

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE CHAPTERS 1.18, 9.15, 9.18, 15.04, AND 16.72**

WHEREAS, the City Code of the City of Cupertino requires periodic updates in order to improve City operations and bring the Code up to date with current law and policy; and

WHEREAS, this Ordinance makes minor revisions to the Cupertino Municipal Code to reflect changes in law, provide clarification to the community, and provide for improved customer service and administration of City business.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 4: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on November 7, 2023 and **ENACTED** at a regular meeting of the Cupertino City Council on November 21, 2023 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Hung Wei, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Christopher D. Jensen, City Attorney	 _____ Date

Attachment A – An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 1.18, 9.15, 9.18, 15.04, and 16.72

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.

1. Amendments to Chapter 1.18 (Claims Against the City)

1.18.020 Form of claim.

All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910. A claim may be submitted to the City electronically via the City's website on a form approved by the City Clerk.

2. Amendments to Chapter 9.15 (Prohibition of Expanded Polystyrene (EPS) Foam Food Service Ware)

CHAPTER 9.15: REGULATION OF FOOD SERVICE WARE AND POLYSTYRENE FOAM COOLERS USED BY FOOD PROVIDERS AND SOLD BY RETAILERS

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9.15.120 Exemptions to the Regulation of Food Service Ware and Polystyrene Foam Coolers Used by Food Providers and Sold by Retailers.

A. A Food Provider may seek an exemption from the requirements under Section 9.15.110 due to a “unique packaging hardship” under Subsection B of this section, “unused inventory” under Subsection C of this section, “significant economic hardship” under Subsection D, or request a temporary exemption to request extra time for compliance under Subsection E.

B. The Food Provider must demonstrate that no reasonably feasible alternative exists for a specific and necessary prohibited Single-Use food service ware item to qualify for a “unique packaging hardship” exemption.

C. The Food Provider must demonstrate that before October 6, 2022, it purchased the prohibited food service ware which cannot be returned to the distributor and, despite the food vendor's best efforts, the prohibited food service ware remains in inventory, to qualify for an “unused inventory” exemption.

D. The Food Provider must demonstrate that the provisions of this Chapter would cause significant economic hardship. “Significant economic hardship” may be based on, but not limited to, demonstrating that suitable Single-use Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Single-Use Food Service Ware is particularly burdensome to the Food Provider based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Provider, and other factors. Reasonable added cost for an item required by this Chapter shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director shall consider the following information: ability of the Food Provider to recover the additional expense by increasing its prices, outside funding, and other options.

E. The Food Provider must demonstrate that for other reasons not already stated it needs additional time to comply with the provisions of this Chapter.

F. The Food Provider may submit a written application for an exemption to the Environmental Programs Division. The Director may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to one year. The determination of the Director shall be final and is not subject to appeal.

G. Prepackaged Food delivered from outside the City is exempt from the provisions of this Chapter.

H. Disposable Food Service Ware that is entirely Aluminum Foil-based including, but not limited to, aluminum trays, aluminum foil wrappers and aluminum foil baskets, is exempt from the provisions of this Chapter.

I. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

3. Amendments to Chapter 9.18 (Stormwater Pollution Prevention and Watershed Protection)

9.18.215 Litter Prevention and Enforcement.

A. Violations.

1. It is unlawful for any person to sweep, throw, deposit, place, or drop without picking up, any litter into or upon any public street, way, sidewalk, parking lot or other public place, or in or upon private property in the City into or upon which the public is admitted by easement or license.

2. It is unlawful for any person to throw or deposit litter in any fountain, pond, creek, stream or other body of water in a park or elsewhere within the City.

3. It is unlawful for any person to collect any garbage, mixed recyclables, or other materials from public or privately authorized outdoor receptacles, kept or accumulated within the City, unless such person is an agent or employee of the City acting within the course and scope of his or her employment, or is acting pursuant to a franchise awarded by the City to act as garbage collector.

4. It is unlawful for any person to discard , deposit, or maintain litter on any occupied private property within the City, whether owned by such person or not.

5. It is unlawful for any person to discard, deposit, or maintain litter on any open or vacant private property within the City whether or not the property is owned by such person.

6. It is unlawful for any person to drive or move any open vehicle or trailer within the City unless there is a tarp over the contents or the material is constructed and loaded so as to ensure that all litter is prevented from being blown or deposited upon any street, alley or other public or private place.

B. Collection and Maintenance.

1. Persons placing material intended for disposal or recycling in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being scattered, carried, or deposited by the elements or animal scavengers upon any street, sidewalk, parking lot, creek, park or other public or private place.

2. Persons placing material intended for disposal or recycling in any public or privately authorized outdoor receptacle shall ensure that the lid is maintained completely closed. The over-filling of any outdoor receptacle intended for, but not limited to, trash, compostable organics and recyclables, in a manner that does not allow the lid to be completely closed is prohibited. The lid of a residential yard waste bin may be left partially open so long as the greater part of the yard and tree trimmings are contained if it is necessary to leave the lid partially open due to the branches or limbs not fitting completely into the bin with the lid closed. Yard waste bins containing food waste must be left with lids completely closed when not being serviced.

3. Uncontained large items originating from single-family homes that will not fit into a receptacle may be placed on private property adjacent to the City right-of-way for scheduled collection within 24 hours of such collection by an agent or employee of the City or by the awardee of a franchise by the City to act as garbage and recycling collector. Any such bulky item(s) may not be placed in the City right-of-way while awaiting collection.

4. Persons owning or occupying property shall maintain the premises, including the perimeter and the City sidewalk in front of their premises, free of loose litter.

5. Persons sharing Trios and cigarette urns placed outside of retail areas for public use, as required in section 9.18.210.4.P., must also share equally in the responsibility of emptying the receptacles so that they do not overflow and maintaining the area around the receptacles so that it is free of loose litter.

C. Exceptions. The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers of general circulation as defined by general law, nor any periodical or current magazine regularly published; provided, however, that no newspaper shall be thrown, deposited or distributed upon any premises where the owner or inhabitant thereof shall have previously advised, in writing, the publisher or distributor of such newspaper not to do so; and no newspaper shall be thrown, deposited or distributed upon any premises where two (2) or more editions of the same newspaper remain unclaimed by the owner or occupant thereof.

4. Amendments to Chapter 15.04 (Waterworks System – Rates and Charges)

15.04.010 Definitions.

The following terms when used in this chapter have the following respective meanings:

- A. “City” means the City of Cupertino.
- B. “Customer” means any person, firm, company, corporation, partnership, association, the City, any public corporation, political subdivision, city, county, district, the State of California or the United States of America, or any department or agency of any thereof, who uses water furnished by the water system.
- C. “Council” means the City Council of the City.
- D. “Lease” means that certain lease entered into on October 1, 1997 between the City and San Jose Water Company, a California corporation whereby the City water system was leased for a period of twenty-five years, or any subsequent lease of the City water system entered into by the City.
- E. “Water” means water furnished through the water system.
- F. “Water facilities” means existing water system equipment and appurtenances.
- G. “Water provider” means the San Jose Water Company or any subsequent lessee of the City water system.
- H. “Water service” means the services, facilities and water furnished or available to premises by the water system.
- I. “Water system” means the enterprise system for the supply, treatment, storage, transmission and distribution of water, including lines, easements, reservoirs, water rights, water tanks, water mains, wells, pumps, pumping equipment, storage, treatment, transmission and distribution facilities, and other works, properties or structures necessary or convenient as more specifically described in Exhibit B attached to the lease.
- J. “Service area” means the territory serviced by the water system as described in the lease.

5. Amendments to Chapter 16.72 (Recycling and Diversion of Construction and Demolition Waste)

16.72.050 Information Required Before Issuance of Permit.

Every applicant shall submit a properly completed waste management plan on a form approved by the Public Works Director, as a portion of the building or demolition permit application process for a covered project.

A. The vendor that the applicant proposes to use to haul the materials must be consistent with the franchise currently in effect pursuant to the provisions of Chapter 6.24;

B. Approval by the Director of Public Works, or designee, of the waste management plan as complying with the applicable California Green Building Standards Code shall be a condition precedent to the issuance of any building or demolition permit for a covered project.