

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING ADOPTION OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CUPERTINO MUNICIPAL CODE SECTIONS 19.56.030A (TABLE 19.56.030), 19.56.030F, TABLE 19.56.040A AND ADDING SECTION 19.56.080 (DENSITY BONUS ORDINANCE) TO ALLOW DENSITY BONUSES AND OTHER INCENTIVES AS PROVIDED BY STATE LAW

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The Planning Commission recommends that the City Council approve the proposed amendments to the City's density bonus ordinance, Chapter 19.56 of the Cupertino Municipal Code, in substantially similar form to the Draft Ordinance attached hereto as Exhibit A.

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 14<sup>th</sup> day of September 2021, by the following roll call vote:

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AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Piu Ghosh  
Planning Manager

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Ray Wang  
Chair, Planning Commission

DRAFT ORDINANCE NO. 21-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CUPERTINO AMENDING CUPERTINO MUNICIPAL CODE SECTIONS  
19.56.030A (TABLE 19.56.030), 19.56.030F, TABLE 19.56.040A AND  
ADDING SECTION 19.56.080 (DENSITY BONUS ORDINANCE) TO  
ALLOW DENSITY BONUSES AND OTHER INCENTIVES AS  
PROVIDED BY STATE LAW

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SECTION I: PROJECT DESCRIPTION

Application No.: MCA-2021-003  
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 modified state density bonus law; and

WHEREAS, the City Council of the City of Cupertino on April 20, 2021 introduced, and on May 4, 2021 adopted, Ordinance No. 21-2226 to incentivize the development of affordable housing by allowing density bonuses of up to 40 percent; and

WHEREAS, the City Council of the City of Cupertino on April 20, 2021 also directed staff to return with a potential amendment to the housing program to allow a 50 percent density bonus for higher percentages of BMR housing, to be considered with other density bonus ordinance updates; and

WHEREAS, the City desires to amend Chapter 19.56 to permit density bonuses of 50 percent and concessions and incentives as provided in AB 2345; and

WHEREAS, the proposed amendments to the density bonus ordinance are 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 \_\_\_\_\_, 2021, at a duly and properly noticed public hearing, the Planning Commission recommended on a \_\_\_\_\_ vote that the City Council find that the

proposed code amendments: (1) will not result in any direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)); (2) do not constitute a project under CEQA (CEQA Guidelines Section 15378); and (3) can be seen with certainty based on review of the facts to have no possible significant effect on the environment (CEQA Guidelines Section 15061(b)(3)); and

WHEREAS, on \_\_\_\_\_, 2021, at a duly and properly noticed public hearing, the Planning Commission adopted Resolution No. \_\_\_\_\_ and recommended on a \_\_\_\_\_ vote that the City Council adopt the draft density bonus 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 \_\_\_\_\_, 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 consistency with AB 2345 adopted by the State in 2020.*

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

*It is not possible to predict which properties in the City, if any, may be proposed to be developed with an increased density bonus, given market conditions, building types desired, and developers' individual decisions whether or not to request bonuses; nor whether any increased development*

*or density will result from the proposed changes, whether any development or density will result that would not already have occurred under the existing Municipal Code, nor whether any possible significant environmental impacts peculiar to the adoption of the proposed zoning code amendments would occur. Therefore, the proposed code amendments: (1) will not result in any direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)) and so (2) do not constitute a project under CEQA (CEQA Guidelines Section 15378).*

*Further, the City has been informed by the California Department of Housing and Community Development (HCD) that its existing density bonus ordinance must be modified to be consistent with AB 2345, and the ordinance amendments reflect HCD's interpretation of the requirements of state law. The proposed zoning amendments do not permit any bonuses, incentives, or waivers other than those provided by State law. The amendments can therefore be seen with certainty based on review of the facts to have no possible significant effect on the environment (CEQA Guidelines Section 15061(b)(3)). These amendments do not authorize the development of housing on any site where housing is not already permitted under the City's existing codes, and any housing development project with a density bonus component must be reviewed under 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 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 environmental impact of a density bonus of 50 percent and the suitability of a site for that bonus cannot be known and 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, consistent with 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 of 50 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 cannot be known and 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 19.56.030 of the Cupertino Municipal Code is hereby amended to read as follows:

**Table 19.56.030: Density Bonus Calculations**

Income Level of unit	Proportion of Total Affordable Dwelling Units	Maximum Density Bonus
Very Low Income	5%	20%
	6% - <del>12</del> <u>11</u> % <sup>(1)</sup>	22.5% - <del>37.5</del> <u>35</u> %
	<u>12% - 14%</u> <sup>(2)</sup>	<u>38.75% - 46.25%</u>
	<del>13</del> <u>15</u> % or more	<del>40</del> <u>50</u> %
Low Income	10%	20%
	11% - <del>22</del> <u>20</u> % <sup>(23)</sup>	21.5% - <del>38</del> <u>35</u> %
	<u>21% - 23%</u> <sup>(4)</sup>	<u>38.75% - 46.25%</u>
	<del>23</del> <u>24</u> % or more	<del>40</del> <u>50</u> %
Moderate Income (Common interest developments)	10%	5%
	11% - <del>44</del> <u>40</u> % <sup>(35)</sup>	6% - <del>39</del> <u>35</u> %
	<u>41% - 43%</u> <sup>(6)</sup>	<u>38.75% - 46.25%</u>
	<del>45</del> <u>44</u> % or above	<del>40</del> <u>50</u> %
<u>Affordable Housing Development</u>	<u>100%</u> <sup>(7)</sup>	<u>80% or as specified in Government Code Section 65915</u>

<sup>(1)</sup> 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~~35%.

<sup>(2)</sup> **For each 1% increase over 11% of the target units, the density bonus shall be increased by 3.75%, up to a maximum of 50%.**

<sup>(23)</sup> 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~~35%.

<sup>(4)</sup> **For each 1% increase over 20% of the target units, the density bonus shall be increased by 3.75%, up to a maximum of 50%.**

<sup>(35)</sup> For each 1% increase over 10% of the target units, the density bonus shall be increased by 1%, up to a maximum of ~~40~~35%.

**(6) For each 1% increase over 40% of the target units, the density bonus shall be increased by 3.75%, up to a maximum of 50%.**

**(7) Must meet the requirements of Government Code Section 65915(b)(1)(G) or successor provision.**

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 ~~40~~50 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 percentage of affordable units, no housing development will be entitled to a density bonus of more than ~~40 percent or as provided in Government Code Section 65915~~, 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 or in paragraph (5) above 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.

3. Table 19.56.040A in Section 19.56.040 of the Cupertino Municipal Code is hereby amended to read as follows:

**Table 19.56.040A: Incentives or Concessions Calculations:**

Unit Type	Percent of Affordable Units	Number of Incentives/Concessions
Very Low Income Units	5% or greater	1
	10% or greater	2
	15% or greater	3
Low Income Units	10% or greater	1
	<del>20</del> <u>17</u> % or greater	2
	<del>30</del> <u>24</u> % or greater	3
Moderate Income Units	10% or greater	1
	20% or greater	2
	30% or greater	3
<u>Affordable Housing Development</u>	<u>100%*</u>	<u>4</u>

\*Must meet the requirements of Government Code Section 65915(b)(1)(G) or successor provision.

4. Add a new Section 19.56.080 of the Cupertino Municipal Code to read as follows:

**19.56.080 Interpretation.**

If any portion of this Chapter 19.56 conflicts with State Density Bonus Law (Government Code Section 65915 et seq.) or other applicable state law, state law shall supersede this Chapter. Any ambiguities in this section shall be interpreted to be consistent with State Density Bonus Law. All code references in this Chapter include all successor provisions.

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 finds that the proposed code amendments: (1) will not result in any direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)) and so (2) do not constitute a project under CEQA (CEQA Guidelines Section 15378), because it is not possible to predict which properties in the City, if any, may be proposed to be developed with an increased density bonus, given market conditions, building types desired, and developers' individual decisions whether or not to request bonuses; nor whether any increased development or density will result from the proposed changes; whether any development or density will result that would not already have occurred under the existing Municipal Code; nor whether any possible significant environmental impacts peculiar to the adoption of the proposed zoning code amendments would occur.

Further, the City has been informed by the California Department of Housing and Community Development (HCD) that its existing density bonus ordinance must be modified to be consistent with AB 2345, and the ordinance amendments reflect HCD's interpretation of state law. The proposed zoning amendments do not permit any bonuses, incentives, or waivers other than those provided by State law. These amendments do not authorize the development of housing on any site where housing is not already permitted under the City's existing codes, and any housing development project with a density bonus component must be reviewed under CEQA. The City Council therefore further finds that the amendments can be seen with certainty based on review of the facts to have no possible significant effect on the environment (CEQA Guidelines Section 15061(b)(3)).

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.

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INTRODUCED this \_\_ day of \_\_\_\_\_, 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:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>