

ORDINANCE NO. 23-2253

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE CHAPTER 19.76 (TABLE 19.76.030) TO ALLOW
PRIVATELY OPERATED EDUCATIONAL USES AND PRIVATELY OPERATED
PUBLIC SERVING USES IN THE BA ZONING DISTRICT

The City Council of the City of Cupertino finds that:

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 19.76.030 are proposed to achieve internal consistency. The amendments are consistent with the Recreation, Parks, and Community Services Element of the General Plan, which in Strategy RPC-2.1.2 states that the City will Zone all public school sites for public use to allow for the public to use [the] sites, when not in use by schools, through shared arrangements. The proposed Ordinance is intended to update the City's conditionally allowed uses in the BA Zone, in accordance with historical practices, as described in the staff report presented to the Planning Commission and City Council.

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

The proposed amendment is categorically exempt from the CEQA pursuant to section 15301 (Existing Facilities) of the CEQA Guidelines because it can be seen that the regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment and none of the exceptions in CEQA Guidelines section 15300.2 apply.

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 amendment is not being applied to any specific site. The modifications would be applied to sites in the BA Zone which are currently maintained as

publicly operated public serving uses. The expansion of allowed uses to privately operated public serving uses is not expected to result in a substantial change in operations and therefore, the sites in the BA zone are considered to be physically suitable for the anticipated uses.

4. The proposed zoning will promote orderly development of the City.

The proposed amendment is intended to promote the continued use of BA zoned properties for public serving uses with flexibility in operator. The amendment is not expected to result in significant modifications or physical changes to these sites which are currently used for public serving uses.

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 amendment is not being applied to any specific site. The modifications would be applied to sites in the BA Zone which are currently maintained as publicly operated public serving uses. The expansion of allowed uses to privately operated public serving uses is not expected to result in a substantial change in operations. The effect of the private operation on the health, safety, peace, moral and general welfare of persons residing or working in the neighborhood of a site will be reviewed when an application is made for a specific site.

WHEREAS, Cupertino Municipal Code Chapter 19.76 outlines the requirements for uses proposed in the City's Public Building (BA) zoning district; and

WHEREAS, the maintenance and retention of public school sites as educational facilities is considered as being in the public interest; and

WHEREAS, the City has certain General Plan Goals, Policies and Strategies that support the retention of publicly owned property, it does not have regulations that specifically address the private use of these properties, and that the amendments to Chapter 19.76 will provide a standard to review private operations on publicly owned property;

WHEREAS, the Ordinance amends the City's Municipal Code as set forth in Exhibit A to clarify the development standards to be applied to private uses on publicly owned land within BA Zones; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare; and

WHEREAS, adoption of the Ordinance is exempt from CEQA under Guidelines section 15301 because it can be seen that the regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on November 14, 2023 to consider the Ordinance; and

WHEREAS, on November 14, 2023, by Resolution 2023-14, the Planning Commission recommended on a unanimous vote that the City Council adopt the proposed Municipal Code Amendment to clarify development standards in the Public Building (BA) Zones; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on December 5, 2023, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

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 shown below. Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted in 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.

1. Table 19.76.030 in Section 19.76.030 of the Cupertino Municipal Code is hereby amended to read as follows:

Table 19.76.030 - Permitted, Conditional, and Excluded Uses in BA, BQ and T Zones

Uses	Zoning Districts		
	BA	BQ	T

Uses	Zoning Districts		
1. Buildings and other uses on land owned or utilized by a federal, State, county, or city government or authority, or by a special district created for public purposes under the laws of the State of California are permitted in a BA zone.	P	-	-
2. <u>Privately operated educational uses and privately operated public serving uses, including, but not limited to, day care and private educational facilities, which, in the opinion of the Director of Community Development, are similar to the permitted uses in the BA zoning district, and which do not create significant adverse impacts to the surrounding area.</u> ⁽¹⁾	CUP - PC		
3. Rotating homeless shelter provided that the following conditions are met: a. Shelter is located within an existing church structure; b. The number of occupants does not exceed twenty-five; c. The hours of operation do not exceed six p.m. to seven a.m.; d. Adequate supervision is provided; e. Fire safety regulations are met; and f. Operation period does not exceed two months in any twelve-month period at any single location.	-	P	-
4. Permanent emergency shelter provided the following conditions are met: a. Section 19.76.030(2)(b), (d), (e); b. A management plan is provided which includes a detailed operation plan. c. Shelter is available to any individual or household regardless of their ability to pay; and d. Occupancy is limited to six months or less.	-	P	-
5. Public utility companies regulated by the Public Utility Commission for uses restricted to administrative and office buildings, communication equipment buildings, including parking, landscaping and maintenance within an enclosed area or storage yard;	-	CUP - PC	-
6. Religious, civic, and comparable organizations, for uses restricted to church buildings, community halls, administrative buildings, schoolrooms, recreational facilities, and athletic fields, convents, seminaries, and similar uses customarily associated with churches, including parking and landscaping areas;	-	CUP - PC	-

Uses	Zoning Districts		
7. Childcare facility, residential care facilities, congregate residence, hospitals, vocational and specialized schools;	-	CUP - PC	-
8. Lodges, clubs, country clubs, including accessory uses such as swimming pools, picnic areas, golf courses, driving tees or ranges, miniature golf courses (all uses to be restricted to members of the above organizations and their guests);	-	CUP - PC	-
9. Large-family daycare home;	-	CUP - PC	-
10. Airports, airfields and helicopter terminals, including administration and service buildings, maintenance and storage yards;	-	-	CUP - PC
11. Railroads, including terminals and stations, freight yards, marshaling yards, storage yards, administrative and service buildings;	-	-	CUP - PC
12. Bus terminals and stations, including administration and service buildings, maintenance and storage yards;	-	-	CUP - PC
13. Freeways, expressways, and other roads with limited or controlled access, including administrative buildings and maintenance yards.	-	-	CUP - PC
Key:			
P – Permitted Use			
- – Not Allowed			
CUP - Admin. – Conditional Use Permit issued by the Director of Community Development			
CUP - PC – Conditional Use Permit issued by the Planning Commission			
CUP - CC – Conditional Use Permit issued by the City Council			
Ex – Excluded Uses			

(1) Provided such use is conducted on property owned by a federal, State, county, or city government or authority, a special district created for public purposes under the laws of the State of California, or any other governmental agency, and leased for said uses.

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: California Environmental Quality Act.

The adoption of the Ordinance is exempt from the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA"), under Guidelines section 15301 because CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action of enacting regulations for use of existing public facilities for private operations, requiring a discretionary use permit, would have no or only a de minimis effect on the environment because it would result in negligible or no expansion of use. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

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

SECTION 5: 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 December 5, 2023 and **ENACTED** at a regular meeting of the Cupertino City Council on February 6, 2024 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> _____ Sheila Mohan, Mayor City of Cupertino	 _____ Date
<p>ATTEST:</p> _____ Kirsten Squarcia, City Clerk	 _____ Date
<p>APPROVED AS TO FORM:</p> _____ Christopher D. Jensen, City Attorney	 _____ Date