



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

This will be a teleconference meeting without a physical location.

Tuesday, January 19, 2021

5:30 PM

Televised Special Meeting Study Session (5:30) and Regular City Council Meeting (6:45)

TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION TO HELP STOP THE SPREAD OF COVID-19

In accordance with Governor Newsom's Executive Order No-29-20, this will be a teleconference meeting without a physical location to help stop the spread of COVID-19.

Members of the public wishing to observe the meeting may do so in one of the following ways:

- 1) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.**
- 2) The meeting will also be streamed live on and online at www.Cupertino.org/youtube and www.Cupertino.org/webcast**

Members of the public wishing comment on an item on the agenda may do so in the following ways:

- 1) E-mail comments by 4:30 p.m. on Tuesday, January 19 to the Council at citycouncil@cupertino.org. These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.**
- 2) E-mail comments during the times for public comment during the meeting to the City Clerk at cityclerk@cupertino.org. The City Clerk will read the emails into the record, and display any attachments on the screen, for up to 3 minutes (subject to the Mayor's discretion to shorten time for public comments). Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking.**

3) Teleconferencing Instructions

Members of the public may provide oral public comments during the teleconference meeting as follows:

Oral public comments will be accepted during the teleconference meeting. Comments may be made during “oral communications” for matters not on the agenda, and during the public comment period for each agenda item.

To address the City Council, click on the link below to register in advance and access the meeting:

Online

Register in advance for this webinar:

https://cityofcupertino.zoom.us/webinar/register/WN_yKTcygvgSLKPbttSGAve_A

Phone

Dial: 669-900-6833 and enter Webinar ID: 910 6192 3803 (Type *9 to raise hand to speak). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 910 6192 3803

SIP: 91061923803@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter “Cupertino Resident” or similar designation.
3. When the Mayor calls for the item on which you wish to speak, click on “raise hand.” Speakers will be notified shortly before they are called to speak.
4. When called, please limit your remarks to the time allotted and the specific agenda topic.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference City Council meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the Council meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Tuesday, January 19, 2021, commencing at 5:30 p.m. In accordance with Governor Newsom's Executive Order No-29-20, this will be a teleconference meeting without a physical location. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting." The regular meeting items will be heard at 6:45 p.m.

SPECIAL MEETING

ROLL CALL - 5:30 PM

STUDY SESSION

1. Subject: Study Session on Lehigh Southwest Cement Company/Permanente Quarry and Stevens Creek Quarry regarding Reclamation Plan Amendment and Use Permit Applications to County of Santa Clara.
Recommended Action: Receive the report and provide input to staff.
[Staff Report](#)

ADJOURNMENT

REGULAR MEETING

PLEDGE OF ALLEGIANCE - 6:45 PM

ROLL CALL

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Certificates of Recognition for Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship
Recommended Action: Present Certificates of Recognition to Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship
[A - Certificates of Recognition](#)

2. Subject: Proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino
Recommended Action: Present proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino
[A - Proclamation](#)
3. Subject: Proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy
Recommended Action: Present proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy
[A - Proclamation](#)
4. Subject: Proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021
Recommended Action: Present proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021
[A - Proclamation](#)

POSTPONEMENTS

5. Subject: Amending the Fiscal Year 2020-21 Fee Schedule to establish updated fees for the Community Gardens. This item has been continued to a date uncertain.
6. Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees. This item has been continued to March 2.

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the Council on any matter within the jurisdiction of the Council and not on the agenda. The total time for Oral Communications will ordinarily be limited to one hour. Individual speakers are limited to three (3) minutes. As necessary, the Chair may further limit the time allowed to individual speakers, or reschedule remaining comments to

the end of the meeting on a first come first heard basis, with priority given to students. In most cases, State law will prohibit the Council from discussing or making any decisions with respect to a matter not listed on the agenda.

REPORTS BY COUNCIL AND STAFF (10 minutes)

7. Subject: City Manager update on emergency response efforts
Recommended Action: Receive City Manager update on emergency response efforts
8. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

CONSENT CALENDAR

Unless there are separate discussions and/or actions requested by council, staff or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously.

9. Subject: Approve the December 15 City Council minutes
Recommended Action: Approve the December 15 City Council minutes
[A - Draft Minutes](#)
10. Subject: License agreements with Pacific Coast Farmers Market Association (PCFMA) to operate weekly Friday farmers market in the Creekside Park north parking lot and with West Coast Farmers Market Association (WCFMA) to temporarily operate weekly Sunday farmers market the Senior Center/Memorial Park parking lot.
Recommended Action: 1. Authorize the City Manager to negotiate and execute a license agreement with Pacific Coast Farmers Market Association (PCFMA) to use the Creekside Park north parking lot for a weekly Friday farmers market; and
2. Authorize the City Manager to negotiate and execute a license agreement with West Coast Farmers Market Association (WCFMA) to temporarily use the Senior Center/Memorial Park parking lot for a weekly Sunday farmers market.
[Staff Report](#)
[A - Draft License Agreement with PCFMA](#)
[B - Draft License Agreement with WCFMA](#)
11. Subject: Increase the construction contingency budget for the McClellan Ranch Preserve Community Garden Improvement Project (Project No. 2017-15) due to COVID-19.

Recommended Action: 1. Authorize an increase in the Construction Contingency Budget from \$64,930 to \$280,530 for the McClellan Ranch Preserve Community Garden Improvement Project; and
2. Adopt Resolution No. 21-001 (Attachment A) to approve Budget Modification No. 2021-113 increasing appropriations in the Capital Improvement Fund 420-99-004 in the amount of \$125,600 funded from Capital Project Fund.

[Staff Report](#)

[A - Draft Resolution](#)

[B - Contractor Proposal](#)

SECOND READING OF ORDINANCES

12. Subject: Second reading of Ordinance No. 20-2218: "An ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

Recommended Action: Conduct the second reading and enact Ordinance No. 20-2218: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

[A - Draft Ordinance](#)

13. Subject: Second reading of Ordinance No. 20-2219 adopting Municipal Code Amendments to CMC to adopt bird safety development regulations to implement the Fiscal Year 2020/21 City Council Work Program items related to bird safety. (Application No. MCA-2019-004; Applicant: City of Cupertino; Location: Citywide)

Recommended Action: Conduct the second Reading and enact Ordinance No. 20-2219 "An Ordinance of the City Council of the City of Cupertino amending city code to add Chapter 19.102: Bird Safe Development standards and to amend Chapter 19.08: Definitions to implement Bird Safe regulations".

[Staff Report](#)

[A. Draft Ordinance No. 20-2219](#)

[B - Redlines to draft ordinance language](#)

PUBLIC HEARINGS

14. Subject: Abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; hearing for impacted property owners to contest the matter of proposed abatement.

Recommended Action: Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; and conduct hearing for impacted property owners to contest the matter of proposed abatement.

[Staff Report](#)

[A - Draft Resolution and Exhibit A](#)

[B - Weed Abatement Program Commencement Report \(Exhibit A\)](#)

[C - County Letter to Property Owners to Abate Weeds](#)

[D - County Hearing Notice to Destroy Weeds and Program Fees](#)

[E - Minimum Fire Safety Standards Program Brochure](#)

[F - Return Reply Form \(RRF\) Sample](#)

[G - City Letter to Property Owners](#)

[H - Approved Resolution No. 20-136](#)

15. Subject: Municipal Code Amendments to update existing Mobile Vending regulations, including conforming edits to Titles 5 and 13 in the Municipal Code, adopting new regulations for Sidewalk Vending in compliance with SB 946. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide. (Continued from December 15).

Recommended Action: Conduct the public hearing and find:

1) Conduct the first reading of Ordinance No. 21-2220: "An Ordinance of the City Council of the City of Cupertino amending Chapter 5.04, Business Licenses Generally, Chapter 5.20, Solicitors, Chapter 5.48, Mobile Vendors, and Chapter 13.04, Parks" to:

A. find that the proposed actions are exempt from CEQA;

B. Adopt regulations to allow sidewalk vending in compliance with SB 946; and

C. Find that the restrictions and requirements contained in the regulations are directly related to objective health, safety, and/or public welfare concerns; and

2) Provide direction to staff regarding whether to later present draft regulations to allow and/or restrict certain Motorized (Mobile) Vendors consistent with its FY 2020-2021 Work Program Item.

[Staff Report](#)

[A - Draft Ordinance MCA-2020-04](#)

[B - SB 946](#)

[C - Planning Commission Resolution No. 6913](#)

[D - Planning Commission Meeting Minutes 10-27-20](#)

16. Subject: Municipal Code Amendments to adopt lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky. (Application No. MCA-2019-003; Applicant: City of Cupertino; Location: City-wide) (Continued from December 15)

Recommended Action: That the City Council:

- 1) Find the proposed actions are exempt from CEQA; and
- 2) Conduct the first reading of Ordinance No. 21-2221 “An Ordinance of the City Council of the City of Cupertino Amending City Code to rename and amend Chapter 19.102: Bird Safe Development Standards to Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Dark Sky Policies.”

[Staff Report](#)

[A - Draft Ordinance](#)

[B - Ordinance No. 20-2219 \(Bird-Safe Ordinance\)](#)

[C - Redline Ordinance](#)

ORDINANCES AND ACTION ITEMS

17. Subject: Approve the updated Commissioner Handbook

Recommended Action: Approve the updated Commissioner Handbook and provide any input

[Staff Report](#)

[A - Draft Commissioner Handbook](#)

[B - Commissioner Feedback](#)

[C - Subcommittee Recommendations](#)

[D - Redline Draft Commissioner Handbook](#)

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

ADJOURNMENT

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/cityclerk> for a reconsideration petition form.

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meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, during normal business hours and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agenda item. These written communications are accessible to the public through the City's website and kept in packet archives. You are hereby admonished not to include any personal or private information in written communications to the City that you do not wish to make public; doing so shall constitute a waiver of any privacy rights you may have on the information provided to the City.



CITY OF CUPERTINO

Legislation Text

File #: 20-8322, **Version:** 1

Subject: Study Session on Lehigh Southwest Cement Company/Permanente Quarry and Stevens Creek Quarry regarding Reclamation Plan Amendment and Use Permit Applications to County of Santa Clara.

Receive the report and provide input to staff.



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Study Session on Lehigh Southwest Cement Company/Permanente Quarry and Stevens Creek Quarry regarding Reclamation Plan Amendment and Use Permit Applications to County of Santa Clara.

Recommended Action

Receive the report and provide input to staff.

Discussion

Upon a request by Councilmembers Willey, Sinks and Chao on October 20, 2020, representatives from the County of Santa Clara Planning Department, City Department of Public Works, and City Attorney's Office will present information related to applications submitted to the County by Lehigh Southwest Cement Company/Permanente Quarry ("Lehigh") for a reclamation plan amendment and by Stevens Creek Quarry (SCQ) for a use permit and reclamation plan amendment, and the City's responses to those applications.

Other public agencies have jurisdiction over the surface mining activities on both properties, including the State Mining and Geology Board, San Francisco Bay Regional Water Quality Control Board, California Department of Fish and Wildlife, and Bay Area Air Quality Management District. Those will not be discussed in depth at this Study Session. The County is also the lead agency for other projects on the properties including the restoration of Permanente Creek. County staff will provide only brief information on the status of that project.

Santa Clara County Supervisor Joseph Simitian has hosted an annual meeting to discuss the regulation status of Lehigh for several years. The date for the next meeting is March 3, 2021 from 6:30-8:30 p.m. The link to attend this meeting will be posted as soon as it is available.

Background

Lehigh Permanente Quarry

Lehigh's Permanente Quarry includes approximately 3,500 acres located immediately west of the City, predominantly on unincorporated County land. A sliver of the easternmost portion of the property not used for the extraction of materials falls within the City. The property includes a large quarry pit from which Lehigh quarries limestone, primarily for processing at the cement plant located on its property.

Starting in late 2018, Lehigh submitted several applications to the County to amend and expand the reclamation plan for its property. The current application consolidates prior applications. It proposes to reclaim the existing quarry pit by filling it primarily with imported fill and to increase the maximum height of the West Materials Storage Area. The application also proposes to expand quarrying into a new area south of the current quarry pit (Rock Plant Reserve), modify a 1972 Ridgeline Protection Easement held by the County to lower the ridgeline elevation above the main pit, and allow export of aggregate materials from Lehigh to SCQ for processing and sale.

Lehigh's current and prior application materials are available on the [County's](#) website for Lehigh. Interested individuals can sign up for the County's Interested Parties List for Lehigh [here](#). The City also maintains a [page](#) linking its recent correspondence related to both applications. The same page allows interested individuals to sign up for notifications when the City posts new information.

Stevens Creek Quarry

The Stevens Creek Quarry includes approximately 167 acres located south of the Lehigh quarry. Like Lehigh, the SCQ is located predominantly on unincorporated County land, with a small portion along the eastern boundary not used for the extraction of materials falling within the City. The southern portion of the property includes material loading and weighing facilities, administrative and maintenance buildings, a trucking company, and recycling operations. The northern portion of the property has been mined for aggregate, historically, and also contains processing facilities and materials storage.

SCQ entered into a compliance agreement with the County in 2018 that required it to cure various violations and to update the approvals, plans, and financial assurances for the property and quarry operations. It submitted pre-application materials in 2019 for a use permit and reclamation plan amendment that would govern the entire property. It resubmitted its most recent application materials in December 2020.

The current application would allow SCQ to deepen its quarry pit, import aggregate from Lehigh for processing and sale, and continue other operations on the property for the next 30 years. It proposes to import fill to backfill the quarry pit during reclamation.

The County provides links to SCQ's current and past applications and reclamation plans [here](#). The City's [page](#) includes recent comments related to SCQ. Both pages provide opportunities to sign up for notifications related to SCQ's applications.

Study Session

During the study session, County and City staff will summarize the following for each quarry:

- Status of the applications
- Contents of the applications (reclamation plan amendments, use permit)
- Anticipated environmental review
- Opportunities and expected timeline for public input
- Vested rights determination (Lehigh only)
- Other compliance concerns and Notices of Violation at each site
- Brief comments on the Permanente Creek restoration (Lehigh only)
- City's comments on each application

As noted, the City has submitted formal comments to the County throughout both application processes. Staff will be able to discuss concerns identified in those letters and areas of focus going forward.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

No fiscal impact.

Prepared by: Sarah Sigman, Attorney for Shute, Mihaly & Weinberger

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager



CITY OF CUPERTINO

Legislation Text

File #: 20-8510, **Version:** 1

Subject: Certificates of Recognition for Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship

Present Certificates of Recognition to Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship



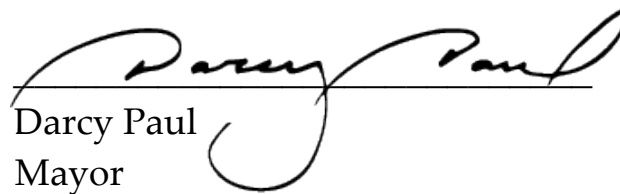
Certificate of Recognition

Presented to

Praneel Anil Shah

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Investigating the Effect of Glucose Supplementation
Through Stem Injection on Sunflower Growth."


Darcy Paul
Mayor



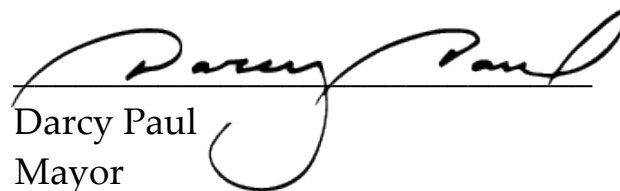
Certificate of Recognition

Presented to

Rishab Reddy Perati

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Evaluating the Ability and Mechanism of how Mealworms
Break Down Plastic Waste from Different Sources."


Darcy Paul
Mayor



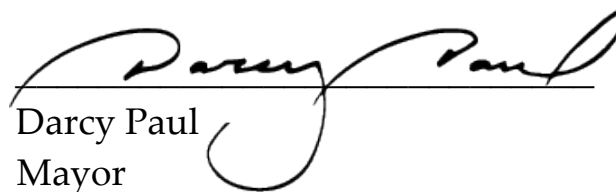
Certificate of Recognition

Presented to

Aaryan Doshi

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "SafetyBot: Sensor-Based Application
to Detect Prolonged Stove Usage and Prevent Home Fires."


Darcy Paul
Mayor



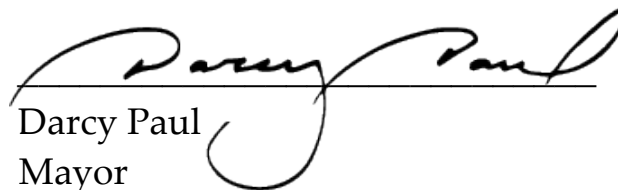
Certificate of Recognition

Presented to

Anika Pallapothu

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Predict Using AI: Diagnosing of Diabetic Eye Diseases
Using Convolutional Neural Networks for Computer Vision."


Darcy Paul
Mayor



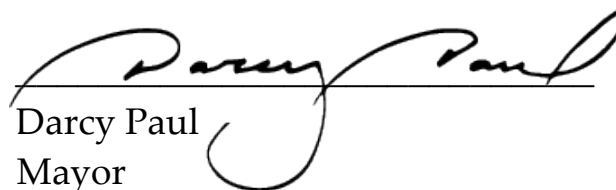
Certificate of Recognition

Presented to

Sonia Swamy

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "BioBooster: Sustainable, Cost-Effective, Non-Disruptive Biopolymers
for Improving Soil Stability and Plant Growth."


Darcy Paul
Mayor



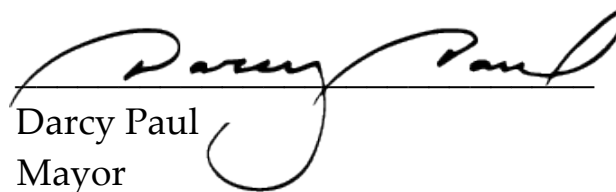
Certificate of Recognition

Presented to

Emily Isabella Kwan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effects of Enterobacter on Soil Pollution."


Darcy Paul
Mayor



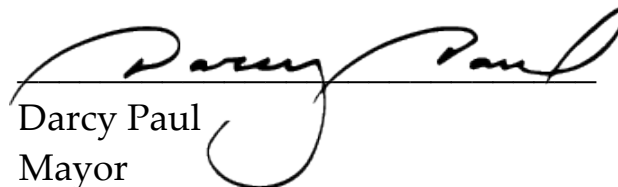
Certificate of Recognition

Presented to

Rishita Shah

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "A Smart White Cane Utilized for Visually Impaired Individuals."


Darcy Paul
Mayor



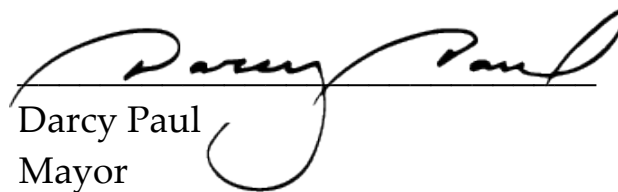
Certificate of Recognition

Presented to

Adhip Raghunathan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Utilizing the Seebeck Effect to Harvest Thermal Energy from Solar Panel."


Darcy Paul
Mayor



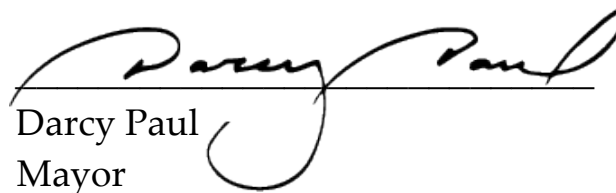
Certificate of Recognition

Presented to

Sanjit Sandip Borle

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Automated Sun-Visor with Photon Detection Part Two."


Darcy Paul
Mayor



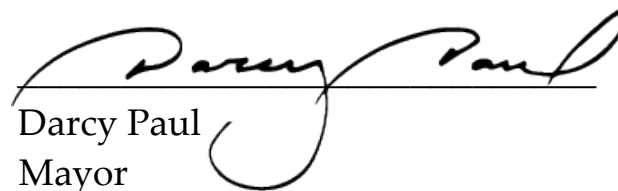
Certificate of Recognition

Presented to

Nathan Tsai Liu

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Using AI to Distinguish Between Human-Caused and Natural Fires."


Darcy Paul
Mayor



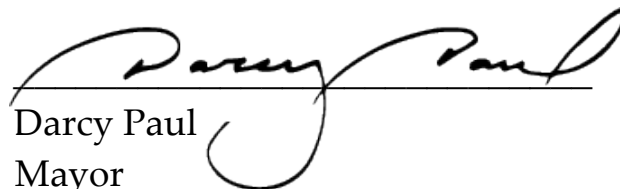
Certificate of Recognition

Presented to

Paulina Xu

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Multimodal Transportation."


Darcy Paul
Mayor



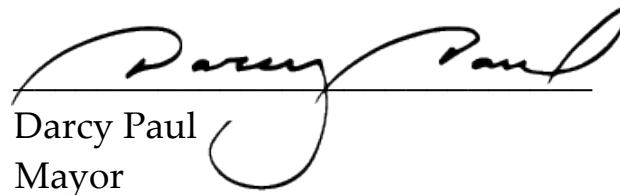
Certificate of Recognition

Presented to

Aditya Rao

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effect of Magnetism on the Growth of Pea Plants."


Darcy Paul
Mayor



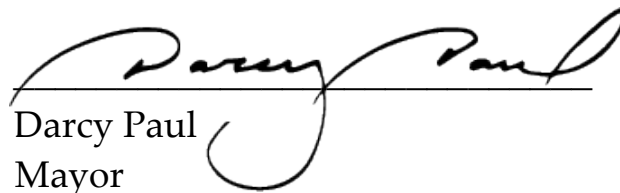
Certificate of Recognition

Presented to

Arihan Yadav

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effect of Magnetism on the Growth of Pea Plants."


Darcy Paul
Mayor



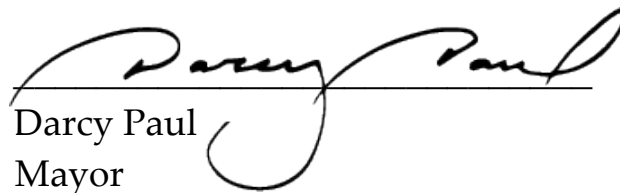
Certificate of Recognition

Presented to

Kelly Hui-Chin Tung

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Investigating the Functions of xpa-1 and him-1 Genes in UV Resistance
of Caenorhabditis Elegans by Combinatorial RNAi."


Darcy Paul
Mayor



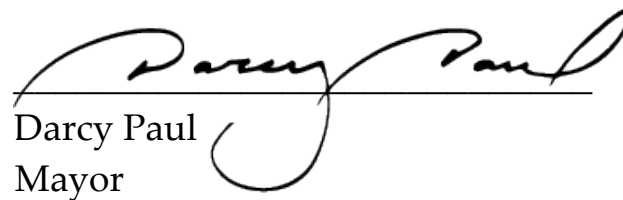
Certificate of Recognition

Presented to

Christine Xu

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "How Does Isolation Affect a Drosophila's Ability to Learn Mazes."


Darcy Paul
Mayor



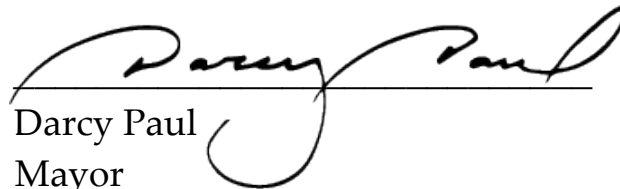
Certificate of Recognition

Presented to

Avani Kulshreshtha

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "What is the Effect of Nutrient Enhancement on Biohydrogen Gas Production of the Green Algae *Chlamydomonas Reinhardtii*?"


Darcy Paul
Mayor



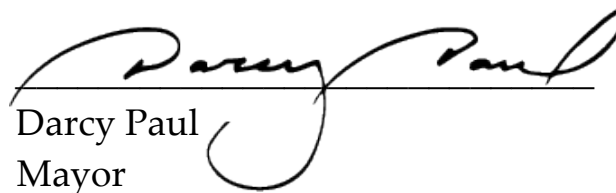
Certificate of Recognition

Presented to

Ashwika Agrawal

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Automated Diagnosis of Infections in Piercings
Using Deep Learning and Convolutional Neural Networks."


Darcy Paul
Mayor



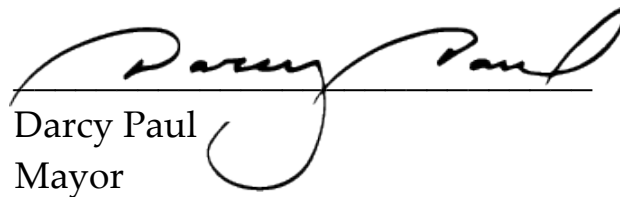
Certificate of Recognition

Presented to

Aaron Yan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Sustainable Water Filtration for Rural Communities."


Darcy Paul
Mayor



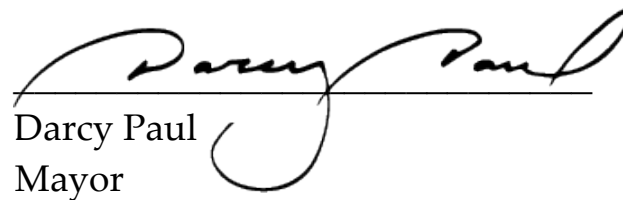
Certificate of Recognition

Presented to

Swathi Badrinarayanan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Migraine Meter: A Novel Device to Predict Migraine Probability."


Darcy Paul
Mayor



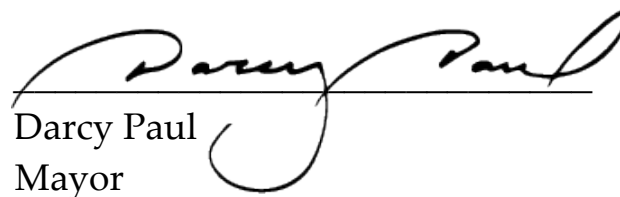
Certificate of Recognition

Presented to

Minjeong Kim

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Detecting Pain in Children with Autism Using 68 Points on Facial Expressions."


Darcy Paul
Mayor



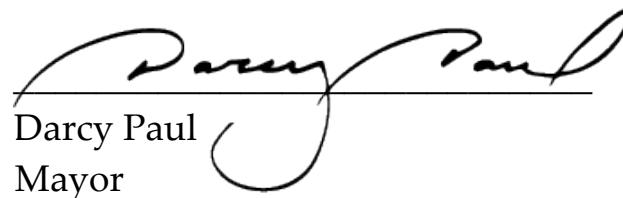
Certificate of Recognition

Presented to

Divya Venkataraman

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Picture Perfect Diet: An App to Classify Food Products, with OCR,
for Recommending Substitutes Based on a Chosen Diet."


Darcy Paul
Mayor



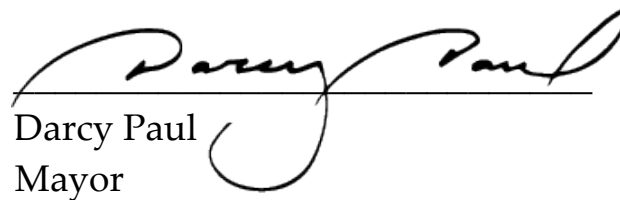
Certificate of Recognition

Presented to

Samhita Srivatsan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Developing Artificial Neural Network Models
to Predict Eutrophication of United States Freshwater Bodies."


Darcy Paul
Mayor



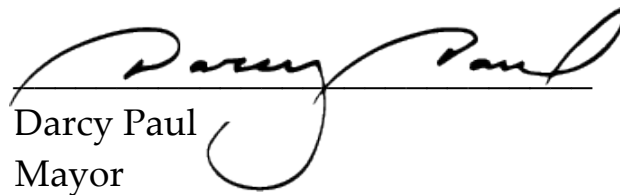
Certificate of Recognition

Presented to

Rohan Tirumala

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effects of Curcumin, Nicotinamide, and Tomatidine
on the Charcot-Marie-Tooth 2A Disease."


Darcy Paul
Mayor



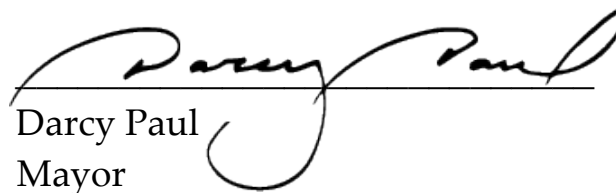
Certificate of Recognition

Presented to

Anoushka Lakshmi

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effects of the Azadirachtin
on the Reproductive Rates of Daphnia Pulex (Water Flea)."


Darcy Paul
Mayor



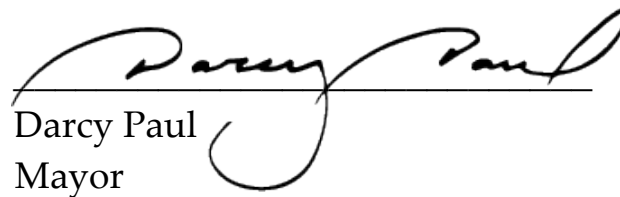
Certificate of Recognition

Presented to

Atmaja Patil

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Effects of Food Waste Addition to Broth of *Rhizobium Leguminosarum* and its Capacity to Raise Interest in Biofertilizers."


Darcy Paul
Mayor



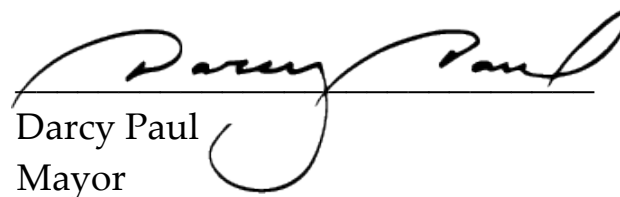
Certificate of Recognition

Presented to

Myung Suh Choi

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Capabilities of Various Phytochemicals
to Inhibit Bacterial Quorum Sensing Modeled by *Serratia Marcescens*."


Darcy Paul
Mayor



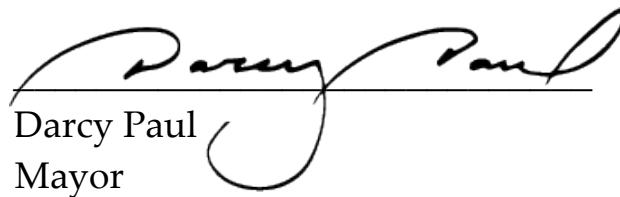
Certificate of Recognition

Presented to

Anika Kiran Nagavara

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "The Effect of Different Amounts of Zinc on Asthma in *Drosophila Melanogaster*."


Darcy Paul
Mayor



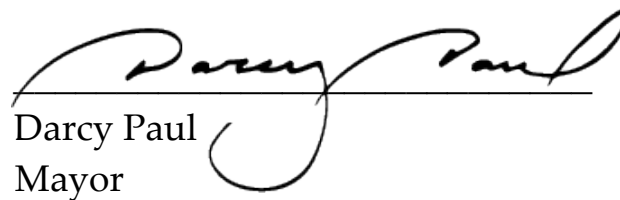
Certificate of Recognition

Presented to

Mahit Vishnusai Tanikella

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Automatic Quantification of Lymphocytes as Prognostic Marker in Cancer Tissue."


Darcy Paul
Mayor



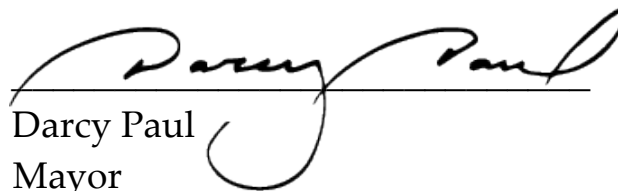
Certificate of Recognition

Presented to

Sanjana S. Jilla

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Identifying Lead-Free Perovskites
Using Machine Learning for High Efficiency Solar Cells."


Darcy Paul
Mayor



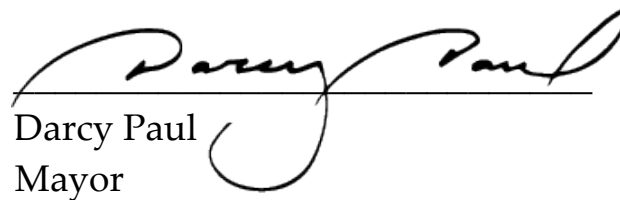
Certificate of Recognition

Presented to

Samika Swamy

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Effect of Environmental Aluminum on Neurotoxicity
and Novel Herb-Based Treatment to Reduce Inflammation-Mediated Neuronal."


Darcy Paul
Mayor



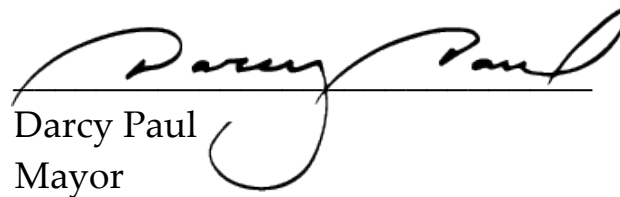
Certificate of Recognition

Presented to

Joseph Seck

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Infrastructure-less Vehicular Position Tracking
Based on RTT Measurement of Wi-Fi Signals."


Darcy Paul
Mayor



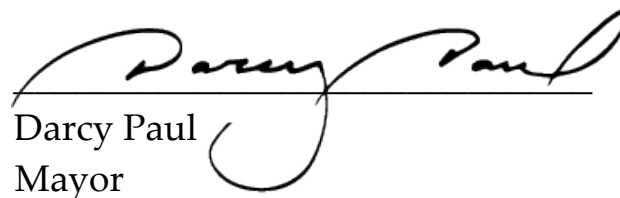
Certificate of Recognition

Presented to

Ojas Mahavir Karnavat

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Designing a Public Alert System that Provides Available Exit Routes
when Fire is Detected in an Enterprise Facility."


Darcy Paul
Mayor



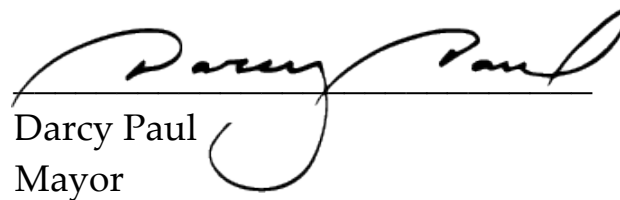
Certificate of Recognition

Presented to

Jennifer Yueyi Song

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Improving School Campus Traffic Flow
Through Dynamic Simulation Modeling and Machine Learning."


Darcy Paul
Mayor



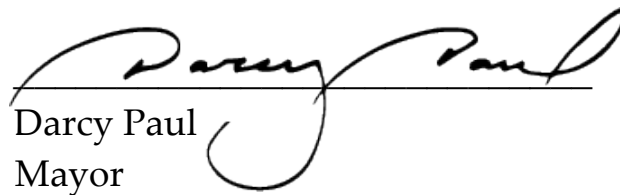
Certificate of Recognition

Presented to

Jonah Tien

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Brainteract: An Integrated Improvement Aiding Brain-Computer-Interfaces and Disabilities Using Visual-Evoked Stimuli."


Darcy Paul
Mayor



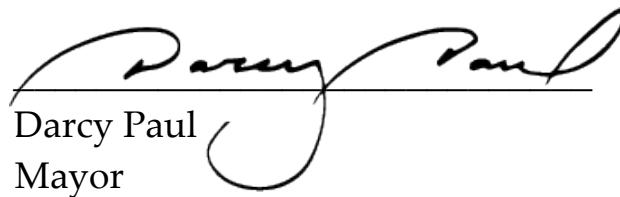
Certificate of Recognition

Presented to

Malavika Eby

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Effect of Varying Levels of Apoptosis on the Efficacy of Phenytoin
in Seizure-Susceptible *Drosophila*."


Darcy Paul
Mayor



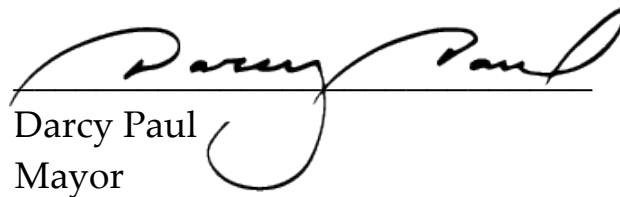
Certificate of Recognition

Presented to

Grace Kuo

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Early Diagnosis and Characterization of Sepsis Using Machine Learning."


Darcy Paul
Mayor



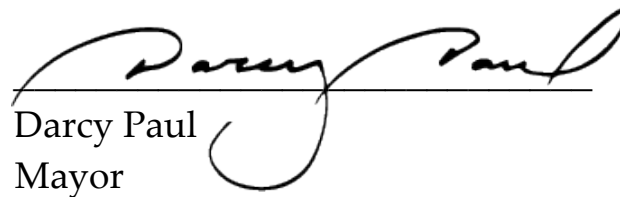
Certificate of Recognition

Presented to

Safaa Aicha Mouline

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "A Customizable Voice that Improves Comprehension of Speech
for Children with Language Impairments."


Darcy Paul
Mayor



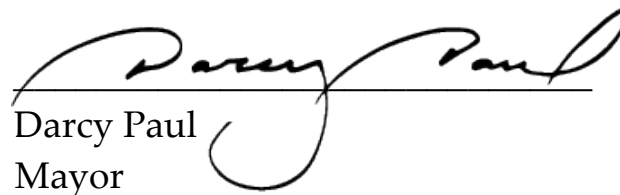
Certificate of Recognition

Presented to

Elizabeth Szeto

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Developing a Bioplastic Using Biopolymer Blending and Crosslinking Techniques
to Replace LDPE Plastics for Packaging."


Darcy Paul
Mayor



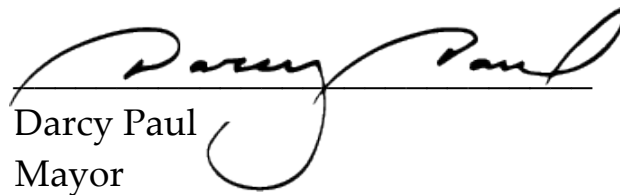
Certificate of Recognition

Presented to

Sohom Kumar Roy

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Drone, Mobile Robot, Tech-Augmented Cockroach, and Crowdsourced System to Find Survivors in Disaster Stricken Areas."


Darcy Paul
Mayor



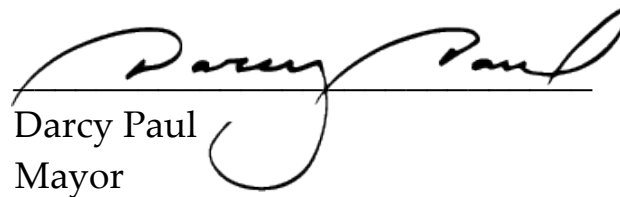
Certificate of Recognition

Presented to

Avani Karvat

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Detection of Seizure and Fainting Occurrences
and Emergency Contact Through a Wearable Device."


Darcy Paul
Mayor



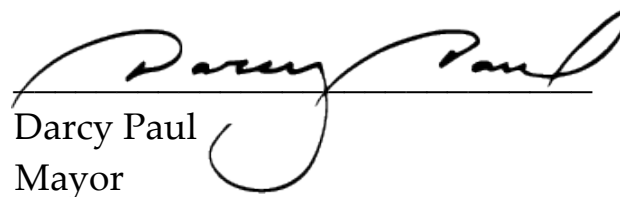
Certificate of Recognition

Presented to

Kristine Soohyun McLaughlin

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Detection of Seizure and Fainting Occurrences
and Emergency Contact Through a Wearable Device."


Darcy Paul
Mayor



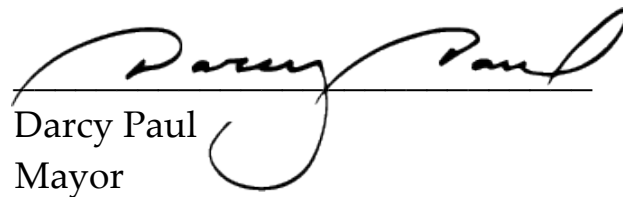
Certificate of Recognition

Presented to

Atreyi Leela Mukherjee

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "A Novel Approach to Bicyclist Safety with an Applied Arduino Sensory Network."


Darcy Paul
Mayor



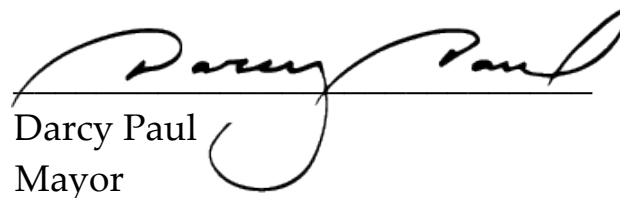
Certificate of Recognition

Presented to

Rishikesh Anand

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "An Autonomous Bioinspired Machine Designed to Clean Up Trash
Using Synthetic Octopus Suction and Gecko-Based Adhesion."


Darcy Paul
Mayor



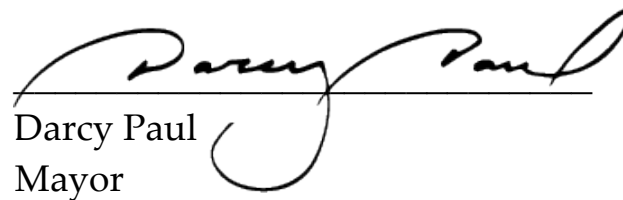
Certificate of Recognition

Presented to

Vardhan Kishore Agrawal

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Automated Assessment of Spaceflight-Associated Neuro-Ocular Syndrome via Incidence of Papilledema and Cotton-Wool Spots."


Darcy Paul
Mayor



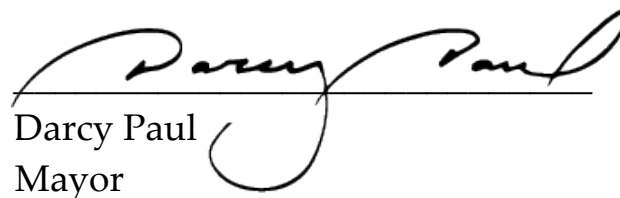
Certificate of Recognition

Presented to

Dinesh Kumar Thirumavalavan

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Using a Convolution LSTM-Based Deep Neural Network
to Accurately Identify and Classify Hate Speech on Twitter."


Darcy Paul
Mayor



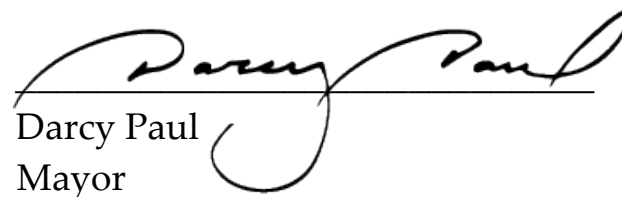
Certificate of Recognition

Presented to

Niranjana Bhatia

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Detection and Classification of Recyclable Items
to Help Recyclable Facility Robots Identify and Pick Them Up Correctly."


Darcy Paul
Mayor



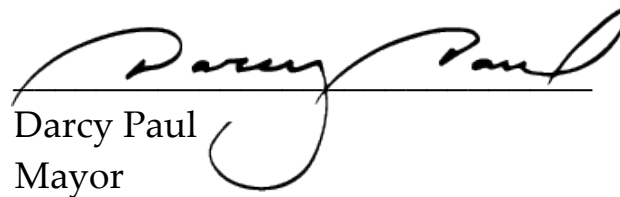
Certificate of Recognition

Presented to

Janya Budaraju

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Using Natural Language Processing to More Effectively Conduct
Qualitative Mental Health Research."


Darcy Paul
Mayor



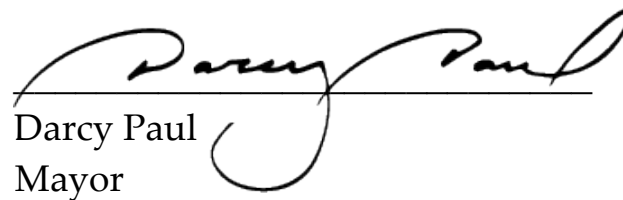
Certificate of Recognition

Presented to

Benjamin M. Wu

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Ball on Plate Control – PID and Neural Self-Learning."


Darcy Paul
Mayor



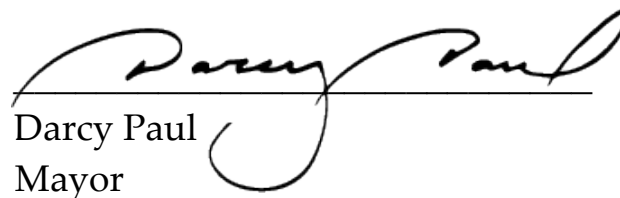
Certificate of Recognition

Presented to

Shashank Venkatramani

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "A Novel Mobile App to Prevent Proliferation of Counterfeit Medications and Reduce DDIs, Using SVM and Machine Learning."


Darcy Paul
Mayor



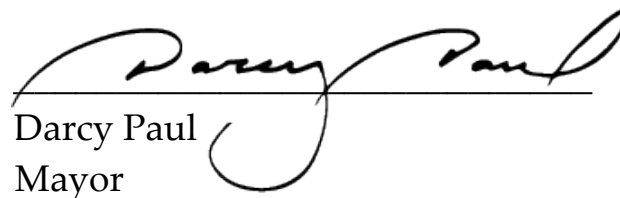
Certificate of Recognition

Presented to

Fiona Lin Luo

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Identification of Novel Antimicrobial Peptides with Designed Activity
through a QSAR-Based Machine Learning Model."


Darcy Paul
Mayor



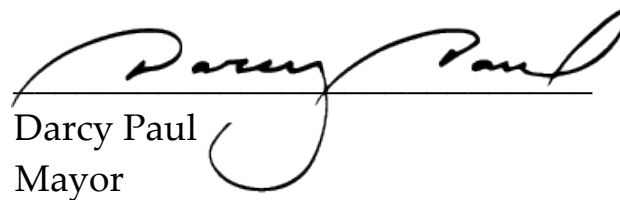
Certificate of Recognition

Presented to

Arushi Agastwar

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Biomimetic Tissue Regeneration:
Activation of Wnt-3a Pathway in Presence of Bone Xenograft."


Darcy Paul
Mayor



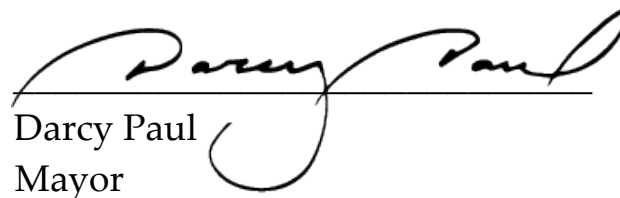
Certificate of Recognition

Presented to

Avishi Agastwar

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Biomimetic Tissue Regeneration:
Activation of Wnt-3a Pathway in Presence of Bone Xenograft."


Darcy Paul
Mayor



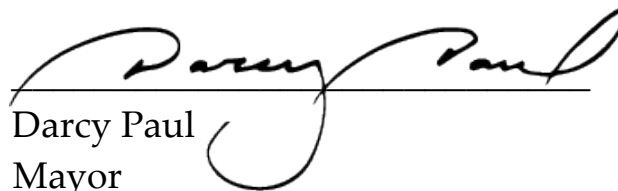
Certificate of Recognition

Presented to

Krithika Venkatasubramanian

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effect of Parkinson's Disease and the Addition of Cholesterol
and Wax Esters on the Phase Transition of Human Tears."


Darcy Paul
Mayor



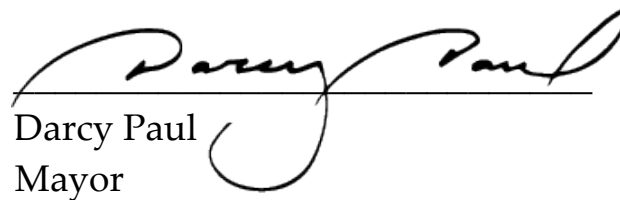
Certificate of Recognition

Presented to

Aditya Sharma

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Pin & Post: A Solution to Wildfires Using a Mobile Application
to Profile Hazardous Vegetation Growth Near Utility Poles."


Darcy Paul
Mayor



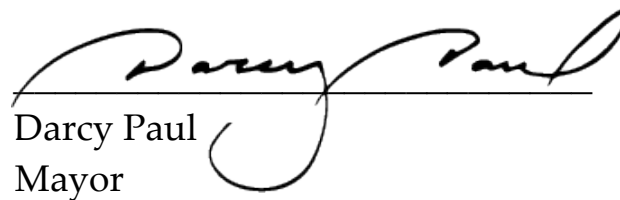
Certificate of Recognition

Presented to

Suhas Prasad

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Hamiltonian Cycles Generating Eulerian Polytopes:
A Computer-Inspired Analysis."


Darcy Paul
Mayor



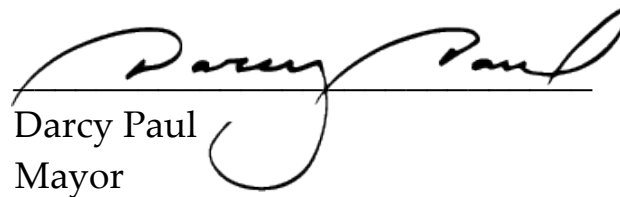
Certificate of Recognition

Presented to

Chaitra Raghupathi

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "What Properties of DNA Sequencing Reads Determine
the Optimal K-mer Size for De Bruijn Graph Construction?"


Darcy Paul
Mayor



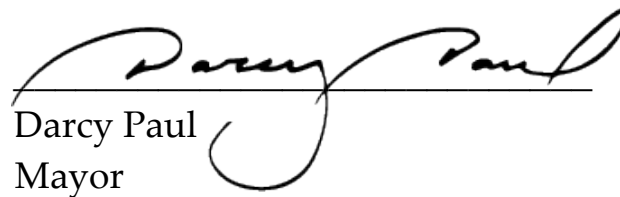
Certificate of Recognition

Presented to

Gautham Raghupathi

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "What Properties of DNA Sequencing Reads Determine
the Optimal K-mer Size for De Bruijn Graph Construction?"


Darcy Paul
Mayor



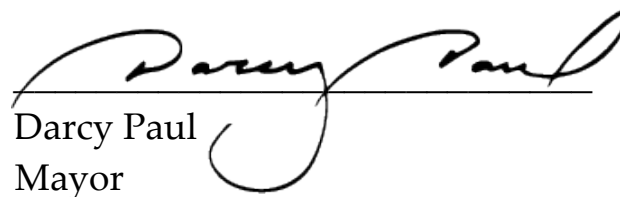
Certificate of Recognition

Presented to

Audrey Yining Cui

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "From Pixels to Paragraph and Paragraph to Pixels:
A Deep Neural Art Critic & Artist."


Darcy Paul
Mayor



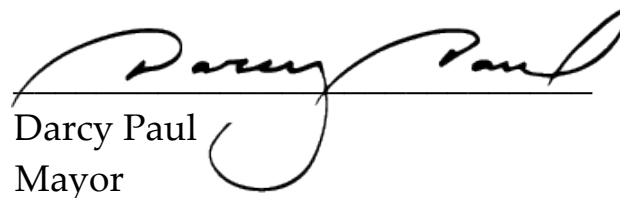
Certificate of Recognition

Presented to

Cynthia Chen

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Decoding Neural Networks:
Generalizable Computational Framework to Discover Protein Sequence Motifs."


Darcy Paul
Mayor



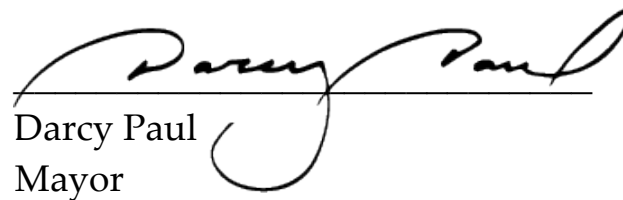
Certificate of Recognition

Presented to

Chaelee Park

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "The Effect of Morphine on Mitochondrial Function
and Neural Inflammation Following Ischemic Stroke."


Darcy Paul
Mayor



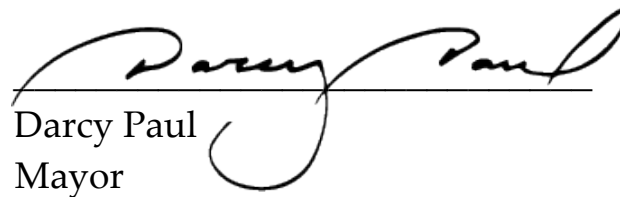
Certificate of Recognition

Presented to

Eileen Ho

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "3D Printing of Carbon Aerogels for Supercapacitors."


Darcy Paul
Mayor



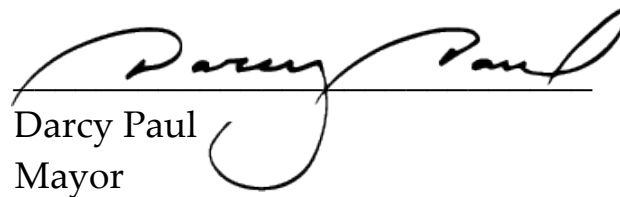
Certificate of Recognition

Presented to

Bidipta Sarkar

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship
with your project "Data Compression Through Empirical Approximations
of Kolmogorov Complexity."


Darcy Paul
Mayor



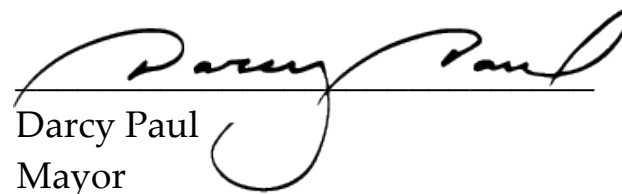
Certificate of Recognition

Presented to

Anika Mantripragada

January 2021

In recognition of your performance in the Santa Clara County 2020 Synopsys Championship with your project "Effects of Everyday Electromagnetic Frequencies (EMF) on Gut Bacteria."


Darcy Paul
Mayor



CITY OF CUPERTINO

Legislation Text

File #: 20-8575, **Version:** 1

Subject: Proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino

Present proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino



Proclamation

WHEREAS, The City of Cupertino wishes to recognize Stanford University in that the institution this past Fall placed trees in its stadium stands due to pandemic related COVID-19 restrictions preventing attendees at outdoor athletic events;

WHEREAS, At the close of the recent competitive collegiate athletics seasons, Stanford University donated 60 of these 470 trees to the City of Cupertino; and

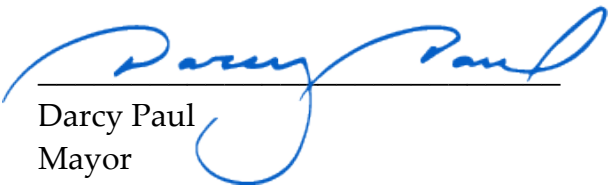
WHEREAS, The City's Public Works Department has accepted the donation and will plant the trees at various City parks in observance of Stanford University's generosity, and as a reminder to the public that out of difficult times, the spirit of perseverance and the determination to ensure continuity lead us all to better places.

THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby Proclaim our fellowship with, and acknowledge this most thoughtful donation to the City of Cupertino, from

Stanford University

and in the upcoming seasons and years, our community looks forward to seeing these trees flourish in our City parks and other locations throughout Cupertino.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, January Nineteenth, Two Thousand and Twenty One.


Darcy Paul
Mayor



CITY OF CUPERTINO

Legislation Text

File #: 20-8587, **Version:** 1

Subject: Proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy

Present proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy



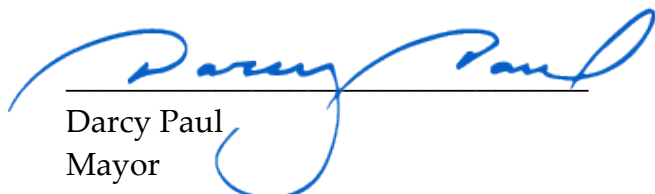
Proclamation

- WHEREAS,** The City of Cupertino recognizes the Santa Clara County Library District (SCCLD) for its commendable efforts and results in navigating the challenging COVID-19 pandemic;
- WHEREAS,** SCCLD has provided continuing and invaluable resources to our residents while making the safety of patrons and staff its top priority;
- WHEREAS,** During the pandemic, SCCLD began offering contactless curbside and walkup services, weekly informational newsletters, and tested an innovative book delivery system for homebound patrons;
- WHEREAS,** SCCLD also greatly expanded digital services to include free and accessible online library cards, virtual programs, and resources for all students in the district, while also offering free Wi-Fi to the community in library parking lots and eliminating late fees;
- WHEREAS,** Despite the multitude of challenges during this time, SCCLD not only engaged the community with an additional focus on mental health, but the Cupertino Library also continued working with the City to move forward on the Library Expansion Project; and
- WHEREAS,** The City Council recognizes that SCCLD and its staff deserve recognition for accommodating the community's needs during this challenging time.
- THEREFORE,** I, Mayor Darcy Paul, and the Cupertino City Council do hereby Proclaim that we acknowledge and commend the

Santa Clara County Library District

and the Cupertino Library and community-based volunteer groups supporting the Library for their excellent response during the COVID-19 pandemic, and we give our sincere appreciation to SCCLD for its commitment and continued service to the City of Cupertino.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, January Nineteenth, Two Thousand and Twenty One.


Darcy Paul
Mayor



CITY OF CUPERTINO

Legislation Text

File #: 21-8629, **Version:** 1

Subject: Proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021

Present proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021



Proclamation

WHEREAS, The City of Cupertino wishes to recognize the Hindu Swayamsevak Sangh (HSS) and its annual Health for Humanity Yogathon campaign, held from January 16 to January 31 this year;

WHEREAS, HSS is a nonprofit organization focused on the importance and education of a healthy lifestyle, community service, character building, and more;

WHEREAS, HSS launched the Health for Humanity Yogathon in 2007 to create awareness about the ancient Hindu practice of yoga to promote the spiritual, mental, and physical wellbeing of all Americans;

WHEREAS, The Health for Humanity Yogathon invites everyone to participate and achieve healthy lifestyles regardless of their backgrounds, with a goal of 1,000 individuals collectively completing 11,000 repetitions of Surya Namaskara (Sun Salutation);


WHEREAS, The City Council recognizes that this campaign comes at a time when it is especially important for all persons to focus on good physical and mental health as we continue to navigate this challenging COVID-19 pandemic.

THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby join HSS to Proclaim our support of the annual

Health for Humanity Yogathon

and thank the local Cupertino Chapter of HSS for its continued efforts in preserving and promoting ancient heritage and cultural values in our community, while also encouraging a healthy, creative, and therapeutic lifestyle in the City of Cupertino.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, January Nineteenth, Two Thousand and Twenty One.



Darcy Paul
Mayor



CITY OF CUPERTINO

Legislation Text

File #: 20-8537, **Version:** 1

Subject: Amending the Fiscal Year 2020-21 Fee Schedule to establish updated fees for the Community Gardens. This item has been continued to a date uncertain.



CITY OF CUPERTINO

Legislation Text

File #: 20-8533, **Version:** 1

Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees. This item has been continued to March 2.



CITY OF CUPERTINO

Legislation Text

File #: 20-8526, **Version:** 1

Subject: City Manager update on emergency response efforts

Receive City Manager update on emergency response efforts



CITY OF CUPERTINO

Legislation Text

File #: 20-8525, **Version:** 1

Subject: Report on Committee assignments

Report on Committee assignments



CITY OF CUPERTINO

Legislation Text

File #: 20-8527, **Version:** 1

Subject: Approve the December 15 City Council minutes

Approve the December 15 City Council minutes



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, December 15, 2020**

SPECIAL MEETING

At 5:30 p.m. Mayor Darcy Paul called the Special City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

ORDINANCES AND ACTION ITEMS

1. Subject: Santa Clara County Community Plan to End Homelessness 2020-25
Recommended Action: Adopt Resolution No. 20-140 endorsing the Santa Clara County Community Plan to End Homelessness 2020-25.

Written communications for this item included a staff presentation.

Santa Clara County Office of Supportive Housing Continuum of Care Manager Kathryn Kaminski gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported the Santa Clara County Community Plan to End Homelessness 2020-25 and assistance for the residents at the Stevens Creek Boulevard and Highway 280 encampment.

Library Commissioner Liana Crabtree (representing self) supported the Santa Clara County Community Plan to End Homelessness 2020-25 and increasing mobile hygiene services.

Mayor Paul closed the public comment period.

Paul moved and Willey seconded to adopt Resolution No. 20-140 endorsing the Santa Clara County Community Plan to End Homelessness 2020-25. The motion carried unanimously.

ADJOURNMENT

REGULAR MEETING

At 6:48 p.m. Mayor Darcy Paul called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

Mayor Paul presented City Council meeting procedural requirements including the order and time limits of agenda items. (Submitted written comments).

CEREMONIAL MATTERS AND PRESENTATIONS - None

POSTPONEMENTS

1. Subject: Consider continuing Item No. 11 Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design to January 19.
Recommended Action: Consider a motion to continue Item No. 11 Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design to January 19.

Written Communications for this item included an email to Council.

Housing Commissioner Connie Cunningham (representing self) opposed postponing the Bird-Safe Design Ordinance. (Submitted written comments).

Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, opposed postponing the Bird-Safe Design Ordinance.

Dashiell Leeds, on behalf of the Sierra Club Loma Prieta Chapter, opposed postponing the Bird-Safe Design Ordinance.

Rose Grymes and Peter Friedland supported Dark Sky and Bird-Safe Design and opposed postponing the Bird-Safe Design Ordinance.

Lisa Warren supported Dark Sky and Bird-Safe Design and opposed postponing the Bird-Safe Design Ordinance.

Robert Hirt supported Dark Sky and Bird-Safe Design and opposed postponing the Bird-Safe Design Ordinance.

Joe Spaulding supported prioritizing homelessness study efforts and postponing Bird-Safe Design efforts indefinitely.

Jill Halloran supported Dark Sky and Bird-Safe Design and opposed postponing the Bird-Safe Design Ordinance.

Linda Ruthruff opposed postponing the Bird-Safe Design Ordinance.

Paul moved and Willey seconded to continue Item No. 11 Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design to January 19.

Paul withdrew his motion.

Willey moved and Wei seconded to separate Dark Sky and Bird-Safe Design and hear Bird-Safe Design; and postpone Dark Sky until January 19 but receive the Dark Sky updates since the last meeting.

Chao made a substitute motion to hear both Dark Sky and Bird-Safe Design. There was no second and the motion was not considered.

Willey's motion carried with Moore voting no.

2. Subject: Amending the Fiscal Year 2020-21 Fee Schedule to establish updated fees for the Community Gardens. This item has been continued to January 19.

3. Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees. This item has been continued to January 19.
4. Subject: Municipal Code Amendments to update existing Mobile Vending regulations, including but not limited to regulations in Chapter 5.48, and potential conforming edits to other chapters in the Municipal Code, including in Titles 5, 11, 13 and 19. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide. This item has been continued to January 19.

ORAL COMMUNICATIONS

Jennifer Griffin was concerned about money backers for Sacramento bills intended to increase high-density housing that are being reintroduced for approval after several years.

Rhoda Fry talked was concerned about Lehigh Cement Plant and the two quarries in Cupertino regarding air pollution reduction and regulation. (Submitted written comments).

Nick Kuwada, County of Santa Clara Division of Equity and Social Justice Program Manager supported the City's strong self-response rate to ensure an accurate 2020 Census count for necessary Federal funding.

Brent Bardsley supported issuing a commendation to the Cupertino Library staff for providing services to residents during COVID-19 and the California wildfires.

Bicycle Pedestrian Commissioner Muni Madhhdhipatla (representing self) was concerned about the number of proposed small cell installations in Cupertino and compared to other cities.

Venkat Ranganathan was concerned about the proposed small cell site installation near his home and potential health effects and requested discussion at a future Council meeting.

Peter Chu was concerned about the number of proposed 5G small cell sites and supported provisional permits and guidelines for minimum setbacks and distances between cells.

Lisa Warren supported future agenda items on action against housing bills, R1 improvements for privacy and balconies, and parkland distribution based on resident population.

Rose Grymes supported issuing a commendation to Cupertino Library staff.

Tianheng Tu was concerned about the proposed 5G small cell site installation in proximity to residences and potential health effects.

Rajul Pandit was concerned about the proposed small cell site installation near homes and supported 100' setbacks and Council prioritizing the matter.

Raj Sayana was concerned about small cell site installations in neighborhoods, the number of proposed installations, and potential health effects, and requested Council action.

Peggy Griffin supported Peter Chu's comments about proposed small cells, prioritizing installations in business areas, and requested a future agenda item on the matter.

REPORTS BY COUNCIL AND STAFF (10 minutes)

5. Subject: City Manager update on emergency response efforts
Recommended Action: Receive City Manager update on emergency response efforts

City Manager Deborah Feng reported on the State's COVID-19 tier guidelines and Santa Clara County travel order, County and Cupertino case counts, testing opportunities, and vaccine information; and Parks and Recreation activities; and homeless encampments.

Council received the City Manager update on emergency response efforts.

6. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

Council recessed from 8:24 p.m. to 8:30 p.m.

CONSENT CALENDAR

Willey moved and Wei seconded to approve the items on the Consent Calendar except for Item No. 7 which was pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

7. Subject: Approve the December 1 City Council minutes
Recommended Action: Approve the December 1 City Council minutes

Mayor Paul opened the public comment period and the following people spoke.

City Council

Minutes

December 15, 2020

Brent Bardsley was unable to call in for the December 1 meeting and supported deferring the weed abatement program during the COVID-19 pandemic.

Mayor Paul closed the public comment period.

Willey moved and Chao seconded to approve the December 1 City Council minutes. The motion carried unanimously with Moore abstaining.

8. Subject: Approve the December 3 City Council minutes
Recommended Action: Approve the December 3 City Council minutes
9. Subject: Appointment of Council Committee assignments_
Recommended Action: Approve Council Committee assignments
10. Subject: Authorize negotiation and execution of a Measure B funding agreement for design of Junipero Serra Trail, Central segment.
Recommended Action: Authorize the City Manager to negotiate and execute a grant funding agreement with Valley Transportation Authority, accepting \$460,000 in Measure B funds for the design of the Junipero Serra Trail, Central segment, and increase the project budget by \$460,000.

SECOND READING OF ORDINANCES

PUBLIC HEARINGS

11. Subject: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004; Applicant: City of Cupertino; Location: City-wide)
Recommended Action: That the City Council:
 1. Find the proposed actions are exempt from CEQA; and,
 2. Conduct the first reading of Ordinance No. 20-2217 "An Ordinance of the City Council of the City of Cupertino Amending City Code to Add Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.08 Definitions, Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Bird-Safe and Dark Sky Policies." (Attachment A)

Written communications for this item included a staff presentation and emails to Council.

Senior Planner Erick Serrano and Planning Manager Piu Ghosh gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public hearing and the following people spoke.

Rhoda Fry supported removing the exceptions made for affordable housing units. (Submitted written comments).

Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, supported adoption of the Bird Safe Design Ordinance and minor language modifications, if necessary.

Housing Commissioner Connie Cunningham (representing self) supported adoption of the Bird Safe Design Ordinance. (Submitted written comments).

Dashiell Leeds, on behalf of the Sierra Club Loma Prieta Chapter, supported adoption of the Bird Safe Design Ordinance and minor language modifications, if necessary.

Rose Grymes supported adoption of the Bird Safe Design Ordinance and minor language modifications, if necessary.

Jill Halloran supported adoption of the Bird Safe Design Ordinance.

Linda Ruthruff, on behalf of The California Native Plant Society (CNPS), supported adoption of the Bird Safe Design Ordinance.

Joe Spaulding opposed adoption of the Bird Safe Design Ordinance and supported prioritizing helping people displaced from their homes.

Mayor Paul closed the public hearing.

Wiley moved and Chao seconded to conduct the first reading of the Alternative Draft Bird-Safe Only Ordinance of Attachment D; and that the City Clerk read the title of Ordinance No. 20-2219 by title only and that the City Clerk's reading would constitute the first reading thereof.

Chao made a friendly amendment to include the following modifications. (Willey and Chao accepted the friendly amendment).

19.102.030 Bird-safe Development Requirements

B. Fenestration and Glass Requirements

2. Standard Compliance Treatments: Glass treatments must ~~be visible to all bird species~~, have high color contrast with the glass, and be applied to the outermost glass.

4. Exemptions: The following are exempted from subsection 19.102.030(B):

~~c. Residential development in R1 zoning districts outside of Bird Sensitive Areas; and~~

~~d. 100% affordable housing developments.~~

Willey made a friendly amendment to exclude window replacements on existing structures. (Chao did not accept the friendly amendment).

Chao made an amended motion to exempt window replacements up to a height of 15' for residential development in R1 zoning districts. There was no support for Chao's amended motion, and it was not considered.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2219: "An Ordinance of the City Council of the City of Cupertino Amending City Code to Add Chapter 19.102: Bird Safe Development Standards and to Amend Chapter 19.08 Definitions to Implement Bird-Safe Regulations."

Willey's motion carried with Moore voting no.

Final motion summary:

Willey moved and Chao seconded to conduct the first reading of the Alternative Draft Bird-Safe Only Ordinance of Attachment D as modified by Chao; and that the City Clerk read the title of Ordinance No. 20-2219 by title only and that the City Clerk's reading would constitute the first reading thereof.

Chao's modifications:

19.102.030 Bird-safe Development Requirements

B. Fenestration and Glass Requirements

2. Standard Compliance Treatments: Glass treatments must ~~be visible to all bird species~~, have high color contrast with the glass, and be applied to the outermost glass.

4. Exemptions: The following are exempted from subsection 19.102.030(B):

~~c. Residential development in R1 zoning districts outside of Bird Sensitive Areas; and~~

~~d. 100% affordable housing developments.~~

Ayes: Paul, Chao, Wei, and Willey. Noes: Moore. Abstain: None. Absent: None.

12. Subject: Adoption of a housing program to incentivize development of affordable housing by allowing for density bonuses up to 40 percent and initiating a zoning code amendment to include the program in the City's density bonus ordinance. (Application No. CP-2020-004; Applicant: City of Cupertino; Location: Citywide)
Recommended Action: Adopt Resolution No. 20-141 (Attachment A) adopting a housing program to incentivize development of affordable housing by allowing for density bonuses up to 40 percent and initiating a zoning code amendment to include the program in the City's density bonus ordinance.

Written Communications for this item included a staff presentation and emails to Council.

Community Development Ben Fu introduced the item.

Housing Manager Piu Ghosh gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public hearing and the following people spoke.

Jennifer Griffin was concerned about money backers for AB 2345 and poorly written housing bills and supported postponing the bill until next year.

Victoria Fierce, on behalf of California Renters Legal Advocacy and Education Fund (CaRLA), opposed adoption of the resolution to bypass state law and state density bonus.

Housing Commissioner Connie Cunningham (representing self) opposed adoption of the resolution and supported working with AB 2345 and the Housing Commission.

Kelsey Banes, on behalf of Peninsula for Everyone, opposed adoption of the resolution and supported working within state housing regulations.

Joe Spaulding opposed adoption of the resolution and supported alternative housing policies.

Jordan Grimes opposed adoption of the resolution and supported working within state law to produce affordable housing.

Mayor Paul closed the public hearing.

Chao moved and Willey seconded to:

Adopt Resolution No. 20-141 adopting a housing program to incentivize development of affordable housing by allowing for density bonuses up to 40 percent and initiating a zoning code amendment to include the program in the City's density bonus ordinance. The motion carried unanimously.

Council recessed from 11:10 p.m. to 11:13 p.m.

ORDINANCES AND ACTION ITEMS

13. Subject: Approval of a new 10-year franchise agreement with Recology Cupertino (Recology) related to recycling, organics, and solid waste collection, processing, and disposal effective February 1, 2021; adopt a maximum rate schedule for Rate Year 1 and percentage increases for Rate Years 2 and 3; authorize the use of Enterprise Funds to smooth and mitigate rates, approve an associated budget modification, and establish a minimum fund reserve; and amend Chapter 6.24 of the Cupertino Municipal Code to update provisions related to solid waste, recycling, and organics collection and disposal.

Recommended Action: 1. Adopt Resolution No. 20-142, (Attachment A) to:

a. Authorize the Mayor to execute a new 10-year franchise agreement with Recology for recycling, organics, and solid waste collection, recycling and organics processing services and transport for disposal (Attachment B);

b. Adopt a maximum rate schedule for Rate Year 1 and percentage increases for Rate Years 2 and 3, describing the maximum amounts Recology may charge customers for providing services pursuant to the franchise agreement (Attachment B, Exhibit G3);

c. Authorize establishment of a minimum reserve for the Resource Recovery Enterprise Fund 520-330 of \$500,000;

d. Authorize use of the Resource Recovery Enterprise Fund 520-330 to smooth and mitigate rate increases for the first three years of the agreement; and

e. Approve Budget Modification No. 2021-109 increasing appropriations in the Resource Recovery Enterprise Fund 520-330 in the amount of \$285,864.

2. Conduct the first reading of Ordinance No. 20-2218: "An ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)" (Attachment C).

Written communications for this item included a staff presentation and emails to Council.

Director of Public Works Roger Lee introduced the item.

Environmental Programs Manager Ursula Syrova and HF&H Consultants President Rob Hilton gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public hearing and the following people spoke.

Jennifer Griffin supported the franchise agreement with Recology Cupertino.

Steven Scharf was concerned about the resource recovery enterprise fund increases and 24-gallon carts and supported a competitive bid process before contract approval.

Peggy Griffin was concerned about annual increases, incentives to reduce costs, and the cost of landfill disposal. (Submitted written comments).

Gilbert Wong supported the franchise agreement with Recology Cupertino.

Caller 8453 was concerned about rates rising and compounding annually and supported collections every alternate week.

Mayor Paul closed the public hearing.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2218: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

Moore moved and Wei seconded to:

Adopt Resolution No. 20-142 to:

a. Authorize the Mayor to execute a new 10-year franchise agreement with Recology for recycling, organics, and solid waste collection, recycling and organics processing services and transport for disposal (Attachment B);

b. Adopt a maximum rate schedule for Rate Year 1 and percentage increases for Rate Years 2 and 3, describing the maximum amounts Recology may charge customers for providing services pursuant to the franchise agreement (Attachment B, Exhibit G3);

- c. Authorize establishment of a minimum reserve for the Resource Recovery Enterprise Fund 520-330 of \$500,000;
 - d. Authorize use of the Resource Recovery Enterprise Fund 520-330 to smooth and mitigate rate increases for the first three years of the agreement; and
 - e. Approve Budget Modification No. 2021-109 increasing appropriations in the Resource Recovery Enterprise Fund 520-330 in the amount of \$285,864; and that the City Clerk read the title of Ordinance No. 20-2218 by title only and that the City Clerk's reading would constitute the first reading thereof.
- Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

City Manager Deborah Feng provided an update on community funding grant opportunities.

Council added a future agenda item to issue a commendation to Cupertino Library staff (Moore, Chao, Paul).

ADJOURNMENT

At 12:49 a.m., Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk



CITY OF CUPERTINO

Legislation Text

File #: 21-8632, **Version:** 1

Subject: License agreements with Pacific Coast Farmers Market Association (PCFMA) to operate weekly Friday farmers market in the Creekside Park north parking lot and with West Coast Farmers Market Association (WCFMA) to temporarily operate weekly Sunday farmers market the Senior Center/Memorial Park parking lot.

1. Authorize the City Manager to negotiate and execute a license agreement with Pacific Coast Farmers Market Association (PCFMA) to use the Creekside Park north parking lot for a weekly Friday farmers market; and
2. Authorize the City Manager to negotiate and execute a license agreement with West Coast Farmers Market Association (WCFMA) to temporarily use the Senior Center/Memorial Park parking lot for a weekly Sunday farmers market.



PARKS AND RECREATION DEPARTMENT

QUINLAN COMMUNITY CENTER
10185 NORTH STELLING ROAD • CUPERTINO, CA 95014-5732
TELEPHONE: (408) 777-3120 • FAX: (408) 777-1305
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

License agreements with Pacific Coast Farmers Market Association (PCFMA) to operate weekly Friday farmers market in the Creekside Park north parking lot and with West Coast Farmers Market Association (WCFMA) to temporarily operate weekly Sunday farmers market the Senior Center/Memorial Park parking lot.

Recommended Action

1. Authorize the City Manager to negotiate and execute a license agreement with Pacific Coast Farmers Market Association (PCFMA) to use the Creekside Park north parking lot for a weekly Friday farmers market; and
2. Authorize the City Manager to negotiate and execute a license agreement with West Coast Farmers Market Association (WCFMA) to temporarily use the Senior Center/Memorial Park parking lot for a weekly Sunday farmers market.

Discussion

Cupertino has two popular farmer's markets serving the community. These include a Friday farmer's market at Creekside Park, organized by PCFMA and a Sunday farmer's market, which has been held at the Oaks Shopping Center, organized by the WCFMA. The Oaks Shopping Center site is no longer available as a farmer's market venue. The WCFMA is therefore proposing to temporarily relocate the Sunday farmer's market to the Senior Center/Memorial park parking lot, until June 1, 2021 at the latest, while it identifies a permanent location for its market. Meanwhile, PCFMA seeks to extend its ability to use the Creekside site (which was originally approved on a trial basis with a special use permit) until June 2022, as the proposed license agreement would permit.

The license agreements include clearly defined conditions of use, including a site plan, parking requirements, set-up/clean-up and signage requirements. These defined conditions also allow the City Manager to review PCFMA's and WCFMA's activities to ensure compliance. The agreements will give the City Manager authority

make any necessary adjustments to the license agreements. Through the license agreements, the City would allow PCFMA and WCFMA to use the specified City parking lots free of charge for their weekly Cupertino farmer's markets, in consideration of the health and nutritional benefits those markets bring to the Cupertino community.

Draft versions of the license agreements are attached to this staff report as Attachments A and B. Approval of the Recommended Action would authorize the City Manager to negotiate final versions of the agreements with PCFMA and WCFMA, and to execute those agreements.

Sustainability Impact

Continuing the Friday and Sunday farmer's markets will greatly benefit the community by providing access to fresh and locally sourced produce and food items. This would also potentially help reduce the City's greenhouse gas emissions and carbon footprint.

Fiscal Impact

No impact; the draft license agreements do not charge a use fee.

Prepared by: Rachelle Sander, Recreation Supervisor

Reviewed by: Joanne Magrini, Director of Parks and Recreation

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft License Agreement with PCFMA

B – Draft License Agreement with WCFMA



**LICENSE AGREEMENT FOR USE OF CREEKSIDE PARK NORTH PARKING LOT
BY AND BETWEEN THE CITY OF CUPERTINO AND
PACIFIC COAST FARMER'S MARKET ASSOCIATION**

This License Agreement ("Agreement") is made by and between the CITY OF CUPERTINO, a municipal corporation ("Licensor"), and PACIFIC COAST FARMER'S MARKET ASSOCIATION ("Licensee") and is effective on the last date signed below.

RECITALS:

WHEREAS, Licensor is the owner of and controls the north public parking lot at Creekside Park in the City of Cupertino, California, (hereinafter referred to as the "Property").

WHEREAS, In 2017, Licensee obtained a special use permit from Licensor to operate a weekly certified farmer's market ("Market") on the Property, and has operated the Market on the Property since that time.

WHEREAS, Licensee seeks to maintain the ability to enter upon the Property, more particularly described in the attached **Exhibit A**, by way of a license for the purposes specified in Section 1 below and in the attached **Exhibit B**.

WHEREAS, Licensor has determined that the Market provides significant benefits to the Cupertino community by providing access to fresh and locally sourced produce and food items.

WHEREAS, Licensor desires to provide Licensee with access to and use of the Property, more particularly described in the attached **Exhibit A**, by way of a nonexclusive license, for the purposes specified in Section 1 below and in the attached **Exhibit B**, subject to the terms and limitations set forth herein.

NOW, THEREFORE, the Licensor and Licensee (collectively, the "Parties"), upon the mutual execution and delivery of this Agreement, for good and valuable consideration, including the Market's above-referenced public benefits, the sufficiency of which are hereby acknowledged, and in consideration of the covenants Parties express herein, agree as follows:

1. Use. Licensor hereby grants to Licensee and its agents and contractors, a nonexclusive, revocable license (the "License") to enter upon and use the Property, as identified in **Exhibit A**, subject to the terms and conditions herein, for the purpose of conducting a weekly certified farmer's market. The Market will be held every Friday from 7:00 a.m. to 2:30 p.m. Licensee agrees to carry out these uses as described in **Exhibit B** and in a manner compatible with the standard of care applicable to Licensee's profession. This grant of License shall not confer any property right to Licensee.

2. **Term.** This License shall commence on the Effective Date and end on 6/24/2022 ("Term"), unless extended by separate written agreement approved by the City Manager or terminated as provided herein.
3. **Payment.** In consideration of the public benefits the Market provides, Licensors agree to grant Licensee this License without changing a fee for use of the Property in compliance with this Agreement.
4. **Conditions Applicable to License.** This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Property, whether or not of record. Licensee agrees to pay all costs incurred by Licensors in enforcing the terms of this License, including reasonable attorney's fees and costs. Failure to make such payments shall be grounds for revocation of this License.
5. **Repair and Restoration.** If Licensee, its agents or contractors cause any damage to the Property, or to any other of Licensors' property or improvements in connection with the exercise of this License, Licensee shall, at no cost to Licensors, repair and restore that property and/or improvements to its original condition prior to and as a condition of Licensee's ongoing use of the Property pursuant to this License.
6. **Assignment.** This License is personal to Licensee. Licensee may not substitute another or transfer any rights or obligations under this Agreement without prior written approval of Licensors.
7. **Termination of License.** Licensors may terminate this License for any reason, upon 30 days written notice.
8. **Indemnification.** To the fullest extent permitted by law, Licensee shall hold harmless, defend (with counsel agreed to by Licensors), and indemnify Licensors and its officers, officials, agents, employees, and volunteers (collectively and/or individually "Licensors") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature including but not limited to claims for loss or damage to any property, or for death or personal injury, arising out of, related to, or in connection with the License, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of Licensors. Licensee's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Licensee, including Licensors, are responsible for the claim does not relieve Licensee from its separate and distinct obligation to immediately defend Licensors as stated herein. This Section 8 shall survive termination of the Agreement.
9. **Insurance.** Licensee shall comply with the insurance requirements in **Exhibit C**. Licensors will not execute the Agreement until it has received and approved satisfactory certificates of insurance and endorsements evidencing the type, amount, and dates of coverage. Alternatively, Licensors in its sole discretion, may purchase insurance and deduct the costs from payments to Licensors, or terminate the Agreement.
10. **Authority.** Licensors is empowered to make adjustments to the Market operations described in **Exhibit B** to address any documented problems or nuisance situation that may occur. All grievances as a result of Licensors' decision may be appealed to the City Manager. The City Manager's decision may be appealed to the City Council under section 1.16.020 of the Cupertino Municipal Code.

11. Compliance with Laws. Licensee shall comply with any and all federal, state, and local laws, statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals and requirements, including those applicable to the use of the Property by Licensee and to any federal, State of California, or Santa Clara County Health Orders, or any other applicable emergency orders including City of Cupertino orders, related to the COVID-19 pandemic.

12. Effect. This Agreement, and each of its terms and conditions, shall inure to the benefit of, and be binding upon the heirs, successors, executors, and assigns of the Parties.

13. Construction. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this License or in any way affect this License. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

14. Governing Law, Venue, and Dispute Resolution. This Agreement is governed by the laws of the State of California. Any legal actions or proceedings filed against Licensors in connection with this Agreement must comply with the government claims filing requirements and must be filed with the Superior Court for the County of Santa Clara, State of California. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

15. Severability. Any provision of this License that shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provisions hereof, and all other provisions shall remain in full force and effect.

16. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice that may arise between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Licensors to insist upon the performance by Licensee in accordance with said terms.

17. Attorney Fees. If Licensors is required to pursue litigation, arbitration or other administrative or regulatory proceeding to enforce its rights or the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 17 survives this Agreement.

18. Entire Agreement/Modifications. This Agreement and all referenced Exhibits are hereby attached and incorporated into the Agreement by this reference and represent the full and complete understanding as to those matters contained herein, and supersede any other agreement or understanding, either oral or written, between the Parties, including the *Exclusive Use Permit – Creekside Park* executed by Pacific Coast Farmers Market Association on 9/16/20. This Agreement may not be modified or amended except in writing signed by both Parties. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

19. Survival. All provisions which by their nature must continue after the Agreement ends, including without limitation Indemnification, Insurance, Governing Law, and Attorney Fees, will survive the expiration or termination of this Agreement.

20. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

To City of Cupertino: Office of the City Manager 10300 Torre Ave., Cupertino, CA 95014 Cc: Representative Name: Rachelle Sander Email: rachelles@cupertino.org	To Pacific Coast Farmer's Market Association: 5060 Commercial Circle, Suite A Concord, CA 94520 Cc: Allen Moy, Executive Director Email: allenmoy@pcfma.org
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or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system, or (iv) 24 hours after facsimile transmittal with confirmation of receipt and followed by personal delivery, United States mail, or overnight delivery as specified in this Section.

21. Execution. The person executing this Agreement on behalf of Licensee represents and warrants that Licensee has full right, power, and authority to execute this Agreement and to carry out all actions required. This Agreement constitutes a legally binding obligation of Licensee, and may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument. This Agreement may be executed by electronic signature, including digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

**LICENSEE, PACIFIC COAST
FARMER'S MARKET ASSOCIATION**

By _____

ALLEN MOY

Executive Director

Date _____

Tax I.D. No.:

LICENSOR, CITY OF CUPERTINO

A Municipal Corporation

By _____

DEBORAH FENG

City Manager

Date _____

APPROVED AS TO FORM:

HEATHER M. MINNER
Cupertino City Attorney

ATTEST:

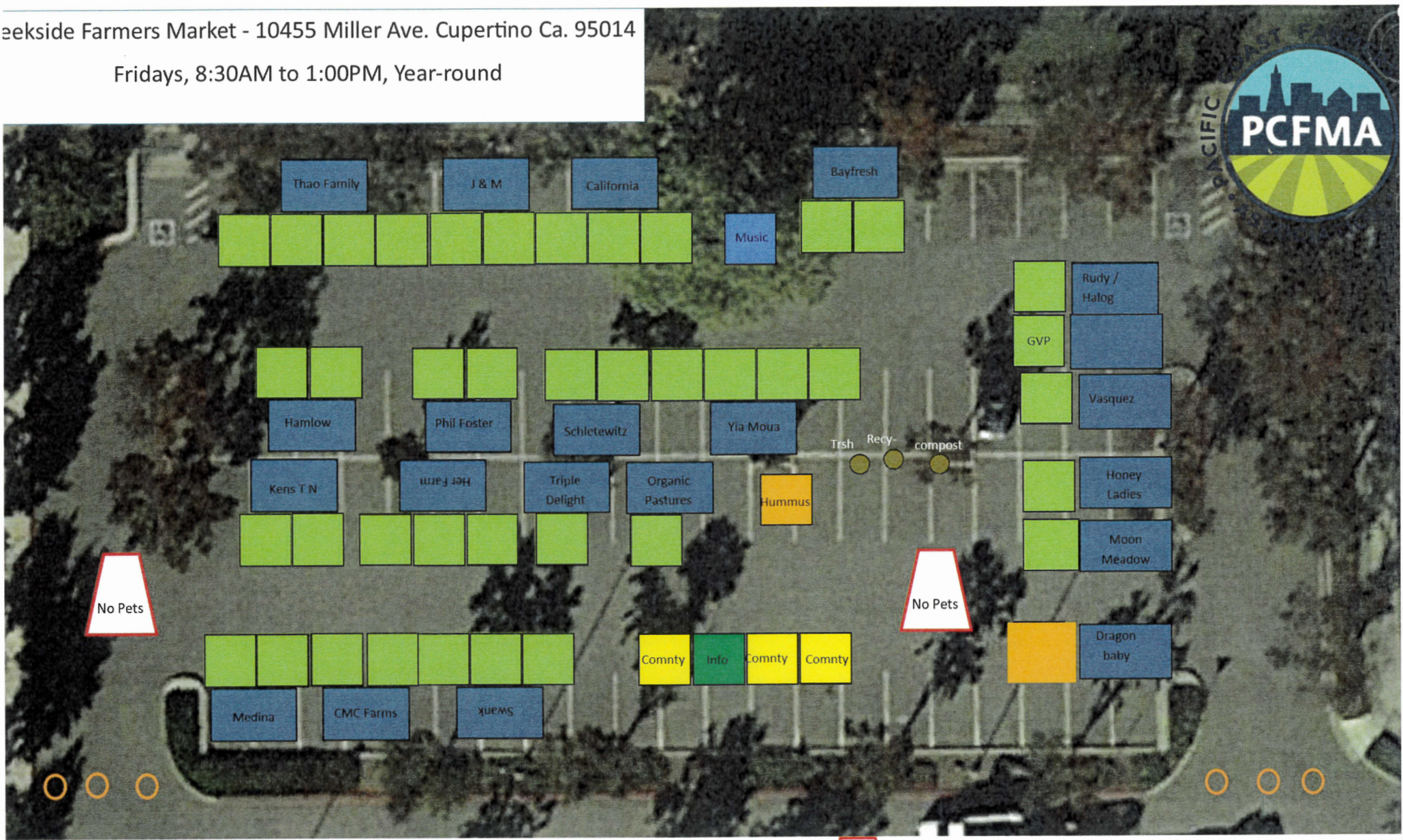
KIRSTEN SQUARCIA
City Clerk
Date _____

1325167.3

Exhibit A - Site Plan

CC 01-19-21
109 of 388

Weekside Farmers Market - 10455 Miller Ave. Cupertino Ca. 95014
Fridays, 8:30AM to 1:00PM, Year-round



- Cones
- Trash cans
- Ag booth
- Non Ag booth
- No Pets
- No pets / animals or smoking

EXHIBIT B

CONDITIONS OF USE

The LICENSEE will operate a weekly, Friday farmers market subject to the following conditions of use:

1. SITE PLAN.

- 1.1. The site plan attached to the Agreement as **Exhibit A** indicates the approved locations and number of all equipment, food and vendor booths, tents and canopies, waste and recycle containers, vendor parking spaces, event attendee parking spaces, signage, and traffic ingress and egress from the lot.
- 1.2. There will be no more than 63 stalls and 40 vans/trucks/commercial vehicles on site.
- 1.3. There will be no more than 40 producers operating at the Market.
- 1.4. Approximately 1,500 persons are expected to attend the Market each week.
- 1.5. All designated fire lanes shall be a minimum of 20 feet in width. Designated fire breaks between stalls shall be 10 feet in width.
- 1.6. Licensee shall be responsible to ensure that all extension cords shall be secured to prevent a tripping hazard.
- 1.7. If a material change to the initial approved layout is anticipated as a result of the addition of vendor booths, Licensee shall contact Parks and Recreation, Community Development, and Fire to ensure compliance with appropriate regulations at least 15 business days prior to the first event at which such changes are expected to be implemented. This change shall be reviewed and approved by Licensor.

2. SIGNAGE.

- 2.1. Licensee will post temporary signage as listed below:
 - 2.1.1. Licensee will place A-frame signs in the Market area of the Creekside north parking lot between 7:00 a.m. and 12:00 p.m. on Thursdays to notify patrons that public parking in that lot will not be allowed on Fridays 6:00 a.m. to 2:30 p.m., and that violators will be towed, but that public parking will continue to be available in the Creekside south parking lot.
 - 2.1.2. Licensee will place signage one hour prior to the Market opening on Fridays at and around the church parking lot at Creekside Bible Church, 10505 Miller Avenue directing customers to that parking.
 - 2.1.3. Licensee will place A-frame "No Farmer's Market parking" signs at entrances to 23-stall south parking lot one hour prior to the Market opening and leave them in place until the Market closes at 2:30 p.m.
- 2.2. All signage must comply with City Ordinance 19.104 with appropriate permits, unless the signs are placed on City Park property.

3. MARKET HOURS.

Licensee shall comply with the stipulations set forth below to minimize sound and traffic impacts:

- 3.1. Vendor arrival, load-in, and set-up shall begin no earlier than 7:00 a.m.
- 3.2. Market hours will begin no earlier than 8:30 a.m. and end no later than 1:00 p.m.
- 3.3. Load out, cleanup of litter and debris, and waste removal will be completed no later than 2:30 p.m.

4. MARKET ACTIVITIES.

- 4.1. Commercial food is permitted at the Market.
- 4.2. Alcohol sales at the Market are prohibited.

5. PARKING.

- 5.1. Licensee shall handle all traffic control in and around the Market site.
- 5.2. Licensee shall monitor parking on Market days with appropriate signage and provide staff/volunteers to direct parking.
- 5.3. Licensee is required to ensure the adjacent church parking lot is available for customer parking on all scheduled Market dates and hours.
- 5.4. Licensee must submit a copy of a signed parking agreement to the Licensor prior to execution of this Agreement.
- 5.5. Should the parking agreement be terminated by either Licensee or the church, the License shall be deemed null and void.
- 5.6. Licensee will ensure vendor loading/unloading and parking occurs only in designated areas.
- 5.7. The 23-stall Creekside south parking lot will remain designated for ADA parking, park users, and City activity participants.
- 5.8. Vehicles in violation of the parking restrictions will be towed away at owner's expense.
- 5.9. Licensee is responsible to contact City of Cupertino Code Enforcement to arrange towing, at 408-777-3182.

6. WASTE MANAGEMENT AND STORM WATER POLLUTION PREVENTION.

- 6.1. Licensee is responsible for litter clean up during and after the Market in the event area and on the adjacent south parking lot, playground, and landscape/turf areas of the park.
- 6.2. Any post-event clean up required to be conducted by the Licensor will result in staff time and material and/or equipment costs to be assessed to the Licensee.
- 6.3. Licensee shall be financially responsible for damages to any public property that may occur as a result of Market activities and attendance.
- 6.4. Licensee shall install and maintain two temporary waste stations for use by the event patrons. Waste stations consist of three Recology branded "event boxes" for landfill, recycling, and compostable. Event boxes shall be lined with clear plastic bags and serviced as needed during the event. Event boxes shall be obtained from Recology at Licensee's expense.
- 6.5. All waste generated during the Market shall be self-hauled and disposed off-site, by the Licensee.
- 6.6. Washing and/or rinsing of any product or equipment is prohibited unless the water is contained in appropriate dedicated gray water collection tanks. Collection tanks shall be emptied off-premises in accordance with all laws.
- 6.7. Licensee shall maintain an appropriately equipped spill kit including towels, absorbent, broom, and waste containers for dry method clean-up of any liquids or solids.
- 6.8. Distribution of single-use produce bags is discouraged, but permitted only for produce items.
- 6.9. Expanded polystyrene (EPS) foam food ware is prohibited from being distributed by any vendor.
- 6.10. Food vendors may not dispose of grease on site.
- 6.11. The public park restrooms must remain available to, and in acceptable condition for, park patrons during the days the event is held. Should Market attendees have a significant impact on the park restrooms, such that additional mid-day servicing is required, Licensee will bear the cost of this service (estimated at \$180 per day). If even with servicing, available public park restrooms are found to be inadequate to handle the volume of attendees, the Licensee may be required to provide portable toilets at its expense.

7. RESTRICTIONS ON USE OF PARK PROPERTY.

- 7.1. Licensee shall comply with the rules and regulations regarding the use of Park Property.

- 7.2. In compliance with City Municipal Code Section 10.48.052 Outdoor Public Events, this License allows amplified sound between 11:00am to 1:30pm, with a limit of 70 dBA (decibels) at the closest residential property and continuous or repeated peak noise levels must remain below 95 dBA where persons may be continuously exposed.
- 7.3. Licensee will adhere to the rules and regulations included in City Ordinance 13.04 Parks. Vendors are not allowed to drive a vehicle in the park or any landscaping within the parking lot for any purpose, including unloading of supplies and equipment. All unloading must be done in the parking lot or curbside.
- 7.4. Per City Ordinance 10.90.020, smoking is prohibited in City recreation areas, parks, and parking lots.
8. **CITY BOOTH.** Licensee shall grant Licensor one booth space free of charge, for the purpose of public education and outreach.
9. **ANIMALS PROHIBITED.** Signs shall be posted around the perimeter of and throughout the Market stating that animals are prohibited within the area of the Market, in accordance with the State of California Health and Safety Code. This prohibition shall not apply to service animals, as defined in the Americans with Disabilities Act, or to on-duty police dogs with handlers.
10. **SECURITY.** Licensee may be required to provide on-site security if deemed required by the Licensor.
11. **EVALUATION AND REPORTING**
 - 11.1. Licensee will meet with Assistant Director of Parks and Recreation or designated staff as requested to evaluate use and neighborhood, traffic, and/or park facilities impact.

1325603.3

EXHIBIT C

Insurance Requirements

Licensee shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to Licensor ("City").

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. **Commercial General Liability** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Licensee's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability:** ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement auto insurance in an amount no less than the minimum required by State law. Licensee shall obtain certificates of insurance evidencing the required auto insurance as a condition to permitting vendors to participate in the Market.
 - b. Licensee's Employees and Agents. Any employee or agent of Licensee who in any way participates, monitors, organizes or performs as part of Licensee's obligations under this contract shall likewise maintain during the term of this Agreement auto insurance covering their autos in an amount no less than the minimum required by State law. Licensee shall require insurance certificates for this insurance as a condition of such persons participating in or performing under this Agreement.
3. **Workers' Compensation:** As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
Not required if Licensee has provided written verification of no employees.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. Licensee shall obtain certificates of insurance evidencing the required vehicle insurance as a condition to permitting vendors and their agents to participate in the Market.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Licensee's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Licensee's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Licensee's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Licensee waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Licensee, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Licensee must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Licensee must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subcontractors

Licensee shall require and verify that all subcontractors maintain insurance that meet the requirements of this Agreement, including naming the City as an additional insured on Contractors insurance policies.

Higher Insurance Limits

If Licensee maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Licensee.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



**LICENSE AGREEMENT FOR TEMPORARY USE OF
SENIOR CENTER/MEMORIAL PARK PARKING LOT
BY AND BETWEEN THE CITY OF CUPERTINO AND
WEST COAST FARMER'S MARKET ASSOCIATION**

This License Agreement ("Agreement") is made by and between the CITY OF CUPERTINO, a municipal corporation ("Licensor"), and WEST COAST FARMER'S MARKET ASSOCIATION ("Licensee") and is effective on the last date signed below.

RECITALS:

WHEREAS, Licensor is the owner of and controls the public parking lot at Senior Center/Memorial Park in the City of Cupertino, California, (hereinafter referred to as the "Property").

WHEREAS, Licensee seeks the ability to enter upon the Property, more particularly described in the attached **Exhibit A**, by way of a license for the purposes specified in Section 1 below and in the attached **Exhibit B**.

WHEREAS, Licensor has determined that the Market will provide significant benefits to the Cupertino community by providing access to fresh and locally sourced produce and food items.

WHEREAS, Licensor desires to provide Licensee with access to and use of the Property, more particularly described in the attached **Exhibit A**, by way of a temporary nonexclusive license, for the purposes specified in Section 1 below and in the attached **Exhibit B**, subject to the terms and limitations set forth herein.

NOW, THEREFORE, the Licensor and Licensee (collectively, the "Parties"), upon the mutual execution and delivery of this Agreement, for good and valuable consideration, including the Market's above-referenced public benefits, the sufficiency of which are hereby acknowledged, and in consideration of the covenants Parties express herein, agree as follows:

1. Use. Licensor hereby grants to Licensee and its agents and contractors, a nonexclusive, revocable license (the "License") to enter upon and use the Property, as identified in **Exhibit A**, subject to the terms and conditions herein, for the purpose of conducting a weekly certified farmer's market. The Market will be held every Sunday from 7:00 a.m. to 2:30 p.m. Licensee agrees to carry out these uses as described in **Exhibit B** and in a manner compatible with the standard of care applicable to Licensee's profession. This grant of License shall not confer any property right to Licensee.

2. Term. This License shall commence on the Effective Date and end on 6/1/2021 ("Term"), unless extended by separate written agreement approved by the City Manager or terminated before the end of the Term, as provided herein.

3. Payment. In consideration of the public benefits the Market provides, Licensors agree to grant Licensee this License without changing a fee for use of the Property in compliance with this Agreement.

4. Conditions Applicable to License. This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Property, whether or not of record. Licensee agrees to pay all costs incurred by Licensors in enforcing the terms of this License, including reasonable attorney's fees and costs. Failure to make such payments shall be grounds for revocation of this License.

5. Repair and Restoration. If Licensee, its agents or contractors cause any damage to the Property, or to any other of Licensors' property or improvements in connection with the exercise of this License, Licensee shall, at no cost to Licensors, repair and restore that property and/or improvements to its original condition prior to and as a condition of Licensee's ongoing use of the Property pursuant to this License.

6. Assignment. This License is personal to Licensee. Licensee may not substitute another or transfer any rights or obligations under this Agreement without prior written approval of Licensors.

7. Termination of License. Licensors may terminate this License for any reason upon 7 days written notice. Reasons for termination include, but are not limited to activities, events, and programs at the Senior Center/Memorial Park resuming due to the end of shelter in place orders related to the COVID-19 pandemic. Licensors also retain the right to terminate this License with 24 hours' written notice if necessary, to accommodate emergency response efforts.

8. Indemnification. To the fullest extent permitted by law, Licensee shall hold harmless, defend (with counsel agreed to by Licensors), and indemnify Licensors and its officers, officials, agents, employees, and volunteers (collectively and/or individually "Licensors") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature including but not limited to claims for loss or damage to any property, or for death or personal injury, arising out of, related to, or in connection with the License, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of Licensors. Licensee's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Licensee, including Licensors, are responsible for the claim does not relieve Licensee from its separate and distinct obligation to immediately defend Licensors as stated herein. This Section 8 shall survive termination of the Agreement.

9. Insurance. Licensee shall comply with the insurance requirements in **Exhibit C**. Licensors will not execute the Agreement until it has received and approved satisfactory certificates of insurance and endorsements evidencing the type, amount, and dates of coverage. Alternatively, Licensors in its sole discretion, may purchase insurance and deduct the costs from payments to Licensors, or terminate the Agreement.

10. Authority. Licensors are empowered to make adjustments to the Market operations described in **Exhibit B** to address any documented problems or nuisance situation that may occur. All grievances as a result of Licensors' decision may be appealed to the City Manager. The City Manager's decision may be appealed to the City Council under section 1.16.020 of the Cupertino Municipal Code.

11. Compliance with Laws. Licensee shall comply with any and all federal, state, and local laws, statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals and requirements, including those applicable to the use of the Property by Licensee and to any federal, State of California, or Santa Clara County Health Orders, or any other applicable emergency orders including City of Cupertino orders, related to the COVID-19 pandemic.

12. Effect. This Agreement, and each of its terms and conditions, shall inure to the benefit of, and be binding upon the heirs, successors, executors, and assigns of the Parties.

13. Construction. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this License or in any way affect this License. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

14. Governing Law, Venue, and Dispute Resolution. This Agreement is governed by the laws of the State of California. Any legal actions or proceedings filed against Licensor in connection with this Agreement must comply with the government claims filing requirements and must be filed with the Superior Court for the County of Santa Clara, State of California. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

15. Severability. Any provision of this License that shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provisions hereof, and all other provisions shall remain in full force and effect.

16. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice that may arise between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Licensor to insist upon the performance by Licensee in accordance with said terms.

17. Attorney Fees. If Licensor is required to pursue litigation, arbitration or other administrative or regulatory proceeding to enforce its rights or the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 17 survives this Agreement.

18. Entire Agreement/Modifications. This Agreement and all referenced Exhibits are hereby attached and incorporated into the Agreement by this reference and represent the full and complete understanding as to those matters contained herein, and supersede any other agreement or understanding, either oral or written, between the Parties. This Agreement may not be modified or amended except in writing signed by both Parties. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

19. Survival. All provisions which by their nature must continue after the Agreement ends, including without limitation Indemnification, Insurance, Governing Law, and Attorney Fees, will survive the expiration or termination of this Agreement.

20. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

To City of Cupertino: Office of the City Manager 10300 Torre Ave., Cupertino, CA 95014 Cc: Rachelle Sander Email: rachelles@cupertino.org	To West Coast Farmer's Market Association: 209 Yarborough Lane Redwood City, CA 94061 Cc: Jerry Lami, Executive Director Email: jerry@wcfma.org
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or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system, or (iv) 24 hours after facsimile transmittal with confirmation of receipt and followed by personal delivery, United States mail, or overnight delivery as specified in this Section.

21. Execution. The person executing this Agreement on behalf of Licensee represents and warrants that Licensee has full right, power, and authority to execute this Agreement and to carry out all actions required. This Agreement constitutes a legally binding obligation of Licensee, and may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument. This Agreement may be executed by electronic signature, including digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

LICENSEE, WEST COAST FARMER'S

MARKET ASSOCIATION

By _____

JERRY LAMI

Executive Director

Date _____

Tax I.D. No.:

LICENSOR, CITY OF CUPERTINO

A Municipal Corporation

By _____

DEBORAH FENG

City Manager

Date _____

APPROVED AS TO FORM:

HEATHER M. MINNER
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk
Date _____

1326184.1

Exhibit A - Site Plan



= Non-Certified Vendors



= Restrooms



= Certified Vendors

West Coast Farmer's Market Association

Senior Center/Memorial Park Parking Lot, Sundays, 9 a.m. to 1 p.m.

EXHIBIT B

CONDITIONS OF USE

The LICENSEE will operate a weekly, Sunday farmers market subject to the following conditions of use:

1. SITE PLAN.

- 1.1. The site plan attached to the Agreement as **Exhibit A** indicates the approved locations and number of all equipment, food and vendor booths, tents and canopies, waste and recycle containers, vendor parking spaces, event attendee parking spaces, signage, and traffic ingress and egress from the lot.
- 1.2. There will be no more than 40 stalls and 15 vans/trucks/commercial vehicles on site.
- 1.3. There will be no more than 40 producers operating at the Market.
- 1.4. Approximately 1,500 persons are expected to attend the Market each week.
- 1.5. All designated fire lanes shall be a minimum of 20 feet in width. Designated fire breaks between stalls shall be 10 feet in width.
- 1.6. Licensee shall be responsible to ensure that all extension cords shall be secured to prevent a tripping hazard.
- 1.7. If a material change to the initial approved layout is anticipated as a result of the addition of vendor booths, Licensee shall contact Parks and Recreation, Community Development, and Fire to ensure compliance with appropriate regulations at least 15 business days prior to the first event at which such changes are expected to be implemented. This change shall be reviewed and approved by the City.

2. SIGNAGE.

- 2.1. Licensee will post temporary signage as listed below:
 - 2.1.1. Licensee will place A-frame signs in the Market area of the Senior Center/Memorial Park parking lot between 7:00 a.m. and 12:00 p.m. on Saturday to notify patrons that public parking in that lot will not be allowed on Sunday 6:00 a.m. to 2:30 p.m., and that violators will be towed, but that public parking will continue to be available in the surrounding area.
- 2.2. All signage must comply with City Ordinance 19.104 with appropriate permits, unless the signs are placed on City Park property.

3. MARKET HOURS.

Licensee shall comply with the stipulations set forth below to minimize sound and traffic impacts:

- 3.1. Vendor arrival, load-in, and set-up shall begin no earlier than 7:00 a.m.
- 3.2. Market hours will begin no earlier than 9:00 a.m. and end no later than 1:00 p.m.
- 3.3. Load out, cleanup of litter and debris, and waste removal will be completed no later than 2:30 p.m.

4. MARKET ACTIVITIES.

- 4.1. Commercial food is permitted at the Market.
- 4.2. Alcohol sales at the Market are prohibited.

5. PARKING.

- 5.1. Licensee shall handle all traffic control in and around the Market site.
- 5.2. Licensee shall monitor parking on Market days with appropriate signage and provide staff/volunteers to direct parking.

- 5.3. Licensee will ensure vendor loading/unloading and parking occurs only in designated areas.
- 5.4. Vehicles in violation of the parking restrictions will be towed away at owner's expense.
- 5.5. Licensee is responsible to contact City of Cupertino Code Enforcement to arrange towing, at 408-777-3182.

6. WASTE MANAGEMENT AND STORM WATER POLLUTION PREVENTION.

- 6.1. Licensee is responsible for litter clean up during and after the Market in the event area and on the Senior Center parking lot and landscape/turf areas of the park.
- 6.2. Any post-event clean-up required to be conducted by the Licensor will result in staff time and material and/or equipment costs to be assessed to the Licensee.
- 6.3. Licensee shall be financially responsible for damages to any public property that may occur as a result of Market activities and attendance.
- 6.4. Licensee shall install and maintain two temporary waste stations for use by the event patrons. Waste stations consist of three Recology branded "event boxes" for landfill, recycling, and compostable. Event boxes shall be lined with clear plastic bags and serviced as needed during the event. Event boxes shall be obtained from Recology at Licensee's expense.
- 6.5. All waste generated during the Market shall be self-hauled and disposed off-site, by the Licensee.
- 6.6. Washing and/or rinsing of any product or equipment is prohibited unless the water is contained in appropriate dedicated gray water collection tanks. Collection tanks shall be emptied off-premises in accordance with all laws.
- 6.7. Licensee shall maintain an appropriately equipped spill kit including towels, absorbent, broom, and waste containers for dry method clean-up of any liquids or solids.
- 6.8. Distribution of single use produce bags is discouraged, but permitted only for produce items.
- 6.9. Expanded polystyrene (EPS) foam food ware is prohibited from being distributed by any vendor.
- 6.10. Food vendors may not dispose of grease on site.
- 6.11. The public park restrooms must remain available to, and in acceptable condition for, park patrons during the days the event is held. Should Market attendees have a significant impact on the park restrooms, such that additional mid-day servicing is required, Licensee will bear the cost of this service (estimated at \$180 per day). If even with servicing, available public park restrooms are found to be inadequate to handle the volume of attendees, the Licensee may be required to provide portable toilets at its expense.

7. RESTRICTIONS ON USE OF PARK PROPERTY.

- 7.1. Licensee shall comply with the rules and regulations regarding the use of Park Property.
- 7.2. In compliance with City Municipal Code Section 10.48.052 Outdoor Public Events, this License allows amplified sound between 11:00am to 1:30pm, with a limit of 70 dBA (decibels) at the closest residential property and continuous or repeated peak noise levels must remain below 95 dBA where persons may be continuously exposed.
- 7.3. Licensee will adhere to the rules and regulations included in City Ordinance 13.04 Parks. Vendors are not allowed to drive a vehicle in the park or any landscaping within the parking lot for any purpose, including unloading of supplies and equipment. All unloading must be done in the parking lot or curbside.
- 7.4. Per City Ordinance 10.90.020, smoking is prohibited in City recreation areas, parks, and parking lots.

8. ANIMALS PROHIBITED. Signs shall be posted around the perimeter of and throughout the market stating that animals within the area of the market are prohibited, in accordance with the State of

California Health and Safety code. This prohibition shall not apply to service animals, as defined in the Americans with Disabilities Act, or to on-duty police dogs with handlers.

9. **SECURITY.** Licensee may be required to provide on-site security if deemed required by the Licensor.

10. EVALUATION AND REPORTING

10.1. Licensee will meet with Assistant Director of Parks and Recreation or designated staff as requested to evaluate use and neighborhood, traffic, and/or park facilities impact.

1325603.2

EXHIBIT C

Insurance Requirements

Licensee shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to Licensor ("City").

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. **Commercial General Liability** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Licensee's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability:** ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement auto insurance in an amount no less than the minimum required by State law. Licensee shall obtain certificates of insurance evidencing the required auto insurance as a condition to permitting vendors to participate in the Market.
 - b. Licensee's Employees and Agents. Any employee or agent of Licensee who in any way participates, monitors, organizes or performs as part of Licensee's obligations under this contract shall likewise maintain during the term of this Agreement auto insurance covering their autos in an amount no less than the minimum required by State law. Licensee shall require insurance certificates for this insurance as a condition of such persons participating in or performing under this Agreement.
3. **Workers' Compensation:** As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
Not required if Licensee has provided written verification of no employees.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. Licensee shall obtain certificates of insurance evidencing the required vehicle insurance as a condition to permitting vendors and their agents to participate in the Market.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Licensee's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Licensee's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Licensee's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Licensee waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Licensee, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Licensee must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Licensee must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subcontractors

Licensee shall require and verify that all subcontractors maintain insurance that meet the requirements of this Agreement, including naming the City as an additional insured on Contractors insurance policies.

Higher Insurance Limits

If Licensee maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Licensee.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



CITY OF CUPERTINO

Legislation Text

File #: 20-8607, **Version:** 1

Subject: Increase the construction contingency budget for the McClellan Ranch Preserve Community Garden Improvement Project (Project No. 2017-15) due to COVID-19.

1. Authorize an increase in the Construction Contingency Budget from \$64,930 to \$280,530 for the McClellan Ranch Preserve Community Garden Improvement Project; and
2. Adopt Resolution No. 21-001 (Attachment A) to approve Budget Modification No. 2021-113 increasing appropriations in the Capital Improvement Fund 420-99-004 in the amount of \$125,600 funded from Capital Project Fund.



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Increase the construction contingency budget for the McClellan Ranch Preserve Community Garden Improvement Project (No. 2017-15) due to COVID-19.

Recommended Action

1. Authorize an increase in the Construction Contingency Budget from \$64,930 to \$280,530 for the McClellan Ranch Preserve Community Garden Improvement Project; and
2. Adopt Resolution No 21-___ (Attachment A) to approve Budget Modification No. 2021-113 increasing appropriations in the Capital Improvement Fund 420-99-004 in the amount of \$125,600 funded from the Capital Project Fund.

Discussion

On February 18, 2020, the City Council authorized a construction contract for the McClellan Ranch Preserve Community Garden Improvement Project (Project) in the amount of \$649,300 with Gradetech, Inc. (Contractor) and the execution of any necessary change orders of up to 10% (\$64,930) of construction contingency for a total authorized amount of \$714,230.

The Project includes the construction of new perimeter fencing, new irrigation, pergola, ADA-accessible raised beds, in-ground plots and space for 98 raised planter beds.

Not included in the project budget was the labor to construct the 98 raised planter beds, filling the beds with topsoil and the placement of mulch along the walking paths. These items were identified as bid alternatives but were not authorized in the budget in order to provide community volunteer opportunities to work alongside City maintenance staff. The unit price submitted by the contractor for the alternatives was \$3,000 per raised planter bed.

A Notice to Proceed was issued to the contractor on March 9, 2020. The first COVID-19 Shelter in Place order (SiP) was issued by the County on March 16, 2020, which included restriction of all non-essential public works construction. When the County eased restrictions in June 2020, public works construction projects were allowed to proceed, and

a new Notice to Proceed was issued with a revised start date of July 14, 2020. With the SiP restrictions remaining in effect, recruiting, scheduling, organizing and managing volunteers to assist with the project was not feasible. The City looked at the option of constructing the planter beds using only City maintenance staff. A cost estimate to complete the work was created based on the staff time necessary to construct the planter beds. These costs were estimated at approximately \$200,000.

The City also requested that the contractor provide an updated proposal to perform this work, similar to what had previously been scoped in the bid alternate (with the exception that the City would provide the lumber and associated materials). The contractor's proposal to complete the work is \$205,600 (Attachment B). Lumber and other materials cost approximately \$100,000, resulting in a total cost of \$3,000+/- per planter bed, which was consistent with the bid alternate pricing previously provided by the contractor.

Staff recommends that the contractor perform this work for the following reasons:

- The cost difference to have the contractor perform the work in lieu of City maintenance staff is negligible.
- Construction of the improvements by City maintenance staff would be in addition to their normal duties and responsibilities.
- The contractor has committed to having the planter boxes completed in time for a Spring opening (weather permitting).
- The contractor would remain responsible for all improvements constructed at the site through completion of the project, reducing potential liability to the City.

Sustainability Impact

Supporting community gardens is consistent with the Cupertino Climate Action Plan. Community-wide measure C-G-1-E is to assess opportunities to expand Cupertino's network of community gardens, demonstration gardens and edible schoolyards. Community gardens can provide access to fresh, nutrient-rich produce that localizes the traditional commodity chain, reducing associated transportation emissions and eliminating packaging lifecycle impacts. Community gardens strengthen our environmental legacy, which in turn can transform other climatized emissions reduction activities among those engaged.

Fiscal Impact

There is \$90,000 in unencumbered funds available in the project budget (420-99-004). To accommodate this additional work, the project budget will need to be augmented by an additional \$125,600 (\$115,600 for contractor's base proposal, plus \$10,000 as a contingency) funded by available fund balance in the Capital Fund (420). The total of the current funds available plus this additional authorization will enable completion of the project. If approved, the remaining fund balance in the Capital Fund (420) is estimated to be \$34,000. The Capital Reserve Fund (429) has an estimated balance of \$3.1M.

Prepared by: Alex Acenas, Public Works Project Manager

Reviewed by: Susan Michael, Interim Capital Improvement Manager
Roger Lee, Public Works Director

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

Attachment A – Draft Resolution

Attachment B - Contractor Proposal

RESOLUTION NO. 21-XXX

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL AMENDING THE
CAPITAL IMPROVEMENT PROGRAM BUDGET FOR FISCAL YEAR 2020-
21 BY APPROPRIATING, TRANSFERRING AND UNAPPROPRIATING
MONIES FOR SPECIFIC FUNDS**

WHEREAS, the orderly administration of municipal government depends on a sound fiscal policy maintaining a proper ratio of expenditures within anticipated revenues and available monies; and

WHEREAS, accomplishing City Council directives, projects and programs, and performing staff duties and responsibilities likewise depends on the monies available for that purpose; and

WHEREAS, the City Manager has determined that the balances from the funds specified in this resolution are adequate to cover the proposed amended appropriations, and therefore recommends the fund reallocations described herein; and

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the recommended fund reallocations and ratifies the attached amended appropriations for the Capital Improvement Program budget for Fiscal Year 2020-21.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 19th day of January 2021, by the following vote:

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Resolution No. 21-xxx

Page 2

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, 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>

Project	Original Budget	Estimated New Budget	Increase/ <Decrease>	Outside Funding	Additional Required
McClellan Ranch Preserve Community Garden Improvement Project	\$ 1,200,000	\$ 1,325,600	\$ 125,600	\$ 0	\$ 125,600

GRADETECH INC.
GENERAL ENGINEERING CONTRACTORS
LIC A 628365
PCO (13)

CC 01-19-21
132 of 388

Project **Cupertino McClellan Ranch Community Garden Improvements**
PROJECT NO. **2017-15**

Date: Wednesday, December 16, 2020

PCO 12 per RFP 05

- 1) Build 98 raised planter boxes with City acquired materials.**
- 2) Fill 98 planter boxes half way with on site Sub-Soil.**
- 3) Fill 98 planter boxes top half with on site amended topsoil.**

ITEM	Description	Qty	Units	Cost	Taxes	Cost
1	Labor & Equipment to Build and install 97 Planter Boxes (includes finishing City Mock Up)	97	EA			
2	Labor & Equipment to fill 1/2 way up with Sub-soil in 98 Planter Boxes	98	EA			
3	Labor & Equipment to top off 1/2 way up with Amended soil in 98 Planter Boxes	98	EA			
				Total		\$205,600.00
Conditions	1. Lumber to be delivered to be picked up at San Jose Lumber yard cut to lengths			Additional Work Days		tbd

Conditions	1. Lumber to be delivered to be picked up at San Jose Lumber yard cut to lengths. 2. No Painting of Lumber or Boxes 3. Only Materials to be supplied by Gradetech are staples for Fabric & Mesh 4. Any Damage to finished Grades by Box installation will be repaired on T&M Finished Boxes May only be 19" tall due to finished Lumber nominal Dimensions for City supplied Lumber. 5. Amended Topsoil and Subsoil from Onsite Stockpiles 6. Work to begin upon receipt of materials and anticipate work to be complete by end of February 2021
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By: Christopher R. Jordan
Chris R Jordan PM

Date 12/16/20



CITY OF CUPERTINO

Legislation Text

File #: 20-8576, **Version:** 1

Subject: Second reading of Ordinance No. 20-2218: "An ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

Conduct the second reading and enact Ordinance No. 20-2218: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CUPERTINO MUNICIPAL CODE CHAPTER 6.24 (GARBAGE,
NON-ORGANIC RECYCLING AND ORGANIC WASTE RECYCLING
COLLECTION AND DISPOSAL)**

The City Council of the City of Cupertino finds that:

WHEREAS, the purposes of Chapter 6.24 of the Cupertino Municipal Code are, among other things, to describe the City Council's authority to award an exclusive franchise to a solid waste collector to perform solid waste collection service, and certain terms and conditions related to solid waste collection service; and

WHEREAS, the City Council has historically exercised its authority under Chapter 6.24 to award such as exclusive franchise to a solid waste collector, describing the terms and conditions for the award in a franchise agreement with the collector; and

WHEREAS, since the City last amended Chapter 6.24, there have been updates in state law and regulation, particularly in regard to expansion of the state mandate for certain businesses to participate in organic recycling, as well as refinements to the City's processes for managing solid waste collection and achieving its diversion goals; and

WHEREAS, this Ordinance makes revisions to Chapter 6.24 to: (a) clarify and confirm the City's role and responsibility for regulating the franchised solid waste collector and protecting Cupertino residents; (b) clarify and confirm the franchised solid waste collector's role and responsibility for collection of payments, including past due payments, from customers for services rendered by the solid waste collector; (c) better align the Municipal Code and the City's franchise agreement with the solid waste collector; (d) reflect recent updates in state law and regulation, particularly relating to the expansion of mandatory organics recycling by businesses; and (e) make minor amendments to the Code to achieve consistent use of defined terms, better organization and titling of existing provisions to better reflect the subject matter of the section, correct typographical errors, and similar.

**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: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, 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 activities 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.

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.

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INTRODUCED at a regular meeting of the Cupertino City Council on December 15, 2020 and
ENACTED at a regular meeting of the Cupertino City Council on _____, 2021
by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

**Attachment A – An Ordinance of the City of Cupertino Amending
Provisions of the City Municipal Code Relating to Solid Waste Collection Service**

SECTION 1. Section 6.24.010 “Purpose of Chapter”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.010 Purpose of Chapter.

A. This chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino.

B. The City is required to comply with the applicable provisions of the California Integrated Waste Management Act (AB 939 or the "Act"), as amended, which is codified in California Public Resources Code beginning at section 40000. The Act requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through some source reduction, recycling, and composting activities.

C. Assembly Bill 1826, which amended the Act in 2014, to impose certain organic waste recycling requirements, mandates that by April 1, 2016, a business that generates eight (8) cubic yards or more of organic waste per week must arrange for recycling services, specifically for organic waste; by January 1, 2017, a business that generates four (4) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2019, a business that generates four (4) or more cubic yards of commercial solid waste per week, must arrange for recycling services specifically for organic waste; by January 1, 2020, if the State determines that the statewide disposal of organic waste has not been reduced to fifty percent (50%) of the level of disposal during 2014, a business that generates two (2) cubic yards or more per week of commercial solid waste must arrange for the organic waste recycling, unless the State determined that this requirement will not result in significant additional reductions of organics disposal. In September 2020, the Department of Resources Recycling and Recovery (CalRecycle) implemented the authority under Assembly Bill 1826 to reduce the threshold to two (2) cubic yards of solid waste generated by covered businesses.

D. The City may adopt, implement, and enforce a local organic waste recycling requirement that is more stringent or comprehensive than State law.

SECTION 2. Section 6.24.020 “Definitions”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Business" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit entity or non-profit entity, or a multi-family residential dwelling with five (5) or more dwellings.
2. "Business Structure" means a building or buildings within a property occupied by one or more businesses.
3. "City" means and includes all the territory lying within the municipal boundaries of the City of Cupertino as presently existing, plus all territory which may be added thereto during the effective term of the ordinance codified herein.
4. "Collection station" means the location at which containers of solid waste, recyclables and organic waste are placed for collection by the solid waste collector. For businesses, collection station is typically the garbage and recycling area enclosure. For multi-family units with less than five (5) residential dwellings and other residential structures, the collection station is typically the street side of the concrete curb immediately adjacent to the residence where curb and gutter exists or where no curb and gutter exists, the edge of asphalt immediately adjacent to the residence.
5. "Construction and demolition debris" or "C&D debris" means materials resulting from the construction, remodeling, or demolition of buildings and other structures. "Construction and demolition debris" includes, but is not limited to, concrete, asphalt, rock and dirt related to construction, remodeling, repair, or demolition operations and is subject to the provisions of [Chapter 16.72](#).
6. "Debris box service" means collection service in containers without compaction that have a capacity of eight (8) cubic yards or more. Debris boxes may be used for the collection of recyclable and organic waste, or garbage, and may be used for construction and/or demolition debris that may or may not be intended for full or partial recycling or other waste diversion.
7. "Delinquent" means a failure of the recipient of solid waste collection service to pay when due all charges owed to the solid waste collector for solid waste collection service rendered or to be rendered.
8. "Director" means the Director of Public Works and his/her duly authorized agents and representatives.
9. "Dwelling" means a residence, flat, duplex, apartment, townhouse, condominium or other facility used for housing one or more persons.
10. "Equipment" means a debris box or debris bin and vehicles used to transport debris boxes or bins.
11. "Finance Director" means the Finance Director and his/her duly authorized agents and representatives.

12. "Food Waste" means unused and discarded solid food products/scraps including, but not limited to, vegetables, fruit, meat, fish, shells, bones, cheese, bread, paper-based tea bags and coffee grounds. Food waste is an organic waste.

13. "Garbage" means all materials, substances or objects that are discarded, including but not restricted to, materials, substances or objects commonly referred to as "trash," "garbage," "refuse" and "rubbish" that are produced, generated or accumulated by all residential, commercial, industrial, institutional, municipal, agricultural and other inhabitants, premises and activities within the City, the collection of which is regulated through the franchise agreement existing between the City and the authorized solid waste collector; provided, however, that "garbage" does not include (a) hazardous materials, (b) recyclable materials, (c) organic materials, (d) clear plastic bags when used to contain organic materials to be recycled, (e) construction and demolition debris, (f) biomedical waste, (g) ash, and (h) sewage and other highly diluted water-carried materials or substances and those in gaseous form.

14. "Hazardous materials" means any or combination of materials which because of its quantity, concentration, or physical, chemical or infectious characteristics may either: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous materials includes, but is not limited to, hazardous wastes as defined under California or United States law or any regulations promulgated pursuant to such laws, and all toxic, radioactive, biologically infectious, explosive or flammable waste materials, including any material defined in Section [9.12.020](#) of the Cupertino City Code for which a hazardous materials storage permit is required.

15. "Litter" means but is not limited to, plastic, paper, cigarette butts, floor sweepings, trash, rubbish, food, cloth, metal, recyclable material, or waste matter of whatever character.

16. "Multi-unit dwelling" or "multi-family dwelling" means any premises, excluding a hotel, motel, or lodging house, used for residential purposes containing five (5) dwelling units or more, irrespective of whether the residency is transient, temporary or permanent.

17. "Non-Organic Recyclables" or "non-organic recyclable material" mean those materials that can be returned to economic use as raw materials for new, reused or reconstituted products, which prior to collection are separated by the generator from other material treated as solid waste. Examples of Non-Organic Recyclables include, but are not limited to: newspaper, cans, corrugated cardboard, glass, certain types of plastic, metals, wood and automobile oil. "Mixed non-organic recyclables" means more than one type of non-organic recyclable material commingled in a bin, debris box, compactor or other type of container. This material includes, but is not limited to wood, paper, plastic, metals, glass, and other recyclable materials other than organic waste. The material must not contain more than 5% by volume garbage and organic waste.

18. "Nonresidential premises" means all premises except residential premises, including but not restricted to premises used for industrial, commercial, administrative and professional offices, public and quasi-public buildings, utility and transportation.

19. "Occupancy"; "occupied": Premises are "occupied" when a person or persons take or hold possession of the premises for permanent or temporary use. For the purposes of

determining whether a premises is occupied during periods when solid waste collection service is made available to such premises, occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods.

20. "Organic waste" means organic materials, including but not limited to, materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, food waste, and non-food vegetative matter, soiled paper and cardboard and waxed cardboard that decompose biologically. The material must not contain in excess of 5% by volume garbage or non-organic recyclable materials. Except in residential dwellings, if the material is placed in a bag, the bag must only be clear plastic.

21. "Owner" means the holder or holders of legal title to the real property constituting the premises to which solid waste collection service is provided.

22. "Person" includes any person, firm, association, organization, partnership, business trust, joint venture, corporation, or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

23. "Premises" means any land, building or structure, or portion thereof, within the City where any solid waste is produced, kept, deposited, placed or accumulated.

24. "Residential premises" means any single-unit dwelling or multiple-unit dwelling.

25. "Single-stream recycling" means a recycling program in which generators place multiple types of recoverable materials in a single container that is designated specifically for recyclables and is taken to a material recovery facility for processing.

26. "Single-unit dwelling" means one or more rooms and a single kitchen, designed for occupancy by one family for residential purposes. Each dwelling unit within a condominium project, duplex, townhouse project or apartment, and each second unit located within a single-family residential zoning district, shall constitute a separate single-unit dwelling to which solid waste collection service is provided, unless the owner or occupants thereof arrange for solid waste collection service to be provided to all dwelling units upon the premises at commercial rates.

27. "Solid waste" means all items of solid waste including, but not limited to garbage, non-organic recyclables, organic waste and hazardous materials eligible for collection.

28. "Solid waste collector" means any person or entity authorized by the franchise agreement between the Franchisee and the City, in accordance with Section [6.24.120](#) of this chapter, to collect, receive, carry, transport, process and dispose of any garbage, non-organic recyclables, organics and hazardous materials eligible for collection, produced, kept or accumulated within the City.

29. "Solid waste collection service" means the collection, transportation and disposal of garbage, organic materials, non-organic recyclables and hazardous materials eligible for collection by an authorized solid waste collector.

30. "Source Separated Recyclables" means any recyclables that, prior to collection, are or have been separated or segregated by their generator as to type or category of source material and are or have been placed into separate containers according to type or category, i.e. all metal is separated from other recyclables and placed in its own separate container or separate debris box.

31. "Tenant" means any person or persons, other than the owner, occupying or in possession of a premises.

SECTION 3. Section 6.24.030 “Mandatory Solid Waste Collection Service – Owner Responsibility”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.030 Mandatory Solid Waste Collection Service – Owner Responsibility.

A. The owner of each occupied residential or nonresidential premises shall subscribe to and pay for at least the minimum level of solid waste collection service made available to that premises by the solid waste collector, as specified in the franchise agreement between the city and the solid waste collector executed pursuant to Section 6.24.120 of this Chapter or obtain an exemption under Section 6.24.031 below. The owner of each occupied residential or nonresidential premises shall subscribe to and pay for a level of service sufficient to provide for the collection of all solid waste generated on the premises. Customers at non-residential premises must subscribe to services on a regular weekly basis sufficient to prevent container or bin overages and, where necessary, to extra services to prevent overages. Nonresidential customers' solid waste, if bagged, shall be in clear plastic bags.

B. The charges for solid waste collection service rendered or made available shall be paid for all periods of time during which the premises are occupied, regardless of whether or not the owner or tenant has any solid waste to be collected on any particular collection date during such occupancy. Occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods. Nothing in this section is intended to prevent an arrangement, or the continuance of an arrangement, under which payments for solid waste collection service are made by a tenant or tenants, or any agent or other person, on behalf of the owner. However, any such arrangement will not affect the solid waste collection service recipient's obligation to pay for solid waste collection service as provided herein.

SECTION 4. Section 6.24.035 “Mandatory Non-Organic Recycling for Businesses”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.035 Mandatory Non-Organic Recycling for Businesses.

A. The owner or tenant designees of multi-family dwelling premises are required to subscribe to and maintain mandatory non-organic residential recycling services for each individual household in the dwelling. An exception may be granted at the discretion of the Director if it is determined there is not sufficient storage space for the containers at the multi-family dwelling premises.

B. All businesses are required to subscribe to and maintain mandatory non-organic recycling services if such businesses generate greater than or equal to four (4) cubic yards of solid waste per week. If the solid waste collector transports containers of solid waste generated by the business to a material recovery facility for the purposes of mixed waste processing, thereby separating non-organic recyclables from the mixed waste and recycling the non-organic recyclables, the business will be deemed to be subscribing to non-organic recycling services.

C. The disposal of garbage in containers designated for organic waste recycling or processing or for source separated or single-stream recycling is prohibited.

D. The solid waste collector is prohibited from providing solid waste service to businesses subject to the mandatory non-organic recycling requirements without providing a non-organic recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the solid waste collector, at least one (1) time per week. The only exceptions to this requirement are the following:

1. The solid waste collector provides a mixed waste processing program to the business in which solid waste containers are taken to a material recovery facility for processing to remove non-organic recyclable materials.
2. The solid waste collector may verify the owner or tenant designee has been granted an exception to the mandatory non-organic recycling program from the Director.

SECTION 5. Section 6.24.037 “Mandatory Organic Recycling for Business Structures”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.037 Mandatory Organic Recycling for Business Structures.

Phased in mandatory recycling of organic waste is required of businesses generating the quantities of organic material specified in this section. Exceptions to these requirements may be granted by the Director, if any aspect of the requirements prove to be unfeasible due to space constraints as allowed in [Chapter 9.16](#).

A. On and after September 1, 2015, a business or business structure generating eight (8) cubic yards or more of organic waste per week are required to subscribe to and maintain organic material (including food waste) recycling services for each structure. Multi-family dwellings are exempted.

B. On and after January 20, 2016, a business or business structure generating three (3) cubic yards or more of organic waste per week or generating a solid waste stream that is comprised of 25% or more organic food waste material are required to subscribe to and maintain organic material (including food waste) recycling services. Multi-family dwellings are exempted.

C. (1) On and after July 1, 2018, a business or business structure generating four (4) cubic yards or more of solid waste per week is required to subscribe to and maintain organic material (including food waste) recycling services for each business or individual household in the multi-family dwelling. (2) On and after January 1, 2021, a business or business structure generating two (2) cubic yards or more of solid waste per week is required to subscribe to and maintain organic material (including food waste) recycling services for each business or individual household in the multi-family dwelling, unless otherwise provided in state law.

D. All business structures are required to maintain mandatory yard waste composting services. These services are to be provided by the solid waste collector or by the contractor retained by the business to perform grounds maintenance services. If these services are not provided by the solid waste collector, the responsible party is required to provide satisfactory proof to the City of the quantity of yard waste being processed and proof that yard waste is being processed as compost.

E. All business structures that either backhaul non-organic recyclables or organic material out of the City or donate non-organic recyclables or organic material is required to provide satisfactory proof to the City of the quantity of non-organic recyclables or organic materials being backhauled and/or donated.

F. The City may direct the solid waste collector to audit individual solid waste streams to determine applicability and compliance with this section. When solid waste stream audits are conducted, businesses are to cooperate and will receive a copy of the audit findings.

G. The disposal of garbage in containers designated for organic material processing or for source separated single-stream recycling is prohibited. Organic waste that is put into an organic waste container for collection by the solid waste collector must be substantially free from garbage and recyclable materials (less than 5% by volume). Organic waste, if bagged, shall be in clear plastic bags. Except for residential dwellings, all bags other than clear plastic bags, are prohibited in containers that have been set out for collection.

1. The owner and/or tenant designee will be notified by the solid waste collector if its organics waste container is contaminated or if the material in their container is bagged in any prohibited bag(s). When the owner and/or tenant designee removes the contaminants and/or the prohibited bags, the franchise solid waste collector will return to the business structure to service the container and will charge the business structure a "Return Fee" as adopted by City resolution.

2. If the owner and/or tenant designee does not remove the contaminants and/or the prohibited bag(s) from the organic waste container, the organic waste container will be serviced and owner and/or tenant designee will be charged for an "Extra P/U" (extra garbage pick-up) and a "Return Fee" in addition to the regular charges that apply to the level of service subscribed to by the owner and/or tenant designee. The extra garbage pick-up charge is based on the size of the container and the City's established approved rates.

H. The solid waste collector is prohibited from providing solid waste service to a business structure subject to the organic waste recycling requirements without providing an organic waste recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the hauler, at least one time per week. The only exceptions to this requirement are the following:

1. Yard waste removal and compost processing services are not provided by the solid waste collector; and
2. Business or business structure provides satisfactory written proof regarding the quantity of yard waste being processed and written proof that yard waste is being processed as compost.

SECTION 6. Section 6.24.080 “Inappropriate Containers”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.080 Inappropriate Containers.

It is the duty of the authorized solid waste collector, unless otherwise allowed under the current franchise agreement, to provide the bins, boxes and containers. The use of garbage, organic materials and non-organic recycling containers which do not meet the standards set forth in Section 6.24.070 of this chapter shall be subject to regulations prescribed by the Director. The solid waste collector may propose for City approval additional charges to be paid the solid waste collector for the collecting and transporting of the inappropriate containers or waste contained therein.

SECTION 7. Section 6.24.120 “Franchise Granting Authority”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.120 Franchise Granting Authority.

The City Council may award an exclusive franchise to any person or entity the Council believes is qualified to perform solid waste collection service. Such franchise agreement shall require the solid waste collector to render service to all residential and nonresidential premises within the City in accordance with the provisions of this chapter and in conformity with such regulations as may be adopted by the Director with the approval of the City Council. Additional terms of such franchise agreement shall not conflict with any of the provisions of this chapter, Chapter 9.16 or Chapter 10.48.

SECTION 8. Section 6.24.150 “Charges for Garbage Collection Service”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.150 Charges for Solid Waste Collection Service.

The City Council reserves the right to establish by resolution a maximum schedule of rates and charges for all levels of solid waste collection services to be rendered by the solid waste collector, who shall then have authority to collect such rates and charges. The schedule may be changed from time to time in the manner prescribed by the franchise agreement between the City and the solid waste collector.

SECTION 9. Section 6.24.160 “Failure to Pay for Garbage Collection Service”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.160 Entitlement to Collect for Solid Waste Collection Service.

The solid waste collector shall be entitled to payment from the recipient of solid waste collection service for any services rendered or to be rendered by the solid waste collector. Upon failure to make such payment, the means of collecting delinquent charges shall be in accordance with the procedures set forth in Sections 6.24.170 through 6.24.180 of this Chapter.

SECTION 10. Section 6.24.170 “Notification of Delinquency”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to read as follows:

6.24.170 Notification of Delinquency.

If a bill for solid waste collection service becomes delinquent, the solid waste collector shall send or deliver notice of delinquency in the form and manner set forth in the franchise agreement, and indicating the amount owed for solid waste collection service, including the amount of late charges that may be imposed thereon, and advising that failure to pay the same will result in increased penalties and that the solid waste collector may pursue other remedies consistent with law regulating the collection of debts.

SECTION 11. Section 6.24.180 “Assignment of Delinquent Account”, of Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby re-titled and amended to read as follows:

6.24.180 Remedies for Delinquent Account.

If a bill for solid waste collection service remains delinquent for more than forty-five (45) days, and the solid waste collector has given notice as required herein, the solid waste collector shall be entitled to collect a late charge in such amount as set forth in the franchise agreement with the solid waste collector. In the event the bill for solid waste collection service, together with any late charge thereon, remains delinquent for more than ninety (90) days, and the solid waste collector has given notice as required herein, the solid waste collector may pursue any remedies consistent with the franchise agreement and law regulating the collection of debts for services rendered by the solid waste collector.



CITY OF CUPERTINO

Legislation Text

File #: 20-7577, **Version:** 1

Subject: Second reading of Ordinance No. 20-2219 adopting Municipal Code Amendments to CMC to adopt bird safety development regulations to implement the Fiscal Year 2020/21 City Council Work Program items related to bird safety. (Application No. MCA-2019-004; Applicant: City of Cupertino; Location: Citywide)

Conduct the second Reading and enact Ordinance No. 20-2219 “An Ordinance of the City Council of the City of Cupertino amending city code to add Chapter 19.102: Bird Safe Development standards and to amend Chapter 19.08: Definitions to implement Bird Safe regulations”.



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Second reading of Ordinance No. 20-2219 adopting Municipal Code Amendments to CMC to adopt bird safety development regulations to implement the Fiscal Year 2020/21 City Council Work Program items related to bird safety. (Application No. MCA-2019-004; Applicant: City of Cupertino; Location: Citywide)

Recommended Action

Conduct the Second Reading and enact Ordinance No. 20-2219 "An ordinance of the City Council of the City of Cupertino amending city code to add Chapter 19.102: Bird Safe Development standards and to amend Chapter 19.08: Definitions to implement Bird Safe regulations" (Attachment A).

Discussion

On December 15, 2020 the City Council introduced and conducted the first reading of Ordinance No. 20-2219. The motion passed on a 4-1 (No: Moore) vote. The City Council motion for adoption included the removal of draft language that exempted homes in R1 zoning outside bird sensitive areas and 100% affordable housing developments, and removal of language requiring bird safe treatments to be visible to all bird species. In addition, a minor reference correction to the name of the new Municipal Code chapter has been made on the first page of the ordinance. Attachment B reflects the redlines to the previously recommended language as shown to Council during the hearing on December 15, 2020.

The City Council posed several questions related to applicability of the ordinance. To clarify, minor replacement of glazing (such as repairing cracks or addressing maintenance issues in compliance with Chapter 19.140 – Non-conforming facilities) would not result in the application of the bird safety regulations.

Environmental Review

The proposed ordinance is exempt from environmental review under California Environmental Quality Act ("CEQA") Guidelines section 15308 because these regulations

are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to bird safety will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply to the proposed ordinance.

Public Noticing & Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Legal ad placed in newspaper (<i>at least 10 days prior to hearing</i>) ▪ Display ad placed in newspaper (<i>at least 10 days prior to hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>four days prior to hearing</i>) ▪ Posted on the City of Cupertino's Web site (<i>four days prior to hearing</i>)

Fiscal Impacts

None.

Sustainability Impacts

None.

Conclusion

The ordinance will be effective thirty days after the second reading/adoption.

Prepared by: Piu Ghosh, Planning Manager

Reviewed by: Albert Salvador, Acting Director of Community Development

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A - Ordinance No. 20-2219

B – Redlined Ordinance indicating amendments since first reading

ORDINANCE NO. 20-2219

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO ADD CHAPTER 19.102: BIRD SAFE DEVELOPMENT
STANDARDS AND TO AMEND CHAPTER 19.08 DEFINITIONS TO IMPLEMENT
BIRD-SAFE REGULATIONS**

The City Council of the City of Cupertino finds that:

WHEREAS, while the City has certain General Plan Goals, Policies and Strategies that support bird-safe goals, it does not have regulations to promote effective Bird-safe policies, and that the proposed new Chapter 19.102: Bird Safe Development Standards will provide effective standards to promote Bird-safe policies;

WHEREAS, on October 28, 2019, Planning Commission provided staff guidance on potential Bird-safe and Dark Sky policies and guidelines;

WHEREAS, community meetings were held on February 12, 2020 and February 20, 2020 to allow the public an opportunity to review and provide comments on the preliminary development standards;

WHEREAS, following 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 August 11, 2020 and October 27, 2020 to consider the Ordinance; and

WHEREAS, with Resolution No. 6914 the Planning Commission has recommended on a 4-1-0 vote that the City Council adopt the Ordinance amending the Municipal Code in substantially similar form as presented in Planning Commission Resolution No. 6914; and

WHEREAS, on December 1, 2020 and December 15, 2020 upon due notice, the City Council has held public hearings to consider the Planning Commission's recommendation and the Ordinance; and

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

WHEREAS, the City Council does find as follows:

- a. That the proposed zoning is in accord with this title of the Municipal Code and the City's Comprehensive General Plan.

The Ordinance does not change any zoning designations, but rather it modifies Title 19: Zoning by adding a new chapter to create development standards for the implementation of regulations that support Bird-Safe policies. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.

The proposed amendments will also support the following General Plan Goals, Policies, and Strategies:

- *Goal LU-3: Ensure that project site planning and building design enhance the public realm through a high sense of identity and connectivity.*
- *Policy LU-3.3: Building Design: Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- *Strategy LU-3.3.1: Attractive Design – Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*
- *Goal LU-12: Preserve and protect the City’s hillside natural habitat and aesthetic values.*
- *Goal ES-5: Protect the city’s urban and rural ecosystems.*
- *Policy ES-5.1: Urban Ecosystem – Manage the public and private development to ensure the protection and enhancement of its urban ecosystem.*
- *Strategy ES-5.2.1: Riparian Corridor Protection – Require the protection of riparian corridors through the development approval process.*

The regulations will encourage incorporation of bird-safe mitigations which will reduce the number of bird collisions.

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

The proposed Ordinance is exempt from environmental review under California Environmental Quality Act (“CEQA”) Guidelines section 15308 because these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to glazing and lighting will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply.

- c. 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).

Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties, nor does it change any land uses allowed. The amendments also do not propose any physical changes in the environment or increased development.

- d. The proposed zoning will promote orderly development of the City.

By creating regulations for Bird-Safe development standards, the ordinance will promote orderly and consistent implementation of the regulations for development in the City.

- e. 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 provides regulation to maintain the health, safety, peace, morals and general welfare of persons residing or working in the City by providing regulations that limit adverse impacts of development on the natural and built environment pertaining to birds.

- f. The proposed amendments are internally consistent with this title.

All the necessary chapters and sections of Title 19: Zoning have been amended to ensure internal consistency with the proposed regulations.

**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: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15308 since these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment. Further, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15301 because it would result in the minor alteration of existing public or private structures without any expansion of use and under CEQA Guidelines Section 15305 because the proposed ordinance involves minor alteration in land use limitations that do not alter permitted uses or density. Finally, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty the Ordinance's regulation related to glazing and lighting will have no possible significant effect on the environment. None of the exceptions listed in CEQA Guidelines section 15300.2 apply to the proposed ordinance

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 15, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – An Ordinance of the City of Cupertino to implement Bird-safe policies and guidelines

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.

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: Zoning adding Chapter 19.102: Bird-Safety Standards

19.102 BIRD-SAFE DEVELOPMENT STANDARDS

19.102.010 Purpose

19.102.020 Applicability of regulations

19.102.030 Bird-safe Development Requirements

19.102.010 Purpose

The purpose of this chapter is to regulate design and construction of structures and accessory elements in all zoning districts to protect the natural environment, particularly enhancing bird-safety. This Chapter establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions.

19.102.020 Applicability of regulations

Whenever an applicant is required to obtain a building permit or a Permit pursuant to Title 19, or whenever exterior lighting is added or replaced (whether temporary or permanent), the project shall meet the requirements of this Chapter. The following table indicates the applicability of regulations by type of project:

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102.030 (D)
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (E) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102.030 (D)
F. Exemptions	See Sections 19.102.030 (B)(4) and (D)(14)

19.102.030 Bird-safe Development Requirements

- A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:
1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
 2. Cross sections, if required;
 3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), (D) and (E); and
 4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.
- B. Fenestration and Glass Requirements
1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
 2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must have high color contrast with the glass and be applied to the outermost glass. Prior to publication of the list, the Planning Department may review information available from interest groups, such as the National Audubon Society.

Ordinance No. _____

3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
 4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers; and
 - b. First floor commercial storefronts, up to a height of 15'.
- C. Non-residential Indoor Lighting Requirements: Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.
- D. Outdoor Lighting Requirements:
1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of-way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
 2. Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 3. Parking lots, sidewalks, and other pedestrian paths shall meet the requirements in Chapter 19.72, 19.60 and 19.124, as applicable. In the event there is a conflict with Chapter 19.72, the less stringent light standards shall apply.

Ordinance No. _____

4. Exterior lighting shall be fully extinguished or motion sensor operated after 11:00 p.m., or when people are no longer present in exterior areas, whichever is later, except for:
 - a. Lights required to remain on in compliance with the California Building Code.
 - b. Lighting of an appropriate intensity allowed in conjunction with uses permitted to operate past 11:00 p.m. with a conditional use permit.
 - c. Outdoor solar powered pathway lights that do not exceed 25 lumens.
 5. Automated control systems, such as motion sensors and timers, shall be used to ensure that outdoor lighting extinguishes 10 minutes after motion activation and turns off when sufficient daylight is available.
 6. Security lighting, necessary to protect persons and property, shall be programmable, motion sensor activated, and may illuminate a perimeter, such as a fence line, if such lights do not result in light trespass, and do not use lamps that exceed 100 watts incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 7. In addition to all other applicable standards, lighting fixtures in the ceiling of service station canopies shall be fully recessed in the canopy, and no light fixtures or illumination, other than approved signage, shall be allowed on top of the fascia of such canopies.
 8. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.
 9. The use of High Intensity Discharge lighting, spot lighting, flood lighting, or similar lighting is prohibited.
 10. The following are exempt from subsection 19.102.030 (D): lighting in the right of way, holiday seasonal lighting between October 15 and January 15 of each year, temporary construction or emergency lighting, temporary lighting associated with a special event, and lighting required pursuant to the Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such required lighting shall additionally comply with the requirements of this Chapter.
- E. Bird-safe Design Requirements. All projects subject to bird-safe development requirements shall:
1. Avoid the funneling of flight paths along buildings or trees towards a building façade.
 2. Avoid use of highly reflective glass or highly transparent glass.
 3. Not include glass skyways or walkways, balconies, freestanding glass walls, transparent building corners, glass features, or other design elements through which trees, landscape areas, water features or the sky are visible from the exterior or from one side of the transparent element to the other, if such elements are untreated.

Ordinance No. _____

2. Additions to Chapter 19.08 concerning Definitions

The following definitions are inserted in alphabetical order in appropriate locations in Sections 19.08.030 (B), (G), (L), (M), (S), (U), and (W). No changes are made to the remainder of the definition sections.

“Bird-safe design” means when building design, site planning, design features, materials, exterior and interior lighting, are designed and developed to reduce hazardous conditions for birds.

“Bird-safe development” means development that incorporates bird-safe design and bird-safe treatment.

“Bird-safe treatment” means treatment to glass that provides visual cues to birds and reduce the likelihood of bird collisions.

“Bird-sensitive area”, for purposes of Chapter 19.102, Glass and Lighting Standards, means parcels that are in or within 300 feet of the Wildland Urban Interface; within 300 feet of watercourses; in Residential Hillside areas; and within 300 feet of public and private, open spaces and parks that are dominated by vegetation, including vegetated landscaping, forest, meadows, grassland, or wetlands.

“Glare” means the effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, which causes annoyance, discomfort, or loss of visual performance and ability.

“Glass features”, for purposes of Chapter 19.102, Glass and Lighting Standards, means such features as free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

“Light Fixture” means a complete lighting unit consisting of one or more lamps, and ballast(s), where applicable, together with the parts designed to distribute the light, position and protect the lamp(s) and ballast(s), and connect the lamp(s) to the power supply.

“Light trespass” means light emitted by a light fixture that shines beyond the property on which it is installed.

“Muntins” means strips of wood, metal, or other materials that physically separate and support individual panes of glass in a window or visually separate a single pane of glass in a window into different sections.

“Shielded fixture” means a light fixture that is shielded or constructed so that light rays emitted by the lamp(s) are projected below the horizontal plane passing through the lowest point on the light fixture.

“Uplighting” means the placement and orientation of light fixtures such that light rays are directed upward.

“Watercourse”, for purposes of Chapter 19.102, Glass and Lighting Standards, means any natural or artificial arroyo, canal, channel, natural conduit, creek,

Ordinance No. _____

culvert, ditch, gully, lake, ravine river, stream, waterway, or wash or other topographic feature on or over which waters flow at least periodically and adjacent areas in which substantial flood damage may occur from overflow or inundation.

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102.030 (D)
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (E) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102.030 (D)
F. Exemptions	See Sections 19.102.030 (B)(4) and (D)(14)

19.102.030 Bird-safe Development Requirements

- A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:
1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
 2. Cross sections, if required;
 3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), (D) and (E); and
 4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.
- B. Fenestration and Glass Requirements
1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
 2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must ~~be visible to all bird species,~~ have high color contrast with the glass, and be applied to the outermost glass. Prior to publication of the list, the Planning Department may

review information available from interest groups, such as the National Audubon Society.

3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers;
and
 - ~~b. First floor commercial storefronts, up to a height of 15' ³/₄~~
 - ~~c. Residential development in R1 zoning districts outside of Bird Sensitive Areas; and~~
 - ~~d. 100% affordable housing developments.~~

C. Non-residential Indoor Lighting Requirements: Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.

D. Outdoor Lighting Requirements:

1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of-way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
2. Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).



CITY OF CUPERTINO

Legislation Text

File #: 20-8536, **Version:** 1

Subject: Abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; hearing for impacted property owners to contest the matter of proposed abatement.

Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; and conduct hearing for impacted property owners to contest the matter of proposed abatement.



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; hearing for impacted property owners to contest the matter of proposed abatement.

Recommended Action

Adopt the Draft Resolution ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; and conduct hearing for impacted property owners to contest the matter of proposed abatement.

Discussion

The purpose of the Cupertino Weed Abatement Program is to prevent fire hazards and other nuisances posed by vegetative growth (weeds) and the accumulation of combustible materials. This program is managed by the Santa Clara County Department of Agriculture. Cupertino Municipal Code Chapter 9.08 requires property owners to remove or destroy weeds on their property for fire and public health protection. The weed abatement process is in place to notify the property owners of this responsibility, authorize the County to remove the hazards if the property owner does not, and allow the County to recover the costs of abatement.

On December 1, 2020 the Council adopted Resolution No. 20-136, declaring the growth of weeds, the accumulation of garden refuse, cuttings and other combustible trash upon private properties to be a potential fire hazard and public nuisance. These properties are identified on the Weed Abatement Program Commencement Report prepared by the County (Attachment B, Exhibit A in Resolution). If Council wishes to adopt the Draft Resolution (Attachment A) ordering abatement of public nuisance, property owners on the Report will have until April 30, 2020 to abate any potential fire hazard on their property. On December 7, 2020, the County mailed a notice to property owners listed on the Weed Abatement Program Commencement Report (Attachment C) indicating that their property must be cleared of hazards according to Minimum Fire Safety Standards (Attachment E), and that the City Council would conduct a public hearing on January 19, 2021 in order to consider all property owners having any objections to the

proposed removal. City notices outlining the same information were mailed on January 7, 2021 (Attachment G).

How Parcels are Added to the Program

Parcels are added to the program through service requests from members of the public, a jurisdictional representative request, or when an inspector finds a non-compliant parcel en route from one active parcel to another. The identified parcels undergo an “add year” process prior to being added to the program. The add year is a buffer year, set aside for communications with the County and for property owners to gain an understanding of the program’s concerns, or to contest. All impacted parcels are expected to maintain the Minimum Fire Safety Standards (Attachment E) for the three years following the add year. The maximum grass height standard is 6 inches. The program will not apply any fees to the parcel tax roll on the add year, only on the monitoring years. An initial inspection fee will be applied as “pass” or “fail” during the monitoring years. If a parcel fails, the monitoring years start over, to ensure that “three consecutive years of voluntary compliance” is achieved. County field officers perform inspections a few times a year. The inspection window for Cupertino runs annually from April 30 through October 31 and properties should be maintained throughout the year. If a property is abated before the April 30 deadline then the County administrative fee will be waived.

Process for Weed Abatement Program Outlined

The process consists of eight steps that begin in November and go through August of each year, as shown on the following list. At this time the process is at Step No. 4.

1. County prepares a report of all properties that have been non-compliant in removing weeds in the last three years and provides that report to the City (Nov). (Attachment B, Exhibit A in Resolution).
2. City Council adopts a resolution declaring properties as having potential fire hazards or other potential nuisances from weeds and sets hearing to declare public nuisance and to consider objections for proposed removal (Nov-Dec). (Attachment H)
- 3.1 County sends notice to the property owners on the report notifying them of the hearing date and explaining that they must remove or destroy weeds by the abatement deadline of April 30, 2021 or it will be done for them, with cost of the abatement plus administrative costs assessed to their property (Dec). (Attachment D).
- 3.2 City sends a courtesy letter to property owners listed on the report, notifying them of the hearing and the abatement deadline (Jan). (Attachment G).
4. City Council holds the hearing to consider objections by property owners and adopts a resolution declaring weeds a public nuisance and ordering abatement (Jan).

- 5.1 County sends a courtesy letter to property owners listed on the report, notifying them again of the abatement deadline, and noting that they will work with the property owner to be sure the weeds are removed (Jan-Feb).
- 5.2 City sends a courtesy letter to property owners listed on the report, reminding them of the abatement deadline (Mar).
6. After April 30, the properties are inspected by the County to verify that weeds were removed and proceeds with abatement if the property fails the inspection. County makes a report of all costs associated with the abatement and provides that report to the City (June-July).
7. City notifies the property owners listed on the assessment report, notifying them of the hearing date (July-Aug).
8. City Council holds a hearing, notes any disputes, and adopts a resolution placing a lien assessment on the properties to allow the County to recover the cost of weed and/or brush abatement (July-Aug).

Sustainability Impact

None

Fiscal Impact

If a property is abated before the April 30 deadline then the County administrative fee will be waived. Any waived administrative fees will be billed to the City by the County to cover their cost of servicing the property.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

- A – Draft Resolution and Exhibit A
- B – Weed Abatement Program Commencement Report (Exhibit A)
- C – County Letter to Property Owners to Abate Weeds
- D – County Hearing Notice to Destroy Weeds and Program Fees
- E – Minimum Fire Safety Standards Program Brochure
- F – Return Reply Form (RRF) Sample
- G – City Letter to Property Owners
- H – Approved Resolution No. 20-136

RESOLUTION NO. 21-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ORDERING ABATEMENT OF PUBLIC NUISANCE PURSUANT TO
PROVISIONS OF CUPERTINO MUNICIPAL CODE CHAPTER 9.08 AND
RESOLUTION NO. 20-136**

WHEREAS, the City Council has declared that the growth of weeds, the accumulation of garden refuse, cuttings and other combustible trash upon the private properties as described in Resolution No. 20-136 adopted December 1, 2020, to be a potential public nuisance (*see* Weed Abatement Program Commencement Report as Exhibit A); and

WHEREAS, after due notice, a public hearing/meeting thereon was held at the regular meeting of the City Council on January 19, 2021 to allow the impacted property owners to contest the matter; and

WHEREAS, from the evidence presented, both oral and written, at the public hearing/meeting of January 19, 2021, it appears to be in the best interests of the City to acquire jurisdiction over the existing nuisances which have not been abated, and for the City to abate said nuisance in accordance with the law.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Agricultural Commissioner is hereby ordered to abate such nuisance or cause the same to be abated by having the weeds referred to destroyed or removed by cutting, disking, chemical spraying or any other method determined by him; that all debris, whether in piles or scattered, be hauled away;

2. That the Agricultural Commissioner and his deputies, assistants, employees, contracting agents or other representatives shall have express authorization to enter upon said private properties for the purpose of causing said public nuisance to be abated, in accordance with all applicable legal requirements; and

3. That any affected property owners shall have the right to destroy or remove such weeds or debris himself or herself or have the same destroyed or removed at his/her own expense provided that such destruction or removal shall have been completed prior to the arrival of the Agricultural Commissioner or his

Resolution No. 21-
Page 2

authorized representative to destroy or remove them by the Parcel Abatement Deadline of April 30, 2021.

BE IT FURTHER RESOLVED:

1. That the Agricultural Commissioner shall keep account of abating said nuisance and embody such account in a report and assessment list to the City Council, which shall be filed with the City Clerk.

2. Said reports of costs, hearing and collection procedures involved shall be provided as stated in Chapter 9.08.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino on the 19th day of January 2021, by the following vote:

Vote Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:	
_____	_____
Darcy Paul, Mayor City of Cupertino	Date
ATTEST:	
_____	_____
Kirsten Squarcia, City Clerk	Date

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF CUPERTINO**

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Exhibit A

Situs			APN			CITY/STATE			
1	10175	MC LAREN	316-21-049	CHAO, LIANG FANG	10175 MC LAREN PL	CUPERTINO	CA	95014-2335	13-
2	10531	N PORTAL	316-30-102	TANG, GEORGE AND TSAO, JUNG	10531 PORTAL AVN	CUPERTINO	CA	95014-2447	13-
3	19641	DRAKE	316-32-028	EDBERG, JEREMY AND YOUNG,	19641 DRAKE DR	CUPERTINO	CA	95014-2433	13-
4	19661	DRAKE	316-32-030	KAN, LAWRENCE K AND CANDY L	19661 DRAKE DR	CUPERTINO	CA	95014-2433	13-
5	20111	APPLE TREE	316-33-091	MA, RUI	20111 APPLE TREE LN	CUPERTINO	CA	95014-2001	13-
6	20094	MERRITT	316-33-105	KOURU, VIJAYA AND YELLAMILLI,	20094 MERRITT DR	CUPERTINO	CA	95014-2011	13-
7	10675	FLORA VISTA	326-08-013	MAHAMONGKOL, HATTHAYA AND	10675 FLORA VISTA AV	CUPERTINO	CA	95014-1610	13-
8	10047	CRESCENT RD	326-16-027	Grand Success LLC	10047 CRESCENT RD	CUPERTINO	CA	95014-1050	13-
9	10036	CRESCENT	326-17-065	HENGYE LLC	10559 FELTON WY	CUPERTINO	CA	95014-4305	13-
10	10395	N STELLING	326-28-094	CHEN, ZHIFENG TRUSTEE & ET AL	10395 STELLING RDN	CUPERTINO	CA	95014-1613	13-
11	20860	GARDEN GATE	326-30-034	ELLIOTT, JULIE TRUSTEE	204 EAGLE LN	BRENTWOOD	CA	94513	13-
12	20985	GARDEN GATE	326-30-087	WU, RICHARD W ET AL	12181 COUNTRY SQUIRE LN	SARATOGA	CA	95070-3467	13-
13	10467	GLENCOE DR	326-30-106	DAMASK ROBERT T	PO BOX 2421	CUPERTINO	CA	95015	13-
14	20710	GARDEN GATE	326-33-015	LO, ANGELINE TRUSTEE	PO BOX 2935	CUPERTINO	CA	95015	13-
15	10490	CASTINE	326-41-032	WONG, LAWRENCE W AND HEIDI Y	5094 GLENTREE DR	SAN JOSE	CA	95129-2125	13-
16	10692	PEBBLE	326-43-042	CHEN, SHUO-HAO AND LIOU, SU-	10692 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
17	10712	PEBBLE	326-43-044	WINGET, CHARLES M AND	10712 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
18		STEVENS BL	342-13-012	DEANE AND DEANE INC	4040 MOORPARK #116	SAN JOSE	CA	95117-1851	13-
19	10744	SANTA LUCIA	342-16-073	BANGALORE, MANJUNATH S AND	10744 SANTA LUCIA RD	CUPERTINO	CA	95014-3940	13-
20	22645	SAN JUAN	342-17-067	MULLEN, EVA JO TRUSTEE	PO BOX 835	CUPERTINO	CA	95015-0835	13-
21	10690	CORDOVA	342-17-083	WONG, KEITH TAI	10690 CORDOVA RD	CUPERTINO	CA	95014-3912	13-
22	22577	SAN JUAN	342-17-084	DHUEY, MICHAEL J	22577 SAN JUAN RD	CUPERTINO	CA	95014-3932	13-
23	22661	SAN JUAN	342-17-110	TURNER, PAUL J TRUSTEE & ET AL	10550 MIRA VISTA RD	CUPERTINO	CA	95014	13-
24	0	EL CERRITO	342-21-004	ITEM, WERNER AND GLORIA E	22670 SAN JUAN RD	CUPERTINO	CA	95014-3933	13-

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF CUPERTINO**

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Exhibit A

	Situs	APN			CITY/STATE				
25	22765	SAN JUAN	342-22-031	NEHAWANDIAN, NASIM	22765 SAN JUAN RD	CUPERTINO	CA	95014-3934	13-
26	10625	CORDOVA	342-22-103	BREINBERG, STEVEN A AND DANNA	10625 CORDOVA RD	CUPERTINO	CA	95014-3911	13-
27	23026	VOSS	342-50-016	TSAI, VICKY TSAY-HSAI TRUSTEE &	PO BOX 977	CUPERTINO	CA	95015-0977	13-
28	0	(LAND ONLY)	342-50-019	CHAMBERLAIN, JACK T TRUSTEE	655 SKYWAY 230	SAN CARLOS	CA	94070	13-
29	0	STEVENS	351-10-043	PARKSIDE TRAIL LLC	P.O BOX 320667	LOS GATOS	CA	95032	13-
30	22483	RIVERSIDE	356-03-041	CHANG, YU-MING AND LEE, CHIH-	1140 CANYON GREEN DR	SAN RAMON	CA	94582-4617	13-
31	0	MC CLELLAN	356-05-005	LOWENTHAL, RICHARD AND ELLEN	21602 VILLA MARIA CT	CUPERTINO	CA	95014	13-
32	10750	RAE	356-07-076	CHANG, CHRIS ET AL	580 ALBERTA AV	SUNNYVALE	CA	94087-0000	13-
33	21885	HYANNISPORT DR	356-13-050	Jacqueline Bergman	1660 GATON DR APT MO3	SAN JOSE	CA	95125-4514	13-
34	21906	HYANNISPORT	356-14-057	XU, HAO AND WANG, XUE	21906 HYANNISPORT DR	CUPERTINO	CA	95014-4016	13-
35	21662	COLUMBUS	356-18-049	CHANG, ERIC AND CECILIA KAN	21662 COLUMBUS AV	CUPERTINO	CA	95014-4711	13-
36	11235	BUBB	356-21-054	KARP, STEPHANIE J	11235 BUBB RD	CUPERTINO	CA	95014-4940	13-
37	21576	LA PLAYA	356-23-015	SAHA, ANGSHUMAN AND	PO BOX 2918	CUPERTINO	CA	95015-2918	13-
38	21987	LINDY	356-25-031	KANG, PING QI AND LIANG, YU JUAN	2408 CLEMENT ST	SAN FRANCISCO	CA	94121	13-
39		NO SITUS	356-25-033	KANG, PINGQI ET AL	2793 RANDERS CT	PALO ALTO	CA	94303-0000	13-
40	22041	LINDY	356-27-012	ARAMOONIE, PHILIP	22041 LINDY LN	CUPERTINO	CA	95014-4851	13-
41	11395	CANYON VIEW	356-27-022	HOPKINS, JOHN N AND CAROLYN S	11395 CANYON VIEW CL	CUPERTINO	CA	95014-0000	13-
42	11450	CANYON VIEW	356-27-023	CHANG, CHIAO-FU AND SUE-FAY	20832 HANFORD DR	CUPERTINO	CA	95014-1824	13-
43	22032	LINDY	356-27-025	DE, KALPAJIT AND MAJUMDER,	22032 LINDY LN	CUPERTINO	CA	95014-4811	13-
44	22310	PALM	357-04-023	VAN BLOMMESTEIN, ROBERT AND	1144 BRACE AV	SAN JOSE	CA	95125-3200	13-
45	840	ROSE	359-04-019	LIAN, HAO AND WANG, JING	840 ROSE BLOSSOM DR	CUPERTINO	CA	95014-4214	13-
46	10040	BIANCHI	359-07-021	LIN, JASON C AND FANG, YING HO	10228 STELLING RDN	CUPERTINO	CA	95014-1643	13-
47	20940	STEVENS	359-07-022	LIN, CHING-CHEN	10228 STELLINGRDN	CUPERTINO	CA	95014	13-
48	20592	MC CLELLAN	359-18-010	CHANG, LANCE C AND MELODY F	20592 MC CLELLAN RD	CUPERTINO	CA	95014-2955	13-

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
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Exhibit A

Situs			APN			CITY/STATE			
49	20616	MC CLELLAN	359-18-048	HARDEMAN, MELODY F ET AL	20616 MCCLELLAN RD	CUPERTINO	CA	95014-2955	13-
50	20840	CHERRYLAND	359-20-042	HODA, MD MYNUL AND BEGUM,	20840 CHERRYLAND DR	CUPERTINO	CA	95014-0000	13-
51	0	BUBB	362-01-025	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
52		BUBB	DR 362-02-048	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
53		BUBB	DR 362-04-058	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
54		RAINBOW	362-09-026	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	130
55			362-16-037	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
56		RAINBOW	362-19-033	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
57	1103	S STELLING	362-22-006	KABRA, GOVIND AND ZAWAR,	1103 STELLING RDS	CUPERTINO	CA	95014-5020	13-
58	1161	STELLING	RD 362-22-018	LEPAGE-WOODIE, CASEY R TRUSTEE	1504 GUIZOT ST	SAN DIEGO	CA	92107	13-
59	7585	RAINBOW	362-24-003	WANG, TAO AND LI, WEI	7585 RAINBOW DR	CUPERTINO	CA	95014-5235	13-
60	20666	CLEO	362-31-001	XU, BIN ET AL	20666 CLEO AV	CUPERTINO	CA	95014-5033	13-
61	20652	CLEO	362-31-002	BURROW, BRADLEY J AND JUANITA S	20652 CLEO AV	CUPERTINO	CA	95014-5033	13-
62		NO SITUS	362-31-030	ALMASI, AZITA TRUSTEE & ET AL	965 LAUREL GLEN DR	PALO ALTO	CA	94304-1323	13-
63	11841	UPLAND	366-03-062	VEMPATY, NAGESHWARA R AND	13304 GLEN BRAE DR	SARATOGA	CA	95070-4431	13-
64	0	S STELLING	366-09-028	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
65	0	STAUFFER	LN 366-09-053	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
66	7690	PEACH	366-11-114	DOLL, CYNTHIA A TRUSTEE	4801 CAMERON RD	ELK	CA	95432	13-
67	21608	RAINBOW	366-38-031	LAU, PHYLLIS ANN CHOY TRUSTEE	P O BOX 2726	CUPERTINO	CA	95015	13-
68	22045	REGNART	366-46-004	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
69	22045	REGNART	366-46-005	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
70		NO SITUS	366-46-006	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
71		NO SITUS	366-46-007	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
72	10295	VICKSBURG	369-07-015	XU, GUANGJUN AND YANG, QI	10295 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-

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73	10301	VICKSBURG	369-07-016	MUNTZ, DANIEL A AND KUNO,	10301 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-
74	10140	RICHWOOD	369-08-033	ORTIZ, ALFREDO TRUSTEE	PO BOX 40	CUPERTINO	CA	95015	13-
75	10441	OAKVILLE	369-12-035	VRCELJ, MICHAEL J	10441 OAKVILLE AV	CUPERTINO	CA	95014-4520	13-
76	10530	PINEVILLE	369-13-029	PISUPATI, BHANU N AND	10530 PINEVILLE AV	CUPERTINO	CA	95014-4529	13-
77	10300	VICKSBURG	369-14-008	TANABE, THOMAS M TRUSTEE & ET	10300 VICKSBURG DR	CUPERTINO	CA	95014-3320	13-
78	866	BETTE	369-24-047	TUNG, KA-WAH ET AL	866 BETTE AV	CUPERTINO	CA	95014	13-
79	879	BETTE	369-27-050	CHANG, JUI PO	1198 EAGLE RIDGE WAY	MILPITAS	CA	95035	13-
80	20011	PACIFICA	369-28-042	SWAMINATHAN, RAM AND	20011 PACIFICA DR	CUPERTINO	CA	95014-3110	13-
81	10450	CORTE DE	375-05-005	10450 CORTE DE MADRID	22330 SANTA PAULA AV	CUPERTINO	CA	95014	13-
82	19397	PHIL	375-05-032	PONGURLEKAR, JITENDRA AND	19397 PHIL LN	CUPERTINO	CA	95014-3429	13-
83	19160	STEVENS	375-07-001	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
84	10039 S	TANTAU	375-07-005	MEIER-LIM, FRANCES W AND	1710 HOLT AV	LOS ALTOS	CA	94024-6924	13-
85	10067 S	TANTAU	375-07-007	WU, HUNGJEN HENRY	10067 TANTAU AVS	CUPERTINO	CA	95014-3541	13-
86	19131	LOREE	375-07-029	KONG, FAN PENG AND CHEN, MING	19131 LOREE AV	CUPERTINO	CA	95014-3539	13-
87	19160	STEVENS	375-07-061	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
88	10251 S	TANTAU	375-08-004	TAO, BANG NHON AND WEN,	10251 TANTAU AVS	CUPERTINO	CA	95014-0000	13-
89	18930	TILSON	375-09-049	LIU, ZHENG AND CHEN, AIDONG	18930 TILSON AV	CUPERTINO	CA	95014-3655	13-
90	10200	STERN AV	375-12-002	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
91	10104	STERN	375-12-011	SUNG, ROBERTO	10683 STELLING RDN	CUPERTINO	CA	95014-1647	13-
92	18880	ARATA	375-13-005	YI, QINGHONG AND ZHOU, JIE	18880 ARATA WY	CUPERTINO	CA	95014-3634	13-
93	18844	ARATA	375-13-008	DSOUZA, SANTHOSH A AND SABITHA	18844 ARATA WY	CUPERTINO	CA	95014-3634	13-
94	10271	MENHART	375-15-028	YAMAMOTO, KEI AND KANG, KELLY	10271 MENHART LN	CUPERTINO	CA	95014-3629	13-
95	10337	MENHART	375-15-039	HORIO, LELAND S ET AL	5878 MACADAM CT	SAN JOSE	CA	95123-4332	13-
96	10391	MENHART	375-15-048	HU, YUGEN AND YINGHE	48236 ARCADIANT ST	FREMONT	CA	94539	13-

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97	10408	MENHART	375-16-004	BARDSLEY, BRENT G	10408 MENHART LN	CUPERTINO	CA	95014-3631	13-
98	10272	MENHART	375-17-017	SF19G LLC	26880 ALISO VIEJO PKWY 100	ALISO VIEJO	CA	92656	13-
99	10335	CALVERT	375-17-022	SRINIVASAN, MAHESHWARAN AND	10335 CALVERT DR	CUPERTINO	CA	95014-3807	13-
100	10405	CALVERT	375-17-029	LUO, VINSON ET AL	45536 CHEROKEE LN	FREMONT	CA	94539	13-
101	10425	CALVERT	375-17-031	YEUNG, LORRAINE TRUSTEE	PO BOX 31	LOS GATOS	CA	95031	13-
102	10435	CALVERT	375-17-032	MCKEE, ELLEN D TRUSTEE	10435 CALVERT DR	CUPERTINO	CA	95014-3835	13-
103	10490	WUNDERLICH	375-17-055	LU, ANNE	10490 WUNDERLICH DR	CUPERTINO	CA	95014-3648	13-
104	10240	CALVERT	375-18-022	XING, PEI AND WANG, NADIA J	10240 CALVERT DR	CUPERTINO	CA	95014-3808	13-
105	10281	JOHNSON	375-18-031	SHETTY, ANILKUMAR DODDANNA	10281 JOHNSON AV	CUPERTINO	CA	95014-3811	13-
106	10361	JOHNSON AV	375-18-039	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
107	10409	JOHNSON	375-18-044	RECUPERO, MARILYN A TRUSTEE	1190 BASCOM AVS 108	SAN JOSE	CA	95128	13-
108	18655	LOREE	375-19-008	LIANG, WAN HAR CINDY TRUSTEE	18655 LOREE AV	CUPERTINO	CA	95014-3837	13-
109	10424	STERLING	375-24-003	ATTIA, MAGED AND BEDAIR, GHADA	10424 STERLING BL	CUPERTINO	CA	95014-3832	13-
110	10356	STERLING	375-24-011	DEE, JOSEFINA	395 KINCORA CT	SAN JOSE	CA	95136-3916	13-
111	10308	STERLING	375-24-017	HAO, STEVE MIN AND SUN, QING	6962 BOLLINGER RD	SAN JOSE	CA	95129-2847	13-
112	18671	PRING	375-25-039	HUANG, CHANG-KAI AND TSENG,	18671 PRING CT	CUPERTINO	CA	95014-3822	13-
113	18661	CRABTREE	375-25-047	SUBAINATI, MOHAMAD K AND JULIE	18661 CRABTREE AV	CUPERTINO	CA	95014-3864	13-
114	18621	BARNHART	375-26-035	KOO, SANDRA S ET AL	18621 BARNHART AV	CUPERTINO	CA	95014-3801	13-
115	10456	JOHNSON	375-26-045	CHO, SUNGJU AND CHOI, IHNAEE	10456 JOHNSON AV	CUPERTINO	CA	95014-3814	13-
116	10610	WUNDERLICH	375-27-019	NIE, XIAOQIONG	10610 WUNDERLICH DR	CUPERTINO	CA	95014-3652	13-
117	18781	TUGGLE	375-27-025	NULL	P O BOX 5345	SAN JOSE	CA	95150-5345	13-
118	10590	WUNDERLICH	375-27-026	CHOONG, PHILIP T AND HSIA S	27769 EDGERTON RD	LOS ALTOS HILLS	CA	94022-3235	13-
119	10540	WUNDERLICH	375-27-037	OH, SEUNGSEOK AND RYU, SUNA	10540 WUNDERLICH DR	CUPERTINO	CA	95014-3650	13-
120	10740	GASCOIGNE	375-29-016	FAULKNER, BARBARA J TRUSTEE	714 CANTERBURY AV	LIVERMORE	CA	94550-6226	13-

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Situation			APN	CITY/STATE					
121	10840	JOHNSON	375-30-024	ATCHISON, JOHN D	P.O. BOX 698	CUPERTINO	CA	95015-0698	13-
122	10784	JOHNSON	375-31-003	WANG, YINAN	PO BOX 946	CUPERTINO	CA	95014	13-
123	10740	JOHNSON	375-31-007	CHA, CATHY Y TRUSTEE	10740 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
124	10730	JOHNSON	375-31-008	LEE, MING-TZUNG AND YU-MING	10730 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
125	10711	GASCOIGNE	375-31-018	TSAL, CHIH JUNG AND LAI, HUI WEN	10711 GASCOIGNE DR	CUPERTINO	CA	95014-3845	13-
126	10731	GASCOIGNE	375-31-020	NEJAT, FRANK F	PO BOX 700702	SAN JOSE	CA	95170	13-
127	10801	GASCOIGNE	375-31-027	AGARWAL, SANJAY TRUSTEE & ET	10801 GASCOIGNEDR	CUPERTINO	CA	95014	13-
128	10831	JOHNSON	375-31-065	HUO, XIPING AND SONG,	5023 CAPISTRANO AV	SAN JOSE	CA	95129-1025	13-
129	10841	JOHNSON	375-31-066	LI, YONGNA AND SONG, NING	10841 JOHNSON AV	CUPERTINO	CA	95014-3819	13-
130	10630	CARVER DR	375-32-020	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
131	10616	CARVER	375-32-021	YETTAW, JACKIE A AND JERRI L	10616 CARVER DR	CUPERTINO	CA	95014-3607	13-
132	18870	TUGGLE	375-32-024	DELA CRUZ, SHERWIN PETER L	18870 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
133	18850	TUGGLE	375-32-026	ZHU, XINGLEI AND YIN, WENYUAN	18850 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
134	18871	PENDERGAST	375-33-027	LUI, DAVID K AND ANGIE E	18871 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
135	18881	PENDERGAST	375-33-028	CHENG, XINWU AND SHI, WEN	18881 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
136	18931	PENDERGAST	375-33-033	KAWASAKI, ELAINE T TRUSTEE	18931 PENDERGAST AV	CUPERTINO	CA	95014-3622	13-
137	18880	PENDERGAST	375-33-044	YAP, KOOI AND THORISA	18880 PENDERGAST AV	CUPERTINO	CA	95014-3621	13-
138	18911	TUGGLE	375-33-064	FLAUGHER, LOU ANN	18911 TUGGLE AV	CUPERTINO	CA	95014-3625	13-
139	10657	MORENGO	375-34-013	ORTIZ, ROSA F ET AL	10657 MORENGO DR	CUPERTINO	CA	95014-3513	13-
140	10673	MORENGO	375-34-015	SHARMA, SUBHASH C AND MAMTA	10673 MORENGO DR	CUPERTINO	CA	95014-3513	13-
141	18930	TUGGLE	375-34-045	SHEN & TIAN LLC	16230 AZALEA WY	LOS GATOS	CA	95032-3622	13-
142	18940	NEWSOM	375-35-011	NGUYEN, CHINH MANH AND PHAM,	18940 NEWSOM AV	CUPERTINO	CA	95014-3618	13-
143	5991	BOLLINGER	375-35-025	NALAVDE, TANMAY S AND VAIDYA,	5991 BOLLINGER RD	CUPERTINO	CA	95014-3536	13-
144	10627	CULBERTSON DR	375-36-027	MC GRATH, PATRICK W	1184 VALELAKE CT	SUNNYVALE	CA	94089-2032	13-

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Situation				APN	Property Address	City/State	County	Parcel Number	Assessor's Parcel Number
145	899	S	TANTAU	375-38-045	ZWEIG, JONATHAN M AND GRACE 899 TANTAU AVS	CUPERTINO	CA	95014-4648	13-
146	928		HYDE	375-39-004	SAIKUMAR, GURUPRASAD AND 928 HYDE AV	CUPERTINO	CA	95014-4663	13-
147	19210		TILSON	375-40-060	SINGH, TAJINDER AND SANDHU, 19210 TILSON AV	CUPERTINO	CA	95014-3529	13-
148	698		MILLER	375-42-011	LIN, JOHN YAW HWA AND MICHELLE 698 MILLER AV	CUPERTINO	CA	95014-4640	13-
149	678		MILLER	375-42-012	JEN, KO-TA AND CHRISTINA N 678 MILLER AV	CUPERTINO	CA	95014-4640	13-

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Situs			APN			CITY/STATE			
1	10175	MC LAREN	316-21-049	CHAO, LIANG FANG	10175 MC LAREN PL	CUPERTINO	CA	95014-2335	13-
2	10531	N PORTAL	316-30-102	TANG, GEORGE AND TSAO, JUNG	10531 PORTAL AVN	CUPERTINO	CA	95014-2447	13-
3	19641	DRAKE	316-32-028	EDBERG, JEREMY AND YOUNG,	19641 DRAKE DR	CUPERTINO	CA	95014-2433	13-
4	19661	DRAKE	316-32-030	KAN, LAWRENCE K AND CANDY L	19661 DRAKE DR	CUPERTINO	CA	95014-2433	13-
5	20111	APPLE TREE	316-33-091	MA, RUI	20111 APPLE TREE LN	CUPERTINO	CA	95014-2001	13-
6	20094	MERRITT	316-33-105	KOURU, VIJAYA AND YELLAMILLI,	20094 MERRITT DR	CUPERTINO	CA	95014-2011	13-
7	10675	FLORA VISTA	326-08-013	MAHAMONGKOL, HATTHAYA AND	10675 FLORA VISTA AV	CUPERTINO	CA	95014-1610	13-
8	10047	CRESCENT RD	326-16-027	Grand Success LLC	10047 CRESCENT RD	CUPERTINO	CA	95014-1050	13-
9	10036	CRESCENT	326-17-065	HENGYE LLC	10559 FELTON WY	CUPERTINO	CA	95014-4305	13-
10	10395	N STELLING	326-28-094	CHEN, ZHIFENG TRUSTEE & ET AL	10395 STELLING RDN	CUPERTINO	CA	95014-1613	13-
11	20860	GARDEN GATE	326-30-034	ELLIOTT, JULIE TRUSTEE	204 EAGLE LN	BRENTWOOD	CA	94513	13-
12	20985	GARDEN GATE	326-30-087	WU, RICHARD W ET AL	12181 COUNTRY SQUIRE LN	SARATOGA	CA	95070-3467	13-
13	10467	GLENCOE DR	326-30-106	DAMASK ROBERT T	PO BOX 2421	CUPERTINO	CA	95015	13-
14	20710	GARDEN GATE	326-33-015	LO, ANGELINE TRUSTEE	PO BOX 2935	CUPERTINO	CA	95015	13-
15	10490	CASTINE	326-41-032	WONG, LAWRENCE W AND HEIDI Y	5094 GLENTREE DR	SAN JOSE	CA	95129-2125	13-
16	10692	PEBBLE	326-43-042	CHEN, SHUO-HAO AND LIOU, SU-	10692 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
17	10712	PEBBLE	326-43-044	WINGET, CHARLES M AND	10712 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
18		STEVENS BL	342-13-012	DEANE AND DEANE INC	4040 MOORPARK #116	SAN JOSE	CA	95117-1851	13-
19	10744	SANTA LUCIA	342-16-073	BANGALORE, MANJUNATH S AND	10744 SANTA LUCIA RD	CUPERTINO	CA	95014-3940	13-
20	22645	SAN JUAN	342-17-067	MULLEN, EVA JO TRUSTEE	PO BOX 835	CUPERTINO	CA	95015-0835	13-
21	10690	CORDOVA	342-17-083	WONG, KEITH TAI	10690 CORDOVA RD	CUPERTINO	CA	95014-3912	13-
22	22577	SAN JUAN	342-17-084	DHUEY, MICHAEL J	22577 SAN JUAN RD	CUPERTINO	CA	95014-3932	13-
23	22661	SAN JUAN	342-17-110	TURNER, PAUL J TRUSTEE & ET AL	10550 MIRA VISTA RD	CUPERTINO	CA	95014	13-
24	0	EL CERRITO	342-21-004	ITEM, WERNER AND GLORIA E	22670 SAN JUAN RD	CUPERTINO	CA	95014-3933	13-

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25	22765	SAN JUAN	342-22-031	NEHAWANDIAN, NASIM	22765 SAN JUAN RD	CUPERTINO	CA	95014-3934	13-
26	10625	CORDOVA	342-22-103	BREINBERG, STEVEN A AND DANNA	10625 CORDOVA RD	CUPERTINO	CA	95014-3911	13-
27	23026	VOSS	342-50-016	TSAI, VICKY TSAY-HSAI TRUSTEE &	PO BOX 977	CUPERTINO	CA	95015-0977	13-
28	0	(LAND ONLY)	342-50-019	CHAMBERLAIN, JACK T TRUSTEE	655 SKYWAY 230	SAN CARLOS	CA	94070	13-
29	0	STEVENS	351-10-043	PARKSIDE TRAIL LLC	P.O BOX 320667	LOS GATOS	CA	95032	13-
30	22483	RIVERSIDE	356-03-041	CHANG, YU-MING AND LEE, CHIH-	1140 CANYON GREEN DR	SAN RAMON	CA	94582-4617	13-
31	0	MC CLELLAN	356-05-005	LOWENTHAL, RICHARD AND ELLEN	21602 VILLA MARIA CT	CUPERTINO	CA	95014	13-
32	10750	RAE	356-07-076	CHANG, CHRIS ET AL	580 ALBERTA AV	SUNNYVALE	CA	94087-0000	13-
33	21885	HYANNISPORT DR	356-13-050	Jacqueline Bergman	1660 GATON DR APT MO3	SAN JOSE	CA	95125-4514	13-
34	21906	HYANNISPORT	356-14-057	XU, HAO AND WANG, XUE	21906 HYANNISPORT DR	CUPERTINO	CA	95014-4016	13-
35	21662	COLUMBUS	356-18-049	CHANG, ERIC AND CECILIA KAN	21662 COLUMBUS AV	CUPERTINO	CA	95014-4711	13-
36	11235	BUBB	356-21-054	KARP, STEPHANIE J	11235 BUBB RD	CUPERTINO	CA	95014-4940	13-
37	21576	LA PLAYA	356-23-015	SAHA, ANGSHUMAN AND	PO BOX 2918	CUPERTINO	CA	95015-2918	13-
38	21987	LINDY	356-25-031	KANG, PING QI AND LIANG, YU JUAN	2408 CLEMENT ST	SAN FRANCISCO	CA	94121	13-
39		NO SITUS	356-25-033	KANG, PINGQI ET AL	2793 RANDERS CT	PALO ALTO	CA	94303-0000	13-
40	22041	LINDY	356-27-012	ARAMOONIE, PHILIP	22041 LINDY LN	CUPERTINO	CA	95014-4851	13-
41	11395	CANYON VIEW	356-27-022	HOPKINS, JOHN N AND CAROLYN S	11395 CANYON VIEW CL	CUPERTINO	CA	95014-0000	13-
42	11450	CANYON VIEW	356-27-023	CHANG, CHIAO-FU AND SUE-FAY	20832 HANFORD DR	CUPERTINO	CA	95014-1824	13-
43	22032	LINDY	356-27-025	DE, KALPAJIT AND MAJUMDER,	22032 LINDY LN	CUPERTINO	CA	95014-4811	13-
44	22310	PALM	357-04-023	VAN BLOMMESTEIN, ROBERT AND	1144 BRACE AV	SAN JOSE	CA	95125-3200	13-
45	840	ROSE	359-04-019	LIAN, HAO AND WANG, JING	840 ROSE BLOSSOM DR	CUPERTINO	CA	95014-4214	13-
46	10040	BIANCHI	359-07-021	LIN, JASON C AND FANG, YING HO	10228 STELLING RDN	CUPERTINO	CA	95014-1643	13-
47	20940	STEVENS	359-07-022	LIN, CHING-CHEN	10228 STELLINGRDN	CUPERTINO	CA	95014	13-
48	20592	MC CLELLAN	359-18-010	CHANG, LANCE C AND MELODY F	20592 MC CLELLAN RD	CUPERTINO	CA	95014-2955	13-

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49	20616	MC CLELLAN	359-18-048	HARDEMAN, MELODY F ET AL	20616 MCCLELLAN RD	CUPERTINO	CA	95014-2955	13-
50	20840	CHERRYLAND	359-20-042	HODA, MD MYNUL AND BEGUM,	20840 CHERRYLAND DR	CUPERTINO	CA	95014-0000	13-
51	0	BUBB	362-01-025	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
52		BUBB	DR 362-02-048	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
53		BUBB	DR 362-04-058	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
54		RAINBOW	362-09-026	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	130
55			362-16-037	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
56		RAINBOW	362-19-033	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
57	1103	S STELLING	362-22-006	KABRA, GOVIND AND ZAWAR,	1103 STELLING RDS	CUPERTINO	CA	95014-5020	13-
58	1161	STELLING	RD 362-22-018	LEPAGE-WOODIE, CASEY R TRUSTEE	1504 GUIZOT ST	SAN DIEGO	CA	92107	13-
59	7585	RAINBOW	362-24-003	WANG, TAO AND LI, WEI	7585 RAINBOW DR	CUPERTINO	CA	95014-5235	13-
60	20666	CLEO	362-31-001	XU, BIN ET AL	20666 CLEO AV	CUPERTINO	CA	95014-5033	13-
61	20652	CLEO	362-31-002	BURROW, BRADLEY J AND JUANITA S	20652 CLEO AV	CUPERTINO	CA	95014-5033	13-
62		NO SITUS	362-31-030	ALMASI, AZITA TRUSTEE & ET AL	965 LAUREL GLEN DR	PALO ALTO	CA	94304-1323	13-
63	11841	UPLAND	366-03-062	VEMPATY, NAGESHWARA R AND	13304 GLEN BRAE DR	SARATOGA	CA	95070-4431	13-
64	0	S STELLING	366-09-028	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
65	0	STAUFFER	LN 366-09-053	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
66	7690	PEACH	366-11-114	DOLL, CYNTHIA A TRUSTEE	4801 CAMERON RD	ELK	CA	95432	13-
67	21608	RAINBOW	366-38-031	LAU, PHYLLIS ANN CHOY TRUSTEE	P O BOX 2726	CUPERTINO	CA	95015	13-
68	22045	REGNART	366-46-004	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
69	22045	REGNART	366-46-005	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
70		NO SITUS	366-46-006	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
71		NO SITUS	366-46-007	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
72	10295	VICKSBURG	369-07-015	XU, GUANGJUN AND YANG, QI	10295 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-

**2021 WEED ABATEMENT PROGRAM
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Exhibit A

Situs			APN	CITY/STATE					
73	10301	VICKSBURG	369-07-016	MUNTZ, DANIEL A AND KUNO,	10301 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-
74	10140	RICHWOOD	369-08-033	ORTIZ, ALFREDO TRUSTEE	PO BOX 40	CUPERTINO	CA	95015	13-
75	10441	OAKVILLE	369-12-035	VRCELJ, MICHAEL J	10441 OAKVILLE AV	CUPERTINO	CA	95014-4520	13-
76	10530	PINEVILLE	369-13-029	PISUPATI, BHANU N AND	10530 PINEVILLE AV	CUPERTINO	CA	95014-4529	13-
77	10300	VICKSBURG	369-14-008	TANABE, THOMAS M TRUSTEE & ET	10300 VICKSBURG DR	CUPERTINO	CA	95014-3320	13-
78	866	BETTE	369-24-047	TUNG, KA-WAH ET AL	866 BETTE AV	CUPERTINO	CA	95014	13-
79	879	BETTE	369-27-050	CHANG, JUI PO	1198 EAGLE RIDGE WAY	MILPITAS	CA	95035	13-
80	20011	PACIFICA	369-28-042	SWAMINATHAN, RAM AND	20011 PACIFICA DR	CUPERTINO	CA	95014-3110	13-
81	10450	CORTE DE	375-05-005	10450 CORTE DE MADRID	22330 SANTA PAULA AV	CUPERTINO	CA	95014	13-
82	19397	PHIL	375-05-032	PONGURLEKAR, JITENDRA AND	19397 PHIL LN	CUPERTINO	CA	95014-3429	13-
83	19160	STEVENS	375-07-001	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
84	10039 S	TANTAU	375-07-005	MEIER-LIM, FRANCES W AND	1710 HOLT AV	LOS ALTOS	CA	94024-6924	13-
85	10067 S	TANTAU	375-07-007	WU, HUNGJEN HENRY	10067 TANTAU AVS	CUPERTINO	CA	95014-3541	13-
86	19131	LOREE	375-07-029	KONG, FAN PENG AND CHEN, MING	19131 LOREE AV	CUPERTINO	CA	95014-3539	13-
87	19160	STEVENS	375-07-061	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
88	10251 S	TANTAU	375-08-004	TAO, BANG NHON AND WEN,	10251 TANTAU AVS	CUPERTINO	CA	95014-0000	13-
89	18930	TILSON	375-09-049	LIU, ZHENG AND CHEN, AIDONG	18930 TILSON AV	CUPERTINO	CA	95014-3655	13-
90	10200	STERN AV	375-12-002	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
91	10104	STERN	375-12-011	SUNG, ROBERTO	10683 STELLING RDN	CUPERTINO	CA	95014-1647	13-
92	18880	ARATA	375-13-005	YI, QINGHONG AND ZHOU, JIE	18880 ARATA WY	CUPERTINO	CA	95014-3634	13-
93	18844	ARATA	375-13-008	DSOUZA, SANTHOSH A AND SABITHA	18844 ARATA WY	CUPERTINO	CA	95014-3634	13-
94	10271	MENHART	375-15-028	YAMAMOTO, KEI AND KANG, KELLY	10271 MENHART LN	CUPERTINO	CA	95014-3629	13-
95	10337	MENHART	375-15-039	HORIO, LELAND S ET AL	5878 MACADAM CT	SAN JOSE	CA	95123-4332	13-
96	10391	MENHART	375-15-048	HU, YUGEN AND YINGHE	48236 ARCADIANT ST	FREMONT	CA	94539	13-

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Situs			APN	CITY/STATE					
97	10408	MENHART	375-16-004	BARDSLEY, BRENT G	10408 MENHART LN	CUPERTINO	CA	95014-3631	13-
98	10272	MENHART	375-17-017	SF19G LLC	26880 ALISO VIEJO PKWY 100	ALISO VIEJO	CA	92656	13-
99	10335	CALVERT	375-17-022	SRINIVASAN, MAHESHWARAN AND	10335 CALVERT DR	CUPERTINO	CA	95014-3807	13-
100	10405	CALVERT	375-17-029	LUO, VINSON ET AL	45536 CHEROKEE LN	FREMONT	CA	94539	13-
101	10425	CALVERT	375-17-031	YEUNG, LORRAINE TRUSTEE	PO BOX 31	LOS GATOS	CA	95031	13-
102	10435	CALVERT	375-17-032	MCKEE, ELLEN D TRUSTEE	10435 CALVERT DR	CUPERTINO	CA	95014-3835	13-
103	10490	WUNDERLICH	375-17-055	LU, ANNE	10490 WUNDERLICH DR	CUPERTINO	CA	95014-3648	13-
104	10240	CALVERT	375-18-022	XING, PEI AND WANG, NADIA J	10240 CALVERT DR	CUPERTINO	CA	95014-3808	13-
105	10281	JOHNSON	375-18-031	SHETTY, ANILKUMAR DODDANNA	10281 JOHNSON AV	CUPERTINO	CA	95014-3811	13-
106	10361	JOHNSON AV	375-18-039	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
107	10409	JOHNSON	375-18-044	RECUPERO, MARILYN A TRUSTEE	1190 BASCOM AVS 108	SAN JOSE	CA	95128	13-
108	18655	LOREE	375-19-008	LIANG, WAN HAR CINDY TRUSTEE	18655 LOREE AV	CUPERTINO	CA	95014-3837	13-
109	10424	STERLING	375-24-003	ATTIA, MAGED AND BEDAIR, GHADA	10424 STERLING BL	CUPERTINO	CA	95014-3832	13-
110	10356	STERLING	375-24-011	DEE, JOSEFINA	395 KINCORA CT	SAN JOSE	CA	95136-3916	13-
111	10308	STERLING	375-24-017	HAO, STEVE MIN AND SUN, QING	6962 BOLLINGER RD	SAN JOSE	CA	95129-2847	13-
112	18671	PRING	375-25-039	HUANG, CHANG-KAI AND TSENG,	18671 PRING CT	CUPERTINO	CA	95014-3822	13-
113	18661	CRABTREE	375-25-047	SUBAINATI, MOHAMAD K AND JULIE	18661 CRABTREE AV	CUPERTINO	CA	95014-3864	13-
114	18621	BARNHART	375-26-035	KOO, SANDRA S ET AL	18621 BARNHART AV	CUPERTINO	CA	95014-3801	13-
115	10456	JOHNSON	375-26-045	CHO, SUNGJU AND CHOI, IHNAEE	10456 JOHNSON AV	CUPERTINO	CA	95014-3814	13-
116	10610	WUNDERLICH	375-27-019	NIE, XIAOQIONG	10610 WUNDERLICH DR	CUPERTINO	CA	95014-3652	13-
117	18781	TUGGLE	375-27-025	NULL	P O BOX 5345	SAN JOSE	CA	95150-5345	13-
118	10590	WUNDERLICH	375-27-026	CHOONG, PHILIP T AND HSIA S	27769 EDGERTON RD	LOS ALTOS HILLS	CA	94022-3235	13-
119	10540	WUNDERLICH	375-27-037	OH, SEUNGSEOK AND RYU, SUNA	10540 WUNDERLICH DR	CUPERTINO	CA	95014-3650	13-
120	10740	GASCOIGNE	375-29-016	FAULKNER, BARBARA J TRUSTEE	714 CANTERBURY AV	LIVERMORE	CA	94550-6226	13-

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Exhibit A

SitUS			APN	CITY/STATE					
121	10840	JOHNSON	375-30-024	ATCHISON, JOHN D	P.O. BOX 698	CUPERTINO	CA	95015-0698	13-
122	10784	JOHNSON	375-31-003	WANG, YINAN	PO BOX 946	CUPERTINO	CA	95014	13-
123	10740	JOHNSON	375-31-007	CHA, CATHY Y TRUSTEE	10740 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
124	10730	JOHNSON	375-31-008	LEE, MING-TZUNG AND YU-MING	10730 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
125	10711	GASCOIGNE	375-31-018	TSAL, CHIH JUNG AND LAI, HUI WEN	10711 GASCOIGNE DR	CUPERTINO	CA	95014-3845	13-
126	10731	GASCOIGNE	375-31-020	NEJAT, FRANK F	PO BOX 700702	SAN JOSE	CA	95170	13-
127	10801	GASCOIGNE	375-31-027	AGARWAL, SANJAY TRUSTEE & ET	10801 GASCOIGNEDR	CUPERTINO	CA	95014	13-
128	10831	JOHNSON	375-31-065	HUO, XIPING AND SONG,	5023 CAPISTRANO AV	SAN JOSE	CA	95129-1025	13-
129	10841	JOHNSON	375-31-066	LI, YONGNA AND SONG, NING	10841 JOHNSON AV	CUPERTINO	CA	95014-3819	13-
130	10630	CARVER DR	375-32-020	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
131	10616	CARVER	375-32-021	YETTAW, JACKIE A AND JERRI L	10616 CARVER DR	CUPERTINO	CA	95014-3607	13-
132	18870	TUGGLE	375-32-024	DELA CRUZ, SHERWIN PETER L	18870 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
133	18850	TUGGLE	375-32-026	ZHU, XINGLEI AND YIN, WENYUAN	18850 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
134	18871	PENDERGAST	375-33-027	LUI, DAVID K AND ANGIE E	18871 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
135	18881	PENDERGAST	375-33-028	CHENG, XINWU AND SHI, WEN	18881 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
136	18931	PENDERGAST	375-33-033	KAWASAKI, ELAINE T TRUSTEE	18931 PENDERGAST AV	CUPERTINO	CA	95014-3622	13-
137	18880	PENDERGAST	375-33-044	YAP, KOOI AND THORISA	18880 PENDERGAST AV	CUPERTINO	CA	95014-3621	13-
138	18911	TUGGLE	375-33-064	FLAUGHER, LOU ANN	18911 TUGGLE AV	CUPERTINO	CA	95014-3625	13-
139	10657	MORENGO	375-34-013	ORTIZ, ROSA F ET AL	10657 MORENGO DR	CUPERTINO	CA	95014-3513	13-
140	10673	MORENGO	375-34-015	SHARMA, SUBHASH C AND MAMTA	10673 MORENGO DR	CUPERTINO	CA	95014-3513	13-
141	18930	TUGGLE	375-34-045	SHEN & TIAN LLC	16230 AZALEA WY	LOS GATOS	CA	95032-3622	13-
142	18940	NEWSOM	375-35-011	NGUYEN, CHINH MANH AND PHAM,	18940 NEWSOM AV	CUPERTINO	CA	95014-3618	13-
143	5991	BOLLINGER	375-35-025	NALAVDE, TANMAY S AND VAIDYA,	5991 BOLLINGER RD	CUPERTINO	CA	95014-3536	13-
144	10627	CULBERTSON DR	375-36-027	MC GRATH, PATRICK W	1184 VALELAKE CT	SUNNYVALE	CA	94089-2032	13-

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Situs				APN			CITY/STATE			
145	899	S	TANTAU	375-38-045	ZWEIG, JONATHAN M AND GRACE	899 TANTAU AVS	CUPERTINO	CA	95014-4648	13-
146	928		HYDE	375-39-004	SAIKUMAR, GURUPRASAD AND	928 HYDE AV	CUPERTINO	CA	95014-4663	13-
147	19210		TILSON	375-40-060	SINGH, TAJINDER AND SANDHU,	19210 TILSON AV	CUPERTINO	CA	95014-3529	13-
148	698		MILLER	375-42-011	LIN, JOHN YAW HWA AND MICHELLE	698 MILLER AV	CUPERTINO	CA	95014-4640	13-
149	678		MILLER	375-42-012	JEN, KO-TA AND CHRISTINA N	678 MILLER AV	CUPERTINO	CA	95014-4640	13-

County of Santa Clara

Consumer and Environmental Protection Agency
Weed Abatement Division

1553 Berger Drive
Building 1
San Jose, CA 95112
(408) 282-3145
Fax (408) 286-2460



December 7, 2020

IMPORTANT NOTICE TO ABATE WEEDS

Dear Property Owner:

To protect your property and the surrounding area from possible fire, your jurisdiction (city or County if in unincorporated areas) contracts with the County of Santa Clara to operate a Weed Abatement Program. You are receiving this notice and information because our staff has determined that your parcel is part of this Program. Please read the information carefully and contact us for clarification or additional information.

Your jurisdiction has or will adopt a resolution declaring your property as one that may contain fire hazards from weeds or other debris. Following this action, your jurisdiction will conduct a public hearing to consider an abatement order, which would require you to remove any hazardous vegetation or combustible debris prior to the deadline in the attached abatement schedule. The public hearing will be held on the date and location stated in the attached notice and provides an opportunity for you to raise any objections or concerns with this requirement.

If you believe your parcel includes an environmentally sensitive habitat, please check the box and provide additional information on the reply form to assist us in determining the best approach to abating your property.

If, after the public hearing, the Weed Abatement Program is approved for your property, the County is authorized by your city and the California Health and Safety Code sections 14875-14922 to inspect your property to confirm that the property has been cleared of hazards according to Minimum Fire Safety Standards (see enclosed brochure). Inspections will begin after the abatement deadline for your jurisdiction. This notice does not relieve you of your responsibility to complete the necessary work prior to the deadline for your jurisdiction. You will be responsible for an annual fee of \$84 to cover the cost of this compliance inspection.

If you fail to complete the abatement work prior to our inspection of your property, you will be responsible for an inspection fee of \$466 per parcel; and your property will be scheduled for abatement by the County contractor. You will be assessed a County administrative fee of \$809 per parcel plus the County's cost of abatement if the County completes this work. If you complete the abatement work before the County contractor, you will not incur further charges.

The County will use the least costly method of abatement considering the physical characteristics of your property and any other environmental or related concerns. Fees are detailed in the attached price list. The total amount will be included as a special assessment on your property tax bill following confirmation of the charges by your city or the County if parcel is not in a city at a public hearing?. This hearing would be scheduled in late spring/summer 2021 with the exact date determined by your jurisdiction. Jurisdictions

post hearing information at a physical location (typically at a city hall building or other government center and most jurisdictions also publish this information on their websites) at least three days prior to the meeting.

You can avoid all costs, other than the annual compliance fee, by completing the abatement work yourself according to Minimum Fire Safety Standards (see enclosed brochure) prior to the abatement deadline for your jurisdiction and maintaining the Minimum Fire Safety Standards for the duration of fire season, which typically runs March Through October. Parcels will be removed from the program after three consecutive years of voluntary compliance (work completed by property owner prior to the deadline and confirmed by our inspection).

In preparation for this program, please complete and return the enclosed Reply Form by January 15, 2021 so we are notified of your plans for abating your property.

If you designate in your reply that you intend to abate the weeds yourself, you need to complete the abatement before the deadline listed on the attached abatement schedule and maintain fire-safe conditions for the duration of the fire season. Responding that you intend to provide maintenance yourself does not release you from this responsibility to have the maintenance *completed* before your deadline and *repeated* as necessary to maintain Minimum Fire Safe Standards. The County will abate hazardous vegetation as required after the deadline for your jurisdiction at your cost.

Enclosed you will find the following information:


- ✓ **Reply Form specific to your property. Please complete and return by January 15, 2021.**
- ✓ **Notice to Destroy Weeds informing you of an upcoming public meeting (that you must attend if you have any objections to the proposed removal of hazardous vegetation or debris from your property. Your Jurisdiction may offer the ability for you to participate in this meeting virtually; please confirm directly with your jurisdiction.**
- ✓ **Weed Abatement Program Schedule for your city with current County abatement fees.**
- ✓ **County of Santa Clara Weed Abatement Brochure.**

Please be aware that any abatement performed by the County must comply with all applicable regulations. If your property falls within an area designated as a possible habitat for burrowing owls or any other protected species of bird or animal, the methods used to remove vegetation may be regulated by specific laws or local ordinances.

If you are no longer the owner of the property identified by this mailing, please notify us immediately at (408) 282-3145. If you sell your property after the date of this letter, it is your responsibility to notify the new owner and to include the obligation to pay any abatement costs in your agreement of sale. Without taking this action, you will be responsible for all-hazard abatement charges assessed to the property.

Our goals are voluntary compliance with the Minimum Fire Safety Standards and all properties remain safe from fire. If you have any questions or need on-site advice to help you achieve compliance with the Minimum Fire Standards, please call us at (408) 282-3145.

Sincerely,

DocuSigned by:

23BC95461D52437...
Jo Zientek, Director
Consumer and Environmental Protection Agency

Notice to Destroy Weeds

NOTICE IS HEREBY GIVEN that on December 1, 2020 pursuant to the provisions of Section 9.08 of the Cupertino Municipal Code, the City Council passed a resolution declaring that all weeds growing upon any private property or in any public street or alley, as defined in Section 9.08.010 of the Cupertino Municipal Code constitute a public nuisance, which nuisance must be abated by the destruction or removal thereof.

NOTICE IS FURTHER GIVEN that property owners shall without delay, remove all such weeds from their property and the abutting half of the street in front and alleys, if any, behind such property and between the lot lines thereof as extended, or such weeds will be destroyed or removed and such nuisance abated by the County Consumer and Environmental Protection Agency, in which case the cost of such destruction or removal will, including but not limited to administration costs, be assessed upon the lots and lands from which, or from the front or rear of which, such weeds shall have been destroyed or removed and such cost will constitute a lien upon such lots or lands until paid and will be collected upon the next tax roll upon which general municipal taxes are collected. All property owners having any objections to the proposed destruction or removal of such weeds are hereby notified to attend a meeting of said City to be held in the Council Chambers of City Hall, located at 10300 Torre Ave., Cupertino, California, on **Thursday, January 19, 2021 at 6:45 p.m.**, or as soon thereafter as the matter can be heard, when their objections will be heard and given due consideration.

The language and format for this notice is required by California Health and Safety Code Sections 14891 Et. Seq.

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CITY OF CUPERTINO WEED ABATEMENT PROGRAM SCHEDULE

January 19, 2021	Public hearing to consider objections to Abatement List.
April 30, 2021	<u>PARCEL ABATEMENT DEADLINE</u> Parcel must be free from hazardous vegetation by this date or Inspector will order abatement.
July/August 2021	Assessment Hearing date to be scheduled by City Council.

2021 COUNTY WEED ABATEMENT FEES

Properties in the Weed Abatement Program, you will be responsible for an annual inspection fee of \$84.00 per parcel.

Please be advised that the property owner of any parcel found to be non-compliant on or after the March 1st deadline will be charged a processing fee of \$466.00 and the property will be scheduled for abatement by the County contractor. If you complete the abatement work before the County contractor performs the abatement, you will not incur further charges. Should the abatement work be performed by a County contractor, you will be assessed the contractor's charges plus a County administrative fee of \$809.00 per parcel.

2021 COUNTY CONTRACTOR'S WEED ABATEMENT PRICE LIST

A) Disc Work**

PARCEL SIZE:	1 st Disc	+	2 nd Disc	= Total Discs
0-12,500 sq.ft.	<u>\$399.80</u>		<u>\$160.73</u>	<u>\$560.53</u>
12,501sq.ft.- 43,560sq.ft.	<u>\$399.80</u>		<u>\$160.73</u>	<u>\$560.53</u>
Larger than 1 Acre	<u>\$290.41</u>		<u>\$141.83</u>	<u>\$432.24</u> (PER ACRE)

** It is required that parcels be disced twice a year. The cost for the first discing is higher due to additional work normally required during the first discing.

B) HANDWORK	<u>\$5.40 PER 100 Square Feet (SF)</u>
C) FLAIL	<u>6 Foot Mower \$6.89 PER 1,000 SF</u>
MOWING	<u>12 Foot Mower \$6.89 PER 1,000 SF</u>
D) LOADER WORK	<u>\$165.20 PER HOUR</u>
E) DUMP TRUCK	<u>\$152.49 PER HOUR</u>
F) BRUSH WORK	<u>\$5.16 PER 100 SF</u>
G) DEBRIS REMOVAL	<u>\$56.73 PER HOUR</u>
H) DUMP FEE	<u>100%</u>

Added to orders with debris removal at 100% of the dump site charge.

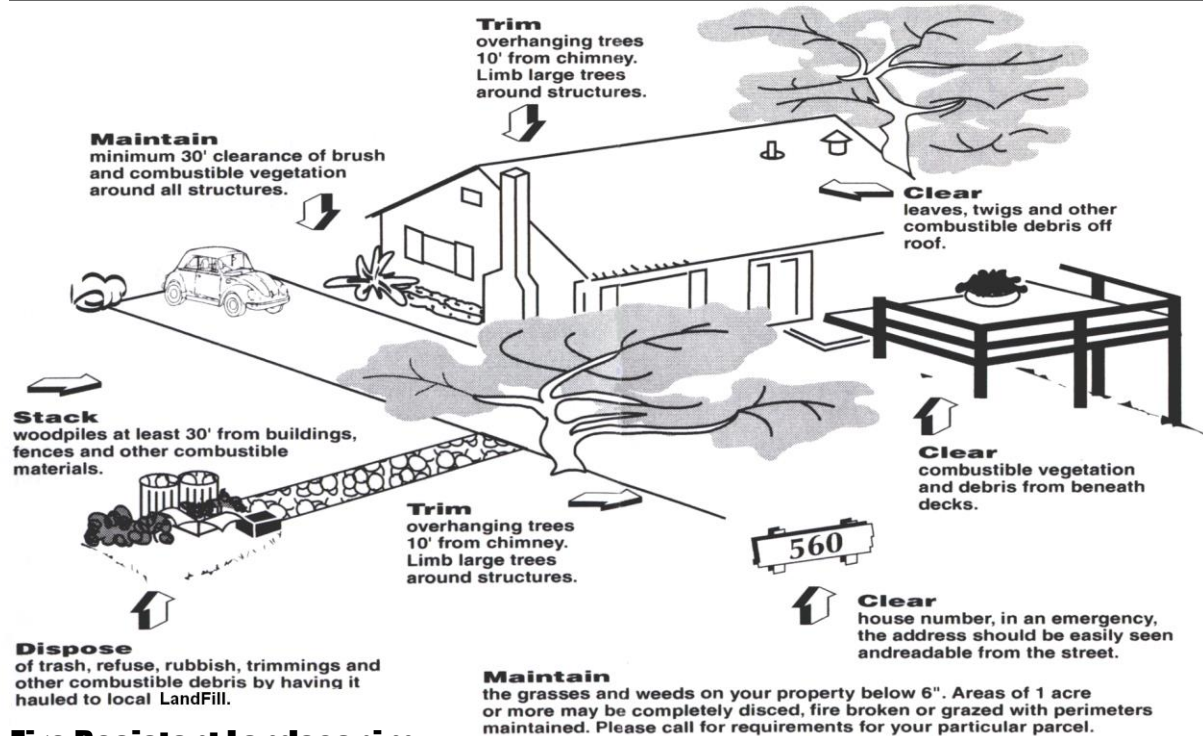
***Please note this program does not offer herbicide application as a method of abatement.**

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MINIMUM FIRE SAFETY STANDARDS

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1. **Vegetation must not exceed 6 inches in height any time after the compliance deadline.**
2. Maintain grasses and weeds below 6 inches for 10 feet horizontally on both sides of all roadways, including driveways and access routes. Roads and Driveways must maintain a clearance of 10' W by 13'6" H for all vegetation
3. Clear flammable vegetation a minimum of 30 feet around any structure, occupied or not. Ornamental vegetation should be kept clear of dead material. Some conditions, such as slopes, may require up to a 100-foot clearance.
4. Parcels one acre or less shall be completely abated. Parcels over one acre up to five acres require 30-foot clearance around structures and perimeter property lines. Additional 30-foot cross fuel breaks may also be required.
5. Parcels larger than five acres require 30-foot clearance around structures and perimeter property lines in addition to 30-foot cross fuel breaks as needed to separate the remaining vegetation into sections no larger than five acres.
6. Keep property clear of accumulation of combustible debris, such as trash, wood, and dead vegetation. Stacked firewood and neatly piled yard waste is not considered to be combustible debris.
7. Keep vegetation cleared from under the eaves of houses.
8. Trim tree branches to at least 10 feet away from chimney.
9. Clear leaves, pine needles and debris from roof and gutters.



Fire Resistant Landscaping

The following is a partial list of fire resistant plants that you may choose to use around your home to reduce the risk of fire. Contact your local nursery for selections appropriate to your area. All grasses, including those purportedly fire resistant, must be maintained below 6" in height.

Trees:

African Sumac
California Pepper

Shrubs:

Bearberry
Carmel Creeper
Carolina Cherry
Catalina Cherry

Escallonia

Hopseed Bush
Lemonade Berry

Groundcover:

Aaron's Beard
Australian Daisy
Candytuft
Sterile Capeweed

Freeway Daisy

Rock rose (except Gum Variety)

Fire Safety Through Vegetation Management

Santa Clara County
Consumer and Environmental
Protection Agency

Weed Abatement Program



1553 Berger Drive #1

San Jose, Ca 95112

Phone (408) 282-3145

Fax: (408) 286-2460

The Santa Clara County Weed Abatement Program

The Santa Clara County Consumer and Environmental Protection Agency and your city are working together to protect your community from fire. We need your help. Please read and follow the directions provided in this brochure regarding fire prevention on your property. The purpose of the Weed Abatement Program is to prevent fire hazards posed by vegetative growth and the accumulation of combustible materials.

The Weed Abatement program is entirely funded from fees charged to residents. Fees will be assessed for any property in the program. This is to cover the cost of the compliance inspection for the property. Properties that fail the compliance inspection will be charged a failed inspection fee, even if the resident completes the weed abatement. If the property requires abatement by the County contractor, the property owner will be responsible for the actual cost of abatement plus an administrative fee. Properties that meet and maintain the minimum fire safety standards will not be charged other than the annual fee.

Program staff annually inspect parcels at the beginning of the fire season, which is typically in March or April depending on your jurisdiction. If the parcel is not in compliance at the time of inspection, the property owner will be charged a failed inspection fee, and the owner will be sent a courtesy notice as a reminder to abate the weeds. If the weeds are not abated by the property owner, the work will be completed by the County contractor. The property owner will pay the contractor's fees plus a County administrative fee. All fees will be included in your property tax bill.

Our Goal Is Voluntary Compliance

Property Owner's Responsibilities

- Do not allow a fire hazard to exist on your property. The Minimum Fire Safety Standards (MFSS) in this brochure give you guidelines to follow in order to maintain your property and protect against a fire hazard. **Please contact our office if you need guidance or have any questions regarding the requirements!**
- Make arrangements to have your property maintained throughout the year. Contractors can be found in the yellow pages. You may choose to have the County contractor maintain your property. A current price list is included in your packet.
- Please complete and return the Reply Form provided in your mailing packet by the date on the form. Indicate your preference regarding performance of weed abatement services.

Program Staff Responsibilities

- Weed Abatement Inspectors will perform periodic inspections on all parcels included in the Santa Clara County Weed Abatement Program. Properties that fail the compliance inspection will be charged a failed inspection fee, even if the resident completes the weed abatement.

- Inspectors will order the County contractor to perform all necessary abatement work on any parcel where the MFSS are not met. An attempt will be made to give the owner a courtesy notice prior to releasing the work order.
- The County contractor uses several methods of abatement including disking and handwork. The property owner is free to select whatever method they choose, provided the MFSS of all federal, state and local laws are met.
- The Weed Abatement Program will place inspection costs and the charges for County contractor services plus a County administrative fee on the property owner's tax bill during the next fiscal year.

Burrowing Owls

These small owls nest in abandoned ground squirrel burrows. Disking collapses the burrows and kills the young. These owls are listed as a state Species of Special Concern and are protected by the federal Migratory Bird Treaty Act. If you suspect burrowing owls on your property you **must** use another form of weed abatement such as mowing or weed-eating. If you request the County perform abatement services, please notify program staff or your City if burrowing owls are known to exist on your property.

Frequently Asked Questions

Q. Why have I received an Abatement Notice?

A. Typically, a property is placed on the program if a Weed Abatement Inspector identified a potential fire hazard on the property. Fire Departments and other agencies also submit complaints to the Weed Abatement Program.

Q. What is required of me now that I am in the Program?

A. All property owners are required to maintain their property free of fire hazards throughout the year.

Q. The grasses planted on my property are fire resistant. Are they exempt from the Weed Abatement program?

A. No. Even grasses that possess some fire resistant qualities are not fire proof, and they can add fuel to any site that is subject to a fire. Additionally, fire resistant grasses are rarely found in a pure, homogenous stand but rather are usually found to occur mixed with other common introduced annual grasses that are highly flammable and hazardous in a fire event. Finally, many grasses occur in Santa Clara County and species identification is difficult in the field, especially after the spring when the reproductive portions required for identification have dried and dispersed. Weed Abatement Inspectors can only focus on the presence of grasses and weeds on your property and the Minimum Fire Safety Standards, and not on grass species identification. Therefore, all grasses are required to be below 6 inches in height.

Q. What is the SC County Weed Abatement Program?

A. This is a monitoring program and our primary objective is voluntary compliance. See the first two paragraphs of this brochure for further specifics.

More FAQ:

Q. How long will I be on the Program?

A. Your property will remain on the Program for three years. If no hazards are found during that time, your property may be removed from the program.

Q. How much will this cost me?

A. There will be an annual fee to cover the cost of the compliance inspection. If the parcel does not meet the MFSS when it is first inspected in the spring, or if work is required by the County contractor, you will be charged additional fees. Our goal is to ensure that the MFSS are met at the lowest possible cost to the property owner.

Q. How will I be billed?

A. Any charges for the inspection and any abatement work performed will appear as a special assessment on your next property tax bill.

Q. Why have you performed work on my property while the vegetation is still green?

A. Grass, weeds or piles of combustible debris have been declared a public nuisance by your jurisdiction. Abating fire hazards in the spring minimizes the volume of combustible material before the hazards increase and dries out completely during the peak fire season.

Q. Will you notify me prior to beginning abatement work?

A. Property owners are responsible for preventing fire hazards on their property. If the MFSS have been met, but further work is necessary, you will receive notice prior to the County contractor performing the work. If the MFSS have **not** been met, an attempt will be made to give the owner a courtesy notice prior to initial abatement.

Q. Where can I find someone to provide abatement services?

A. Weed Abatement contractors can be found in the Yellow Pages under "Weed Control Services" or "Disking Services". You may have the County contractor perform the necessary work; see your mailing packet for a current price list as administrative costs are charged.

Q. How can I get additional information or assistance regarding the specific requirements for my property?

A. Weed Abatement Inspectors are available to assist you and answer your questions. Please call our Customer Service line at (408) 282-3145 to schedule a consultation with program staff or to obtain additional information.

Q. I have Grazing Animals do I need to perform abatement?

A. Grazing animals do not absolve you of your responsibilities to provide a fire safe condition on your property. You will need to check with our office to determine if grazing is adequate or if additional work is required.

2021 Return Reply Form

PATEL JITENDRAKUMAR M

IMPORTANT: Please complete this form and mail back to the Weed Abatement Program **within 15 days of receipt of this notice.** Thank you.

TRA: 02000

PATEL JITENDRAKUM R M
39625 FREMONT BLVD
FREMONT CA 94538

841-03-063

Please check the box that applies for each parcel (see explanations below):

Parcel Number	Site Address	A	B	C
841-03-063	341 LEWIS ST GILROY CA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A I am no longer the owner of this property, and the new owner information is listed below. Please return Reply Form immediately.

B I intend to maintain this parcel in a manner consistent with the Minimum Fire Safety Standards from May 15, 2020 through the end of the fire season (typically runs through October). All parcels on the abatement list are subject to inspection to ascertain compliance. Non-compliance by the deadline will result in an Inspection fee or the abatement of weeds by the County contractor and the resulting charges added to the property tax.

C I request that the County Contractor perform weed abatement work on this parcel. Charges for this work will be added to my property tax bill. **(All County fees Apply)**

Please provide any additional information such as new owners, presence of piping, irrigation, crops or other improvement. If your property is fenced/locked, please provide instructions on how to enter the property. If you are no longer the owner of the property identified by this mailing, please notify the County immediately. If you sell your property after December 1st, 2020, it is your responsibility to notify the new owner and to include the obligation to pay any abatement costs in your agreement of sale. Without taking this action, you will be liable for all hazard abatement charges assessed to the property.

Thank You

☐ Please check if you feel this parcel is environmentally sensitive

Signature

Name (please print)

Date _____

Day time phone



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

January 7, 2021

Re: Weed Abatement Season Commencement and January 19, 2021 Public Hearing

Your property has been placed on the enclosed Weed Abatement Program Commencement Report for public nuisance (weeds) pursuant to Section 9.08 of the Cupertino Municipal Code. Please refer to the attached Minimum Fire Safety Standards (MFSS) guidelines to make the corrections that are necessary and avoid the County administrative fee. The Cupertino City Council will hold a public hearing **on January 19, 2021 at 6:45 p.m.** in a teleconference meeting with no physical location to help stop the spread of COVID. All properties identified by the Agricultural Commissioner as being non-compliant with Weed Abatement Program safety regulations will be declared to have hazardous conditions requiring abatement. Details on how to attend the meeting will appear on the City Council Agenda for that date.

About the Weed Abatement Program

The Santa Clara County Department of Agriculture and Environmental Management and the City of Cupertino are working together to prevent fire hazards posed by vegetative growth and accumulation of combustible materials.

Property owners are required to keep their property free of fire hazards—such as weeds—throughout the year. However, the Minimum Fire Safety Standards (MFSS) are required to be met each year by the April 30 deadline and then maintained throughout the year. Vegetation must not exceed six inches in height any time after the compliance deadline. Please see the reverse side of this page for the complete MFSS guidelines.

County staff annually inspect parcels at the beginning of the fire season, which is typically in March or April. If the property is not in compliance, the property owner will pay a fee equal to the contractor's charges plus a County administrative fee. All fees will be included in your property tax bill. If your property is abated before the April 30 deadline then County administrative fee will be waived.

Weed Abatement Program Standards

The clearance requirements for the Weed Abatement program are referred to as the Minimum Fire Safety Standards (MFSS).

Minimum Fire Safety Standards (MFSS)

1. *Vegetation must not exceed 6 inches in height any time after the compliance deadline*
2. Maintain grasses and weeds below six (6) inches for ten feet horizontally on both sides of all roadways, including driveways and all access routes.
3. Clear flammable vegetation a minimum of thirty feet around any structure, occupied or not. Ornamental vegetation should be kept clear of dead material. Some conditions, such as slopes, may require up to 100 feet of clearance.
4. Parcels up to one acre shall be completely abated. Parcels one to five acres require 30-foot clearance around structures and perimeter property lines. Additional 30-foot cross fuel breaks may also be required.
5. Parcels larger than five acres require 30-foot clearance around structure and perimeter property lines in addition to 30-foot cross breaks as needed to separate the remaining vegetation into sections no larger than five acres.
6. Keep property clear of accumulation of combustible debris, such as trash, wood, and dead vegetation. Stacked firewood and neatly piled yard waste is not considered to be combustible debris.
7. Keep vegetation cleared from under the eaves of houses.
8. Trim tree branches to at least 10 feet from the structure and chimney.
9. Clear leaves, pine needles, and debris from roof and gutters.

If the compliance work identified for your property involves brush or weed removal, you may request the services of the approved County of Santa Clara abatement contractor. If you are interested in this service, please call the Hazardous Vegetation Service line at (408) 282-3145 to request more information and/or to schedule an inspection appointment for a cost estimate.

If you have any questions about the information on this notice, please contact the Santa Clara County Department of Agriculture, Hazardous Vegetation Management Program at (408) 918-4600.

Sincerely,

Kirsten Squarcia
City Clerk

RESOLUTION NO. 20-136

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DECLARING WEEDS ON CERTAIN DESCRIBED PROPERTY TO BE A POTENTIAL FIRE HAZARD OR OTHER POTENTIAL NUISANCES AND SETTING A HEARING TO DECLARE PUBLIC NUISANCE AND FOR OBJECTIONS TO PROPOSED REMOVAL

WHEREAS, weeds as described in Chapter 9.08 of the Cupertino Municipal Code are growing in the City of Cupertino upon certain streets, sidewalks, highways, roads and private property; and

WHEREAS, said weeds are undesirable, noxious, and dangerous and/or due to their rapid growth are or may become a fire menace; as such, said weeds constitute a potential public nuisance under state law and Chapter 9.08 of the Cupertino Municipal Code; and

WHEREAS, property owners and other persons occupying or having charge or control of any building, lot, or premises within the City are required to remove weeds in accordance with the provisions of Chapter 9.08 of the Cupertino Municipal Code;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino as follows:

1. Weeds growing upon any private property or in any street or alley within the City in violation of Cupertino Municipal Code, Chapter 9.08 constitute a public nuisance;
2. The weeds found on the streets, sidewalks, highways, roads and private property, which properties are identified by common names or by reference to the tract, block, lot, code area, and parcel number on the report prepared by the County Agricultural Commissioner and attached hereto as Exhibit A, are declared as having potential fire hazards or other potential nuisances due to weeds that are noxious, dangerous, or pose health risks;
3. That the 19th day of January, 2021, at the hour of 6:45 p.m., or as soon thereafter as the matter can be heard, in a teleconference meeting with no physical location to help stop the spread of COVID, with details on how to attend the meeting appearing on the City Council Agenda for that date, is

hereby set as the time and place to declare weeds on these properties to be a public nuisance and where all property owners having any objections to the proposed removal of such weeds may be heard;

4. That the Agricultural Commissioner is hereby designated and ordered to give notice of the adoption of this resolution, in the manner and form provided in Chapter 9.08 of the Cupertino Municipal Code.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 1st day of December 2020 by the following vote:

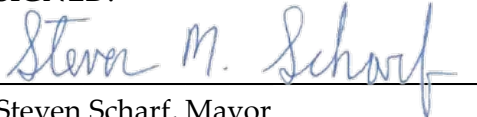

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks, Willey

NOES: None

ABSENT: None

ABSTAIN: None

<div>SIGNED:  Steven Scharf, Mayor City of Cupertino</div>	<div>12/2/2020 _____ Date</div>
<div>ATTEST:  Kirsten Squarcia, City Clerk</div>	<div>12/2/2020 _____ Date</div>

**2021 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF CUPERTINO**

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Exhibit A

Situs			APN			CITY/STATE			
1	10175	MC LAREN	316-21-049	CHAO, LIANG FANG	10175 MC LAREN PL	CUPERTINO	CA	95014-2335	13-
2	10531	N PORTAL	316-30-102	TANG, GEORGE AND TSAO, JUNG	10531 PORTAL AVN	CUPERTINO	CA	95014-2447	13-
3	19641	DRAKE	316-32-028	EDBERG, JEREMY AND YOUNG,	19641 DRAKE DR	CUPERTINO	CA	95014-2433	13-
4	19661	DRAKE	316-32-030	KAN, LAWRENCE K AND CANDY L	19661 DRAKE DR	CUPERTINO	CA	95014-2433	13-
5	20111	APPLE TREE	316-33-091	MA, RUI	20111 APPLE TREE LN	CUPERTINO	CA	95014-2001	13-
6	20094	MERRITT	316-33-105	KOURU, VIJAYA AND YELLAMILLI,	20094 MERRITT DR	CUPERTINO	CA	95014-2011	13-
7	10675	FLORA VISTA	326-08-013	MAHAMONGKOL, HATTHAYA AND	10675 FLORA VISTA AV	CUPERTINO	CA	95014-1610	13-
8	10047	CRESCENT RD	326-16-027	Grand Success LLC	10047 CRESCENT RD	CUPERTINO	CA	95014-1050	13-
9	10036	CRESCENT	326-17-065	HENGYE LLC	10559 FELTON WY	CUPERTINO	CA	95014-4305	13-
10	10395	N STELLING	326-28-094	CHEN, ZHIFENG TRUSTEE & ET AL	10395 STELLING RDN	CUPERTINO	CA	95014-1613	13-
11	20860	GARDEN GATE	326-30-034	ELLIOTT, JULIE TRUSTEE	204 EAGLE LN	BRENTWOOD	CA	94513	13-
12	20985	GARDEN GATE	326-30-087	WU, RICHARD W ET AL	12181 COUNTRY SQUIRE LN	SARATOGA	CA	95070-3467	13-
13	10467	GLENCOE DR	326-30-106	DAMASK ROBERT T	PO BOX 2421	CUPERTINO	CA	95015	13-
14	20710	GARDEN GATE	326-33-015	LO, ANGELINE TRUSTEE	PO BOX 2935	CUPERTINO	CA	95015	13-
15	10490	CASTINE	326-41-032	WONG, LAWRENCE W AND HEIDI Y	5094 GLENTREE DR	SAN JOSE	CA	95129-2125	13-
16	10692	PEBBLE	326-43-042	CHEN, SHUO-HAO AND LIOU, SU-	10692 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
17	10712	PEBBLE	326-43-044	WINGET, CHARLES M AND	10712 PEBBLE PL	CUPERTINO	CA	95014-1333	13-
18		STEVENS BL	342-13-012	DEANE AND DEANE INC	4040 MOORPARK #116	SAN JOSE	CA	95117-1851	13-
19	10744	SANTA LUCIA	342-16-073	BANGALORE, MANJUNATH S AND	10744 SANTA LUCIA RD	CUPERTINO	CA	95014-3940	13-
20	22645	SAN JUAN	342-17-067	MULLEN, EVA JO TRUSTEE	PO BOX 835	CUPERTINO	CA	95015-0835	13-
21	10690	CORDOVA	342-17-083	WONG, KEITH TAI	10690 CORDOVA RD	CUPERTINO	CA	95014-3912	13-
22	22577	SAN JUAN	342-17-084	DHUEY, MICHAEL J	22577 SAN JUAN RD	CUPERTINO	CA	95014-3932	13-
23	22661	SAN JUAN	342-17-110	TURNER, PAUL J TRUSTEE & ET AL	10550 MIRA VISTA RD	CUPERTINO	CA	95014	13-
24	0	EL CERRITO	342-21-004	ITEM, WERNER AND GLORIA E	22670 SAN JUAN RD	CUPERTINO	CA	95014-3933	13-

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Situs			APN			CITY/STATE			
25	22765	SAN JUAN	342-22-031	NEHAWANDIAN, NASIM	22765 SAN JUAN RD	CUPERTINO	CA	95014-3934	13-
26	10625	CORDOVA	342-22-103	BREINBERG, STEVEN A AND DANNA	10625 CORDOVA RD	CUPERTINO	CA	95014-3911	13-
27	23026	VOSS	342-50-016	TSAI, VICKY TSAY-HSAI TRUSTEE &	PO BOX 977	CUPERTINO	CA	95015-0977	13-
28	0	(LAND ONLY)	342-50-019	CHAMBERLAIN, JACK T TRUSTEE	655 SKYWAY 230	SAN CARLOS	CA	94070	13-
29	0	STEVENS	351-10-043	PARKSIDE TRAIL LLC	P.O BOX 320667	LOS GATOS	CA	95032	13-
30	22483	RIVERSIDE	356-03-041	CHANG, YU-MING AND LEE, CHIH-	1140 CANYON GREEN DR	SAN RAMON	CA	94582-4617	13-
31	0	MC CLELLAN	356-05-005	LOWENTHAL, RICHARD AND ELLEN	21602 VILLA MARIA CT	CUPERTINO	CA	95014	13-
32	10750	RAE	356-07-076	CHANG, CHRIS ET AL	580 ALBERTA AV	SUNNYVALE	CA	94087-0000	13-
33	21885	HYANNISPORT DR	356-13-050	Jacqueline Bergman	1660 GATON DR APT MO3	SAN JOSE	CA	95125-4514	13-
34	21906	HYANNISPORT	356-14-057	XU, HAO AND WANG, XUE	21906 HYANNISPORT DR	CUPERTINO	CA	95014-4016	13-
35	21662	COLUMBUS	356-18-049	CHANG, ERIC AND CECILIA KAN	21662 COLUMBUS AV	CUPERTINO	CA	95014-4711	13-
36	11235	BUBB	356-21-054	KARP, STEPHANIE J	11235 BUBB RD	CUPERTINO	CA	95014-4940	13-
37	21576	LA PLAYA	356-23-015	SAHA, ANGSHUMAN AND	PO BOX 2918	CUPERTINO	CA	95015-2918	13-
38	21987	LINDY	356-25-031	KANG, PING QI AND LIANG, YU JUAN	2408 CLEMENT ST	SAN FRANCISCO	CA	94121	13-
39		NO SITUS	356-25-033	KANG, PINGQI ET AL	2793 RANDERS CT	PALO ALTO	CA	94303-0000	13-
40	22041	LINDY	356-27-012	ARAMOONIE, PHILIP	22041 LINDY LN	CUPERTINO	CA	95014-4851	13-
41	11395	CANYON VIEW	356-27-022	HOPKINS, JOHN N AND CAROLYN S	11395 CANYON VIEW CL	CUPERTINO	CA	95014-0000	13-
42	11450	CANYON VIEW	356-27-023	CHANG, CHIAO-FU AND SUE-FAY	20832 HANFORD DR	CUPERTINO	CA	95014-1824	13-
43	22032	LINDY	356-27-025	DE, KALPAJIT AND MAJUMDER,	22032 LINDY LN	CUPERTINO	CA	95014-4811	13-
44	22310	PALM	357-04-023	VAN BLOMMESTEIN, ROBERT AND	1144 BRACE AV	SAN JOSE	CA	95125-3200	13-
45	840	ROSE	359-04-019	LIAN, HAO AND WANG, JING	840 ROSE BLOSSOM DR	CUPERTINO	CA	95014-4214	13-
46	10040	BIANCHI	359-07-021	LIN, JASON C AND FANG, YING HO	10228 STELLING RDN	CUPERTINO	CA	95014-1643	13-
47	20940	STEVENS	359-07-022	LIN, CHING-CHEN	10228 STELLINGRDN	CUPERTINO	CA	95014	13-
48	20592	MC CLELLAN	359-18-010	CHANG, LANCE C AND MELODY F	20592 MC CLELLAN RD	CUPERTINO	CA	95014-2955	13-

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49	20616	MC CLELLAN	359-18-048	HARDEMAN, MELODY F ET AL	20616 MCCLELLAN RD	CUPERTINO	CA	95014-2955	13-
50	20840	CHERRYLAND	359-20-042	HODA, MD MYNUL AND BEGUM,	20840 CHERRYLAND DR	CUPERTINO	CA	95014-0000	13-
51	0	BUBB	362-01-025	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
52		BUBB	DR 362-02-048	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
53		BUBB	DR 362-04-058	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
54		RAINBOW	362-09-026	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	130
55			362-16-037	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
56		RAINBOW	362-19-033	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
57	1103	S STELLING	362-22-006	KABRA, GOVIND AND ZAWAR,	1103 STELLING RDS	CUPERTINO	CA	95014-5020	13-
58	1161	STELLING	RD 362-22-018	LEPAGE-WOODIE, CASEY R TRUSTEE	1504 GUIZOT ST	SAN DIEGO	CA	92107	13-
59	7585	RAINBOW	362-24-003	WANG, TAO AND LI, WEI	7585 RAINBOW DR	CUPERTINO	CA	95014-5235	13-
60	20666	CLEO	362-31-001	XU, BIN ET AL	20666 CLEO AV	CUPERTINO	CA	95014-5033	13-
61	20652	CLEO	362-31-002	BURROW, BRADLEY J AND JUANITA S	20652 CLEO AV	CUPERTINO	CA	95014-5033	13-
62		NO SITUS	362-31-030	ALMASI, AZITA TRUSTEE & ET AL	965 LAUREL GLEN DR	PALO ALTO	CA	94304-1323	13-
63	11841	UPLAND	366-03-062	VEMPATY, NAGESHWARA R AND	13304 GLEN BRAE DR	SARATOGA	CA	95070-4431	13-
64	0	S STELLING	366-09-028	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
65	0	STAUFFER	LN 366-09-053	UNION PACIFIC CORPORATION	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95747	13-
66	7690	PEACH	366-11-114	DOLL, CYNTHIA A TRUSTEE	4801 CAMERON RD	ELK	CA	95432	13-
67	21608	RAINBOW	366-38-031	LAU, PHYLLIS ANN CHOY TRUSTEE	P O BOX 2726	CUPERTINO	CA	95015	13-
68	22045	REGNART	366-46-004	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
69	22045	REGNART	366-46-005	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
70		NO SITUS	366-46-006	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
71		NO SITUS	366-46-007	BIGLER, ROBERT A AND PUNITA P	11230 BUBB RD	CUPERTINO	CA	95014-4979	13-
72	10295	VICKSBURG	369-07-015	XU, GUANGJUN AND YANG, QI	10295 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-

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73	10301	VICKSBURG	369-07-016	MUNTZ, DANIEL A AND KUNO,	10301 VICKSBURG DR	CUPERTINO	CA	95014-3358	13-
74	10140	RICHWOOD	369-08-033	ORTIZ, ALFREDO TRUSTEE	PO BOX 40	CUPERTINO	CA	95015	13-
75	10441	OAKVILLE	369-12-035	VRCELJ, MICHAEL J	10441 OAKVILLE AV	CUPERTINO	CA	95014-4520	13-
76	10530	PINEVILLE	369-13-029	PISUPATI, BHANU N AND	10530 PINEVILLE AV	CUPERTINO	CA	95014-4529	13-
77	10300	VICKSBURG	369-14-008	TANABE, THOMAS M TRUSTEE & ET	10300 VICKSBURG DR	CUPERTINO	CA	95014-3320	13-
78	866	BETTE	369-24-047	TUNG, KA-WAH ET AL	866 BETTE AV	CUPERTINO	CA	95014	13-
79	879	BETTE	369-27-050	CHANG, JUI PO	1198 EAGLE RIDGE WAY	MILPITAS	CA	95035	13-
80	20011	PACIFICA	369-28-042	SWAMINATHAN, RAM AND	20011 PACIFICA DR	CUPERTINO	CA	95014-3110	13-
81	10450	CORTE DE	375-05-005	10450 CORTE DE MADRID	22330 SANTA PAULA AV	CUPERTINO	CA	95014	13-
82	19397	PHIL	375-05-032	PONGURLEKAR, JITENDRA AND	19397 PHIL LN	CUPERTINO	CA	95014-3429	13-
83	19160	STEVENS	375-07-001	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
84	10039 S	TANTAU	375-07-005	MEIER-LIM, FRANCES W AND	1710 HOLT AV	LOS ALTOS	CA	94024-6924	13-
85	10067 S	TANTAU	375-07-007	WU, HUNGJEN HENRY	10067 TANTAU AVS	CUPERTINO	CA	95014-3541	13-
86	19131	LOREE	375-07-029	KONG, FAN PENG AND CHEN, MING	19131 LOREE AV	CUPERTINO	CA	95014-3539	13-
87	19160	STEVENS	375-07-061	STEVENS CREEK L P	1400 PARKMOOR AV STE 190	SAN JOSE	CA	95126-0000	13-
88	10251 S	TANTAU	375-08-004	TAO, BANG NHON AND WEN,	10251 TANTAU AVS	CUPERTINO	CA	95014-0000	13-
89	18930	TILSON	375-09-049	LIU, ZHENG AND CHEN, AIDONG	18930 TILSON AV	CUPERTINO	CA	95014-3655	13-
90	10200	STERN AV	375-12-002	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
91	10104	STERN	375-12-011	SUNG, ROBERTO	10683 STELLING RDN	CUPERTINO	CA	95014-1647	13-
92	18880	ARATA	375-13-005	YI, QINGHONG AND ZHOU, JIE	18880 ARATA WY	CUPERTINO	CA	95014-3634	13-
93	18844	ARATA	375-13-008	DSOUZA, SANTHOSH A AND SABITHA	18844 ARATA WY	CUPERTINO	CA	95014-3634	13-
94	10271	MENHART	375-15-028	YAMAMOTO, KEI AND KANG, KELLY	10271 MENHART LN	CUPERTINO	CA	95014-3629	13-
95	10337	MENHART	375-15-039	HORIO, LELAND S ET AL	5878 MACADAM CT	SAN JOSE	CA	95123-4332	13-
96	10391	MENHART	375-15-048	HU, YUGEN AND YINGHE	48236 ARCADIANT ST	FREMONT	CA	94539	13-

**2021 WEED ABATEMENT PROGRAM
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Exhibit A

Situs			APN	CITY/STATE					
97	10408	MENHART	375-16-004	BARDSLEY, BRENT G	10408 MENHART LN	CUPERTINO	CA	95014-3631	13-
98	10272	MENHART	375-17-017	SF19G LLC	26880 ALISO VIEJO PKWY 100	ALISO VIEJO	CA	92656	13-
99	10335	CALVERT	375-17-022	SRINIVASAN, MAHESHWARAN AND	10335 CALVERT DR	CUPERTINO	CA	95014-3807	13-
100	10405	CALVERT	375-17-029	LUO, VINSON ET AL	45536 CHEROKEE LN	FREMONT	CA	94539	13-
101	10425	CALVERT	375-17-031	YEUNG, LORRAINE TRUSTEE	PO BOX 31	LOS GATOS	CA	95031	13-
102	10435	CALVERT	375-17-032	MCKEE, ELLEN D TRUSTEE	10435 CALVERT DR	CUPERTINO	CA	95014-3835	13-
103	10490	WUNDERLICH	375-17-055	LU, ANNE	10490 WUNDERLICH DR	CUPERTINO	CA	95014-3648	13-
104	10240	CALVERT	375-18-022	XING, PEI AND WANG, NADIA J	10240 CALVERT DR	CUPERTINO	CA	95014-3808	13-
105	10281	JOHNSON	375-18-031	SHETTY, ANILKUMAR DODDANNA	10281 JOHNSON AV	CUPERTINO	CA	95014-3811	13-
106	10361	JOHNSON AV	375-18-039	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
107	10409	JOHNSON	375-18-044	RECUPERO, MARILYN A TRUSTEE	1190 BASCOM AVS 108	SAN JOSE	CA	95128	13-
108	18655	LOREE	375-19-008	LIANG, WAN HAR CINDY TRUSTEE	18655 LOREE AV	CUPERTINO	CA	95014-3837	13-
109	10424	STERLING	375-24-003	ATTIA, MAGED AND BEDAIR, GHADA	10424 STERLING BL	CUPERTINO	CA	95014-3832	13-
110	10356	STERLING	375-24-011	DEE, JOSEFINA	395 KINCORA CT	SAN JOSE	CA	95136-3916	13-
111	10308	STERLING	375-24-017	HAO, STEVE MIN AND SUN, QING	6962 BOLLINGER RD	SAN JOSE	CA	95129-2847	13-
112	18671	PRING	375-25-039	HUANG, CHANG-KAI AND TSENG,	18671 PRING CT	CUPERTINO	CA	95014-3822	13-
113	18661	CRABTREE	375-25-047	SUBAINATI, MOHAMAD K AND JULIE	18661 CRABTREE AV	CUPERTINO	CA	95014-3864	13-
114	18621	BARNHART	375-26-035	KOO, SANDRA S ET AL	18621 BARNHART AV	CUPERTINO	CA	95014-3801	13-
115	10456	JOHNSON	375-26-045	CHO, SUNGJU AND CHOI, IHNAEE	10456 JOHNSON AV	CUPERTINO	CA	95014-3814	13-
116	10610	WUNDERLICH	375-27-019	NIE, XIAOQIONG	10610 WUNDERLICH DR	CUPERTINO	CA	95014-3652	13-
117	18781	TUGGLE	375-27-025	NULL	P O BOX 5345	SAN JOSE	CA	95150-5345	13-
118	10590	WUNDERLICH	375-27-026	CHOONG, PHILIP T AND HSIA S	27769 EDGERTON RD	LOS ALTOS HILLS	CA	94022-3235	13-
119	10540	WUNDERLICH	375-27-037	OH, SEUNGSEOK AND RYU, SUNA	10540 WUNDERLICH DR	CUPERTINO	CA	95014-3650	13-
120	10740	GASCOIGNE	375-29-016	FAULKNER, BARBARA J TRUSTEE	714 CANTERBURY AV	LIVERMORE	CA	94550-6226	13-

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Exhibit A

Situation			APN	Property Owner	Address	City/State	County	Parcel Number	Assessor's Parcel Number
121	10840	JOHNSON	375-30-024	ATCHISON, JOHN D	P.O. BOX 698	CUPERTINO	CA	95015-0698	13-
122	10784	JOHNSON	375-31-003	WANG, YINAN	PO BOX 946	CUPERTINO	CA	95014	13-
123	10740	JOHNSON	375-31-007	CHA, CATHY Y TRUSTEE	10740 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
124	10730	JOHNSON	375-31-008	LEE, MING-TZUNG AND YU-MING	10730 JOHNSON AV	CUPERTINO	CA	95014-3818	13-
125	10711	GASCOIGNE	375-31-018	TSAL, CHIH JUNG AND LAI, HUI WEN	10711 GASCOIGNE DR	CUPERTINO	CA	95014-3845	13-
126	10731	GASCOIGNE	375-31-020	NEJAT, FRANK F	PO BOX 700702	SAN JOSE	CA	95170	13-
127	10801	GASCOIGNE	375-31-027	AGARWAL, SANJAY TRUSTEE & ET	10801 GASCOIGNEDR	CUPERTINO	CA	95014	13-
128	10831	JOHNSON	375-31-065	HUO, XIPING AND SONG,	5023 CAPISTRANO AV	SAN JOSE	CA	95129-1025	13-
129	10841	JOHNSON	375-31-066	LI, YONGNA AND SONG, NING	10841 JOHNSON AV	CUPERTINO	CA	95014-3819	13-
130	10630	CARVER DR	375-32-020	MC GRATH, PATRICK W	PO BOX 2422	PALO ALTO	CA	94309-2422	13-
131	10616	CARVER	375-32-021	YETTAW, JACKIE A AND JERRI L	10616 CARVER DR	CUPERTINO	CA	95014-3607	13-
132	18870	TUGGLE	375-32-024	DELA CRUZ, SHERWIN PETER L	18870 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
133	18850	TUGGLE	375-32-026	ZHU, XINGLEI AND YIN, WENYUAN	18850 TUGGLE AV	CUPERTINO	CA	95014-3626	13-
134	18871	PENDERGAST	375-33-027	LUI, DAVID K AND ANGIE E	18871 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
135	18881	PENDERGAST	375-33-028	CHENG, XINWU AND SHI, WEN	18881 PENDERGAST AV	CUPERTINO	CA	95014-3620	13-
136	18931	PENDERGAST	375-33-033	KAWASAKI, ELAINE T TRUSTEE	18931 PENDERGAST AV	CUPERTINO	CA	95014-3622	13-
137	18880	PENDERGAST	375-33-044	YAP, KOOI AND THORISA	18880 PENDERGAST AV	CUPERTINO	CA	95014-3621	13-
138	18911	TUGGLE	375-33-064	FLAUGHER, LOU ANN	18911 TUGGLE AV	CUPERTINO	CA	95014-3625	13-
139	10657	MORENGO	375-34-013	ORTIZ, ROSA F ET AL	10657 MORENGO DR	CUPERTINO	CA	95014-3513	13-
140	10673	MORENGO	375-34-015	SHARMA, SUBHASH C AND MAMTA	10673 MORENGO DR	CUPERTINO	CA	95014-3513	13-
141	18930	TUGGLE	375-34-045	SHEN & TIAN LLC	16230 AZALEA WY	LOS GATOS	CA	95032-3622	13-
142	18940	NEWSOM	375-35-011	NGUYEN, CHINH MANH AND PHAM,	18940 NEWSOM AV	CUPERTINO	CA	95014-3618	13-
143	5991	BOLLINGER	375-35-025	NALAVDE, TANMAY S AND VAIDYA,	5991 BOLLINGER RD	CUPERTINO	CA	95014-3536	13-
144	10627	CULBERTSON DR	375-36-027	MC GRATH, PATRICK W	1184 VALELAKE CT	SUNNYVALE	CA	94089-2032	13-

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Exhibit A

Situs				APN			CITY/STATE			
145	899	S	TANTAU	375-38-045	ZWEIG, JONATHAN M AND GRACE	899 TANTAU AVS	CUPERTINO	CA	95014-4648	13-
146	928		HYDE	375-39-004	SAIKUMAR, GURUPRASAD AND	928 HYDE AV	CUPERTINO	CA	95014-4663	13-
147	19210		TILSON	375-40-060	SINGH, TAJINDER AND SANDHU,	19210 TILSON AV	CUPERTINO	CA	95014-3529	13-
148	698		MILLER	375-42-011	LIN, JOHN YAW HWA AND MICHELLE	698 MILLER AV	CUPERTINO	CA	95014-4640	13-
149	678		MILLER	375-42-012	JEN, KO-TA AND CHRISTINA N	678 MILLER AV	CUPERTINO	CA	95014-4640	13-



CITY OF CUPERTINO

Legislation Text

File #: 20-8532, **Version:** 1

Subject: Municipal Code Amendments to update existing Mobile Vending regulations, including conforming edits to Titles 5 and 13 in the Municipal Code, adopting new regulations for Sidewalk Vending in compliance with SB 946. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide. (Continued from December 15).

Conduct the public hearing and find:

1) Conduct the first reading of Ordinance No. 21-2220: "An Ordinance of the City Council of the City of Cupertino amending Chapter 5.04, Business Licenses Generally, Chapter 5.20, Solicitors, Chapter 5.48, Mobile Vendors, and Chapter 13.04, Parks" to:

A. find that the proposed actions are exempt from CEQA;

B. Adopt regulations to allow sidewalk vending in compliance with SB 946; and

C. Find that the restrictions and requirements contained in the regulations are directly related to objective health, safety, and/or public welfare concerns; and

2) Provide direction to staff regarding whether to later present draft regulations to allow and/or restrict certain Motorized (Mobile) Vendors consistent with its FY 2020-2021 Work Program Item.



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Consider Municipal Code Amendments to update existing Mobile Vending regulations, including conforming edits to Titles 5 and 13 in the Municipal Code, adopting new regulations for Sidewalk Vending in compliance with SB 946. (Application No.: MCA-2020-004; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the City Council conduct a public hearing and

1. Introduce and conduct the first reading of the draft ordinance "An Ordinance of the City Council of the City of Cupertino amending Chapter 5.04, Business Licenses Generally, Chapter 5.20, Solicitors, Chapter 5.48, Mobile Vendors, and Chapter 13.04, Parks" (Attachment A) to:
 - a. Find that the proposed actions are exempt from CEQA;
 - b. Adopt regulations to allow sidewalk vending in compliance with SB 946;
 - c. Find that the restrictions and requirements contained in the regulations are directly related to objective health, safety, and/or public welfare concerns; and
2. Provide direction to staff regarding whether to later present draft regulations to allow and/or restrict certain Motorized (Mobile) Vendors consistent with its FY 2020-2021 Work Program Item.

Discussion

Background

Cupertino's Economic Development Strategic Plan (EDSP), adopted by Council in October 2016, identified strategies to strengthen Cupertino's existing competitive advantages for economic development, and Motorized Mobile Vendor Regulations was seen as a key issue due to the growing popularity of and increased reliance on food trucks and other mobile services in cities across the nation. In addition, the state adopted SB 946 (effective Jan. 1, 2019) which established requirements for local regulation of sidewalk vending (Attachment B). The development of Mobile Vendor regulations and/or standards was included in the City Council's FY 2020-2021 work program with a goal of adopting standards by Winter 2020.

Proposed regulations for both sidewalk vending and motorized mobile vending were presented to the Planning Commission on October 27, 2020. Commissioners discussed at great length the following issues:

- What is allowed under SB 946 sidewalk vending compared to what is currently allowed in Cupertino's Municipal Code
- The differences between sidewalk vending and motorized vending
- Why regulations are needed for motorized vending
- What restrictions, if any, should be placed on motorized vending

The discussion resulted in the Planning Commission adopting Resolution No. 6913 (Attachment C) on a 3-2-0 vote (Takahashi and Fung voting no), recommending that City Council adopt an ordinance to make Municipal Code Amendments in accordance with SB 946 and not adopt any regulations related to motorized mobile vending.

The Commissioners had different reasons for not wanting to adopt regulations related to motorized mobile vending. Some Commissioners expressed that the proposed regulations were too lenient and would negatively impact existing brick and mortar businesses, particularly when they are already impacted by the pandemic. Other Commissioners believed the proposed regulations were too restrictive, particularly the proposed regulation which would disallow motorized mobile services (such as mobile hairdressers, mobile dentists, mobile car washing etc.) on exclusively non-residential property.

Analysis

Existing regulations in Chapter 5.48 of the Municipal Code limit mobile vendors to non-motorized stationary carts, push wagons, etc., and exclude motorized vehicles as mobile vending facilities. Chapter 5.48 is inconsistent with SB 946 in several ways, including that it prohibits all sidewalk vendors in R1 or R1C zoning districts. In compliance with the Planning Commission's recommendation, the proposed amendments to the Cupertino Municipal Code, including Titles 5 and 13, aim to provide new policies and definitions limited to regulating sidewalk vending.

The two main issues addressed with this ordinance update are:

1. Conforming the Municipal Code to SB 946, including updates to the City's existing use of the terms "solicitors" and "peddlers" for consistency.
2. Establishing a process and regulations for how sidewalk vending will be regulated by the City in order to allow for proper enforcement and compliance.

The proposed regulations aim to protect the public health and safety and ensure safe pedestrian and vehicular traffic while safely allowing sidewalk vendors to operate on public sidewalks in the City. It is important to note that the City is preempted from

imposing requirements or limitations on sidewalk vending that are more restrictive than what SB 946 allows.

Sidewalk Vendors

SB 946 defines “sidewalk vendor” as a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack or other nonmotorized conveyance, or from one's person, on a public sidewalk or other pedestrian path. “Roaming” sidewalk vendors move from place to place, whereas “stationary” sidewalk vendors vend from a fixed location.

Table 1: What Can Be Regulated by Local Jurisdictions Under SB 946	
<u>Not allowed to:</u>	<u>Allowed to:</u>
<ul style="list-style-type: none"> • Prohibit sidewalk vending • Limit the total number of vendors in city • Prohibit roaming sidewalk vendors from exclusively residential areas • Prohibit stationary sidewalk vendors from parks (unless an exclusive concessionaire agreement exists) • Overly restrict hours of operation in areas that are not exclusively residential 	<ul style="list-style-type: none"> • Impose regulations directly related to objective health, safety or welfare concerns • Require sanitary standards, ADA compliance, food preparation standards • Require a sidewalk vending registration and/or business license with the City

Proposed Regulations:

The proposed regulations comply with SB 946. Sidewalk vendors, both roaming and stationary, are allowed to operate in areas that are not exclusively residential for the same hours as commercial operations – between 7 a.m. and 11 p.m. In parks, sidewalk vendors, both roaming and stationary, are allowed to conduct business during park operation hours, except that stationary vendors are not allowed to vend in parks subject to an exclusive concessions contract. There are currently 18 City parks, five of which have physical concession stands. The Blackberry Farm Café is exclusively managed and operated by the City, and therefore, an exclusive concession contract. The concession stands at Creekside, Monta Vista, and Wilson parks are used by youth sports groups in conjunction with their field use agreements, but these are not exclusive concession contracts. The concession stand at Jollyman Park is being converted to storage space.

Roaming sidewalk vendors are permitted to operate in exclusively residential areas but limited to operations between 9 a.m. and 8 p.m. Stationary sidewalk vendors are not permitted in exclusively residential areas. In all cases, roaming sidewalk vendors are not permitted to stop at a location for longer than 15 minutes to complete a transaction.

Operational Standards

Operational standards for sidewalk vendors include:

- Signs painted on sidewalk vending facility only.
- Waste handling requirements – provide one trash receptacle, remove litter at the end of the day, comply with organic waste recycling and storm water pollution prevention requirements, etc.
- Noise – loud sounds and voice amplification prohibited.
- Smoke – ensure compliance with requirements of Chapter 10.90 related to outdoor dining areas.
- Single use plastic bag usage – comply with requirements of Chapter 9.17.
- Food service ware – comply with requirements of Chapter 9.15 and retain existing prohibition on the sale of food or drinks in glass containers.
- Condition of facilities and vicinity – maintain a clean area, clean up at the end of the day and remove all facilities daily.
- Vending area: Maximum permitted size regulations to safely accommodate sidewalk vending facilities.
- Obstruction of traffic – Disallow obstruction of sidewalks (sidewalks/pathways) by vending facilities.

Proposed Process

Registration shall be in a manner provided for by the City Manager or his or her designee, be accompanied by a valid Cupertino business license, a registration fee established by the City Council, and include the following:

1. Identification information of the applicant and if the applicant is an agent, the information for the principal;
2. Certificate of Insurance pursuant to requirements;
3. A description of the proposed business – including but not limited to a description of the food and/or goods being provided, type of vendor, hours of operation, days of the week, routes of operation, and location of stationary vending facilities, if applicable;
4. Plans indicating size of the sidewalk vending facility. If deemed appropriate by the City Manager or his or designee, photographs with dimensions may be accepted, in lieu thereof;
5. A copy of a valid CA Department of Tax and Fee Administration seller's permit, as required;
6. A copy of all required permits/approvals from the County Public Health Department, if selling food;
7. Indemnification Agreement; and
8. Such additional information as may be required by the City to ensure that the vendor is operating in compliance with the requirements of the Municipal Code.

An approved registration will be valid for one year and must be renewed annually. Registration is non-transferable. Registration may be revoked after notice and hearing as provided for in the proposed ordinance, for any of the following reasons:

1. That the registration was obtained by misrepresentation, false statement or fraud;
2. That the sidewalk vending activity is being conducted in violation of local or state law;
3. That the sidewalk vendor has violated the regulations of Chapter 5.48 four (4) times within the preceding twelve (12) months; or
4. That the sidewalk vending activity has caused or is causing a serious threat to human health or public safety.

However, the sidewalk vendor has the right to appeal the decision to revoke, and the steps for doing so are outlined in the ordinance.

Other Conforming Edits

Proposed edits have been made to Chapter 5.04 Business Licenses Generally, Chapter 5.20 Solicitors, and Chapter 13.04 Parks, in conformance with the proposed sidewalk vending regulations in Chapter 5.48. In all cases, references to Chapter 5.48 were listed.

- Sections 5.04.290 and 5.04.400 currently regulate the types of business licenses applicable to solicitors and peddlers, respectively. Each section was simplified so that the text directly references the corresponding definition in the existing Solicitors Ordinance (Chapter 5.20) and revised Mobile Vendor Ordinance (Chapter 5.48). These changes included changing “Peddling” to “Sidewalk Vendor” and replacing the description of types of services with a reference to the applicable Code section that already has each use defined.
- Sections 5.20.010 regulates solicitors and was revised to clarify the definition of solicitor as well as distinguish it from a sidewalk vendor.
- Section 13.04.180 regulates advertising and sales within parks and was revised to allow sidewalk vending in compliance with Chapter 5.48, pursuant to SB 946.

Motorized Mobile Vending

Adopting regulations for Motorized Mobile Vending was on the City Council’s FY 2019/2020 Work Program. However, as previously mentioned, since the Planning Commission did not recommend adoption of the proposed motorized mobile vending regulations, these have not been presented to the City Council. Staff is seeking direction from the Council on whether to proceed with presenting the regulations reviewed by the Planning Commission at a future date. These regulations are included in the Planning Commission Resolution No. 6913 (Attachment C).

The proposed motorized mobile vending regulations mostly mirrored the sidewalk vendor regulations except that:

1. Up to three motorized mobile food vendors were allowed on exclusively non-residential private property as an accessory use.
2. Motorized mobile vendors could only be on private property at the invitation of the property owner.
3. Motorized mobile vendors could only park on public streets for no more than 15 minutes to complete a transaction.
4. Motorized mobile service vendors (hairdressers, dog-groomers, car washers, dentists, etc.) were allowed in exclusively residential areas, but not in exclusively commercial or industrial areas.

Public Noticing and Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Legal ad placed in newspaper (at least 10 days prior to hearing) ▪ Display ad placed in newspaper (at least 10 days prior to hearing) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (four days prior to hearing) ▪ Posted on the City of Cupertino's Web site (four days prior to hearing)

The City hosted community and business engagement meetings held on August 11, August 12, and September 4, 2020 via Zoom in accordance with current Health Orders. Participants in these meetings expressed general support for the proposed policy regulations. One attendee expressed a desire for stricter regulations in general for pet groomers.

Environmental Review

The proposed ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or indirectly. In the event that the proposed 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.

Sustainability Impact

The proposed ordinance has no sustainability impact.

Fiscal Impact

The total estimated budget (not including staff time) for this work program item is \$47,000 as part of the Economic Development Division FY 2020-2021 budget for external

consulting services and outreach meetings. To date, approximately 180 staff hours have been spent by Planning, Economic Development, Public Works, and Parks & Recreation staff this fiscal year. There have not been any external consulting expenses nor community meeting expenses as outreach has been conducted virtually due to Shelter in Place Health Orders.

Next Steps

If the ordinance is adopted by the Council, staff will work to develop, administer, implement, and enforce Cupertino's ordinance through a registration process. A fee amount will be determined and brought to Council to be included in the City's fee schedule.

<u>Prepared by:</u>	Angela Tsui, Economic Development Manager Piu Ghosh, Planning Manager Jeffrey Tsumura, Associate Planner
<u>Reviewed by:</u>	Benjamin Fu, Director of Community Development
<u>Approved for Submission by:</u>	Dianne Thompson, Assistant City Manager

Attachments:

- A – Proposed Ordinance with Redline and Strikethrough Changes to Existing Municipal Code
- B – SB 946
- C – Planning Commission Resolution No. 6913
- D – Planning Commission Meeting Minutes of October 27, 2020

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 5.04, BUSINESS LICENSES GENERALLY, CHAPTER 5.20,
SOLICITORS, CHAPTER 5.48, MOBILE VENDORS, AND CHAPTER 13.04, PARKS

The City Council of the City of Cupertino finds that:

WHEREAS, Senate Bill No. 946 ("SB 946"), which took effect on January 1, 2019, provides that cities and counties may not regulate sidewalk vending except in accordance with California Government Code sections 51038 and 51039;

WHEREAS, provisions of the Cupertino Municipal Code currently regulate sidewalk vendors in a manner that is inconsistent with SB 946, and the City seeks to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the Cupertino community;

WHEREAS, SB 946 only applies to sidewalk vending in public parks and rights-of-way, and private rights-of-way are still subject to private and local control;

WHEREAS, until the effective date of SB 946, the City regulated sidewalk vendors by means of a general license for "solicitors" and a mobile vending permit for certain mobile vendors. In light of the specific provisions for sidewalk vending in state law, regulating sidewalk vending through a registration requirement specific to the activity will enable the City to more effectively comply with state mandates;

WHEREAS, regulating sidewalk vending will benefit the City by promoting entrepreneurship and a dynamic streetscape, while ensuring protection of the public safety and welfare, in compliance with state law;

WHEREAS, unless properly regulated, sidewalk vending in the public right-of-way and in public parks creates the potential for increased safety risks including, but not limited to, interfering with the performance of police, firefighter, and paramedic services; contributing to traffic congestion; and interfering with the ability of pedestrians, transit users and persons with disabilities to follow a safe path of travel (by obstructing the right-of-way with vending equipment or by increasing congestion);

WHEREAS, the registration requirements of this ordinance are necessary to collect adequate information about sidewalk vending operations within city limits, to facilitate contact between the City and its sidewalk vendors, and to ensure that sidewalk vending does not adversely affect the public welfare;

WHEREAS, requiring sidewalk vendors to maintain a minimum unobstructed pedestrian path of four (4) feet at vending locations is necessary to ensure compliance with state and federal disability access standards;

WHEREAS, requiring sidewalk vendors to maintain a clearance at driveways and corner triangle clearances is necessary to ensure the safe flow of pedestrian and automobile traffic, and required of all development. This will ensure the safe flow of pedestrian and automobile traffic, which is particularly important to the safety of the elderly, the very young, persons with disabilities, and others who are less able to navigate crowds and obstacles that may require stepping off curbs when sidewalks have become obstructed;

WHEREAS, requiring sidewalk vendors to obtain any necessary permit from the Santa Clara County Department of Public Health before engaging in the sale of certain food to the public is necessary to protect the public health and safety;

WHEREAS, restricting sidewalk vending in parks is necessary to protect the health, safety and welfare of the public and the use and enjoyment of public spaces, natural resources, and recreational opportunities within the City;

WHEREAS, restricting sidewalk vending in parks is necessary to preventing undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of parks;

WHEREAS, restricting sidewalk vending near school grounds when the grounds are open for student instruction is necessary to protect the safety of children traveling to and from campus and to avoid disrupting classroom instruction and school activities;

WHEREAS, restricting sidewalk vending in residential areas is necessary to protect residents and visitors from excessive traffic impacts;

WHEREAS, restricting sidewalk vendors' use of sound amplifying equipment and other noise generating equipment is necessary to protect residents and visitors from excessive noise impacts;

WHEREAS, allowing a process for revoking a registration and appeals to any such decisions is an important tool to ensure compliance with the City's regulations and a fair complete due process for any sidewalk vendor;

WHEREAS, public outreach was conducted on August 11, and August 12, 2020 to discuss the proposed regulations with members of the public and on September 4, 2020 with the Chamber of Commerce;

WHEREAS, following 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 October 27, 2020 to consider the Ordinance;

WHEREAS, the Planning Commission adopted Resolution No. 6913 finding that the proposed actions are exempt from CEQA and recommending that the City Council adopt an ordinance to make Municipal Code Amendments relating to Mobile Vendors;

WHEREAS, the Planning Commission motion (made by Chair Moore and seconded by Vice Chair Wang and Com. Saxena (amendment)) amended the draft of Resolution No. 6913 prepared by staff as follows: “The Planning Commission recommends that the City Council adopt an Ordinance to amend Chapter 5.04; Business Licenses, generally Chapter 5.20; Solicitors; Chapter 5.48; Mobile Vendors; Chapter 11.28: Miscellaneous Parking Regulations, On Street parking, Chapter 13.04; Parks, and Chapter 19.100; Accessory Uses and Building Structures for Mobile Vendor regulations in accordance with SB946 and excepting portions which are not directly applicable to SB946.” and “Adopt the proposed amendments to the Municipal Code with the findings reflected in the proposed Ordinance which the Planning Commission makes as though set forth in their entirety in the Resolution only as applicable to SB946 in substantially the form as shown in said Exhibit”;

WHEREAS, on _____, 2021 upon due notice, the City Council has held at least one public hearing to consider the Planning Commission’s recommendation and the Ordinance;

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

WHEREAS, the City Council hereby adopts this Ordinance pursuant to its authority under Government Code section 51038 and finds that the regulation of sidewalk vendors set forth herein is directly related to protecting the health, safety, and welfare of the Cupertino community; and

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: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15378 since these regulations are being adopted to regulate sidewalk vending and are not a project which may result in physical changes to the environment. In the event that this proposed amendment is found to be a project under CEQA, the proposed Ordinance is exempt from environmental review under section 15061 (b)(3) because "[w]here it can be seen with certainty that there is no possibility that the activity in question may have significant effect on the environment," the activity is not subject to CEQA. The enactment of this ordinance will not result in a permanent alteration of the environment or any specific property as there will be no new or expanded structures that will directly or indirectly change the environment.

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 _____, 2021 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – SIDEWALK VENDOR REGULATIONS

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 5.48 concerning Mobile Vendors

CHAPTER 5.48: ~~MOBILE VENDOR PERMITS~~ SIDEWALK VENDORS

5.48.010 Purpose.

The purpose of this chapter is to set forth specific regulations to govern the vending of various **food and** goods from locations which are not permanent. It is recognized that such transient operations may have negative ~~land use and traffic~~ impacts which the city desires to minimize through a **permitregistration** process.

5.48.020 ~~Mobile Vending Facility–Permit Required~~Definitions.

For the purpose of this chapter, the following definitions shall be used in the interpretation and construction of this chapter, unless it is apparent from the context that a different meaning is intended.

“Sidewalk vending facility” means a non-motorized conveyance used by a sidewalk vendor. A sidewalk vending facility shall not include any authorized outdoor display associated with an immediately adjacent brick-and-mortar business. A sidewalk vending facility offering food for sale is a food establishment and must additionally comply with the requirements of Chapter 9.04.

“Sidewalk vendor” means a person who sells food or goods, but not services, from either a non-motorized conveyance, including but not limited to a pushcart, stand, display, pedal-driven cart, wagon, showcase, or rack, or from one’s person, upon a public sidewalk or other pedestrian path.

a. “Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

b. "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location for a defined period of time during the day and removes their mobile vending facility from that location on a daily basis.

5.48.030 Applicability and Exceptions.

A. No person shall place, maintain, conduct, park or allow to stand or remain any mobile sidewalk vending facility, that is, any portable container, pushcart, lunch, meal or eating stand, or wagon used for displaying, selling or offering for sale cut flowers, foodstuffs or other merchandise, food or goods within the city City limits of the City, without first obtaining a mobile vendor permit from the Director of Community Development registering in the City's Mobile Vendor Registry on an annual calendar year basis, pursuant to Section 5.48.030. For purposes of this section, automobiles, trucks 040, except that the regulations in this chapter shall not apply to the exceptions identified in subsection B. below. Any registered sidewalk vending facility operating in compliance with this code is not considered an encroachment pursuant to Chapter 14.08 of the Municipal Code.

B. The registration requirements in subsection A above do not apply to:

1. Persons engaged in delivering food or goods to or from any store, fixed place of business or residence upon order of or by agreement with a customer of a store or other vehicles defined in California Vehicle Code fixed place of business, provided they do not come within the definition of sidewalk vendor;

2. Any persons operating in accordance with Section 670, as amended, shall not be permitted to be used as mobile vending facilities. 5.20 Solicitors, provided they do not come within the definition of sidewalk vendor. Any persons operating as both a sidewalk vendor and a solicitor must satisfy the requirements for both; 5.48.030 Mobile Vending Facility Permit Procedure.—

A. The Director of Community Development may grant a permit authorizing establishment of a mobile vending permit.

B. Thirty days prior to granting a permit, the Director shall cause the requested mobile vending facility location to be posted, giving notice of the application and the date that the permit will be granted. In addition, written notice thereof shall be delivered to the occupants and property owners of properties within three hundred feet of the vending facility site. Persons wishing to appeal the permit must send a written appeal to the Director of Community Development within the thirty-day application period. Upon receipt of a written appeal within the thirty-day application period, the director shall cause the appeal to be promptly heard by the Planning Commission, whose decision in the matter shall be final. Sixty days after the application has been submitted, if no written appeal has been filed, all other conditions having been met, the Director shall issue the permit.

~~—C. Each permit issued hereunder shall authorize placement of a mobile vending facility only upon the public sidewalk or paved private property at a location described in such permit. Each permit shall specify the dates for which placement of a mobile vending facility shall be authorized, not exceeding one calendar year, and the names of those companies or persons authorized to exercise it.~~

~~3. —D. Each application for a mobile vending permit~~**Persons engaged in the sale of food or goods as part of Outdoor Sales and Promotional Events, including special events or festivals, regulated by the Outdoor Sales and Promotional Events Policy.**

5.48.040 Registration Process.

A. **Process: Registration** shall be on forms provided by the ~~Director of Community Development, shall be~~**City Manager or his or her designee,** accompanied by ~~an application~~**a valid Cupertino business license and a registration** fee established by the City Council, ~~shall be signed by the property owner if requesting a private property location, and shall~~**and** include the following:

~~1. The names~~**name** and ~~addresses~~**address** of each person~~the applicant, and additionally, if the applicant is an agent, the name and address of the principal,~~ who will ~~occupy~~**operate** the ~~mobile~~**sidewalk** vending ~~location~~**facility**;

~~2. A copy of the applicant's, and, additionally, if the applicant is an agent, the principal's, California driver's license or identification number, an individual taxpayer identification number, or a social security number. Such information shall not be available to the public for purposes of exercising the permit;~~**inspection, is confidential, and shall not be disclosed except as required to administer the registration or comply with a state law or state or federal court order;**

~~23. A certificate of insurance with policy limits set by the City~~**Manager,** naming the City as an additional insured ~~when the vending facility will be located on public property,~~ and stating the insurer's name, policy terms and principal amounts (combined single limit) of a policy of insurance against general liability, bodily injury, and property damage arising from the permitted activity. The City shall provide all insurance forms. Each such policy shall be amendable only upon thirty days' advance written notice to the city;

~~3. Plans for the proposed vending facility showing both the proposed site of the facility and the construction of the facility; and~~**4. A description of the proposed business – including but not limited to a description of the food and/or goods being provided, type of vendor, hours of operation, days of the week, routes of operation, and the location of stationary vending facilities, if applicable;**

~~45. Plans indicating the size of the sidewalk vending facility. If deemed appropriate by the City Manager or his or her designee, photographs with dimensions may be accepted, in lieu thereof;~~

6. A copy of a valid California Department of Tax and Fee Administration seller's permit, as required;

7. A copy of all required permits/approvals from the Santa Clara County Public Health Department, if selling food;

8. An agreement to indemnify the City from any damage or harm on a form provided by the City; and

9. Such additional information as may be required by the Director.

~~E. The Director of Community Development shall grant mobile vending permits based upon the information contained in the application, public records, and/or the recommendations of departmental staff, when they indicate City Manager or his or her designee to ensure that the sidewalk vendor is operating in compliance with all of the provisions of this chapter, and it appears that no undue traffic safety, litter or parking consequences would result from exercise thereof. Should the Director of Community Development deny the permit, the applicant may submit a written appeal pursuant to Section 1.16.020 of this code the requirements of the Cupertino Municipal Code.~~

~~B. F.Fee:~~ The ~~permits~~sidewalk vendor shall become effective upon issuance~~pay an annual registration fee prescribed by City Council resolution, no part of which shall be returnable to the registrant.~~

~~C. Term of Registration: Registration shall be on a Cupertino calendar-year basis and must be renewed annually. Registration is non-transferable.~~

D. Registration:

1. The sidewalk vendor shall be registered in the Mobile Vendor Registry within thirty days of receiving a registration request, if it is determined that:

a. The registration is complete with all required information and the proposed business license, in addition to any~~complies with all requirements of this chapter and other~~ applicable sanitation,~~requirements of the Cupertino Municipal Code; and~~

b. The sidewalk vending activity will not unduly interfere with traffic or pedestrian movement, interfere with or endanger the public peace, be a public nuisance, or otherwise be detrimental to the health or safety~~permits. Permits shall require compliance with all applicable municipal code provisions and, and general welfare of the public; and~~

~~a.c.~~ The sidewalk vending facility and activities comply with applicable health and sanitation requirements;~~; and~~

d. ~~G. The Director~~ The sidewalk vending activity will not cause a violation of the American with Disabilities Act of 1990 (Public Law 101-336) or other disability access standards; and

e. The sidewalk vendor has not had four (4) or more violations of the Cupertino Municipal Code within the last twelve (12) months from registration submittal related to any sidewalk vending facility or activity.

f. As used in this subsection D, the term “violation” shall mean any violation of the Cupertino Municipal Code, as evidenced by a City-issued citation, unresolved notice of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of the Cupertino Municipal Code shall constitute one (1) violation.

2. The City Manager or his or her designee may attach such additional conditions to the permitregistration as may be needed to fulfill the intent of this section.

5.48.040 Mobile Vending Facility-Permit Fees.

~~—A. Each applicant for a vending permit shall pay to the City a nonrefundable application fee which shall be set by action of the City Council.~~

~~—B. Each vendor granted a vending permit shall pay to the City an annual permit fee which shall be set by action of the City Council.~~

5.48.050 Mobile Vendors-Prohibited Locations.

~~—Notwithstanding the terms of any mobile vending permit, no person~~ No sidewalk vendor shall place, maintain, conduct, park or allow to stand or remain any ~~portable container, vehicle, pushcart, eating stand, wagon or car used in selling, vending, peddling, bartering or exchanging any goods, flowers or foodstuffs~~ sidewalk vending facility, in any of the following places within the city:

~~A. In any R1 (Single Family Residential) or R1C (Single Family Residential Cluster) zoning districts;~~

A. In any natural, dirt, sand, or grass area, or any programmed space for recreation, such as sports courts, tot lots, and amphitheaters, within any City park;

B. In or upon any street (curb to curb) or center median strip, excluding sidewalks ;

~~C. Upon any sidewalk or private property within ten feet of any bicycle lane designated by this code;~~

~~D.C.~~ Upon any sidewalk within ten feet of any “no parking” zone designated pursuant to the provisions of Title 11, during the times when such parking prohibition is in effect ~~or upon any private property within twenty five feet of any designated fire~~

lane unless specifically allowed by the Director of Community Development in connection with a mobile vendor permit;

~~E. Within any one hundred foot corner triangle;~~

~~F. On any private property which contains fewer parking spaces than the minimum number required by this code, regardless of whether the property has a variance or legal nonconforming status;~~

~~D. G. Within fifteen feet of any fire hydrant or public safety alarm box, or driveway~~within any one hundred foot corner triangles at any intersection pursuant to Public Works Standard Details 7-4 or any driveway clearance triangle pursuant to Public Works Standard Details 7-6;

~~E. H. Within one hundred feet of~~twenty five feet of any public transit bus stop sign;

~~I. At, or any location on private property~~valet loading zone, taxicab stand, or other designated loading zone, to ensure open pedestrian pathways and adequate room for persons to enter and exit loading vehicles;

~~F. On any sidewalk~~ separated from the ~~public right of way~~street by landscaping ~~or vegetation~~, unless reasonable precautions are taken ~~or improvements installed sufficient~~ to protect such landscaping from ~~damage or~~ destruction by sidewalk vending facility customers;

~~J. G. Within three hundred~~twenty feet of another ~~mobile~~sidewalk vendor, ~~except where separated by a public street with four or more moving lanes;~~

~~K. H. Within five hundred feet of the nearest property line~~a public or private school. This prohibition applies during school hours (when classes are in session) and one hour before and after such school hours. For purposes of this prohibition, distance will be measured along ~~any public street~~the pedestrian path or sidewalk, upon which is located a public school building or park; L. Mobile vendor facilities legally in operation at to the time of enactment of this chapter and not in violation of any other provision of the municipal code are exempt from the provisions of this section for two yearsschool property line.

5.48.060 Mobile Vendors-Exceptions.

~~—A. This chapter shall not apply to any person engaged in delivering merchandise from or to any store, fixed place of business or residence upon order of or by agreement with a customer of a store or other fixed place of business;~~

~~—B. This chapter shall not apply to vehicles or trucks used for catering or vending prepared foodstuffs and located upon private property at the invitation of the property owner, solely for the use of the owner or owner's tenants or employees;~~

~~—C. This chapter shall not apply to special events or festivals where prohibited locations are devoted exclusively to that use and where the events are regulated by the Outdoor Sales and Promotional Events Policy.~~

~~5.48.070 Mobile Vendors Parking Limited to Location in Permit.~~

~~—Whenever any permit is granted under the provisions of this chapter and a particular location to park or stand any vehicle or wagon is specified therein, no person shall park or stand any vehicle or wagon on any location other than as designed in such permit.~~

~~5.48.080 Mobile Vendors General Regulations.~~

~~A. The following **Table 5.48.060A below indicates the operation** regulations are applicable to **for sidewalk** vendors with vending permits:~~

~~A. Size of Vending Facility. Vending stands shall not exceed eight feet in length and five feet in width or height. Umbrellas or canopies open on four sides are permitted, but shall not exceed eight feet in height measured from grade.~~

~~B. Signage. No mobile vending facility shall display any sign, flag, banner, whether attached or on a separate structure, except such signs as may be painted on the sides thereof, provided that no signs exceed five feet in height or width.~~

~~C. Hours of Operation. It is unlawful for vendors to engage in the business of vending between the hours of 8:00 p.m. and 7:00 a.m. Vendors may request from the city a temporary exception to the usual hours of operation for special events. All vending stands must be removed from public property during nonoperating hours.~~

~~D. Trash. All vendors must provide at least one trash receptacle. All litter at the permit location must be removed by the vendor.~~

~~E. Noise. No vendor may use any device which produces loud sounds to attract public attention including loudspeakers, horns, bells, musical instruments, voice amplification or shouting.~~

~~F. Glass Containers. Vendors are not permitted to sell or dispense items of food or drink in glass containers which would be carried away by the customer after purchase.~~

~~G. Obstruction of Pedestrian Traffic. A four foot width of sidewalk must be kept clear at all times. No vendor shall in any way impede or obstruct pedestrian traffic.~~

TABLE 5.48.060A: Operation Regulations for Sidewalk Vendors

	<u>Allowed Locations</u>	<u>Allowed Hours</u>
<u>1. Stationary</u>	<u>a. All sidewalks except in exclusively residential zones and pursuant to standards provided in table 5.48.060B.</u>	<u>7 AM – 11 PM</u>

TABLE 5.48.060A: Operation Regulations for Sidewalk Vendors

	<u>Allowed Locations</u>	<u>Allowed Hours</u>
	<u>b. All parks except if the park has an exclusive concessions contract with another party and pursuant to standards in Table 5.48.060B.</u>	<u>Parks – Open hours for park</u>
<u>2. Roaming</u>	<u>a. All sidewalks pursuant to standards provided in Table 5.48.060B. See subsection b. for sidewalks in parks.</u>	<ul style="list-style-type: none"> ▪ <u>Exclusively residential zones – 9 AM – 8 PM;</u> ▪ <u>All other zones except exclusively residential zones and parks – 7 AM – 11 PM;</u> <u>and</u> ▪ <u>Total duration at any location limited to the duration required to complete a transaction, up to a maximum of 15 minutes.</u>
	<u>b. All parks, regardless of whether the park has an exclusive concessions contract with another party, and pursuant to the standards in Table 5.48.060B.</u>	<ul style="list-style-type: none"> ▪ <u>Open hours for park</u> <u>and</u> ▪ <u>Total duration at any location limited to the duration required to complete a transaction, up to a maximum of 15 minutes.</u>

B. The following table 5.48.060B indicates the standards that must be adhered to by all sidewalk vending facilities and vendors:

TABLE 5.48.060B: Standards for Sidewalk Vendors

<u>1. Size</u>	<u>a. Vending area: Maximum nine feet in length and nine feet in width, subject to compliance with section 5.48.060B.9, to accommodate any allowed appurtenances, as follows:</u> <ul style="list-style-type: none"> <u>i. Vending facility: Maximum eight feet in length and five feet in width and height.</u> <u>ii. Umbrella or canopy: Maximum one; open on four sides, not to exceed eight feet in height measured from grade.</u>
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TABLE 5.48.060B: Standards for Sidewalk Vendors

<u>2. Direct retail sales only</u>	<u>Sidewalk vending facilities that operate solely for cooking (e.g. mobile kitchens) or production of goods and services, do not vend or offer direct on-site sales, and rely solely on delivery are not allowed.</u>
<u>3. Signage</u>	<u>No sidewalk vending facility shall display any sign, flag, banner, whether attached or on a separate structure, except such signs as may be painted on the sides thereof.</u>
<u>4. Waste</u>	<u>a. Sidewalk vendors shall provide at least one trash receptacle.</u> <u>b. All litter associated with the sidewalk vending facility shall be removed promptly by the vendor at the end of service or the end of the day.</u> <u>c. Sidewalk vendors shall comply with the requirements of Chapter 6.24 related to mandatory organic waste recycling.</u> <u>d. Sidewalk vendors shall comply with the requirements of Chapter 9.18 related to stormwater pollution prevention and the unlawful discharge of waste in such a manner as to constitute a threatened discharge into storm drains, gutters, or watercourses.</u> <u>e. No sidewalk vendor shall use any publicly available trash receptacles to empty trash from the sidewalk vending facility.</u>
<u>5. Noise</u>	<u>No sidewalk vendor may use any device which produces loud sounds to attract public attention including loudspeakers, horns, bells, musical instruments, voice amplification or shouting and shall comply with the requirements of Chapter 10.48.</u>
<u>6. Smoke</u>	<u>Sidewalk vendors shall ensure compliance with requirements of Chapter 10.90 related to smoking in Outdoor Dining Areas as defined.</u>
<u>7. Single use plastic bags</u>	<u>Sidewalk vendors shall comply with the requirements of Chapter 9.17.</u>
<u>8. Food service ware</u>	<u>a. Sidewalk vendors shall comply with the requirements of Chapter 9.15 for all food service ware.</u> <u>b. Sidewalk vendors are not permitted to sell or dispense items of food or drink in glass containers which would be carried away by the customer after purchase.</u>
<u>9. Obstruction of traffic</u>	<u>a. Sidewalk vendors shall not impair the free flow of traffic on the sidewalk. At least one-half (½) of the sidewalk width, but no less than four (4) feet, shall be kept unobstructed at all times.</u> <u>No lines, banners, ties, or any part of a sidewalk vending facility shall be connected to a public or private structure.</u>

TABLE 5.48.060B: Standards for Sidewalk Vendors

<p><u>10. Condition of facilities and vicinity</u></p>	<p><u>a. Each sidewalk vendor shall maintain a clean selling area. Each vending area must be cleared of all merchandise, stands, carts, or other items which belong to, or are used by, the vendor when not in use by the vendor.</u></p> <p><u>b. All sidewalk vending facilities must be removed daily during non-operating hours.</u></p>
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5.48.090 070 Mobile Vending Facility Permit – Revocation or Suspension of Registration.

~~If the Director of Community Development finds that any mobile vending facility has been erected, altered, relocated or maintained in violation of any provision of this chapter or any other relevant ordinance of the city, the permit may be revoked or suspended by the Director, after notice and hearing.~~

A. The City Manager, or his or her designee, may revoke the sidewalk vendor's registration after notice and hearing, as provided for in this subsection for the following reasons:

- 1. That the registration was obtained by misrepresentation, false statement or fraud;**
- 2. That the sidewalk vending activity is being conducted in violation of local or state law;**
- 3. That the sidewalk vendor has violated the regulations of this Chapter four (4) times within the preceding twelve (12) months; or**
- 4. That the sidewalk vending activity has caused or is causing a serious threat to human health or public safety.**

As used in this subsection (A), the term "violation" shall mean any violation of the Cupertino Municipal Code, as evidenced by a City-issued citation, unresolved notice shall fix a time and place, not less than five, or more than thirty days after service thereof, at which time the holder of the permit may appear before the Director of Community Development and be granted a hearing upon the merits of such of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of the Cupertino Municipal Code shall constitute one (1) violation.

B. Process: In any case where substantial evidence indicates that the conditions in Section 5.08.070A exist, revocation proceedings shall occur as follows:

1. The City Manager, or his or her designee, may issue either a notice of pending revocation or a notice of suspension or revocation. If pending revocation, the latter of which shall require immediate suspension of all sidewalk vending activity pending a final determination regarding revocation. Any notice of suspension shall explain why the sidewalk vending activity presents an immediate, serious threat to human health or public safety. The notice shall detail the grounds for potential revocation of the registration and allow thirty calendar (30) days for submission of a written statement and/or supporting documentation disputing such grounds.

2. The determination on the revocation by the City Manager, or his or her designee, shall be made not more than thirty calendar (30) days after the deadline for submittal of documentation provided on the notice. The determination shall be mailed to the sidewalk vendor.

3. All notices and determinations of the City Manager, or his or her designee, shall be mailed to the sidewalk vendor.

4. The City Manager, or his or her designee, is authorized to issue administrative guidelines to further define procedures for making revocation determinations.

C. Appeals: If after such hearing the registration is ordered revoked, the holder/sidewalk vendor shall have the right to appeal pursuant to Section 1.16.020 of this code, the decision as follows:

1. The appellant must file a notice of appeal with the City Clerk within fourteen (14) calendar days of the date of the revocation decision.

2. The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager or his or her designee no more than thirty (30) calendar days from the receipt of the appeal.

3. The appellant shall be served with notice of the time and place of hearing, as well as any relevant materials, at least seven calendar days prior to the hearing.

4. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party and the City Manager or his or her designee may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

5. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within a reasonable time after the conclusion of the hearing and shall state the

reasons for the decision. The notice shall be mailed to the sidewalk vendor, and if said vendor is an agent, the notice shall additionally be mailed to the principal. The notice shall specify that the decision is final and subject only to judicial review in accordance with law.

A.D. Upon receiving notice of final action by the City in revoking ~~or suspending~~ the ~~permit~~registration, the ~~permit~~registration holder shall immediately cease operations and remove his or her mobile vending facility from the previously approved locationwithin the City.

B.E. Notwithstanding the above, if the ~~Director~~City Manager or his or her designee finds that any ~~mobile~~sidewalk vending facility, whether conforming with this chapter or not, is an immediate peril or menace to the public, or to any person, the ~~Director~~City Manager or his or her designee may order the owner to immediately cease operations and remove the facility.

5.48.100 ~~Penalty~~080 Code Enforcement and Penalties.

Any person who violates the provisions of this chapter shall be ~~guilty of an infraction and upon conviction thereof shall be~~ punished as provided in Chapter 1.12-, except as limited by Govt. Code Section 51039.

2. Amendments to Section 5.04.290 concerning Agents, Solicitors and Salespersons

5.04.290 ~~Agents, Solicitors and Salespersons.~~

~~Each agent, Every~~ solicitor, ~~and salesperson selling or soliciting, or taking orders for the sale or furnishing of any paintings, pictures, portraits, photographs, orders for advertising or for any goods, wares, merchandise or service at retail, not otherwise provided herein when not~~ **defined** ~~in connection with any fixed place of business within the City licensed under this chapter~~ **Chapter 5.20 of this code**, shall pay a business license tax of seventy-five dollars. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.

3. Amendments to Section 5.04.400 concerning Peddling

5.04.400 ~~Peddling~~ Sidewalk Vendor.

~~Every person peddling any goods, food, wares, magazines, or merchandise not otherwise provided for in this chapter.~~ **Every sidewalk vendor within the City, as defined in Chapter 5.48 of this code,** shall pay a business license tax of one hundred fifty dollars per year. This amount shall increase annually from 1992 based on the indexing formula in Section 5.04.460 of this code.

4. Amendments to Chapter 5.20 Solicitors in Sections 5.20.010 and 5.20.015

5.20.010 Definitions.

For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Solicitor” means any person, including salesman and vendor, who engages in the business of going from house to house, place of business to place of business, or to any one house or to any one place, ~~or in or along the streets of business~~, within the City, ~~selling not at the request~~ or ~~taking invitation of the occupant thereof, to sell or take~~ orders for, or offering to sell or take orders for ~~goods or offering for~~, immediate or future delivery of, goods, wares, merchandise, services, or other things of value, to persons other than manufacturers, wholesalers, jobbers, or retailers in such commodities or services. Sidewalk vendors operating as described in Chapter 5.48 do not come within the definition of solicitor provided they operate solely on a public sidewalk or other pedestrian path, not on private property.

5.20.015 Exemption.

The provisions of this chapter shall not apply to ~~any~~:

A. Any person soliciting on behalf of any religious, charitable, educational, or political organization or to any person who is exempt from the provisions of this chapter by virtue of the Constitution or statutes of the United States of America or of the state.

B. Any persons operating in accordance with Section 5.48, Sidewalk Vendors, provided they do not come within the definition of solicitor. Any persons operating as both a sidewalk vendor and a solicitor must satisfy the requirements for both.

6. Amendments to Section 13.04.180 concerning Vending in Parks

13.04.180 Advertising and Sale Restrictions.

A. ~~No~~**Unless in compliance with Chapter 5.48, no** person in a park shall, without prior permission from the City Council, do any of the following:

1. Expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing;
2. Announce, advertise or call the public attention in any way to any article or service for sale or hire;
3. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription.

B. In addition, in order to insure the public safety, health and general welfare, **unless in compliance with Chapter 5.48,** no person shall expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for the sale or display of any article or thing, on a public street, within five hundred feet in a straight line from the nearest boundary of any park.

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 6913

OF THE CUPERTINO PLANNING COMMISSION RECOMMENDING
THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO AMEND
CHAPTER 5.04, BUSINESS LICENSES GENERALLY, CHAPTER 5.20,
SOLICITORS, CHAPTER 5.48, MOBILE VENDORS, CHAPTER 11.28,
MISCELLANEOUS PARKING REGULATIONS-ON-STREET PARKING,
CHAPTER 13.04, PARKS, AND CHAPTER 19.100, ACCESSORY USES AND
BUILDINGS/STRUCTURES FOR MOBILE VENDOR REGULATIONS

The Planning Commission recommends the City Council adopt the Draft Ordinance attached as Exhibit A to:

1. Find that the Ordinance is exempt from environmental review under California Environmental Quality Act ("CEQA") Guidelines section 15378 because the proposed municipal code amendment is not a project which may result in physical impacts on the environment. In the event that this proposed amendment is found to be a project under CEQA, the proposed Ordinance is exempt from environmental review under section 15061 (b)(3) because "[w]here it can be seen with certainty that there is no possibility that the activity in question may have significant effect on the environment," the activity is not subject to CEQA. The enactment of this ordinance will not result in a permanent alteration of the environment or any specific property as there will be no new or expanded structures that will directly or indirectly change the environment; and
2. Adopt the proposed amendments to the Municipal Code, with the findings reflected in the proposed Ordinance, which the Planning Commission makes as though set forth in their entirety in this Resolution, in substantially the form as shown in said Exhibit entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 5.04, BUSINESS LICENSES GENERALLY, CHAPTER 5.20,
SOLICITORS, CHAPTER 5.48, MOBILE VENDORS, CHAPTER 11.28,
MISCELLANEOUS PARKING REGULATIONS-ON-STREET PARKING, CHAPTER

13.04, PARKS, AND CHAPTER 19.100, ACCESSORY USES AND
BUILDINGS/STRUCTURES FOR MOBILE VENDOR REGULATIONS

PASSED AND ADOPTED this 27TH day of October 2020, at a Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS: Chair Moore, Vice Chair Wang, Saxena

NOES: COMMISSIONERS: Takahashi, Fung

ABSTAIN: COMMISSIONERS: none

ABSENT: COMMISSIONERS: none

ATTEST:

APPROVED:

/s/Benjamin Fu
Benjamin Fu
Director of Community Development

/s/Kitty Moore
Kitty Moore
Chair, Planning Commission

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 5.04, BUSINESS LICENSES GENERALLY, CHAPTER 5.20,
SOLICITORS, CHAPTER 5.48, MOBILE VENDORS, CHAPTER 11.28,
MISCELLANEOUS PARKING REGULATIONS-ON-STREET PARKING, CHAPTER
13.04, PARKS, AND CHAPTER 19.100, ACCESSORY USES AND
BUILDINGS/STRUCTURES FOR MOBILE VENDOR REGULATIONS**

The City Council of the City of Cupertino finds that:

WHEREAS, Senate Bill No. 946 ("SB 946"), which took effect on January 1, 2019, provides that cities and counties may not regulate sidewalk vending except in accordance with California Government Code sections 51038 and 51039;

WHEREAS, provisions of the Cupertino Municipal Code currently regulate sidewalk vendors in a manner that is inconsistent with SB 946, and the City seeks to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the Cupertino community;

WHEREAS, until the effective date of SB 946, the City regulated sidewalk vendors by means of a general license for "solicitors." In light of the specific provisions for sidewalk vending in state law, regulating sidewalk vending through a local license specific to the activity will enable the City to more effectively comply with state mandates;

WHEREAS, regulating sidewalk vending will benefit the City by promoting entrepreneurship and a dynamic streetscape, while ensuring protection of the public safety and welfare;

WHEREAS, unless properly regulated, vending in the public right-of-way and in public parks creates the potential for increased safety risks including, but not limited to, interfering with the performance of police, firefighter, and paramedic services; contributing to traffic congestion; and interfering with the ability of pedestrians, transit users and persons with disabilities to follow a safe path of travel (by obstructing the right-of-way with vending equipment or by increasing congestion);

WHEREAS, the registration requirements of this ordinance are necessary to collect adequate information about vending operations within city limits, to facilitate contact between the City and its vendors, and to ensure that vending does not adversely affect the public welfare;

WHEREAS, requiring sidewalk vendors to maintain a minimum unobstructed pedestrian path of four (4) feet at vending locations is necessary to ensure compliance with state and federal disability access standards;

WHEREAS, requiring motorized vendors to maintain a clearance at driveways and corner triangle clearances is necessary to ensure the safe flow of pedestrian and automobile traffic, and required of all development. This will ensure the safe flow of pedestrian and automobile traffic, which is particularly important to the safety of the elderly, the very young, persons with disabilities, and others who are less able to navigate crowds and obstacles that may require stepping off curbs when sidewalks have become obstructed;

WHEREAS, requiring sidewalk vendors to obtain a permit from the Santa Clara County Department of Public Health before engaging in the sale of food to the public is necessary to protect the public health and safety;

WHEREAS, restricting vending in parks is necessary to protect the health, safety and welfare of the public and the use and enjoyment of public spaces, natural resources, and recreational opportunities within the City;

WHEREAS, restricting vending in parks is necessary to preventing undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of parks;

WHEREAS, restricting vending near school grounds when the grounds are open for student instruction is necessary to protect the safety of children traveling to and from campus and to avoid disrupting classroom instruction and school activities;

WHEREAS, restricting sidewalk and motorized vending in residential areas is necessary to protect residents and visitors from excessive traffic impacts;

WHEREAS, restricting active vending on public streets to legal, designated parking spaces and limiting the length of time a vendor may actively vend from any one location is important to ensure free flow of traffic and that public parking spaces continue to be available to the community;

WHEREAS, restricting vendors' use of sound amplifying equipment and other noise generating equipment is necessary to protect residents and visitors from excessive noise impacts;

WHEREAS, allowing a process for revoking a registration and appeals to any such decisions is an important tool to ensure compliance with the city's regulations and a fair complete due process for any mobile vendor;

WHEREAS, public outreach was conducted on August 11, and August 12, 2020 to discuss the proposed regulations with members of the public and on September 4, 2020 with the Chamber of Commerce

WHEREAS, following 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 October 27, 2020 to consider the Ordinance; and

WHEREAS, with Resolution No. XXXX the Planning Commission has recommended on a X-X vote that the City Council adopt the Ordinance amending the Municipal Code in substantially similar form as presented in Planning Commission Resolution No. XXXX; and

WHEREAS, on _____, 2020 upon due notice, the City Council has held at least one public hearing to consider the Planning Commission's recommendation and the Ordinance; and

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

WHEREAS, the City Council hereby adopts this ordinance pursuant to its authority under Government Code section 51038 and finds that the regulation of sidewalk vendors set forth herein is directly related to protecting the health, safety, and welfare of the Cupertino community.

WHEREAS, the City Council does find as follows:

- a. That the proposed zoning is in accord with this title of the Municipal Code and the City's Comprehensive General Plan.

The Ordinance does not change any zoning designations, but rather it modifies Titles 5, 10, 11, 13, and 19 by adding amendments based on zoning designations for the implementation of mobile vendor regulations and allowing up to three (3) mobile vendors at the invitation of a property owner as an accessory use subject to the requirements of the amended Chapter 5.48. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.

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

The proposed municipal code amendment is not a project within the meaning of Section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it is not a specific development which may result in physical impacts on the environment. Since the activity is amendments to the municipal code to regulate the sale of food, goods, and services, there is no potential for physical change in the environment. In the event that this proposed amendment is found to be a project under CEQA, the proposed Ordinance is

exempt from environmental review under section 15061 (b)(3) because “[w]here it can be seen with certainty that there is no possibility that the activity in question may have significant effect on the environment,” the activity is not subject to CEQA. The enactment of this ordinance will not result in a permanent alteration of the environment or any specific property as there will be no new or expanded structures that will directly or indirectly change the environment because these regulations are being adopted to regulate temporary mobile vending.

- c. 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).

Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties. The amendments allow up to three (3) mobile vendors at the invitation of a property owner as an accessory use subject to the requirements of the amended Chapter 5.48. The amendments do not propose any physical changes in the environment or increased development.

- d. The proposed zoning will promote orderly development of the City.

Not applicable. The proposed ordinance amendments do not affect the development of the City. However, they allow locating future mobile vendors in a manner that is not damaging to the environment by requiring compliance with several existing standards in the Municipal Code such as Single use plastic bags, organic recycling standards, handling of trash, etc.

- e. 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.

This finding does not apply since there is no change to the zoning of any particular parcel. However, the proposed amendments apply citywide and allow up to three (3) mobile vendors on private property at the invitation of the property owner and in compliance with Chapter 5.48. The regulations in Chapter 5.48 include several provisions to ensure that public health, safety and welfare are protected by:

- *requiring a health permit for mobile food vendors,*
- *ensuring driveways and sidewalks are not obstructed and allow for free flow of traffic,*
- *establishing hours of operation within public rights-of-way in exclusively residential areas to allow less intrusion on weekends and at night,*
- *ensuring vending does not occur in areas designate “no parking” or near fire hydrants and/or fire alarms*

- *within corner triangles required to be clear near intersections and at driveways*
- *near transit-stops, designated drop-off zones*
- *on dirt, grass or any programmed space for recreation within parks or*
- *in any vacant, undeveloped private property.*

f. The proposed amendments are internally consistent with this title.

All the necessary chapters of the Municipal Code have been amended to ensure internal consistency with the proposed regulations.

**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: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15378 since these regulations are being adopted to regulate mobile vending and is not a project which may result in physical changes to the environment. In the event that this proposed amendment is found to be a project under CEQA, the proposed Ordinance is exempt from environmental review under section 15061 (b)(3) because "[w]here it can be seen with certainty that there is no possibility that the activity in question may have significant

effect on the environment,” the activity is not subject to CEQA. The enactment of this ordinance will not result in a permanent alteration of the environment or any specific property as there will be no new or expanded structures that will directly or indirectly change the environment.

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 _____, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2020 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, CA 95014

CITY OF CUPERTINO
PLANNING COMMISSION MEETING
APPROVED MINUTES, October 27, 2020

At 6:45pm Chair Moore called to order the regular Planning Commission meeting. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Chairperson Moore, Vice Chair R Wang, Commissioners Alan Takahashi, David Fung, Vikram Saxena

Absent: None

APPROVAL OF MINUTES:

1. **Subject:** Amended Draft Minutes of October 13, 2020.

Recommended Action: Approve or modify the Amended Draft Minutes of October 13, 2020

The Commissioners made the following amendment to the Draft Minutes:

There was much discussion about the upcoming RNHA numbers and the need for better PR communication by the City ~~to demonstrate that the City is on track to meet the~~ about our progress to meet the housing goals for the 5th cycle RHNA.

Moved by Com. Takahashi and seconded Chair Moore to: "Approve the minutes as amended". The motion carried 5-0-0.

POSTPONEMENTS: None

ORAL COMMUNICATIONS:

Jennifer Griffin – spoke about how housing bills passed in Oregon should not influence the housing bills in California and vice versa

Lisa Warren – (read email) regarding the Better Friends of Cupertino v City of Cupertino (SB35) 18CV330190, Attorney Fees

WRITTEN COMMUNICATIONS:

Emails were received regarding item #4

PUBLIC HEARING:

2. **Subject:** Modification to Use Permit (U-2011-09) and an Architectural and Site approval to allow for the installation of two (2) hydrogen refueling dispensers and accessory utility structures, site improvements and landscaping to an existing gasoline station (BSP Union).

Application No(s): M-2020-001, ASA-2020-002; Applicant(s): Kristi Kandel (BSP Cupertino Union, LLC); Location: 21530 Stevens Creek Boulevard APN# 357-20-027

Recommended Action: That the Planning Commission conduct the public hearing and adopt the proposed resolutions to: recommend that the City Council: 1) find that the proposed actions are exempt from CEQA; and 2) approve the project per the Draft Resolutions

Planning Commission decision final unless appealed.

Associate Planner, Ellen Yau, reviewed the Staff Report and project scope with Planning Commissioners. She was asked clarifying questions, which she answered. The applicants, Kristi Kandel, Dr. Shane Stephens and Ghassan Sleiman also addressed the Commissioners.

Chair Moore opened the public comment period and the following individual(s) spoke:

Jennifer Griffin

Rose Grymes

Chair Moore closed the public comment period.

The Commissioners discussed the new refueling technology, the location on site where the new equipment was going to be placed, and the need for strict adherence to all the safety regulations. They thanked Staff and the applicant for their presentation and information.

Moved by Vice Chair Wang and seconded by Com. Saxena to: Find the proposed project exempt from CEQA and approve the application per the Draft Resolution. The motion carried 5-0-0.

3. **Subject:** Consider Municipal Code Amendments to update existing Mobile Vending regulations, including but not limited to, regulations in Chapter 5.48, and potential conforming edits to other chapter in the Municipal Code, including in Titles 5, 11, 13 and 19, and adopting new policies and definitions regulating Mobile Vendors. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide (postponed from the October 13, 2020 meeting)

Recommended Action: Conduct the public hearing and recommend that the City Council: 1) find that the proposed actions are exempt from CEQA; and 2) Adopt an ordinance to make Municipal Code Amendments related to new and amended regulations related to sidewalk and motorized mobile vendors

Economic Development Director, Angela Tsui, and Associate Planners Ellen Yau and Jeffrey Tsumura, reviewed the draft Ordinance and proposed Municipal Code changes with Planning Commissioners. Staff explained that the passage of SB946 requires this update to bring the City's Municipal Code into compliance. They were asked clarifying questions and operational scenarios, which they answered.

Chair Moore opened the public comment period and the following individual(s) spoke:

Lisa Warren

Rose Grymes

Jenifer Griffin

Chair Moore closed the public comment period.

The Commissioners discussed the sidewalk safety, the potential places in the City where sidewalk vendors could operate, and the time constraints to conduct transactions. The Commissioners talked about the differences between mobile vendors operating in commercial zones and residential areas. They felt that the sidewalk push-cart vendor and the street mobile vendor engagements with the residents were too dissimilar to be regulated in one Ordinance.

A five (5) minute break was called at 10:15pm.

The commissioners resumed discussions toward recommending that the Ordinance move forward to City Council only adopting the policies to be compliant with State law.

Moved by Chair Moore and seconded by Vice Chair Wang and Com. Saxena (amendment) to: Find that the proposed actions are exempt from CEQA and recommend that the City Council adopt an ordinance to make Municipal Code Amendments relating to Mobile Vendors with the following amendment to the Resolution: "The Planning Commission recommends that the City Council adopt an Ordinance to amend Chapter 5.04; Business Licenses, generally Chapter 5.20; Solicitors; Chapter 5.48; Mobile Vendors; Chapter 11.28: Miscellaneous Parking Regulations, On Street parking, Chapter 13.04; Parks, and Chapter 19.100; Accessory Uses and Building Structures for Mobile Vendor regulations *in accordance with SB946 and excepting portions which are not directly applicable to SB946.*" and "Adopt the proposed amendments to the Municipal Code with the findings reflected in the proposed Ordinance which the Planning Commission makes as though set forth in their entirety in the Resolution *only as applicable to SB946* in substantially the form as shown in said Exhibit"

The motion carried 3-2-0 (Takahashi and Fung voting no).

4. **Subject:** Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items relating to Dark Sky and Bird Safe Design. Application No(s): MCA-2019-003, MCA-2019-004; Applicant(s): City of Cupertino; Location: citywide (continued from the August 11, 2020 meeting)

Recommended Action: Conduct the public hearing and recommend that the City Council: 1) find that the proposed actions are exempt from CEQA; and 2) Amend the Municipal Code by adding a new Chapter 19.102 and amending Chapters 19.08, 19.12, 19.40, 19.60 and 19.72 to adopt glazing and lighting regulations to implement Bird-Safe and Dark Sky goals

Senior Planner Erick Serrano and Associate Planner, Ellen Yau, reviewed the updates that have been made to draft Ordinance and proposed Municipal Code changes per the feedback from the Commissioners at the August 11th meeting with the Planning Commissioners. They were asked clarifying questions and operational scenarios, which they answered.

Chair Moore opened the public comment period and the following individual(s) spoke:

Connie Cunningham

Dashiell Leeds

Rose Grymes

Shani Kleinhaus

Chair Moore closed the public comment period.

The Commissioners thanked Staff for the additional research and clarifications and the fiscal impacts for construction. The Ordinance would be applicable to new residential construction, major remodel or landscaping changes where windows and lighting fixtures are being replaced. It would also apply to windows in commercial construction. All outdoor illumination is required to be shut off at 11pm or when people are no longer present. The Commissioners would like Staff to suggest to Council a possible exemption for string lights hung around trees year-round or in residential patios.

Moved by Chair Moore and seconded by Com. Takahashi to: Find that the proposed actions are exempt from CEQA and recommend that the City Council adopt an ordinance to make Municipal Code Amendments relating to Dark Sky and Bird Safe Design with the following friendly amendment to the Resolution: *"To have the City Council review the portions which would affect string lighting and potentially come up with some regulation around that which provides more flexibility so to allow year round low luminosity string lighting"*
The motion carried 4-1-0 (Wang voting no).

OLD BUSINESS: None

NEW BUSINESS: None

REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT: None

REPORT OF THE PLANNING COMMISSION:

Chair Moore and Com. Saxena attend the CUSD Board meeting.

ADJOURNMENT:

The meeting was adjourned at 12:00am. to the next regular Planning Commission meeting on November 10, 2020 at 6:45 p.m.

Respectfully Submitted:

/s/Beth Ebben

Beth Ebben, Deputy Board Clerk



CITY OF CUPERTINO

Legislation Text

File #: 21-8628, **Version:** 1

Subject: Municipal Code Amendments to adopt lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky. (Application No. MCA-2019-003; Applicant: City of Cupertino; Location: City-wide) (Continued from December 15)

That the City Council:

- 1) Find the proposed actions are exempt from CEQA; and
- 2) Conduct the first reading of Ordinance No. 21-2221 "An Ordinance of the City Council of the City of Cupertino Amending City Code to rename and amend Chapter 19.102: Bird Safe Development Standards to Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Dark Sky Policies."



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Municipal Code Amendments to adopt lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky. (Application No. MCA-2019-003; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the City Council:

1. Find the proposed actions are exempt from CEQA; and,
2. Conduct the first reading of Ordinance No. 21-_____ "An Ordinance of the City Council of the City of Cupertino Amending City Code to rename and amend Chapter 19.102: Bird-Safe Development Standards to Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Dark Sky Policies." (Attachment A)

Discussion

On December 1 and December 15, 2020, the City Council considered a combined bird-safe and dark sky ordinance. However, at the December 1, 2020 Council hearing, Council directed staff to present a bird-safe only ordinance as an alternative. This bird-safe only ordinance, which included outdoor lighting regulations intended to provide for bird safety, was presented to Council at the December 15, 2020 meeting. The Council conducted the first reading of the bird-safe ordinance (Attachment B) on a 4-1-0 vote (Moore voting no). The Council postponed adoption of dark sky regulations to January 19, 2021, to allow for more time for input.

At the December 15, 2020 Council hearing, several topics were discussed related to the applicability of proposed lighting regulations to existing lighting, landscape lighting, and critical areas of illuminations. The following were clarified at the meeting:

- Existing lighting does not need to comply with the proposed regulations unless changes are made to the electrical system for any reason. It should be noted that the only exception is parking lot lighting, which must be retrofitted when a parking lot is upgraded or reconfigured.
- Light bulbs may be replaced, however, if a fixture is replaced, it must comply with the applicable provisions of the ordinance (i.e., shielded, downward facing, etc.).
- The ordinance includes provisions to allow outdoor landscape lighting.
- Critical areas of illumination such as stairways, ramps and main walkways may have a higher illumination level and later operating hours. The illumination levels of these areas are regulated by the California Building Code (CBC) and the California Energy Code (CEC), and include different illumination standards dependent on the use.

The proposed ordinance (Attachment A, redlines shown in Attachment C) adopts the dark sky regulations and integrates them with the bird safe regulations. Because the bird-safe only ordinance (Attachment B) (presented to the Council for a second reading at this January 19, 2021 meeting) contains several provisions relating to lighting, combined regulations will be easier for both the public and City staff to understand and apply. Specifically, the proposed ordinance (Attachment A) incorporates all outdoor lighting regulations (including those related to both bird safe and dark sky) as a in a single code section and makes other conforming changes.

Since the proposed ordinance would modify the code sections to be adopted by the bird-safe only ordinance (to integrate lighting regulations), the proposed ordinance should only be introduced if the Council moves forward with a bird-safe ordinance. As discussed below, the second reading of the dark sky ordinance would, therefore, occur after the effective date of the bird-safe only ordinance.

Modifications

In integrating dark sky lighting regulations, this draft ordinance also proposes modifications to the lighting regulations in the bird safe only ordinance. Based on comments received from the public and concerns about safety and trip hazards, a proposed modification to the lighting regulations is recommended regarding outdoor lighting in section 19.102.040 (B)(4)(e). The proposed modification would allow that outdoor lighting illuminating a pedestrian pathway may remain illuminated past 11:00pm provided it is at a maximum height of four (4) feet, fully shielded and downward directed. Examples of pathway lighting include bollards, in-step lights and building mounted lights.

Additionally, in response to concerns from the business community about struggling retailers, the lighting regulations have been modified to allow interior window display lighting for retail uses to remain illuminated at any time, provided it is downward

directed, low voltage, and fully shielded. This change is reflected in section 19.102.030 (C).

Further, based on analysis of existing dark sky ordinances, availability of lighting fixtures and lamps, it is recommended that the maximum lighting temperature be changed from 2,700 Kelvin to 3,000 Kelvin.

Environmental Review

The proposed ordinance is exempt from environmental review under California Environmental Quality Act (“CEQA”) Guidelines section 15308 because these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to bird safety will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply to the proposed ordinance.

Public Noticing & Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Legal ad placed in newspaper (at least 10 days prior to hearing) ▪ Display ad placed in newspaper (at least 10 days prior to hearing) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (four days prior to hearing) ▪ Posted on the City of Cupertino’s Web site (four days prior to hearing)

Additionally, Staff presented the ordinance to the Chamber of Commerce on the January 8, 2021 meeting.

Sustainability Impact

The proposed ordinance has no sustainability impact.

Fiscal Impact

There are no fiscal impacts to the City’s General Fund.

Next Steps

Adoption of this ordinance is dependent on the bird-safe only ordinance taking effect. Consequently, the second reading for this ordinance, if introduced at this meeting, will be scheduled after the bird-safe only ordinance is effective; the second reading is

tentatively set for March 2, 2021. If adopted, the ordinance will be effective 30 days after the second reading/adoption.

Prepared by: Erick Serrano, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Ordinance

B – Ordinance No. 20-2219 (Bird-Safe Only Ordinance)

C – Redlined Ordinance

ORDINANCE NO. 21-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO RENAME AND AMEND CHAPTER 19.102: BIRD
SAFE DEVELOPMENT STANDARDS TO CHAPTER 19.102: GLASS AND
LIGHTING STANDARDS AND TO AMEND CHAPTER 19.40 RESIDENTIAL
HILLSIDE (RHS) ZONES, CHAPTER 19.60 GENERAL COMMERCIAL (GC)
ZONES, CHAPTER 19.72 LIGHT INDUSTRIAL (ML) AND INDUSTRIAL PARK
(MP) ZONES, AND CHAPTER 19.124 PARKING REGULATIONS TO IMPLEMENT
DARK SKY POLICIES**

The City Council of the City of Cupertino finds that:

WHEREAS, while the City has certain General Plan Goals, Policies and Strategies that support bird-safe and dark sky goals, it does not have regulations to promote effective Dark Sky policies, and that the proposed new Chapter 19.102: Glass and Lighting and amendments to Chapter 19.40, 19.60, 19.72, and 19.124 will provide effective standards to promote Dark Sky policies;

WHEREAS, on October 28, 2019, Planning Commission provided staff guidance on potential Bird-safe and Dark Sky policies and guidelines;

WHEREAS, community meetings were held on February 12, 2020 and February 20, 2020 to allow the public an opportunity to review and provide comments on the preliminary development standards;

WHEREAS, following 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 August 11, 2020 and October 27, 2020 to consider a bird-safe and dark sky ordinance; and

WHEREAS, with Resolution No. 6914, the Planning Commission recommended on a 4-1-0 vote that the City Council adopt the bird-safe and dark sky ordinance amending the Municipal Code in substantially similar form as presented to the Planning Commission; and

WHEREAS, on December 1, 2020, December 15, 2020, and January 19, 2021 upon due notice, the City Council has held public hearings to consider the Planning Commission's recommendation and the bird-safe and dark sky ordinance;

WHEREAS, on December 15, 2020 the City Council introduced and approved a first reading of a bird-safe only ordinance, which included portions of the ordinance recommended by the Planning Commission; and

WHEREAS, the City Council is the decision-making body for this Ordinance, which proposes to adopt the dark sky components of the ordinance recommended by the Planning Commission; and

WHEREAS, the City Council does find as follows:

- a. That the proposed zoning is in accord with this title of the Municipal Code and the City's Comprehensive General Plan.

The Ordinance does not change any zoning designations, but rather it modifies Title 19: Zoning by modifying Chapter 19.102 to create development standards for the implementation of regulations that support Dark Sky policies. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.

The proposed amendments will also support the following General Plan Goals, Policies, and Strategies:

- *Goal LU-3: Ensure that project site planning and building design enhance the public realm through a high sense of identity and connectivity.*
- *Policy LU-3.3: Building Design: Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- *Strategy LU-3.3.1: Attractive Design – Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*
- *Goal LU-12: Preserve and protect the City's hillside natural habitat and aesthetic values.*
- *Goal ES-5: Protect the city's urban and rural ecosystems.*
- *Policy ES-5.1: Urban Ecosystem – Manage the public and private development to ensure the protection and enhancement of its urban ecosystem.*
- *Strategy ES-5.2.1: Riparian Corridor Protection – Require the protection of riparian corridors through the development approval process.*

The adopted regulations will support protection of riparian corridors by allowing native wildlife, particularly nocturnal wildlife, corridors to travel along without interruptions by light intrusion. Further, the proposed ordinance includes policies to reduce the negative effects of light pollution on humans by ensuring adequate lighting to a site, preventing light trespass to adjacent properties, and ensuring that unnecessary lighting is extinguished at night.

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

The proposed Ordinance is exempt from environmental review under California Environmental Quality Act ("CEQA") Guidelines section 15308 because these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to glazing and lighting will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply.

- c. 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).

Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties, nor does it change any land uses allowed. The amendments also do not propose any physical changes in the environment or increased development.

- d. The proposed zoning will promote orderly development of the City.

By creating regulations for Dark-Sky development standards, the ordinance will promote orderly and consistent implementation of the regulations for development in the City.

- e. 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 provides regulation to maintain the health, safety, peace, morals and general welfare of persons residing or working in the City by providing regulations that limit adverse impacts of development on the natural and built environment pertaining to light pollution.

- f. The proposed amendments are internally consistent with this title.

All the necessary chapters and sections of Title 19: Zoning have been amended to ensure internal consistency with the proposed regulations.

**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: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15308 since these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment. Further, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15301 because it would result in the minor alteration of existing public or private structures without any expansion of use and under CEQA Guidelines Section 15305 because the proposed ordinance involves minor alteration in land use limitations that do not alter permitted uses or density. Finally, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty the Ordinance's regulation related to glazing and lighting will have no possible significant effect on the environment. None of the exceptions listed in CEQA Guidelines section 15300.2 apply to the proposed ordinance.

Ordinance No. _____

Page 5

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 _____, 2021 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	_____ Date

Attachment A – An Ordinance of the City of Cupertino to implement Bird-safe policies and guidelines

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.

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: Zoning, Chapter 19.102: Bird-Safe Development Standards

19.102 BIRD-SAFE DEVELOPMENT GLASS AND LIGHTING STANDARDS

19.102.010 Purpose

19.102.020 Applicability of regulations

19.102.030 Bird-safe Development Requirements

19.102.040 Outdoor Lighting Requirements

19.102.010 Purpose

The purpose of this chapter is to regulate design and construction of structures and accessory elements in all zoning districts to protect the natural environment, particularly enhancing bird-safety and reducing light pollution. This Chapter establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions. This Chapter also establishes regulations to reduce light pollution, which is known to contribute to bird mortality, reduced visibility of the night sky, and adverse impacts to human health.

19.102.020 Applicability of regulations

Whenever an applicant is required to obtain a building permit or a Permit pursuant to Title 19, or whenever exterior lighting is added, ~~or replaced,~~ or altered (whether

Ordinance No. _____

temporary or permanent), the project shall meet the requirements of this Chapter. The following table indicates the applicability of regulations by type of project in which exterior glazing or interior or exterior lighting is added, replaced, or altered:

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030 <u>and 19.102.040</u>
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 <u>and 19.102.040</u> apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102.030 (D) <u>040</u>
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (DE) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102.030 (D) <u>040</u>
F. Exemptions	See Sections 19.102.030 (B)(4), (C)(2) , and <u>19.102.040 (D) (D)(14)</u>

19.102.030 Bird-safe Development Requirements

- A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:
1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
 2. Cross sections, if required;
 3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), ~~(D)~~ and ~~(DE)~~; and
 4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.
- B. Fenestration and Glass Requirements
1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
 2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass,

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window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must have high color contrast with the glass and be applied to the outermost glass. Prior to publication of the list, the Planning Department may review information available from interest groups, such as the National Audubon Society.

3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers; and
 - b. First floor commercial storefronts, up to a height of 15'.

C. Non-residential Indoor Lighting Requirements:

1. Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.
2. Businesses that involve the direct retailing of goods to the general public may have downward directed, low voltage, and fully shielded lighting for window displays at any time when there is a display of such goods.

~~D. Outdoor Lighting Requirements:~~

- ~~1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights of way to avoid light trespass, except:~~
 - ~~a. Low voltage Landscape Lighting: Low voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right of way.~~
 - ~~b. Architectural Features: Uplighting may be used to highlight special architectural features.~~
 - ~~c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.~~

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- ~~d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.~~
- ~~2. Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).~~
- ~~3. Parking lots, sidewalks, and other pedestrian paths shall meet the requirements in Chapter 19.72, 19.60 and 19.124, as applicable. In the event there is a conflict with Chapter 19.72, the less stringent light standards shall apply.~~
- ~~4. Exterior lighting shall be fully extinguished or motion sensor operated after 11:00 p.m., or when people are no longer present in exterior areas, whichever is later, except for:~~
 - ~~a. Lights required to remain on in compliance with the California Building Code.~~
 - ~~b. Lighting of an appropriate intensity allowed in conjunction with uses permitted to operate past 11:00 p.m. with a conditional use permit.~~
 - ~~c. Outdoor solar powered pathway lights that do not exceed 25 lumens.~~
- ~~5. Automated control systems, such as motion sensors and timers, shall be used to ensure that outdoor lighting extinguishes 10 minutes after motion activation and turns off when sufficient daylight is available.~~
- ~~6. Security lighting, necessary to protect persons and property, shall be programmable, motion sensor activated, and may illuminate a perimeter, such as a fence line, if such lights do not result in light trespass, and do not use lamps that exceed 100 watts incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).~~
- ~~7. In addition to all other applicable standards, lighting fixtures in the ceiling of service station canopies shall be fully recessed in the canopy, and no light fixtures or illumination, other than approved signage, shall be allowed on top of the fascia of such canopies.~~
- ~~8. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.~~
- ~~9. The use of High Intensity Discharge lighting, spot lighting, flood lighting, or similar lighting is prohibited.~~
- ~~10. The following are exempt from subsection 19.102.030 (D): lighting in the right of way, holiday seasonal lighting between October 15 and January 15 of each year, temporary construction or emergency lighting, temporary lighting associated with a special event, and lighting required pursuant to the Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such required lighting shall additionally comply with the requirements of this Chapter.~~

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D. Bird-safe Design Requirements. All projects subject to bird-safe development requirements shall:

1. Avoid the funneling of flight paths along buildings or trees towards a building façade.
2. Avoid use of highly reflective glass or highly transparent glass.
3. Not include glass skyways or walkways, balconies, freestanding glass walls, transparent building corners, glass features, or other design elements through which trees, landscape areas, water features or the sky are visible from the exterior or from one side of the transparent element to the other, if such elements are untreated.

19.102.040 Outdoor Lighting Requirements

A. Submittal Requirements: Projects subject to outdoor lighting regulations must submit the following information:

1. A site plan indicating the location of all outdoor lighting fixtures.
2. A description of each lighting fixture. This description may include, but not be limited to, manufacturer's catalog cuts and drawings (including sections if requested), lamp types, and lumen outputs.
3. Photometric plans, prepared, stamped and signed by a licensed electrical engineer, depicting the location of all outdoor lighting fixtures and building-mounted lighting fixtures and a maximum ten-foot by ten-foot grid of both the initial and maintained lighting levels on the site, including any impact on adjacent properties.
4. The project lighting plan shall indicate how lighting has been coordinated with any associated landscaping plan to prevent site planning conflicts.
5. Any other information the Director may determine is necessary to ensure that the proposed lighting is in compliance with the provisions of this Chapter.
6. Any of the above requirements may be waived by the Director of Community Development when determined to be unnecessary for determining compliance with the provisions of this Chapter.

B. Outdoor Lighting Standards

1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a

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- maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
 - e. String Lighting: String Lighting may be used in compliance with Section 19.102.040 (B) (12).
- 2. Illumination Levels
 - a. No light, combination of lights, or activity shall cast light exceeding one (1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source, except if two adjacent properties are non-residential, or function as a shopping center, and agree to coordinate lighting.
 - b. No direct off-site glare from a light source shall be visible above three feet at a public right-of-way.
 - c. The maximum light intensity on a site shall not exceed a maintained value of ten foot-candles, when measured at finished grade.
 - d. Parking lots, sidewalks and other areas accessible to pedestrians and automobiles on properties with four or more units, mixed-use development, and non-residential development shall be illuminated with uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:
 - i. Average horizontal maintained illumination should be between one and three foot-candles
 - ii. Maximum to minimum ratio should be between 6:1 and 10:1
 - e. Critical areas of illumination such as stairways, ramps and main walkways may have a higher illumination.
- 3. All light sources shall have a maintained correlated color temperature of 3,000 Kelvin or less.
- 4. All outdoor lighting shall be fully extinguished or be motion sensor operated by 11:00 p.m. or when people are no longer present in exterior areas, whichever is later, except for:
 - a. Critical lighting pursuant to section 2 (e) above;

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- b. Any lighting at building entrances, parking areas, walkways, and driveways area required to remain illuminated after 11:00 p.m. by the California Building Code or state law;
 - c. Lighting of an appropriate intensity, allowed in conjunction with uses that are permitted to operate past 11:00 p.m., with a conditional use permit; and
 - d. Outdoor solar powered pathway lights that are 25 lumens or less.
 - e. Lighting that illuminates a pedestrian pathway (examples include bollard, in-place step, or building mounted), provided that such lighting is a maximum height of four (4) feet above the pathway, fully shielded, and downward directed.
5. Automated control systems, such as motion sensors and timers, shall be used to meet the outdoor lighting requirements.
- a. Photocells or photocontrols shall be used to extinguish all outdoor lighting automatically when sufficient daylight is available.
 - b. All lighting activated by motion sensors shall extinguish no more than 10 minutes after activation.
 - c. Automated controls shall be full programmable and supported by battery or similar backup.
6. Security lighting may be provided when necessary to protect persons and property. When security lighting is utilized the following standards shall apply, in addition to other applicable standards:
- a. Security lighting shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Code.
 - b. Floodlights shall not be permitted.
 - c. Security lights intended to illuminate a perimeter, such as a fence line, are permitted only if such lights do not result in light trespass.
 - d. Motion-activated security lights shall not use lamps that exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1,600 lumens (whichever is less).
7. Lighting design standards:
- a. Lighting fixtures must be of a design that complements building and landscaping design.
 - b. Lighting fixtures shall be appropriate in height, intensity, and scale to the use they are serving. Parking lot lights in non-residential zones shall not exceed a height of 21 feet, and any wall-mounted lights shall not exceed a height of 12 feet, measured from the adjacent grade to the bottom of the fixture.
8. Service Station Canopies: The following standards shall apply to service station canopy lighting, in addition to all other applicable standards:

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- a. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy.
 - b. Light fixtures shall not be mounted on top of the fascia of such canopies.
 - c. The fascia of such canopies shall not be illuminated, except for approved signage in compliance with Chapter 19.104.
9. Areas around Automatic Teller Machines shall meet minimum standards required by the State of California Business and Professions Code.
10. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.
11. Lighting in ML zones shall additionally comply with the standards in Chapter 19.72.
12. String Lighting Regulations:
 - a. String lighting is different from holiday and/or seasonal lighting, and in addition to subsections (b) and (c) as applicable below, shall not be:
 - i. Blinking and/or chasing lights
 - ii. Secured with materials or in a manner that will puncture the skin or restrict the growth of any living landscape feature.
 - iii. Attached to a fence in a manner that permits light trespass to adjacent property.
 - iv. More than a 2.8-watt incandescent bulb system or equivalent LED system and emit no more than 42 lumens (whichever is less).
 - b. Residential Areas: String lighting is permitted subject to the following requirements:
 - i. It shall not illuminate more than fifty (50) percent of the rear yard or 500 sq. ft., whichever is more restrictive.
 - ii. It shall not be visible from the City right-of-way.
 - iii. It shall be used primarily to illuminate patio areas.
 - iv. It shall be extinguished by 11:00 p.m.
 - c. Commercial and Mixed-Use Commercial Areas: String lighting may be permitted subject to the following requirements, with approval of the Director of Community Development:
 - i. Any development or property is permitted to submit one application for string lighting, which shall include all uses of string lighting on the development or property.
 - ii. It shall not illuminate an area greater than:
 1. Five (5) percent of the building(s) footprint of a shopping center, and,
 2. Fifteen (15) percent for a freestanding commercial building not part of a shopping center.
 - i. It is limited to the lighting of the following:

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1. Living landscape features (trees, shrubs, etc.), if used in combination with other highlighting or pedestrian lighting fixtures within the immediate area, and,
2. Designated outside dining or display areas.

C. Prohibited Lighting: The following types of lighting are prohibited:

1. Outdoor lighting that blinks, flashes, or rotates except those that may be permitted pursuant to Chapter 10.26.
2. Outdoor flood lights that project above the horizontal plane.
3. Lighting that unnecessarily illuminates any other lot or substantially interferes with use or enjoyment of that lot.
4. High-intensity discharge lighting for recreation courts on private property.
5. Spotlights.

D. Exemptions: The following types of lighting are exempt from the lighting requirements of the Chapter:

1. Lighting within the public right-of-way and public parks
2. Permitted lighting for signs
3. Temporary construction or emergency lighting
4. Short-term lighting authorized by a special events permit
5. Holiday seasonal lighting during the period of October 15 through January 15 of each year
6. Required lighting to comply with Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such lighting shall additionally comply with the requirements of this Chapter.

2. Amendments to Chapter 19.40.060 concerning lighting in Residential Hillside Zones

19.40.060 Building Development Regulations.

All provisions of this section may be deviated from upon obtaining a Hillside Exception in accordance with Section 19.40.070.

Table 19.40.060 sets forth the rules and regulations pertaining to the development of structures on property zoned Residential Hillside (RHS).

Table 19.40.060: Building Development Regulations
A. Floor Area Ratio (FAR)

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1. Maximum Allowable Development	a. Net lot area < 10,000 square feet	Lesser of: · 6,500 square feet; or · 45% of net lot area times the slope adjustment factor pursuant to Section 19.40.060(A)(2)* * Formula = (0.45 x Net lot area) x (Slope adjustment factor)		
	b. Net lot area 10,000 square feet	Lesser of: · 6,500 square feet; or · 4,500 square feet plus 59.59 square feet for every 1,000 square feet over 10,000 square feet of net lot area, times the slope adjustment factor pursuant to Section 19.40.060(A)(2)* * Formula = (4,500 + ((Net lot area -10000)/1000) (59.59)) x (Slope adjustment factor)		
2. Adjustment Factor based on Average Slope of Net Lot Area			Average Slope	Reduction (1.5 x (Average Slope - 0.1))
	a. Average Slope 10%	No reduction in allowable floor area slope adjustment factor = 1	< 10%	0%
	b. Average slope between 10% and 30%	A reduction in allowable floor area by one and one-half percent (1.5%) for each percent of slope over 10%.	11%	1.5%
			12%	3.0%
			13%	4.5%
			14%	6.0%
			15%	7.5%
			16%	9.0%
			17%	10.5%
			18%	12.0%
			19%	13.5%
			20%	15.0%
			21%	16.5%
			22%	18.0%
			23%	19.5%
			24%	21.0%
			25%	22.5%

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		Slope adjustment factor = (1-(1.5 × (average slope of net lot area - 0.1)))	26%	24.0%
			27%	25.5%
			28%	27.0%
			29%	28.5%
	c. Average slope > 30%	Allowable floor area shall be reduced by a constant 30% Slope adjustment factor=(1- 0.3)	30%	30.0%
3. Additional Regulations for Lots Within Clustered Subdivisions where Land is Reserved for Common Open Space				
a. Lot Area for calculating FAR	May count a proportionate share of the reserved private open space to arrive at lot area for purposes of calculating FAR.			
b. Maximum FAR prior to slope consideration	No developable lot in a cluster development can exceed forty-five-percent floor area ratio, prior to applying the slope adjustment factor, when a portion of the private open space is attributed to the lot area for calculating FAR.			
c. Average slope of lot	Calculated on the developable lot only.			
B. Height of Buildings and Structures	Limited to 30 feet			
C. Setbacks				
	First Floor		Second Floor	Habitable Third Floor (or portions of structures taller than 20 feet)
1. Front-yard				
a. Slope ≤ 20%	20 feet	Driveway and garage must be designed to enable vehicles to park off-street	25 feet	25 feet
b. Slope > 20%	10 feet		25 feet	25 feet
2. Side-yard				
a. Interior Side	10 feet		15 feet	20 feet
b. Street Side	15 feet		15 feet	20 feet

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on Corner Lot			
3. Rear-yard	20 feet	25 feet	25 feet
D. Second Story Decks and Patios Minimum Setbacks			
1. Front Yard	-	17 feet	17 feet
2. Side Yard	-	15 feet	15 feet
3. Rear Yard	-	20 feet	20 feet
E. Downhill Facing Elevation			
1. Second Story Downhill Facing Wall Plane Offset			
a. Offset from First Floor Downhill Wall Plane	i. Average of 7 feet 6 inches for 75% of the second story downhill facing wall plane shall be setback and ii. Not less than five feet. iii. The remaining 25% may not extend past the first story wall plane.		
b. Multiple Downhill Facing Wall Planes	Offset shall apply only the primary setback affected.		
c. Offset from First Floor Roofed Porches	i. Offset may be measured from the outside perimeter of first-story roofed porches. ii. Roof of the porch must match, in pitch and style, the roof of the main structure. iii. Porch must be at least 5 feet in width and extend the length of the wall on which it is located.		
2. Maximum Wall Height on Downhill Elevation	15 feet		
F. Permitted Yard Encroachments			
1. Extension of a Legal Non-conforming Wall Plane for structures not located within a prominent ridgeline site line	a. Where a building legally constructed according to existing first floor yard and setback regulations at the time of construction encroaches upon present required first floor setbacks, one encroaching side of the existing structure may be extended along existing building lines. b. Only one such extension shall be permitted for the life of the building. c. Encroachments into a required yard which are the result of the granting of a variance may not be further extended. d. Further encroachment into a required setback is not allowed. I.e., a non-conforming setback may not be further		

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	reduced. e. In no case shall any wall plane of a first-story addition be placed closer than three feet to any property line.
2. Architectural Features	a. May extend into a required yard a distance not exceeding three feet. b. No architectural feature, or combination thereof, whether a portion of a principal or accessory structure, may extend closer than three feet to any property line.
G. Accessory Structures (including attached patio covers)	As allowed by Chapter 19.100, Accessory Buildings/Structures
H. Design Standards	
1. Building and Roof Forms	
a. Natural Contours	Building shall follow as closely as possible the primary natural contour of the lot.
b. Building Mass and Roof Pitches	The main building mass shall be on the upslope side of the building and the roof pitches shall trend downslope.
c. Second Story Dormers	Permitted within the second story setbacks as long as they are minor in shape and size.
d. Downhill Elevation of main structure	Shall have a minimum of four offset building and roof elements to provide varied building forms to produce shadow patterns which reduce the impact of visual mass.
e. High Wall Planes	Wall planes exceeding one story or 20 feet in height, whichever is more restrictive, shall contain architectural elements in order to provide relief and to break up expansive wall planes.
2. Colors	
a. Natural Earth Tones	All structures on the lot shall use natural earth tone and/or vegetation colors which complement the natural surroundings. Natural earth-tone and vegetation colors include natural hues of brown, green and shades of gray.
b. Reflectivity Value	Shall not exceed 60 on a flat surface
3. Outdoor Lighting	All outdoor lighting shall <u>meet the requirements in Chapter 19.102.</u> be identified on the site development plan.
a. Tennis Court and Other Recreational Purposes	High intensity lights not permitted.
b. Motion-activated Security	4. Shall not exceed 100 watts and

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Lights	2. Must be shielded to avoid all off-site intrusion.
c. Other lighting	Must be directed to meet the particular need.
I. Geologic and Soils Reports	
1. Applicability	<p>A geological report prepared by a certified engineering geologist and a soils report prepared by a registered civil engineer qualified in soils mechanics by the State shall be submitted prior to issuance of permits for construction of any building or structure which:</p> <ul style="list-style-type: none"> a. Is located on property in an RHS zoning district which has been designated by the General Plan to be within a geological hazard area; and b. Where an addition, alteration or repair of an existing building or structure include at least one of the following: <ul style="list-style-type: none"> i. The improvements include increasing the occupancy capacity of the dwelling such as adding a bedroom or secondary unit, or ii. The cost of the completed addition, alteration or repairs will, during any period of twelve months, exceed twenty-five percent of the value of the existing improvements as determined by the building official based on current per foot value of the proposed structure to the existing structure's value on a parcel of property. For the purposes of this section, the value of existing improvements shall be deemed to be the estimated cost to rebuild the improvements in kind, which value shall be determined by the building official.

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2. Content of Reports	<p>These reports shall contain, in addition to the requirements of Chapter 16.12 of this code, the following:</p> <ul style="list-style-type: none"> a. All pertinent data, interpretations and evaluations, based upon the most current professionally recognized soils and geologic data; b. The significance of the interpretations and evaluations with respect to the actual development or implementation of the intended land use through identification of any significant geologic problems, critically expansive soils or other unstable soil conditions which if not corrected may lead to structural damage or aggravation of these geologic problems both on- and off-site; c. Recommendations for corrective measures deemed necessary to prevent or significantly mitigate potential damages to the proposed project and adjacent properties or to otherwise insure safe development of the property; d. Recommendations for additional investigations that should be made to insure safe development of the property; e. Any other information deemed appropriate by the City Engineer.
3. Incorporation of Recommendations	<p>All building and site plans shall incorporate the above-described corrective measures and must be approved by the City Engineer, prior to building permit issuance.</p>
J. Private Roads and Driveways	
1. Pavement Width and Design	<p>The pavement width and design for a private road or common driveway serving two to five lots and a single-lot driveway shall comply with development standards contained in the Hillside Subdivision Ordinance, Chapter 18.52 of this code.</p>
2. Reciprocal Ingress/Egress Easement and Reciprocal Maintenance Agreement	<p>The property owner for a lot served by a private road or common driveway shall, prior to issuance of building permits, record an appropriate deed restriction guaranteeing the following, to adjoining property owners who utilize the private road or common driveway for the primary access to their lot(s):</p> <ul style="list-style-type: none"> a. Reciprocal ingress/egress easement, and b. Participation in a reciprocal maintenance agreement.

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K. Solar Design	The setback and height restrictions provided in this chapter may be varied for a structure utilized for passive or active solar purposes, provided that no such structure shall infringe upon solar easements or adjoining property owners. Variation from the setback or height restrictions of this chapter may be allowed only upon issuance of an Administrative Conditional Use Permit subject to Chapter 19.12.
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3. Amendments to Section 19.60.060 concerning lighting in General Commercial Zoning Districts

19.60.060 Development Standards.

Table 19.60.060 sets forth the rules and regulations pertaining to the development of property located in the General Commercial (CG) zoning district.

Table 19.60.060: Development Standards	
A. Lot Area and Coverage	No minimum lot area or coverage. Must be in conformance with the General Plan or applicable Specific Plan. Must have sufficient area to satisfy off-street parking and loading requirements contained in this title.
B. Height of Buildings and Structures	30 feet unless otherwise permitted by the General Plan or applicable Specific Plan.
C. Required Setbacks for Buildings and Enclosed Patio/Atrium Space	
1. Front Yard	Established based upon special policies contained in the General Plan and/or applicable specific plan to: <ul style="list-style-type: none"> - Insure sufficient space to provide adequate light, air and visibility at intersections; - Assure general conformity to yard requirements of adjacent or nearby zones, lots or parcels; and - Promote excellence of development.
2. Minimum Side and Rear Yard	No side or rear yard setback required unless lot abuts any residential or agricultural-residential zone in which case the following regulations apply:

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a. Side Yard Setback	
i. Interior Side	12 feet, or a total setback equal to one foot of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
ii. Street Side of Corner Lot	12 feet
b. Rear Yard Setback	20 feet, or a total setback equal to one and one-half feet of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
D. Noise Standards –	
1. New Construction and uses approved as a Conditional Use that have a high probability of generating noise that adjoin residential districts shall be:	
a. Exterior Walls	Designed to attenuate all noise emanating from interior retail space.
b. Loading Docks and Doors	Located away from residential districts. Required Fire Doors are excluded.
c. Mechanical and other equipment	Air conditioning, exhaust fans, and other mechanical equipment shall be acoustically isolated to comply with the noise ordinance
d. Sound Wall	Install a minimum eight-foot-high masonry sound wall on or adjacent to the common property line
e. Acoustical Engineer	Certified by an acoustical engineer that the above sound attenuation measures comply with the intent of the regulation and the City's community noise ordinance
2. In addition to (1) above, retail structures in a mixed use residential development shall employ noise attenuation techniques recommended by an acoustical engineer to comply with the community noise ordinance.	
E. Lighting – New lighting fixtures for any new site construction or building improvements <u>shall meet the requirements in Chapter 19.102.</u>	
1. Exterior Lighting	Shall be a white type light either metal halide or a comparable color corrected light unless otherwise approved as part of a development plan.

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2. Off-site Glare	Light fixtures shall be oriented and designed to preclude any light and direct glare to adjacent residential properties. No direct off-site glare from a light source shall be visible above three feet at a public right of way.
3. Parking Lots, Sidewalks and other areas accessible to pedestrians and automobiles	Shall be illuminated with a uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:
a. Average horizontal maintained illumination	Should be between one and three foot candles
b. Maximum to Minimum Ratio	Should be between 6:1 and 10:1
4. Critical Area Illumination	Such as stairways, ramps and main walkways may have a higher illumination
5. Areas around Automatic Teller Machines	Shall meet minimum standards required by the State of California Business and Professions Code.
F. Landscaping Plan	Shall be designed to provide an effective year-round landscaping screen in the setback area adjoining a residential property. The intent of the plan is to screen the building from the rear yard of a residence within five years.

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G. Utilities	<p>1. The following amenities and utilities shall be installed subject to the specifications of the subdivision ordinance:</p> <ul style="list-style-type: none">a. All utilities including water, gas, sanitary and storm sewers, underground power systems, andb. Amenities including, lighting electroliers, curbs, gutters, streets and sidewalks andc. Connections to main systems shall be installed subject to the specifications of the subdivision ordinance of the City. <p>2. All wires, pipes, cables, utilities and connections shall be placed in underground or subsurface conduits subject to the specifications of the subdivision ordinance of the City.</p> <p>3. Underground vaults, or, well screened areas, if underground vaults are deemed to be infeasible by the City Engineer and the Director of Community Development, must be provided for the installation of the necessary utilities.</p>
H. Mechanical Equipment	<p>Air conditioning, exhaust fans, and other mechanical equipment shall be visually screened.</p>

4. Amendments to Section 19.72.050 concerning lighting in Light Industrial (ML) and Industrial Park (MP) zoning districts

19.72.50 Restrictions Related to Emissions.

No use shall be allowed which is or will be offensive by reason of the emission of dust, gas, smoke, noise, fumes, odors, bright lights, vibrations, nuclear radiation, radio frequency interference, or otherwise. Every use shall be operated in such manner that the volume of sound inherently and recurrently generated shall not exceed sixty-five decibels during the day and fifty-five decibels at night, at any point on the property line on which the use is located, or sixty decibels during the day and fifty-five decibels at night, at any point on the property line on which the use is located where such property line abuts property that is zoned for residential purposes. Noise and sounds shall be appropriately muffled in such manner so as not to be objectionable as to intermittent beat, frequency, or shrillness.

Provided further that prior to issuance of a building permit the Building Inspector may require evidence that adequate controls, measures, or devices have been provided to insure and protect the public interest, health, comfort, convenience, safety and general welfare from such nuisances.

Emissions of noise, vibrations, radiation, light, smoke, fumes or gas, odor, dust and toxic waste shall be limited to quantities indicated in this section. The limitations shall apply at any point outside the boundary of each lot in an ML zone, the boundary assumed, for the purpose of this title, to extend in a vertical plane and below ground. In case of further subdivision or lot split, the limitations shall not apply outside any resulting lot.

- A. Vibration. Vibrations in the nonaudible range shall not be of such intensity that they can be perceived without instruments.
- B. Radiation. Electromagnetic radiation shall not result in perceptible disturbance of television or radio reception.

C. Light. **In addition to the lighting standards in Chapter 19.102, all development shall meet the following lighting standards:**

- 1.** The intensity of light at the boundary of each lot shall not exceed seventy-five footlamberts from a source of direct light, or one hundred footlamberts from a source of reflected light.
- 2.** The intensity of light at the boundary of an industrial zone, or an industrial area in a planned development (P) zone, shall not exceed fifty footlamberts from a source of direct light, or seventy-five footlamberts from a source of reflected light.
- 3. In the event there is a conflict with Chapter 19.102, the less stringent**

lighting standards shall apply.

D. Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible grey smoke of a shade equal to or darker than No. 1 on the Ringelmann Smoke Chart, as published by the U.S. Department of Interior, Bureau of Mines, Informational Circular 8333, May 1967; except that a visible grey smoke of a shade equal to No. 2 on the Ringelmann Smoke Chart may be emitted for four minutes in any thirty minutes.

E. Hazardous and Toxic Materials. The use, handling, storage, and transportation of toxic and hazardous materials shall comply with the provisions of the California Hazardous Materials Regulations (California Administrative Code, Title 22, Division 4). The use, storage, manufacture and disposal of hazardous materials shall be regulated and monitored according to the standards established by the U.S. Environmental Protection Agency (EPA), the California Environmental Protection Agency (Cal/EPA) and any delegated government agencies.

F. Odor. No emission of odorous gases or other odorous matter shall be permitted in such quantities as to be readily detectable without the aid of instruments at the boundaries of the lot or in such concentrations as to create a public nuisance or hazard beyond such boundaries. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail. There is established as a guide in determining such quantities of offensive odors, Table III, Odors Thresholds, in Chapter 5 of Air Pollution Abatement Manual, copyrighted in 1951 by Manufacturing Chemists Association, Inc., Washington, D.C.

G. Fly Ash, Dust, Fumes, Gases and Other Forms of Air Pollution. No emission shall be permitted which can cause any damage to health, animals, vegetation or other forms of property, or that will result in the collection of heavy gases at ground level. No emission shall be permitted in excess of fifty percent of the standards specified in Table I, Chapter 5 of Industrial Hygiene Standards, Maximum Allowable Concentrations of the Air Pollution Abatement Manual, copyrighted in 1951 by Manufacturing Chemists Association, Inc., Washington, D.C. In no event shall any emission, from any chimney or otherwise, exceed one-tenth of a grain (0.1 grain) per cubic foot of the conveying gas. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of five hundred degrees Fahrenheit and fifty percent excess air.

Wastes. No discharge shall be permitted into any public street or sewer, private sewage disposal system, stream, body of water, or into the ground, of any materials of such nature or temperature as can contaminate any water supply, interfere with bacterial processes in sewage treatment, corrode or otherwise damage sewers or

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pipelines, or otherwise cause the emission of dangerous or offensive elements, except in accordance with standards approved by the California Environmental Protection Agency (Cal/EPA) and any other governmental agency having jurisdiction over the activities.

5. Amendments to Section 19.124.040 concerning lighting in off-street parking

19.124.040 Regulations for Off-Street Parking.

Table 19.124.040 sets for the rules and regulations for Off-Street Parking.

Table 19.124.040 - Regulations for Off-Street Parking		
A.	Parking Ratio and Dimensions	Table 19.124.040(A) defines the minimum and maximum required number of parking spaces by size and type for specific zoning districts and use within districts.
B.	Residential Lots Fronting on Public or Private Streets	If no on-street parking is available, two additional off-street spaces are required.
C.	Large-Family Day Care Home	Requirements are in addition to minimum requirements of the zoning district. May be on-street, in front of provider's residence. If the provider is relying on on-street parking and the roadway prohibits on-street parking, a semi-circular driveway may be provided, subject to other provisions of the Municipal Code.
1.	Non-resident Employee Parking	Minimum of one parking space for each non-resident employee.
2.	Drop-off Parking	Minimum of one parking space with direct access to the unit, not crossing a street.
D.	Aisle Dimensions	Aisle dimension shall be as required by standard details adopted by the City Engineer and shown in Table 19.124.040(B)
E.	Loading Areas	Loading areas, truck parking spaces and parking spaces for vehicles other than automobiles shall have ample dimensions for the particular use and type of operation, and be designed as required by the City Engineer except in the case of loading areas in the OP and MP zones which are specified in Chapters 19.68 and 19.72.
F.	Planned Development Districts	The parking requirement contained in Table 19.124.040(A) functions as guidelines for projects in

Table 19.124.040 - Regulations for Off-Street Parking		
		planned development zoning districts.
G.	Mixed-Use and Shared Parking	The minimum parking requirement for developments with more than one land use, or parking facilities being used by one or more properties, shall be determined using Table 19.124.040(C).
H.	Alternative Parking Standards	For all projects not meeting parking requirements in Table 19.124.040(A), (B) or (C), alternative parking arrangements may be approved per Section 19.124.060C
I.	Tandem, Valet and Other Special Parking Arrangements	Tandem, Valet, and other special forms of parking may be approved per Section 19.124.060C.
J.	Minimum Stall Dimensions in Parking Structures	Uni-size space located in a parking garage or other enclosed parking structure intended for non-residential uses is eight and one-half (8.5) feet by eighteen (18) feet.
1.	Space adjacent to a wall or structure on one side	Nine feet by eighteen feet.
2.	Space adjacent to a wall or structure on both sides	Nine and one-half feet by eighteen feet.
K.	Accessible Parking for the Disabled	The accessible parking requirement for the disabled is embodied in Section 1129 B of the California Building Code, as amended, is hereby incorporated into this chapter by reference.
L.	Heavy Equipment	<ol style="list-style-type: none"> 1. May only be stored within entirely enclosed structures or behind six-foot-high fencing in interior side yard and rear yard setback areas; and 2. In no case shall these items be visible from the street even when placed in permitted areas. 3. The provisions in L(1) and L(2) shall not apply to heavy equipment stored on site that is being used for construction or installation of improvements with a valid building or grading permit.
M.	Other Regulations	Outlined in Title 11 of the Municipal Code.

Table 19.124.040 - Regulations for Off-Street Parking			
N.	Landscape Requirements	Applicable to all new centers and centers with a twenty- five percent or greater increase in floor area or a twenty- five percent or greater change in floor area resulting from use permit or architectural and site approval within twelve months shall be required to meet the following minimum landscape requirements. However, the Planning Commission and/or City Council may recommend additional landscaping.	
1.	Minimum Interior Landscaping	As required in Table 19.124.040 (N)(1) below:	
		Table 19.124.040(N)(1):	
		Size of Parking Facility (Sq. Ft.)	Minimum Required Interior Landscaping (% of Total Parking Interior Facility Area)
		Under 14,999	5%
		15,000 - 29,000	7.5%
		30,000 plus	10%
2.	Parking Lot trees	<div>i. Shall be planted or exist at a rate of one tree for every five parking stalls for every ten spaces in a single row.</div> <div>ii. Only fifty percent of the trees located along the perimeter of the parking area may count towards the required number of trees.</div> <div>iii. A parking facility with larger trees with high canopies may be allowed to increase the number of parking stalls (up to 10 parking stalls per tree) depending on the size of the tree and canopy size.</div>	
3.	Landscape Planter Strip	At least three feet wide by the length of the parking space.	
4.	Placement of Trees	Shall be offset to prevent vehicles from bumping into them. The Planning Department shall review and approve final tree locations.	
5.	Landscape Buffer (inclusive of curbing and vehicle overhang allowance)	<div>i. When parking lot is adjacent to a street, landscape buffer = ten feet wide</div> <div>ii. When adjacent to a side or rear property line, landscape buffer = five feet wide,</div>	

Table 19.124.040 - Regulations for Off-Street Parking		
		iii. Buffer between double loading stalls = four feet.
6.	Flat and Raised Curbs, Wheel Stops and Overhang into landscaped areas	<p>i. Landscape areas shall be enclosed by a six-inch wide continuous flat curb allowing parking lot run off into landscaping area, infiltration islands or swales.</p> <p>ii. Concrete wheel stops shall be placed on top of the flat curb and shall be provided at a rate of one per two stalls.</p> <p>iii. Landscape planter strips at the end of the parking aisles adjacent to a driveway shall be enclosed by a six-inch raised concreted curb with drainage outlets to help delineate the driveways or aisles.</p> <p>iv. Parking stall length may be decreased by up to two feet but must provide an equivalent vehicle overhang into landscaped areas.</p>
7.	Planter Strips	<p>i. Curbed planter strips shall be provided at the end of each parking aisle.</p> <p>ii. Landscape planter strip shall be at least three feet wide and the length of a parking stall.</p>
8.	Pedestrian Paths	Where appropriate, provision shall be made to ensure that adequate pedestrian paths are provided throughout the parking lot/landscaped areas.
9.	Minimum Tree Size	Trees require to meet any section of this title shall be a minimum of fifteen gallon size.
10.	Tree Protection	All trees shall be protected by wheel stops, curbing, bollards or other similar barriers as appropriate.
11.	Maintenance	All landscaping shall be continuously maintained.
O.	Swales and Permeable Surfaces	In order to reduce urban runoff and provide water quality benefits in parking lots, all new parking lots or any substantial alterations to existing parking lots shall incorporate the following design measures to the maximum extent possible:
1.	Bio-swales	Incorporate bio-swales in the required landscaping

Table 19.124.040 - Regulations for Off-Street Parking

		buffers.
a.	Standards for bio-swales	<p>i. Longitudinal slope of the swale shall be between one percent and five percent.</p> <p>ii. Swales of greater than three percent may be required to install check dams to reduce velocity through swale.</p> <p>iii. Side slope shall not exceed 3:1 (horizontal:vertical).</p> <p>iv. All swales shall be required to provide an adequate under-drain system to prevent ponding. Swales shall be designed to eliminate any ponding of water for more than forty-eight hours.</p>
2.	Permeable surfaces	Use permeable or semi-permeable materials for the parking stalls
P.	Bicycle Parking	Bicycle parking shall be provided in multi-family residential developments and in commercial districts. In commercial districts, bicycle parking shall be conveniently located and adjacent to on-site bicycle circulation pedestrian routes. The bicycle parking facilities shall be one of the following three classification types:
1.	Class I Facility	These facilities are intended for long-term parking and are intended to protect the entire bicycle or its individual components and accessories from theft. The facility also protects the cycle from inclement weather, including wind driven rain. The three design alternatives for Class I facilities are as follows:
a.	Bicycle Locker	A fully enclosed space accessible only by the owner or operator of the bicycle. Bicycle lockers must be fitted with key locking mechanisms.
b.	Restricted Access	Class III bicycle parking facilities located within a locked room or locked enclosure accessible only to the owners and operators of the bicycle. The maximum capacity of each restricted room shall be ten bicycles. In multiple family residential developments, a common locked garage area with Class II parking facilities shall be deemed restricted access provided the garage is

Table 19.124.040 - Regulations for Off-Street Parking		
		accessible only to the residents of the units for whom the garage is provided.
c.	Enclosed Cages	A fully enclosed chain link enclosure for individual bicycles, where contents are visible from the outside, which can be locked by a user provided lock. This facility may only be used for multiple family residential uses.
2.	Class II Facility	<p>i. Intended for short term parking. A stationary object which the user can lock the frame and both wheels with a user provided lock.</p> <p>ii. The facility shall be designed so that the lock is protected from physical assault.</p> <p>iii. A Class II facility must accept U-shaped locks and padlocks.</p> <p>iv. Class II facilities must be within constant visual range of persons within the adjacent building or located at street floor level.</p>
3.	Class III Facility	<p>i. Intended for short-term parking. A stationary object to which the user may lock the frame and both wheels with a user provided cable or chain and lock.</p> <p>ii. Spacing of the bicycle units shall be designed for a handlebar width of three feet, distance from bottom of wheel to top of handlebar of three feet and six inches and a maximum wheel-to-wheel distance of six feet.</p>
Q.	Parking Lot <u>and</u> Structured Parking Lighting	Applicable to New lighting fixtures for any new site construction shall meet the following requirements <u>in addition to the requirements of Chapter 19.102:</u>
1.	Exterior Light Color	All exterior lighting shall be a white type light either metal halide or a comparable color corrected light unless otherwise approved as part of a development plan for uniformity, not allowing any dark areas in the parking lot.

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Table 19.124.040 - Regulations for Off-Street Parking		
2.	Lighting Glare	<p>i. The light fixtures shall be oriented and designed to preclude any light and direct glare to adjacent residential properties.</p> <p>ii. No direct off-site glare from a light source shall be visible above three feet at a public right-of-way.</p>
3.	Lighting Intensity	Parking lots, sidewalks and other areas accessible to pedestrians and automobiles shall be illuminated with a uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:
a.	Average Horizontal Maintained Illumination	Between one and three foot-candles
b.	Average Maximum to Minimum Ratio	Should be generally between six and ten to one
c.	Minimum Intensity above Parking Lot Surface	Minimum three foot-candles vertically above the parking lot surface shall be maintained.
4.	Critical Areas	Such as stairways, ramps and main walkways may have a higher illumination.
5.	Automatic Teller Machines (ATM)	Lighting around automatic teller machines shall meet minimum standards required by the State Business and Professions Code.
6.5.	Shatter Resistant Lenses	Shatter resistant lenses should be placed over the light to deter vandalism.
7.6.	<u>Underground and Structured Parking Lighting</u>	<p>i. Underground <u>Lighting</u> should shall utilize vandal-resistant fixtures and</p> <p>ii. Maintain a minimum five lux level of color-corrected lighting for maximum efficiency.</p>
8.7.	Parking Garage Entrances	Portal lighting should be provided inside all parking garages entrances.

R. Parking Space Dimension Chart. Parking space dimensions shall be as shown in Table 19.124.040(A):

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Table 19.124.040(A)					
Land Use	Zones	Parking Ratio(2)	Bicycle Parking	Bicycle Parking Class(4)	Stall Dimensions (3)
Residential					
Single-Family	R-1/RHS/A1/P	4/DU (2 garage + 2 open)			10 x 20 ea.
Small Lot Single-family, Townhouse	P	2.8/DU (2 garage + 0.8 open)			10 x 20 ea.
Duplex	R2	3/DU (1 ½ enclosed + 1 ½ open)			10 x 20 ea.
High Density Multiple-Family,	R3/P	2/DU (1 covered + 1 open)	1 space per 2 residential units; and	Class I	9.5 x 20 ea.
High Density Multiple Story Condominium			1 space per 10 residential units	Class II	
Public/Quasi-Public/Agriculture					
Churches, Clubs, Lodges, Theaters	BQ/CG	1/4 seats +1/employee +1/special-purpose vehicle	2% of seats. Minimum two spaces	Class II	Uni-size
Schools and School Offices	BA/BQ	1/employee + 1/56 sq. ft. multipurpose room + 8 visitor spaces/school + 1/3 students at senior H.S. or college level	1 space per 5 students	Class II	Uni-size
Daycare Centers	CG	1/6.5 students			Uni-size

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Table 19.124.040(A)					
Land Use	Zones	Parking Ratio⁽²⁾	Bicycle Parking	Bicycle Parking Class⁽⁴⁾	Stall Dimensions⁽³⁾
Martial Arts, CG Dance/Art/Music Studios, Tutorial Services, specialized schools (does not include adult tutorial schools or services)	CG	1/4 students plus 1/1 staff at any given time or 1/250 whichever is more restrictive	1 space per 5 students	Class II	Uni-size
Agriculture	A	2 garage + 2 open			10 x 20 ea.
Sanitariums and Rest Homes	BQ	1/doctor + 1/3 employees + 1/6 beds			Uni-size
Private Recreation	FP	1/4 seats + 1/employee	1/5,000 sq. ft. Minimum two spaces	Class II	Uni-size
Gyms, Auditoriums, floor area used Skating Rinks for seating without fixed seats	BA/BQ	1/56 sq. ft. purposes + 1/employee	1/5,000 sq. ft. Minimum two spaces	Class II	Uni-size
Commercial					
Motels/Hotels/ Lodging	CG	1/unit + 1/employee (2) (3)	1/20,000 sq. ft.	Class II	Uni-size
Restaurant/Bar and Nightclubs	CG	1/3 seats + 1/employee + 1/36 sq. ft. of dance floor	1/2,000 sq. ft.	Class II	Uni-size
Restaurants without Separate Bar	CG	1/4 seats + 1/employee + 1/36 sq. ft. of	1/2,000 sq. ft.	Class II	Uni-size

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Table 19.124.040(A)					
Land Use	Zones	Parking Ratio ⁽²⁾	Bicycle Parking	Bicycle Parking Class ⁽⁴⁾	Stall Dimensions (3)
		dance floor			
Restaurant - Fast Food	CG	1/3 seats + 1/employee	1/2,000 sq. ft.	Class II	Uni-size
Specialty Foods	CG	1/3 seats or 1/250 sq. ft. whichever is more	1/2,000 sq. ft.	Class II	Uni-size
Bowling Alleys	CG	7/lane + 1/employee	1/5,000 sq. ft.	Class II	Uni-size
General	CG	1/250 sq. ft.	1/1,250 sq. ft. up to 25,000 sq. ft.	Class II	Uni-size
			1/2,500 sq. ft. between 25,000 – 50,000 sq. ft.		
			1/5,000 sq. ft. over 50,000 sq. ft.		
			1/5,000 sq. ft. Bulky Merchandise (5)		
Industrial					
Manufacturing	ML	1/450 sq. ft.	1/12,000 sq. ft.	Class I	Uni-size
Office/Prototype Manufacturing	ML/OA	1/285 sq. ft.	/1,250 sq. ft. or 1/15 employees, whichever is more restrictive.	Class I	Uni-size
Office					
Corporate/ Administrative/ General Multi-Tenant	CG/OP	1/285 sq. ft.	1/1,250 sq. ft. or 1/15 employees, whichever is more restrictive.	Class I	Uni-size
Medical and	CG	1/175 sq. ft.	1/1,250 sq. ft.	Class II	Uni-size

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Table 19.124.040(A)					
Land Use	Zones	Parking Ratio ⁽²⁾	Bicycle Parking	Bicycle Parking Class ⁽⁴⁾	Stall Dimensions ⁽³⁾
Dental Office					

Notes:

1. Refer to Table 19.124.040(B) for uni-size stall dimensions.
2. Refer to standard details table for requirements for handicapped parking.
3. See 19.124.040(J) for stall dimensions in parking structures.
4. See 19.124.040(P) for description of bicycle parking classes.
5. Retail space devoted to the handling of bulky merchandise such as motor vehicles, machinery or furniture, excluding grocery stores.

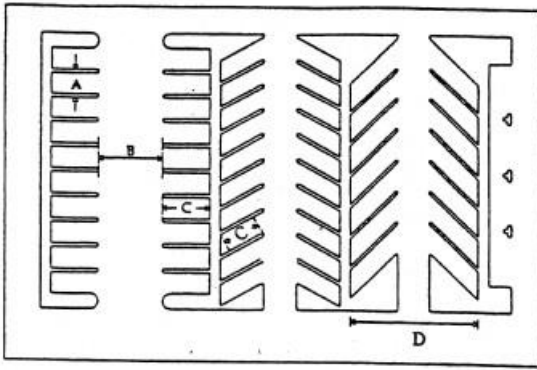
Table 19.124.040(B)					
Type of Parking Stall	Angle (In Degrees)	Stall Width	Aisle Width (One-Way Aisle)	Aisle Width (Two-Way Aisle)	Car Space Depth
		(A)	(B)	(B)	(C)
Uni-Size	0°	8.5	10.0	18.0	22.0
	30°	8.5	10.0	18.0	18.0
	35°	8.5	10.0	18.0	18.0
	40°	8.5	10.0	18.0	18.0
	45°	8.5	10.0	18.0	18.0
	50°	8.5	10.0	18.0	18.0
	55°	8.5	11.5	18.5	18.0
	60°	8.5	13.0	19.0	18.0
	65°	8.5	14.5	19.5	18.0
	70°	8.5	16.0	20.0	18.0
	90°	8.5	N/A	22.0	18.0

NOTES TO TABLE:

* - For handicap accessible spaces, please refer to § 1118A.4 of 1994 Uniform Building Code.

* - For further information, please refer to the Public Works Department Standard Details.

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**Table 19.124.040(C): Calculating Shared Parking for Mixed-Use Developments**

	Weekday Weekend Nighttime				
	Weekday		Weekend		Nighttime
	Daytime	Evening	Daytime	Evening	(midnight - 6:00 a.m.)
	(9:00 a.m. - 4:00 p.m.)	(6:00 p.m. - midnight)	(9:00 a.m. - 4:00 p.m.)	(6:00 p.m. - midnight)	
Residential	75%	100%	80%	100%	100%
Office/Industrial	100%	10%	10%	5%	5%
Retail	60%	90%	100%	70%	5%
Hotel	75%	100%	75%	100%	10%
Restaurant	100%	100%	100%	100%	10%
Entertainment / Recreational	40%	100%	80%	100%	10%

1. Determine the minimum amount of parking required for each land use as though it were a separate use;
2. Multiply each amount by the corresponding percentage for each of the five time periods;
3. Calculate the column total for each time period;
4. The column total with the highest value is the parking space requirement.

ORDINANCE NO. 20-2219

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO ADD CHAPTER 19.102: BIRD SAFE DEVELOPMENT
STANDARDS AND TO AMEND CHAPTER 19.08 DEFINITIONS TO IMPLEMENT
BIRD-SAFE REGULATIONS**

The City Council of the City of Cupertino finds that:

WHEREAS, while the City has certain General Plan Goals, Policies and Strategies that support bird-safe goals, it does not have regulations to promote effective Bird-safe policies, and that the proposed new Chapter 19.102: Bird Safe Development Standards will provide effective standards to promote Bird-safe policies;

WHEREAS, on October 28, 2019, Planning Commission provided staff guidance on potential Bird-safe and Dark Sky policies and guidelines;

WHEREAS, community meetings were held on February 12, 2020 and February 20, 2020 to allow the public an opportunity to review and provide comments on the preliminary development standards;

WHEREAS, following 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 August 11, 2020 and October 27, 2020 to consider the Ordinance; and

WHEREAS, with Resolution No. 6914 the Planning Commission has recommended on a 4-1-0 vote that the City Council adopt the Ordinance amending the Municipal Code in substantially similar form as presented in Planning Commission Resolution No. 6914; and

WHEREAS, on December 1, 2020 and December 15, 2020 upon due notice, the City Council has held public hearings to consider the Planning Commission's recommendation and the Ordinance; and

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

WHEREAS, the City Council does find as follows:

- a. That the proposed zoning is in accord with this title of the Municipal Code and the City's Comprehensive General Plan.

The Ordinance does not change any zoning designations, but rather it modifies Title 19: Zoning by adding a new chapter to create development standards for the implementation of regulations that support Bird-Safe policies. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.

The proposed amendments will also support the following General Plan Goals, Policies, and Strategies:

- *Goal LU-3: Ensure that project site planning and building design enhance the public realm through a high sense of identity and connectivity.*
- *Policy LU-3.3: Building Design: Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- *Strategy LU-3.3.1: Attractive Design – Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*
- *Goal LU-12: Preserve and protect the City’s hillside natural habitat and aesthetic values.*
- *Goal ES-5: Protect the city’s urban and rural ecosystems.*
- *Policy ES-5.1: Urban Ecosystem – Manage the public and private development to ensure the protection and enhancement of its urban ecosystem.*
- *Strategy ES-5.2.1: Riparian Corridor Protection – Require the protection of riparian corridors through the development approval process.*

The regulations will encourage incorporation of bird-safe mitigations which will reduce the number of bird collisions.

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

The proposed Ordinance is exempt from environmental review under California Environmental Quality Act (“CEQA”) Guidelines section 15308 because these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to glazing and lighting will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply.

- c. 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).

Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties, nor does it change any land uses allowed. The amendments also do not propose any physical changes in the environment or increased development.

- d. The proposed zoning will promote orderly development of the City.

By creating regulations for Bird-Safe development standards, the ordinance will promote orderly and consistent implementation of the regulations for development in the City.

- e. 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 provides regulation to maintain the health, safety, peace, morals and general welfare of persons residing or working in the City by providing regulations that limit adverse impacts of development on the natural and built environment pertaining to birds.

- f. The proposed amendments are internally consistent with this title.

All the necessary chapters and sections of Title 19: Zoning have been amended to ensure internal consistency with the proposed regulations.

**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: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15308 since these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment. Further, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15301 because it would result in the minor alteration of existing public or private structures without any expansion of use and under CEQA Guidelines Section 15305 because the proposed ordinance involves minor alteration in land use limitations that do not alter permitted uses or density. Finally, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty the Ordinance's regulation related to glazing and lighting will have no possible significant effect on the environment. None of the exceptions listed in CEQA Guidelines section 15300.2 apply to the proposed ordinance

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 15, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – An Ordinance of the City of Cupertino to implement Bird-safe policies and guidelines

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.

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: Zoning adding Chapter 19.102: Bird-Safety Standards

19.102 BIRD-SAFE DEVELOPMENT STANDARDS

19.102.010 Purpose

19.102.020 Applicability of regulations

19.102.030 Bird-safe Development Requirements

19.102.010 Purpose

The purpose of this chapter is to regulate design and construction of structures and accessory elements in all zoning districts to protect the natural environment, particularly enhancing bird-safety. This Chapter establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions.

19.102.020 Applicability of regulations

Whenever an applicant is required to obtain a building permit or a Permit pursuant to Title 19, or whenever exterior lighting is added or replaced (whether temporary or permanent), the project shall meet the requirements of this Chapter. The following table indicates the applicability of regulations by type of project:

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102.030 (D)
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (E) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102.030 (D)
F. Exemptions	See Sections 19.102.030 (B)(4) and (D)(14)

19.102.030 Bird-safe Development Requirements

A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:

1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
2. Cross sections, if required;
3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), (D) and (E); and
4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.

B. Fenestration and Glass Requirements

1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must have high color contrast with the glass and be applied to the outermost glass. Prior to publication of the list, the Planning Department may review information available from interest groups, such as the National Audubon Society.

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3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
 4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers; and
 - b. First floor commercial storefronts, up to a height of 15'.
- C. Non-residential Indoor Lighting Requirements: Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.
- D. Outdoor Lighting Requirements:
1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
 2. Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 3. Parking lots, sidewalks, and other pedestrian paths shall meet the requirements in Chapter 19.72, 19.60 and 19.124, as applicable. In the event there is a conflict with Chapter 19.72, the less stringent light standards shall apply.

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4. Exterior lighting shall be fully extinguished or motion sensor operated after 11:00 p.m., or when people are no longer present in exterior areas, whichever is later, except for:
 - a. Lights required to remain on in compliance with the California Building Code.
 - b. Lighting of an appropriate intensity allowed in conjunction with uses permitted to operate past 11:00 p.m. with a conditional use permit.
 - c. Outdoor solar powered pathway lights that do not exceed 25 lumens.
 5. Automated control systems, such as motion sensors and timers, shall be used to ensure that outdoor lighting extinguishes 10 minutes after motion activation and turns off when sufficient daylight is available.
 6. Security lighting, necessary to protect persons and property, shall be programmable, motion sensor activated, and may illuminate a perimeter, such as a fence line, if such lights do not result in light trespass, and do not use lamps that exceed 100 watts incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 7. In addition to all other applicable standards, lighting fixtures in the ceiling of service station canopies shall be fully recessed in the canopy, and no light fixtures or illumination, other than approved signage, shall be allowed on top of the fascia of such canopies.
 8. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.
 9. The use of High Intensity Discharge lighting, spot lighting, flood lighting, or similar lighting is prohibited.
 10. The following are exempt from subsection 19.102.030 (D): lighting in the right of way, holiday seasonal lighting between October 15 and January 15 of each year, temporary construction or emergency lighting, temporary lighting associated with a special event, and lighting required pursuant to the Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such required lighting shall additionally comply with the requirements of this Chapter.
- E. Bird-safe Design Requirements. All projects subject to bird-safe development requirements shall:
1. Avoid the funneling of flight paths along buildings or trees towards a building façade.
 2. Avoid use of highly reflective glass or highly transparent glass.
 3. Not include glass skyways or walkways, balconies, freestanding glass walls, transparent building corners, glass features, or other design elements through which trees, landscape areas, water features or the sky are visible from the exterior or from one side of the transparent element to the other, if such elements are untreated.

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2. Additions to Chapter 19.08 concerning Definitions

The following definitions are inserted in alphabetical order in appropriate locations in Sections 19.08.030 (B), (G), (L), (M), (S), (U), and (W). No changes are made to the remainder of the definition sections.

“Bird-safe design” means when building design, site planning, design features, materials, exterior and interior lighting, are designed and developed to reduce hazardous conditions for birds.

“Bird-safe development” means development that incorporates bird-safe design and bird-safe treatment.

“Bird-safe treatment” means treatment to glass that provides visual cues to birds and reduce the likelihood of bird collisions.

“Bird-sensitive area”, for purposes of Chapter 19.102, Glass and Lighting Standards, means parcels that are in or within 300 feet of the Wildland Urban Interface; within 300 feet of watercourses; in Residential Hillside areas; and within 300 feet of public and private, open spaces and parks that are dominated by vegetation, including vegetated landscaping, forest, meadows, grassland, or wetlands.

“Glare” means the effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, which causes annoyance, discomfort, or loss of visual performance and ability.

“Glass features”, for purposes of Chapter 19.102, Glass and Lighting Standards, means such features as free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

“Light Fixture” means a complete lighting unit consisting of one or more lamps, and ballast(s), where applicable, together with the parts designed to distribute the light, position and protect the lamp(s) and ballast(s), and connect the lamp(s) to the power supply.

“Light trespass” means light emitted by a light fixture that shines beyond the property on which it is installed.

“Muntins” means strips of wood, metal, or other materials that physically separate and support individual panes of glass in a window or visually separate a single pane of glass in a window into different sections.

“Shielded fixture” means a light fixture that is shielded or constructed so that light rays emitted by the lamp(s) are projected below the horizontal plane passing through the lowest point on the light fixture.

“Uplighting” means the placement and orientation of light fixtures such that light rays are directed upward.

“Watercourse”, for purposes of Chapter 19.102, Glass and Lighting Standards, means any natural or artificial arroyo, canal, channel, natural conduit, creek,

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culvert, ditch, gully, lake, ravine river, stream, waterway, or wash or other topographic feature on or over which waters flow at least periodically and adjacent areas in which substantial flood damage may occur from overflow or inundation.

[Chapter 19.08 -19.40.050 – No Change]**19.40.060 Building Development Regulations.**

All provisions of this section may be deviated from upon obtaining a Hillside Exception in accordance with Section 19.40.070.

Table 19.40.060 sets forth the rules and regulations pertaining to the development of structures on property zoned Residential Hillside (RHS).

Table 19.40.060: Building Development Regulations				
A. Floor Area Ratio (FAR)				
1. Maximum Allowable Development	a. Net lot area < 10,000 square feet	Lesser of: . 6,500 square feet; or . 45% of net lot area times the slope adjustment factor pursuant to Section 19.40.060(A)(2)* * Formula = (0.45 x Net lot area) x (Slope adjustment factor)		
	b. Net lot area 10,000 square feet	Lesser of: . 6,500 square feet; or . 4,500 square feet plus 59.59 square feet for every 1,000 square feet over 10,000 square feet of net lot area, times the slope adjustment factor pursuant to Section 19.40.060(A)(2)* * Formula = (4,500 + ((Net lot area -10000)/1000) (59.59)) x (Slope adjustment factor)		
			Average Slope	Reduction (1.5 x (Average Slope - 0.1))
	a. Average Slope 10%	No reduction in allowable floor area slope adjustment factor = 1	< 10%	0%
			11%	1.5%
			12%	3.0%

Table 19.40.060: Building Development Regulations				
2. Adjustment Factor based on Average Slope of Net Lot Area	b. Average slope between 10% and 30%	A reduction in allowable floor area by one and one-half percent (1.5%) for each percent of slope over 10%. Slope adjustment factor = $(1 - (1.5 \times (\text{average slope of net lot area} - 0.1)))$	13%	4.5%
			14%	6.0%
			15%	7.5%
			16%	9.0%
			17%	10.5%
			18%	12.0%
			19%	13.5%
			20%	15.0%
			21%	16.5%
			22%	18.0%
			23%	19.5%
			24%	21.0%
			25%	22.5%
			26%	24.0%
			27%	25.5%
			28%	27.0%
			29%	28.5%
	c. Average slope > 30%	Allowable floor area shall be reduced by a constant 30% Slope adjustment factor= $(1 - 0.3)$	30%	30.0%
3. Additional Regulations for Lots Within Clustered Subdivisions where Land is Reserved for Common Open Space				
a. Lot Area for calculating FAR	May count a proportionate share of the reserved private open space to arrive at lot area for purposes of calculating FAR.			
b. Maximum FAR prior to slope consideration	No developable lot in a cluster development can exceed forty-five-percent floor area ratio, prior to applying the slope adjustment factor, when a portion of the private open space is attributed to the lot area for calculating FAR.			

Table 19.40.060: Building Development Regulations				
c. Average slope of lot	Calculated on the developable lot only.			
B. Height of Buildings and Structures	Limited to 30 feet			
C. Setbacks				
	First Floor	Second Floor	Habitable Third Floor (or portions of structures taller than 20 feet)	
1. Front-yard				
a. Slope ≤ 20%	20 feet	Driveway and garage must be designed to enable vehicles to park off-street	25 feet	25 feet
b. Slope > 20%	10 feet		25 feet	25 feet
2. Side-yard				
a. Interior Side	10 feet	15 feet	20 feet	
b. Street Side on Corner Lot	15 feet	15 feet	20 feet	
3. Rear-yard	20 feet	25 feet	25 feet	
D. Second Story Decks and Patios Minimum Setbacks				
1. Front Yard	-	17 feet	17 feet	
2. Side Yard	-	15 feet	15 feet	
3. Rear Yard	-	20 feet	20 feet	
E. Downhill Facing Elevation				
1. Second Story Downhill Facing Wall Plane Offset				
a. Offset from First Floor Downhill Wall Plane	i. Average of 7 feet 6 inches for 75% of the second story downhill facing wall plane shall be setback and ii. Not less than five feet. iii. The remaining 25% may not extend past the first story wall plane.			

Table 19.40.060: Building Development Regulations	
b. Multiple Downhill Facing Wall Planes	Offset shall apply only the primary setback affected.
c. Offset from First Floor Roofed Porches	<p>i. Offset may be measured from the outside perimeter of first-story roofed porches.</p> <p>ii. Roof of the porch must match, in pitch and style, the roof of the main structure.</p> <p>iii. Porch must be at least 5 feet in width and extend the length of the wall on which it is located.</p>
2. Maximum Wall Height on Downhill Elevation	15 feet
F. Permitted Yard Encroachments	
1. Extension of a Legal Non-conforming Wall Plane for structures not located within a prominent ridgeline site line	<p>a. Where a building legally constructed according to existing first floor yard and setback regulations at the time of construction encroaches upon present required first floor setbacks, one encroaching side of the existing structure may be extended along existing building lines.</p> <p>b. Only one such extension shall be permitted for the life of the building.</p> <p>c. Encroachments into a required yard which are the result of the granting of a variance may not be further extended.</p> <p>d. Further encroachment into a required setback is not allowed. I.e., a non-conforming setback may not be further reduced.</p> <p>e. In no case shall any wall plane of a first-story addition be placed closer than three feet to any property line.</p>
2. Architectural Features	<p>a. May extend into a required yard a distance not exceeding three feet.</p> <p>b. No architectural feature, or combination thereof, whether a portion of a principal or accessory structure, may extend closer than three feet to any property line.</p>
G. Accessory Structures (including attached patio covers)	As allowed by Chapter 19.100, Accessory Buildings/Structures
H. Design Standards	

Table 19.40.060: Building Development Regulations	
1. Building and Roof Forms	
a. Natural Contours	Building shall follow as closely as possible the primary natural contour of the lot.
b. Building Mass and Roof Pitches	The main building mass shall be on the upslope side of the building and the roof pitches shall trend downslope.
c. Second Story Dormers	Permitted within the second story setbacks as long as they are minor in shape and size.
d. Downhill Elevation of main structure	Shall have a minimum of four offset building and roof elements to provide varied building forms to produce shadow patterns which reduce the impact of visual mass.
e. High Wall Planes	Wall planes exceeding one story or 20 feet in height, whichever is more restrictive, shall contain architectural elements in order to provide relief and to break up expansive wall planes.
2. Colors	
a. Natural Earth Tones	All structures on the lot shall use natural earth tone and/or vegetation colors which complement the natural surroundings. Natural earth-tone and vegetation colors include natural hues of brown, green and shades of gray.
b. Reflectivity Value	Shall not exceed 60 on a flat surface
3. Outdoor Lighting	All outdoor lighting shall meet the requirements in Chapter 19.102.
a. Tennis Court and Other Recreational Purposes	High intensity lights not permitted.
b. Motion-activated Security Lights	1. Shall not exceed 100 watts and 2. Must be shielded to avoid all off site intrusion.
c. Other lighting	Must be directed to meet the particular need.
I. Geologic and Soils Reports	
	A geological report prepared by a certified engineering geologist and a soils report prepared by a registered civil engineer qualified in soils mechanics by the State shall be submitted prior to issuance of permits for construction of any building or

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Table 19.40.060: Building Development Regulations	
1. Applicability	<p>structure which:</p> <ul style="list-style-type: none"> a. Is located on property in an RHS zoning district which has been designated by the General Plan to be within a geological hazard area; and b. Where an addition, alteration or repair of an existing building or structure include at least one of the following: <ul style="list-style-type: none"> i. The improvements include increasing the occupancy capacity of the dwelling such as adding a bedroom or secondary unit, or ii. The cost of the completed addition, alteration or repairs will, during any period of twelve months, exceed twenty-five percent of the value of the existing improvements as determined by the building official based on current per foot value of the proposed structure to the existing structure's value on a parcel of property. For the purposes of this section, the value of existing improvements shall be deemed to be the estimated cost to rebuild the improvements in kind, which value shall be determined by the building official.
2. Content of Reports	<p>These reports shall contain, in addition to the requirements of Chapter 16.12 of this code, the following:</p> <ul style="list-style-type: none"> a. All pertinent data, interpretations and evaluations, based upon the most current professionally recognized soils and geologic data; b. The significance of the interpretations and evaluations with respect to the actual development or implementation of the intended land use through identification of any significant geologic problems, critically expansive soils or other unstable soil conditions which if not corrected may lead to structural damage or aggravation of these geologic problems both on- and off-site; c. Recommendations for corrective measures deemed necessary to prevent or significantly mitigate potential damages to the proposed project and adjacent properties or to otherwise insure safe development of the property; d. Recommendations for additional investigations that should be made to insure safe development of the property; e. Any other information deemed appropriate by the City

Table 19.40.060: Building Development Regulations	
	Engineer.
3. Incorporation of Recommendations	All building and site plans shall incorporate the above-described corrective measures and must be approved by the City Engineer, prior to building permit issuance.
J. Private Roads and Driveways	
1. Pavement Width and Design	The pavement width and design for a private road or common driveway serving two to five lots and a single-lot driveway shall comply with development standards contained in the Hillside Subdivision Ordinance, Chapter 18.52 of this code.
2. Reciprocal Ingress/Egress Easement and Reciprocal Maintenance Agreement	The property owner for a lot served by a private road or common driveway shall, prior to issuance of building permits, record an appropriate deed restriction guaranteeing the following, to adjoining property owners who utilize the private road or common driveway for the primary access to their lot(s): a. Reciprocal ingress/egress easement, and b. Participation in a reciprocal maintenance agreement.
K. Solar Design	The setback and height restrictions provided in this chapter may be varied for a structure utilized for passive or active solar purposes, provided that no such structure shall infringe upon solar easements or adjoining property owners. Variation from the setback or height restrictions of this chapter may be allowed only upon issuance of an Administrative Conditional Use Permit subject to Chapter 19.12.

[19.40.070 -19.60.050 – No Change]

19.60.060 Development Standards.

Table 19.60.060 sets forth the rules and regulations pertaining to the development of property located in the General Commercial (CG) zoning district.

Table 19.60.060: Development Standards	
A. Lot Area and Coverage	No minimum lot area or coverage. Must be in conformance with the General Plan or applicable Specific Plan. Must have sufficient area to satisfy off-street parking and loading requirements contained in this title.
B. Height of Buildings and Structures	30 feet unless otherwise permitted by the General Plan or applicable Specific Plan.
C. Required Setbacks for Buildings and Enclosed Patio/Atrium Space	
1. Front Yard	<p>Established based upon special policies contained in the General Plan and/or applicable specific plan to:</p> <ul style="list-style-type: none"> - Insure sufficient space to provide adequate light, air and visibility at intersections; - Assure general conformity to yard requirements of adjacent or nearby zones, lots or parcels; and - Promote excellence of development.
2. Minimum Side and Rear Yard	No side or rear yard setback required unless lot abuts any residential or agricultural- residential zone in which case the following regulations apply:
a. Side Yard Setback	
i. Interior Side	12 feet, or a total setback equal to one foot of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
ii. Street Side of Corner Lot	12 feet
b. Rear Yard Setback	20 feet, or a total setback equal to one and one-half feet of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
D. Noise Standards –	
1. New Construction and uses approved as a Conditional Use that have a high	

Table 19.60.060: Development Standards	
probability of generating noise that adjoin residential districts shall be:	
a. Exterior Walls	Designed to attenuate all noise emanating from interior retail space.
b. Loading Docks and Doors	Located away from residential districts. Required Fire Doors are excluded.
c. Mechanical and other equipment	Air conditioning, exhaust fans, and other mechanical equipment shall be acoustically isolated to comply with the noise ordinance
d. Sound Wall	Install a minimum eight-foot-high masonry sound wall on or adjacent to the common property line
e. Acoustical Engineer	Certified by an acoustical engineer that the above sound attenuation measures comply with the intent of the regulation and the City's community noise ordinance
2. In addition to (1) above, retail structures in a mixed use residential development shall employ noise attenuation techniques recommended by an acoustical engineer to comply with the community noise ordinance.	
E. Lighting – New lighting fixtures for any new site construction or building improvements shall meet the requirements in Chapter 19.102.	
<u>1. Exterior Lighting</u>	
<u>2. Off-site Glare</u>	<u>Light fixtures shall be oriented and designed to preclude any light and direct glare to adjacent residential properties. No direct off-site glare from a light source shall be visible above three feet at a public right of way.</u>
<u>3. Parking Lots, Sidewalks and other areas accessible to pedestrians and automobiles</u>	<u>Shall be illuminated with a uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:</u>
<u>a. Average horizontal maintained illumination</u>	<u>Should be between one and three foot-candles</u>
<u>b. Maximum to Minimum Ratio</u>	<u>Should be between 6:1 and 10:1</u>
<u>4. Critical Area Illumination</u>	<u>Such as stairways, ramps and main walkways</u>

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Table 19.60.060: Development Standards	
	<u>may have a higher illumination</u>
<u>5. Areas around Automatic Teller Machines</u>	<u>Shall meet minimum standards required by the State of California Business and Professions Code.</u>
F. Landscaping Plan	Shall be designed to provide an effective year-round landscaping screen in the setback area adjoining a residential property. The intent of the plan is to screen the building from the rear yard of a residence within five years.
G. Utilities	<p>1. The following amenities and utilities shall be installed subject to the specifications of the subdivision ordinance:</p> <ul style="list-style-type: none"> a. All utilities including water, gas, sanitary and storm sewers, underground power systems, and b. Amenities including, lighting electroliers, curbs, gutters, streets and sidewalks and c. Connections to main systems shall be installed subject to the specifications of the subdivision ordinance of the City. <p>2. All wires, pipes, cables, utilities and connections shall be placed in underground or subsurface conduits subject to the specifications of the subdivision ordinance of the City.</p> <p>3. Underground vaults, or, well screened areas, if underground vaults are deemed to be infeasible by the City Engineer and the Director of Community Development, must be provided for the installation of the necessary utilities.</p>
H. Mechanical Equipment	Air conditioning, exhaust fans, and other mechanical equipment shall be visually screened.

[Chapter 19.64 -19.72.040 – No Change]

19.72.50 **Restrictions Related to Emissions.**

No use shall be allowed which is or will be offensive by reason of the emission of dust, gas, smoke, noise, fumes, odors, bright lights, vibrations, nuclear radiation, radio frequency interference, or otherwise. Every use shall be operated in such manner that the volume of sound inherently and recurrently generated shall not exceed sixty-five decibels during the day and fifty-five decibels at night, at any point on the property line on which the use is located, or sixty decibels during the day and fifty-five decibels at night, at any point on the property line on which the use is located where such property line abuts property that is zoned for residential purposes. Noise and sounds shall be appropriately muffled in such manner so as not to be objectionable as to intermittent beat, frequency, or shrillness.

Provided further that prior to issuance of a building permit the Building Inspector may require evidence that adequate controls, measures, or devices have been provided to insure and protect the public interest, health, comfort, convenience, safety and general welfare from such nuisances.

Emissions of noise, vibrations, radiation, light, smoke, fumes or gas, odor, dust and toxic waste shall be limited to quantities indicated in this section. The limitations shall apply at any point outside the boundary of each lot in an ML zone, the boundary assumed, for the purpose of this title, to extend in a vertical plane and below ground. In case of further subdivision or lot split, the limitations shall not apply outside any resulting lot.

A. Vibration. Vibrations in the nonaudible range shall not be of such intensity that they can be perceived without instruments.

B. Radiation. Electromagnetic radiation shall not result in perceptible disturbance of television or radio reception.

C. Light. In addition to the lighting standards in Chapter 19.102, all development shall meet the following light standards:

1. The intensity of light at the boundary of each lot shall not exceed seventy-five footlamberts from a source of direct light, or one hundred footlamberts from a source of reflected light.

2. The intensity of light at the boundary of an industrial zone, or an industrial area in a planned development (P) zone, shall not exceed fifty footlamberts from a source of direct light, or seventy-five footlamberts from a source of reflected light.

3. In the event there is a conflict with Chapter 19.102, the less stringent lighting standards shall apply.

D. Smoke. No emission shall be permitted at any point, from any chimney or otherwise, of visible grey smoke of a shade equal to or darker than No. 1 on the Ringelmann Smoke Chart, as published by the U.S. Department of Interior, Bureau of Mines, Informational Circular 8333, May 1967; except that a visible grey smoke of

a shade equal to No. 2 on the Ringelmann Smoke Chart may be emitted for four minutes in any thirty minutes.

E. Hazardous and Toxic Materials. The use, handling, storage, and transportation of toxic and hazardous materials shall comply with the provisions of the California Hazardous Materials Regulations (California Administrative Code, Title 22, Division 4). The use, storage, manufacture and disposal of hazardous materials shall be regulated and monitored according to the standards established by the U.S. Environmental Protection Agency (EPA), the California Environmental Protection Agency (Cal/EPA) and any delegated government agencies.

F. Odor. No emission of odorous gases or other odorous matter shall be permitted in such quantities as to be readily detectable without the aid of instruments at the boundaries of the lot or in such concentrations as to create a public nuisance or hazard beyond such boundaries. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail. There is established as a guide in determining such quantities of offensive odors, Table III, Odors Thresholds, in Chapter 5 of Air Pollution Abatement Manual, copyrighted in 1951 by Manufacturing Chemists Association, Inc., Washington, D.C.

G. Fly Ash, Dust, Fumes, Gases and Other Forms of Air Pollution. No emission shall be permitted which can cause any damage to health, animals, vegetation or other forms of property, or that will result in the collection of heavy gases at ground level. No emission shall be permitted in excess of fifty percent of the standards specified in Table I, Chapter 5 of Industrial Hygiene Standards, Maximum Allowable Concentrations of the Air Pollution Abatement Manual, copyrighted in 1951 by Manufacturing Chemists Association, Inc., Washington, D.C. In no event shall any emission, from any chimney or otherwise, exceed one-tenth of a grain (0.1 grain) per cubic foot of the conveying gas. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of five hundred degrees Fahrenheit and fifty percent excess air.

H. Wastes. No discharge shall be permitted into any public street or sewer, private sewage disposal system, stream, body of water, or into the ground, of any materials of such nature or temperature as can contaminate any water supply, interfere with bacterial processes in sewage treatment, corrode or otherwise damage sewers or pipelines, or otherwise cause the emission of dangerous or offensive elements, except in accordance with standards approved by the California Environmental Protection Agency (Cal/EPA) and any other governmental agency having jurisdiction over the activities.

[19.72.060 – Chapter 19.100 – No Change]

19.102 ~~BIRD-SAFE DEVELOPMENT~~ GLASS AND LIGHTING STANDARDS

19.102.010 Purpose

19.102.020 Applicability of regulations

19.102.030 Bird-safe Development Requirements

19.102.040 Outdoor Lighting Requirements.

19.102.010 Purpose

The purpose of this chapter is to regulate design and construction of structures and accessory elements in all zoning districts to protect the natural environment, particularly enhancing bird-safety and reducing light pollution. This Chapter establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions. This Chapter also establishes regulations to reduce light pollution, which is known to contribute to bird mortality, reduced visibility of the night sky, and adverse impacts to human health.

19.102.020 Applicability of regulations

Whenever an applicant is required to obtain a building permit or a Permit pursuant to Title 19, or whenever exterior lighting is added, ~~or~~ replaced, or altered (whether temporary or permanent), the project shall meet the requirements of this Chapter. The following table indicates the applicability of regulations by type of project in which exterior glazing or interior or exterior lighting is added, replaced, or altered:

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030 <u>and 19.102.040</u>
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 <u>and 19.102.040</u> apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102. 030-(D) <u>040</u>
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (DE) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102. 030-(D) <u>040</u>
F. Exemptions	See Sections 19.102.030 (B)(4), <u>C(2)</u> and (D)(14) <u>19.102.040 (D)</u>

19.102.030 Bird-safe Development Requirements

- A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:
1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
 2. Cross sections, if required;
 3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), (D) and (E); and
 4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.
- B. Fenestration and Glass Requirements
1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
 2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must have high color contrast with the glass, and be applied to the outermost glass. Prior to publication of the list, the Planning Department may review information available from interest groups, such as the National Audubon Society.
 3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
 4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers; and
 - b. First floor commercial storefronts, up to a height of 15'.

C. Non-residential Indoor Lighting Requirements:

1. Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.

2. Businesses that involve the direct retailing of goods to the general public may have downward directed, low voltage, and fully shielded lighting for window displays at any time when there is a display of such goods.

C. Outdoor Lighting Requirements:

1. ~~All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights of way to avoid light trespass, except:~~
 - a. ~~Low voltage Landscape Lighting: Low voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right of way.~~
 - b. ~~Architectural Features: Uplighting may be used to highlight special architectural features.~~
 - c. ~~Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.~~
 - d. ~~Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.~~
2. ~~Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).~~
3. ~~Parking lots, sidewalks, and other pedestrian paths shall meet the requirements in Chapter 19.72, 19.60 and 19.124, as applicable. In the event there is a conflict with Chapter 19.72, the less stringent light standards shall apply.~~
4. ~~Exterior lighting shall be fully extinguished or motion sensor operated after 11:00 p.m., or when people are no longer present in exterior areas, whichever is later, except for:~~
 - a. ~~Lights required to remain on in compliance with the California Building Code.~~
 - b. ~~Lighting of an appropriate intensity allowed in conjunction with uses permitted to operate past 11:00 p.m. with a conditional use permit.~~
 - c. ~~Outdoor solar powered pathway lights that do not exceed 25 lumens.~~
5. ~~Automated control systems, such as motion sensors and timers, shall be used to ensure that outdoor lighting extinguishes 10 minutes after motion activation and turns off when sufficient daylight is available.~~
6. ~~Security lighting, necessary to protect persons and property, shall be programmable, motion sensor activated, and may illuminate a perimeter,~~

~~such as a fence line, if such lights do not result in light trespass, and do not use lamps that exceed 100 watts incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).~~

- ~~7. In addition to all other applicable standards, lighting fixtures in the ceiling of service station canopies shall be fully recessed in the canopy, and no light fixtures or illumination, other than approved signage, shall be allowed on top of the fascia of such canopies.~~
- ~~8. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.~~
- ~~9. The use of High Intensity Discharge lighting, spot lighting, flood lighting, or similar lighting is prohibited.~~
- ~~10. The following are exempt from subsection 19.102.030 (D): lighting in the right of way, holiday seasonal lighting between October 15 and January 15 of each year, temporary construction or emergency lighting, temporary lighting associated with a special event, and lighting required pursuant to the Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such required lighting shall additionally comply with the requirements of this Chapter.~~

D. Bird-safe Design Requirements. All projects subject to bird-safe development requirements shall:

1. Avoid the funneling of flight paths along buildings or trees towards a building façade.
2. Avoid use of highly reflective glass or highly transparent glass.
3. Not include glass skyways or walkways, balconies, freestanding glass walls, transparent building corners, glass features, or other design elements through which trees, landscape areas, water features or the sky are visible from the exterior or from one side of the transparent element to the other, if such elements are untreated.

19.102.040 Outdoor Lighting Requirements

A. Submittal Requirements: Projects subject to outdoor lighting regulations must submit the following information:

1. A site plan indicating the location of all outdoor lighting fixtures.
2. A description of each lighting fixture. This description may include, but not be limited to, manufacturer's catalog cuts and drawings (including sections if requested), lamp types, and lumen outputs.
3. Photometric plans, prepared, stamped and signed by a licensed electrical engineer, depicting the location of all outdoor lighting fixtures and building-mounted lighting fixtures and a maximum ten-foot by ten-foot grid of both

the initial and maintained lighting levels on the site, including any impact on adjacent properties.

4. The project lighting plan shall indicate how lighting has been coordinated with any associated landscaping plan to prevent site planning conflicts.
5. Any other information the Director may determine is necessary to ensure that the proposed lighting is in compliance with the provisions of this Chapter.
6. Any of the above requirements may be waived by the Director of Community Development when determined to be unnecessary for determining compliance with the provisions of this Chapter.

B. Outdoor Lighting Standards

1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
 - e. String Lighting: String Lighting may be used in compliance with Section 19.102.040 (B) (12).
2. Illumination Levels
 - a. No light, combination of lights, or activity shall cast light exceeding one (1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source, except if two adjacent properties are non-residential, or function as a shopping center, and agree to coordinate lighting.
 - a.b. No direct off-site glare from a light source shall be visible above three feet at a public right-of-way.
 - c. The maximum light intensity on a site shall not exceed a maintained value of ten foot-candles, when measured at finished grade.
 - b.d. Parking lots, sidewalks and other areas accessible to pedestrians and automobiles on properties with four or more units, mixed-use

PROPOSED REGULATIONS

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FROM CHAPTER 19.60

- development, and non-residential development shall be illuminated with uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:
- i. Average horizontal maintained illumination should be between one and three foot-candles
 - ii. Maximum to minimum ratio should be between 6:1 and 10:1
 - e. Critical areas of illumination such as stairways, ramps and main walkways may have a higher illumination.
3. All light sources shall have a maintained correlated color temperature of 3,000 Kelvin or less.
4. All outdoor lighting shall be fully extinguished or be motion sensor operated by 11:00 p.m. or when people are no longer present in exterior areas, whichever is later, except for:
- a. Critical lighting pursuant to section 2 (e) above;
 - b. Any lighting at building entrances, parking areas, walkways, and driveways area required to remain illuminated after 11:00 p.m. by the California Building Code or state law;
 - c. Lighting of an appropriate intensity, allowed in conjunction with uses that are permitted to operate past 11:00 p.m., with a conditional use permit; and
 - d. Outdoor solar powered pathway lights that are 25 lumens or less.
 - e. Lighting that illuminates a pedestrian pathway (examples include bollard, in-place step, or building mounted), provided that such lighting is a maximum height of four (4) feet above the pathway, fully shielded, and downward directed.
5. Automated control systems, such as motion sensors and timers, shall be used to meet the outdoor lighting requirements.
- a. Photocells or photocontrols shall be used to extinguish all outdoor lighting automatically when sufficient daylight is available.
 - b. All lighting activated by motion sensors shall extinguish no more than 10 minutes after activation.
 - c. Automated controls shall be full programmable and supported by battery or similar backup.
6. Security lighting may be provided when necessary to protect persons and property. When security lighting is utilized the following standards shall apply, in addition to other applicable standards:
- a. Security lighting shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Code.
 - b. Floodlights shall not be permitted.
 - c. Security lights intended to illuminate a perimeter, such as a fence line, are permitted only if such lights do not result in light trespass.

- d. Motion-activated security lights shall not use lamps that exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1,600 lumens (whichever is less).
- 7. Lighting design standards:
 - a. Lighting fixtures must be of a design that complements building and landscaping design.
 - b. Lighting fixtures shall be appropriate in height, intensity, and scale to the use they are serving. Parking lot lights in non-residential zones shall not exceed a height of 21 feet, and any wall-mounted lights shall not exceed a height of 12 feet, measured from the adjacent grade to the bottom of the fixture.
- 8. Service Station Canopies: The following standards shall apply to service station canopy lighting, in addition to all other applicable standards:
 - a. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy.
 - b. Light fixtures shall not be mounted on top of the fascia of such canopies.
 - c. The fascia of such canopies shall not be illuminated, except for approved signage in compliance with Chapter 19.104.
- 2.9. Areas around Automatic Teller Machines shall meet minimum standards required by the State of California Business and Professions Code.
- 10. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.
- 11. Lighting in ML zones shall additionally comply with the standards in Chapter 19.72.
- 12. String Lighting Regulations:
 - a. String lighting is different from holiday and/or seasonal lighting, and in addition to subsections (b) and (c) as applicable below, shall not be:
 - i. Blinking and/or chasing lights
 - ii. Secured with materials or in a manner that will puncture the skin or restrict the growth of any living landscape feature.
 - iii. Attached to a fence in a manner that permits light trespass to adjacent property.
 - iv. More than a 2.8-watt incandescent bulb system or equivalent LED system and emit no more than 42 lumens (whichever is less).
 - b. Residential Areas: String lighting is permitted subject to the following requirements:
 - i. It shall not illuminate more than fifty (50) percent of the rear yard or 500 sq. ft., whichever is more restrictive.
 - ii. It shall not be visible from the City right-of-way.
 - iii. It shall be used primarily to illuminate patio areas.
 - iv. It shall be extinguished by 11:00 p.m.

c. Commercial and Mixed-Use Commercial Areas: String lighting may be permitted subject to the following requirements, with approval of the Director of Community Development:

- i. Any development or property is permitted to submit one application for string lighting, which shall include all uses of string lighting on the development or property.
- ii. It shall not illuminate an area greater than:
 1. Five (5) percent of the building(s) footprint of a shopping center, and,
 2. Fifteen (15) percent for a freestanding commercial building not part of a shopping center.
- i. It is limited to the lighting of the following:
 1. Living landscape features (trees, shrubs, etc.), if used in combination with other highlighting or pedestrian lighting fixtures within the immediate area, and,
 2. Designated outside dining or display areas.

A.C. Prohibited Lighting: The following types of lighting are prohibited:

1. Outdoor lighting that blinks, flashes, or rotates except those that may be permitted pursuant to Chapter 10.26.
2. Outdoor flood lights that project above the horizontal plane.
3. Lighting that unnecessarily illuminates any other lot or substantially interferes with use or enjoyment of that lot.
4. High-intensity discharge lighting for recreation courts on private property.
5. Spotlights.

B.D. Exemptions: The following types of lighting are exempt from the lighting requirements of the Chapter:

1. Lighting within the public right-of-way and public parks
2. Permitted lighting for signs
3. Temporary construction or emergency lighting
4. Short-term lighting authorized by a special events permit
5. Holiday seasonal lighting during the period of October 15 through January 15 of each year
6. Required lighting to comply with Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such lighting shall additionally comply with the requirements of this Chapter.

[Chapter 19.104 -19.124.030 – No Change]

19.124.040 Regulations for Off-Street Parking.

Table 19.124.040 sets for the rules and regulations for Off-Street Parking.

Table 19.124.040 - Regulations for Off-Street Parking		
A.	Parking Ratio and Dimensions	Table 19.124.040(A) defines the minimum and maximum required number of parking spaces by size and type for specific zoning districts and use within districts.
B.	Residential Lots Fronting on Public or Private Streets	If no on-street parking is available, two additional off-street spaces are required.
C.	Large-Family Day Care Home	Requirements are in addition to minimum requirements of the zoning district. May be on-street, in front of provider's residence. If the provider is relying on on-street parking and the roadway prohibits on-street parking, a semi-circular driveway may be provided, subject to other provisions of the Municipal Code.
1.	Non-resident Employee Parking	Minimum of one parking space for each non-resident employee.
2.	Drop-off Parking	Minimum of one parking space with direct access to the unit, not crossing a street.
D.	Aisle Dimensions	Aisle dimension shall be as required by standard details adopted by the City Engineer and shown in Table 19.124.040(B)
E.	Loading Areas	Loading areas, truck parking spaces and parking spaces for vehicles other than automobiles shall have ample dimensions for the particular use and type of operation, and be designed as required by the City Engineer except in the case of loading areas in the OP and MP zones which are specified in Chapters 19.68 and 19.72.
F.	Planned Development Districts	The parking requirement contained in Table 19.124.040(A) functions as guidelines for projects in planned development zoning districts.
G.	Mixed-Use and Shared Parking	The minimum parking requirement for developments with more than one land use, or parking facilities being used by one or more properties, shall be determined using Table 19.124.040(C).
H.	Alternative Parking Standards	For all projects not meeting parking requirements in Table 19.124.040(A), (B) or (C), alternative parking arrangements may be approved per Section 19.124.060C

Table 19.124.040 - Regulations for Off-Street Parking		
I.	Tandem, Valet and Other Special Parking Arrangements	Tandem, Valet, and other special forms of parking may be approved per Section 19.124.060C.
J.	Minimum Stall Dimensions in Parking Structures	Uni-size space located in a parking garage or other enclosed parking structure intended for non-residential uses is eight and one-half (8.5) feet by eighteen (18) feet.
1.	Space adjacent to a wall or structure on one side	Nine feet by eighteen feet.
2.	Space adjacent to a wall or structure on both sides	Nine and one-half feet by eighteen feet.
K.	Accessible Parking for the Disabled	The accessible parking requirement for the disabled is embodied in Section 1129 B of the California Building Code, as amended, is hereby incorporated into this chapter by reference.
L.	Heavy Equipment	<ol style="list-style-type: none"> May only be stored within entirely enclosed structures or behind six-foot-high fencing in interior side yard and rear yard setback areas; and In no case shall these items be visible from the street even when placed in permitted areas. The provisions in L(1) and L(2) shall not apply to heavy equipment stored on site that is being used for construction or installation of improvements with a valid building or grading permit.
M.	Other Regulations	Outlined in Title 11 of the Municipal Code.
N.	Landscape Requirements	Applicable to all new centers and centers with a twenty-five percent or greater increase in floor area or a twenty-five percent or greater change in floor area resulting from use permit or architectural and site approval within twelve months shall be required to meet the following minimum landscape requirements. However, the Planning Commission and/or City Council may recommend additional landscaping.
		As required in Table 19.124.040 (N)(1) below:
		Table 19.124.040(N)(1):

Table 19.124.040 - Regulations for Off-Street Parking			
		Size of Parking Facility (Sq. Ft.)	Minimum Required Interior Landscaping (% of Total Parking Interior Facility Area)
1.	Minimum Interior Landscaping	Under 14,999	5%
		15,000 - 29,000	7.5%
		30,000 plus	10%
2.	Parking Lot trees	<p>i. Shall be planted or exist at a rate of one tree for every five parking stalls for every ten spaces in a single row.</p> <p>ii. Only fifty percent of the trees located along the perimeter of the parking area may count towards the required number of trees.</p> <p>iii. A parking facility with larger trees with high canopies may be allowed to increase the number of parking stalls (up to 10 parking stalls per tree) depending on the size of the tree and canopy size.</p>	
3.	Landscape Planter Strip	At least three feet wide by the length of the parking space.	
4.	Placement of Trees	Shall be offset to prevent vehicles from bumping into them. The Planning Department shall review and approve final tree locations.	
5.	Landscape Buffer (inclusive of curbing and vehicle overhang allowance)	<p>i. When parking lot is adjacent to a street, landscape buffer = ten feet wide</p> <p>ii. When adjacent to a side or rear property line, landscape buffer = five feet wide,</p> <p>iii. Buffer between double loading stalls = four feet.</p>	

Table 19.124.040 - Regulations for Off-Street Parking		
6.	Flat and Raised Curbs, Wheel Stops and Overhang into landscaped areas	<p>i. Landscape areas shall be enclosed by a six-inch wide continuous flat curb allowing parking lot run off into landscaping area, infiltration islands or swales.</p> <p>ii. Concrete wheel stops shall be placed on top of the flat curb and shall be provided at a rate of one per two stalls.</p> <p>iii. Landscape planter strips at the end of the parking aisles adjacent to a driveway shall be enclosed by a six-inch raised concreted curb with drainage outlets to help delineate the driveways or aisles.</p> <p>iv. Parking stall length may be decreased by up to two feet but must provide an equivalent vehicle overhang into landscaped areas.</p>
7.	Planter Strips	<p>i. Curbed planter strips shall be provided at the end of each parking aisle.</p> <p>ii. Landscape planter strip shall be at least three feet wide and the length of a parking stall.</p>
8.	Pedestrian Paths	Where appropriate, provision shall be made to ensure that adequate pedestrian paths are provided throughout the parking lot/landscaped areas.
9.	Minimum Tree Size	Trees require to meet any section of this title shall be a minimum of fifteen gallon size.
10.	Tree Protection	All trees shall be protected by wheel stops, curbing, bollards or other similar barriers as appropriate.
11.	Maintenance	All landscaping shall be continuously maintained.
O.	Swales and Permeable Surfaces	In order to reduce urban runoff and provide water quality benefits in parking lots, all new parking lots or any substantial alterations to existing parking lots shall incorporate the following design measures to the maximum extent possible:
1.	Bio-swales	Incorporate bio-swales in the required landscaping buffers.

Table 19.124.040 - Regulations for Off-Street Parking		
a.	Standards for bio-swales	<p>i. Longitudinal slope of the swale shall be between one percent and five percent.</p> <p>ii. Swales of greater than three percent may be required to install check dams to reduce velocity through swale.</p> <p>iii. Side slope shall not exceed 3:1 (horizontal:vertical).</p> <p>iv. All swales shall be required to provide an adequate under-drain system to prevent ponding. Swales shall be designed to eliminate any ponding of water for more than forty-eight hours.</p>
2.	Permeable surfaces	Use permeable or semi-permeable materials for the parking stalls
P.	Bicycle Parking	Bicycle parking shall be provided in multi-family residential developments and in commercial districts. In commercial districts, bicycle parking shall be conveniently located and adjacent to on-site bicycle circulation pedestrian routes. The bicycle parking facilities shall be one of the following three classification types:
1.	Class I Facility	These facilities are intended for long-term parking and are intended to protect the entire bicycle or its individual components and accessories from theft. The facility also protects the cycle from inclement weather, including wind driven rain. The three design alternatives for Class I facilities are as follows:
a.	Bicycle Locker	A fully enclosed space accessible only by the owner or operator of the bicycle. Bicycle lockers must be fitted with key locking mechanisms.
b.	Restricted Access	Class III bicycle parking facilities located within a locked room or locked enclosure accessible only to the owners and operators of the bicycle. The maximum capacity of each restricted room shall be ten bicycles. In multiple family residential developments, a common locked garage area with Class II parking facilities shall be deemed restricted access provided the garage is accessible only to the residents of the units for whom the garage is provided.

Table 19.124.040 - Regulations for Off-Street Parking		
c.	Enclosed Cages	A fully enclosed chain link enclosure for individual bicycles, where contents are visible from the outside, which can be locked by a user provided lock. This facility may only be used for multiple family residential uses.
2.	Class II Facility	<p>i. Intended for short term parking. A stationary object which the user can lock the frame and both wheels with a user provided lock.</p> <p>ii. The facility shall be designed so that the lock is protected from physical assault.</p> <p>iii. A Class II facility must accept U-shaped locks and padlocks.</p> <p>iv. Class II facilities must be within constant visual range of persons within the adjacent building or located at street floor level.</p>
3.	Class III Facility	<p>i. Intended for short-term parking. A stationary object to which the user may lock the frame and both wheels with a user provided cable or chain and lock.</p> <p>ii. Spacing of the bicycle units shall be designed for a handlebar width of three feet, distance from bottom of wheel to top of handlebar of three feet and six inches and a maximum wheel-to-wheel distance of six feet.</p>
Q.	Parking Lot and Structured Parking Lighting	New lighting fixtures for any new site construction shall meet the following requirements, in addition to the requirements of Chapter 19.102:
1.	Light Color	All lighting shall be a white type light either metal halide or a comparable color corrected light unless otherwise approved as part of a development plan for uniformity, not allowing any dark areas in the parking lot.
2.	Lighting Glare	<p>i. The light fixtures shall be oriented and designed to preclude any light and direct glare to adjacent residential properties.</p> <p>ii. No direct off-site glare from a light source shall be visible above three feet at a public right-of-way.</p>
3.	Lighting Intensity	Parking lots, sidewalks and other areas accessible to pedestrians and automobiles shall be illuminated with a uniform and adequate intensity. Typical standards to

Table 19.124.040 - Regulations for Off-Street Parking		
		achieve uniform and adequate intensity are:
a.	Average Horizontal Maintained Illumination	Between one and three foot-candles
b.	Average Maximum to Minimum Ratio	Should be generally between six and ten to one
c.	Minimum Intensity above Parking Lot Surface	Minimum three foot-candles vertically above the parking lot surface shall be maintained.
4.	Critical Areas	Such as stairways, ramps and main walkways may have a higher illumination.
<u>5.</u>	<u>Automatic Teller Machines (ATM)</u>	<u>Lighting around automatic teller machines shall meet minimum standards required by the State Business and Professions Code.</u>
5.	Shatter Resistant Lenses	Shatter resistant lenses should be placed over the light to deter vandalism.
6.	Underground and Structured Parking Lighting	i. Lighting shall utilize vandal-resistant fixtures and ii. Maintain a minimum five lux level of color-corrected lighting for maximum efficiency.
7.	Parking Garage Entrances	Portal lighting should be provided inside all parking garages entrances.

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R. Parking Space Dimension Chart. Parking space dimensions shall be as shown in Table 19.124.040(A):

Table 19.124.040(A)					
Land Use	Zones	Parking Ratio ⁽²⁾	Bicycle Parking	Bicycle Parking Class ⁽⁴⁾	Stall Dimensions ⁽³⁾
Residential					
Single-Family	R-1/RHS/A1/P	4/DU (2 garage + 2 open)			10 x 20 ea.

Table 19.124.040(A)					
Land Use	Zones	Parking Ratio ⁽²⁾	Bicycle Parking	Bicycle Parking Class ⁽⁴⁾	Stall Dimensions ⁽³⁾
Small Lot Single-family, Townhouse	P	2.8/DU (2 garage + 0.8 open)			10 x 20 ea.
Duplex	R2	3/DU (1 ½ enclosed + 1 ½ open)			10 x 20 ea.
High Density Multiple-Family,	R3/P	2/DU (1 covered + 1 open)	1 space per 2 residential units; and	Class I	9.5 x 20 ea.
High Density Multiple Story Condominium			1 space per 10 residential units	Class II	
Public/Quasi-Public/Agriculture					
Churches, Clubs, Lodges, Theaters	BQ/CG	1/4 seats +1/employee +1/special- purpose vehicle	2% of seats. Minimum two spaces	Class II	Uni-size
Schools and School Offices	BA/BQ	1/employee + 1/56 sq. ft. multipurpose room + 8 visitor spaces/school + 1/3 students at senior H.S. or college level	1 space per 5 students	Class II	Uni-size
Daycare Centers	CG	1/6.5 students			Uni-size
Martial Arts, CG Dance/Art/Music Studios, Tutorial Services, specialized schools (does not include adult tutorial schools or services)	CG	1/4 students plus 1/1 staff at any given time or 1/250 whichever is more restrictive	1 space per 5 students	Class II	Uni-size

Table 19.124.040(A)

Land Use	Zones	Parking Ratio⁽²⁾	Bicycle Parking	Bicycle Parking Class⁽⁴⁾	Stall Dimensions⁽³⁾
Agriculture	A	2 garage + 2 open			10 x 20 ea.
Sanitariums and Rest Homes	BQ	1/doctor + 1/3 employees + 1/6 beds			Uni-size
Private Recreation	FP	1/4 seats + 1/employee	1/5,000 sq. ft. Minimum two spaces	Class II	Uni-size
Gyms, Auditoriums, floor area used Skating Rinks for seating without fixed seats	BA/BQ	1/56 sq. ft. purposes + 1/employee	1/5,000 sq. ft. Minimum two spaces	Class II	Uni-size
Commercial					
Motels/Hotels/Lodging	CG	1/unit + 1/employee (2) (3)	1/20,000 sq. ft.	Class II	Uni-size
Restaurant/Bar and Nightclubs	CG	1/3 seats + 1/employee + 1/36 sq. ft. of dance floor	1/2,000 sq. ft.	Class II	Uni-size
Restaurants without Separate Bar	CG	1/4 seats + 1/employee + 1/36 sq. ft. of dance floor	1/2,000 sq. ft.	Class II	Uni-size
Restaurant - Fast Food	CG	1/3 seats + 1/employee	1/2,000 sq. ft.	Class II	Uni-size
Specialty Foods	CG	1/3 seats or 1/250 sq. ft. whichever is more	1/2,000 sq. ft.	Class II	Uni-size
Bowling Alleys	CG	7/lane + 1/employee	1/5,000 sq. ft.	Class II	Uni-size

Table 19.124.040(A)					
Land Use	Zones	Parking Ratio ⁽²⁾	Bicycle Parking	Bicycle Parking Class ⁽⁴⁾	Stall Dimensions ⁽³⁾
General	CG	1/250 sq. ft.	1/1,250 sq. ft. up to 25,000 sq. ft.	Class II	Uni-size
			1/2,500 sq. ft. between 25,000 – 50,000 sq. ft.		
			1/5,000 sq. ft. over 50,000 sq. ft.		
			1/5,000 sq. ft. Bulky Merchandise ⁽⁵⁾		
Industrial					
Manufacturing	ML	1/450 sq. ft.	1/12,000 sq. ft.	Class I	Uni-size
Office/Prototype Manufacturing	ML/OA	1/285 sq. ft.	/1,250 sq. ft. or 1/15 employees, whichever is more restrictive.	Class I	Uni-size
Office					
Corporate/ Administrative/General Multi-Tenant	CG/OP	1/285 sq. ft.	1/1,250 sq. ft. or 1/15 employees, whichever is more restrictive.	Class I	Uni-size
Medical and Dental Office	CG	1/175 sq. ft.	1/1,250 sq. ft.	Class II	Uni-size

Notes:

1. Refer to Table 19.124.040(B) for uni-size stall dimensions.
2. Refer to standard details table for requirements for handicapped parking.
3. See 19.124.040(J) for stall dimensions in parking structures.
4. See 19.124.040(P) for description of bicycle parking classes.
5. Retail space devoted to the handling of bulky merchandise such as motor vehicles, machinery or furniture, excluding grocery stores.

Table 19.124.040(B)					
Type of Parking Stall	Angle (In Degrees)	Stall Width	Aisle Width (One-Way Aisle)	Aisle Width (Two-Way Aisle)	Car Space Depth
		(A)	(B)	(B)	(C)
Uni-Size	0°	8.5	10.0	18.0	22.0
	30°	8.5	10.0	18.0	18.0
	35°	8.5	10.0	18.0	18.0
	40°	8.5	10.0	18.0	18.0
	45°	8.5	10.0	18.0	18.0
	50°	8.5	10.0	18.0	18.0
	55°	8.5	11.5	18.5	18.0
	60°	8.5	13.0	19.0	18.0
	65°	8.5	14.5	19.5	18.0
	70°	8.5	16.0	20.0	18.0
	90°	8.5	N/A	22.0	18.0

NOTES TO TABLE:

* - For handicap accessible spaces, please refer to § 1118A.4 of 1994 Uniform Building Code.

* - For further information, please refer to the Public Works Department Standard Details.

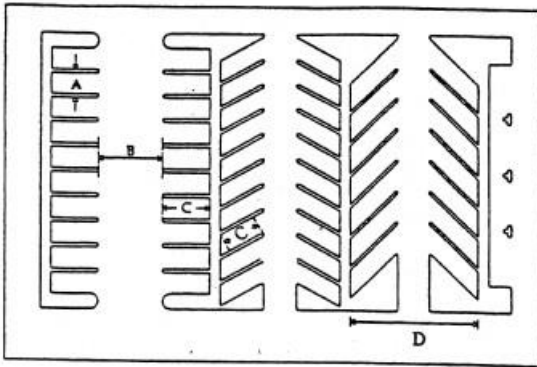


Table 19.124.040(C): Calculating Shared Parking for Mixed-Use Developments

Weekday Weekend Nighttime					
	Weekday		Weekend		Nighttime
	Daytime	Evening	Daytime	Evening	(midnight - 6:00 a.m.)
	(9:00 a.m. - 4:00 p.m.)	(6:00 p.m. - midnight)	(9:00 a.m. - 4:00 p.m.)	(6:00 p.m. - midnight)	
Residential	75%	100%	80%	100%	100%
Office/ Industrial	100%	10%	10%	5%	5%
Retail	60%	90%	100%	70%	5%
Hotel	75%	100%	75%	100%	10%
Restaurant	100%	100%	100%	100%	10%
Entertainment / Recreational	40%	100%	80%	100%	10%

1. Determine the minimum amount of parking required for each land use as though it were a separate use;
2. Multiply each amount by the corresponding percentage for each of the five time periods;
3. Calculate the column total for each time period;
4. The column total with the highest value is the parking space requirement.



CITY OF CUPERTINO

Legislation Text

File #: 20-8529, **Version:** 2

Subject: Approve the updated Commissioner Handbook

Approve the updated Commissioner Handbook and provide any input



OFFICE OF THE CITY CLERK

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: January 19, 2021

Subject

Approve the updated Commissioner Handbook

Recommended Action

Approve the updated Commissioner Handbook and provide any input

Background

The Commissioner Handbook is provided to each commissioner at their orientation to use as a guide to the roles and responsibilities of serving on the City's commissions. The Handbook is designed to serve as a reference for the basic protocols that apply generally to all commissions.

Discussion

On January 21, 2020, the City Council adopted recommendations provided by a Council Ad Hoc subcommittee to improve commission engagement with Council and to standardize protocol among commissions and committees (Attachment C). Due to these changes, updates were required to the Commissioner Handbook (Handbook). As part of the Fiscal Year 2020-2021 City Work Program, Council directed that the Handbook be updated to address the changes as well as to improve readability and user-friendliness. Recommendations directed to commissioners were incorporated into the Handbook language and the entire list of recommendations is included as an additional resource. Overall, the Handbook has been shortened from 32 pages to 10 pages, including the most pertinent information and adding links to additional resources.

The following resources have been referenced within the handbook:

- Rosenberg's Rules of Order, the official Parliamentary Procedures for City Council meetings, implemented March 5, 2020
- Rosenberg's Rules of Order Cheat Sheet
- Ethics AB1234 Certification
- Ralph M. Brown Act

- California Public Records Act
- FPPC Conflict of Interests
- City Organization Chart
- January 21, 2020 Subcommittee Recommendations Regarding Commissions
- City of Cupertino Policies and Resolutions:
 - Ethics Policy
 - Technology Use Policy (replaced Electronic Communications, Internet Access and Use, Password Policies)
 - Social Media Policy
 - Resolution Governing Recruitment Process
 - Commission Diversity Resolution

A joint commission meeting was held on November 30, 2020 where all commissioners were invited to provide feedback on the draft Handbook. There were 19 commissioners in attendance and 4 commissioners emailed their written comments. Commissioners were generally positive about the draft handbook and many appreciated the shortened version and commented that it is more user friendly. Three commissioners expressed that the number of required periodic written updates, reports, and website requirements is adding too much unnecessary work to commissioners and liaisons. Commissioners also recommended adding more training on Rosenberg's Rules of Order and Brown Act requirements. Additional training on these topics, meeting decorum, and ethics will be implemented starting this year. To supplement the training, the Handbook also links to the League of California Cities' Brown Act webpage which includes a guide and other resources.

Attachment B contains the commissioner feedback received. However, only minimal changes were made to the draft Handbook to add clarity. Language was added to page 5 section D to clarify that individual commissioners can make recommendations to Council as long as they are acting as individual citizens and not in their official capacity. A sentence regarding the future agenda items list on page 7 section E was amended to improve readability. In this section it was also clarified that commissioners should reach out to the liaison with proposals for agenda items rather than the Chair and liaison to avoid Brown Act concerns. This section was also the only section to refer to a commission's purpose as its purview, so the word was changed to "purpose" for consistency with the remainder of the document. The subcommittee recommendations and a Rosenberg's Rules of Order cheat sheet were also added to the resources section. These changes can be seen in redline in Attachment D. In addition to changes made directly to the Handbook, a section describing quasi-judicial proceedings was added to the guidance on imposed restraints for clarity.

Once approved, this Handbook will be provided to new commissioners and staff will make updates annually for factual changes such as the date and mayor's signature.

Sustainability Impact

None anticipated.

Fiscal Impact

None anticipated.

Prepared by: Astrid Robles, Management Fellow

Reviewed by: Katy Nomura, Assistant to the City Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Commissioner Handbook

B – Commissioner Feedback

C – Subcommittee Recommendations

D – Redline Draft Commissioner Handbook

COMMISSIONER'S HANDBOOK



CUPERTINO

2021

WELCOME AND ORIENTATION

Welcome and thank you for your willingness to serve as a member of a City of Cupertino Commission. Advisory bodies play an important role in City governance by assisting the City Council in addressing specific issues in detail and facilitating community decision-making.

The City of Cupertino has a number of advisory bodies, each with distinct responsibilities. As a new advisory body member, you should familiarize yourself with the documents governing your particular body including City ordinances, City Council resolutions, relevant element(s) of the General Plan, and other documents, all available from your staff liaison. Reviewing these documents will help you get a sense of your responsibilities.

This Handbook is designed to serve as a reference for the basic protocols that apply generally to all City advisory bodies. Orientation is necessarily an active process. As a new member you may want to meet with the Chair of your advisory body to get a better sense of your role and the business of the body, as well as with the staff liaison assigned to the body. Along with familiarizing yourself with your advisory body's foundational documents, you may want to review agendas and minutes from recent meetings to see what current issues have been under consideration, as well as the City Work Program to familiarize yourself with current goals.

Learning your role and developing an effective voice takes time and familiarity. We hope this Handbook will assist you towards a satisfying and productive experience. Your participation is deeply appreciated by the City Council, by city staff, and by your community. The vitality and strength of our community results from the willingness of people like you to serve.

Mayor

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THE STRUCTURE OF GOVERNMENT

A. FORM OF GOVERNMENT

The City of Cupertino operates as a general law city with a City Council-City Manager form of government where the City Council sets policy and the City Manager manages the implementation and administration of those policies.

B. CITY COUNCIL

The City Council is the governing legislative body of the City, consisting of five members elected in odd numbered years to staggered four-year terms. These councilmembers then elect the mayor and vice mayor to one-year terms. It sets goals and priorities and establishes policies. The Mayor is the presiding officer of the Council, and the official spokesperson and representative of the City.

C. CITY MANAGER AND STAFF

City Manager

The City Manager has complete responsibility and authority for the administration of the City's government. This individual is appointed by and serves at the pleasure of the Council and is the appointing authority for the City, selecting the department heads and other employees. The City Manager coordinates and directs the services of the City staff, and commissioners should not attempt to direct or prioritize work for departments or individual staff.

City Clerk

The City Clerk plays an important role for advisory bodies. The City Clerk accepts and maintains applications, processes appointments, updates membership rosters, bylaws, informational booklets, and yearly attendance records. The City Clerk is the filing officer for Statements of Economic Interests, and any other required filing as identified by the City Council and the State.

Staff

When assigned by the City Manager, staff assist and act in a technical advisory capacity to the commissions. It is not expected that every staff recommendation will be followed; however, because of the staff's technical knowledge, full consideration should be given to their recommendation. Staff are at liberty to make their recommendation to the City Council through the City Manager, even though the commission may have taken a different position. However, in these cases, the commission recommendation will be made clear to the City Council.

Staff Liaison

A staff liaison is assigned to each commission. Their main duties include facilitating meetings, preparing agendas, advising commissioners, and writing

meeting minutes. Commissioners should reach out to their liaison if they have any questions regarding matters of the commission or if they would like to contact other staff regarding official business.

D. COMMISSIONS

The primary purpose of the City's commissions is to serve as advisory bodies to Council by weighing public input and rendering recommendations to the City Council. There are times when the advisory body's recommendation will not be sustained or will be modified by the City Council. It is important to recognize this not as a rejection of the integrity of the recommendation, but as an inevitable part of the process of community decision-making. The Council has appointed commissioners as advisors to them. This underlying philosophy makes it improper for an individual commissioner, acting in their official capacity, to try to persuade the Council into the acceptance of a recommendation other than that voted by the majority of the commission. The role of a commission is to assist the City Council in the formation of policy, having been created for the purpose of advising. The scope of work, purpose, and other primary functions for each commission can be found in the City [Municipal Code Chapter 2](#).

Chair and Vice Chair

Each year, every commission will elect from its membership a Chairperson (Chair) and a vice Chairperson (Vice Chair) who serve at the pleasure of the commission for a one-year term. The Vice Chair acts in this capacity when the Chair is not available.

The Chair should:

- Maintain order of the meeting, ensure respect for all opinions, protect commissioners, staff, and the public from personal attacks.
- Keep discussion focused on the issue at hand.
- Solicit opinions from commissioners. Encourage evaluation of new, tentative, or incomplete ideas. Discourage overly dominant commissioners from having disproportionate control over the discussion.
- Attempt to reach decisions expeditiously on action items. At those times when action would be premature, guide discussion toward a timeline or framework for responsible action.
- Set meeting rules early and make sure everyone abides by them without exception.
- Set an acceptable time limit for public testimony (generally three minutes per individual and 10 minutes per group) and stick to it. At the Chair's discretion, the public can interact with the members of the commission beyond the public-comment time limit in order to facilitate better communication of the agenda item.
- Provide periodic written updates, approved by the full body, to Council regarding the status of their activities at least every six months.

COMMISSION MEMBERSHIP

A. QUORUM AND ATTENDANCE

A quorum consists of a majority of the members of the commission. A quorum is required to conduct business at any meeting whether it is a regular, adjourned, or special meeting. While it is expected that members be present at all meetings, the Chair should be notified if a member knows in advance that he/she will be absent. A member shall be considered removed from an advisory body under the following conditions:

- A member misses more than three consecutive meetings
- A member misses more than 25% of the advisory body's meetings in a calendar year ([Resolution 10-048](#))

B. VACANCIES

Vacancies are filled by appointment by the Council. Appointments made in the middle of a term are for the unexpired portion of that term. Council-appointed Alternates will automatically fill a vacancy.

C. RESIGNATIONS AND REMOVALS

If a member is unable to continue serving because of health, business requirements or personal reasons, a letter of resignation should be submitted to the City Council.

The position of any member is automatically vacated when the member ceases to meet the qualifications for office, when Council accepts the member's resignation, or when the Council so declares.

MEETINGS

A. REGULAR MEETINGS

Commissions are required to hold regular meetings open to the public as provided by the enabling ordinance. The agenda for this meeting must be posted at least 72 hours prior to the meeting.

B. ADJOURNED MEETINGS

If the business to be considered at a regular meeting cannot be completed, the commission then may designate a time and date for an adjourned meeting.

C. SPECIAL MEETINGS

A special meeting may be called by the Chair or a majority of the members with coordination with the staff liaison.

D. SUBCOMMITTEES

The Chair may appoint special subcommittees of less than a quorum of the commission who then may meet at their convenience to carry out the purpose of the subcommittee. If the subcommittee has a continuing subject matter or a regularly scheduled meeting time, it may qualify as a [Brown Act](#) committee and public notice provisions will apply.

E. AGENDAS

Each commission has a staff liaison responsible for preparing agendas in consultation with the Chair. If a commissioner or staff member intends to bring up an item for discussion or action, the item must be included on the agenda in accordance with the Brown Act. For each meeting, a date should be scheduled for the Chair and staff liaison to set the agenda. Commissioners can propose agenda items within the purpose of the commission to the staff liaison prior to the agenda setting date.

Future Agenda Setting

The staff liaison will maintain a list of future agenda items that the commission plans to discuss. The Chair, the staff liaison, or any two commissioners can add an agenda item within their purpose to the future agenda item list and it will be scheduled at the discretion of the Chair and staff liaison. To provide commissioners an opportunity to discuss whether to add an item to the future agenda item list, each regularly-scheduled agenda will include a "Future Agenda Setting" item. Once an item is added to the future agenda item list, it cannot be removed until it is discussed for removal at a regularly scheduled meeting during the item for "Future Agenda Setting." In addition, the item will not be removed if the Chair or at least two commissioners wish for the item to remain on the future agenda item list.

Staff Updates and Commissioner Activity Report

Each regularly scheduled agenda will also include a "Staff Updates and Commissioner Activity Report" item for staff to report on updates and the members to report any activities they have taken part in related to the commission since the prior regularly scheduled meeting.

F. PREPARATION FOR MEETINGS

- Thoroughly review the agenda packet, including agenda reports, and any other materials *before* the meeting. Check if you may have a conflict of interest with any of the items due to property or monetary interests. If it is unclear, the commissioner

can explain the situation to the staff liaison who can seek legal counsel from the City Attorney. For more information on conflicts of interest, please review [the Fair Political Practices Commission \(FPPC\) Conflicts of Interest Rules](#).

- Understand what action you are being called upon to take for each particular agenda item.
- Contact the Chair or your staff liaison before the meeting to clarify questions about the agenda or request further information.
- Understand the responsibilities of your commission. As a member of an advisory body you will be asked to provide recommendations to the City Council about specific issues. Keep in mind that your appointment does not empower you to supervise or direct City staff.

G. MINUTES

The approved minutes are placed on file by the City Clerk for public access. Commissions should strive to keep summary minutes as opposed to action minutes. If automatic transcription is made available to supplement official minutes, action minutes may be sufficient.

H. PROCEDURE

Commissions follow the guidelines on parliamentary procedure contained in [Rosenberg's Rules of Order](#) (Rules). These Rules outline how motions are made and the basic format for an agenda item discussion.

I. DECORUM AT MEETINGS

- Discourage outward signs of agreement or disagreement from the audience such as cheering or clapping. Such demonstrations can intimidate those wishing to express alternate views and delay the meeting. Also see Conduct of Members in the [Cupertino Ethics Policy](#).
- Limit your own comments to the issues before the commission. Avoid the appearance of straying from the subject or "grandstanding".

J. BASIS FOR YOUR DECISION

Commission decisions should be based principally on the information presented to you in the open public meeting process. If you collect pertinent information outside of the public process through a meeting with stake holders or site visits, you should share that information with your fellow commissioners in the public meeting. This sharing of information will ensure that other commissioners and members of the public have a better understanding of the rationale for your decision.

Commissioners are free to meet or refuse to meet with residents, resident groups,

developers or prospective contractors or any persons outside of the public meeting process concerning issues before the commission. If you meet with any individuals outside of the public meeting you should disclose the content of that meeting in the public meeting to again ensure that everybody is aware of the facts and have similar information upon which to base their decision.

All governmental procedures and process must follow due process and allow an affected party a right to be heard, and to present controverting fact or testimony on the question of right in the matter involved. Unfair determinations, such as bias, predetermination, refusal to hear, etc., may invalidate actions.

Keep an open mind. An objective, balanced, and receptive approach will help you assess the facets of a given issue and evaluate new ideas. When receiving written and oral public testimony it will be necessary to discern between fact and opinion, as well as between those concerns which are relevant and those which are secondary to the issue at hand. Keeping an open mind will make it easier for you to understand all sides of an issue before you make a judgment or take a position.

CITY WORK PROGRAM

The City Council approves an annual City Work Program to guide the work of the City. Prior to the first draft of the City Work Program each year, staff will reach out to the commissions to ask for recommendations of items to add. These recommendations will be provided to the City Council for consideration, but ultimately the City Council will determine the final items on the City Work Program. Commissions support City Work Program items within their scope by reviewing the items and making recommendations to City Council. Since the City Council sets the City Work Program to guide the priority efforts in the City, commission agendas should be aligned accordingly. By August 15, each commission should provide an annual report of all of the topics the commission has addressed in the prior year.

COMMUNICATIONS

A. STAYING INFORMED

Commissioners should sign up for City email notifications to stay informed of various community events and public meetings. Council encourages commissioners to attend at least two community meetings or meetings of other commissions each year.

The City uses social media outlets, surveys, email notifications, the Scene, and the City website to perform outreach for City business. For appropriate conduct on social media, see the City's [Social Media Policy](#). For questions about City outreach, speak with your staff liaison.

B. USE OF CITY EMAIL

All newly appointed City commissioners will be assigned a mandatory City email address after reviewing and signing the [Technology Use Policy](#).

As noted under the Brown Act, care should be taken with regard to emails. Never select “Reply All” to an email to all commissioners or forward an email sent to you by one commissioner to another commissioner since that would constitute a quorum. All questions and concerns should be directed to the Chair and staff liaison.

All City emails are subject to the Public Records Act and you should use your City email only to conduct City business as a commissioner. Please do not forward or reply to a City email from your personal email address. Once your term on the commission is over, your City email will be terminated.

RESOURCES

Commissioners should familiarize themselves with the following resources:

City policies relating to ethics, social media, commissions, diversity, and technology, as well as the City organizational chart, a Rosenberg’s Rules of Order cheat sheet, and guidance on imposed restraints, can be found online in the [Commission Resources folder](#).

League of California Cities

[Rosenberg’s Rules of Order, Brown Act, Public Records Act, and other resources](#)

Institute for Local Government

[Parliamentary Procedure Simplified](#)

[Ethics and Transparency](#)

Commissioner Feedback from Joint Commission Meeting 11/30/2020

Verbal Comments

- #9 pg. 7 under agendas, very good clarification on future agenda setting.
- Very good to have an agenda item on staff updates and commissioner activity reports.
- Last sentence on pg. 2 is incomplete from the Ethics Policy, it should be an approved and signed document.
- Pg. 5 under commissions it says periodic written updates at least every 6 months and then there is a 6-month report on pg. 9 under City Work Program, so this is confusing, they are 2 separate reports, what is actually being requested there?
- Having reports aside from the minutes (summary or action) is more unproductive work for commissions and liaisons with little added utility. What is the purpose for the reports, who is the audience, who prepares the reports, are there requirements, I recommend just using the meeting minutes to capture the needed information.
- Pg. 7 under Subcommittees does not mention needing City Council approval for subcommittees. I recall in the past that some didn't need approval from Council and others did, this section should explain whether Council approval is necessary to create a subcommittee and why.
- There should be training about meeting decorum and how the Chair is supposed to protect commissioners from the public in unruly meetings.
- Pg. 7 under subcommittees, I do not understand what the Brown Act limitations are in the subcommittee section. I do not understand that section?
- Thank you for making the handbook easy to read.
- Pg. 5 under Chair, how are we supposed to interact with the public beyond public comment because it can be lengthy and we don't know when to cut people off from talking over their limit, there should be guidelines on how to do this?
- This document is now concise and easy to read. I appreciate the staff that worked on this document. Thank you.
- Can we clarify the eligibility criteria? Can a commissioner be part of other commissions, is family member allowed to apply?
- Are there any specific city rules on conflict of interest, aside from FPPC rules, that explains what is allowed and not allowed for advisory commissions. It is clear for planning but not for the others.
- There is no mention of subcommittees collaborating with another subcommittee or commissions collaborating with other commissions. There is currently a collaboration with TICC and Bike Ped.
- Record all commission meetings since we have the technology now.
- Thank you for working diligently on this and making it more user friendly and easy to read.

- What are a subcommittees conflicts with the Brown Act and when are we subject to those requirements? We never meet in a quorum so I would like to understand what the Brown Act concerns are.
- When exactly can I forward an email, to who, and what is the concern if I forward it to myself on a personal account?
- The city clerk description does not include their important role in facilitating emails to and from the public. For transparency I would like to suggest an archive record request with the keywords used and result so that it is easy to search, this job is important and should be listed in this handbook.
- The City Clerk's actions have legal consequences so any compliance issues should be reviewed by an attorney.
- Add the bold to the section talking about commissioners meeting with resident groups and developers: "before **and or of interest of** the commission" so that commissioners are not limited to only items that are before them during that year.
- This is great and appreciate the shortened version. The fact that its down to 10 pages is amazing.
- Subcommittee recommendation #5 is not in the handbook. This refers to the recommendation that there should be a brief description of the top 3 commission work items on the commission's webpage. This needs to be explained somewhere but I agree with the other commissioners that it is adding more work.
- What is the timeline for the first draft of the City Work Program and when should commissions and committees be coming up with ideas?
- Can presentations from staff be sent earlier?
- Liked the summary table from Rosenberg's and Roberts rules of order that was presented to Council on 1/21/20. Can this table and attachment A be linked in with the other documents?
- Palo Alto has a City Council Procedures and Protocols Handbook (50 pages long) City Council should consider adopting something similar, especially the section on how motions are made.
- This is great, having it shortened is very nice.
- It would be great to have something where every newly appointed chair can review Rosenberg's rules of order to help them facilitate meetings. (a onetime video recording for example).
- Should have a running list of everything the commission is working on listed on the website instead of just the top 3.
- Post presentations earlier.
- Regarding filling of vacancies, is it possible that Council appointed alternates are relevant for that Council cycle and if the Council cycle changes, then the alternates should change as well.

- Amend the section where it says commissioners cannot direct city staff to include “Commission agendas are determined by the Chair or two commissioners and cannot be removed unless its discussed at a meeting”.
- There should be more clarification on ad hoc subcommittees. The second sentence in subcommittee section should be removed or more detail should be provided about the difference between the ad hoc subcommittees.
- Loved reading this document instead of the 30-page doc, it is a welcome change.
- Can we get presentations earlier.
- What is Council going to do with all the written reports? They can just look at our minutes. On pg. 5 under chair responsibilities it says there are periodic written updates at least every 6 months and on pg. 9 under City work program there is another annual report due Aug 15th, so are the 2 written updates in addition to the august 15th report or is that one considered one of the 2 written updates? In the past we used to present at least twice to Council at a Council meeting, and it allowed for better interaction.
- Pg. 7 last sentence under future agenda setting should be clarified, too long should be shortened or split in two.
- Can only the Chair appoint subcommittees regardless of what the commissioners want? Can they also appoint who sits on the subcommittee? This seems to go against the spirit of the role of the chair as described in the rest of the handbook, which is to run the meeting and set the agenda.

Email Comments

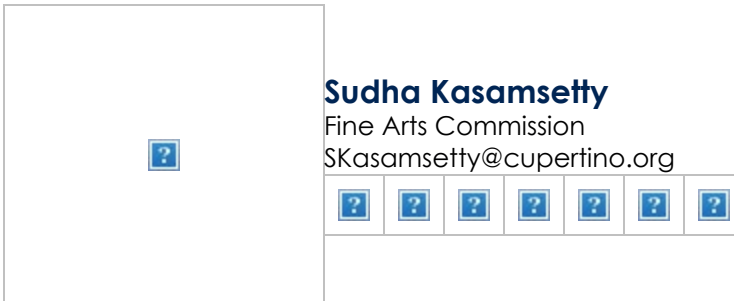
From: [Sudha Kasamsetty](#)
To: [Kirsten Squarcia](#)
Subject: Re: 11/30/20 Joint commission meeting - Agenda and Draft Commissioner's Handbook attached
Date: Thursday, November 26, 2020 11:31:26 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

Thank you Kristen for the info. Looks good and I won't be able to attend the meeting. Letting you know in advance.

Happy Thnxgiving to you and your family.

Sudha kasamsetty

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From: Kirsten Squarcia <KirstenS@cupertino.org>
Sent: Wednesday, November 25, 2020 4:17:49 PM
Cc: City Clerk <CityClerk@cupertino.org>; Katy Nomura <KatyN@cupertino.org>; Astrid Robles <AstridR@cupertino.org>; Dianne Thompson <diannet@cupertino.org>; Ashley Sanks <ashleys@cupertino.org>; City Channel <CityChannel2@cupertino.org>
Subject: RE: 11/30/20 Joint commission meeting - Agenda and Draft Commissioner's Handbook attached

Dear Commissioners (Bcc'd on this email),
Attached is the 11/30/20 Special Joint Commissions Agenda and Draft Commissioner's Handbook for your review. You may send your input in advance to cityclerk@cupertino.org. Comments received prior to the meeting will be read aloud during the meeting and posted to the City's website after the meeting. In compliance with the Brown Act, any input received after the open meeting session will not be considered or included in the public record. If you are unable to attend or intend to email your comments in advance, be sure to email cityclerk@cupertino.org before the comment period has concluded on Monday night. Feel free to email the Clerk's Office with any questions about this process.

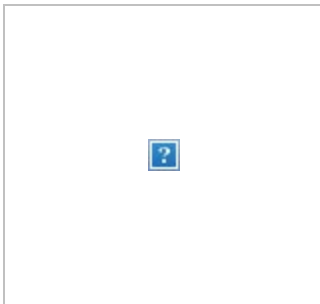
Regards, Kirsten

From: [Lakshminarasimha Ankireddipally](#)
To: [City Clerk](#)
Subject: Clarification/Question - Re COMMISSIONER'S HANDBOOK
Date: Sunday, November 29, 2020 8:57:09 PM

Hi

The section C and D under the title "THE STRUCTURE OF GOVERNMENT" in the handbook covers the role of City Manager and City Clerk respectively. The corresponding description, however, does not cover the tenure of these roles. May be helpful to provide that information.

thanks



Lakshminarasimha Ankireddipally

Public Safety Commissioner

LAnkireddipally@cupertino.org



From: [Connie Cunningham](#)
To: [City Clerk](#)
Subject: Comments/Questions for Draft Commissioners Handbook; meeting Monday Nov 30
Date: Sunday, November 29, 2020 5:54:45 PM

Hello Kirsten, Your email says that our input will be read during the meeting, but I was wondering how that would work. I have several comments about organization of the document, plus a couple about missing signatures on some attached documents and so forth. Other, substantive questions are numerous, too.

Will Commissioners have the opportunity to speak at the meeting? It seems that time would be limited, so I can choose the ones I consider most important to discuss. However, I am interested in answers to all of them.

Sincerely, Connie

2020-11-28 Draft Commissioner's Handbook comments

Comments 1-3 are comments about the organization of the document to make it easier to discuss or reference if referring to it.

Comments 4-16 are about specific items in the Draft Handbook.

1. Comment #1. The numbering system and organization is difficult to follow. The Table of Contents should provide the same numbering and organization as the document. The overall title of the chapter should be part of the numbering system for easy reference when discussing the topic. Otherwise, the subparagraphs A, B etc. are confusing. Page numbers are very good for easy access from the Table of Contents.

Suggestion:

I. Structure of Government

- A. Form of Government
- B. City Council
- C. City Manager and Staff
- D. Commissions

II. Commission Membership

1. Quorum and Attendance
2. Vacancies
3. Resignations and Removals

III. Meetings

1. Regular Meetings
2. Adjourned Meetings
3. Special Meetings

4. Subcommittees
5. Agendas
6. Preparation for Meetings
7. Minutes
8. Procedure
9. Decorum at Meetings
10. Basis for your Decision

IV. City Work Program

V. Communications

- A. Staying Informed
- B. Use of City Email

VI. Resources

2. Comment #2. Intentionally deleted.
3. Comment #3. A separate list of referenced documents would be good with the page number where they can be found in the document. Ex: Brown Act, Page 7 for ease of reference. The Resources listed on page 10 of the Draft Commissioner's Handbook does not show all of those referenced throughout the Handbook, such as Social Media Policy, Page 9
4. Comment #4. It would be useful to state what has been changed or added from the previous Commissioner's Handbook.

Question #5. Commissions, Page 5 indicates that the Chair should protect commissioners, staff and the public from personal attacks. What techniques can be employed other than reprimanding the person. Can security be easily called to escort someone from a meeting who refuses to follow instructions? I ask this because housing can be an emotional subject, and people have been known to go on tirades or for other audience members to clap or be aggressive. The Housing Element will become a focus as we move into the RHNA discussions and possible changes to the General Plan. The Planning Commission would likely have the most problems, although the Housing Commission could have some, too.

Question #6. Commissions, Page 5, talks about "periodic written updates...at least every six months." Is this the same as the six-month report on Page 9 under the topic of City Work Program? (Commission Terms start in Jan/Feb) Perhaps the two requirements could be discussed in the same place, to avoid confusion. Or perhaps, made into just one requirement.

Q: Who prepares this/these reports? Staff Liaison or Chair?

Q: Are there any requirements re: length, format

Question #7: Page 6, Please define Adjourned meetings in this topic. How is that different from a Special meeting?

Question #8: Page 7, Subcommittees. This does not mention needing City Council approval. However, Housing Commission had discussion last year about the amount of staff time, etc. for subcommittees, when it was considering a possible subcommittee. It would be good to address that here. Some subcommittees were OK without approval; others needed approval. The concerns revolved around budget and staff time.

GOOD IDEA: Comment #9, Page 7, Subparagraph E. Agendas—Very good clarification on setting future agendas by adding a standing item to the Agenda. Also, Very good to have an agenda item for Staff Updates and Commissioner Activity Report.

Question #10, Page 8, Subparagraph G, Minutes—What is the difference between summary minutes and action minutes? Our Commission uses action minutes, so need to understand this difference.

Question #11, Page 8, Subparagraph I, Decorum at Meetings. The City of Cupertino Ethics Policy is not dated or signed. How do we know it is current? Also, the last sentence on page 2 is incomplete.

Question #. 12, Page 9, City Work Program—Is this the same process that was set up in 2019?

Question #13. Page 9, City Work Program states that an annual report is due on August 15 of all the topics the commission has addressed.

Q: Is this the same as the six-month report required on page 5 under Commissions (Question #6 above)? Perhaps the two requirements could be discussed in the same place, to avoid confusion.

Q: Who prepares this/these reports? Staff Liaison or Chair?

Q: Are there any requirements re: length, format

Question #14. Page 9, Communications: Staying Informed. Although the Social Media Policy is dated, it is not signed.

Question #15. Page 10, Use of City Email. Although the Technology Use Policy is dated, the Citywide Policy Manual says Policy TBD. There is no signature page of person authorizing the form.

Question #16, Page 10, Resources

Commission Resources folder: It would be useful for the reference to the Commission

Resources Folder to be clear what the difference is between Ethics and Imposed Restraints. Also, is the order of topics important? The folder documents are alphabetical, but the paragraph introducing the topic seems to mention the documents randomly.

Imposed Restraints: is not signed or dated

I bring up this point of dated and signed documents because some are dated and signed, and some are not. Important to know how the documents relate to the rest of the documents that we are to follow.

Thank you for your attention to these questions.

Connie



From: [David Fung](#)
To: [Kirsten Squarcia](#); [Katy Nomura](#); [Astrid Robles](#); [City Clerk](#); [City Council](#)
Subject: Comments for 11/30/2020 Joint Commission Meeting - Fung / Planning Commission
Date: Sunday, November 29, 2020 6:44:55 PM

Dear City Clerk Squarcia:

I have enclosed written comments for the 11/30/2020 Joint Commission Meeting. I serve as a Co-President of the FUHSD Citizens' Oversight Committee which is having a regular meeting at the same time. Per your email on 11/25, please read my comments below in the public record and include this message in the published meeting communications.

Thank you!

David Fung
Planning Commission, 2017-2021
Parks & Recreation Commission, 2011-2017

=====

Comments on Draft Commissioner Handbook – 11/29/2020

1. Section: p4 – City Manager & Staff

Recommendation: Include City Attorney in this section

Detail: Previous editions of the Commissioner Handbook included a callout of the City Attorney/CAO as an important role, and this should be added in the new version. Only the City Manager and City Attorney are direct employees of the Council which lead to special rules and responsibilities for interactions with the Commissioners. The Planning Commission is the only commission to regularly have a member of the CAO in attendance, but the CAO provides overview and advice for ALL commissions, particularly on proposed actions, and conflict of interest.

The operation of the City Attorney's office has been regularly misunderstood and misinterpreted publicly in the past by the Commissioners and public. It is beneficial to make sure the City Attorney's role is clear in all communications by the City.

2. Section: p5 – Role of Commissioners

Recommendation – improve text about consensus decision making

Detail: The power of Commissions comes from the consensus of its members, not from the individual commissioners. This should be made clearer in the text – after a hearing is held and a decision made, the official decision of the Commission follows the outcome of the vote with the prior positions set aside.

However, having participated in this decision, the Commissioners do NOT lose their First

Amendment right to express their opinion AS AN INDIVIDUAL CITIZEN and not in an official capacity, which would include commenting on their personal views of an issue before the Council, provided that they make it clear that this is a personal rather than official opinion. The Draft Handbook includes this text, which should be reviewed for legality: “This underlying philosophy makes it improper for an individual commission to try to persuade the Council into acceptance of a recommendation other than that vote by the majority of the commission”. I believe this specific text should be struck.

3. Section: p5 – Role of the Chair

Recommendation: Clarify responsibilities of the Chair, in accordance with Rosenberg’s Rules of Order

Detail: The list of roles for a Commission Chair is missing the most critical specific responsibility – to encourage a **neutral** discussion in public hearings, so that the Commissioners and public can be assured that their opinions are heard fairly and without bias, especially when dealing with divisive issues and strong opinions. This means that the Chair should try to speak last in deliberation and debate, and allow the other Commissioners to make and second motions. Half of the discussion about the role of the Chair in *Rosenberg’s Rules of Order* is dedicated to this topic, including balancing the Chair’s role as facilitator with their role as an equal member of the commission. This was completely missed in the Draft Handbook text. This is an area of improvement needed in the last two years on the Planning Commission.

4. Section: p6 – Resignations and Removals

Recommendation: add “residency” to the explicit requirements listed

Detail: Most commission qualifications include a residency requirement (Planning Commission requires voter registration as well). It would be good to reflect this in the list of reasons for vacating a commission seat, as this has been one of common reasons for resignation in the past.

5. Section: N/A

Recommendation: Add discussion of “legislative” vs. “quasi-judicial” hearings

Detail: Only the Planning Commission is delegated final decision authority on a limited number of activities, but many commissions may have to hold hearings in which “quasi-judicial” rules apply, specifically, that the commission is called upon to judge whether a specific proposal is consistent with existing laws. This is a very different standard than “legislative” decision making which can be subjective and would apply to future proposals. Quasi-judicial hearings can easily arise in Parks & Recreation when reviewing facilities proposals that are part of a project approval (the park at Main Street), or in the TIC Committee related to cellular facility applications. This should be added into the Handbook text.



From: [Carol Stanek](#)
To: [Kirsten Squarcia](#)
Subject: Re: 11/30/20 Joint commission meeting - Reminder and meeting logistics
Date: Monday, November 30, 2020 3:07:00 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image024.png](#)

Hi Kirsten,

Not sure if I'll be able to stay in the meeting long enough to provide input so here are some of my thoughts.

1) On page 5, under Chair responsibilities, there is a bullet that says:

- Provide periodic written updates, approved by the full body, to Council regarding the status of their activities at least every six months.

Then on page 9, under City Work Program, the last sentence reads:

"By August 15, each commission should provide an annual report of all of the topics the commission has addressed in the prior year. "

Are the two written updates in addition to the August 15 update or is that considered one of the updates? If these are just written updates, it seems to me that there is no opportunity for the Council to get clarification on the topics or provide additional guidance to the commission on the topics. This interaction has historically been a useful occasion when once a year at least the P&R Commission would present directly to the Council. It seems that the opportunity for direct feedback and clarification for the Council is not covered.

2) One of the stated goals for the rewrite of the Handbook was for improved readability. The last sentence under Future Agenda Setting on Page 7 should be rewritten for clarification. The sentence currently reads:

"Once an item is added to the future agenda item list, it cannot be removed until it is discussed for removal at a regularly scheduled meeting during the item for "Future Agenda Setting," and no more than one commissioner (other than the Chair) wishes for the item to remain on the future agenda item list. "

I would suggest putting these two ideas into separate sentences:

"Once an item is added to the future agenda item list, it cannot be removed until it is discussed for removal at a regularly scheduled meeting during the item for "Future Agenda Setting,". In addition, the item will not be removed if the Chair

or at least two other commissioners wish for the item to remain on the future agenda item list."

Hope that helps.
Carol Stanek



Carol Stanek

Park and Recreation Commissioner
cstanek@cupertino.org



From: Kirsten Squarcia <KirstenS@cupertino.org>
Sent: Monday, November 30, 2020 12:42 PM
Cc: City Clerk <CityClerk@cupertino.org>; Katy Nomura <KatyN@cupertino.org>; Astrid Robles <AstridR@cupertino.org>; Dianne Thompson <diannet@cupertino.org>; Ashley Sanks <ashleys@cupertino.org>; City Channel <CityChannel2@cupertino.org>
Subject: RE: 11/30/20 Joint commission meeting - Reminder and meeting logistics

Dear Commissioners (Bcc'd on this email),
 I am sending a reminder for tonight's joint commission meeting as well as some logistical remarks.
 Thank you for the Commissioner emails that have been received thus far.

- Tonight's meeting will be hosted by City staff.
- No, quorum is required and no roll call will be taken.
- No action will be taken, only input received.
- Please use the below link to attend. This is the same link listed in the published agenda.
- Comments from the public will be heard first and then Commissioners.
- Your comments will be evaluated by staff for a final draft handbook to be approved by the City Council.

Please click the link below to register and join the webinar:
https://cityofcupertino.zoom.us/webinar/register/WN_jhf3Xb4qRUiUeTKyrgQKhQ

Regards, Kirsten

Kirsten Squarcia

City Clerk
 City Manager's Office
 KirstenS@cupertino.org
 (408) 777-3225

From: [Liana Crabtree](#)
To: [Kirsten Squarcia](#)
Cc: [City Clerk](#); [Katy Nomura](#); [Astrid Robles](#); [Dianne Thompson](#); [Ashley Sanks](#); [City Channel](#)
Subject: questions and written comment: 11/30/20 Joint commission meeting - Agenda and Draft Commissioner's Handbook attached
Date: Monday, November 30, 2020 10:50:39 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

Dear Office of the City Clerk:

It seems like it may be difficult for people who are not commissioners to discover tonight's all-commissioner meeting.

The meeting is announced on the home page of the City's website, but for now, the meeting details are missing:

<https://www.cupertino.org/Home/Components/Calendar/Event/14352/19?backlist=%2fhome>

I did find the meeting by sorting the meeting calendar using "all meetings" then sorting by descending date, but I persisted with the calendar search because I was already aware that a meeting agenda existed.

Also, from the agenda, I cannot determine who is responsible for running the all-commissioner meeting. Who presides?

WRITTEN COMMENT

For the purposes of written comment, I hope that there is an opportunity to discuss this item from the draft commissioner's handbook:

"...B. Use of City Email

...Please do not forward or reply to a City email from your personal email address...." PDF p 10

If a commissioner receives an announcement for a meeting, such as tonight's all-commissioner meeting, that the commissioner believes may be of interest to others who are not included in the distribution list, what are acceptable means for sharing the meeting announcement if forwarding city communication is discouraged or forbidden? Is it acceptable to forward the communications to individual residents and encourage them to share the information, if helpful?

Also, what is the acceptable response when a commissioner sends public comment using personal email to an item outside the purview of the commission they serve and as a resident, but then receives a reply to their city email from staff, electeds, or others? Is it acceptable for residents who serve as commissioners to reply from the city email but cc their personal email so they can maintain a record of their non-commission-related communication?

All the best,

Liana Crabtree



Liana Crabtree

Library Commissioner

lcrabtree@cupertino.org



From: Kirsten Squarcia <KirstenS@cupertino.org>

Sent: Wednesday, November 25, 2020 4:17 PM

Cc: City Clerk <CityClerk@cupertino.org>; Katy Nomura <KatyN@cupertino.org>; Astrid Robles <AstridR@cupertino.org>; Dianne Thompson <diannet@cupertino.org>; Ashley Sanks <ashleys@cupertino.org>; City Channel <CityChannel2@cupertino.org>

Subject: RE: 11/30/20 Joint commission meeting - Agenda and Draft Commissioner's Handbook attached

Dear Commissioners (Bcc'd on this email),

Attached is the 11/30/20 Special Joint Commissions Agenda and Draft Commissioner's Handbook for your review. You may send your input in advance to cityclerk@cupertino.org. Comments received prior to the meeting will be read aloud during the meeting and posted to the City's website after the meeting. In compliance with the Brown Act, any input received after the open meeting session will not be considered or included in the public record. If you are unable to attend or intend to email your comments in advance, be sure to email cityclerk@cupertino.org before the comment period has concluded on Monday night. Feel free to email the Clerk's Office with any questions about this process.

Regards, Kirsten

Kirsten Squarcia

City Clerk

City Manager's Office

KirstenS@cupertino.org

(408) 777-3225



From: Kirsten Squarcia

Sent: Friday, November 13, 2020 8:05 PM

Cc: City Clerk <CityClerk@cupertino.org>; Katy Nomura <KatyN@cupertino.org>; Astrid Robles <AstridR@cupertino.org>

Subject: 11/30/20 Joint commission meeting - Input on updated Commissioner's Handbook

Dear Commissioners (Bcc'd on this email),

Your feedback will soon be requested as we make changes to update the Commissioner's Handbook. The Handbook is provided to each Commissioner at the time of appointment to use as a guide to the roles and responsibilities of serving on the City's advisory boards. Updates will include incorporating recommendations adopted by the City Council as well as simplifying and improving readability. You will have an opportunity to provide input at a publicly noticed joint commission meeting beginning at 6:00 p.m. on Monday, November 30. A newly updated draft for your review will be provided in a forthcoming published agenda. You will have the option to email your comments if you are unable to attend the teleconference meeting.

Regards, Kirsten



Kirsten Squarcia

City Clerk

City Manager's Office/City Clerk's Office

KirstenS@Cupertino.org

(408) 777-3225



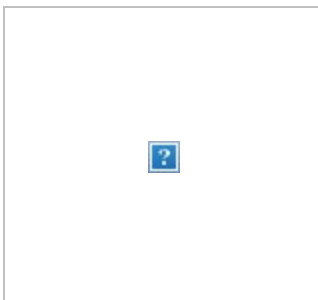
From: [Tessa Parish](#)
To: [City Clerk](#)
Cc: [City Council](#)
Subject: feedback re commission manual
Date: Monday, November 30, 2020 3:57:21 PM

Thank you for your review and re-writing of the commission manual. These are my comments:

1. re: **City Clerk:** this section does not mention the very important job the clerk has in receiving and managing email communication to and from the public: a) Records request go through the City Clerk. For the purposes of transparency, I'd like to suggest an archive of record requests with the following information: key words used to create the search & result of the search in an easy to access library or archive for the public to access.
 b) some of the City Clerk's actions have legal consequences. I'd like to suggest that where there are legal consequences such as a referendum or State mandate/compliance issue, that it be reviewed by an attorney. (If this is not already part of the job description.) I realize this is not a full job description but I feel the managing of communication is an important element that could be included in the manual as well as an archive to facilitate our job.
2. re: "Commissioners are free to meet or refuse to meet with residents, resident groups, developers or prospective contractors or any persons outside of the public meeting process concerning issues before the commission."

I'd like to suggest changing this to include "issues before or of interest to the commission" as in the case where a commissioner would like to speak to an Org regarding benefits such as grants or programs that might be of benefit to the commission for the purposes of acquiring information ONLY"

Best Regards,



Tessa Parish

Housing Commissioner
 TParish@cupertino.org



Kirsten Squarcia

From: Eno Schmidt
Sent: Monday, November 30, 2020 1:54 PM
To: City Clerk
Subject: Advance Input on Draft Commissioner's Handbook

Follow Up Flag: Follow up
Flag Status: Flagged

After reviewing the Draft Commissioner's Handbook and considering certain changes in the Audit Committee meetings over an annual period that likely would result from adoption of the Draft, it is my view that the Draft Handbook achieves the goals of simplification, improved readability and user-friendliness. Thanks for including the participation of Commissioners in this process.



Eno Schmidt
 Audit Committee
 eschmidt@cupertino.org



From: [Connie Cunningham](#)
To: [Kirsten Squarcia](#)
Subject: Re: 11/30/20 Joint commission meeting - Reminder and meeting logistics
Date: Monday, November 30, 2020 4:11:13 PM
Attachments: [image001.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

Hi Kirsten, I plan to speak this evening, and have provided this email for the purpose of the written record. You do not need to read it. Thanks! Connie

Good Evening, City Staff and Commissioners,
 I am Connie Cunningham, Vice-Chair Housing Commission
 I hope everyone had a good Thanksgiving last week.

Thank you for the time to make comments this evening. Thank you for the work that went into preparing a fully revised version of the Commissioners Handbook. I made several comments on organization and structure of the Handbook that I have submitted separately. I have four points that I would like to make tonight.

GOOD IDEAS: Comment #9, Page 7, Subparagraph E. Agendas—Very good clarification on setting future agendas by adding a standing item to the Agenda. Also, Very good to have an agenda item for Staff Updates and Commissioner Activity Report.

 Paragraph on Commissions, Page 5, talks about "periodic written updates...at least every six months." There is, also, a six-month report mentioned on Page 9 under the topic of City Work Program.

Having reports over and above the summary or action minutes for each meeting adds more non-productive work for Commissions and the Staff Liaison with little added utility. Meeting agendas are full. Time is limited. An added action item to review a report would reduce time available for work.

Q: What is the purpose of these reports? Q: Who is the audience? Q: Who prepares them? Staff Liaison or Chair? Q: Are there any requirements re: length, format, content
Recommend: Use meeting minutes to capture information needed.

 Commissions, Page 5 indicates that the Chair should protect commissioners, staff and the public from personal attacks. This is more difficult for in-person meetings than Virtual meetings, of course.

What techniques can be employed other than reprimanding the person. Can security be easily called to escort someone from a meeting who refuses to follow instructions? I ask this because housing can be an emotional subject, and people have been known to go on tirades or for audience members to clap or be aggressive. The Housing Element will become a focus as we move into the RHNA discussions and possible changes to the General Plan. The Planning Commission would likely have the most problems, although the Housing Commission could have some, too.

Recommendation: Training on techniques to control difficult meetings to be provided to Commissioners.

 Question #8: Page 7, Subcommittees. This paragraph does not mention needing City Council approval for subcommittees. However, Housing Commission had discussion last year about the amount of staff time, etc. for subcommittees, when it was considering a possible subcommittee. Some subcommittees were OK without approval; others needed approval. The

concerns revolved around budget and staff time.

Recommendation: Address whether Council approval for subcommittees will be necessary and for what reasons.



Connie Cunningham

Housing Commissioner

CCunningham@cupertino.org



Subcommittee Recommendations

General Engagement with the Community, Councilmembers and Commissioners and Committee Members.

1. Councilmembers will make best efforts to establish collegial and effective working relationships with commission and committee members. Attending at least one meeting per year of each commission and committee (consistent with Brown Act requirements), and other informal meetings such as coffees, will be encouraged in order to promote an amicable and respectful civic environment.
2. The City will provide opportunity for notice to commission and committee members of various community events and public meetings.
3. Each commissioner or committee member should strive to attend at least two community meetings or other commission meetings each year.
4. The City will provide information to each commission and committee with respect to the mechanisms of outreach from the City and how to access these mechanisms.
5. In addition, the subcommittee suggests that the web page of each commission and committee include a section with a brief description of the top three items the group is currently working on in order to provide the public with a reference as to the commission's or committee's current activities.

Scope and Frequency of Commission Meetings.

6. Commission and committee meetings should not be cancelled without coordination with the commission or committee Chair.
7. Council should review the frequency and the scope of commission meetings once a year.
8. Starting in 2021, each commission or committee should provide an annual review of all of the topics the commission or committee has worked on in the prior calendar year by August 15.

Communications with the Staff Liaison.

9. When items are advisory in nature or when input is useful, staff should seek and record the input and feedback of commissions and committees on items in addition to providing information.
10. The staff liaison should on a regular basis provide topical updates and activity reports to the commission or committee, for example, with respect to grant-funding opportunities, outreach meetings, and construction updates relevant to the scope of the commission or committee's work.
11. Staff liaisons are available to meet with individual members of commissions or committees when necessary and reasonable.

Subcommittee Recommendations

Agenda-Setting Process.

12. The Chair and the staff liaison set the agenda. The other commissioners or committee members should be informed of the date of the agenda setting session in case a member of the commission or committee would like to propose an agenda item to the staff liaison prior to the agenda setting session.
13. An item on each agenda should be "Future Agenda Setting" with a draft of future agenda items, ordered by tentative meeting dates. During the Future Agenda Setting item, the commission or committee shall discuss whether to add an item proposed by any single commissioner or committee member, consistent with the requirements of Item 14 below.
14. The Chair of a commission or committee is able to add an agenda item to the meeting agenda. Any two commissioners or committee members can add an agenda item for the future agenda item list. Scheduling of items will be determined by the Chair in consultation with Liaison. If the item requires staff time, consideration should be given by the Chair and Liaison in scheduling the item to ensure that staff has sufficient time to prepare the item.
15. The staff liaison can add an agenda item with consent of the Chair to add the item. Required permit processing hearings and other necessary commission or committee business may be added by the staff liaison, in consultation with the Chair.
16. Once an item is added or scheduled to the future agenda item list, the item cannot be removed until it is discussed for removal at a regularly scheduled meeting during the item for "Future Agenda Setting."

Training and Development for Civic Duties.

17. All commissioners and committee members will receive an orientation which includes the governmental structure of Cupertino in an organizational chart, the Brown Act, FPPC requirements, ethics obligations under AB 1234, and a description of the scope of work for the commission or committee.
18. Staff liaisons should inform their respective commission or committee of relevant meetings and educational workshops, with this information being available as well to members of the other commissions or committees.

Meeting Protocols and Meeting Minutes.

19. The Chair of the commission or committee runs the meeting and decides the policies and procedures for interaction with the public observing principles of equal treatment and availability of opportunity to speak. For agendized items, at the Chair's discretion, the public can interact with the members of the commission or committee beyond the public-comment time limit in order to facilitate better communication of the agendized topic. With respect to the

Subcommittee Recommendations

qualitative nature of such interactions, the purpose is to understand the various public perspectives.

20. Agenda packets should be comprehensive and include as much supporting materials as available for transparency, including to the extent possible staff presentation materials as part of the materials published together with the notice of the meeting agenda. All meeting materials should be paginated in sequential order from the beginning of the agenda to the end of the agenda. The subcommittee recommends that the paginated area include, in addition to the overall page number: 1) an identification of the meeting; and 2) the date of the meeting. This will help members of the public, the Council, and commissions and committees communicate better with each other and the public with regard to background materials provided through the mechanism of public notice as pertain to agenda items.
21. Any presentation and other materials not posted in the agenda packet should be posted online after the meeting. These materials should also be paginated with a clear indication that they were not included in the materials released as part of the publicly-noticed agenda.
22. Discussion items and action items should be clearly and distinctly identified as such.
23. Commissions and committees should strive to keep summary minutes as opposed to action minutes. Summary minutes should include summaries of each comment from a member of the public. Alternatively, an increasingly feasible tool in this effort with the current state of improving technology is the use of automatic transcription. If automatic transcription is made available to supplement official minutes, action minutes may be sufficient.
24. When providing recommendations to the Council, in addition to the specific vote, staff should provide summaries of the positions of an advisory commission or committee in both the majority views and minority views.
25. For certain commissions and committees that meet on a quarterly basis or less frequently, Draft Minutes should be posted online as soon as they are available, within one month of the meeting in order to ensure the timely availability of a description of the scope of meetings.
26. Commissions, committees, and Council should follow Rosenberg's Rules of Order. This is consistent with the vote of the Council at the November 20, 2018 Council Meeting. At the Chair or Mayor's discretion, time permitting and consistent with applicable legal requirements, flexibility on rules regarding discussion and comment is allowed to promote effective communication.

Subcommittee Recommendations

Regular updates.

27. A standing item should be on each regularly-scheduled agenda called “Staff Updates and [Commissioner/Committee Member] Activity Report” for staff to report on updates and the members to report any activities they have taken part in related to the commission or committee since the prior regularly scheduled meeting.
28. The Chair or a designee of a commission or committee should provide periodic written updates, approved by the full body, to Council regarding the status of their activities no less frequently than every six months.

Agendas and Work Programs.

29. Commissions and Audit Committee should have Council-approved work programs that are in alignment with the adopted City Work Program. Generally, work programs should govern agendas. These commissions and committees should strive to work together on their annual work programs and aim over the course of the year to address those items. In an exceptional circumstance, two members of a commission or committee are required to add an item to agendas, with the timing to be determined by the Chair working with the staff liaison.
30. Council will consider how the City Work Program items can be improved by seeking input from and involving the commissions and Audit Committee. For example, an extra column on the draft and final City Work Program spreadsheets entitled “Commission(s)/Committee(s)” could identify the possible synergies. Staff will reach out to the commissions and Audit Committee prior to the first draft of the City Work Program, to ask for recommendations of items to add.
31. The current-year and prior-year City, commission, and committee work programs will be posted on the City’s website.
32. For current-year City, commission, and committee work programs, staff will provide quarterly updates as to the status of each item in the work programs accordingly.
33. The commissions and committees have the discretion to add items to their work programs that do not require significant amounts of staffing-based resources (up to two hours, consistent with the Cupertino Municipal Code Section 2.17.043) or budgetary resources. For additional items beyond those identified in an annual work program that would require significant amounts of budgetary and staffing-based resources, such items should be considered for inclusion in the subsequent year’s work plan, but if such an item requires earlier consideration, Council approval is required.

COMMISSIONER'S HANDBOOK



CUPERTINO

2021

WELCOME AND ORIENTATION

Welcome and thank you for your willingness to serve as a member of a City of Cupertino Commission. Advisory bodies play an important role in City governance by assisting the City Council in addressing specific issues in detail and facilitating community decision-making.

The City of Cupertino has a number of advisory bodies, each with distinct responsibilities. As a new advisory body member, you should familiarize yourself with the documents governing your particular body including City ordinances, City Council resolutions, relevant element(s) of the General Plan, and other documents, all available from your staff liaison. Reviewing these documents will help you get a sense of your responsibilities.

This Handbook is designed to serve as a reference for the basic protocols that apply generally to all City advisory bodies. Orientation is necessarily an active process. As a new member you may want to meet with the Chair of your advisory body to get a better sense of your role and the business of the body, as well as with the staff liaison assigned to the body. Along with familiarizing yourself with your advisory body's foundational documents, you may want to review agendas and minutes from recent meetings to see what current issues have been under consideration, as well as the City Work Program to familiarize yourself with current goals.

Learning your role and developing an effective voice takes time and familiarity. We hope this Handbook will assist you towards a satisfying and productive experience. Your participation is deeply appreciated by the City Council, by city staff, and by your community. The vitality and strength of our community results from the willingness of people like you to serve.

Mayor

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THE STRUCTURE OF GOVERNMENT

A. FORM OF GOVERNMENT

The City of Cupertino operates as a general law city with a City Council-City Manager form of government where the City Council sets policy and the City Manager manages the implementation and administration of those policies.

B. CITY COUNCIL

The City Council is the governing legislative body of the City, consisting of five members elected in odd numbered years to staggered four-year terms. These councilmembers then elect the mayor and vice mayor to one-year terms. It sets goals and priorities and establishes policies. The Mayor is the presiding officer of the Council, and the official spokesperson and representative of the City.

C. CITY MANAGER AND STAFF

City Manager

The City Manager has complete responsibility and authority for the administration of the City's government. This individual is appointed by and serves at the pleasure of the Council and is the appointing authority for the City, selecting the department heads and other employees. The City Manager coordinates and directs the services of the City staff, and commissioners should not attempt to direct or prioritize work for departments or individual staff.

City Clerk

The City Clerk plays an important role for advisory bodies. The City Clerk accepts and maintains applications, processes appointments, updates membership rosters, bylaws, informational booklets, and yearly attendance records. The City Clerk is the filing officer for Statements of Economic Interests, and any other required filing as identified by the City Council and the State.

Staff

When assigned by the City Manager, staff assist and act in a technical advisory capacity to the commissions. It is not expected that every staff recommendation will be followed; however, because of the staff's technical knowledge, full consideration should be given to their recommendation. Staff are at liberty to make their recommendation to the City Council through the City Manager, even though the commission may have taken a different position. However, in these cases, the commission recommendation will be made clear to the City Council.

Staff Liaison

A staff liaison is assigned to each commission. Their main duties include facilitating meetings, preparing agendas, advising commissioners, and writing

meeting minutes. Commissioners should reach out to their liaison if they have any questions regarding matters of the commission or if they would like to contact other staff regarding official business.

D. COMMISSIONS

The primary purpose of the City's commissions is to serve as advisory bodies to Council by weighing public input and rendering recommendations to the City Council. There are times when the advisory body's recommendation will not be sustained or will be modified by the City Council. It is important to recognize this not as a rejection of the integrity of the recommendation, but as an inevitable part of the process of community decision-making. The Council has appointed commissioners as advisors to them. This underlying philosophy makes it improper for an individual commissioner, acting in their official capacity, to try to persuade the Council into the acceptance of a recommendation other than that voted by the majority of the commission. The role of a commission is to assist the City Council in the formation of policy, having been created for the purpose of advising. The scope of work, purpose, and other primary functions for each commission can be found in the City [Municipal Code Chapter 2](#).

Chair and Vice Chair

Each year, every commission will elect from its membership a Chairperson (Chair) and a vice Chairperson (Vice Chair) who serve at the pleasure of the commission for a one-year term. The Vice Chair acts in this capacity when the Chair is not available.

The Chair should:

- Maintain order of the meeting, ensure respect for all opinions, protect commissioners, staff, and the public from personal attacks.
- Keep discussion focused on the issue at hand.
- Solicit opinions from commissioners. Encourage evaluation of new, tentative, or incomplete ideas. Discourage overly dominant commissioners from having disproportionate control over the discussion.
- Attempt to reach decisions expeditiously on action items. At those times when action would be premature, guide discussion toward a timeline or framework for responsible action.
- Set meeting rules early and make sure everyone abides by them without exception.
- Set an acceptable time limit for public testimony (generally three minutes per individual and 10 minutes per group) and stick to it. At the Chair's discretion, the public can interact with the members of the commission beyond the public-comment time limit in order to facilitate better communication of the agendized topic.
- Provide periodic written updates, approved by the full body, to Council regarding the status of their activities at least every six months.

COMMISSION MEMBERSHIP

A. QUORUM AND ATTENDANCE

A quorum consists of a majority of the members of the commission. A quorum is required to conduct business at any meeting whether it is a regular, adjourned, or special meeting. While it is expected that members be present at all meetings, the Chair should be notified if a member knows in advance that he/she will be absent. A member shall be considered removed from an advisory body under the following conditions:

- A member misses more than three consecutive meetings
- A member misses more than 25% of the advisory body's meetings in a calendar year ([Resolution 10-048](#))

B. VACANCIES

Vacancies are filled by appointment by the Council. Appointments made in the middle of a term are for the unexpired portion of that term. Council-appointed Alternates will automatically fill a vacancy.

C. RESIGNATIONS AND REMOVALS

If a member is unable to continue serving because of health, business requirements or personal reasons, a letter of resignation should be submitted to the City Council.

The position of any member is automatically vacated when the member ceases to meet the qualifications for office, when Council accepts the member's resignation, or when the Council so declares.

MEETINGS

A. REGULAR MEETINGS

Commissions are required to hold regular meetings open to the public as provided by the enabling ordinance. The agenda for this meeting must be posted at least 72 hours prior to the meeting.

B. ADJOURNED MEETINGS

If the business to be considered at a regular meeting cannot be completed, the commission then may designate a time and date for an adjourned meeting.

C. SPECIAL MEETINGS

A special meeting may be called by the Chair or a majority of the members with coordination with the staff liaison.

D. SUBCOMMITTEES

The Chair may appoint special subcommittees of less than a quorum of the commission who then may meet at their convenience to carry out the purpose of the subcommittee. If the subcommittee has a continuing subject matter or a regularly scheduled meeting time, it may qualify as a [Brown Act](#) committee and public notice provisions will apply.

E. AGENDAS

Each commission has a staff liaison responsible for preparing agendas in consultation with the Chair. If a commissioner or staff member intends to bring up an item for discussion or action, the item must be included on the agenda in accordance with the Brown Act. For each meeting, a date should be scheduled for the Chair and staff liaison to set the agenda. Commissioners can propose agenda items within the ~~purpose~~purview of the commission to the ~~Chair and~~ staff liaison prior to the agenda setting date.

Future Agenda Setting

The staff liaison will maintain a list of future agenda items that the commission plans to discuss. The Chair, the staff liaison, or any two commissioners can add an agenda item within their ~~purpose~~purview to the future agenda item list and it will be scheduled at the discretion of the Chair and staff liaison. To provide commissioners an opportunity to discuss whether to add an item to the future agenda item list, each regularly-scheduled agenda will include a "Future Agenda Setting" item. Once an item is added to the future agenda item list, it cannot be removed until it is discussed for removal at a regularly scheduled meeting during the item for "Future Agenda Setting." ~~In addition, the item will not be removed if the Chair or at least two commissioners and no more than one commissioner (other than the Chair) wishes~~ for the item to remain on the future agenda item list.

Staff Updates and Commissioner Activity Report

Each regularly scheduled agenda will also include a "Staff Updates and Commissioner Activity Report" item for staff to report on updates and the members to report any activities they have taken part in related to the commission since the prior regularly scheduled meeting.

F. PREPARATION FOR MEETINGS

- Thoroughly review the agenda packet, including agenda reports, and any other materials *before* the meeting. Check if you may have a conflict of interest with any of the items due to property or monetary interests. If it is unclear, the commissioner

can explain the situation to the staff liaison who can seek legal counsel from the City Attorney. For more information on conflicts of interest, please review [the Fair Political Practices Commission \(FPPC\) Conflicts of Interest Rules](#).

- Understand what action you are being called upon to take for each particular agenda item.
- Contact the Chair or your staff liaison before the meeting to clarify questions about the agenda or request further information.
- Understand the responsibilities of your commission. As a member of an advisory body you will be asked to provide recommendations to the City Council about specific issues. Keep in mind that your appointment does not empower you to supervise or direct City staff.

G. MINUTES

The approved minutes are placed on file by the City Clerk for public access. Commissions should strive to keep summary minutes as opposed to action minutes. If automatic transcription is made available to supplement official minutes, action minutes may be sufficient.

H. PROCEDURE

Commissions follow the guidelines on parliamentary procedure contained in [Rosenberg's Rules of Order](#) (Rules). These Rules outline how motions are made and the basic format for an agenda item discussion.

I. DECORUM AT MEETINGS

- Discourage outward signs of agreement or disagreement from the audience such as cheering or clapping. Such demonstrations can intimidate those wishing to express alternate views and delay the meeting. Also see Conduct of Members in the [Cupertino Ethics Policy](#).
- Limit your own comments to the issues before the commission. Avoid the appearance of straying from the subject or "grandstanding".

J. BASIS FOR YOUR DECISION

Commission decisions should be based principally on the information presented to you in the open public meeting process. If you collect pertinent information outside of the public process through a meeting with stake holders or site visits, you should share that information with your fellow commissioners in the public meeting. This sharing of information will ensure that other commissioners and members of the public have a better understanding of the rationale for your decision.

Commissioners are free to meet or refuse to meet with residents, resident groups,

developers or prospective contractors or any persons outside of the public meeting process concerning issues before the commission. If you meet with any individuals outside of the public meeting you should disclose the content of that meeting in the public meeting to again ensure that everybody is aware of the facts and have similar information upon which to base their decision.

All governmental procedures and process must follow due process and allow an affected party a right to be heard, and to present controverting fact or testimony on the question of right in the matter involved. Unfair determinations, such as bias, predetermination, refusal to hear, etc., may invalidate actions.

Keep an open mind. An objective, balanced, and receptive approach will help you assess the facets of a given issue and evaluate new ideas. When receiving written and oral public testimony it will be necessary to discern between fact and opinion, as well as between those concerns which are relevant and those which are secondary to the issue at hand. Keeping an open mind will make it easier for you to understand all sides of an issue before you make a judgment or take a position.

CITY WORK PROGRAM

The City Council approves an annual City Work Program to guide the work of the City. Prior to the first draft of the City Work Program each year, staff will reach out to the commissions to ask for recommendations of items to add. These recommendations will be provided to the City Council for consideration, but ultimately the City Council will determine the final items on the City Work Program. Commissions support City Work Program items within their scope by reviewing the items and making recommendations to City Council. Since the City Council sets the City Work Program to guide the priority efforts in the City, commission agendas should be aligned accordingly. By August 15, each commission should provide an annual report of all of the topics the commission has addressed in the prior year.

COMMUNICATIONS

A. STAYING INFORMED

Commissioners should sign up for City email notifications to stay informed of various community events and public meetings. Council encourages commissioners to attend at least two community meetings or meetings of other commissions each year.

The City uses social media outlets, surveys, email notifications, the Scene, and the City website to perform outreach for City business. For appropriate conduct on social media, see the City's [Social Media Policy](#). For questions about City outreach, speak with your staff liaison.

B. USE OF CITY EMAIL

All newly appointed City commissioners will be assigned a mandatory City email address after reviewing and signing the [Technology Use Policy](#).

As noted under the Brown Act, care should be taken with regard to emails. Never select "Reply All" to an email to all commissioners or forward an email sent to you by one commissioner to another commissioner since that would constitute a quorum. All questions and concerns should be directed to the Chair and staff liaison.

All City emails are subject to the Public Records Act and you should use your City email only to conduct City business as a commissioner. Please do not forward or reply to a City email from your personal email address. Once your term on the commission is over, your City email will be terminated.

RESOURCES

Commissioners should familiarize themselves with the following resources:

City policies relating to ethics, social media, commissions ~~s-recruitment~~, diversity, and technology, as well as the City organizational chart, [a Rosenberg's Rules of Order cheat sheet](#), and guidance on imposed restraints, can be found online in the [Commission Resources folder](#).

League of California Cities

[Rosenberg's Rules of Order, Brown Act, Public Records Act, and other resources](#)

Institute for Local Government

[Parliamentary Procedure Simplified](#)
[Ethics and Transparency](#)