

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, CA 95014

CITY OF CUPERTINO
PLANNING COMMISSION MEETING
APPROVED/AMENDED MINUTES

6:45 P.M.	OCTOBER 25, 2016	TUESDAY
CITY COUNCIL CHAMBERS		

The regular Planning Commission meeting of October 25, 2016, was called to order at 6:45 p.m. in the Cupertino Council Chambers, 10350 Torre Avenue, Cupertino, CA. by Chairperson Alan Takahashi.

SALUTE TO THE FLAG

ROLL CALL

Commissioners Present:	Chairperson:	Alan Takahashi
	Vice Chairperson:	Margaret Gong
	Commissioner:	Geoff Paulsen
	Commissioner:	Winnie Lee
	Commissioner:	Don Sun

Staff Present:	Assistant Community Development Director:	Benjamin Fu
	Principal Planner:	Piu Ghosh
	Assistant Planner:	Ellen Yau
	Associate Planner:	Gian Paolo Martire
	Assistant City Attorney:	Colleen Winchester

APPROVAL OF MINUTES:

Minutes of the October 11, 2016 Planning Commission meeting:

MOTION: Motion by Vice Chair Gong, second by Com. Sun, and unanimously carried
5-0-0, to approve the October 11, 2016 Planning Commission minutes as presented.

ORAL COMMUNICATIONS: None

POSTPONEMENTS/REMOVAL FROM CALENDAR: None

WRITTEN COMMUNICATIONS: None

CONSENT CALENDAR: None

PUBLIC HEARING

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| 2. MCA-2016-03
City of Cupertino
Citywide Location | Municipal Code Amendments to amend Chapter 8.07, Beekeeping and Table 19.20.020 of Chapter 19.20 Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones regarding the regulation, location and the keeping of bees in the city and to make other conforming changes in Table 19.20.020 for consistency. |
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Ellen Yau, Assistant Planner, presented the staff report:

- Reported on evaluating proposed changes on two sections of the code, the evaluation will include an overview of the current regulations in other cities, the importance of the honeybee to the environment and the results of regulatory action and how their proposed change will make beekeeping allowed in Cupertino. The current code limits beekeeping to permitted use in A Zones and agricultural zones, conditional use in A-1 which is agricultural and residential uses and permitted as accessory uses in all other zones, but the specific Chapter 8.07 states that the hives themselves must be located 1,000 feet from nearest residences, church, school, public building or corral or water area in the corral and 300 feet from any public road. Because of that even though they are permitted use, this effectively prohibits beekeeping in most of the lots in the city. Earlier in the year Cupertino Rolling Hills 4H Club and the Santa Clara Bee Guild presented on the importance of bees to the environment and requested that Council review the existing restrictive regulations and asked staff to evaluate the current regulations and draft an ordinance to set reasonable regulations to change some regulations to allow for this use in the city. Other cities were studied and some of those changes were rather significant; one of the minimum setbacks on property line is about 5 feet and from streets 20 feet, which is a drastic difference from Cupertino.
- Said what is important is why honeybees and why make the change? Compared to other cities, the Code does prohibit the keeping of bees because of those regulations and setbacks. It is important because bees pollinate about 85% of crops they have; scientists have claimed and stated about one in three bites of American diet is due to the pollination of bees because they pollinate flowers, crops, and they produce other products such as beeswax and honey. Due to some variable factors such as climate change and pesticide applications applied to residential and commercial lots, they effectively have the phenomenon called colony collapse disorder, which is where a significant portion of the U.S. bee colonies have vanished. They looked at the national agenda in terms of preserving the bee environment and many cities around the area and nationwide where they have modified the regulations. They are making two section changes in the proposed code of Chapter 8.07 Beekeeping; made changes to the definitions by consolidating some of the definitions and clarifying them; also made it explicit that it is a permitted use for A and A-1 zones, accessory uses in all other zones.
- Under Locations, the setback requirements were changed from 20 feet from the front property line and public or private streets and to 10 feet from side and rear and driveway easements. Other cities evaluated, lots with less than 5,000 square feet are limited to hives because they are smaller lots and the concentration of the beehives was something they thought about. Sections were also added to maintenance, registration, nuisance and enforcement. Throughout the research evaluating other cities, it was important that water provisions for the bees are sufficient; that way they stay within the area to access water. If there are any concerns about hives being left there, abandoned structures, it was put into the code that those apiaries would be dismantled and taken down.
- She reviewed the changes to Section 8.07.040 Nuisance, 8.07.050 Enforcement, Chapter 19.20 as outlined in staff report, page 4.
- Staff recommendation is to find that the proposed action is exempt from CEQA, and adopt the draft resolution recommending City Council introduce and adopt an ordinance amending Chapter 8.07 Beekeeping, and Table 19.20.020 of Chapter 19.20, regarding the regulation, location and the keeping of bees in the City and to make other conforming changes in Table 19.20.020 for consistency.

Staff answered questions relative to the application.

Chair Takahashi opened the public hearing.

Ethan Chi, Chris Chapman, Nathan Chi, Bryan Chi, Elena McPherson, Rolling Hills 4H Club of Cupertino:

- The group members each commented: That they were pleased to see the Beekeeping Ordinance being updated; it was a great learning experience to speak at the City Council meeting in March; it was wonderful to know that anyone, including kids, could make a difference. They thanked the Commission for considering their proposal, and said they hoped that the Commission would approve this modification to the Code. Hopefully soon, Cupertino will be a model green city with many busy beehives and pollinated plants.

Alysa Sakkas, Adult Leader from Rolling Hills 4H Club of Cupertino:

- Thanked the Commission for their consideration, and suggested three minor semantic recommendations to offer for consideration in changing the wording. First one is Item 8.07.030 Location Number Maintenance and Regulation of Apiaries; would recommend for A3 which currently says minimum setbacks; that it be changed to minimum hive setbacks, to clarify that the setback amounts are in respect to the hives vs. in respect to the apiaries as stated at the top of the paragraph. An apiary is an area that may enclose several hives, sometimes some people don't choose to create a boundary for an apiary but an apiary is a collection of hives. Recommends that the 20 feet and 10 feet are respective of the hives vs. if someone was to create a fenced area wouldn't want that measurement to occur from the edge of the apiary.
- The second one 8.07.030c under Maintenance, suggest to strike the words "abandon or" full sentence to state "Maintenance; any abandoned or disused apiary shall be promptly dismantled and removed from the location", strike "abandoned or" would clarify, if it is abandoned by the bees it does not need to be promptly dismantled because beekeepers often have bees absconded from their hives and would probably choose to leave the hive assembled and moving the colony into the hive. It is not clear whether abandoned means abandoned by the beekeeper or the beehive but the remainder of the sentence can stand alone.
- The third one 8.07.040 Nuisance; recommend striking the word, to say "the maintenance or use of any real property in violation of this chapter or when apiary bees swarm and/or abscond or which creates a condition as defined in Section 1.09.030 is hereby declared a public nuisance, is prohibited in a subject to code enforcement and all other enforcement remedies as provided in this code. Recommend striking the words "or when an apiary's bees swarm and/or abscond, and the remainder of the paragraph stand alone in terms of the nuisance law; primarily because beekeepers cannot control swarming or absconding hives; this will alleviate someone being jeopardized for their beehives swarming or absconding.
- Thanked the Planning Commission again for the work done; said they were happy with this code and looking forward to seeing more beekeepers in Cupertino.

Chair Takahashi closed the public hearing.

Com. Paulsen:

- Complimented the group of 4H students on their excellent presentation.

The Commission discussed the three suggestions from Alysa Sakkas.

- The first is the setback as far as whether or not it was defined to the hive vs. the apiary.

Piu Ghosh:

- Said that could be at the Planning Commission's pleasure; which means that if a hive is surrounded by a fence or some such structure, it could be within that 5 or 10 foot setbacks; the setback varies between all the different cities looked at; most cities define the apiaries as being the collection of bees, the hives and any accessory structure. All the setbacks are to the apiary and not to the hives.

Ellen Yau:

- Said there are some cities who when they define it, define apiaries and hives differently in some cases; the insertion of hives would not be much of an issue because we are looking at the specific structure of the hive; we do define apiaries, we do include hives, bees and the appliances themselves, but the appliances that there was another structure to store things, would fall under our accessory facilities chapter as well. That would have slightly different setbacks.

Chair Takahashi:

- Said from a clarity standpoint it would make sense to reference the hive as well.

Com. Paulsen:

- Said he felt saying “hives” clarified the issue, and the suggestions made by Mr. and Mrs. Sakkas were reasonable suggestions; the swarming issue and the abandonment issue as well as the definition of hives. He suggested they be included in the final resolution.

Vice Chair Gong:

- Said she agreed with the first and second suggestion; the second one to strike the abandonment or disuse; instead of striking that, keep it and add abandonment by beekeepers as opposed to by bees, because if the beekeeper abandoned it, then they should remove it; said she would not strike it.

Com. Paulsen:

- Agreed that it was reasonable.

Benjamin Fu:

- Said staff would not have an objection to that; their intention was not to have structures that are abandoned; or an eyesore. There was one additional email item received from the 4H Group, switching the word “freshwater” for “clean water”. Staff can briefly discuss the difference between what their intent is for the “clean” vs. “fresh”.

Alysa Sakkas:

- Said it was okay as stated.

Com. Lee:

- Said she was in the minority, but did not have a problem with how staff has put it in the draft resolution; and she felt if apiaries wanted to be closer they could reach some kind of agreement with their neighbor and if they wanted to be closer encroaching the setback, she would rather they could go through the city and encroach in the setback with some type of ministerial review.

Colleen Winchester, Asst. City Attorney:

- Said it would have to be with the permission of the neighbor. It would be a private agreement; the city would not mediate it.

Com. Lee:

- Said she would support the wording as proposed; she felt it was better as stated in the draft resolution.

Vice Chair Gong:

- Said she agreed they should make it apiary vs. hive.

Chair Takahashi:

- If an individual wants to put a hive in place; we outline the structure of an offset and could they then, depending on the offset between the actual hive and the apiary, alter the structure such that they would use a fence as part of that enclosure? Could they work it with that offset and meet the intent of the code?

Piu Ghosh:

- Said she understood they were saying that the hive could be placed at the 10 foot setback and an existing fence, property boundary line fence could be used as the fence to enclose that as an apiary; that could be how it could be capped. Saying that that is a setback for the apiary does not necessarily mean that you can place a hive at 10 feet because you don't have to enclose the hives with fencing.

Com. Sun:

- Said he agreed with Com. Lee and Vice Chair Gong; it is the original intent of the city amendment; it is more accurate and may prevent some future problems with public nuisance.

MOTION: Motion by Vice Chair Gong, second by Com. Sun, and unanimously carried 5-0-0, to approve Application MCA-2016-03 with the following amendments: Section 8.07.030, Subsection C2, any abandoned or misused ... (suggest language we were suggesting: any apiaries abandoned by beekeepers or disused apiaries" (and keep same language after that) grammatical correction to your suggestion.

Strike in Section 8.07.040 Nuisance ... "or when an apiary's bees swarm and/or abscond"

2. **MCA-2016-05**
City of Cupertino
Citywide Location Municipal Code Amendments to various Chapters in Title 19, Zoning of the Cupertino Municipal Code including but not limited to Chapter 19.08 Definitions), Chapter 19.20 (Permitted, Conditional and Excluded Uses to Agricultural and Residential Zones), Chapter 19.24 (Agricultural and Agricultural – Residential (A-1) Zones), Chapter 19.32 (Residential Duplex (R-2) (Zones), Chapter 19.52 (Reasonable Accommodation), Chapter 19.112 (Second Dwelling Units in R-1, RHS, A and A-1 Zones), and 19.124 (Parking Regulations) in response to recently adopted State legislation regarding accessory dwelling units for compliance with State Law, and for internal consistency. Amendments will apply citywide.

Gian Paolo Martire, Associate Planner, presented the staff report:

- Reviewed the staff report, stating that the ordinance amendment is in response to the recently passed Senate Bill signed by Gov. Brown on September 27th. Reviewed the various chapters listed that were being amended in Title 19 zoning; most of the chapters will be swapping terms out for the secondary and there are substantial changes to Chapter 19.12 and the definition section.
- Explained that the Municipal Code is reviewed periodically to ensure that it is consistent with State law and that there is internal consistency amongst all the titles and chapters of the Municipal Code. The urgency is if the cities in California don't adopt something by January 1, 2017, any ordinances regulating second dwelling units are considered null and void. What is changing and how is it going to affect how we develop second dwelling units, accessory dwelling units? Primarily it will amend 19.112 Second Dwelling Units and R1-RHS A and A-1 zones.
- He reviewed other changes listed under State-Law Consistency – SB 1069, Chapter 19.112, Second Dwelling Units in R-1, RHA, A and A-1 Zones summarized. In addition to ensure consistency with State law, minor amendments have been proposed to ensure internal consistency and as clarifications.

Senate Bill 1069 amends Section 65852.2 of the Government Code by replacing the term “second unit” with “accessory dwelling ~~unit~~ unit”. The definition of second dwelling unit has been updated to match the State’s definition of an accessory dwelling unit. The term “second unit” in the Municipal Code, when used in the context of an “accessory dwelling unit” has been replaced. While the City’s current practice of processing of an accessory dwelling unit is a ministerial process through a building permit, SB 1069 requires that the City incorporate language in the ordinance to memorialize it. Allowable accessory dwelling unit sizes are being increased from 650 to 800 sq. ft. for lots of up to 10,000 sq. ft. for lots over 10,000 sq. ft.

- Other parts of the State law were amended that don’t deal with the zoning ordinance but will be reflected in how an outside agency such as sewer and utility lines are hooked up to the second dwelling units including the elimination or relaxing of some fees that for accessory dwelling units are built within existing footprints of homes. What will affect how the City of Cupertino processes fire sprinklers is that these accessory dwelling units built within these homes won’t necessary be required to have fire sprinklers and that is more of a Cupertino standard than it is a building code standards, and that will be reflected when the building official will bring those changes to City Council by the end of the year.
- Said they took the opportunity to clarify some terms, such as refining the definition of duplex to give it more of a separation between the relationship a lot may have with a primary family unit, primary residence and an accessory dwelling unit rather than a duplex. There are slight refinements to that definition. Also removed all references to family as indicator of occupancy in unit types, in response to recent case law; and have inserted term “transient” for lodging and lodging unit to ensure that it meets the definition of transient; setting a time of 3 days or less for a person who is residing or staying in a unit.
- It is recommended that the Planning Commission recommend to City Council that they find that the proposed actions are exempt from CEQA and to adopt an ordinance amending Title 19, Zoning, of the Cupertino Municipal Code including but not limited to Chapter 19.08 Definitions), Chapter 19.20 (Permitted, Conditional and Excluded Uses to Agricultural and Residential Zones), Chapter 19.24 (Agricultural and Agricultural – Residential (A-1) Zones), Chapter 19.32 (Residential Duplex (R-2) Zones), Chapter 19.52 (Reasonable Accommodation), Chapter 19.112 (Second Dwelling Units in R-1, RHS, A and A-1 Zones), and 19.124 (Parking Regulations) in response to recently adopted State legislation regarding accessory dwelling units for compliance with State Law, and for internal consistency.

Ellen Yau:

- Said they would have to do it in response to State law, unfortunately because of the California housing crisis, the Governor saw fit to sign the bill into law. She said when stating they see impacts, she was not sure what kind of impacts they were eluding to.

Com. Sun:

- Presented an example of a single family house which was divided into a duplex, which would limit the parking spaces. One single family home would have a maximum of 3 cars, but if separated into a duplex there is a minimum of 4 cars; there may be another space for accessory room or unit and then have 6 cars there in one particular lot. He said it was a problem he could foresee.

Piu Ghosh:

- Said she understood their concerns but unfortunately that decision was taken out of City’s hands by the Senate Bill the Governor signed with those changes. It states that if you are providing an accessory dwelling unit within the existing structure, as if you have an existing family house and you are taking a portion of it and converting it into an existing dwelling unit you do not have to provide any parking spaces. There is a list of conditions under which parking does not have to be provided on the site for that accessory dwelling unit. There is nothing cities can do to regulate that; all they are doing is making changes to conform to that amendment that the Governor signed.

Gian Paolo Martire:

- Clarified that they do not allow accessory dwelling use in duplex R2 zones anyway. If you already have a duplex you can't add another accessory unit on top of that.

Piu Ghosh:

- Presently the ordinance allows accessory dwelling units at R1, RHS, A and A-1 zones which are primarily single family zones; you can only have a single family home there. We currently allow accessory dwelling units there, we are just making conforming changes to that.

Vice Chair Gong:

- If it is the primary dwelling unit and a part of it is carved off as an accessory dwelling unit, no additional parking is required. What happens if there is a stand-alone garage that is now converted to an accessory unit, but those two parking spaces in that existing garage; do parking spaces have to be provided on the lot and since it is a stand-alone building, do additional parking spaces need to be provided in accordance with our ordinance?

Gian Paolo Martire:

- As the ordinance is written now, if you take away two enclosed spaces, you have to provide two enclosed spaces somewhere else on the lot.

Piu Ghosh:

- Said if you do convert your existing garage into a stand-alone or you are attached; it doesn't matter; if you converted that into an accessory dwelling unit you could provide replacement spaces on the site in any combination of the applicant's choice, unenclosed, enclosed or with parking lifts in any combination; they don't necessarily have to provide two enclosed spaces; it has to be on the site as opposed to street parking. If eliminating parking from your project, you have to provide replacement spaces on the site but can be in any combination of their choice of enclosed, unenclosed or with parking lifts or tandem parking. With this amendment, we cannot require enclosed spaces.

Chair Takahashi opened the public hearing.

Jennifer Griffin, Rancho Rinconada resident:

- Said she felt Gov. Brown had signed many strange laws recently, particularly some of the ones allowing additional liberties to developers for housing element sites. Said she was concerned about completely overriding the current laws, municipal laws about what goes into suburban homes and state laws.
- She referred to the city of Fremont and a bill started by an assemblyman from Fremont and another similar bill from Santa Monica and said it appeared that Fremont is having some problems if they are starting to have ordinances like this and getting the governor to sign them. Said she did not know what problems Fremont had as they have the largest amount of space of any city that is unbuilt in the entire state. Said she was not pleased with what is coming down from the governor, when they have no right to say anything about it. She said she had questions because she felt they were turning suburbia into duplexes; you have a home and it is becoming a duplex. She addressed the issue of Air B&Bs; and questioned if people were building those units to be able to circumvent hotel laws. Would someone buy a home and build one of these units? Having a structure for grandparents or a college student is acceptable but she did not support building one specifically to rent it out for Air B&B. She likened it to being an inn keeper living in suburbia and putting 1200 sq. ft. on a lot, potentially having 5 people living in the home. It also says that if you live within ½ mile of a transit, you don't have to have any parking places; does that mean if a VTA bus is ½ mile away and you have a 1200 sq. ft. home, that secondary accessory in your back yard could generate 4 cars and they would be on

the street. Said she felt they needed to look at the issue more, and Cupertino needs to make a statement about it because it is eroding. Said that she was pleased it was going to go to City Council.

Chair Takahashi closed the public hearing.

MOTION: Motion by Com. Lee, second by Com. Paulsen, and unanimously carried 5-0-0 to recommend that the City Council approve amendments to Chapter 19.08 under Definitions, Chapter 19.20 (Permitted, Conditional and Excluded Uses in Agricultural and residential zones) Chapter 19.24 (Agricultural (A) and Agricultural – Residential (A-1) Zones), Chapter 19.32 (Residential Duplex (R-2) Zones), Chapter 19.52 (Reasonable Accommodation), and Chapter 19.112 (Second Dwelling units in R-1, RHS, A and A-1 Zones), and 19.124 Parking Regulations per the draft resolution.

OLD BUSINESS: None

NEW BUSINESS: None

REPORT OF THE PLANNING COMMISSION

There was a brief discussion about the November 8th meeting being held on election night; Staff will keep everyone posted on next meeting date.

Environmental Review Committee:

No meeting.

Housing Commission:

No meeting.

Economic Development Committee Meeting:

No meeting.

Mayor's Monthly Meeting With Commissioners:

No report.

REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT: None

MISC.

Com. Lee:

- Announced the Cupertino Quota Club fundraiser on Saturday, October 29th at Original Pancake House open at 7 a.m. Brunch also from noon. (Open 7 a.m. to 3 p.m.) A flyer about the event will be sent.

ADJOURNMENT:

- The meeting was adjourned to next Planning Commission meeting on November 8, 2016 beginning at 6:45 p.m. (yet to be determined because of election night)

Respectfully Submitted:

/s/Elizabeth Ellis
Elizabeth Ellis, Recording Secretary

Approved as amended: January 17, 2017