per acre (South Vallco)
All other areas - Maximum density as indicated in the Heart of the City Land Use Map and, if none indicated, 25 units per acre

Maximum Height

45 feet, or 30 feet where designated by hatched line

Monta Vista Village Special Area

Maximum Residential Density

Up to 15 units per acre, per General Plan Land Use Map
Maximum density as indicated in the General Plan Land Use Map and if none indicated, 15 units per acre

Maximum Height

Up to 30 feet

Neighborhoods

Maximum Residential Density

Per Maximum density as indicated in the General Plan Land Use Map;
15 units per acre for Neighborhood Commercial Centers Sites

Maximum Height

30 feet

City Center Node

Maximum Residential Density
25 units per acre
Maximum Height
45 feet or as existing approved with post height exceptions, for existing taller buildings

North De Anza Special Area

Maximum Residential Density

Maximum density is 25 units per acre

Maximum Height

45 feet

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Proposed GPA – text edits

Chapter 3; LU-1.1 and Goal 13

POLICY LU-1.1: LAND USE AND TRANSPORTATION

Focus higher land use intensities and densities within a half-mile of public transit service, and along major corridors. Figure LU-2 indicates the maximum residential densities for sites that allow residential land uses.

HEART OF THE CITY SPECIAL AREA

The Heart of the City will remain the core commercial corridor in Cupertino, with a series of commercial and mixed-use centers and a focus on creating a walkable, bikeable boulevard that can support transit. General goals, policies and strategies (as identified in Goal LU-13) will apply throughout the entire area; while more specific goals, policies, and strategies for each subarea are designed to address their individual settings and characteristics and are identified in Goals LU-14 through LU-18.

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Proposed GPA – text edits

Chapter 6; Strategy ES-6.1.1

STRATEGIES:

ES-6.1.1: Public Participation.

Strongly encourage Santa Clara County to engage with the affected neighborhoods when considering changes to restoration plans and mineral extraction activity.

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Municipal Code Amendment

Add new Chapter 17.04

- Definitions
- Applicability: All projects involving subdivision, construction, ground-disturbing activities and tree removal
 - Non-residential/residential (4+ units) = CMP and/or permit plans
 - Residential (<4 units)/additions/remodels/TIs = Permit plans
 - No bldg. or ground disturbing permit required (includes Tree removals) = implement requirements as would be required for permitted work

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Municipal Code Amendment

Requirements prior to project approval

- Air Quality: Prepare operational HRA, if project exceeds certain thresholds
 - Prepared in accordance with OEHHA and BAAQMD standards
 - Identify and implement T-BACTs or measures capable of reducing risks to acceptable level in project, if certain risk thresholds are exceeded
- Indicate what area site is on BAAQMD “Planning Healthy Places” map
 - If in “Implement Best Practices”, install higher MERV filters, locate openings in building away from emission sources and plant trees as required

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Municipal Code Amendment

Requirements prior to project approval

- Hazardous Materials: Applicants must complete and submit a Phase I ESA report if project involves:
 - change in land use,
 - development of uses occupied by sensitive receptors
 - development of a net new residential unit (not including a JADU/ADU) or
 - new construction non-residential and/or mixed use residential
 - Subdivisions

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Municipal Code Amendment

Requirements prior to project approval

- Hazardous Materials (contd.)
 - If Phase I ESA report indicates potential for contaminants, project applicant must prepare Phase II ESA report.
 - Prepare all reports in accordance with commonly accepted standards
- Traffic: Provide VMT analysis to indicate compliance with adopted VMT standards
- Vibration: Submit vibration study, if vibration causing equipment expected to be used. Alternate standards identified if vibration inducing equipment must be used.

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Municipal Code Amendment

Requirements prior to permit issuance

- Air Quality:
 - Control dust during construction: Implement BAAQMD's requirements
 - Control Construction Exhaust: >1 acre and > 2 months construction, use higher emission standard equipment
 - Require low-VOC paint in interior and all architectural coatings

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Municipal Code Amendment

Requirements prior to permit issuance

- Hazardous Material:
 - Soil Remediation Required: If Phase II ESA indicated this is required, require clean up through an appropriate agency
- Greenhouse Gas Emissions and Energy:
 - Complete the Climate Action Plan – Development Project Consistency Checklist

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Municipal Code Amendment

Requirements prior to permit issuance

- **Biological Resources:**
 - **Avoid Nesting Birds during Construction:** Avoid nesting season. If not avoidable, then conduct initial preconstruction survey:
 - Homeowner/contractor if three trees or fewer impacted
 - Biologist if more trees impacted.
 - Follow up surveys, if nesting birds or eggs found.
 - **Avoid Special-Status Roosting Bat during Construction:** If building not secure, conduct initial preconstruction survey by biologist.
 - Follow up surveys if required. Special requirements if a maternity nest is found.
 - Birds or bats: follow recommendations of biologist.

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Municipal Code Amendment

Requirements prior to permit issuance

- **Cultural Resources:**
 - **Areas with No Known Cultural Resources:**
 - Provide materials to construction crew and contractors information on site indicators and laws pertaining to cultural resources. Instructions identified if cultural resources or indicators found.
 - **Areas with Known Cultural Resources:**
 - Retain qualified archaeologist for report on extent of resource. Consult with tribal representative. File report with CA Historical Resource Information System and City.
 - Archaeologist to determine if resource extends into project's area and whether resource eligible to be listed in CA Register of Historical Resources. If eligible, identify ways to minimize effect.

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Municipal Code Amendment

Requirements prior to permit issuance

- Cultural Resources (contd.)
 - Protect Human Remains and Native American Burials: Comply with existing state requirements related to human remains and NA burials.
- Hydrology and Water Quality:
 - Control Stormwater Runoff Contamination – comply with existing City requirements related to stormwater pollution prevention and watershed protection.

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Municipal Code Amendment

Requirements prior to permit issuance

- Noise and Vibration
 - Notice and Site Signage - prior to start of any activity
 - Manage Noise during Construction: Applicant to prepare and submit Construction Noise Plan in compliance with City's Noise Control requirements.
 - Manage Vibrations during Construction: Notices required within 300 feet of project site prior to construction. Prepare and implement vibration Monitoring plan if vibratory equipment used close to sensitive receptors. Complete surveys before and after use of vibration equipment.

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Municipal Code Amendment

Requirements prior to permit issuance

- Paleontological Resources: Requirements for what to do if paleontological resources are found.
- Utilities and Service Systems:
 - Projects will not exceed peak wet weather flow capacity by implementing methods to either:
 - Reduce inflow and infiltration in the Cupertino Sanitary District (CSD)
 - Increase on-site water reuse (grey water) or reduce water use
 - Obtain letter of clearance from CSD
 - Ensure adequate water supply and infrastructure: obtain letters from appropriate water service provider regarding connections etc.

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Municipal Code Amendment

Violations

- Violations are violations of the Municipal Code

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CEQA review

- Fifth Addendum to 2014 General Plan EIR prepared:
 - Indicates no subsequent environmental review required since no substantial changes in Project or circumstances under which Project is to be undertaken that would result in new or substantially more severe environmental impacts requiring major revisions to Final EIR, and there is no new information that involves new significant environmental effects or substantial increase in severity of previously identified environmental effects that would require preparation of subsequent or supplemental EIR
 - Concluded that significant and unavoidable impacts to which proposed Project will contribute were previously disclosed and analyzed in the Final EIR;

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CEQA review

- Proposed code amendments will not result in any direct or reasonably foreseeable indirect physical change in environment (**CEQA Guidelines Section 15060(c)**) and so 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)**).
- Proposed code amendments establish regulations to assure protection of environment, and proposed actions do not authorize construction activities or relaxation of standards that would allow environmental degradation. (**CEQA guidelines Section 15308.**)

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PC Review

- Heard item on September 28
- Voted on a 4-0-1 (Absent: Scharf) to recommend that City Council adopt Addendum, General Plan amendments and Municipal Code Amendments.

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Council questions

- What is cost of Construction Management plan, Operational HRA, Phase I and Phase II reports?
 - These reports are currently required of discretionary projects . Many of the costs are generic to all projects. Hard to parse out costs for each item.
 - To ensure that ALL ministerial or discretionary projects provide these important reports necessary for environmental protection.

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Council questions

- Vehicle Miles Traveled: What if project does not comply with City's VMT standards? What options are available?
 - Project can implement any number of project improvements to meet the VMT standard – providing bike lanes, providing bus passes being some options that will help reduce VMT.

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Council questions

- What kinds of equipment will cause vibration? It seems that almost all Projects will need to use some kind of equipment that will cause vibration, so this item covers almost all projects? How about cost and length of time to comply?
 - Specific equipment is considered vibration generating – such a vibratory roller, pile driving
 - Discretionary projects are required to comply with these requirements. These are being codified to ensure that ministerial projects would be covered as well.

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Council questions

- Cultural Resources: Who are to be trained and who trains them?
 - Construction workers would be trained to identify indicators of cultural resources. This training is provided by contractor to construction crews about basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources

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Council questions

- Paleontological Resources: Does every project need to retain a qualified paleontologist or only after paleontological evidence has been discovered?
 - Only projects that are in areas with known cultural resources where the construction activity cannot avoid the resource would retain a qualified paleontologist.

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Council questions

- Utilities and Service Systems: Who are the experts that prepare the Reports? Is it standard practice that issuance of permits need “written approval from the appropriate water service provided for water connections, service capability and location/layout of water lines and backflow preventers”?
- Utility companies will provide necessary information/report to ensure adequate service is available. The utility provider will also typically approve or provide utility service connection drawings to address location and layout of their facilities.

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Council questions

- General Plan Amendments: How many of these “refinements” are new and/or “upgraded” requirements?
Though there are no changes to the intensity or density of development by these “certain refinements”, does adding costs by requiring these refinements constitute adding “intensity” of development?
 - There are no new or upgraded requirements. The General Plan Amendments are simply changes to clarify the City’s prior intent and does not add costs to project.

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Council questions

- General Plan Amendments: How do we define “minor” modifications? Are adding significant more “costs” considered minor modifications?
 - The proposed changes General Plan Amendment changes do not add costs to a development. They are also not changes to the density, height, floor area ratio or how much development can occur on a property. These text edits are to clarify the City’s intent so that the language does not run afoul of the state standards regarding objectivity.
 - None of the proposed changes results in new or more severe environmental impacts than those studied in the General Plan EIR.

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Recommended Action

- That City Council:
 1. Adopt resolution to adopt Addendum (Addendum No. 5 to the 2014 General Plan EIR) addressing environmental effects of the proposed changes and proposed amendments to the Cupertino General Plan and
 2. Introduce and conduct first reading of Ordinance for proposed amendment to Cupertino Municipal Code adding Chapter 17.04

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