

ORDINANCE NO. 19-2187

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ELIMINATING REFERENCES IN THE MUNICIPAL CODE TO THE VALLCO TOWN CENTER SPECIFIC PLAN AND ADDING LANGUAGE ESTABLISHING DEVELOPMENT STANDARDS FOR A NEW MIXED USE PLANNED DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL AND GENERAL COMMERCIAL ZONING DESIGNATION (P(R3,CG))

SECTION I: PROJECT DESCRIPTION

Application No: MCA-2019-01
Applicant: City of Cupertino
Location: 10101 to 10333 N Wolfe Rd
APN#s: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council's consideration of the Municipal Code amendments, the Council adopted Resolution No. 19-109, approving a General Plan Amendment to remove office uses as

a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. 19-110, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Municipal Code to add a new zoning category, Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)), to the text of the Municipal Code that includes development standards enabling the mixed use or residential-only development contemplated for the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and _____, upon due notice, the City Council has held at least two public hearings to consider the Municipal Code Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Municipal Code Amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Municipal Code amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. 19-109 and 19-110) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which

concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

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

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves the Amendments to the Municipal Code (Application No. MCA-2019-01) as shown in Exhibit A and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published Municipal Code.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or

circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of August, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the ____ day of _____, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit A

19.12.030 Approval Authority.

Table 19.12.030 shows the approval authority, Noticing Radius, Expiration Date and Extension Dates for different types of Permits.

Table 19.12.030 - Approval Authority									
Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
General Plan Amendment									
Major ^F	-	-	R	F	PH	CA. Govt. Code 65350-65362	Yes	-	CA. Govt. Code 65350-65362
Minor ^G	-	-	R	F	PH		Yes	-	
Zoning Map Amendments									
Major ^F	-	-	R	F	PH	CA. Govt. Code 65853-65857	Yes	-	19.152.020
Minor ^G	-	-	R	F	PH		Yes	-	
Zoning Text Amendments	-	-	R	F	PH	CA. Govt. Code 65853-65857	-	-	19.152.030
Specific Plans	-	-	R	F	PH	CA. Govt. Code 65350-65362	-	-	20.04.030
Development Agreements	-	-	R	F	PH	CA. Govt. Code 65867	Yes	-	19.144.120
Development Permits									
Major ^{F, H}	-	-	F/R	A ¹ /F	PM	19.12.110/300'	Yes	2 years	19.156.050
Minor ^G	F	-	A ¹	A ²	PM		Yes	2 years	

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Conditional Use Permits									
Major ^{F, H, I}	F	-	A ¹ /F/R	A ¹ / A ² /F	PH	CA. Govt. Code 65905	Yes	2 years	19.156.050
Minor ^{G, I}	F	-	A ¹ /F/R	A ¹ / A ² /F	PH		Yes	2 years	
Temporary	F	-	A ¹	A ²	-	None	No	1 year	None 19.160.030
Density Bonus (Residential)			R	F	Based on concurrent application	19.52			
Adult-Oriented Commercial Activity (CUP)		-	R	F	PH	CA. Govt. Code 65905/300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval									
Major ^J	F	-	A ¹	A ²	PM	19.12.110/	Yes	2 years	19.168.030
Minor ^K	F	-	A ¹	A ²	PM		Yes	2 years	
Amendment									
Major ^{F, H}	-	-	F	A ¹	Varies ^L	Depends on permit being amended ^L	Yes	2 years	19.44, 19.144, 19.156, 19.164
Minor ^G	F	-	A ¹	A ²	Varies ^L		Yes	2 years	
Minor Modification	F	-	A ¹	A ²	-	None	No	2 years	19.164
Hillside Exception/ Height Exception/	-	-	F	A ¹	PH	19.12.110/300'	Yes	2 years	19.40.080, 19.24.070,

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Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Heart of the City Exception ^I									19.136.090
Variance	F	-	A ¹	A ²	PH	CA. Govt. Code 65905	Yes	2 years	19.156.060
Status of non-conforming Use	-	-	F	A ¹	PH	19.12.11 0/300'	Yes	-	19.140.110
Wireless Antennas ^I	F	-	F/ A ¹	A ²	Varies ^I	Depends on application type	Yes	2 years	19.136.090
Signs									
Permits	F	-	A ¹	A ²	-	None	No	1 year	19.104
Neon, Reader board & Freeway Oriented Signs ^I	-	F	F	A ^{1M}	PM	19.12.11 0/300'	No	1 year	19.104
Programs	F	-	A ¹	A ²	-	None	No	1 year	19.104
Exceptions ^I	-	F	-	A ^{1M}	PM	19.12.11 0/ Adjacent	Yes	1 year	19.104.290
Parking Exceptions ^I	F	F	A ¹	A ^{1M} /A ²	Varies ^N	19.12.11 0/ Adjacent/ 300' ^O	Yes	1 year	19.124.050
Fence Exceptions	-	F	-	A ^{1L}	PM	19.12.11 0/ Adjacent	Yes	1 year	19.48.060

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Front Yard Interpretation	F	-	A ¹	A ²	PM	19.12.110/ Adjacent	Yes	1 year	19.08
R-1 Ordinance Permits									
Two-story ^I	F	F	F/A ¹	A ^{1 L} / A ²	Varies ^I	19.12.110/ Adjacent	Yes	1 year	19.28.140
Minor Residential	F	-	A ¹	A ²	CP		No	1 year	
Exceptions ^I	-	F	-	A ^{1 M}	PM		Yes	1 year	
Protected Trees									
Tree Removal	F	-	A ¹	A ²	CP	Adjacent unless exempt	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-	-	F	A ¹	PM	19.12.110/ 300'	Yes	-	14.18
Tree Management Plan	F	-	A ¹	A ²	-	None	No	-	14.18
Retroactive Tree Removal	F	-	A ¹	A ²	-	None	No	-	14.18
Reasonable Accommodation	F	-	A ¹	A ²	-	None	No	1 year	19.52.050
Extensions ^P									
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F	-	A ¹	A ²	-	None	No	1 year	
Neon, Reader board	F		A ¹	A ²	-	None	No	1 year	

Table 19.12.030 - Approval Authority

Type of Permit or Decision^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period^C	Noticing/ Noticing Radius^D	Posted Site Notice	Expiration Date^E	Chapter/ Findings
& Freeway Oriented Signs									
Two Story Permits, Minor Residential Permits and Exceptions	F		A ¹	A ²	-	None	No	1 year	
Tree Removals	F	-	A ¹	A ²	-	-	No	1 year	
All other projects	F	-	A ¹	A ²	-	19.12.110/ None	No	2 years	

~~For permits within the Vallco Town Center Zone – see Vallco Town Center Specific Plan~~

KEY:

R—Review and recommendation body	F—Final decision-making body unless appealed
A ¹ —Appeal Body on first appeal	A ² —Appeal body on second appeal
PH—Public Hearing	PM—Public Meeting
CP—Comment Period	

Notes:

A. Permits can be processed concurrently with other applications, at the discretion of the Director of Community Development.

B. Projects with combined applications shall be processed at the highest level of approval in conformance with Section 19.04.090.

C. Public Hearing: Projects types that need noticing pursuant to the CA Government Code; Public Meeting: Project types that need only a mailed notice and no newspaper notices; Comment Period: Project types that need only a mailed notice and do not need a public hearing or public meeting.

D. Noticing Radius of an application in a combined application shall correspond to the maximum noticing radius required for any one of the applications.

E. Expiration date of an application in a combined application shall correspond to the maximum expiration date allowed for any one of the development applications (not including Subdivision Map Act applications, General Plan Amendments and Zoning Map or Text Amendments.)

F. Major General Plan Amendment, Conditional Use Permit, Development Permit application - for more than ten thousand square feet of commercial and/or industrial and/or office and/or other non-residential use, or greater than six residential units.

G. Minor General Plan Amendment, Conditional Use Permit, Development Permit application - for ten thousand square feet or less of commercial and/or industrial and/or office and/or other non-residential use, or six or less residential units.

H. City Council review for applications with new development greater than fifty thousand square feet of commercial, and/or greater than one hundred thousand square feet of industrial and/or office and/or other non-residential use, and/or greater than fifty residential units.

Planning Commission review for all other applications.

I. Please see specific zoning district regulations or chapters in this title that apply to the subject property or project for approval authority.

J. Major Architectural and Site Approval application - architectural and site approval for all projects that are not a Minor Architectural and Site Approval application.

K. Minor Architectural and Site Approval application - single family home in a planned development zoning district, minor building architectural modifications, landscaping, signs and lighting for new development, redevelopment or modification in such zones where review is required and minor modifications of duplex and multi-family buildings.

L. Meeting type and noticing are dependent on the underlying permit being modified.

M. Appeals of Design Review Committee decisions shall be heard by the City Council.

N. Parking Exceptions approved by the Director of Community Development need a comment period.

Parking Exceptions approved by the Design Review Committee need a public meeting.

O. Parking Exceptions in Single-family residential (R1) zones and Duplex (R2) zones need adjacent noticing.

All other Parking Exceptions need notices within three hundred feet of the exterior boundary of the subject property.

P. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the extension.

19.16.010 Zoning Districts Designated.

B. In addition to the zones identified in Table 19.16.010A, the City may establish separate zoning districts in individual specific plans adopted to promote the orderly development of the plan area. These zoning districts are identified in Table 19.16.010B below:

Table 19.16.010B - Specific Plan Districts	
Zoning Map Designation	Specific Plan Name
Heart of the City	Heart of the City
VTC Vallecito Town Center	Vallecito Town Center

Land uses and development standards within a specific plan zone shall be as prescribed in the specific plan.

19.16.030 Zoning Map and District Boundaries.

A. The boundaries of districts established by this title shall be shown upon the zoning map. The zoning map, and all amendments, changes, and extensions thereof, and all legends, symbols, notations, references, and other matters shown thereon shall be a part of this title.

B. The zoning map, as currently effective, and a record of all amendments, changes and extensions thereof, shall be maintained as a public record in the office of the Director of Community Development.

C. The boundaries of each district as shown upon the zoning map, or amendments thereto, are adopted by the ordinance codified in this title, and the specific regulations established by this title for each general district and all other regulations applicable therein as set forth in this title are established and declared to be in effect upon all portions of lands included within the boundaries of each and every district as shown upon the zoning map.

19.16.060 Application of Regulation to Sites Divided by Zone Boundaries.

Whenever it is found, pursuant to Section 19.28.050, that a lot or site is divided by a boundary between districts, the provisions of the zoning regulations applicable within each district shall apply only to ~~each~~ the portion of this site situated in each a separate district.

19.80.030 Establishment of Districts—Permitted and Conditional Uses and Development Standards.

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

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

C. Permitted uses in a P zoning district shall consist of all uses which are permitted in the zoning district which constitutes the designation following the letter coding "P." For example, the permitted uses in a P(CG) zoning district are the same uses

which are permitted in a CG zoning district for sites with a mixed-use residential designation, Section [19.80.030F](#) shall apply.

D. Conditional uses in a P zoning district shall consist of all uses which require the issuance of a conditional use permit in the zoning district which constitutes the designation following the letter coding "P." For example, the conditional uses in a P(CG) zoning district are the same uses which require a conditional use permit in CG zoning district. Each conditional use in a P zoning district requires a separate conditional use permit for sites with a mixed-use residential designation, Section [19.80.030F](#) shall apply.

E. The general category of uses in a P zone shall be defined at the time of the conceptual plan, and shall be consistent with the adopted General Plan relative to the property in the application. The development standards and regulations of the permitted and conditional uses shall be established in conjunction with the approval of the conceptual and definitive plans, unless specifically identified in Section 19.80.030F below. Developments which are not subject to discretionary approval by the City must comply with the development standards of the underlying zoning district.

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

1. For sites in the Monta Vista Village Special Area, residential shall be a permitted use.

2. If a site is listed as a Priority Housing Site in the City's adopted Housing Element of the General Plan, then residential development that does not exceed the number of units designated for the site in the Housing Element shall be a permitted use.

3. Residential development on sites not designated as Priority Housing Sites in the City's adopted Housing Element of the General Plan and residential development on a Priority Housing Site that exceeds the number of units designated for that Priority Housing Site shall be a conditional use.

4. Priority Housing Sites shall be shown on the City's zoning map.

5. For sites zoned P(R3, CG), no conceptual or definitive plans shall be required to establish permitted and conditional uses. Multifamily residential use is the primary permitted use. Commercial uses may be incorporated into the development on the ground floor but shall not be the primary permitted use.

G. For sites which require a specific plan prior to development approval, the permitted and conditional uses and all development regulations shall be as shown in the specific plan.