

DRAFT ORDINANCE NO. 21-2226

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO AMENDING CUPERTINO MUNICIPAL CODE SECTIONS
19.56.030A (TABLE 19.56.030) AND 19.56.030F (DENSITY BONUS
ORDINANCE) TO INCENTIVIZE THE DEVELOPMENT OF
AFFORDABLE HOUSING BY ALLOWING FOR DENSITY BONUSES OF
UP TO 40 PERCENT

SECTION I: PROJECT DESCRIPTION

Application No.: MCA-2021-002
Applicant: City of Cupertino
Location: Citywide

SECTION II: RECITALS

WHEREAS, Cupertino Municipal Code Chapter 19.56 implements the requirements of Government Code Section 65915 (state density bonus law) to incentivize the construction of affordable units through the provision of density bonuses and other benefits; and

WHEREAS, the California Legislature has adopted AB 2345 (Chapter 197, Statutes of 2020), which provides in Government Code Section 65915(s) that a city may implement a housing program in place of that in AB 2345 if it adopts an ordinance or housing program or both that incentivizes the development of affordable housing and allows for density bonuses that exceed 35 percent; and

WHEREAS, the City Council of the City of Cupertino on December 15, 2020, by Resolution 20-141, adopted a housing program as provided in Section 65915(s) and initiated a zoning code amendment to include the housing program described above into the Cupertino density bonus ordinance, Municipal Code Chapter 19.56; and

WHEREAS, as demonstrated in the report from the Hausrath Economics Group dated February 2021, the City's housing program to be incorporated into Chapter 19.56 by this Ordinance will incentivize the development of affordable housing by increasing the maximum density bonus from 35 percent to 40 percent for projects not including 100 percent affordable units (which are entitled to greater bonuses), consistent with the requirements of Section 65915(s); and

WHEREAS, the Ordinance is consistent with the City's General Plan, and the City's police power provides the City with the authority to adopt an affordable housing program to further the public health, safety, and welfare; and

WHEREAS, on February 23, 2021, at a duly and properly noticed public hearing, the Planning Commission recommended on a 4-1 vote (Kapil – no) that the City Council find that the proposed zoning code amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that adoption of the amendments may have a significant effect on the environment. Therefore, the proposed action is not subject to CEQA. The ordinance amendments will not allow any increase in density greater than that allowed by the housing program adopted by the City Council in December 2020. The density bonus increase to 40 percent contained in the proposed amendments does not increase the number of units that may be constructed on any property, because this increase in density has already been adopted by the City Council as part of the adopted housing program; and

WHEREAS, on February 23, 2021, at a duly and properly noticed public hearing, the Planning Commission adopted Resolution No. 6919 recommended on a 4-1 vote (Kapil – no) that the City Council adopt the draft Ordinance presented to it, in substantially similar form to this Ordinance; and

WHEREAS, all necessary public notices having been given as required by the Municipal Code of the City of Cupertino and the Government Code, on April 20, 2021, the City Council held a public hearing to consider the Ordinance; and

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

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

That after careful consideration of facts, exhibits, testimony and other evidence submitted in this matter the City Council hereby adopts the Ordinance based on the findings described below, the public hearing, and the record, as follows:

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 Sections 19.152.020C and 19.152.030D:

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 proposed amendments have been adopted in accord with the requirements of Title 19, and the proposed amendments to Section 19.56.030F are proposed to achieve internal consistency.

The amendments are consistent with the Housing Element of the General Plan, which in Program HE-2.3.7 states that the City will update the density bonus ordinance as necessary to respond to changes in State law. The proposed Ordinance is intended to update the City's density bonus ordinance to respond to changes in State law, as described in the staff report presented to the Planning Commission and City Council.

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

The proposed amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment, in that the proposed density bonus increases are already in effect, in that they were adopted by the City Council on December 15, 2020 as part of a housing program to incentivize the development of affordable housing.

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 proposed ordinance amendments are not being applied to any specific site, nor is it reasonably foreseeable which sites, if any, may elect to utilize the proposed ordinance amendments. The impact of a density bonus in excess of 35 percent and the suitability of a site for that bonus will be reviewed when an application is made for its use on a specific site.

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

The proposed amendment is intended to promote the development of affordable housing in the City. The bonuses proposed do not exceed, and are somewhat less than, those that would otherwise be imposed by State law.

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 ordinance amendments are not being applied to any specific site, nor is it reasonably foreseeable which sites, if any, may elect to utilize the proposed ordinance amendments. The impact of a density bonus in excess of 35 percent and the effect of that bonus on the health, safety, peace, moral and general welfare of persons residing or working in the neighborhood of a site will be reviewed when an application is made for its use on a specific site.

Section 3. The City Council hereby approves the following amendments to the Cupertino Municipal Code:

1. Table 19.56.030 in Section 19.56.030A of the Cupertino Municipal Code is hereby amended to read as follows:

Income Level of unit	Proportion of Total Affordable Dwelling Units	Maximum Density Bonus
Very Low Income	5%	20%
	6% - 12% ⁽¹⁾	22.5% - 37.5%
	13% or more	40%
Low Income	10%	20%
	11% -22% ⁽²⁾	21.5% - 38%
	23% or more	40%
Moderate Income (Common interest developments)	10%	5%
	11% - 44% ⁽³⁾	6% - 39%
	45% or above	40%

⁽¹⁾ For each 1% increase over 5% of the target units, the density bonus shall be increased by 2.5%, up to a maximum of 40%.

⁽²⁾ For each 1% increase over 10% of the target units, the density bonus shall be increased by 1.5%, up to a maximum of 40%.

⁽³⁾ For each 1% increase over 10% of the target units, the density bonus shall be increased by 1%, up to a maximum of 40%.

2. Section 19.56.030F of the Cupertino Municipal Code is hereby amended to read as follows:

F. Density Bonus Calculations:

1. A density bonus may be selected from only one category listed in Section 19.56.020A(1), except that density bonuses for land donation may be combined with others, up to a combined maximum of ~~35~~40 percent, and an additional square-foot bonus may be granted for a child day care facility as provided in Section 19.56.030C.

2. In determining the number of density bonus units to be granted, any fractions of density bonus units shall be rounded up to the next whole number.

3. Density bonus units authorized by this section shall not be included when determining the number of affordable units required to qualify for the density bonus. In determining the number of affordable units required to qualify for a density bonus, any fractions of affordable units shall be rounded up to the next whole number.

4. An applicant may request a lower density bonus than the housing development is entitled to, but no reduction will be permitted in the percentage of required affordable units as shown in Section 19.56.020 or Section 19.56.020C.

5. Regardless of the affordable units, no housing development will be entitled to a density bonus of more than 40 percent, unless approved by the City pursuant to Section 19.56.030F(6).

6. The City, at its discretion, may grant a density bonus higher than the maximum set forth in Table 19.56.030 to a housing development where all units (except manager's unit(s)) are affordable to lower income households.

7. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The bonus units shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

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 hereby finds that the proposed Ordinance amendments are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that adoption of the amendments may have a significant effect on the environment. Therefore, the proposed action is not subject to CEQA. The ordinance amendments will not allow any increase in density greater than that allowed by the housing program adopted by the City Council in December 2020. The density bonus increase to 40 percent contained in the proposed amendments does not increase the number of units that may be constructed on any property, because this increase in density has already been adopted by the City Council as part of the adopted housing program. The City Council further directs the Director of Community Development to file a Notice of Exemption with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

INTRODUCED this 20th day of April, 2021, at a Regular Meeting of the City Council of the City of Cupertino and ENACTED on the ____ day of ____, 2021, at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date