



**COMMUNITY DEVELOPMENT DEPARTMENT**  
CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3308 [www.cupertino.org](http://www.cupertino.org)

## **CITY COUNCIL STAFF REPORT**

Meeting: May 19, 2015

### SUBJECT

**Item 7B:** General Plan Amendment to consider changes to citywide development allocations for office, commercial, and hotel uses, building planes, height limits.

### RECOMMENDED ACTION

Recommend that the City Council conduct a public hearing and take the following actions:

1. Make no further amendments to the General Plan (Community Vision 2040) adopted on December 4, 2014 (GPA-2013-01); and
2. Adopt Resolution No. 15-043 adopting a policy establishing procedures for authorization of General Plan amendments (Attachment B1).

### DESCRIPTION

Application No.: GPA-2013-01 (EA-2013-03)  
Applicant: City of Cupertino  
Property Location: City-wide

### BACKGROUND

On August 21, 2012, the City Council directed staff to prepare draft General Plan amendments to replenish office and hotel allocations; inform the Vallco Shopping District Specific Plan; consolidate individual requests from property owners; and address State law, and text clean-up.

In addition, in November 2013, a State-mandated update of the Housing Element of the General Plan was initiated. The Housing Element Update was combined with the General Plan Amendment process so that the City and community could fully evaluate and discuss issues in one comprehensive outreach and planning process. Please see the staff report for Item 7A. for additional detail on the 2014-2022 Housing Element.

The General Plan Amendment and Housing Element Update process has involved over 21 months of extensive community discussions and input provided during 27 public meetings, workshops, online comment surveys, and study sessions and hearings with the

Housing Commission, Planning Commission and City Council. For a detailed listing of the public input meetings leading up to the December 2, 2014 Council meeting and for recommendations previously made, please refer to the December 2, 2014 City Council staff report (Attachment B.2.) Copies of the staff reports from past study sessions and public hearings are available on the project website at [www.cupertinoogpa.org](http://www.cupertinoogpa.org) and at [www.cupertino.org/records](http://www.cupertino.org/records).

On December 4, 2014, the City Council reviewed three General Plan alternatives (Alternatives A, B and C – See Attachment B.3), including various Housing Element sites, and made the following decisions:

- Authorized staff to send the Draft Housing Element to HCD with amendments to the priority Housing Element sites for HCD’s review (See Staff Report for Item 7A for details.)
- Adopted Community Vision 2040, the City’s updated General Plan (available online at: [www.cupertino.org/gp](http://www.cupertino.org/gp)),
- Authorized processing of a Specific Plan for the Vallco Shopping District as follows:
  - Development allocation of a minimum of 600,000 square feet of retail, up to 2 million square feet of office, 389 units in the Housing Element with building heights, building planes and setbacks to be decided in the Specific Plan.
- Deferred the decision on the following General Plan items to a meeting in 2015 after receiving community input:
  - Development allocations for commercial, office and hotel uses, building heights and building planes,
  - Community Benefit program, and
  - Site-specific land use designation amendments and associated re-zoning for two properties – PG&E site located at 10900 N. Blaney Avenue and the Mirapath property located at 10950 N. Blaney Avenue.

The Council also directed staff to conduct more community input on the proposed General Plan amendments and research community benefit programs. The December 2, 2014 City Council staff report (Attachment B.2) provides a detailed discussion on the issues listed above.

## DISCUSSION

### *Community Workshop & Survey*

In order to gather additional input on key issues related to the General Plan, the City hosted a community workshop and made an online survey available to the public.

The workshop was conducted on February 4, 2015 and included over 80 participants. Attendees at the workshop gathered in small groups and discussed what they considered to be appropriate building forms and heights (including building planes) within different Special Areas, nodes and gateways in the city. The groups also provided input on whether or not the City should establish a community benefits program, and the types of benefits that should be required if a program were to be created. Attachment B.4 provides a summary of the feedback from the workshop.

Additionally, an online survey was made available to the public using an outreach platform called Peak Democracy, also used by other local agencies. The online survey consisted of two parts. The first part of the survey focused on building heights at the Special Areas, gateways and nodes. The second part focused on building planes and community benefits.

Responses from participants who registered on the Peak Democracy platform are called “on forum” responses. Registration ensures that each response is from a discrete participant and is not a multiple response from the same source. There were 382 on forum responses for Part A of the survey and 300 on-forum responses for Part B of the survey. The on forum responses of the results for Parts A and B of the survey are briefly summarized below (Attachment B.5 provides a detailed report):

- Over 80% of respondents stated that they were Cupertino residents.
- Over 55% of the respondents stated they do not want to see an increase in building heights for six of the seven areas identified.
- Over 50% of the respondents stated they do not want to see a change to the existing 1.5:1 building plane requirement along the south side of Homestead Road (between Linnet Lane and Swallow Drive) and the north side of Stevens Creek Boulevard (between Perimeter Road and Tantau Avenue).
- Over 65% of respondents think a community benefits program would be beneficial, but do not think ground floor retail should be required as part of a Community Benefits Program.
- The average priorities were ranked as follows but there was support for amenities in all the categories:
  - Parks/Recreation
  - Transportation enhancements (sidewalks, bike lanes, etc.)
  - Community services (e.g. teen center, library branch, etc.)
  - In-lieu fee to City (e.g. contribution towards school improvements or affordable housing)

Peak Democracy also allows participants that do not want to register to provide feedback. However, since it is difficult to ascertain whether the feedback is from discrete individuals or repeat responses from the same individuals, these are summarized separately as “off forum” responses. 429 off forum responses were received for Part A and 182 off forum responses for Part B of the survey. These are provided separately in Attachment B.6.

### ***Research on Community Benefits and Growth Allocation programs***

The Council also directed staff to research implementation of a community benefits program for projects that required additional development above a base height.

Extensive research was conducted into development models tied to community benefits in various communities (see Attachment B.7 for a white paper about Development Management). These included three basic approaches:

- *Community Benefit Incentive Zoning (CBIZ) Programs* - In these programs, the zoning allows additional development or height based on community amenities provided by a project. These range from formulaic approaches where projects are given additional development (floor area or height) if they provide items based on objective criteria and requirements such as green buildings, traffic reduction programs, etc. (e.g. Santa Monica and San Diego), to discretionary, non-formulaic models where maximum heights or development allocation may be set out in the General Plan but are not tied to a pre-determined checklist and the community amenities would be negotiated through a development agreement (e.g. Palo Alto and Berkeley).
- *Growth Allocation Programs* – These are programs that meter development to allow infrastructure improvements to keep up with development. These programs are adopted by cities of Morgan Hill, Brentwood, and Livermore. In each case, growth is already planned in the General Plan and it requires a meticulous and time-consuming process to score developments based on pre-determined objective criteria, decide which ones are allowed to proceed and then review them.
- *Land Use Regulation* - A community benefit model in Vancouver, Canada, was also briefly reviewed, that required the payment of specific dollar amounts for projects that were approved for rezoning. However, that program is not legally feasible. The white paper also notes that cities can implement, and control, growth and development through their General Plans, Specific Plans and zoning. In California, State Planning and Zoning Law allows the local legislative bodies the authority to establish their own procedures for the processing of amendments to its General Plan. Cities can also implement additional nexus fees (such as community facilities fees, transportation impact fees, utility impact fees, etc.) and additional design review guidelines to address the impacts of development. Cities can also enter into

negotiated Development Agreements with developers, which allow for developers to obtain vested rights and for the City to negotiate desired community amenities to address the impacts of development.

The following is a summary of pros and cons of the models based on the review of the various Community Benefit Incentive Zoning (CBIZ) and Growth Allocation models:

- Requiring community benefits (or in-lieu payments for community benefits) as an absolute condition of development, may constitute an exaction under California law, and thus the City may need to demonstrate a proportional relationship between the community benefit payment and the impact of the project.
- Formulaic zoning incentive programs (e.g., City of San Diego Downtown Community Plan) provide very little discretion since the development incentives and community benefits are predetermined and codified by zoning.
- Discretionary zoning incentive programs (e.g., City of Berkeley Downtown Area Plan) require protracted negotiation and discussion before the City can determine that a project applicants offer of “substantial community benefits” warrants granting of a bonus in height or floor area ratio. Also, the lack of specific criteria can lead to lack of transparency, difficulty in administering the program and lack of consistency between projects. A discretionary CBIZ program would also require updates to the City’s zoning code.
- Metering residential development annually (e.g., Morgan Hill, Brentwood, Livermore, etc.) would require changes to the Housing Element and is not advisable given the May 31, 2015 deadline for its adoption. The City would also need to ensure that any metering program would still allow its housing obligations to be met. Even if the process is implemented only for non-residential development, the program provides much less flexibility and is cumbersome to administer since it involves detailed criteria, scoring, a specific checklist of community benefits and deadlines for processing and building of development.
- A metering approach can create a competitive process where projects can showcase community benefits in order to be considered for processing. Morgan Hill is a good example of this process. A newer example is the City of Mountain View, where proposals for a limited amount of development are being reviewed along with a community benefit approach in the North Bayshore area.
- Growth allocation metering programs require an additional amount of planned growth in the General Plan (e.g. Brentwood and Morgan Hill). However, these programs can work well in years in which there are projects competing for development, since the quality of site plans and community benefits would be high. In years where there are fewer projects competing for an allocation that is

built-into the zoning or General Plan, quality of the development and/or community amenities may not be of the same quality as in competitive years.

- A process that provides procedures for General Plan amendments can provide the most flexibility since development assumptions are not already built in and cities have more discretion about amending General Plans, except with respect to legal requirements for Housing Element sites.

### ***Staff Recommendation Related to the General Plan***

The community survey and community input indicated the following concerns and wishes:

- Concern about additional growth and heights being built into the General Plan.
- There continues to be interest in community benefits/amenities being provided by development to improve transportation and transit, parks, facilities and schools.
- Staggering or metering growth instead of allowing it all at one time.
- There is a preference to see more detail about projects before any changes to the General Plan are contemplated.
- That the process should be more transparent and provide more information up front.

Based on Council direction, community input and research on community benefit models, staff is recommending that:

- No changes be made to Community Vision 2040 adopted in December 4, 2014 including:
  - No increase in existing General Plan building heights and building planes,
  - No increase in residential, commercial, office or hotel development allocations, or
  - No change in land use designations to any property.
- Council adopt a procedure to review General Plan amendments and authorize staff to process a limited number of General Plan amendments using a specific set of criteria (See Attachment B.1 for a description of the policy). The process is described in greater detail below.

### ***Proposed Process for Authorization of General Plan Amendments***

The recommended approach would establish clear community expectations that in order to be considered for General Plan amendments, projects would have to make a specific project proposal including a detailed description of voluntary community amenities offered, if any. This process would not apply to City-initiated General Plan amendments (such as the Housing Element, etc.).

The process would work as follows:

- The Council will consider the timing and processing of General Plan amendments once every year.
- As part of the annual cycle for applications, projects would provide conceptual plans for a brief preliminary review (site plan, project plans, elevations, perspectives, project description, etc.), the General Plan amendment(s) requested and a term sheet with a list of voluntary community amenities to be provided, if any.
- The list of voluntary community amenities could include: support for (i) school resources, (ii) Public open space, such as parks and trails (e.g. land and/or improvements, (iii) Public facilities and utilities, such as library, community center or utility, and (iv) transportation facilities with an emphasis on city-wide bicycle, pedestrian and transit improvements, such as community shuttles, pedestrian and bicycle bridges, transit center/stations, etc.
- Each cycle, staff would conduct a preliminary review of the proposed projects using the following criteria.
  - General Plan goals achieved by the project including, but not limited to, the following:
    - ✓ Site and Architectural design and neighborhood compatibility,
    - ✓ Brief description of net fiscal impacts (revenue such as sales tax, transit occupancy tax or other revenue, a diverse economic base, etc.),
    - ✓ The provision of affordable housing,
    - ✓ Sustainability.
  - List of General Plan amendments (and any other zoning amendments or variances) requested.
  - A list of voluntary community amenities as discussed above.
  - Staff time and resources required to process the project.
- The process would include city-wide notification.
- The Council would conduct a public meeting, take public input and make the final decision on which projects would be authorized for processing of a General Plan amendment(s).
- Only projects that were authorized by the Council for processing of a General Plan amendment(s) would move forward for environmental and entitlement review. The subsequent project applications would have to be substantially similar to the project authorized by the Council in order to move forward for processing.

- Projects that were not authorized for the annual round would have to re-apply for the next annual round in order to be considered for processing. This would allow them to modify their project for the next cycle.

In addition to achieving both Council and community goals, the process would also have the following benefits:

- It would allow the City to manage the process of General Plan amendments in a more orderly manner (General law cities, such as Cupertino, are only allowed four General Plan amendments every year),
- It would create a more competitive process when compared to the current ad hoc approach to processing applications as they come in,
- It would allow applicants to showcase their projects and their voluntary community amenity program to the Council and the community,
- The Council, public and staff would have a better preview of projects before the Council made a decision on which projects would be processed.
- It would create an upfront and transparent process before projects were authorized to move forward for processing.

The Council decision would only authorize staff and other resources for processing of the projects. It would not guarantee approval of projects. Each project would be reviewed in a manner similar to the City's project review process including a review of environmental impacts per the California Environmental Quality Act (CEQA), adherence to applicable codes and laws, etc.

### **ENVIRONMENTAL IMPACT REPORT (EIR)**

Pursuant to the California Environmental Quality Act (CEQA), this General Plan Amendment is considered a project that must be reviewed for potential environmental impacts. The environmental review was completed along with the Housing Element project. The Draft Environmental Impact Report (EIR) for the two projects was made available for public review and comment for a 45-day period ending on August 1, 2014. As required by CEQA, subsequently, a Response to Comments document (RTC), to respond to comments received regarding the adequacy of the Draft EIR, including corrections necessary to the Draft EIR, was prepared.

The Final EIR, comprising of the RTC document and the Draft EIR was certified by the City Council on December 4, 2014. No actions related to environmental review are required by the City Council.

## PUBLIC NOTICING, OUTREACH AND COMMENTS

### *City Council – May 19, 2015*

The following table summarizes the noticing for this meeting:

Notice	Agenda
<ul style="list-style-type: none"> <li>▪ Courtesy email sent to all interested parties signed up through the project website</li> <li>▪ Newspaper Display Ad (at least <i>10 days prior to hearing</i>)</li> <li>▪ Newspaper Display Ad (at least <i>10 days prior to hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ City's official notice bulletin board (<i>6 days prior to the hearing</i>)</li> <li>▪ City of Cupertino's website (<i>6 days prior to the hearing</i>)</li> <li>▪ Project website (<i>5 days prior to hearing</i>)</li> </ul>

The complete list of public outreach meetings leading up to the December 2, 2014 City Council meeting is provided in the December 2, 2014 Staff Report (Attachment B.2)

In addition to the public input collected at the February 4, 2015 workshop and the online survey, public comments have been sent by members of the public. These have been compiled into Attachment B.8.

## NEXT STEPS

### **Community Vision 2040 Clean-up Edits**

As part of General Plan Amendment process, the Santa Clara Valley Water District (SCVWD) recommended minor edits to certain General Plan policies and strategies. Due to the lateness of their comments, their recommendations could not be incorporated into Community Vision 2040 in time for the December 2014 adoption. Should the Council wish to incorporate these changes, they can be brought back to the City Council in conjunction with a future General Plan amendment.

### **Staff Recommendation Summary**

If Council adopts the staff recommendation:

- There will be no changes to the General Plan – Community Vision 2040, except for adoption of the 2014-2022 Housing Element.
- The final General Plan including text, maps and graphics will be formatted and prepared for posting online and printing.
- As noted earlier in this report, staff will not make General Plan clean-up edits suggested by the Santa Clara Valley Water District. Instead they will be brought for Council consideration in conjunction with a future General Plan amendment.

- Applications for General Plan amendments will have to follow the newly adopted Council policy and will require authorization from the Council for processing.

### **General Plan Fee**

Since this will conclude the General Plan Amendment process, staff will compile the cost of the preparation of the General Plan and EIR and bring back a General Plan fee for the Council's consideration in June 2015. The fee will be charged on a square foot basis for projects that will tier off the General Plan EIR. Projects that paid into the General Plan process will not have to pay the fee.

## **ALTERNATIVES FOR COUNCIL CONSIDERATION**

### *General Plan Amendment Project Components*

If the Council wishes staff to process amendments to the General Plan in specific areas, it can provide direction to staff to bring back the specific amendments to be heard at a future public hearing after Planning Commission consideration. Attachment B.2 provides a detailed description of issues that were presented for Council consideration at the December 2, 2014 public hearing on the General Plan amendment. These are briefly listed below:

- Development allocations
- Building heights/building planes
- Land use designation and zoning changes for the PG&E site at 10900 N. Blaney Avenue and the Mirapath site at 10950 N. Blaney Avenue. While staff does not recommend bringing the application for PG&E back for the City Council's consideration, staff recommends that the Mirapath site be brought back for consideration at a later date.

### *Default Process for General Plan Amendment Applications*

If the Council does not wish to authorize the policy for authorization of General Plan amendment applications, the City would continue with the current process of taking in General Plan amendment applications as they came in. While this process continues to involve the community on a project-by-project basis, it would not have the same benefits as the proposed process where all the applications and voluntary community amenities programs could be preliminarily reviewed at the same time on an annual basis.

---

Prepared by: Piu Ghosh, Senior Planner

Reviewed by: Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- B.1. Resolution No. 15-043 adopting a policy for Procedures for Authorization of General Plan Amendment applications
- B.2. December 2, 2014 City Council Staff Report
- B.3. Concept Alternative Maps (Alternatives A, B and C)
- B.4. February 4, 2015 Workshop Feedback Summary
- B.5. Peak Democracy Survey On Forum Responses Summary (Part A and B)
- B.6. Peak Democracy Survey Off Forum Responses Summary (Part A and B)
- B.7. White Paper on Development Management Programs
- B.8. Public Comments