



PUBLIC WORKS DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

November 12, 2019

SUBJECT

Municipal Code Amendments to Park Land Dedication Requirements

RECOMMENDED ACTION

That the Planning Commission receive a staff presentation on proposed amendments to Municipal Code Chapter 13.08 - Park Land Dedication Fee, Chapter 14.05 - Park Maintenance Fee and Chapter 18.24 - Dedications and Reservations, and provide input to the City Council regarding adopting a Fourth Addendum to the General Plan EIR and the proposed amendments.

DISCUSSION

Background

The FY2019/20 City Council Work Program directs the City to clarify objective standards within the City's General Plan and Municipal Code. The Planning Commission and City Council reviewed areas that were identified by staff as needing clarity through Summer 2019. At the Planning Commission and City Council Study Sessions, Commissioners and Council Members recommended express standards for Park Land Dedications, in particular to have park lands situated at ground level. On October 1, 2019 City Council meeting, the Council authorized staff to commence with amendments identified in Phase 1 and suggested that staff proceed with any feasible amendments listed in Phase 1.5. Staff has determined that the City can quickly make the amendments being proposed with this presentation.

Analysis

The proposed amendments include updates to park land dedication requirements, including specifying a requirement to situate parks at ground level and dedicate the land in fee simple, as well as ensuring that areas within setbacks, private yards,

and open areas necessary to provide services to the development are not included in the computations for park land area (such as streets, etc.) and are not entitled to receive credits as part of the computation for park land area or an in-lieu fee. Other modifications work to better align sections of the Municipal Code with the California Subdivision Map Act. Additionally, amendments have been proposed that modify how the Average Household Size is determined, and to provide further clarity as to how the Municipal Code has been interpreted and implemented by the City.

Modifications include:

- Adding definitions to section 13.08.020 to provide clarity, including the requirement to situate parks at ground level and dedicate land in fee simple.
- Amending how the Average Household Size is determined. Currently the City uses a household sizes based on the density of the project (dwelling units per acre of land). The amendment proposes using the household size as determined by the most recently available federal census data. The amendment aligns with California Government Code Section 66477(a)(2), which provides that “There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census...”.
- Modifying section 13.08.030 to provide further clarity as to the requirement to address parkland demands.
- Clarifications to exceptions and credits to the park land dedication requirements to align with existing City Code, including those that further align the Cupertino Municipal Code with State laws.
- Clarifications to the formulas used for calculating the park land dedication area, as well as in lieu fees (note: the clarifications do not alter the formulas).
- Clarifications regarding areas that should not be included in or receive credits as part of the computations for park land areas (areas within setbacks, private yards, and open spaces necessary to provide services to a development (e.g., streets)).
- Modifications to align timing of dedication requirements with existing practices.
- Modifications to Chapter 14.05 and Chapter 18.24 for consistency with Chapter 13.08.

Attachment 1 shows a redlined version of the Municipal Code amendments being proposed.

ENVIRONMENTAL ASSESSMENT

In 2014, the City Council certified a Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), which was a program EIR prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The Final EIR analyzed land use alternatives that included citywide development allocations (as well as building heights and densities) in connection with the adoption of the Cupertino Community Vision 2015-2040 (General Plan). The General Plan and Associated Rezoning were adopted in December 2014, the Housing Element Update was adopted in May 2015, and modifications to the text and figures of the General Plan adopted in October 2015 following adoption of an Addendum to the EIR.

When a lead agency has certified an EIR, Public Resources Code Section 21166 and CEQA Guidelines 15162 provide that no subsequent environmental review shall be required unless specified conditions have occurred (substantial changes in the project, substantial changes with respect to the circumstances under which the project is undertaken, or new information of substantial importance which was not known and could not have been known when the EIR was certified) and would result in new significant environmental effects or a substantial increase in the severity of significant environmental effects requiring major revisions to the EIR. CEQA Guidelines Section 15164 further states that if some changes or additions to a previously certified EIR are needed, but subsequent review is not required under CEQA Guidelines 15162, an addendum shall be prepared.

The City has prepared a Fourth Addendum to the Final EIR to evaluate whether the proposed modifications to the Municipal Code described in this Staff Report would require major revisions to the Final EIR or a subsequent EIR due to new significant environmental effects or a substantial increase in the severity of significant environmental effects previously identified in the EIR. The Fourth Addendum, which is included as Attachment 3, provides analysis and cites substantial evidence in support of the conclusion that no subsequent environmental review is required because none of the conditions that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

Therefore, it is recommended that the Planning Commission recommend adoption of the Fourth Addendum, and no further environmental review is required for the modifications described in this Staff Report.

In addition, the amendments to the Municipal Code are not subject to CEQA pursuant to California Code of Regulations, title 14, section 15061(b)(3) ("CEQA Guidelines" § 15061(b)(3)) since the proposed amendments are not a "project" as defined under CEQA (CEQA Guidelines § 15378). CEQA Guidelines Section 15061(b)(3) states, "CEQA applies only to projects which have the potential for 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."

OTHER DETERMINATIONS

The amendments do not exceed the standards and criteria being applied by the City to its publicly financed parks, given that no city parks are above ground level. In addition, the amendments will not impede the ability to develop the City's Regional Housing Needs Allocation or housing for all income levels as anticipated by the City's Housing Element. The City will thus continue to be able to address the housing needs of the region.

NEXT STEPS

The proposed ordinance amendment will be presented for the City Council consideration on December 3, 2019.

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ATTACHMENTS

1. Redline Municipal Code amendments
2. Fourth Addendum to the Final EIR