

RESOLUTION NO. 2023-17

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 19.12, CHAPTER 19.28 AND CHAPTER 19.112 REGARDING TWO-STORY PERMIT AND ACCESSORY DWELLING UNIT (ADU) LAWS

The Planning Commission recommends that the City Council:

1. Determine that Project is exempt under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of 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 amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment. The proposed ordinance is further exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17, which provides a statutory CEQA exemption to ADU ordinances adopted to implement Government Code Sec. 65852.2.
2. Adopt the proposed amendments to the Municipal Code as indicated in Exhibit A, with the following modifications:
 - Modify 19.28.110(A)(5) to read:

Mechanical, heating or cooling equipment or associated piping installed on the roof shall be screened from the public right of way.
 - Tables 19.112.030A, 19.112.030B, and 19.112.040 – Remove major transit stop and transit corridor thresholds for height and second story allowances.
 - Modify Table 19.112.040 Row A to read:

A maximum of three ADUs per single-family lot in any combination of the following, subject to the underlying zoning standards for lot coverage, floor area, open space, and setback:

- No more than one attached ADU
- No more than one conversion of existing space ADU (whether in principal dwelling unit or existing accessory structure).
- No more than one detached ADU, or
- No more than one Junior ADU

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this 14th day of November, 2023, by the following roll call vote:

AYES: COMMISSIONERS: Lindskog, Fung, Scharf, Madhhipatla, Mistry

NOES: COMMISSIONERS: None

ABSTAIN: COMMISSIONERS: None

ABSENT: COMMISSIONERS: None

ATTEST:

APPROVED:

/S/ Piu Ghosh

/S/ Steven Scharf

Piu Ghosh
Planning Manager

Steven Scharf
Chair, Planning Commission

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTER 19.12, CHAPTER 19.28 AND CHAPTER 19.112 REGARDING TWO-STORY PERMIT AND ACCESSORY DWELLING UNIT (ADU) LAWS

The City Council of the City of Cupertino finds that:

1. An assessment of the City's development review processes and requirements revealed that out of the 768 Planning permit applications that have been received since November of 2021, the City has taken in 98 Two-Story Permit applications, the most of any codified permitting process. To improve efficiency, staff proposes to eliminate the discretionary Two-Story Permit requirement, with the intended result to streamline the permitting process and save residents time and money when upgrading their homes.
2. State Law changes have rendered the City's Accessory Dwelling Unit ordinance (CMC 19.112) obsolete and unenforceable.
3. 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 CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption.

The Cupertino Municipal Code is further 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 re-adoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

Determine that Project is exempt under the requirements of the California Environmental Quality Act (CEQA) of 1970, and CEQA Guidelines (collectively, "CEQA") subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of 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 amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment. The proposed ordinance is further exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17, which provides a statutory CEQA exemption to ADU ordinances adopted to implement Government Code Sec. 65852.2.

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 December 19, 2023 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN

<p>SIGNED:</p> <p>_____</p> <p>Hung Wei, 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>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

ATTACHMENT A - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTER 19.12, CHAPTER 19.28 AND CHAPTER 19.112 REGARDING TWO-STORY PERMIT AND ACCESSORY DWELLING UNIT (ADU) LAWS

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.

1. Amendments to Title 19 concerning the Two-Story Permit

19.12.030 Approval Authority.

Table 19.12.030 shows the approval authority, Noticing Radius, Expiration Date and Extension Dates for different types of Permits.

Table 19.12.030 - Approval Authority

Type of Permit or Decision A, B	Administrative Review		Arts and Culture Commission	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period C	Noticing/ Noticing Radius D	Posted Site Notice	Expiration Date E	Chapter/ Findings
General Plan Amendment										
Major F	-			R	F	PH	CA. Govt. Code 65350-65362	Yes	-	CA. Govt. Code 65350-65362
Minor G	-			R	F	PH		Yes	-	
Zoning Map Amendments										
Major F	-			R	F	PH	CA. Govt. Code 65853-65857	Yes	-	19.152.020
Minor G	-			R	F	PH		Yes	-	
Zoning Text Amendments	-			R	F	PH	CA. Govt. Code 65853-65857	-	-	19.152.030
Specific Plans	-			R	F	PH	CA. Govt. Code 65350-65362	-	-	20.04.030
Development Agreements	-			R	F	PH	CA. Govt. Code 65867	Yes	-	19.144.120
Development Permits										
Major F, H	-			F/R	A1/F	PM	19.12.110/300'	Yes	2 years	19.156.050
Minor G	F			A1	A2	PM		Yes	2 years	
Conditional Use Permits										
Major F, H, I	F			A1/F/R	A1/ A2/F	PH	CA. Govt. Code 65905	Yes	2 years	19.156.050
Minor G, I	F			A1/F/R	A1/ A2/F	PH		Yes	2 years	
Temporary	F			A1	A2	-	None	No	1 year	None/ 19.160.030
Density Bonus (Residential)				R	F	Based on concurrent application	19.56			
Adult-Oriented Commercial Activity (CUP)				R	F	PH	CA. Govt. Code 65905/300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval										
Major J	F			A1	A2	PM	19.12.110/	Yes	2 years	19.168.030
Minor K	F			A1	A2	PM		Yes	2 years	
Amendment										
Major F, H	-			F	A1	Varies L		Yes	2 years	19.44,

Table 19.12.030 - Approval Authority

Type of Permit or Decision A, B	Administrative Review		Arts and Culture Commission	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period C	Noticing/ Noticing Radius D	Posted Site Notice	Expirati on Date E	Chapter/ Findings	
Minor G	F			A1	A2	Varies L	Depends on permit being amended L	Yes	2 years	19.144, 19.156, 19.164	
Minor Modification	F			A1	A2	-	None	No	2 years	19.164	
Hillside Exception/ Height Exception/ Heart of the City Exception I	-			F	A1	PH	19.12.110/300'	Yes	2 years	19.40.080, 19.24.070, 19.136.090	
Variance	F			A1	A2	PH	CA. Govt. Code 65905	Yes	2 years	19.156.060	
Status of non- conforming Use	-			F	A1	PH	19.12.110/300'	Yes	-	19.140.110	
Wireless Antennas I	F			F/ A1	A2	Varies I	Depends on application type	Yes	2 years	19.136.090	
Signs											
Permits	F			A1	A2	-	None	No	1 year	19.104	
Neon, Reader board & Freeway Oriented Signs I	F	-		F/A1	A1/A2	PM	19.12.110/300'	No	1 year	19.104	
Programs	F			A1	A2	-	None	No	1 year	19.104	
Exceptions I	-	-		F	A1	PM	19.12.110/ Adjacent	Yes	1 year	19.104.290	
Parking Exceptions I	FM	-		F/A1	A1 /A2	Varies M	19.12.110/ Adjacent/ 300' N	Yes	1 year	19.124.050	
Fence Exceptions	F	-		A1	A2 L	PM	19.12.110/ Adjacent	Yes	1 year	19.48.060	
Front Yard Interpretation	F			A1	A2	PM	19.12.110/ Adjacent	Yes	1 year	19.08	
R-1 Ordinance Permits											
Two-story-I	F	-		F/A1	A1-L/A2	Varies-I	19.12.110/ Adjacent	Yes	1-year	19.28.140	
Minor Residential	F			A1	A2	CP		No	1 year	<u>19.28.140</u>	
Exceptions I	-	-		F	A1	PM		Yes	1 year		
Miscellaneous Ministerial Permit	F			-	-	None	Adjacent	Yes	1 Year	19.28.150 and 19.40.090	
Miscellaneous Ministerial Permit				Not Allowed							

Table 19.12.030 - Approval Authority

Type of Permit or Decision A, B	Administrative Review		Arts and Culture Commission	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period C	Noticing/ Noticing Radius D	Posted Site Notice	Expiration Date E	Chapter/ Findings
Protected Trees										
Tree Removal	F			A1	A2	CP	Adjacent unless exempt	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-			F	A1	PM	19.12.110/ 300'	Yes	-	14.18
Tree Management Plan	F			A1	A2	-	None	No	-	14.18
Retroactive Tree Removal	F			A1	A2	-	None	No	-	14.18
Reasonable Accommodation	F			A1	A2	-	None	No	1 year	19.52.050
Extensions O										
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F			A1	A2	-	None	No	1 year	
Neon, Reader board & Freeway Oriented Signs	F			A1	A2	-	None	No	1 year	
Two Story Permits, Minor Residential Permits and Exceptions	F			A1	A2	-	None	No	1 year	
Tree Removals	F			A1	A2	-	-	No	1 year	
All other projects	F			A1	A2	-	19.12.110/ None	No	2 years	
Miscellaneous Ministerial Permit	Not Allowed									
Public Art Architectural and Site Approval Permits										
Public Art	-		F	-	A1	PM	None	None	None	2.80 and 19.148
Art in lieu payment	-		R	-	F	PM	None	None	None	2.80 and 19.148
KEY:										
R—Review and recommendation body						F—Final decision-making body unless appealed				
A1—Appeal Body on first appeal						A2—Appeal body on second appeal				
PH—Public Hearing						PM—Public Meeting				
CP—Comment Period										

Notes:

- A. Permits can be processed concurrently with other applications, at the discretion of the Director of Community Development.
- B. Projects with combined applications shall be processed at the highest level of approval in conformance with Section 19.04.090.
- C. Public Hearing: Projects types that need noticing pursuant to the CA Government Code; Public Meeting: Project types that need only a mailed notice and no newspaper notices; Comment Period: Project types that need only a mailed notice and do not need a public hearing or public meeting.
- D. Noticing Radius of an application in a combined application shall correspond to the maximum noticing radius required for any one of the applications.
- E. Expiration date of an application in a combined application shall correspond to the maximum expiration date allowed for any one of the development applications (not including Subdivision Map Act applications, General Plan Amendments and Zoning Map or Text Amendments.)
- F. Major General Plan Amendment, Conditional Use Permit, Development Permit application - for more than ten thousand square feet of commercial and/or industrial and/or office and/or other non-residential use, or greater than six residential units.
- G. Minor General Plan Amendment, Conditional Use Permit, Development Permit application - for ten thousand square feet or less of commercial and/or industrial and/or office and/or other non-residential use, or six or less residential units.
- H. City Council review for applications with new development greater than fifty thousand square feet of commercial, and/or greater than one hundred thousand square feet of industrial and/or office and/or other non-residential use, and/or greater than fifty residential units.

Planning Commission review for all other applications.
- I. Please see specific zoning district regulations or chapters in this title that apply to the subject property or project for approval authority.
- J. Major Architectural and Site Approval application - architectural and site approval for all projects that are not a Minor Architectural and Site Approval application.

K. Minor Architectural and Site Approval application - single family home in a planned development zoning district, minor building architectural modifications, landscaping, signs and lighting for new development, redevelopment or modification in such zones where review is required and minor modifications of duplex and multi- family buildings.

L. Meeting type and noticing are dependent on the underlying permit being modified.

M. Parking Exceptions approved by the Director of Community Development need a comment period.

N. Parking Exceptions in Single-family residential (R1) zones and Duplex (R2) zones need adjacent noticing.

All other Parking Exceptions need notices within three hundred feet of the exterior boundary of the subject property.

O. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the extension.

19.12.110 Noticing.

A. Notice of Public Hearing: Noticing shall be provided in the following manner for applications that need a public hearing:

1. Notice of hearing shall be given by publication once in a local newspaper of general circulation not less than

ten days prior to the date of the hearing as provided in Section 65090 of the California Government Code;

2. The City shall mail written notice by first class mail to:

a. Each owner of record of real property within the noticing radius per Section 19.12.030 of the exterior boundary of the property for which the application is made as the owner of record is shown in the last tax assessment roll pursuant to Section 65091 of the California Government Code;

b. Owner(s) of subject site or his or her authorized agent

c. Project applicant(s)

d. Local agencies expected to provide water, sewage, streets, roads, schools or other essential facilities or services to the proposed project;

e. Any individual or entity that has filed a written request with the City Clerk requesting notification of

public hearings.

3. If the number of owners to whom notice would be mailed or delivered pursuant to subsection A2 above is greater than one thousand, in lieu of mailed or delivered notice, the Director may provide published notice as provided in Government Code Section 65091(3).

4. The notice shall contain the following:

- a. The exact address of the property, if known, or the location of the property, if the exact address is not known;
- b. The date on which action on the application will be taken;
- c. A brief description, the content of which shall be in the sole discretion of the City, of the proposed project;
- d. Reference to the application on file for particulars;
- e. A statement that any interested person, or agent thereof, may contact the city for additional information and/or plan.

Typographical and/or publishing errors shall not invalidate the notice nor any City action related to the notice.

B. Notice of Public Hearing for Zoning Text Amendments:

1. For amendments to zoning regulations: Notice of such hearing (publication) shall be given in the manner prescribed in Section 19.12.110 A(1) of this chapter.
2. For amendments to permitted uses of real property: Notice (mailing or publication) shall be given pursuant to Sections 19.12.110 A(2) or A(3), as the case may be.

C. Notice of Public Meeting: For projects requiring notice of a public meeting, notice shall be mailed in accord with 19.12.110A(2) or A(3), as the case may be, at least ten days prior to the date of the meeting date.

D. Notice of Comment Period: For projects requiring notice of a comment period, notice shall be mailed in accord

with 19.12.110A(2) and A(5), fourteen calendar days prior to the date of action on the application.

1. For permits issued pursuant to Chapter 19.28, Single Family Residential, the mailed notice shall include a copy of the site plan and elevation plans of the proposed project.
2. For permits issued pursuant to Chapter 14.18, Protected Trees, the mailed notice shall include a copy of the site plan and tree replacement/mitigation plan.

E. The City may also give notice of public hearings/public meetings in any other manner it deems necessary or desirable. If the Director of Community Development believes the project may have impacts beyond the range of the mailed notice, particularly on nearby residential areas, the Director, in his or her discretion, may expand noticing beyond the stated requirements in Section 19.12.030.

Compliance with the procedures set forth in this section shall constitute a good-faith effort to provide notice, and the failure to provide notice, and the failure of any to receive notice, shall not prevent the City from proceeding with a hearing, meeting or from taking any action nor affect the validity of any action.

F. Posted Site Notice:

1. Applicants shall install notice(s) on the subject site that is/are clearly visible and legible from the right-of-way in accord with the requirements of Table 19.12.030.
 - a. Applicants must install a site notice in the front yard of the subject site.
 - b. For all applications other than ~~Two Story Permits~~, Residential Design Review, Miscellaneous Ministerial Permits, and Tree Removal applications in R1 or R2 zones, if the

subject site has more than one property line abutting a street, the applicant may be required to install more than one notice.

2. The notice shall be a weatherproof sign, firmly attached to 5 foot tall posts and:
 - a. For ~~Two Story Permits~~, Residential Design Review, Miscellaneous Ministerial Permits, and Tree Removal applications in R1 or R2 zones, shall be at least 2 feet tall and 3 feet wide.
 - b. For all other applications that need a site notice, shall be at least 4 feet tall and 6 feet wide.
 3. The notice shall be placed at least 14 days prior to the decision/public hearing and shall remain in place until an action has been taken on the application and the appeal period, if any, has passed.
 4. The notice shall contain the following:
 - a. The exact address of the property, if known, or the location of the property, if the address is not known;
 - b. A brief description of the proposed project, the content of which shall be at the sole discretion of the City;
 - c. City contact information for public inquiries;
 - d. A deadline for the submission of public comments;
 - e. If proposing a physical alteration to an existing building or new buildings, at least one of the following visual representations of the proposed project:
 - i. A color perspective drawing or three-dimensional (3-D) photographic simulation of the proposed project, in a size deemed appropriate by the Director of Community Development.
 - ii. For ~~Two Story Permits~~, Residential Design Review Permit, and Miscellaneous Ministerial Permit applications, a color or black and white perspective drawing or three-dimensional (3-D) photographic simulation of the proposed project, at least 11 inches by 17 inches in size.
 - iii. Visual Representation is not required for applications that do not have a material change in the physical appearance of the property.
- G. Miscellaneous Ministerial Permit: For projects requiring notice of a Miscellaneous Ministerial Permit, notice shall be mailed in accord with subsection 19.12.110A(4) and posted on the property, fourteen calendar days prior to the date of action on the application.

19.28.040 Permits Required for Development.

Table 19.28.040 sets forth the planning permits required for development in the Single- Family Residential district.

Table 19.28.040 Permits Required		
Planning permit required prior to building permit application	Type of Project	Approval Authority

A. None	One-story Single-family projects that doe s not require exception or variance from the requirements of this	Admin.
B. Minor Residential Permit, pursuant to Chapter 19.12, Administration	1. One-story encroachment into a required rear yard setback, subject to requirements of Section 19.28.070	Admin
	2. One-story extension of an existing side yard nonconforming building wall line, subject to requirements of Section 19.28.100 in all districts except R1-a	
	3. One-story project with a gable end of a roof enclosing an attic space projecting outside the building envelope, subject to requirements of Section 19.28.070 or 19.28.080	
	4. New or expanded second story deck or balcony with views into neighboring residential side or rear yards in all districts except R1-a or on any project previously developed pursuant to Government Code Section 65852.21	
	5. Any active or passive solar structure that requires variation from the setback or height restrictions of this chapter, provided that no such structure shall infringe upon solar easements or adjoining property owners	
	6. One or two-story addition or new home on a sloped single-family residential lot with development on building pads/graded areas with actual slopes equal to or greater than 20% and with total floor area ratio of all structures on the lot greater than 35%	
C. Director's Minor Modification, pursuant to Chapter 19.12, Administration	Encroachment of porch elements into the required front yard setback in the R1-a zone, subject to the requirements of Section 19.28.100	Admin
D. Two-Story Permit, pursuant to Chapter 19.12, Administration	Two-story addition or new two-story home in all districts that do not require Residential Design Review per Section 19.28.040(I) except in an R1-a zone	Admin

<u>E.D</u> Residential Design Review, pursuant to Chapter 19.12, Administration	Two-story addition or new two-story home in all districts except R1-a where: <ol style="list-style-type: none"> 1. Second floor to first floor area ratio is greater than 66%, except any second to first floor ratio for development on building pads/graded areas with actual slopes equal to or greater than 20%; and/or 2. Where second story side yard setback(s) are less than 15 feet to any interior side property line 	Admin. with design review
	Two-story addition, new two-story home, and/or second story deck in the R1-a zone	PC
<u>F.E</u> Exception, pursuant to Chapter 19.12, Administration & Section 19.28.130, Exceptions	One or two-story project requesting an exception from Sections 19.28.070 [Development Regulations (Building)], 19.28.080 [Eichler R1-e Building Design Requirements], and/or 19.28.110 [Landscape Requirements].	PC
<u>G.F</u> Hillside Exception, pursuant to Chapter 19.12, Administration	Development (area greater than 500 square feet) on slopes greater than 30%	
<u>H.G</u> Architectural and Site Approval, pursuant to Chapter 19.12, Administration	One or two-story addition or new home on a sloped single-family residential lot with development on building pads/graded areas with actual slopes equal to or greater than 20% and where the cut plus fill of the site exceeds 2,500 cubic yards	
<u>I.H</u> Conditional Use Permit, pursuant to Chapter 19.12, Administration	Two-story addition or new two-story home in an R1 zoning district with an "i" suffix	
<u>J. I</u> Single-Story Overlay District Application, pursuant to Chapter 19.12, Administration	Establishment or removal of a Single-Story Overlay District in a Single Family Residential District (Addition or removal of the "I" suffix in an R1 zoning district)	CC
<u>K.J</u> Miscellaneous Ministerial Permit	<ol style="list-style-type: none"> 1. New one or two-story duplex project in an R1 zoning district pursuant to Government Code Section 65852.21 2. New one or two-story single-family home, secondary principal dwelling unit, or two-story addition in an R1 zoning district pursuant to Government Code Section 65852.21 	Admin

19.28.110 Single-Family Residential Design Guidelines and Principles.

Any new single-family residential house or addition to an existing house shall be generally consistent with the adopted single-family residential guidelines in Sections 19.28.110(A) and (B).

A. Single-Family Residential Design Guidelines for all projects.^{1, 2}

1. There ~~should~~ shall not be a three-car wide driveway curb cut.
2. No more than fifty percent of the front elevation of a house ~~should~~ shall consist of garage area, unless the lot is not wide enough to accommodate.

a. In the R1-a zone, the maximum width of a garage on the front elevation ~~should~~ shall be twenty-five feet, which will accommodate a two-car garage. Additional garage spaces ~~should~~ shall only be provided through the use of a tandem garage or a detached accessory structure at the rear of the property.²

3. Usable Living area ~~should~~ shall be closer to the street, while garages should be set back more.

4. All roofs ~~should~~ shall have at least a one-foot overhang.

5. Structures shall not have any mechanical, heating or cooling or associated piping installed on the roof.

6. Porches are encouraged.

a. In the R1-a zone, the following porch design guidelines apply²:

- i. When viewed from the street, a porch ~~should~~ shall appear proportionately greater in width than in height. A porch differs from an entry element, which has a proportionately greater height than its width.
- ii. Structural supports ~~should~~ shall be designed such that the appearance is not obtrusive or massive.
- iii. The use of large columns or pillars is discouraged.
- iv. The eave height for a front porch ~~should~~ shall not be significantly taller than the eave height of typical single-story elements in the neighborhood.
- v. Porch elements ~~should~~ shall have detailing that emphasizes the base and caps for posts and fence elements.

7. In R1-6e and R1-a zones, entry features ~~should~~ shall not be higher than fourteen feet from natural grade to plate.²

19.28.140 Findings.

Sections 19.28.140(A), (B), (C), (D), and (E) set forth the findings required for a Minor Residential Permit, Two-Story Permit, Residential Design Review, and R-1 Exception approval.

A. Minor Residential Permit Findings.

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinances and the purposes of this title.
2. The granting of the permit will not result in a condition that is detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety or welfare.
3. The proposed project is harmonious in scale and design with the general neighborhood.
4. Adverse visual impacts on adjoining properties have been reasonably mitigated.

B. ~~Two-Story Permit Findings.~~

- ~~1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance and the purposes of this title.~~
- ~~2. The granting of the permit will not result in a condition that is detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety or welfare.~~
- ~~3. The proposed project is harmonious in scale and design with the general neighborhood.~~
- ~~4. Adverse visual impacts on adjoining properties have been reasonably mitigated.~~

C. B. Residential Design Review Findings.

1. The project is consistent with the Cupertino General Plan, any applicable specific plans, zoning ordinance and the purposes of this title.
2. The granting of the permit will not result in a condition that is detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety or welfare.
3. The project is harmonious in scale and design with the general neighborhood.
4. The project is consistent with the two-story design principles and generally consistent with the single- family residential design guidelines.
5. Adverse visual impacts on adjoining properties have been reasonably mitigated.

D. C. Residential Design Review Findings, R1-a zone.

1. The project is consistent with the Cupertino General Plan and Title 19 of the Cupertino Municipal Code.
2. The granting of this permit will not result in detrimental or injurious conditions to the property or improvements in the vicinity, or to the public health, safety, or welfare.

3. The project is generally compatible with the established pattern of building forms, building materials, and designs of homes in the neighborhood.
4. The project is generally compatible with the City's single-family residential design guidelines and the guidelines in this chapter and any inconsistencies have been found to not result in impacts on neighbors.
5. Significant adverse visual and privacy impacts as viewed from adjoining properties have been mitigated to the maximum extent possible.

E. D. R-1 Exception Findings.

1. The literal enforcement of this chapter will result in restrictions inconsistent with the spirit and intent of this chapter.
2. The proposed development will not be injurious to property or improvements in the area, nor be detrimental to the public safety, health and welfare.
3. The exception to be granted is one that will require the least modification of the prescribed design regulation and the minimum variance that will accomplish the purpose.
4. The proposed exception will not result in significant visual impact as viewed from abutting properties.

2. Amendments to Title 19 concerning Accessory Dwelling Units

19.112.010 Purpose; Incorporation by Reference; Consistency with State Law.

The purpose of this chapter is to promote the goal of affordable housing within the City through provision of additional housing in certain residential, agricultural residential, and mixed-use zoning districts in a manner which minimizes adverse impacts of accessory dwelling units on neighborhoods. Unless otherwise defined in this Title, all terms used in this Chapter shall be defined and interpreted in accordance with Government Code Sections 65852.2 and 65852.22. In the event of a conflict between this Chapter and the requirements of State law, the requirements of State law, including the requirements of Government Code Sections 65852.2 and 65852.22, shall prevail.

19.112.020 Accessory Dwelling Unit Regulations.

Notwithstanding any provision of this title to the contrary:

1. Accessory dwelling units are permitted on lots within any residential or mixed-use residential zoning district. The lot must have an existing single family dwelling unit or if zoned multi-family or mixed use residential, at least one residential unit. If the lot is vacant, an accessory dwelling unit may only be proposed in conjunction with the development of at least one residential unit. Notwithstanding the underlying zoning, an accessory dwelling

unit developed pursuant to this chapter does not cause the lot upon which it is located to exceed its maximum the allowable density on the lot.

2. Accessory dwelling units must comply with the site development regulations and guideline specified in those zoning districts for dwelling units, including but not limited to: lot coverage; floor area ratio; height; setbacks; landscape; the regulations contained in this chapter; Chapter 19.100, Accessory Structures/Buildings; and Chapter 19.124, Parking; except as those standards are modified by this chapter.
3. No impact fees, as defined in Government Code Section 65852.2(f)(3)(B), shall be imposed on any accessory dwelling unit or junior accessory dwelling unit with a gross floor area of less than 750 square feet. Impact fees ~~for all other accessory dwelling units shall be charged in compliance with State Law imposed on accessory dwelling units greater than or equal to 750 feet shall be charged proportionally in relation to the square footage of the primary dwelling unit in compliance with Government Code Section 65852.2(f)(3)(A).~~
4. Accessory dwelling units are permitted on lots within any residential or mixed-use residential zoning district. The lot must have an existing single family dwelling unit or if zoned multi-family or mixed use residential, at least one residential unit. If the lot is vacant, an accessory dwelling unit may only be proposed in conjunction with the development of at least one residential unit. Notwithstanding the underlying zoning, an accessory dwelling unit developed pursuant to this chapter does not cause the lot upon which it is located to exceed its maximum the allowable density on the lot.
5. Accessory dwelling units must comply with the site development regulations and guideline specified in those zoning districts for dwelling units, including but not limited to: lot coverage; floor area ratio; height; setbacks; landscape; the regulations contained in this chapter; Chapter 19.100, Accessory Structures/Buildings; and Chapter 19.124, Parking; except as those standards are modified by this chapter.

19.112.030 Site Development Regulations for Streamlined Accessory Dwelling Units & Junior Accessory Dwelling Units.

Pursuant to California Government Code Section 65852.2(e), the City shall approve the following streamlined accessory dwelling units if the specified development standards and use restrictions are met, as identified in:

- A. Table 19.112.030A for single-family ~~residential uses developments~~ and
- B. Table 19.112.030B for multi-family ~~residential uses developments~~.

Table 19.112.030A: Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family <u>Residential Uses Developments</u>
--

		Conversion of space within principal dwelling unit or accessory structures	New Construction <u>Attached or Detached Accessory Dwelling Unit</u> ≤ 800 s.f.
1.	Size of living space, exclusive of decks		
	a. Minimum size	150 s.f.	
	b. Maximum size	<p>No size limitation as long as the unit:</p> <ul style="list-style-type: none"> i. Is wholly within the space of a proposed or existing single-family dwelling or the existing space of an accessory structure, and ii. Does not require either: <ul style="list-style-type: none"> • An addition of more than 150 square feet to an existing accessory structure to accommodate ingress and egress only, or • Any addition to an existing single-family dwelling unit. 	800 s.f.
2.	Number of Units	<p>Two accessory dwelling units are allowed only if one of the accessory dwelling units is a detached unit built pursuant to this Table 19.112.030A and the other is a junior accessory dwelling unit. Otherwise, only one accessory dwelling unit is allowed per lot.</p> <p><u>Maximum three ADUs per lot in any combination of the following:</u></p> <ul style="list-style-type: none"> • <u>One attached ADU,</u> • <u>One conversion of existing space ADU (whether in principal dwelling unit or existing accessory structure),</u> • <u>One detached ADU, or</u> • <u>One Junior ADU</u> 	
3.	Setbacks	<p>Per the underlying zoning district except that if the existing structures do not meet these standards, the side and rear setbacks shall be sufficient for fire safety and life safety.</p>	<ul style="list-style-type: none"> a. At least four feet from the rear and side lot lines. a. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.

4.	Height	The conversion shall not change the height of the existing structure.	<p>a. 16 feet <u>or</u>,</p> <p>b. <u>18 feet for detached ADU within half a mile walking distance of a major transit stop or transit corridor defined in Section 21155 of the Public Resources Code.</u>¹</p> <p>c. <u>If accessory dwelling unit attached to principal dwelling, 25 feet or the height limitations applicable to the principal dwelling, whichever is lower.</u></p> <p>d. <u>An applicant alternatively may elect to follow the height standards for accessory structures in Chapter 19.100.</u></p>
5.	Second-story accessory dwelling unit	Allowed if the unit is a conversion of existing second story portion of the principal dwelling unit.	<u>Not Allowed Allowed if accessory dwelling is located within one half mile walking distance of a major transit stop or transit corridor;</u>
6.	Parking for accessory dwelling unit	None	
7.	Direct outside access	Independent outdoor access must be provided without going through the principal dwelling unit.	
8.	Separation from principal dwelling unit	The conversion must result in an independent unit. With the exception of a JADU that has a shared bathroom with the principal dwelling unit, no interior doors or other connections between the units are permitted.	Detached from principal dwelling unit

1 An additional two feet in height is permitted to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

Table 19.112.030B: Site Development Regulations for Streamlined Accessory Dwelling Units Associated with Existing Multi-Family Residential Uses ~~Developments~~

		Conversion of interior space within multifamily dwelling structures	New Construction Detached Accessory Dwelling Unit
1.	Location	Conversion of space within existing dwelling structures that is not used as livable space (e.g. existing units) including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, as long as the unit meets building standards for dwellings.	Detached from the multi-family dwelling structure(s)
2.	Number of Units	The greater of: <ul style="list-style-type: none"> • 25 percent of the existing number of primary dwelling units, or • One accessory dwelling unit. 	No more than two units
3.	Minimum Size	150 s.f.	
4.	Maximum Size	No size limitation	1,200 s.f.
5.	Setbacks	The accessory dwelling unit shall not increase the size of the existing structure.	<p>a. Located at least four feet from the side and rear lot lines.</p> <p>b. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.</p>
6.	Height	The accessory dwelling unit shall not increase the size of the existing structure.	<p>a. 16 feet <u>18 feet</u>; or</p> <p>b. <u>25 feet or the height limitations applicable to the principal dwelling, whichever is lower if accessory dwelling unit attached to principal dwelling</u></p> <p>c. <u>b.</u> An applicant alternatively may elect to follow the setback and height standards</p>

			for accessory structures in Chapter 19.100.
7.	Separation from principal dwelling units	The conversion must result in an independent unit. No interior doors or other connections between the units are permitted.	Detached from principal dwelling units.

(Ord. 20-2199, § 5 (part), 2020; Ord. 17-2170, § 4, 2018; Ord. 17-2165, § 12, 2017; Ord. 16-2159, § 8 (part), 2016; Ord. 2085, § 2 (part), 2011)

19.112.040 Site Development Regulations for Non-Streamlined Accessory Dwelling Units.

A. This section shall govern applications for ADUs and JADUs that do not qualify for approval under Section 19.112.030 or Government Code section 65852.2(e)(1) and for which the city may impose local standards pursuant to Government Code section 65852.2, subdivisions (a) through (d). Nothing in this section shall be interpreted to prohibit an ADU of up to 800 square feet, at the heights stated in Section 19.112.030(A) and .030(B), with a four-foot side and rear setbacks.

B. The Development Standards for units governed by this section are provided in Section 19.112.040. These regulations do not limit the height of existing structures converted into ADU/JADUs unless the envelope of the building is proposed to be modified beyond any existing legal, non-conforming condition

~~Any accessory dwelling unit that does not meet the criteria of Section 19.112.030 shall meet the following development standards and use restrictions as identified in Table 19.112.040.~~

Table 19.112.040: Site Development Regulations for Non-Streamlined Accessory Dwelling Units			
Created by New Construction and/or Additions to the Principal Dwelling Unit			
		Attached	Detached > 800 s.f.
A.	Number of Units	Only one accessory dwelling unit pursuant to Table 19.112.040 is permitted and cannot be combined with any accessory dwelling units pursuant to Table 19.112.030A.	
B.	Size of living space, exclusive of decks		
	1. Minimum size	150 s.f.	

	<p>2. Maximum size</p>	<p>a. Studios/one-bedroom unit – 850 s.f.; two or more-bedroom unit – 1,000 s.f.; and</p> <p>b. Attached accessory dwelling units shall not exceed 50% of the existing primary dwelling</p> <p>c. Application of lot coverage, floor area, and open space standards:</p> <ul style="list-style-type: none"> i. Maximum size for units ≤ 800 s.f. shall not be limited by lot coverage, floor area ratio, and open space requirements per the underlying zoning. ii. Maximum size for units > 800 s.f. are limited by lot coverage, floor area ratio, and open space requirements per the underlying zoning. These standards shall apply to the gross floor area of the unit proposed. Notwithstanding application of these standards, an 800 s.f. detached accessory dwelling unit is permitted pursuant to Table 19.112.030A or an 800 s.f. attached accessory dwelling unit is permitted. 	
<p>C.</p>	<p>Setbacks</p>	<p>Per the underlying zoning district, except the required side and rear setbacks are modified to four feet.</p>	<p>The proposed structure must comply with the setback standards for accessory structures in Chapter 19.100, except the street side setbacks are modified to four feet.</p>
<p>D.</p>	<p>Height</p>	<p><u>25 feet or the height limitations applicable to the principal dwelling, whichever is lower.</u></p>	<p><u>a. The proposed structure must comply with the height standards for accessory structures in Chapter 19.100, except that a maximum height of 16 feet is allowed at the farthest point of the proposed structure from the rear and side property lines.</u></p> <p><u>b. 18 feet for detached ADU within half a mile of a major transit stop or transit corridor or on a lot with an existing multifamily, multistory dwelling or;</u></p> <p><u>c. If accessory dwelling unit attached to principal dwelling, 25 feet or the</u></p>

			<u>height limitations applicable to the principal dwelling, whichever is lower.</u>
E.	Second-story accessory dwelling units	Not allowed <u>Allowed if accessory dwelling is:</u> <ul style="list-style-type: none"> a. <u>Located within one half mile of a major transit stop or transit corridor; or</u> b. <u>On a lot with an existing multifamily, multistory dwelling; or</u> c. <u>More than 800 s.f. and attached to principal dwelling.</u> 	Not allowed <u>Allowed if accessory dwelling is located within one half mile of a major transit stop or transit corridor.</u>
F.	Parking		
	1. Parking for accessory dwelling unit	One additional off-street parking space shall be provided, if the principal dwelling unit has less than the minimum off-street parking spaces for the applicable residential zoning district in which it is located, as required in Chapter 19.124 unless the accessory dwelling unit meets one of the following requirements: <ul style="list-style-type: none"> a. Located within one-half (1/2) mile of a public transit stop; or b. <u>Located within one block of a car share vehicle pick-up location; or</u> c. Located in an architecturally and historically significant historic district; or d. The occupant of the unit is not allowed/offered a required on-street parking permit; or e. Located within one block of a car share vehicle pick-up location; or f. Is part of the proposed or existing primary residence or an accessory structure. 	
	2. Replacement parking spaces for existing covered, uncovered or enclosed parking spaces converted to an	No replacement parking spaces are required.	

	accessory dwelling unit		
G.	Direct outside access	Independent outdoor access must be provided without going through the principal dwelling unit.	
H.	Screening from public street	All access to accessory dwelling units shall be on a different wall plane than the access to the principal dwelling unit.	
I.	Structure Design	Should be compatible with the architectural style and materials of the principal structure.	
J.	Separation from principal dwelling unit	The ADU must be an independent unit. No interior doors or other connections between the ADU and the principal dwelling unit are permitted.	Detached from principal dwelling unit.
<p>1. No setback is required for an accessory dwelling unit located within existing living area or an existing accessory structure, or an accessory dwelling unit that replaces an existing structure and is located in the same location and to the same dimensions as the structure being replaced.</p>			

(Ord. 20-2199, § 5 (part), 2020)

19.112.050 Review Process.

Applications for accessory dwelling units conforming to the requirements of this chapter shall be reviewed ministerial without discretionary review and must be approved or denied within the time frame specified in Government Code Section 65852.2.

(Ord. 20-2199, § 5 (part), 2020; Ord. 16-2159, § 8 (part), 2016)

19.112.060 Accessory Dwelling Units Prohibited on Certain Lots.

Notwithstanding Government Code Section 65852.2 or 65852.22 or any provision of this Chapter, no accessory dwelling unit or a junior accessory dwelling unit shall be permitted on any lot in single-family residence district (R-1 or RHS) if a lot split has been approved pursuant to Section 18.12.70 and one or more residential units has been approved for construction pursuant to Section 19.28.150 or 19.40.090 (- Government Code Section 65852.21).