

CC 04-06-21

Oral Communications

Written Comments

Cyrah Caburian

From: Connie Cunningham <info@sg.actionnetwork.org>
Sent: Friday, April 2, 2021 4:17 PM
To: Jon Robert Willey
Subject: I support affordable housing at 10591 N. De Anza Boulevard!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jon Wiley,

I am a Cupertino community member writing to you out of excitement for the potential of having affordable housing at 10591 N. De Anza Boulevard! Why? Because I want to see people have the ability to live here, regardless of their socioeconomic class.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

This land was once home to Outback Steakhouse, and while culinary options will always be missed, we have an incredible opportunity right here.

The future of our city and region depends on rare opportunities such as this one. We must continue to proactively search for meaningful partnerships, so Cupertino and Santa Clara County can become more inclusive and affordable. This is the only way we will be able to even approach our 4,000+ RHNA targets for the upcoming cycle.

Again, thank you, and I am hopeful that the County and City move forward in this collaborative process. I will also be making my voice loud and clear to the County before the April 6 County Board of Supervisors vote.

Connie Cunningham
cunninghamconniel@gmail.com

Cupertino, California 95014

Cyrah Caburian

From: Connie Cunningham <info@sg.actionnetwork.org>
Sent: Friday, April 2, 2021 4:17 PM
To: Hung Wei
Subject: I support affordable housing at 10591 N. De Anza Boulevard!

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Hung Wei,

I am a Cupertino community member writing to you out of excitement for the potential of having affordable housing at 10591 N. De Anza Boulevard! Why? Because I want to see people have the ability to live here, regardless of their socioeconomic class.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

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cunninghamconniel@gmail.com

Cupertino, California 95014

Cyrah Caburian

From: Connie Cunningham <info@sg.actionnetwork.org>
Sent: Friday, April 2, 2021 4:17 PM
To: Darcy Paul
Subject: I support affordable housing at 10591 N. De Anza Boulevard!

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Darcy Paul,

I am a Cupertino community member writing to you out of excitement for the potential of having affordable housing at 10591 N. De Anza Boulevard! Why? Because I want to see people have the ability to live here, regardless of their socioeconomic class.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

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cunninghamconniel@gmail.com

Cupertino, California 95014

Cyrah Caburian

From: Connie Cunningham <info@sg.actionnetwork.org>
Sent: Friday, April 2, 2021 4:17 PM
To: Kitty Moore
Subject: I support affordable housing at 10591 N. De Anza Boulevard!

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Kitty Moore,

I am a Cupertino community member writing to you out of excitement for the potential of having affordable housing at 10591 N. De Anza Boulevard! Why? Because I want to see people have the ability to live here, regardless of their socioeconomic class.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

This land was once home to Outback Steakhouse, and while culinary options will always be missed, we have an incredible opportunity right here.

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cunninghamconniel@gmail.com

Cupertino, California 95014

Cyrah Caburian

From: Connie Cunningham <info@sg.actionnetwork.org>
Sent: Friday, April 2, 2021 4:17 PM
To: Liang Chao
Subject: I support affordable housing at 10591 N. De Anza Boulevard!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Liang Chao,

I am a Cupertino community member writing to you out of excitement for the potential of having affordable housing at 10591 N. De Anza Boulevard! Why? Because I want to see people have the ability to live here, regardless of their socioeconomic class.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

This land was once home to Outback Steakhouse, and while culinary options will always be missed, we have an incredible opportunity right here.

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Connie Cunningham
cunninghamconniel@gmail.com

Cupertino, California 95014

Cyrah Caburian

From: jean Bedord <info@sg.actionnetwork.org>
Sent: Sunday, April 4, 2021 3:58 PM
To: Hung Wei
Subject: Please acquire the Outback parcel on DeAnza Blvd. in Cupertino

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hung Wei,

I am a long-time resident of Cupertino and urge council enthusiastic support of the purchase of this property. It is in an ideal location for community services and housing, along transit lines and within walking distance of grocery stores. Regardless of what project would be considered for this site, it's important for a government entity to acquire the site, rather than Apple which would just build more offices in that area.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

This is a rare opportunity to acquire scarce land for housing opportunities to meet our 4,000+ RHNA targets for the upcoming cycle.

I am hopeful that the County and City move forward in this collaborative process. I will also be making my voice loud and clear to the County before the April 6 County Board of Supervisors vote.

Warm regards,
Jean Bedord

jean Bedord
Jean@Bedord.com

Cupertino, California 95014

Cyrah Caburian

From: jean Bedord <info@sg.actionnetwork.org>
Sent: Sunday, April 4, 2021 3:58 PM
To: Kitty Moore
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Warm regards,
Jean Bedord

jean Bedord
Jean@Bedord.com

Cupertino, California 95014

Cyrah Caburian

From: jean Bedord <info@sg.actionnetwork.org>
Sent: Sunday, April 4, 2021 3:58 PM
To: Darcy Paul
Subject: Please acquire the Outback parcel on DeAnza Blvd. in Cupertino

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I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

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Warm regards,
Jean Bedord

jean Bedord
Jean@Bedord.com

Cupertino, California 95014

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From: jean Bedord <info@sg.actionnetwork.org>
Sent: Sunday, April 4, 2021 3:58 PM
To: Jon Robert Willey
Subject: Please acquire the Outback parcel on DeAnza Blvd. in Cupertino

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Jon Wiley,

I am a long-time resident of Cupertino and urge council enthusiastic support of the purchase of this property. It is in an ideal location for community services and housing, along transit lines and within walking distance of grocery stores. Regardless of what project would be considered for this site, it's important for a government entity to acquire the site, rather than Apple which would just build more offices in that area.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

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Warm regards,
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jean Bedord
Jean@Bedord.com

Cupertino, California 95014

Cyrah Caburian

From: jean Bedord <info@sg.actionnetwork.org>
Sent: Sunday, April 4, 2021 3:58 PM
To: Liang Chao
Subject: Please acquire the Outback parcel on DeAnza Blvd. in Cupertino

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Liang Chao,

I am a long-time resident of Cupertino and urge council enthusiastic support of the purchase of this property. It is in an ideal location for community services and housing, along transit lines and within walking distance of grocery stores. Regardless of what project would be considered for this site, it's important for a government entity to acquire the site, rather than Apple which would just build more offices in that area.

I want to thank the staff and council for conducting a study session on a potential partnership between Cupertino and Santa Clara County, so Measure A funds can be used to acquire land right here in Cupertino for over 60 units of affordable housing—due to the Heart of the City Plan.

This is a rare opportunity to acquire scarce land for housing opportunities to meet our 4,000+ RHNA targets for the upcoming cycle.

I am hopeful that the County and City move forward in this collaborative process. I will also be making my voice loud and clear to the County before the April 6 County Board of Supervisors vote.

Warm regards,
Jean Bedord

jean Bedord
Jean@Bedord.com

Cupertino, California 95014

Cyrah Caburian

From: Diana Farsai <diana.farsai@gmail.com>
Sent: Sunday, April 4, 2021 2:52 PM
To: City Council
Subject: Oaks Center Farmers Market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

It's come to my attention that the weekly farmer's market held at the Oaks Shopping Center has been asked to shut down after May. I understand the reason, but would like for it to remain in Cupertino. The accessibility of more affordable prices for organic local farm goods is very important to me and my family. It would be great if the option for it to continue could be at Memorial Park.

Regards,
Diana Farsai
Cupertino resident.

Cyrah Caburian

From: Alex B <abourov@yahoo.com>
Sent: Sunday, April 4, 2021 5:18 PM
To: Darcy Paul; Liang Chao; Kitty Moore; Hung Wei; Jon Robert Willey;
Councilmembers.citycouncil@cupertino.org
Subject: Please keep the Farmers Market in the Cupertino intact.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Cupertino Council Members, please keep the Farmers Market in the Cupertino intact. It's in the good place and is very popular with the people.

Alexander Bourov,
5 min. drive from the market.

Cyrah Caburian

From: nancy canter <nancyjcanter@gmail.com>
Sent: Sunday, April 4, 2021 5:24 PM
To: City Council
Subject: Farmers Market Oaks/Senior Center location

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council Members

It has been brought to my attention that the Farmers Market is closing in May.

Having a Sunday Farmers Market near Memorial Park location is critical to the residents in Cupertino and is well attended. It seems with each new development plan the city approves the residents are losing a quality of life they have enjoyed like buying fresh produce from the Farmers Market. Please consider the residents request to keep a weekly open air Farmers Market in this location and please think of the many local farmers who depend financially on having this income. During Covid it was the only outdoor place I felt safe buying produce.

Please consider quality of life for residents -refuse to allow the cutting down of mature trees when approving new developments and please consider that there are few activities left in Cupertino for residents - no new parks/open spaces, no retail stores, no movie theaters, no bookstores, no Flint Center,

Nancy Canter

Cyrah Caburian

From: Vivek Datar <vivekdatar@yahoo.com>
Sent: Sunday, April 4, 2021 6:17 PM
To: City Council; Vivek's Yahoo Address
Subject: All: Wanted to let you know that we should keep Farmer's market in Cupertino...

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Specifically the one in Memorial park. We go there every Sunday.

Regards

-Vivek

Cyrah Caburian

From: Cheryl Chin <cheryl@halabe.com>
Sent: Sunday, April 4, 2021 7:41 PM
To: City Council
Subject: Please keep the Cupertino Farmer's Market!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi - Please please keep the Sunday morning farmer's market in Cupertino!
We love supporting local farmers! There's so many customers! Please don't take it away.

Thanks,
Cheryl

Cyrah Caburian

From: Pushpa Khatod <pushpa.khatod@gmail.com>
Sent: Monday, April 5, 2021 9:50 AM
To: City Council
Subject: Keep Farmers market on Cupertino

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I shop at the farmers market regularly so pls keep farmers market in Cupertino.

Thanks

Pushpa

Cyrah Caburian

From: Priya Sukumar <priasuk@gmail.com>
Sent: Monday, April 5, 2021 10:04 AM
To: City Council
Subject: Request to extend the farmer's market close to the current location

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Cupertino City Council,

I am a resident of Cupertino and writing to request an extension to extend the farmer's market offering.

My family and along with many in our Garden Gate neighbourhood families regularly go to buy organic produce and really like the current location since it is close to 85 and also Memorial park where we can spend time outdoors before or after our shopping.

Kindly consider this request to extend the farmer's market close to the current location.

Thanks for your understanding.
Priya

Cyrah Caburian

From: Caryl Gorska <gorska@gorska.com>
Sent: Monday, April 5, 2021 1:46 PM
To: Darcy Paul; Liang Chao; Kitty Moore; Hung Wei; Jon Robert Willey; Deborah L. Feng
Cc: Brijesh Khanna
Subject: Please don't close Synday Farmers Market at Memorial Park

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mayor Paul, Vice Mayor Chao, Council Members Moore, Wei and Willey, and City Manager Deb Feng;

I saw a post on NextDoor that says the Sunday Farmers Market at the Memorial Park parking lot is set to close in May.

Is this true?

If so, is there any way to keep it there, or move it somewhere nearby?

A lot of hearts will be broken if we lose this treasure serving the west side of Cupertino.

Regards,

Caryl Gorska and Brijesh Khanna
Citizens who love fresh farm-to-market food

Cyrah Caburian

From: PATRICIA KOT <pkot@aol.com>
Sent: Sunday, April 4, 2021 1:23 PM
To: City Council
Subject: Farmers market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please keep the farmers market in Cupertino. If the Senior center site is not longer an option, please secure another site within Cupertino. The farmers market is an asset to Cupertino and wanted by many citizens.

Pat Kot

Sent from my iPad

Cyrah Caburian

From: Anandi Sujeer <anandis@yahoo.com>
Sent: Sunday, April 4, 2021 4:30 PM
To: City Council
Subject: Farmers Market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Cupertino City Council

My name is Anandi Sujeer and I work for the Santa Clara Public Health currently in COVID-19 response. I have lived in Cupertino for the last 18 years and have been proud of how the city has a focus on public health and emergency preparedness. I heard that the Farmers Market which allows the city residents option to healthy organic fruit and vegetables may close in May.

Since health is a big focus in the City General Plan, please ensure that the Farmers Market is kept open in Cupertino. It benefits both farmers and residents and is a win-win for following healthy lifestyles.

Thanks for accomodating my request

Anandi Sujeer

Cyrah Caburian

From: SUZANNE ABECKET <8pawprints@sbcglobal.net>
Sent: Tuesday, April 6, 2021 10:06 AM
To: Liang Chao
Subject: Farmers Market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please keep the Farmers Market open in Memorial Park, please don't close in May.
Suzanne a'Becket, 21163 Patriot Way, Cupertino

[Sent from AT&T Yahoo Mail on Android](#)

Cyrah Caburian

From: SUZANNE ABECKET <8pawprints@sbcglobal.net>
Sent: Tuesday, April 6, 2021 10:07 AM
To: Darcy Paul
Subject: Farmers Market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please keep the Farmers Market open in Memorial Park, please don't close in May.
Suzanne a'Becket, 21163 Patriot Way, Cupertino

[Sent from AT&T Yahoo Mail on Android](#)

Cyrah Caburian

From: SUZANNE ABECKET <8pawprints@sbcglobal.net>
Sent: Tuesday, April 6, 2021 10:09 AM
To: Kitty Moore
Subject: Farmers Market

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please keep the Farmers Market open in Memorial Park, please don't close in May.
Suzanne a'Becket, 21163 Patriot Way, Cupertino

[Sent from AT&T Yahoo Mail on Android](#)

Cyrah Caburian

From: SUZANNE ABECKET <8pawprints@sbcglobal.net>
Sent: Tuesday, April 6, 2021 10:12 AM
To: Hung Wei
Subject: Farmers Market

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Please keep the Farmers Market open in Memorial Park, please don't close in May.
Suzanne a'Becket, 21163 Patriot Way, Cupertino

[Sent from AT&T Yahoo Mail on Android](#)

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: Image for oral communications

From: Rick Kitson <rick@cupertino-chamber.org>
Sent: Tuesday, April 6, 2021 6:30 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Subject: Image for oral communications

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kirsten & team,

Can you share the image during my comments?



Thai New Year

Songkran

Celebration

Come Celebrate

Saturday, April 14th

Seatings 5pm and 8pm



Reserve Now



Cyrah Caburian

From: Peggy Griffin <griffin@compuserve.com>
Sent: Wednesday, April 7, 2021 12:12 AM
To: City Council; Deborah L. Feng
Cc: City Clerk
Subject: FYI...4-6-2021 CC Meeting Audio and Video very poor

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor Paul, Vice Mayor Chao, Council Members and City Manager,

Tonight's CC meeting audio was horrible! Multiple people would slow down then pause throughout the meeting.

Also, the video actually threw me off for quite awhile. I hope whatever was causing the problems can be fixed.

Sincerely,
Peggy Griffin

CC 04-06-21

#2

Councilmember
Activities and
Reports

Written Comments

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: Saturday event flyer
Attachments: 2. CM Wei.pdf

From: Hung Wei <HWei@cupertino.org>
Sent: Tuesday, April 6, 2021 3:53 PM
To: Deborah L. Feng <DebF@cupertino.org>; Kirsten Squarcia <KirstenS@cupertino.org>
Subject: Saturday event flyer

Dear Deb and Kirsten

Could one of you show the Stop Asian Hate flyer when I make a brief announcement during Open Session #2
Brief reports on councilmember activities?

Thanks a bunch!

Best regards,
Hung



Hung Wei

Councilmember
City Council
HWei@cupertino.org
(408) 777-3139



Join us for

**STOP ASIAN
HATE**



Date : Saturday, 4/10/2021

Time : 1~2pm

Location : Cupertino City Hall

CC 04-06-21

#14

Design Standards
Work Program FY
2020-21

Written Comments

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: 4-6-2021 CC Meeting Agenda Item #14 Design Standards Work Program
Attachments: Agenda Item 14-Peggys slide.pdf

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, April 6, 2021 6:43 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Cc: City Council <CityCouncil@cupertino.org>
Subject: 4-6-2021 CC Meeting Agenda Item #14 Design Standards Work Program

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

I'd like to speak on Agenda Item #14 which is on the Consent Calendar please. Attached is my 1-page slide.

Thank you,
Peggy

Agenda Item #14 – Residential and Mixed-Use Residential Design Standards WP

REQUEST: “Stakeholders” list needs to be defined/reviewed by City Council, not just City Staff! Needs to be balanced!

From Exhibit A, page 4 Entitled “Project Outreach Materials”

STAKEHOLDER INTERVIEWS

RRM will conduct a series of stakeholder interviews to collect input on the City’s existing discretionary review and approval process. The interviews will be structured as a series of half-hour to one-hour confidential meetings (held via video/teleconference), with various individuals or small groups of people with like interests, including City staff, select decision makers, and developers/recent applicants.

PLANNING COMMISSION AND CITY COUNCIL STUDY SESSIONS

During the development of the objective design standards, RRM will conduct a study session with the Planning Commission and one with the City Council to provide a project update and collect input prior to finalizing the Administrative draft.

COMMUNITY OPEN HOUSE

Virtual open house to present project materials and gather input on standards.

Deliverables:

- Provide materials developed as part of other tasks for City use on website, up to three (3) project updates to be used in City e-blasts and social media posts
- One (1) PDF of informational flyer, and FAQ. Assumes up to two (2) rounds of revisions based on consolidated redline draft of City comments
- One (1) video presentation with voice over.
- Facilitate up to sixteen (16) 30 minute to 1 hour meetings with stakeholders. We ask that staff be responsible for noticing and meeting logistics and contacting key stakeholders.
- Facilitate online open house. City staff will be responsible for meeting notification and logistics.
- One (1) Planning Commission and one (1) City Council study session.

CC 04-06-21

#16

Bird Safe Dark Sky

Municode
Amendment

Written Comments

Cyrah Caburian

From: Rick Kitson <rick@cupertino-chamber.org>
Sent: Tuesday, April 6, 2021 11:55 AM
To: City Council; Deborah L. Feng
Cc: City Clerk; Piu Ghosh; Erick Serrano
Subject: Apr 6 Agenda Item #16: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004; Ap...
Attachments: 20210305 Letter to Council re Dark Sky (1).pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Cyrah Caburian

From: Donna austin <primadona1@comcast.net>
Sent: Tuesday, April 6, 2021 1:49 PM
To: Rick Kitson
Cc: City Council; Deborah L. Feng; City Clerk; Piu Ghosh; Erick Serrano
Subject: Re: Apr 6 Agenda Item #16: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004...
Attachments: 20210305 Letter to Council re Dark Sky (1).pdf

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Great letter and a positive message. Thank you for weight this. Donna

Sent from my iPhone

On Apr 6, 2021, at 11:55 AM, Rick Kitson <rick@cupertino-chamber.org> wrote:

Cyrah Caburian

From: Donna austin <primadona1@comcast.net>
Sent: Tuesday, April 6, 2021 4:06 PM
To: Rick Kitson
Cc: City Council; Deborah L. Feng; City Clerk; Piu Ghosh; Erick Serrano
Subject: Re: Apr 6 Agenda Item #16: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004...
Attachments: 20210305 Letter to Council re Dark Sky (1).pdf

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Writing not weight

Sent from my iPhone

On Apr 6, 2021, at 1:49 PM, Donna austin <primadona1@comcast.net> wrote:

Great letter and a positive message. Thank you for weight this. Donna

Sent from my iPhone

On Apr 6, 2021, at 11:55 AM, Rick Kitson <rick@cupertino-chamber.org> wrote:



20455 Silverado Avenue
Cupertino, CA 95014
Tel (408) 252-7054
www.cupertino-chamber.org

Anjali Kausar
Chief Executive Officer

2021 BOARD OF DIRECTORS

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John Tang
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April 5, 2021

Cupertino City Council
10300 Torre Avenue
Cupertino, California 95014

RE: Dark Sky and Bird-Safe Ordinance

Dear Councilmembers,

The Cupertino Chamber of Commerce strongly supports the intended outcome of the proposed ordinance. Our concerns are entirely regarding the significant negative unintended impact of the ordinance as currently designed.

As noted in the Chamber's previous letter, there continue to be questions about the ordinance, specifically in regard to subjective standards that are used throughout the document.

Glare: "Glare" continues to be used in the ordinance as if it were an objective and measurable feature of light. It is not. Light can be measured, glare, as defined by the ordinance cannot. Enforcement of glare standards must therefore be arbitrary.

Appropriate: "Lighting of an appropriate intensity...", "Lighting fixtures shall be appropriate in height, intensity, and scale to the use they are serving." It continues to be the wish of the Chamber that this ordinance would be where "appropriate" intensity and "appropriate" height, intensity, and scale would be defined.

As both automakers and the federal government commit to an expanded market for electric vehicles, it is anticipated that property owners will significantly increase the number of charging stations available in parking lots throughout Cupertino. It is not clear from the ordinance that these anticipated improvements would not also require retrofitting of all the associated buildings and property to meet Cupertino's new dark sky and bird-safe standards. This uncertainty is a significant disincentive.

Any clarification of subjective standards and retrofitting thresholds will greatly improve the efficacy and long-term success of the ordinance.

Thank you for your most serious consideration of this issue.

Respectfully yours,

Shyam Panchal
President, Board of Directors
Cupertino Chamber of Commerce

Cyrah Caburian

From: Connie Cunningham <cunninghamconniel@gmail.com>
Sent: Tuesday, April 6, 2021 4:24 PM
To: City Council; City Clerk
Subject: I support Item 16 Bird-Safe Design and Dark Skies!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

SECOND READING OF ORDINANCES

16. Subject: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003and MCA-2019-004; Applicant: City of Cupertino; Location: City-wide)

Dear Mayor, Vice-Mayor and Councilmembers:

I am excited to write in favor of Item 16 for enactment of Ordinance no. 21-2225—Bird-safe Design and Dark Skies Ordinance!

I thank this Council for bringing forward this idea in the City Work Plan, and I thank the City Staff for their excellent work in writing this ordinance.

Not only will millions of birds' lives be saved with Bird-Safe Design and Dark Skies changes to lighting standards, but human beings will, also, live longer and healthier lives.

Sincerely,

Connie Cunningham
Resident and member of Santa Clara Valley Audubon Society (SCVAS)

Just a few of the beautiful birds whose songs and flight we will continue to enjoy for years to come!











Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: photo of glare from glass and lights - Bird Safe Dark Sky
Attachments: glare pic.jpg

From: Lisa Warren <la-warren@att.net>
Sent: Tuesday, April 6, 2021 6:42 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Subject: photo of glare from glass and lights - Bird Safe Dark Sky

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I hope I got this to you in time.



Cyrah Caburian

From: Connie Cunningham <cunninghamconniel@gmail.com>
Sent: Tuesday, April 6, 2021 8:06 PM
To: City Clerk
Subject: Question for City Clerk: Fwd: I support Item 16 Bird-Safe Design and Dark Skies!

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

Can you show these photos of birds during my talk. Leave each one up for a few seconds. I will not name them or anything, so the timing is not critical

Begin forwarded message:

From: Connie Cunningham <CunninghamConnieL@gmail.com>
Subject: I support Item 16 Bird-Safe Design and Dark Skies!
Date: April 6, 2021 at 4:23:50 PM PDT
To: "citycouncil@cupertino.org" <citycouncil@cupertino.org>, City Clerk Cupertino
<cityclerk@cupertino.org>

SECOND READING OF ORDINANCES

16. Subject: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003and MCA-2019-004;
Applicant: City of Cupertino; Location: City-wide)

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Sincerely,

Connie Cunningham
Resident and member of Santa Clara Valley Audubon Society (SCVAS)

Just a few of the beautiful birds whose songs and flight we will continue to enjoy for years to come!











CC 04-06-21

#17

Homestead Homes
General Plan
Amendment
Hearing

Written Comments

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Monday, April 5, 2021 10:31 AM
To: City Council
Cc: grenna5000@yahoo.com
Subject: On-Site Parking for ADUs on Item 17, Cupertino City Council Agenda, 4/6/21

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council:

Item 17 on the City Council Agenda for April 6/2021 is involving building ADUs on two lots resulting from a lot split.

Do these lots with the proposed ADUS require on-site parking for the ADUs?
If there is no on-site parking required for these ADUS, then the cars resulting from these two ADUS, which may be up to two cars per ADU, will be parked on adjacent streets.

This is a problem in Portland, Oregon where ADUs have been built on neighborhood lots and the cars from the ADUSs are being parked on the neighborhood streets, overflowing the neighborhood streets with extra cars.

This is also a problem in Santa Cruz County where cars from newly constructed ADUS in suburban neighborhoods are being parked on the neighborhood streets, adding extra traffic and constricting parking availability.

I am very concerned about where the cars from the ADUs will be parked at this new lot split/ ADUs construction site in Cupertino as mentioned in Item 17 on the City Council Agenda if there is no on-site parking required. The cars from these ADUs will be parked out on neighborhood streets.

Thank you very much for your concern in this very important matter.

Sincerely,

Jennifer Griffin

Cyrah Caburian

From: Anne Ezzat <aezzat95014@gmail.com>
Sent: Monday, April 5, 2021 1:42 PM
To: Darcy Paul; Liang Chao; Jon Robert Willey; Kitty Moore; R Wang; Steven Scharf; Sanjiv Kapil; vsaxema@cupertino.org; Muni Madhhipatla
Subject: 19820 Homestead Road Doesn't Add Up or Another Bait and Switch?

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor Paul, Vice Mayor Chao, Council member Wiley and Council member Moore, and Commissioners,

I am baffled by the GPA notice received for the change in Land Use Designation at 19820 Homestead Road. The request is for a change in Land Use Designation from Low Density (1-5/DU/Ac) to Low/Medium Density (5-10 DU/Ac). Why request a change if the owners plan on building only four units as depicted in the drawings? Did the Planning Department point out the inconsistency or are they authorized to do so? It seems as the owner/developer wants to leave the door open in case they want to use the time honored excuse of "it doesn't pencil out." Which oddly enough, it never "pencils out" because this type of ineptitude appears to be a profitable business model.

Secondly and more alarming, is that the property is currently a daycare and located next to a PG & E yard. Who approved the use of that property as a daycare? Don't transformers contain PCBs? And there are other potentially dangerous materials on site? At a facility next to a daycare?

Please turn this project down. It appears that the plan is quite elastic--what is proposed is not what will materialize. And secondly, if it is approved, -please have soil testing done by a reputable firm, not someone the owner has chosen out of the phone book delivering results that will endanger residents.

Thank you for your time and consideration.

Best regards,

Brooke Ezzat

Cyrah Caburian

From: Parth Chaudhary <parth.chaudhary87@yahoo.com>
Sent: Tuesday, April 6, 2021 5:52 PM
To: ciycouncil@cupertino.org; Kirsten Squarcia; City Clerk
Subject: Public Comment to be Read for Agenda Item 17, Resolution No. 21-030, April 6, 2021

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

City Clerk, please read this during public comment on item 17.

Dear Mayor and City Council:

Please vote against Resolution No. 21-030, item 17 on tonight's agenda.

This lot is large enough for three houses, each with an attached and a detached ADU, for a total of nine housing units. Each lot would be around 6300 square feet.

There are some issues with this application that are not necessarily the fault of the applicant.

The photo in the postcard is misleading because it shows only four houses when in fact if the property is subdivided into four parcels the property owner could legally build four single family homes each with an attached and a detached ADU for a total of 12 housing units, by right with no parking requirements for the ADUs.

But it gets more complicated.

Last year the State Legislature failed to pass SB-1120, a real-estate investor backed housing bill that was opposed by affordable housing groups throughout the state as well as by most cities in the State. SB-1120 was a lot-split bill that would have caused displacement and gentrification, would have driven up property values, and increased housing costs. SB-1120 had no requirement for affordable units. It would have made it nearly impossible for anyone but the wealthy to achieve the American Dream of home ownership.

SB-1120 failed, but it is back this year as SB-9 and has a good chance of becoming law.

If SB-9 passes, the property owner could split this lot in two and construct four buildings, two homes and two ADUs, plus two attached ADUs. That is fine, the lot is big enough for a lot split into two parcels.

But if prior to SB-9 the City approves splitting this lot into four parcels, and then SB-9 becomes law, those four parcels could be split again with each of the eight parcels having three housing units. This would create 24 units on this lot. None of the units would have to be affordable or below-market-rate units

Do not move this GPA forward at this time. Wait to see what happens with SB-9. If it passes then this GPA would be unnecessary. If it fails then the property owner can submit an application in a subsequent GPA cycle for a lot split into three lots.

Thank You
Parth Chaudhary Cupertino Resident

Cyrah Caburian

From: Parth Chaudhary <parth.chaudhary87@yahoo.com>
Sent: Tuesday, April 6, 2021 5:56 PM
To: City Council; City Clerk
Subject: Item 17 on Agenda

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

City Clerk, please read this during public comment on item 17.

Dear Mayor and City Council:

Please vote against Resolution No. 21-030, item 17 on tonight's agenda.

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Do not move this GPA forward at this time. Wait to see what happens with SB-9. If it passes then this GPA would be unnecessary. If it fails then the property owner can submit an application in a subsequent GPA cycle for a lot split into three lots.

Thank You

Parth Chaudhary Cupertino Resident

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: Agenda Item 17 - GPA app - Peggy's slide
Attachments: Agenda Item 17-Peggys slide.pdf

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, April 6, 2021 9:27 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Cc: City Council <CityCouncil@cupertino.org>
Subject: Agenda Item 17 - GPA app - Peggy's slide

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

I'd like to speak on Item 17. Attached is my slide.
Thank you,
Peggy

AGENDA ITEM #17 – GPA Application Review on Homestead Road

REQUEST

- **Require affordable housing** in order to upzone the property
- **If property sold before building – make approval void**

ISSUES

- Upzoning is an immediate increase in value without affordable housing
- ADUs – Feasibility study mentions used for visitors and used as an office!?!?
 - described not necessarily for permanent low income housing!
- 3 trash cans per home going to stored? $3*6 = 18$ cans (gray, blue, green)
 - Where will 18 cans be stored!?!?!?
 - By law, can't be stored facing the street
- Parking
 - There is NO overflow parking on Homestead or Blaney
 - Gardner/Service vehicles?
 - Where will trucks park?

CC 04-06-21

#18

FY 2021-22 CDBG
and BMR AHF
Funding Allocations

Written Comments

Cyrah Caburian

From: Mark Tersini <mtersini@aol.com>
Sent: Monday, April 5, 2021 5:32 PM
To: Liang Chao
Cc: Mike Kelley; Deborah L. Feng; Kerri Heusler
Subject: Affordable Housing
Attachments: Memo re inclusionary.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Vice Mayor Chao,

Attached below please find a letter that was sent to Mayor Paul this afternoon.

Regards,

Mark E. Tersini

Mayor Paul,

In advance of the Council meeting tomorrow evening I have attached a memorandum on local inclusionary policies in California. The memorandum includes a document called "Meeting California's Housing Needs: Best Practices for Inclusionary Housing." It is my hope that the information provided is of good use.

Mike Kelley with the Pacific Companies will be available to address any questions from you and/or your fellow council members.

Sincerely,

Mark E. Tersini

KT Urban
Mark E. Tersini
Principal

21710 Stevens Creek Blvd., Suite 200
Cupertino, California 95014
Office: (408) 257-2100
Fax: (408) 255-8620
mtersini@aol.com

Cyrah Caburian

From: Mark Tersini <mtersini@aol.com>
Sent: Monday, April 5, 2021 5:33 PM
To: Jon Robert Willey
Cc: Mike Kelley; Deborah L. Feng; Kerri Heusler
Subject: Affordable Housing
Attachments: Memo re inclusionary.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Council member Willey,

Attached please find a letter that was sent to Mayor Paul this afternoon.

Regards,

Mark E. Tersini

Mayor Paul,

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Sincerely,

Mark E. Tersini

KT Urban

Mark E. Tersini
Principal

21710 Stevens Creek Blvd., Suite 200
Cupertino, California 95014

Office: (408) 257-2100

Fax: (408) 255-8620

mtersini@aol.com

Cyrah Caburian

From: Mark Tersini <mtersini@aol.com>
Sent: Monday, April 5, 2021 5:31 PM
To: Darcy Paul
Cc: Mike Kelley; Deborah L. Feng; Kerri Heusler
Subject: Affordable Housing/Agenda #18
Attachments: Memo re inclusionary.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mayor Paul,

In advance of the Council meeting tomorrow evening I have attached a memorandum on local inclusionary policies in California. The memorandum includes a document called "Meeting California's Housing Needs: Best Practices for Inclusionary Housing." It is my hope that the information provided is of good use.

Mike Kelley with the Pacific Companies will be available to address any questions from you and/or your fellow council members.

Sincerely,

Mark E. Tersini

KT Urban

Mark E. Tersini
Principal

21710 Stevens Creek Blvd., Suite 200
Cupertino, California 95014
Office: (408) 257-2100
Fax: (408) 255-8620
mtersini@aol.com

Cyrah Caburian

From: Mark Tersini <mtersini@aol.com>
Sent: Monday, April 5, 2021 5:36 PM
To: Kitty Moore
Cc: Mike Kelley; Deborah L. Feng; Kerri Heusler
Subject: Affordable Housing/Agenda #18
Attachments: Memo re inclusionary.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Council member Moore,

Attached below please find a letter that was sent to Mayor Paul this afternoon.

Regards,

Mark E. Tersini

Mayor Paul,

In advance of the Council meeting tomorrow evening I have attached a memorandum on local inclusionary policies in California. The memorandum includes a document called "Meeting California's Housing Needs: Best Practices for Inclusionary Housing." It is my hope that the information provided is of good use.

Mike Kelley with the Pacific Companies will be available to address any questions from you and/or your fellow council members.

Sincerely,

Mark E. Tersini

KT Urban

Mark E. Tersini
Principal

21710 Stevens Creek Blvd., Suite 200
Cupertino, California 95014

Office: (408) 257-2100

Fax: (408) 255-8620

mtersini@aol.com



**California Rural
Legal Assistance
Foundation**

To: Mike Kelley
From: Brian Augusta, CRLAF
Re: Local Inclusionary Policies
Date: March 27, 2021

Mike, I'm following up on our recent conversation about financial incentives in local inclusionary policies. As I mentioned on the phone, in our experience, while policies certainly differ, many inclusionary policies in California include local public subsidy among the incentives and concessions available to developers subject to inclusionary policies.

In 2018, CRLAF and Western Center on Law and Poverty worked with the Local Government Commission to produce a review of best practices in local inclusionary housing programs. One of the recommendations addressed this very issue. According to the report:

"From both a legal and a practical standpoint, an inclusionary-housing policy should include incentives and concessions for developers to help offset the cost of providing the affordable units. Common concessions and incentives include:

- Density increases, including the option of greater density increases in exchange for higher percentages of affordable units.
- Waivers of development standards, such as height and setback requirements.
- Reduction in or a waiver of minimum parking requirements, especially for projects located in transit areas.
- Expedited permit processing or ministerial approval.
- Waiver, reduction or deferral of development fees, either on the inclusionary units or the entire project.
- **Direct financial subsidies."**

Many local governments have implemented such a policy, allowing for local public subsidy as part of a package of assistance and incentives. We have found that that sort of assistance is particularly common—and necessary—where the inclusionary units are being provided by a different developer, either as an off-site development or as part of a standalone component to a market-rate development. For example, the City of Folsom's ordinance allows for developers to access the city's housing trust fund *See Folsom Municipal Code, Section 17.104.070(H)*. Other cities do likewise with respect to locally controlled housing funding sources. *See also* Daly

City Municipal Code Section 17.47.100(F); City of Irvine Municipal Code, Section 2-3-7; City of West Sacramento Municipal Code, Section 15.40.070(A)(1)(b).

It is also common, and often essential from a feasibility perspective, for an ordinance to provide that local subsidies are available to help more deeply affordable units than would be required under the ordinance. For example, to bring low-income units down to very low-income. The City of Pasadena has such a policy (see attached regulations implementing the city's ordinance).

Let me know if you have any other questions on this.

Meeting California's Housing Needs: Best Practices for Inclusionary Housing



Inclusionary housing is used in hundreds of communities across the country to create units that are affordable to lower-income households in new market-rate residential developments. More than 170 cities and counties in California have used inclusionary-housing policies to help address affordable-housing needs while advancing equitable-development goals.

Inclusionary policies capture some of the value of rising real-estate prices to provide community benefits by using local land-use controls to ensure that much-needed affordable-housing units are produced along with market-rate units and that the limited supply of developable land is put to work in a way that serves households at all income levels.

Inclusionary housing — also referred to as “inclusionary zoning” — is a flexible tool that can be tailored to local circumstances. There is no one “model” inclusionary-housing policy, but rather a number of best practices to consider when adopting or amending an ordinance.

This factsheet explores the range of policy options to consider when designing a local inclusionary ordinance and highlights best practices that maximize community benefits and fulfill policy goals.

An inclusionary-housing ordinance is one part of an equitable-development strategy, and should not be viewed as the sole way to address affordable-housing needs. In most communities, building the needed amount of housing for lower-income families will still require public subsidies and must be integrated with other strategies.

Following a period of legal uncertainty around inclusionary ordinances, a 2015 Supreme Court decision affirmed city and county authority to impose inclusionary requirements based on local government's broad police powers. And passage of Assembly Bill 1505 in 2017 reinstated the authority to apply inclusionary policies for rental housing.



■ November 2018

*Produced by Local Government Commission,
Western Center on Law and Poverty and
California Rural Legal Assistance Foundation,
with funding from the Climate, Land Use,
and Transportation program of
the Resources Legacy Fund.*

Benefits of an Inclusionary Housing Ordinance

A well-designed ordinance can generate numerous benefits for communities seeking to increase housing affordability and develop diverse, inclusive neighborhoods. These include:

- ◆ More choices for lower-income households about where to live.
- ◆ Reduced opposition to affordable housing by producing affordable units within communities as they develop, not after.
- ◆ Support for compact infill development, reduced sprawl and achievement of local Regional Housing Needs Assessment (RHNA) targets for all income levels.
- ◆ Reduced vehicle miles traveled (VMT) and greenhouse gas emissions by providing people at all income levels more opportunities to live closer to work and in transit-rich areas.
- ◆ Ensuring that the entire community benefits from a growing economy. Public and private investments help create economic growth that raises property values. Inclusionary housing helps capture some of the value created by these investments to ensure that the benefits do not accrue solely to property owners and helps buffer against displacement pressures by ensuring that lower-income residents can remain in the community.
- ◆ Reduced segregation and concentration of poverty.

Keys to a Successful Ordinance

Adopting a detailed inclusionary ordinance with input from a wide range of community stakeholders is the best method for implementing effective and legally defensible inclusionary requirements.

The ordinance's language should provide clarity and certainty for the development community, and be structured to realistically achieve its goals. It should be backed by data and research that establishes both the need for the policy and the feasibility of the requirement.

The key elements of a well-crafted inclusionary ordinance include:

1. State the need.

Local governments have **broad discretion under the police power** granted by the state constitution to regulate the use of land within their borders, so long as the regulation is reasonably related to advancing the general welfare. A local inclusionary ordinance, then, should start with a statement of findings related to the need for the policy to improve the community's well-being.

Most California jurisdictions have a **severe shortage of housing units affordable to low- and very low-income households**. The need to address that shortage provides a strong basis for inclusionary zoning, as does the need to meet the jurisdiction's share of the region's ongoing housing need at the lower-income levels (which is nearly impossible to do with subsidy alone).



Jurisdictions also frequently point to the need to **address past patterns of racial and economic segregation** in their community, ensure the preservation and development of diverse neighborhoods, meet fair-housing mandates, and make the best use of a limited supply of developable land.

The ordinance should be directly tied to the findings establishing the need for the policy. For example, if the findings cite the shortage of low- and very low-income housing units in the community, then one of the policy's goals should be to ensure that those units get produced. A well-crafted ordinance will start with findings that support the policy choices reflected in the design of the ordinance.

"Lower-income" households refers to those making 80% or less of area median income (AMI). The term encompasses households that are "low-income" (those making 50-80% of AMI) and "very low-income" (those making less than 50% of AMI).

2. Get the numbers right: how many, where, when and for how long?

How many affordable units should be required and to whom should they be affordable?

An inclusionary ordinance should clearly define how many affordable units must be included in a project and at which income levels. The vast majority of ordinances set the requirement as a percentage of the total number of units in the project, while a few communities use a square-footage metric.

LOW AND VERY-LOW: The requirement will typically be split between low- and very low-income households (for example, 15% of the total are affordable units, with 10% low and 5% very low). Some laws also include a target for extremely low-income households.

MODERATE: Some communities also require moderate-income units, but this should be based on a careful analysis of the market and its ability to serve moderate-income households. If the market is producing moderate-income units on its own, there would be no rationale for having an inclusionary requirement for moderate-income units.

In California, the requirements in most inclusionary policies adopted so far have fallen within the 10-20% range – 15% being the most common.

What percentage a community establishes will be dependent on its affordable housing needs, local market conditions, the financial incentives available to developers, and the mix of affordability levels required.

FIXED: Some communities require fixed percentages at each designated income level, whereas others may provide some flexibility (for example, allowing for a lower percentage of inclusionary units overall when the units are provided at a deeper affordability level).

FLEXIBLE: Some jurisdictions structure their inclusionary policies to involve a sliding scale, so that projects that include higher percentages of affordable units also qualify for more incentives, such as greater density increases.

While there may be reasons to build flexibility for the required number of affordable units into an ordinance, **too much flexibility can undermine the creation of new housing at the income levels needed most and cannot be produced by the market alone.**

Which projects should have to comply with the inclusionary requirement?

While it may be tempting to carve out various exceptions to an inclusionary requirement, the best practice is to apply the requirement to all housing-development projects throughout a community or the geographic area covered by the policy. This is the best way to ensure that the policy is

implemented equitably and serves the overall goal of ensuring that all neighborhoods – single-family and multi-family, lower-density and higher-density – incorporate housing options at a range of income levels.

SMALL PROJECTS: Many jurisdictions choose to exempt small projects from complying with an inclusionary requirement. The rationale is often to ensure that smaller development projects are financially feasible. While a small-project exemption may be well-intended, it can be difficult to reconcile an exemption with the ordinance's overall goals and create potential legal issues.

It can also be a challenge to settle on a definition of “small” that doesn't simply encourage projects that come in just under the threshold, thus frustrating the goal of ensuring that all new housing development contributes to meeting the community's affordable-housing needs.

Rather exempting these projects altogether, **a better practice is to provide small projects with the option to pay an in-lieu fee as an alternative to compliance with on-site production requirements.** This is particularly true in areas where a high proportion of development activity occurs on smaller projects.

Should inclusionary requirements be different for for-sale projects and rental projects?

In most jurisdictions, the most defensible ordinance will be one that imposes an inclusionary requirement equally on rental and for-sale housing. Requirements that treat the two differently may have fair-housing implications and, much like exemptions for small projects, can be challenging to reconcile with the ordinance's goals.

For example, an ordinance that requires the inclusion of low- and very low-income units in rental developments, but only moderate-income units in for-sale developments, could run counter to the goal of ensuring that all neighborhoods have a mix of housing at all income levels in cities where rental and for-sale development generally happen in different neighborhoods.

Furthermore, **depending on local demographics, such policies may lead to disparate impacts on certain protected classes**, potentially violating legal requirements. In weighing whether to impose the same or different requirements on rental and for-sale housing, it's crucial to consult with an attorney with expertise in fair-housing laws.

RENTAL/FOR-SALE MIX: One way to maximize the production of affordable units and increase flexibility is to allow developers of single-family projects the option of meeting the inclusionary requirement by including affordable multi-family rental units within the development rather than affordable for-sale, single-family homes.

However, this option should be crafted carefully to ensure consistency with the ordinance's overall goals and fair-housing obligations. Rental units can generally be produced more cost-effectively than for-sale units, so this option should reflect that by requiring that a higher percentage of rental units be produced.

Under California law, if the inclusionary requirement is adopted through a program in the jurisdiction's housing element, the program must provide developers with this option. However, nothing requires a jurisdiction to adopt an inclusionary requirement through its housing element, and this approach is not ideal.

Should inclusionary requirements be structured differently in different neighborhoods?

Inclusionary requirements most typically apply jurisdiction-wide. **While different neighborhoods within a city may have differing development markets, a well-designed policy already adjusts for those differences.**

For example, in a neighborhood where the development market is especially hot and land costs are high, the value of an increase in allowable density is also much higher, making a higher inclusionary requirement feasible.

SPECIFIC PLANS: However, in large cities, it may make sense to consider area-specific increases in an inclusionary requirement because some parts of town may be much hotter development markets than others. An effective way to accomplish this is through the adoption of a specific plan that lays out the land-use controls that apply within a designated geographic area.

TRANSIT AREAS: Some jurisdictions have also crafted specific inclusionary policies that apply to areas adjacent to transit stations, recognizing the wide body of research demonstrating how crucial it is to build affordability into transit-oriented development and the resulting benefits that increase transit ridership, reduce greenhouse gas emissions, and strengthen community stability.

How long should inclusionary units remain affordable?

Given the time and resources that go into developing housing, an inclusionary ordinance should aim to set the affordability term — how many years a unit must remain “affordable” — for the longest period of time that is feasible.

One important thing to consider in determining the affordability term is the cost of maintaining a unit's affordability over time compared to the cost of having to provide a new affordable unit to replace it when the deed-restriction period ends. In most cases, the former will be far more cost-effective than the latter.

BUILDING WEALTH: One advantage of homeownership is the ability to build wealth through the ownership of an appreciable asset. Strict resale controls that require the home to be resold at an affordable price to another low-income homeowner significantly restrict the wealth-building advantages of homeownership. On the other hand, the program should protect against the owner of a for-sale inclusionary home quickly reselling the home at a significant profit.

For rental units, 55 years is a common affordability term required by many affordable-housing funding programs in California. An inclusionary ordinance should require at least as long a period, although it's not uncommon for jurisdictions to require longer periods — or even to mandate that inclusionary rental units be deed restricted in perpetuity, as West Hollywood does.

The typical term with for-sale units is 45 years. Affordability restrictions for these units present some additional policy considerations about the sale of the home during the affordability term.

SHARING EQUITY: The most common way of balancing these interests is an equity-sharing policy in which any appreciation is split between the selling homeowner and the jurisdiction. The jurisdiction then uses its share to assist in future homeownership opportunities for low-income buyers. Some policies have initial limits on resale (such as 10 years) that require the home to be resold only to a low-income buyer at an affordable price during that period.

Other ordinances have a sliding-scale, equity-sharing provision that states that no proceeds to a homeowner who sells during the initial years, but provides a greater share of the proceeds to the homeowner closer toward the end of the 45-year term.

Should the inclusionary requirement change over time?

Housing markets are constantly changing, and it would be a challenge to amend an inclusionary requirement in response to every rise and dip in local conditions. However, building in a set review period can be useful for a number of reasons. **Periodic review can help determine whether the percentage of units required remains appropriate for local conditions so that the community is not losing out on affordable units** that could feasibly be achieved with a higher inclusionary requirement.

It can also help in assessing whether changes to income targeting are necessary. For example, if a community has steadily produced low-income units but not very low-income units, it may be necessary to increase the percentage of very low-income units required by the ordinance and adjust available incentives accordingly to account for the higher cost of providing these units. Every five years is a reasonable review period.

SYNC WITH HOUSING ELEMENT: Another option is to review the ordinance concurrent with the housing-element adoption process every eight years. (While most local jurisdictions in California must update their housing element every eight years, some rural jurisdictions remain on a five-year cycle.)

3. Couple with incentives and concessions.

From both a legal and a practical standpoint, an inclusionary-housing policy should include incentives and concessions for developers to help offset the cost of providing the affordable units. Common concessions and incentives include:

- ◆ Density increases, including the option of greater density increases in exchange for higher percentages of affordable units.
- ◆ Waivers of development standards, such as height and setback requirements.
- ◆ Reduction in or a waiver of minimum parking requirements, especially for projects located in transit areas.
- ◆ Expedited permit processing or ministerial approval.
- ◆ Waiver, reduction or deferral of development fees, either on the inclusionary units or the entire project.
- ◆ Direct financial subsidies.

California law requires that developers who comply with an on-site inclusionary requirement that meets the affordable-housing requirements of the state **Density Bonus Law** must receive all of the benefits to which they are entitled under that law. These benefits include a density increase, concessions and incentives, waivers of development standards and reduced parking requirements. For example, a project that includes 20% of units affordable to low-income households is entitled to a 35% density bonus, two concessions or incentives and various other benefits provided under the state law.

4. Establish clear development standards.

In addition to specifying the percentage of affordable units and at which income levels, an ordinance should establish clear standards for the inclusionary units. Among such best practices:

- ◆ The affordable units must be indistinguishable from the market-rate units in the development, at least outwardly.



- ◆ The project includes a similar mix of unit types. For example, if a multifamily rental development will have an equal number of 1-, 2- and 3-bedroom units, the affordable units should also incorporate an equal mix of 1-, 2- and 3-bedroom units. Many ordinances also require that inclusionary units be the same square footage as the market-rate units, although in some cases jurisdictions have built in flexibility to reduce square footage while including the same number of bedrooms to reduce project costs.
- ◆ Inclusionary units must be located throughout the development rather than clustered in one area.
- ◆ Residents of the affordable units must have access to all amenities — such as a pool, a fitness center and parking — that market-rate residents have.
- ◆ The affordable units must be completed either prior to or concurrent with the market-rate units, and prior to issuance of a certificate of occupancy.

ACCESSORY DWELLING UNITS: For single-family for-sale developments, some jurisdictions have allowed accessory dwelling units (ADUs) as a way to fulfill an inclusionary requirement. This is not considered a best practice and should be avoided. **While cities and counties should encourage the construction of ADUs, which can be a land- and cost-efficient way of expanding a community's housing supply, they are problematic from an inclusionary standpoint.**

ADUs are readily distinguishable from the other units in a for-sale development, and may raise equity and fair-housing concerns if used as the means for achieving compliance with an inclusionary policy.

ADUs are also typically studios or 1-bedrooms rather than a match of the bedroom mix of the primary development, and are often designed as “micro” or “efficiency” units without similar amenities as the primary development. They are challenging to deed-restrict and monitor, and are unlikely to provide the long-term affordability that an inclusionary ordinance should require.

5. Provide alternative methods of compliance.

Because one of the primary goals of an inclusionary requirement is to make affordable units available in all housing developments, ordinances should require on-site construction of the inclusionary units to the maximum extent possible. However, most jurisdictions have chosen to allow alternatives to on-site production of inclusionary units under certain circumstances.

In California, **state law requires that alternative methods of compliance be provided to developers of inclusionary rental housing**, although what those alternatives are, and when each alternative is available, is left up to individual jurisdictions. The law doesn't require alternatives for developers of for-sale housing. Common alternatives include in-lieu fees, off-site construction, land donation, and the acquisition and rehabilitation of existing units.

When weighing how to offer to provide some flexibility, alternatives should be appropriately limited to maximize on-site construction. **Alternatives should be available where on-site production of units is less feasible, rather than as a default option for all developments.** Common mistakes that can lead to inadequate production of actual housing units include setting in-lieu fees too low and failing to establish adequate standards for land donation.

Timing is also a crucial factor in the structure of alternatives. For example, some jurisdictions have required that off-site inclusionary units be completed concurrent with or prior to the development that triggered the inclusionary requirement, or before a certificate of occupancy for that development is issued. Ideally, alternatives should be used only when they will lead to the production of more affordable units than would otherwise be provided on-site, while still being consistent with the ordinance's other goals.

In-lieu fees

One common alternative is in-lieu fees, which are paid instead of constructing the required affordable units. **In-lieu fees are generally paid into a local affordable-housing trust fund that finances the construction of affordable housing at other locations within the community.** Of all the alternatives, in-lieu fees provide the greatest challenge to achieving inclusionary goals and therefore should be considered carefully and sparingly.

Unlike off-site construction and land-dedication alternatives, **in-lieu fees don't guarantee a site for the construction of the affordable units.** If the amount of the fee is not sufficiently high, the payment may also not produce enough revenue to help produce new affordable units. Without adequate funding and identified locations for their use, the fee revenue could sit unused.

TRUE COST: Furthermore, if in-lieu fees don't reflect the true cost of producing on-site units, this may drive most developers to opt for paying the fee rather than producing an affordable unit on-site. Over time, this can frustrate the policy and lead to an insufficient proportion of affordable units being developed.



If properly designed, an in-lieu fee option can have advantages in certain jurisdictions. **In-lieu fees can enable a jurisdiction to leverage state and federal funds** that may not have otherwise been available, allowing for more affordable units to be built than would have been created on-site.

IN-LIEU ADVANTAGES: It can also provide flexibility to produce needed units that the inclusionary requirement is not producing, such as extremely low-income units; use funds to preserve existing affordable housing with expiring deed restrictions; produce rental units in places where the inclusionary requirement is primarily creating for-sale units (or vice versa); or develop affordable units in parts of the city where development isn't happening and thus the inclusionary requirement is having no impact.

If allowed, the fee amount should be set at a level comparable to the cost of producing a similar unit to the one that otherwise would have been provided on-site. One of the most common methods for determining the fee amount is to base it on the gap between the affordable-housing and market-rate costs. For example, if it costs \$300,000 to produce a low-income unit but the rent only covers the financing on \$230,000, then the in-lieu fee would be set at \$70,000 to cover the difference.

The amount of an in-lieu fee will need to change over time to reflect changes in construction costs, inflation and other market factors. Therefore, it is better to **put the formula for determining the fee amount into an ordinance rather than state the amount itself**, since amending an ordinance on a regular basis can be time-consuming, costly and potentially controversial.

ADJUSTING THE FEE: The ordinance should specify the mechanism for adjusting the fee over time, such as tying it to increases in the local Construction Cost Index, as San Francisco does. If an ordinance distinguishes between rental and for-sale units in its inclusionary requirements, in-lieu fees should also be distinguished in the same manner to ensure they are an adequate substitute for the provision of on-site units.

Off-site construction

Allowing construction of inclusionary units off-site can have advantages. For example, a developer may be able to build affordable units more cost-effectively off-site, thus enabling more units to be produced. However, there are also pitfalls that jurisdictions should work to avoid.

One important consideration with off-site construction is the allowable geography — how far from the development site. Given that the inclusionary requirement seeks to foster mixed-income neighborhoods and reduce segregation, even if inclusionary units can't be produced on-site in a new development, they should be produced nearby. In cases where that isn't possible, the jurisdiction should ensure that they are dispersed equitably throughout the community and not clustered in lower-income neighborhoods.

Jurisdictions also typically require more units to be built off-site than would be required on-site. This means the value of the cost savings over on-site construction is captured and translated into a community benefit, and that the policy properly expresses an appropriate preference for on-site units.

Ensuring on-site and off-site construction have similar costs incentivizes on-site construction (which should be the norm), while still providing a meaningful alternative for those projects that can't feasibly accommodate on-site affordable units.

Another best practice is to **require that the off-site units be constructed before or concurrent with the market-rate units**, which can be achieved by having the off-site units finished before building permits are issued for the market-rate development site. That way an off-site alternative doesn't simply become an escape hatch to avoid complying with the site's inclusionary requirement.

Land donation

Land donation can be a useful option where affordable-housing developers have difficulty finding building sites. Paired with in-lieu fees or other sources of affordable-housing funding, **dedicated land can be used to produce needed types of housing that might not otherwise get built**, such as homes for people with special needs or permanent supportive housing.

However, jurisdictions must establish clear parameters for exercising this alternative. Donated land should be equivalent or greater in value to the affordable units that otherwise would have been produced on-site, and should be ready for development at the time it is donated. It is also important here to consider the allowable geography to make sure that the required affordable units are not concentrated in certain neighborhoods.

6. Include procedure for requesting waivers or reductions.

An inclusionary requirement may not withstand legal scrutiny if it doesn't include a process by which a developer can request a waiver or reduction of the requirement. Much like the inclusionary requirement itself, **the waiver process should be as clear and specific as possible**, detailing both the procedures for requesting the waiver — process, timeline, appeal procedure — and the standards by which the request will be evaluated.

Feasibility Studies

While not required by state law in California, preparing a feasibility study in support of an inclusionary requirement helps ensure that the requirement is right-sized for local conditions. It's important not to set an inclusionary requirement so high that it stops development, and equally crucial not to set it too low and miss out on affordable units.

A feasibility study is an opportunity to analyze local market conditions and the economics and tradeoffs of various policy options — affordability percentages and levels, incentives — to make sure the ordinance delivers the number and type of affordable units that a community needs. It also provides a data-driven foundation for the requirement, which can help overcome opposition by showing that it can be implemented without impeding the developers' ability to earn a profit.

The California Department of Housing and Community Development generally requires local jurisdictions to analyze inclusionary requirements as a potential constraint on development in their housing elements. A feasibility study can help demonstrate that the requirement isn't a barrier.

NEXUS STUDIES: Feasibility studies should not be confused with nexus studies. A jurisdiction must prepare a nexus study to impose an exaction. A nexus study would be required if a jurisdiction wanted to adopt a commercial linkage fee, for example, where it must show that the amount of the fee is roughly proportional to the need for affordable housing generated by new commercial development.

An inclusionary requirement is not an exaction but rather a land-use regulation, much like a density requirement or a height restriction, and need only be related to advancing a legitimate purpose. A nexus study is not required when adopting a traditional inclusionary ordinance.

For more information about the preparation of feasibility studies for inclusionary studies: inclusionaryhousing.org/resources/#feasibility

The waiver or reduction process should be carefully structured so that it functions as the exception and not the rule, and is only used in rare cases.

The City of Napa's inclusionary requirement withstood a constitutional challenge in part because it included a waiver-request provision. The City used a **constitutional test** to determine whether a waiver would be approved, under which the developer had to show that the requirement as applied would be unconstitutional.

Other jurisdictions apply a **hardship standard**, allowing for a waiver or reduction if the developer can show that the requirement would deprive them of all economically viable use of the land. An economic-hardship standard should not be about the level of profit, but about whether any profit can be made.

7. Monitor implementation and compliance.

A jurisdiction that chooses to adopt an inclusionary ordinance should be prepared to devote staff time and resources to ongoing monitoring and other administrative tasks needed to implement the ordinance effectively.

In addition to ensuring that deed restrictions and covenants are recorded in time and that affordability is maintained for the required time period, it is important to **ensure that units are occupied by households at the appropriate income levels over time and that resale provisions are enforced.**

To maximize the program's effectiveness, a jurisdiction should adopt procedures that:

- ◆ Establish whether the jurisdiction, property managers or a designated third party will be responsible for verifying tenant or homebuyer eligibility, income recertification and other occupancy factors. The best practice is to have the jurisdiction perform these tasks, although smaller jurisdictions may find it more cost-effective to pool resources with other neighboring jurisdictions and contract with a third party. Having property managers perform these tasks can prove overly burdensome due to the training required.
- ◆ Ensure that a list of available units is up-to-date and readily accessible to households in the targeted income categories, and that the list is maintained in a way that ensures compliance with fair-housing obligations.
- ◆ Determine which qualified applicants (those meeting household-income restrictions) are chosen to rent or buy inclusionary units.
- ◆ Recertify tenant income annually and determine when a tenant household no longer qualifies for residency in the inclusionary unit.

Some jurisdictions require that tenants move at the end of the lease term as soon as their household income exceeds the income limit for the unit. Others allow a tenant to remain until their household income exceeds the income limit by a set amount or percentage.

The policy should be tied to the cost of market-rate housing in the community and ensure that tenants are aware of requirements and receive adequate notice when they exceed income limits and must vacate the unit. To avoid displacement, consider allowing tenants to stay in a unit after their income exceeds allowable limits but convert that unit rent to market rate. The next comparable unit in the development that becomes vacant would then be offered as affordable to replace that "lost" unit.

- ◆ State how sales of for-sale units will be handled, including the referral of potential buyers and how funds derived from equity-sharing agreements will be used. Also, if the jurisdiction has an option to purchase a unit upon resale or at the end of the regulatory period, it should have a mechanism in place for handling those options.

A strong monitoring program can have the added benefit of providing clear data about the success of the ordinance. This information can then be used to establish that the inclusionary requirement is not a constraint on development for purposes of the housing-element review process, and for potential future discussions about amendments to the inclusionary requirement.

MORE RESOURCES

- ◆ inclusionaryhousing.org
- ◆ lgc.org/advancing-inclusionary-housing-policy

Other Value-Capture Tools to Produce Affordable Housing in Development

While "inclusionary housing" usually refers to mandatory land-use policies designed to construct affordable housing within market-rate developments, other tools can also capture land value to produce needed affordable units.

Voluntary inclusionary requirements

California has a statewide, voluntary inclusionary method in the form of Density Bonus Law, with which all cities and counties must comply. Under this law, developers who include affordable units in their projects are entitled to a density increase and other incentives.

Local governments can offer density increases above those specified in the state law in exchange for higher levels of affordability (units for households at the lower AMI levels).

Linkage fees

A linkage fee can be imposed on commercial and residential development to generate funds for affordable housing. The amount of this fee is set based

on the community's need for affordable housing generated by new development. A growing number of California cities have adopted commercial linkage fees, including Los Angeles, Oakland, Sacramento and San Diego.

While linkage fees can be a crucial revenue source, a linkage fee for affordable housing doesn't produce the other community-wide benefits of a traditional inclusionary requirement, such as economically integrated neighborhoods, and may also not be as economically valuable. Pairing a commercial linkage fee with a traditional inclusionary requirement is one way for a community to maximize the production of affordable housing while also advancing other important policy goals.

Ad hoc inclusionary requirements

Some jurisdictions have tried to negotiate inclusionary requirements on a project-by-project basis, often on larger projects. These ad hoc requirements are problematic from a legal standpoint and don't ensure that all new residential development includes housing affordable at a range of income levels.

CITY OF PASADENA
INCLUSIONARY
HOUSING REGULATIONS

**THIS DOCUMENT INTEGRATES ALL OF THE AMENDMENTS MADE TO
THE REGULATIONS ORIGINALLY ADOPTED ON 9/10/01 BY RESOLUTION
NO. 8042, PER THE ACTIONS LISTED BELOW.**

Adopted September 10, 2001 by Resolution No. 8042
Amended July 21, 2003 by Resolution No. 8272
Amended August 16, 2004 by Resolution No. 8386
Amended September 19, 2005 by Ordinance No. 7020
Amended January 30, 2006 by Resolution No. 8558
Amended December 16, 2013 and updated administratively with corrections on
December 26, 2017

Agreement to a deed of trust securing construction financing. In that event, however, the Inclusionary Housing Agreement must be superior to all liens and deeds of trust, except as set forth in paragraph “a”, prior to issuance of a certificate of occupancy for all or any portion of the Residential Project.

c. In the case where the requirements of Chapter 17.42 are satisfied through the development of off-site Inclusionary Units, the Inclusionary Housing Agreement shall simultaneously be recorded on title to the property where the off-site Inclusionary Units are to be developed. Upon the completion of the Inclusionary Units and their occupancy by Income-Eligible households, the Inclusionary Housing Agreement shall be released from record title of the Residential Project site.

III. INCENTIVES

The Developer may request that the City provide one or more of the following incentives: Density Bonus. A density bonus pursuant to procedures set forth in Chapter 17.43 of the Municipal Code. If density bonus units pursuant to Chapter 17.43 are also being counted towards compliance with the requirements of Chapter 17.42, whichever term of affordability restrictions (Chapter 17.42 or Chapter 17.43) is longer shall apply. Furthermore, if density bonus units dedicated to persons aged 55 years and older (and to those residing with them) are also being used to satisfy the requirements of Chapter 17.42, the more restrictive income limit and longer term of affordability shall apply.

A. Fee Waivers. Fee waivers for Inclusionary Units, including but not limited to, the partial or full waiver of the construction tax as set forth in Section 4.32.050.A of the Municipal Code.

B. Marketing of Inclusionary Units. Technical assistance for the marketing of Inclusionary Units at www.pasadenahousingsearch.com, an online housing finder co-sponsored by the City of Pasadena and County of Los Angeles.

C. Financial Assistance for Excess Units. Financial assistance to the Developer for units in excess of the 15% Inclusionary Unit requirement or to make Low Income Units affordable to Very Low Income Households.

D. Reduction in Inclusionary Unit Requirement. A reduction in the total Inclusionary Unit requirement as set forth in Section 17.42.040 of Chapter 17.42. The reduction of Inclusionary Units is calculated as follows:

1. If Very Low Income Units are provided in lieu of the required Low Income Units, a credit of 1.5 units to every 1 unit shall be provided.
2. If Low Income Units are provided in lieu of the required Moderate Income Units, a credit of 1.5 units to every 1 unit shall be provided.
3. If Very Low Income Units are provided in lieu of the required Moderate Income Units, a credit of 2 units to every 1 unit shall be provided.

CC 04-06-21

#20

Secondhand Smoke Ordinance

Written Comments

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE CHAPTER 10.90 OF TITLE 10 (PUBLIC PEACE, SAFETY,
AND MORALS) TO PROHIBIT SMOKING IN MULTI-UNIT HOUSING AND
CERTAIN OUTDOOR AREAS**

The City Council of the City of Cupertino finds that:

1. The purpose of this Chapter is to: (a) To protect public health, safety, and general welfare by prohibiting smoking in multi-unit housing, public places, recreational areas, service areas, outdoor dining and various other locations set forth in this chapter; (b) To reduce litter, waste and pollution; and (c) To reduce exposure to secondhand smoke, which has been shown to cause negative health effects.
2. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and the California Air Resources Board identified secondhand smoke as a toxic air contaminant for which there is no safe level of exposure.
3. Secondhand smoke is responsible for an estimated 34,000 heart disease–related and 7,300 lung cancer–related deaths among adult nonsmokers each year.
4. In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory infections, and increases the risk of Sudden Infant Death Syndrome (SIDS).
5. Exposure to electronic smoking device aerosol has immediate impacts on the human respiratory and cardiovascular system and poses a risk to human health.
6. Secondhand cannabis smoke has been identified as a health hazard; the California Environmental Protection Agency includes cannabis smoking on the Proposition 65 list of chemicals known to the state to cause cancer.
7. Studies have shown that exposure to secondhand smoke outdoors can reach levels attained indoors depending on the amount of wind and number and proximity of smokers.

8. Research demonstrates that secondhand smoke in multi-unit housing can and does transfer between units, creeping under doorways and through wall cracks.
9. According to the County, close to one-third (29%) of adults who live in multi-unit housing in the County reported smelling tobacco smoke drifting into their home in the previous week. The rate of secondhand smoke exposure was higher among those with less than a high school diploma (38%) and adults with household incomes less than \$15,000 (36%).
10. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “thirdhand smoke” a potential health hazard.
11. California cities and counties have the legal authority to adopt local laws that prohibit all tobacco use indoors and outdoors in areas not already covered by state law.
12. State law allows local governments to adopt ordinances that permit residential rental agreements to prohibit smoking tobacco products within rental units.
13. State law prohibits smoking within 25 feet of playgrounds as well as within 20 feet of government buildings and expressly authorizes local communities to enact additional restrictions.
14. Cupertino prohibits smoking in recreational areas owned or operated by the City; outdoor dining areas; at entrances and exits of places where food and drink is served; and within 25 feet of these areas.
15. The City Council of the City of Cupertino held a duly noticed public meeting on March 2, 2021, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California 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, either directly or ultimately. 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 of a significant effect on the environment. CEQA applies only to projects which have the potential of 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 would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937. However, the Ordinance's requirements shall not become operative until October 1, 2021, which means that the City, or its designee, will not begin to enforce the provisions and penalties under the Ordinance until October 1, 2021.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on March 2nd, 2021 and **ENACTED** at a regular meeting of the Cupertino City Council on March 16th, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – An ordinance to prohibit smoking in multi-unit housing and certain outdoor areas

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

1. Amendments to Article 10.90 concerning Regulation of Smoking

10.90.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this chapter unless the context clearly requires otherwise:

~~A. “Outdoor Dining Area” means any privately owned or publicly owned area, street, or sidewalk, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.~~

A. “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes. A Business also includes owner-operated entities with no Employees in which the owner is the only worker.

B. “Common Area” means every area of a Multi-unit Residence that residents of more than one unit are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

C. “Dining Area” means any privately owned or publicly owned area, street, or sidewalk, which is available or customarily used by the general public or an employee and which is designed, established, or regularly used for consuming food or drink.

D. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

E. "Employee" means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

F. "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

G. "Enclosed area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

H. "Landlord" means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a Multi-unit Residence that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a landlord.

I. "Multi-unit Residence" means property containing two or more attached units, including, but not limited to, apartment buildings, condominiums, duplexes and triplexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit Residences do not include the following:

1. a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
2. a mobile home park;
3. a campground;
4. a marina or port;
5. a detached single-family home, except if used as a health care facility subject to licensing requirements; and
6. a detached single-family home with ~~a an attached or~~ detached accessory dwelling unit or second unit.

J. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this chapter.

K. "Nonsmoking Area" means any area in which smoking is prohibited by

1. this chapter or other law;
2. binding agreement relating to the ownership, occupancy, or use of real property; or

3. a person with legal control over the area.

L. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

M. "Place of Employment" means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

N. "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

O. ~~B.~~ "Reasonable distance" means a distance of ~~25~~30 feet in any direction from an area in which smoking is prohibited.

P. ~~C.~~ "Recreational Area" means any outdoor area, including streets and sidewalks adjacent to Recreational ~~a~~Areas, owned or operated by the City of Cupertino and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller-skating rinks, and skateboard parks, and parking lot or other area designated or primarily used for parking vehicles of persons accessing a Recreational Area.

Q. "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

R. ~~D.~~ "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, vapors from an electronic smoking device, and marijuana smoke.

S. ~~E.~~ "Smoking" means: ~~engaging in an act that generates Smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or, or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.~~

1. inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;
2. carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or
3. using an "electronic smoking device."

T. "Unenclosed Area" means any area that is not an enclosed area.

U. "Unit" means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, community care facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an accessory dwelling unit or second unit.

10.90.20 Smoking Prohibited.

A. Smoking is prohibited in the following Enclosed Areas:

1. In Recreational Areas-Places of Employment; and
2. In Outdoor Dining Areas-Public Places; and
3. At entrances, exits, operable windows, or air intake openings of any building area which is available or customarily used by the general public and which is designed, established, or regularly used for selling or consuming food or drink.

B. Smoking is prohibited by this chapter in all Enclosed Areas exempted by the California workplace law (Labor Code section 6404.5(d), as that section may be amended from time to time) except as provided below.

1. Smoking at theatrical production sites is not prohibited by this subsection if the theater general manager certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience. This exception will not apply if minors are performers within the production;
2. Smoking is not restricted by this subsection in up to twenty percent (20%) of guest room accommodations in a hotel, motel, or similar transient lodging establishment.

C. Smoking is prohibited in the following Unenclosed Areas:

1. Places of Employment;

2. ~~In~~ Recreational Areas;
3. ~~In~~ Outdoor Dining Areas;
4. Service Areas; and
5. Public Places when being used for a public event, including a farmer's market, parade, craft fair, or any event which may be open to or attended by the general public, provided that Smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.

D. ~~B.~~ Reasonable Smoking Distance Required.

1. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance in any direction from any operable doorway, window, opening, crack, or vent into an Enclosed Area in which smoking is prohibited under Section 10.90.020A, except while actively passing on the way to another destination and provided Smoke does not enter any area in which Smoking is prohibited.
2. ~~1.~~ Smoking in all ~~u~~Unenclosed a~~A~~reas is prohibited within a ~~r~~Reasonable Distance from any ~~u~~Unenclosed a~~A~~reas in which ~~s~~Smoking is prohibited under Section 10.90.020A, except while actively passing on the way to another destination and provided Smoke does not enter any area in which ~~s~~Smoking is prohibited.
3. ~~2.~~ The ~~s~~Smoking prohibitions in Section 10.90.020B.1 shall not apply to ~~u~~Unenclosed a~~A~~reas of private residential properties that are not Multi-unit Residences.

E. ~~C.~~ Nothing in this chapter shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

F. ~~D.~~ No Person shall dispose of used Smoking waste within the boundaries of an area in which Smoking is prohibited by this chapter.

G. ~~E.~~ Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

(Ord. 14-2121, § 3, 2014; Ord. 11-2077 (part), 2011)

10.90.30 ~~Other Requirements and Prohibitions~~ Multi-unit Housing

- A. Beginning October 1, 2021, smoking is prohibited and no person shall smoke inside any new or existing unit of a Multi-unit Residence, in any enclosed or

unenclosed Common Area of a Multi-unit Residence, or within a Reasonable Distance of any operable doorway, window, opening, or vent of a Multi-unit Residence.

- B. Smoking is prohibited in Multi-unit Residences as provided in subsection (A) of this section, except that a person with legal control over a Common Area, or authorized representative, may designate a portion of the common area as a designated smoking area; provided, that at all times the designated smoking area complies with subsection (C) of this section.
- C. Designated Smoking Areas in Multi-unit Residences. A designated smoking area shall:
1. Be an Unenclosed Area;
 2. Be a Reasonable Distance from Unenclosed Areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;
 3. Be a Reasonable Distance in any direction from any operable doorway, window, opening or other vent into an enclosed area that is located at the Multi-unit Residence and is a Nonsmoking Area;
 4. Have a clearly marked perimeter;
 5. Have a receptacle for cigarette butts that is emptied and maintained;
and
 6. Be identified by conspicuous signs.
- D. Smoking and the use of Electronic Smoking Devices is prohibited in adjacent unenclosed property within a Reasonable Distance in any direction of any doorway, window, opening, or other vent into an enclosed area of a Multi-unit Residence.
- E. Common Areas Free from Smoking Waste. Persons with legal control over common areas in Multi-unit Residences, and their authorized representatives, shall ensure that all Common Areas except those meeting the requirements of subsection (C) of this section remain free of Smoking and tobacco waste, and ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking and tobacco waste.
- F. Signage. "No smoking" signs shall be posted as required by Section 10.90.050 of this chapter, but are not required inside any unit of a Multi-unit Residence. Signs shall be maintained by the person or persons with legal control over the common areas or the authorized representative of such person.

G. Lease Terms. Every lease or other rental agreement for the occupancy of a new or existing unit in a Multi-unit Residence entered into, renewed, or continued month-to-month after October 1, 2021 shall include the following:

- 1. A clause providing that it is a material breach of the agreement to Smoke or allow Smoking:**
 - a. in the Unit, including exclusive-use areas such as balconies, porches, or patios; and**
 - b. in any Common Area of the Multi-unit Residence other than a designated Smoking area.**
- 2. A description of and/or image depicting the location(s) of any designated Smoking area(s) on the property, if any.**
- 3. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-unit Residence as to the Smoking provisions of the lease or other rental agreement. Such a clause shall provide that any tenant of the Multi-unit Residence may sue another tenant/owner to enforce the Smoking provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of the Smoking provisions of the agreement.**

H. Whether or not a landlord complies with subsection (G) of this section, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (G) of this section applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (G) of this section.

10.90.040 Posting of Signs Other Requirements and Prohibitions.

A. No ash can, ashtray, or other Smoking waste receptacle shall be placed in any area in which Smoking is prohibited by this chapter.

B. No Person shall dispose of used Smoking waste within the boundaries of an area in which Smoking is prohibited by this chapter.

C. Persons owning or occupying property are responsible for maintaining the premises, including the perimeter and the sidewalk in front of their premises, free of loose litter, in accordance with Section 9.18.215.

CD. The presence of Smoking waste receptacles in violation of subsection A. above or the absence of signs shall not be a defense to a violation of any provision of this chapter.

DE. Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than Smoking, each day of a continuing violation of this chapter shall constitute a separate violation. (Ord. 11-2077 (part), 2011)

10.90.050 Posting of Signs.

Where sSmoking is prohibited by this chapter, a clear conspicuous sign shall be posted at a conspicuous point within the area. The sign shall have letters of no less than one inch in height and shall include, either the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or “No Smoking” in words. **Signs are not required inside any unit of a Multi-unit Residence.** Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of sSmoking in violation of any other provision of this chapter.

(Ord. 14-2121, § 4, 2014)

10.90.060 Violation - Penalty.

A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City of Cupertino. Nothing in this chapter shall create a right of action in any person against the City of Cupertino or its agents to compel public enforcement of this article against any party.

B. Any person who violates any of the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.12 or, in the alternative, subject to enforcement action pursuant to Chapter 1.10: Administrative Citations, Fines, and Penalties.

C. Any violation of this chapter is hereby declared to be a public nuisance.

D. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter may be remedied by a civil action brought by the city attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

E. Any person may bring a civil action to enforce this chapter to prevent future violations and may sue to recover actual or statutory damages, including court costs, and attorney fees.

F. Owners, operators, property managers, and officers of homeowners’ associations for residential properties, whether rental or owner-occupied, are required to post signs in accordance with Section 10.90.050 and provide notice to residents or tenants of the requirements of this Chapter. Owners, operators, and property managers of rental property must include the requirements of Section 10.90.030(G) in the lease or other rental agreement. If the owners, operators, property managers, and officers of rental property and homeowners’ associations for residential properties have

satisfied these requirements, they shall not be responsible for violations of the requirements of this chapter by tenants or residents, or guests of tenants or residents.

G. An owner, operator, or manager ("owner") of a commercial establishment shall not be responsible for violations of this chapter within an area under owner's control, by a patron or other member of the public ("patron"); provided, that the owner:

1. Has posted signs in accordance with this chapter; and

2. Has verbally asked the patron not to Smoke.

This limitation shall not limit the liability of an employer for the actions of employees in places of employment, or any other violation of this chapter by the employer.

10.90.070 Nonretaliation

No Person or Employer shall discharge, refuse to hire on, or in any manner retaliate against any Employee or applicant for employment because such Employee or applicant makes a complaint regarding violation of this chapter or exercises any rights granted to him or her under this chapter. No Person or landlord shall terminate a tenancy, or modify the terms of a tenancy, or in any manner retaliate against any tenant because such tenant makes a complaint regarding violation of this chapter or exercises any rights granted to him or her under this chapter.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE CHAPTER 10.90 OF TITLE 10 (PUBLIC PEACE, SAFETY,
AND MORALS) TO PROHIBIT SMOKING IN MULTI-UNIT HOUSING AND
CERTAIN OUTDOOR AREAS**

The City Council of the City of Cupertino finds that:

1. The purpose of this Chapter is to: (a) To protect public health, safety, and general welfare by prohibiting smoking in multi-unit housing, public places, recreational areas, service areas, outdoor dining and various other locations set forth in this chapter; (b) To reduce litter, waste and pollution; and (c) To reduce exposure to secondhand smoke, which has been shown to cause negative health effects.
2. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and the California Air Resources Board identified secondhand smoke as a toxic air contaminant for which there is no safe level of exposure.
3. Secondhand smoke is responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year.
4. In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory infections, and increases the risk of Sudden Infant Death Syndrome (SIDS).
5. Exposure to electronic smoking device aerosol has immediate impacts on the human respiratory and cardiovascular system and poses a risk to human health.
6. Secondhand cannabis smoke has been identified as a health hazard; the California Environmental Protection Agency includes cannabis smoking on the Proposition 65 list of chemicals known to the state to cause cancer.
7. Studies have shown that exposure to secondhand smoke outdoors can reach levels attained indoors depending on the amount of wind and number and proximity of smokers.

8. Research demonstrates that secondhand smoke in multi-unit housing can and does transfer between units, creeping under doorways and through wall cracks.
9. According to the County, close to one-third (29%) of adults who live in multi-unit housing in the County reported smelling tobacco smoke drifting into their home in the previous week. The rate of secondhand smoke exposure was higher among those with less than a high school diploma (38%) and adults with household incomes less than \$15,000 (36%).
10. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “thirdhand smoke” a potential health hazard.
11. California cities and counties have the legal authority to adopt local laws that prohibit all tobacco use indoors and outdoors in areas not already covered by state law.
12. State law allows local governments to adopt ordinances that permit residential rental agreements to prohibit smoking tobacco products within rental units.
13. State law prohibits smoking within 25 feet of playgrounds as well as within 20 feet of government buildings and expressly authorizes local communities to enact additional restrictions.
14. Cupertino prohibits smoking in recreational areas owned or operated by the City; outdoor dining areas; at entrances and exits of places where food and drink is served; and within 25 feet of these areas.
15. The City Council of the City of Cupertino held a duly noticed public meeting on March 2, 2021, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California 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, either directly or ultimately. 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 of a significant effect on the environment. CEQA applies only to projects which have the potential of 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 would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937. However, the Ordinance's requirements shall not become operative until October 1, 2021, which means that the City, or its designee, will not begin to enforce the provisions and penalties under the Ordinance until October 1, 2021.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on March 2nd, 2021 and **ENACTED** at a regular meeting of the Cupertino City Council on March 16th, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date

Attachment A – An ordinance to prohibit smoking in multi-unit housing and certain outdoor areas

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

1. Amendments to Article 10.90 concerning Regulation of Smoking

10.90.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this chapter unless the context clearly requires otherwise:

~~A. “Outdoor Dining Area” means any privately owned or publicly owned area, street, or sidewalk, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.~~

A. “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes. A Business also includes owner-operated entities with no Employees in which the owner is the only worker.

B. “Common Area” means every area of a Multi-unit Residence that residents of more than one unit are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

C. “Dining Area” means any privately owned or publicly owned area, street, or sidewalk, which is available or customarily used by the general public or an employee and which is designed, established, or regularly used for consuming food or drink.

D. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

E. "Employee" means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

F. "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

G. "Enclosed area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

H. "Landlord" means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a Multi-unit Residence that is leased to a residential tenant. For purposes of this ordinance, a tenant who sublets their unit (e.g., a sublessor) is not a landlord.

I. "Multi-unit Residence" means property containing two or more attached units, including, but not limited to, apartment buildings, condominiums, duplexes and triplexes, ~~attached single-family homes~~, senior and assisted living facilities, and long-term health care facilities. "Multi-unit Residence" also includes ~~single-family homes with an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit.~~ "Multi-unit Residences" do not include the following:

1. a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
2. a mobile home park;
3. a campground;
4. a marina or port; and
5. a detached single-family home, without an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit.
5. ~~except if used as a health care facility subject to licensing requirements; and~~
6. ~~a detached single-family home with an attached or detached accessory dwelling unit or second unit.~~

J. "Nonprofit Entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this chapter.

K. "Nonsmoking Area" means any area in which smoking is prohibited by

1. this chapter or other law;
2. binding agreement relating to the ownership, occupancy, or use of real property; or
3. a person with legal control over the area.

L. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

M. "Place of Employment" means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

N. "Public Place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

O. —B. "Reasonable distance" means a distance of ~~25~~30 feet in any direction from an area in which smoking is prohibited.

P. ~~€.~~ "Recreational Area" means any outdoor area, including streets and sidewalks adjacent to Recreational ~~a~~Areas, owned or operated by the City of Cupertino and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller-skating rinks, and skateboard parks, and parking lot or other area designated or primarily used for parking vehicles of persons accessing a Recreational Area.

Q. "Service Area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

R. ~~D.~~ "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, vapors from an electronic smoking device, and marijuana smoke.

S. ~~E. "Smoking" means: engaging in an act that generates Smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.~~

1. inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic;
2. carrying any lighted, heated, or activated tobacco, nicotine, marijuana, or plant product, whether natural or synthetic, intended for inhalation; or
3. using an "electronic smoking device."

T. "Unenclosed Area" means any area that is not an enclosed area.

U. "Unit" means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, community care facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an accessory dwelling unit, junior accessory dwelling unit, or second unit.

10.90.20 Smoking Prohibited.

A. Smoking is prohibited in the following Enclosed Areas:

1. ~~In Recreational Areas~~ Places of Employment; and
2. ~~In Outdoor Dining Areas~~ Public Places; and
3. ~~At entrances, exits, operable windows, or air intake openings of any building area which is available or customarily used by the general public and which is designed, established, or regularly used for selling or consuming food or drink.~~

B. Smoking is prohibited by this chapter in all Enclosed Areas exempted by the California workplace law (Labor Code section 6404.5(d), as that section may be amended from time to time) except as provided below.

1. Smoking at theatrical production sites is not prohibited by this subsection if the theater general manager certifies that smoking is an essential part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience. This exception will not apply if minors are performers within the production;

2. Smoking is not restricted by this subsection in up to twenty percent (20%) of guest room accommodations in a hotel, motel, or similar transient lodging establishment.

C. Smoking is prohibited in the following Unenclosed Areas:

1. Places of Employment;
2. ~~In~~ Recreational Areas;
3. ~~In~~ Outdoor Dining Areas;
4. Service Areas; and
5. Public Places when being used for a public event, including a farmer's market, parade, craft fair, or any event which may be open to or attended by the general public, provided that Smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.

~~D. B.~~ Reasonable Smoking Distance Required.

1. Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance in any direction from any operable doorway, window, opening, crack, or vent into an Enclosed Area in which smoking is prohibited under Section 10.90.020A, except while actively passing on the way to another destination and provided Smoke does not enter any area in which Smoking is prohibited.
2. ~~1.~~ Smoking in all ~~u~~Unenclosed a~~A~~Areas is prohibited within a ~~r~~Reasonable Distance from any ~~u~~Unenclosed a~~A~~Areas in which ~~s~~Smoking is prohibited under Section 10.90.020A, except while actively passing on the way to another destination and provided SSmoke does not enter any area in which ~~s~~Smoking is prohibited.
3. ~~2.~~ The ~~s~~Smoking prohibitions in Section 10.90.020B.1 shall not apply to ~~u~~Unenclosed a~~A~~Areas of private residential properties that are not Multi-unit Residences.

~~E. C.~~ Nothing in this chapter shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

~~F. D.~~ No Person shall dispose of used Smoking waste within the boundaries of an area in which Smoking is prohibited by this chapter.

G. ~~E.~~ Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

(Ord. 14-2121, § 3, 2014; Ord. 11-2077 (part), 2011)

10.90.30 ~~Other Requirements and Prohibitions~~ Multi-unit Housing

- A. Beginning October 1, 2021, smoking is prohibited and no person shall smoke inside any new or existing unit of a Multi-unit Residence, in any enclosed or unenclosed Common Area of a Multi-unit Residence, or within a Reasonable Distance of any operable doorway, window, opening, or vent of a Multi-unit Residence.
- B. Smoking is prohibited in Multi-unit Residences as provided in subsection (A) of this section, except that a person with legal control over a Common Area, or authorized representative, may designate a portion of the common area as a designated smoking area; provided, that at all times the designated smoking area complies with subsection (C) of this section.
- C. Designated Smoking Areas in Multi-unit Residences. A designated smoking area shall:
 - 1. Be an Unenclosed Area;
 - 2. Be a Reasonable Distance from Unenclosed Areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;
 - 3. Be a Reasonable Distance in any direction from any operable doorway, window, opening or other vent into an enclosed area that is located at the Multi-unit Residence and is a Nonsmoking Area;
 - 4. Be a Reasonable Distance in any direction from a Nonsmoking Area and/or any operable doorway, window, opening or other vent into an enclosed area of adjacent private property;
 - ~~3.5.~~ Have a clearly marked perimeter;
 - ~~4.6.~~ Have a receptacle for cigarette butts that is emptied and maintained;
and
 - ~~5.7.~~ Be identified by conspicuous signs.
- D. Smoking and the use of Electronic Smoking Devices is prohibited in adjacent unenclosed property within a Reasonable Distance in any direction of any doorway, window, opening, or other vent into an enclosed area of a Multi-unit Residence.

- E. Common Areas Free from Smoking Waste. Persons with legal control over common areas in Multi-unit Residences, and their authorized representatives, shall ensure that all Common Areas except those meeting the requirements of subsection (C) of this section remain free of Smoking and tobacco waste, and ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking and tobacco waste.
- F. Signage. "No smoking" signs shall be posted as required by Section 10.90.050 of this chapter, but are not required inside any unit of a Multi-unit Residence. Signs shall be maintained by the person or persons with legal control over the common areas or the authorized representative of such person.
- G. Lease Terms. Every lease or other rental agreement for the occupancy of a new or existing unit in a Multi-unit Residence entered into, renewed, or continued month-to-month after October 1, 2021 shall include the following:
 - 1. A clause providing that it is a material breach of the agreement to Smoke or allow Smoking:
 - a. in the Unit, including exclusive-use areas such as balconies, porches, or patios; and
 - b. in any Common Area of the Multi-unit Residence other than a designated Smoking area.
 - 2. A description of and/or image depicting the location(s) of any designated Smoking area(s) on the property, if any.
 - 3. A clause expressly conveying third-party beneficiary status to all occupants of the Multi-unit Residence as to the Smoking provisions of the lease or other rental agreement. Such a clause shall provide that any tenant of the Multi-unit Residence may sue another tenant/owner to enforce the Smoking provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of the Smoking provisions of the agreement.
- H. Whether or not a landlord complies with subsection (G) of this section, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection (G) of this section applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (G) of this section.

10.90.040 ~~Posting of Signs~~ Other Requirements and Prohibitions.

- A. No ash can, ashtray, or other Smoking waste receptacle shall be placed in any area in which Smoking is prohibited by this chapter.

B. No Person shall dispose of used Smoking waste within the boundaries of an area in which Smoking is prohibited by this chapter.

C. Persons owning or occupying property are responsible for maintaining the premises, including the perimeter and the sidewalk in front of their premises, free of loose litter, in accordance with Section 9.18.215.

CD. The presence of Smoking waste receptacles in violation of subsection A. above or the absence of signs shall not be a defense to a violation of any provision of this chapter.

DE. Each instance of Smoking in violation of this chapter shall constitute a separate violation. For violations other than Smoking, each day of a continuing violation of this chapter shall constitute a separate violation. (Ord. 11-2077 (part), 2011)

10.90.050 Posting of Signs.

Where sSmoking is prohibited by this chapter, a clear conspicuous sign shall be posted at a conspicuous point within the area. The sign shall have letters of no less than one inch in height and shall include, either the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or “No Smoking” in words. **Signs are not required inside any unit of a Multi-unit Residence.** Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of sSmoking in violation of any other provision of this chapter.

(Ord. 14-2121, § 4, 2014)

10.90.060 Violation - Penalty.

A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City of Cupertino. Nothing in this chapter shall create a right of action in any person against the City of Cupertino or its agents to compel public enforcement of this article against any party.

B. Any person who violates any of the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.12 or, in the alternative, subject to enforcement action pursuant to Chapter 1.10: Administrative Citations, Fines, and Penalties.

C. Any violation of this chapter is hereby declared to be a public nuisance.

D. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter may be remedied by a civil action brought by the city attorney, including, without limitation, administrative or judicial

nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

E. Any person may bring a civil action to enforce this chapter to prevent future violations and may sue to recover actual or statutory damages, including court costs, and attorney fees.

F. Owners, operators, property managers, and officers of homeowners' associations for residential properties, whether rental or owner-occupied, are required to post signs in accordance with Section 10.90.050 and provide notice to residents or tenants of the requirements of this Chapter. Owners, operators, and property managers of rental property must include the requirements of Section 10.90.030(G) in the lease or other rental agreement. If the owners, operators, property managers, and officers of rental property and homeowners' associations for residential properties have satisfied these requirements, they shall not be responsible for violations of the requirements of this chapter by tenants or residents, or guests of tenants or residents.

G. An owner, operator, or manager ("owner") of a commercial establishment shall not be responsible for violations of this chapter within an area under owner's control, by a patron or other member of the public ("patron"); provided, that the owner:

1. Has posted signs in accordance with this chapter; and

2. Has verbally asked the patron not to Smoke.

This limitation shall not limit the liability of an employer for the actions of employees in places of employment, or any other violation of this chapter by the employer.

10.90.070 Nonretaliation

No Person or Employer shall discharge, refuse to hire on, or in any manner retaliate against any Employee or applicant for employment because such Employee or applicant makes a complaint regarding violation of this chapter or exercises any rights granted to him or her under this chapter. No Person or landlord shall terminate a tenancy, or modify the terms of a tenancy, or in any manner retaliate against any tenant because such tenant makes a complaint regarding violation of this chapter or exercises any rights granted to him or her under this chapter.