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To: Piu Ghosh, Planning Manager, City of Cupertino

Re: City Council/Planning Commission Housing Element Study Sessions

Date: April 19, 2021

Introduction

This memo provides background context and information on the General Plan Housing Element update process in preparation for the upcoming City Council/Planning Commission/Housing Commission joint Housing Element Study Sessions. The two Study Sessions will be structured to provide Councilmembers and Commissioners with a full introduction to all of the required components of Cupertino's Housing Element, including new analyses or requirements that have been added as the result of recently passed State laws. The technical support team for the Santa Clara County Planning Collaborative¹ (of which Cupertino is a member) comprised of staff from Baird+ Driskell will also facilitate a discussion around proactive housing and programs for the Councilmembers and Commissioners to consider as Cupertino looks to create a tailored Housing Element that fits within the community's larger planning and development goals.

The first study session on April 27 will provide a comprehensive overview of: 1) The Housing Element structure and required sections; 2) the RHNA methodology and allocation process; and 3) New legal requirements and resources for this planning period. Building on study session #1, the second session on May 11 will provide participants with an opportunity to explore best practices in housing element policies and programs in comparable California jurisdictions, as well as to discuss potential locally appropriate housing strategies for Cupertino.

Overview of the Housing Element

The Housing Element is part of Cupertino General Plan and identifies policies and programs to meet the housing needs of the city's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city and county in California adopt a Housing Element approximately every eight years. In addition, the State Department of Housing and Community Development (HCD) reviews and certifies that each Housing Element meets all the requirements of the law. Cupertino's previous Housing Element was adopted in 2015 and the new document must be adopted by January 2023.

This Housing Element update process is expected to be more time intensive and rigorous than previous cycles for several reasons. First, as displayed below, Cupertino's proposed Regional

¹The Planning Collaborative meets monthly and meeting presentations, training materials and related resources are posted on the Collaborative page hosted by the Cities Association <https://citiesassociation.org/planning/>.

Housing Needs Allocation (RHNA) is significantly higher than last cycle: 4,588 units compared to 1,064. Also, because of changes in State law, it may be harder to identify sites that can count towards meeting the RHNA. There are also other new rules, such as Affirmatively Furthering Fair Housing, which are in effect for the first time this cycle. In spite of these potential challenges, this Housing Element update also provides the community with an unprecedented opportunity to reevaluate its housing strategies and design a proactive housing plan tailored to Cupertino's unique needs and characteristics.

The below information will highlight the most critical aspects of the Housing Element update process, highlighting new requirements, resources and opportunities for this planning cycle, also referred to as the "RHNA 6" Planning Cycle.

Housing Element Components

The Housing Element includes several major components, as follows:

1. **Community Outreach and Engagement:** Community outreach and engagement is critical to a successful Housing Element update, and both HCD and ABAG recommend that outreach occur throughout the update process with a particular focus on outreach to traditionally underrepresented groups². Through its participation in the Planning Collaborative, Cupertino will also have the opportunity to participate in joint outreach and engagement activities with other Silicon Valley cities, and/or to take advantage of engagement resources developed through the Collaborative.
2. **Evaluation of Past Performance:** Each year, Cupertino prepares an annual progress report (APR) on the City's status and progress in implementing its Housing Element (Government Code Section 65400). Building on the accomplishments documented in the City's APR, as well as additional information on the City's progress towards meeting its housing goals as presented in the previously adopted Element, this section of the Housing Element will provide a comprehensive assessment of past performance³.
3. **Housing Needs Assessment:** The Housing Needs Assessment provides a fresh opportunity to analyze Cupertino's current housing needs in light of recent demographic and economic trends. As part of ABAG's Regional Housing Technical Assistance Program (REAP), a data packet for all Bay Area jurisdictions has already been prepared and can form the basis of this section. The data packet and analysis for Cupertino can be accessed at the following link:

² Additional resources on community engagement are provided by both HCD (<https://www.hcd.ca.gov/community-development/building-blocks/getting-started/public-participation.shtml>) and ABAG will be offering an upcoming training through the REAP program on best practices in community engagement.

³ <https://www.cupertino.org/our-city/departments/community-development/housing/housing-documents>

<https://mtcdrive.app.box.com/s/nei8x775oi5m47mqhu8ctpyyqrio2v3/folder/134783851555>

4. **Constraints Analysis:** The Housing Element will also include a complete analysis of existing and potential governmental and nongovernmental constraints to the development of housing. For this planning period, the analysis should provide additional detail on market and financial constraints to housing development.
5. **Housing Sites Inventory:** In many respects, the sites inventory and analysis constitutes the core of the housing element as this section lists the housing sites available for development or redevelopment, ensuring that there is sufficient capacity to address the city's RHNA. The ABAG Executive Board adopted a draft methodology for distributing the region's housing needs by jurisdiction in January of this year, and it has been approved by HCD. (See attached letter.) The methodology will now be finalized, and draft RHNA numbers will be provided to individual jurisdictions which will then have an opportunity to appeal.

Table 1: Illustrative RHNA for Cupertino, Santa Clara County and the Bay Area, January 2021

Income Group	Cupertino Units	Santa Clara County Units	Bay Area Units	Cupertino Percent	Santa Clara County Percent	Bay Area Percent
Very Low Income (<50% of AMI)	1193	32316	114442	26.0%	24.9%	25.9%
Low Income (50%-80% of AMI)	687	18607	65892	15.0%	14.4%	14.9%
Moderate Income (80%-120% of AMI)	755	21926	72712	16.5%	16.9%	16.5%
Above Moderate Income (>120% of AMI)	1953	56728	188130	42.6%	43.8%	42.6%
Total	4588	129577	441176	100.0%	100.0%	100.0%

Source: Association of Bay Area Governments Methodology and tentative numbers were approved by ABAG's Executive board on January 21, 2021 (Resolution No. 02-2021). The numbers were submitted for review to California Housing and Community Development in February 2021, after which an appeals process will take place during the Summer and Fall of 2021. THESE NUMBERS SHOULD BE CONSIDERED PRELIMINARY AND SUBJECT TO CHANGE PER HCD REVIEW

Whatever the outcome of the final RHNA allocation for Cupertino, perhaps the chief challenge this cycle will be identifying sufficient housing sites to meet the RHNA. This is in part due to the higher numbers, but also because of State laws like AB 1397 (passed

in 2017)⁴ which require: increased focus on ensuring that sites are located in high opportunity areas; 'by-right' zoning for lower income sites identified in previous housing elements; restriction on designating sites smaller than 0.5 acre or larger than 10 acres as suitable for lower income housing; and new standards and increased scrutiny for non-vacant sites, including lease terms and market demand for the existing use.

Although the RHNA numbers for this planning period are significantly higher, there are also new resources and technical assistance available through the Planning Collaborative and ABAG. One of these is the Housing Sites Selection (HESS) Tool, a web-based platform to guide local jurisdictions in identifying potential sites that align with state requirements as well as regional and local priorities. This tool has been provided in an initial version to Cupertino and other cities across the region and is currently being refined to be more useful in identifying potential housing sites.

In addition, a key workplan priority of the Planning Collaborative will be sites inventory technical assistance and training, providing staff with ongoing support throughout the update process.

6. **Policies and Programs:** Finally, the Housing Element will develop goals, objectives, policies and programs to meet the housing needs as identified in the Housing Element. These policies may include: land use, zoning and development process improvements; financial incentive program for affordable housing (for example, using Cupertino's commercial and residential in-lieu fee funds); and may other specialized policies and programs that can be tailored to Cupertino's community example (for example, customized Accessory Dwelling Unit programs and policies).

Additional Changes Affecting this Housing Element Update

In addition to the new requirements listed above by Housing Element section, there are also a number of other significant changes to note, as follows:

1. **Program to Rezone Housing Sites.** Ideally, Cupertino will be able to identify sufficient sites to address the RHNA prior to adoption of the updated housing element. If, however, sufficient sites are not identified in the Housing Element when adopted, the Element must include a program to rezone sites to meet the shortfall. The program to rezone must be completed either at the time of the housing Element update or

⁴ For more information on this and other housing laws adopted by the State in 2017, refer to this primer from Goldfarb and Lipman. <https://goldfarbblipman.com/wp-content/uploads/2017/11/Recent-Developments-in-California-Housing-Legislation-10-2017.pdf>

within three years. There are specific requirements for any rezoning to address RHNA, which makes it more onerous than doing required rezoning actions prior to on-time housing element adoption. Key provisions for Cupertino sites designated for lower income housing include:

- Ensure sites are zoned to allow owner-occupied and rental multifamily residential uses “by-right,” where projects not requiring a subdivision and including 20 percent affordable housing are not subject to CEQA and may only be subject to design review.
- Ensure sites permit a minimum of 20 dwelling units per acre.

2. Affirmatively Furthering Fair Housing. In 2018, California adopted new requirements for jurisdictions to Affirmatively Further Fair Housing (AFFH). While it has long been illegal for cities to discriminate based on race or certain other categories, the AFFH rules go further and require that cities actively work to dismantle the legacy of segregation and to create equal housing opportunities. The State is still finalizing guidance, but cities will likely be expected to:

- Study housing demographics more thoroughly, in particular identifying how the needs and trends are different for people of color and other protected groups,
- Ensure that public engagement reaches all segments of the community,
- Plan so that sites designated for lower income housing or upzoned are not disproportionately put in low-income communities of color, and
- Develop policies and programs that advance equity.

As with community engagement and sites analysis, AFFH will also be a key priority of the Collaborative’s workplan in the coming year.

3. Safety Element. Recent state legislation (SB 379, SB 1035, SB1241) has placed new requirements on how and when local jurisdictions need to update the Safety Element. This chapter of the General Plan must be updated at the same time as the Housing Element. This includes identifying the specific environmental hazards and risks that are posed by climate change and wildfire.

Timeline and Process

While Cupertino’s Housing Element is due in January 2023, like all jurisdictions in the Bay Area it is important to build in a few months extra to ensure HCD has time to conduct their required review prior to final adoption by Council. The following is a preliminary draft timeline that will need to be adjusted for Cupertino in the coming months:

1. Start Process – Spring ‘21
2. Complete Housing Goals, Policies, & Technical Analysis – Summer ‘21

3. Preparation of Draft Site Inventory – Fall '21
4. Public Hearings & Approval of Draft Site Inventory – Winter'21/Early '22
5. Preparation of Draft Housing Element- early Summer '22
6. Public Hearings – late Summer '22
7. Submit Draft Housing Element to HCD – early Fall '22
8. Preparation of Final Housing Element – late Fall '22
9. Public Hearings & Adoption – Winter '22
10. Submit Final Housing Element to HCD- Jan. '23

Rezoning is not included in the timeline above as the site inventory will first need to be conducted to determine the extent of rezoning.