



## DEPARTMENT OF COMMUNITY DEVELOPMENT

CITY HALL

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## CITY COUNCIL STAFF REPORT

Meeting: April 18, 2017

### Subject

Municipal Code Amendment to Title 19, Zoning, of the Cupertino Municipal Code, to allow the creation of Single-Story Overlay Zones in single-family residential zoning districts, and an amendment to Fiscal Year 2016-17 Fee Schedule. (Application No(s): MCA-2017-02; Applicant(s): City of Cupertino; Location: citywide)

### Recommended Action

That the City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Conduct the first reading of the Draft Ordinance: "An ordinance of the City Council of the City of Cupertino amending Title 19, Zoning, of the Cupertino Municipal Code Chapter 19.12 (Administration), Chapter 19.20 (Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones), and Chapter 19.28 (Single-Family Residential R-1) Zones), to create a Single-Story Overlay District process" (see Attachment A).
3. Adopt the Draft Resolution amending the 2016-17 Fee Schedule to include Single-Story Overlay District applications (Resolution No.16-131), effective June 19, 2017 (see Attachment B)

### Discussion

#### ***Background***

Currently, the City of Cupertino allows the development of two-story homes that meet applicable regulations, in addition to making necessary findings to approve a Two-Story permit, in the Single-Family Residential (R-1) Zones. However, there are sometimes concerns from neighbors over two-story homes related to the height of the proposed building, neighborhood compatibility, and impacts to privacy and light.

The establishment of overlay zones or districts has typically been initiated by the City Council at the request of residents. Currently, the City has the following overlay districts in R-1 zones. These include:

- Single-Story Overlay Districts, where an “i” suffix is added to the end of the R-1 zoning designation to indicate that development of new homes is limited to one story. The City currently has four such zones.

The current regulation for “i” overlays limited building height to a single-story (not to exceed 18 feet in height), and a second-story (addition or new home) may be permitted through a Conditional Use Permit. It should be noted that staff is not proposing to make any changes to these regulations;

- Eichler District, where an “e” suffix is appended to the R-1 zoning designation to indicate that new development, alteration or addition in this district must adhere to specific design standards. The City currently has one such district;
- Semi-Rural Agricultural District, where an “a” suffix is appended to the R-1 zoning designation to indicate that new development, alterations or addition in that district must adhere to specific regulations. The City currently has one such district.

In the summer of 2016, the City was asked by property owners in the Creston-Pharlap neighborhood about allowing their neighborhood to create a Single-Story Overlay District, as a result of concerns related to the approval of a complying two-story home in their neighborhood. While Single-Story Overlay Districts exist in the City, as noted above, the process for their creation, should an applicant wish to initiate an application, is not clear. The establishment of Overlay Districts is different from other re-zoning processes, in that, it involves multiple properties, in addition to those requesting the Overlay District. As such, it can result in disagreements among property owners, and the lack of a clear process may create confusion about how and when property owners can provide input.

The recommendation that a clear and understandable process, for the establishment of Single-Story Overlay Districts, that ensures that all property owners in a proposed Overlay district have the ability to provide input on its creation, was presented to the City Council on August 2, 2016. The City Council directed staff to develop an applicant initiated process for the review and processing of requests for a Single-Story Overlay District in Single-Family Residential Zones (including guidelines and related Zoning Ordinance amendment(s)).

The proposed process (see Attachment A and C), discussed further below, is based on a review of processes adopted by neighboring jurisdictions of Los Altos, Palo Alto,

Sunnyvale and Mountain View, and the existing City processes for community driven petitions (e.g. Permit Parking and Rural/Semi-Rural designation for determination of street improvements (See Attachment D)).

### ***Planning Commission Review***

At its March 14, 2017 meeting, the Planning Commission reviewed the proposed amendments, received public comments, and adopted Resolution No. 6825 on 4-1 vote (Sun – no) recommending that the City Council adopt the Draft Ordinance with a revision that staff evaluate the inclusion of thresholds for a minimum and/or maximum number of properties within a proposed overlay district (see Attachment E.) This is further discussed in the analysis below.

In addition, the Planning Commission discussed but did not recommend any changes to the draft Ordinance related to the following items:

1. The establishment of the boundaries of the proposed Single-Story Overlay District;
2. The petition threshold requirement that sixty-six and two-thirds (66-2/3) percent of the property owners sign the petition in favor of the proposed Overlay;
3. The requirement that a minimum of 75% of homes within the proposed District be single-story;
4. The basis of the mail-in ballot threshold – whether it should be a percentage of the ballots received by the City or a percentage of the total number of ballots mailed (currently proposed).

Comments from the public were supportive of the Single-Story Overlay District process. One resident stated that single-story overlays gives them more control over their neighborhoods.

### **Analysis**

#### ***Proposed Overlay Process***

The proposed process for establishing or removing a Single-Story Overlay District can be summarized as follows:

1. An applicant would circulate a petition within the area where the Single-Story Overlay District is being proposed.
2. If the petition is signed by a certain percentage of the owners within the proposed District, the applicant would submit an application to the City.
3. City staff would begin working on the application including a review of typical zoning requirements such as ensuring compliance with established regulations and any related environmental review.

4. The application would include a formal mail-in voting process for the property owners with each developable lot getting one vote.
5. An application would only move forward and be scheduled for public hearings with Planning Commission and City Council for final determination if a majority of a neighborhood was in agreement with creating the single-story overlay.

In order to help applicants understand the process, staff will also provide a guideline for submittal and the process. A draft outline of the guideline is attached (Attachment F.)

### ***Characteristics and Thresholds***

#### *Overlay District Boundary:*

Based on a review of the neighboring jurisdictions, a requirement to make the boundaries of the proposed Single-Story Overlay District correspond to natural or man-made features (such as, streets, waterways, existing zoning boundaries etc.) to define an identifiable neighborhood is standard practice. All the cities and petition processes reviewed require the identification of discernable boundaries. This has been included as a requirement in the Draft Ordinance.

*Amendments to District Boundary upon Planning Commission Recommendation:* The inclusion of a minimum and/or a maximum threshold for the number of properties that may be included in a proposed Overlay District was evaluated upon Planning Commission's recommendation. Jurisdictions vary in the requirement of a minimum number of parcels in a proposed Overlay District, but none of the jurisdictions evaluated have a requirement on the maximum number of parcels that may be included. The cities of Los Altos and Sunnyvale require a minimum of ten (10) parcels and twenty (20) parcels respectively, and Palo Alto has no minimum requirement. The City of Mountain View does not have a requirement about the number of parcels to be included in a proposed Overlay District and instead requires that it encompass one (1) or more entire city blocks, or one (1) or more entire subdivision tracts, or street faces opposite one another. Cupertino's existing petition processes also require that at a minimum one or more entire city blocks be included for both permit parking and semi-rural designations.

The Draft Ordinance has been updated to include language requiring that the proposed Overlay District boundary include one (1) or more entire city block(s), or one (1) or more entire subdivision tract(s), or street faces opposite of one another (see yellow highlights on final page in Attachment C.) However, no limitations have been placed on

the maximum number of properties that could be included in a Single-Story Overlay District.

*Proposed Overlay District Characteristics:*

In addition to having discernable boundaries as discussed above, jurisdictions require that existing development within the proposed boundary be predominantly single-story in order to create a definable and unified district. The City of Mountain View requires 51 percent, while the cities of Palo Alto and Sunnyvale require 80 percent and 75 percent, respectively, of the existing homes in the proposed Overlay District to be single story. However, the City of Los Altos does not have such a requirement. The proposed ordinance requires that at least 75 percent of the existing homes in the proposed Overlay District, with boundaries corresponding to natural or man-made features, be single story.

*Petition:*

The draft ordinance requires that the petition circulated by the applicant within the proposed Overlay District include a map of the proposed Single-Story Overlay District, property addresses, property owner name(s), signature(s) and contact information of the petitioner (in case of questions).

*Original Petition Thresholds:*

The draft ordinance requires that in order for an application to be eligible for submission, a minimum of 66-2/3 percent (or two-thirds) of the properties in the proposed District must sign the original petition. The City of Los Altos requires 50 percent of the property owners to proceed, while the cities of Palo Alto, Mountain View and Sunnyvale require 70 percent, 50 percent and 55 percent respectively. The proposed threshold is consistent with the current threshold required for the City's permit parking and rural/semi-rural designation petition processes.

*Mail-in Ballot Threshold:*

Once an application is made, based on the above qualifications, mail-in ballots would be sent out and collected by the City. The cities of Los Altos and Mountain View have a requirement that two-thirds of the ballots received by the City must be in favor of the proposal for proceeding to a public hearing. Neither the cities of Sunnyvale and Palo Alto, nor Cupertino's permit parking and rural/semi-rural designation petition processes, have a mail in ballot provision.

The draft ordinance proposes that a minimum of 66-2/3 percent (or two-thirds) of the ballots mailed must be received by the City with a vote in favor of the proposal in order

for the application to move forward and be scheduled for hearings. Staff is recommending this so that the City has an independent process whereby ballots are sent to the property owners in the proposed District and received back from each property owner by a deadline.

*Deadline for Mail in Ballot Receipt:*

As previously mentioned, the cities of Palo Alto and Sunnyvale do not have a mail in ballot requirement. The City of Los Altos allows four (4) weeks to return ballots to the city, while the City of Mountain View (which does not have any codified requirements on this) allows, as a matter of practice, five (5) weeks to return ballots on this issue to the city. The proposed regulations recommend a six (6) week deadline for the ballots to be received by the city. In order to ensure that property owners have adequate time to respond to the mail in ballot for the implementation of the Single-Story Overlay District, an extended deadline is recommended.

*Site Signage:*

The City currently requires, that in addition to the public hearing notices required for zoning applications, that site signage be placed in the front yard of the property(ies) being re-zoned. However, since this process would establish a zoning district, an area larger than a few properties, the draft ordinance proposes that site signage be placed in the closest yard at the boundaries of the proposed Overlay District. For such an application, multiple site signs may be required.

*Fee:*

The cities of Los Altos, Palo Alto, and Sunnyvale have adopted varying fees for Single-Story Overlay project depending on whether they are “fee-for-service” cities or not. The cities of Palo Alto and Mountain View are “fee-for-service” cities and are considered “cost-recovery” cities. The cities of Sunnyvale and Los Altos are not “fee-for-service” cities and therefore, not considered, in the fee recommendation. The City of Palo Alto’s current fee schedule sets a fee of \$6,454 with additional fees for environmental review and noticing. Mountain View treats Single-Story Overlay applications like other rezoning applications that are subject to a deposit based on an hourly rate. Therefore, the final fee is based on the time required to process the project. Larger and more complicated projects would be charged more while smaller Overlay applications would be charged less.

It is recommended that similar to the City of Mountain View, and the City’s current fees for rezoning applications, that the application fee for Single-Story Overlay District applications be a deposit (see Attachment B and G.) The deposit allows for flexibility in

accommodating applications of differing magnitudes as well as other costs such as noticing and mailings while ensuring cost-recovery for the City.

### ***Noticing and Public Outreach***

The following noticing has been conducted for this hearing as required by the City's Municipal Code and State Law:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ Legal ad placed in newspaper twice (<i>at least 10 days and 5 days prior to hearing since fee schedule amendments involved</i>)</li><li>▪ Display ad placed in newspaper (<i>at least 10 days prior to hearing</i>)</li></ul>	<ul style="list-style-type: none"><li>▪ Posted on the City's official notice bulletin board (<i>five days prior to hearing</i>)</li><li>▪ Posted on the City of Cupertino's Web site (<i>five days prior to hearing</i>)</li></ul>

In addition, a Public Outreach Meeting was hosted by the City on December 7, 2016. Two (2) members of the public attended the meeting. They had an opportunity to view a draft of the process and were supportive of the proposed process.

The City has also prepared a list of Frequently Asked Questions that is available online and attached as Attachment H.

Other than those previously received by the Planning Commission, no public comments have been received on this subject as of April 12, 2017.

### ***Environmental Review***

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA, Section 15063 (b) (3)).

### **Sustainability Impact**

The proposed ordinance has no sustainability impact.

### **Fiscal Impact**

Since it is recommended that an application fee, set up as a deposit for time spent on a project, be adopted, there are no fiscal impacts to the City's General Fund.

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Attachments:

A - Draft Ordinance

B – Draft Resolution

C - Redline document indicating changes in Chapter 19.12, 19.20, and 19.28.

D - Comparison of Neighboring Jurisdictions Single-Story Overlay District, City of Cupertino Semi-Rural Designation, and City of Cupertino Parking processes

E - Planning Commission Resolution No. 6825

F - Draft Guidelines for Submittal of an Application for Single-Story Overlay District

G - Redline document indicating amendments to Fee Schedule C – Planning Fees

H - Frequently Asked Questions