

CC 05-05-20

Oral  
Communications

Written Comments

## Cyrah Caburian

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**From:** dicksteinp@aol.com  
**Sent:** Tuesday, May 5, 2020 5:39 PM  
**To:** City Clerk  
**Cc:** City Council  
**Subject:** May 5th Council Orals

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please read the message below during the orals:

Mayor Scharf and Members of the Council,

I would like to address the issue of the major development projects in Cupertino.

First of all, Westport. I recall that last year the developer presented a proposal for a project consisting of housing and retail (no offices). It was a basis for serious consideration and fruitful negotiation. With some compromise with respect to setbacks and maximum height, it could have received a welcome from the community. I fail to see why he has now replaced it with a project that is bound to arouse considerable community opposition. I would request the City Council to work with the developer to revive last year's proposal as a basis for consideration.

I would also like to see the City Council devise a new Vallco proposal, with community input. Perhaps it could be similar to last year's Westport proposal (housing and retail), but adhering closely to Plan limits. Perhaps the developer could provide the land for affordable housing free of charge, but have it financed, built, maintained and managed by a non-profit (MidPen Housing or similar organization) that actually wants to do it -- that considers it their mission in life.

Thanks,

Phyllis Dickstein  
Cupertino Resident

## Cyrah Caburian

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**From:** Sashi Begur <sashibegur@gmail.com>  
**Sent:** Tuesday, May 5, 2020 4:59 PM  
**To:** City Council  
**Subject:** Oral comments - Sashi Begur

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I would like to speak about Surveys the need for them and also how to go about doing this and therefore this is what I want to present:

Thank you for giving me the opportunity to speak today. I want to bring to the Council attention, my concerns with regard to the recent survey! I have some questions first and then I have recommendations for solving this problem. Yes you heard me right I see this as a problem that needs the immediate attention of the mayor and the council.

My questions are the following:

- This is to the City Manager - Why was the survey put out on Facebook without the knowledge, let alone the approval of the City council? Aren't you accountable to the Council, who in turn are accountable to the voting public?
- This is to the Mayor - What action will you take in order to investigate why and how this happened? What action will you take to prevent this from happening again?

I would like to obtain answers to these questions in a public forum, as in the next monthly meeting as well as a written reply!

My recommendations:

- I think the Mayor and also the Council, must insist that no surveys be released without the approval of the city council. This is not being autocratic, this is to perform the required oversight, which is what the CC is supposed to provide!
- I also recommend that every CC monthly meeting have this as a required agenda item. This being - discuss why and what surveys are being put out. Thousands of dollars of tax payer money is being spent on consultants and surveys with no accountability! You need to have the surveys to understand what the residents want, and therefore this is a requirement in every meeting! IF you have too many items for meetings, then hold a special meeting, or do whatever it takes, to ensure the public is aware of the upcoming surveys, so they can participate!
- My final recommendation is the that the Council must define the limits of the changes allowed to the GPA. As a resident, I have to follow the setbacks and height recommendations etc, up to the last inch! I do that for 2 reasons
- to make sure my city architecture is consistent and

- I am a good neighbor by not inconveniencing my neighbors in anyway.

Given residents are required to follow the GPA, why is it developers always get to change the rules? For example, Westport development which is the old Oaks shopping center is adding 5 Units to meet the Density requirements specified by the state. In exchange they are requesting an increase in height of 25feet. Are they stacking all 5 units one on top of another, that too with no setback? Westport is not the only exception; the Good year construction is the same and God knows what Vallco will come up with Plan B. So my recommendation is very simple the GPA has to stand as is, no one not Vallco, not good year, not Oaks, and NO other developer will change it. They took a gamble when they bought the property, they should have known what the state rules were and what the city's GPA states. Why did they come up with outlandish plans then? We need to enforce the GPA period!. We need a survey and the first question on the Survey needs to be do - developers need to be a good neighbor and follow the GPA? Currently it seems as though the developer decides what he wants to build and gets approval from the city staff. It is later sent to the CC for approval which is merely a formality in other words a sham! I would like for the city council, to be the oversight body it is elected to be so we don't get any nasty surprises like the current survey, and furthermore, the eyesores that these developers want to build!

CC 05-05-20

Special Meeting

Study Session # 1,  
Small Cell Facilities

Written Comments

## Cyrah Caburian

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**From:** Paul Albritton <pa@mallp.com>  
**Sent:** Monday, May 4, 2020 5:06 PM  
**To:** Steven Scharf; Darcy Paul; Rod Sinks; Liang Chao; Jon Robert Willey; City Council; Lauren Sapudar  
**Cc:** Heather Minner Law Email; Chad Mosley; Roger Lee  
**Subject:** Re: Verizon Wireless Letter, Study Session on Small Cells in the Right-of-Way - Council Special Meeting Agenda, May 5, 2020 [Cupertino]  
**Attachments:** Verizon Wireless Letter Corrected 05.04.20.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Resending — Signature error corrected.

Paul

Paul Albritton  
Mackenzie & Albritton, LLP  
155 Sansome Street, Suite 800  
San Francisco, California 94104  
(415) 288-4000

On May 4, 2020, at 4:49 PM, Paul Albritton <[pa@mallp.com](mailto:pa@mallp.com)> wrote:

Dear Councilmembers, attached please find our letter prepared on behalf of Verizon Wireless regarding the City's policy for small cell facilities in the right-of-way to be considered at your meeting tomorrow evening.

Thank you.

<Verizon Wireless Letter 05.04.20.pdf>

Paul

Paul Albritton  
Mackenzie & Albritton, LLP  
155 Sansome Street, Suite 800  
San Francisco, California 94104  
(415) 288-4000

**MACKENZIE & ALBRITTON LLP**

155 SANSOME STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94104

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TELEPHONE 415 / 288-4000  
FACSIMILE 415 / 288-4010

May 4, 2020

**VIA EMAIL**

Mayor Steven Scharf  
Vice Mayor Darcy Paul  
Councilmembers Rod Sinks,  
Liang Chao and Jon Willey  
City Council  
City of Cupertino  
10300 Torre Avenue  
Cupertino, California 95014

Re: Study Session on Small Cell Facilities within the Public Right-of-Way  
Council Special Meeting Agenda, May 5, 2020

Dear Mayor Scharf, Vice Mayor Paul and Councilmembers:

We write on behalf of Verizon Wireless regarding the City's small cell policy review scheduled for tomorrow evening. Verizon Wireless appreciates the Council hosting a public study session on this topic. Over the last several years, Verizon Wireless has worked tirelessly with the City to develop custom designs that have been approved in select locations and installed with little or no controversy. Verizon Wireless continues to work with the City, including public notice and addressing resident concerns, to identify the ideal locations for additional small cells to provide reliable service to targeted areas of Cupertino.

We encourage the City to work with wireless carriers when refining small cell policies. Policies should accommodate facilities where needed and align with federal and state law. In particular, the Federal Communications Commission (the "FCC") issued an order in 2018 that sets forth appropriate approval procedures for small cells (the "Infrastructure Order").<sup>1</sup> Adopted to facilitate enhanced wireless service and new technologies, the Infrastructure Order requires expedited review of small cells under reasonable, objective standards. California Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless the right to place their equipment along any right-of-way, subject to reasonable aesthetic review by the City.

Your staff report references small cell policies adopted by several other Bay Area cities. However, other cities' regulations do not always provide credible guidance. For

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<sup>1</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018).

Cupertino City Council

May 4, 2020

Page 2 of 2

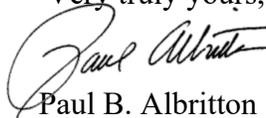
example, a preempted school setback in Los Altos caused both Verizon Wireless and AT&T to challenge that city's regulations in federal court this year. A federal court recently ruled in favor of Verizon Wireless in its lawsuit against Danville, because that Town Council denied a small cell permit due to public pressure, illegally enforcing its wireless ordinance.

Some of the concepts listed in your staff report conflict with the Infrastructure Order and Section 7901. For example, Palo Alto imposes preempted school setbacks and numerous other location restrictions, requiring applicants to seek an exception to each restriction. Such exception processes are not objective and conflict with the FCC's Infrastructure Order. Generally, if a city's regulations frustrate placement of new small cells, they are prohibitive in violation of federal law.

The City should encourage placement of small cells where needed, with reasonable, objective design standards. Verizon Wireless has worked cooperatively with many jurisdictions, including Sunnyvale, San José, San Francisco, Sacramento and Napa, to permit small cells in those cities, and would be pleased to work with City of Cupertino staff on any needed policy refinements.

Should the City seek to modify current regulations, we encourage the Council to direct staff to hold stakeholders meetings with industry representatives prior to proposing new policies. Verizon Wireless would be pleased to discuss its network plan for Cupertino and new small cell designs that provide enhanced service with minimal visual impact. We look forward to working with the City to continue to maintain an enhanced and improved Verizon Wireless network for the betterment of the community through small cells.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton".

Paul B. Albritton

cc: Heather Minner, Esq.  
Chad Mosley  
Roger Lee

## Cyrah Caburian

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**From:** swetha Thota <swethaeras@hotmail.com>  
**Sent:** Tuesday, May 5, 2020 1:44 PM  
**To:** City Council  
**Cc:** Kiran Thota  
**Subject:** Study Session on Small Cell Facilities within the Public Right of Way

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Cupertino City Council members,

We have received a letter from Verizon that they are partnering with City of Cupertino to install a small cell (3 radio units and 3 antennae) on the light pole at our house. The letter stated that the pole was 60ft from house (per google map), but we measured it to be 55ft and most importantly our backyard and swimming pool are within 20 ft of the pole. My kids, 10 and 8, spend most of their time in the pool or backyard. We are seriously concerned about the safety of the small cell (RF) on young kids, especially with a kid with developmental disorder. I urge the city to seriously consider our request and ensure our safety.

As per Verizon's communication, they have a 27GHz Ericsson antenna. From NIH research report of Jan, 2019 [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6254861/>]

"International Agency for Research on Cancer (IARC) concluded that radiofrequency (RF) radiation in the frequency range 30 kHz-300 GHz is a 'possible' human carcinogen Group 2B (7,8)". As this is a new technology, the number of studies are very limited and hardly any for young kids. Cupertino has a vibrant student community, so I strongly recommend the City of Cupertino to study the ill-effects of the new technology before rolling out widely, especially at my house where the proposed install site is really close to my house (in my lot).

Sincerely,  
Dr. Swetha Thota, MD  
and  
Kiran Thota

## Cyrah Caburian

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**From:** Halinski, Timothy <Timothy.Halinski1@T-Mobile.com>  
**Sent:** Tuesday, May 5, 2020 1:44 PM  
**To:** City Clerk  
**Cc:** Fuge, Dylan; Delarosa, Rod; McFadden, James  
**Subject:** T-Mobile Comments - City Council Study Session on Small Cell Facilities in the Public ROW  
**Attachments:** T-Mobile Comments Re City of Cupertino Small Cell Study Session.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please find attached T-Mobile's comments for review by City Council in advance of tonight's Study Session on Small Cell Facilities within the Public Right of War. Let me know if you have any additional questions. Thank you,

Tim Halinski  
Siting Advocacy Manager



Direct 678.690.3590 | Mobile 770.891.0499 | [timothy.halinski1@t-mobile.com](mailto:timothy.halinski1@t-mobile.com)

[T-Mobile.com](http://T-Mobile.com) | Follow T-Mobile on [Twitter](#), [Facebook](#) and [Instagram](#)



Via Email to [cityclerk@cupertino.org](mailto:cityclerk@cupertino.org)

May 5, 2020

Mayor Steven Scharf & Members of the City Council  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014-3255

Re: T-Mobile Comments in Response to Cupertino's Study Session on Small Cell Facilities within the Public Right of Way

Dear Mayor Scharf and Members of the City Council

T-Mobile is dedicated to delivering and deploying the most ubiquitous network as expeditiously as possible to serve its customers in the City and nationwide. T-Mobile does so by carefully considering the balance between aesthetic impact to the community and serving our customer base with our network needs. T-Mobile appreciates the City's desire to consider ways to improve and clarify its existing small cell requirements to achieve those goals. To that end, T-Mobile offers the following comments on the issues Staff has identified for consideration in the City's upcoming "Study Session on Small Cell Facilities within the Public Right of Way."

**Issue:** *Supplement the City's existing aesthetic and technical standards for small cells to ensure changes in technology and the varying equipment used by different providers can be properly accommodated.*

**T-Mobile Comment:** T-Mobile supports aesthetic and technical standards that allow flexibility to accommodate varied equipment and technology configurations that individual carriers may choose to deploy based on their spectrum holdings and network needs. As the Staff Report acknowledges, any aesthetic requirements must be "clearly-defined and ascertainable standard." Indeed, the FCC held that local aesthetic regulations must be: (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance."<sup>1</sup> Likewise, local regulations cannot mandate the use of particular technologies or network designs,<sup>2</sup> so the City is correct to seek to accommodate new and varied technologies in its standards. Such an approach will help encourage deployments, while also ensuring consistency with federal and state law.

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<sup>1</sup> *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Dkt. Nos. 17-179 and 17-84, FCC 18-133, 33 FCC Rcd. 9088, ¶ 86 (rel. Sept. 27, 2018) ("Decl. Ruling").

<sup>2</sup> *Id.*, ¶ 37, n.84.

**Issue:** *Creating a small cell Application Checklist to further clarify submittal requirements and materials.*

**T-Mobile Comment:** T-Mobile supports any effort to clarify submittal requirements, so long as the underlying application requirements are reasonable, and comply with applicable federal and state law requirements. Such checklists help increase transparency around application requirements and expectations.

**Issue:** *Creating a formal Submittal Review Checklist to aid staff in further streamlining the review process.*

**T-Mobile Comment:** Again, T-Mobile supports any effort to clarify submittal requirements and streamline application processing, so long as the underlying application requirements are reasonable, and at least comply with federal and state law.

**Issue:** *Provide clarification on spacing restrictions for small cell facilities owned by a specific provider.*

**T-Mobile Comment:** Generally, spacing requirements applied to small cell facilities are discriminatory and an impermissible effective prohibition of service.

First, a “regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code.”<sup>3</sup> The FCC’s order states that spacing requirements will be treated like other aesthetic requirements, and thus must be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) published in advance.<sup>4</sup> As the FCC noted, “it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from . . . collocating new equipment on a structure already in use.”<sup>5</sup> Moreover, as the Staff Report notes, local regulations cannot “materially inhibit[] a provider’s ability to engage in any variety of activities related to its provision of a covered service.”<sup>6</sup> With respect to spacing requirements, that means, to be valid,

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<sup>3</sup> *Id.*, ¶ 39.

<sup>4</sup> *Id.*, ¶¶ 87, 91.

<sup>5</sup> *Id.*, ¶ 91.

<sup>6</sup> Staff Report at 2.

they must be technologically feasible, as determined by the carrier and its network design and needs.<sup>7</sup>

Second, as the FCC explained, to be “reasonable” the regulation must be technologically feasible.<sup>8</sup> Small wireless facilities have extremely focused coverage areas. Mandatory minimum spacing requirements arbitrarily limit the deployment of small wireless facilities in an area and would interfere with a provider’s ability to meeting its network design objectives Accordingly, any attempt to limit a wireless carrier to artificial or arbitrary distances (or for example prohibiting installation by one provider on consecutive poles) would effectively prohibit the provision of service by creating gaps. There should be spacing limits on attachments to existing infrastructure, and new poles should be subject to at most limits generally applied to all other poles in the right of way.

**Issue:** *Provide specific guidance that small cell facilities are not permitted within Public Utility Easements located on private property. The City’s Master License Agreements with wireless carriers only permit installation of small cell facilities on City-owned streetlight poles located in the public right of way.*

**T-Mobile Comment:** Federal law does not allow the City to adopt a blanket prohibition on the installation of small cell facilities in Public Utility Easements (“PUEs”).<sup>9</sup> As a threshold matter, federal and California laws grant telecommunications providers, including wireless, the right to attach to utility poles, and utility easements.<sup>10</sup> Indeed, as the Staff Report notes, the City is prohibited “from enforcing a blanket prohibition on installation of small cell facilities in an areas or neighborhood.”<sup>11</sup> Moreover, prohibiting the use of a type of easement would also be unlawfully discriminatory. Any local regulation that “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory framework” is preempted by Sections 253 and 332 of the Communications Act.<sup>12</sup> Other telecommunications carriers are permitted to install facilities in PUEs, therefore the City cannot prohibit small cell wireless facilities from such locations.

It is important to note that there is a distinction between the City prohibiting the use of PUEs on private property for small cell wireless facilities and the scope of the City’s MLA with wireless carriers. While the City’s MLA may be limited to City-owned streetlight poles in the PROW, that does not mean that small wireless facilities are, or can be, prohibited from installation in

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<sup>7</sup> See Decl. Ruling, ¶ 87.

<sup>8</sup> Id. ¶ 87.

<sup>9</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>10</sup> See, e.g., 47 U.S.C. § 224.

<sup>11</sup> Staff Report at 2-3.

<sup>12</sup> Decl. Ruling, ¶¶ 35,57, and 119.

other locations. It is true that an applicant may be required to obtain some separate authorization to install on a pole not owned by the City or in a PUE on private property, but that does not mean that the City can prohibit such installations.

**Issue:** *Require that any streetlight proposed to receive a small cell facility be posted with a notification sign during the public notification period.*

**T-Mobile Comment:** While T-Mobile does not object to this specific requirement, it cautions that any permitting regulations that are compliant with federal and state law must be based upon objective criteria. Therefore, an applications success or failure must depend solely on the content of the application itself, and not on any public opinion related thereto. Accordingly, when establishing public notice requirements, the City must be careful not to suggest a role for the public in reviewing the application.

**Issue:** *Restrict small cells from being placed on any pole located within 20' of an existing residence.*

**T-Mobile Comment:** Just like separation/spacing requirements addressed above, establishing a minimum distance for small cells from existing residences is likely to be an unlawfully discriminatory aesthetic regulation. If there are already poles in the right of way within 20 feet of an existing residence, the City cannot, and should not, prohibit installation of small wireless facilities. Moreover, if not considered an aesthetic requirement, a blanket minimum distance requirement from residences is expressly prohibited by federal law. As the Staff Report recognizes “the FCC has established safety limits for Radio Frequency (RF) emissions from wireless facilities,” and “a local government may not base its regulation of wireless facilities . . . on RF emissions from a facility, as long as those emissions meet the FCC’s emission standards.”<sup>13</sup> A required minimum distance from residences, like several of the additional issues addressed below, appears to be a proxy for regulating RF, which is clearly prohibited under Federal law. All the City can do is require compliance with the federal standards.

**Issue:** *Establish a minimum vertical clearance for small cell antennae at 26' above surrounding terrain (within 10' of the pole).*

**T-Mobile Comment:** As an initial matter, it is unclear what the basis is for the proposed 26-foot minimum height. Depending on the existing poles in the City, it may be that such a height for small cells is generally appropriate. However, like the proposed 20-foot set back from residences, ***requiring*** a specific height ***and*** applying it to a 10-foot radius from the pole appears to be a proxy for regulating RF emissions, and thus unlawful. Moreover, location of antenna

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<sup>13</sup> Staff Report at 2.

attachments on poles are governed by extensive safety and engineering regulations and standards from both pole owners and the California PUC.

**Issue:** *Establish a maximum vertical elevation for small cell antennae at 36' above ground level in residential areas and 41' in commercial areas.*

**T-Mobile Comment:** Any limit on the maximum height of a small cell antenna installed on a pole in the PROW should be dependent upon the height of existing poles in the PROW. For example, the federal definition of small wireless facility is a facility that does not extend the height of an existing structure above 50 feet or 10 percent higher than the existing structure.

**Issue:** *Provide clarification that small cell wireless antennae be oriented along the direction of travel in public right of way, and not toward private property or occupied structures.*

**T-Mobile Comment:** Any requirement as to the specific orientation of small cell wireless antennae is an unlawful regulation of the provider's network design. As the FCC made clear, "local jurisdictions do not have the authority to require that providers offer certain types or levels of service, *or to dictate the design of a provider's network.*"<sup>14</sup> Indeed, practically speaking requiring antennas to be directed toward the travel lanes in the PROW is counter to the market demand for service inside buildings. Moreover, the proposed requirement to direct antennas away from occupied structures appears to be another unlawful proxy for RF regulation. Again, all the City can require is that wireless facilities comply with the federal RF emissions standards, it cannot seek to regulate potential exposure by requiring specific antenna orientations.

**Issue:** *Consider implementing a time and materials fee structure for small cell permitting, to ensure staffing costs are being recovered by the City.*

**T-Mobile Comment:** Under federal law, any fees imposed on an applicant for a small cell permit must be based on objectively reasonable costs and no higher than those charged to similarly situated competitors.<sup>15</sup> Accordingly, "a time and materials fee structure" appears appropriate so long as it is verifiably based on the City's costs of administering the permits and is not higher than permit costs for similarly situated competitors.

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<sup>14</sup> *Decl. Ruling*, ¶ 37, n.84 (emphasis added).

<sup>15</sup> *Id.*, ¶ 48.

City of Cupertino City Council  
May 5, 2020  
Page 6

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Again, T-Mobile appreciates the opportunity to provide comment and assist the City in its efforts to clarify and revise its small cell regulations to allow City residents to benefit from reliable and ubiquitous wireless service. We would be happy to discuss these issues further. Please feel free to contact me at [Dylan.Fugel@t-mobile.com](mailto:Dylan.Fugel@t-mobile.com).

Sincerely,



Dylan M. Fuge  
Managing Corporate Counsel, Land Use

cc: Rod Delarosa, Siting Advocacy Manager – West Region  
Jim McFadden, Site Development Manager – San Francisco  
Tim Halinski, Siting Advocacy Manager – National Siting Advocacy

## Cyrah Caburian

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**From:** City of Cupertino Written Correspondence  
**Subject:** FW: Virtual Meeting 5/5/2020 Small Cell discussion

**From:** Edith Nelson <edie50@gmail.com>  
**Sent:** Tuesday, May 5, 2020 3:21 PM  
**To:** City Council <CityCouncil@cupertino.org>  
**Subject:** Virtual Meeting 5/5/2020 Small Cell discussion

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon. I have been communicating with Verizon and Modus LLC regarding the proposal for a new Small Cell location adjacent to 1099 November Drive. (Verizon Site #: SF Cupertino 067). I have sent several emails and also had a telephone conversation today with JoAnna Wang, Director of Government and Community Affairs at Modus LLC. Jacob Olander Modus LLC was also on the call although I did not speak with him.

The following are my concerns/questions:

- 1) How many other Small Cells are you requesting permits for in Cupertino?
- 2) Who is paying for the permits?
- 3) What are their locations?
- 4) What other locations/Cupertino neighborhoods did you consider instead of the one on November Drive?

The addition of numerous small cells mean there are higher amounts of RF waves surrounding people at ALL TIMES. More transmitters mean an increase in the amount of signals CONSTANTLY being sent to cell phones and other devices. There has only been limited number of studies focused on direct correlation between cancer and radio frequency waves. And, most have not included the effect on children. No studies have found a way to simulate the transmission of 5G BASE STATIONS.

The bottom line is that nothing conclusive has been ruled out OR in and the long-term effects remain unknown with regard to possible cancer causing potential of cell and RF waves. There are unforeseen negative consequences that could be associated with the growth of 5G including Security and Privacy risks as well as the Health risks.

Will there be a City Council Meeting to discuss this prior to a permit being issued?

My feeling is that Modus/Verizon should find another more suitable place for the small cell and that it should not be installed in our residential neighborhood with children on November Drive.

Thank you for your consideration to these important questions and concerns. Cupertino is a small community. We must think about the consequences of installing so many of these small cells all over our city and, thereby, being bombarded with constant RF waves.

Best regards,  
Edith Nelson  
1095 November Drive  
Cupertino, CA  
(408) 257-8065  
(408) 642-4621 (Cell or Text)

CC 05-05-20

# 1

COVID-19 Response  
Efforts

Written Comments

## Cyrah Caburian

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**From:** C. F <cfu000@hotmail.com>  
**Sent:** Tuesday, May 5, 2020 1:45 PM  
**To:** City Clerk  
**Subject:** Curbside mini tent city near I-280 south on ramp on Wolfe Rd.

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kirsten,

Not sure where/who should handle this, or this should go to the oral communication at the next Council meeting, please redirect to the appropriate party.

There were tents at the said location for several (> 6) month as far as I can remember, and I reported that through Cupertino 311 about 3-4 weeks ago, and they are still there - and growing in size - when I drove by today.

I do not understand why the curbside tent city is allowed to exist for so long, especially during the COVID-19 blowout and shelter-in-place order, and I think Governor Newsom mentioned time and time again that the state has secured hotel rooms to accommodate the homeless for everyone's safety, it is not like they have no place to go.

The link below shows the recording of the site mentioned as I drove by it this morning for your reference.

Thanks.

<https://1drv.ms/v/s!AgCkC1-R-iKbfYMU-k4-dYULbl?e=bPID09>

--  
Charles Fu

CC 05-05-20

#10

FY 20-21 CDBG,  
BMR AHF, and HSG  
funding

Written Comments

## Cyrah Caburian

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**From:** City of Cupertino Written Correspondence  
**Subject:** FW: City Funding Allocations: 5/5 Meeting

**From:** Deb McClellan <deb@rebuildingtogethersv.org>  
**Sent:** Tuesday, May 5, 2020 1:42 PM  
**To:** City Clerk <CityClerk@cupertino.org>; City Council <CityCouncil@cupertino.org>  
**Cc:** Deanne Everton <deanneeverton@rebuildingtogethersv.org>; Kerri Heusler <KerriH@cupertino.org>  
**Subject:** FW: City Funding Allocations: 5/5 Meeting

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City of Cupertino Councilmembers and City Clerk,

Here are comments that Rebuilding Together Silicon Valley would like to enter into the record for tonight's meeting:

Rebuilding Together Silicon Valley relies on CDBG grants to provide critical home repairs to our most vulnerable populations. Additional CDBG funding will help address the increased demand for home repair services as many Americans who have lost income are at risk of losing their home to deferred maintenance. These repairs are crucial to supporting our communities and they serve to prevent displacement and homelessness. With the continuation of the pandemic and the sharp decline in local government revenue, additional CDBG funding is needed to help us address these challenges. – With gratitude, the Board and Staff of Rebuilding Together Silicon Valley

Many thanks,

!

**Deb McClellan**  
Development & Communications Manager  
408-578-9519 ext. 1014  
1701 South 7th Street #10  
San Jose CA, 95112  
[rtsv.org](http://rtsv.org) | [Facebook](https://www.facebook.com/rebuildingtogethersv) | [Instagram](https://www.instagram.com/rebuildingtogethersv) | [Twitter](https://twitter.com/rebuildingtogethersv)



CC 05-05-20

# 11

Draft Urgency  
Ordinance

Desk Items

(Redline Version)

**Draft Ordinance No. 20-XXXX**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO EXTENDING THE VALIDITY OF PLANNING ENTITLEMENTS AND PERMITS ISSUED BY THE COMMUNITY DEVELOPMENT DEPARTMENT; EXTENDING THE TIME FOR CITY REVIEW AND ACTION ON DEVELOPMENT APPLICATIONS IN THE EVENT STATE LAW DEADLINES ARE EXTENDED; AND TEMPORARILY SUSPENDING CERTAIN CEQA REQUIREMENTS AS PROVIDED BY EXECUTIVE ORDER N-54-20

**WHEREAS**, on February 3, 2020 and pursuant to Section 101080 of the California Health and Safety Code, the Santa Clara County Health Officer (the "Health Officer") declared a local health emergency throughout Santa Clara County (the "County") related to the novel coronavirus ("COVID-19"); and

**WHEREAS**, on February 3, 2020, and pursuant to Section 8630 of the California Government Code, the Santa Clara County Director of Emergency Services proclaimed a local emergency throughout the County related to COVID-19; and

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19; and

**WHEREAS**, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another; and

**WHEREAS**, as of March 9, 2020, the County reported that there were 43 cases of persons testing positive for COVID-19 in the County, an increase of 23 in five days. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are prohibited until March 31, 2020 (the "Order"). This Order was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as

currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

**WHEREAS**, on March 11, 2020, the City Manager for the City of Cupertino (“City”) declared a local emergency throughout the City related to COVID-19; and

**WHEREAS**, on March 17, 2020, the Council ratified and continued the City Manager’s declaration of a local emergency; and

**WHEREAS**, on March 13, 2020, the County issued a new order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons; and

**WHEREAS**, also on March 16, 2020, the County, along with five other Bay Area counties, issued a sweeping “Shelter-in-Place” order (the “Shelter-in-Place Order” or “Order”) including limitations on non-essential work and operations, including but not limited to prohibitions on most residential and almost all commercial construction; and

**WHEREAS**, on March 19, 2020, Governor Newsom issued a “Shelter-in-Place” order directing all individuals living in the State of California to stay home or at their place of residence, with limited exceptions, to stop the spread of COVID-19 until further notice; and

**WHEREAS**, on March 31, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, issued an updated “Shelter-in-Place” order effective from April 1, 2020 through May 3, 2020, and on April 29, 2020 issued an updated “Shelter-in-Place” order effective from May 3, 2020 through May 31, 2020 (the “Updated Shelter-in-Place Order” or “Updated Order”); and

**WHEREAS**, in an effort to reduce the spread of COVID-19, the City has cancelled several meetings of the City Council and other City Boards and Commissions in March and April 2020; and

**WHEREAS**, the City is currently concentrating staff time and resources on the response to the COVID-19 pandemic and on providing essential City services and protecting public health and safety during the local emergency; and

**WHEREAS**, the County’s March 31 Shelter-in-Place Order prohibited most residential and almost all commercial construction, which together with other efforts to slow the spread of COVID-19 resulted in the delay or cessation of land use development activity, effectively shortening the validity of planning entitlements and building permits; and

**WHEREAS**, the County’s April 29 Shelter-in-Place Order permits all construction projects to resume to the extent allowed under the Governor’s statewide Shelter-in-Place order, but requires that construction projects comply with the Construction Project Safety Protocols issued as part of the County’s Order, which include social distancing,

screening, sanitation requirements and other protective measures that may affect the speed of construction; and

**WHEREAS**, the County's April 29 Shelter in Place Order continues to require most residents, businesses, and employees to stay at home to limit the transmission of the COVID-19 virus and limits the types of work that may be performed; and

**WHEREAS**, employees of businesses that typically work in an office setting are now required to work from home, and the transition to an alternative work environment makes it more difficult and time-consuming for some employees to effectively perform business functions such as preparing construction drawings, reports, and other materials; and

**WHEREAS**, even when the Shelter-in-Place Order is lifted, a transition period will be needed to adjust to new business norms and workplace environments; and

**WHEREAS**, the Shelter-in-Place Order may compromise the ability of residents and businesses to effectively collaborate and prepare necessary permit documentation for land use development and business operations; and

**WHEREAS**, the County's April 29 Order includes Construction Project Safety Protocols which require workers at construction sites to maintain adequate social distancing and take other protective measures against COVID-19 that may affect construction timelines, including for projects that are nearing permit expiration dates, and the impending expiration of permits could create incentives to speed up work at construction sites in ways that may be inconsistent with social distancing requirements and other Construction Project Safety Protocols mandated by the County's Order; and

**WHEREAS**, The City Council finds that it is necessary for the public health, safety, and welfare to temporarily extend the validity of certain planning entitlements and other permits issued by the Department of Planning and Development Services and to extend the time provided for City review of and action on such applications during the COVID-19 pandemic in light of the local emergency and Shelter-in-Place Order;

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

**SECTION 1.** Notwithstanding the provisions of Cupertino Municipal Code ("CMC") Chapter 16, Sections 16.02.010 and 16.02.050, the City finds that in light of the COVID-19 local emergency and the County's Shelter-in-Place Order, there is good cause to extend by 90 days the following permit applications submitted to the Chief Building Official pursuant to CMC Chapter 16, Section 16.02.050, and to subsequently grant a second extension of an additional 90 days for those permit applications, and to extend by 180 days the following permits, that are not associated with an active Code Enforcement case, issued by the Chief Building Official pursuant to CMC Chapter 16, Section 16.02.050: (1)

any permit application or permit that had not expired as of March 16, 2020; and (2) any ~~permit application submitted or~~ permit issued during the pendency of the County's Shelter-in-Place Order, including the March 16 Order, the March 31 Updated Order, the April 29 Updated Order, and any further continuances of the Order. This extension of permit applications and permits shall be provided automatically and at no cost to a project applicant.

**SECTION 2.** Notwithstanding the provisions of CMC Chapter 19, Sections 19.12.030 and 19.12.180 and any Record of Land Use Action or Final Director's Decision, the time to commence construction for the following Planning Permit Approvals listed in CMC section 19.12.030 is hereby extended until the County's Shelter-in-Place Order is lifted, plus an additional 180 days: (1) Planning Permit Approvals for which the time to commence construction had not expired as of March 16, 2020; and (2) Planning Permit Approvals issued during the pendency of the County's Shelter-in-Place Order, including the March 16 Order, the March 31 Updated Order, the April 29 Updated Order, and any further continuances of the Order. This extension shall be provided automatically and at no cost to a project applicant.

**SECTION 3.** In the event that any of the timelines for City action established in the Permit Streamlining Act (Gov. Code § 65920 et seq.), Housing Accountability Act (Gov. Code § 65589.5), Subdivision Map Act (Gov. Code § 66410 et seq.), Government Code section 65852.2 (permitting of Accessory Dwelling Units), Civil Code section 714(e)(2)(B) (permitting of solar installations) and/or other state law or regulation are extended or suspended by the Governor, the corresponding timelines for the City to act on any application pursuant to Cupertino Municipal Code Titles 16, 18, or 19, including without limitation, Building Permits, Subdivisions, Architectural Review, Standard Staff Review, and Development Permit Review, shall likewise be automatically extended to the maximum extent consistent with state law, including any emergency orders issued by the Governor, without any further action by the City Council.

**SECTION 4.** The Governor's executive order dated April 22, 2020 (Executive Order N-54-20) provides that the public filing, posting, notice, and public access requirements set forth in Public Resources Code sections 21092.3 and 21152, and California Code of Regulations, Title 14, sections 15062(c)(2) and (c)(4); 15072(d); 15075 (a),(d), and (e); 15087(d); and 15094(a), (d), and (e), for projects undergoing, or deemed exempt from, California Environmental Quality Act review, are suspended for a period of 60 days (provisions governing the time for public review are not suspended). Executive Order N-54-20 also provides that the timeframes set forth in Public Resources Code sections 21080.3.1 and 21082.3, within which a California Native American tribe must request consultation and the lead agency must begin the consultation process, are suspended for 60 days. In accordance with Executive Order N-54-20, these 60-day suspensions of

requirements apply to City actions subject to the California Environmental Quality Act pursuant to the guidelines adopted in CMC section 2.84.090.

**SECTION 5.** Government Code section 36937 and CMC section 2.12.050 authorize the adoption of an urgency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by four-fifths of the Council.

**SECTION 6.** The City Council hereby finds, determines and declares that this urgency ordinance adopted pursuant to California Government Code section 36937 and CMC section 2.12.050 is necessary because there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, all of which are deemed true and correct, as well any oral and written testimony at the May 5, 2020 City Council meeting.

**SECTION 7.** This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in Section 6 of this Ordinance.

**SECTION 8.** The City Council of the City of Cupertino held a duly noticed public meeting on May 5, 2020, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

**SECTION 9.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 10.** The City Council finds that adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that temporarily extending certain permit approvals and application processing timelines for a limited period of time will not have a significant effect on the environment.

**SECTION 11: *Severability.***

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other

provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 12:** *Effective Date.*

This urgency Ordinance shall take effect immediately upon adoption as provided by Government Code Section 36937 and CMC section 2.12.050 and shall remain in effect until the County's Shelter-in-Place Order is lifted, plus an additional 180 days, unless the Ordinance is otherwise terminated or extended by the City Council .

**SECTION 13:** *Certification.*

The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

**SECTION 14:** *Continuity.*

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 amendments of the earlier provisions.

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**INTRODUCED** and **ADOPTED** as an urgency ordinance of the City of Cupertino at a meeting of the City Council held on May 5, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____	  _____
Steven Scharf, Mayor City of Cupertino	Date
ATTEST:	

<hr/> Kirsten Squarcia, City Clerk	<hr/> Date
APPROVED AS TO FORM:  <hr/> Heather Minner, City Attorney	  <hr/> Date

(Clean Version)

**Draft Ordinance No. 20-XXXX**

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO EXTENDING THE VALIDITY OF PLANNING ENTITLEMENTS AND PERMITS ISSUED BY THE COMMUNITY DEVELOPMENT DEPARTMENT; EXTENDING THE TIME FOR CITY REVIEW AND ACTION ON DEVELOPMENT APPLICATIONS IN THE EVENT STATE LAW DEADLINES ARE EXTENDED; AND TEMPORARILY SUSPENDING CERTAIN CEQA REQUIREMENTS AS PROVIDED BY EXECUTIVE ORDER N-54-20

**WHEREAS**, on February 3, 2020 and pursuant to Section 101080 of the California Health and Safety Code, the Santa Clara County Health Officer (the “Health Officer”) declared a local health emergency throughout Santa Clara County (the “County”) related to the novel coronavirus (“COVID-19”); and

**WHEREAS**, on February 3, 2020, and pursuant to Section 8630 of the California Government Code, the Santa Clara County Director of Emergency Services proclaimed a local emergency throughout the County related to COVID-19; and

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19; and

**WHEREAS**, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm’s length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm’s length of one another; and

**WHEREAS**, as of March 9, 2020, the County reported that there were 43 cases of persons testing positive for COVID-19 in the County, an increase of 23 in five days. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are prohibited until March 31, 2020 (the “Order”). This Order was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as

currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

**WHEREAS**, on March 11, 2020, the City Manager for the City of Cupertino (“City”) declared a local emergency throughout the City related to COVID-19; and

**WHEREAS**, on March 17, 2020, the Council ratified and continued the City Manager’s declaration of a local emergency; and

**WHEREAS**, on March 13, 2020, the County issued a new order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons; and

**WHEREAS**, also on March 16, 2020, the County, along with five other Bay Area counties, issued a sweeping “Shelter-in-Place” order (the “Shelter-in-Place Order” or “Order”) including limitations on non-essential work and operations, including but not limited to prohibitions on most residential and almost all commercial construction; and

**WHEREAS**, on March 19, 2020, Governor Newsom issued a “Shelter-in-Place” order directing all individuals living in the State of California to stay home or at their place of residence, with limited exceptions, to stop the spread of COVID-19 until further notice; and

**WHEREAS**, on March 31, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, issued an updated “Shelter-in-Place” order effective from April 1, 2020 through May 3, 2020, and on April 29, 2020 issued an updated “Shelter-in-Place” order effective from May 3, 2020 through May 31, 2020 (the “Updated Shelter-in-Place Order” or “Updated Order”); and

**WHEREAS**, in an effort to reduce the spread of COVID-19, the City has cancelled several meetings of the City Council and other City Boards and Commissions in March and April 2020; and

**WHEREAS**, the City is currently concentrating staff time and resources on the response to the COVID-19 pandemic and on providing essential City services and protecting public health and safety during the local emergency; and

**WHEREAS**, the County’s March 31 Shelter-in-Place Order prohibited most residential and almost all commercial construction, which together with other efforts to slow the spread of COVID-19 resulted in the delay or cessation of land use development activity, effectively shortening the validity of planning entitlements and building permits; and

**WHEREAS**, the County’s April 29 Shelter-in-Place Order permits all construction projects to resume to the extent allowed under the Governor’s statewide Shelter-in-Place order, but requires that construction projects comply with the Construction Project Safety Protocols issued as part of the County’s Order, which include social distancing,

screening, sanitation requirements and other protective measures that may affect the speed of construction; and

**WHEREAS**, the County's April 29 Shelter in Place Order continues to require most residents, businesses, and employees to stay at home to limit the transmission of the COVID-19 virus and limits the types of work that may be performed; and

**WHEREAS**, employees of businesses that typically work in an office setting are now required to work from home, and the transition to an alternative work environment makes it more difficult and time-consuming for some employees to effectively perform business functions such as preparing construction drawings, reports, and other materials; and

**WHEREAS**, even when the Shelter-in-Place Order is lifted, a transition period will be needed to adjust to new business norms and workplace environments; and

**WHEREAS**, the Shelter-in-Place Order may compromise the ability of residents and businesses to effectively collaborate and prepare necessary permit documentation for land use development and business operations; and

**WHEREAS**, the County's April 29 Order includes Construction Project Safety Protocols which require workers at construction sites to maintain adequate social distancing and take other protective measures against COVID-19 that may affect construction timelines, including for projects that are nearing permit expiration dates, and the impending expiration of permits could create incentives to speed up work at construction sites in ways that may be inconsistent with social distancing requirements and other Construction Project Safety Protocols mandated by the County's Order; and

**WHEREAS**, The City Council finds that it is necessary for the public health, safety, and welfare to temporarily extend the validity of certain planning entitlements and other permits issued by the Department of Planning and Development Services and to extend the time provided for City review of and action on such applications during the COVID-19 pandemic in light of the local emergency and Shelter-in-Place Order;

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

**SECTION 1.** Notwithstanding the provisions of Cupertino Municipal Code ("CMC") Chapter 16, Sections 16.02.010 and 16.02.050, the City finds that in light of the COVID-19 local emergency and the County's Shelter-in-Place Order, there is good cause to extend by 90 days the following permit applications submitted to the Chief Building Official pursuant to CMC Chapter 16, Section 16.02.050, and to subsequently grant a second extension of an additional 90 days for those permit applications, and to extend by 180 days the following permits, that are not associated with an active Code Enforcement case, issued by the Chief Building Official pursuant to CMC Chapter 16, Section 16.02.050: (1)

any permit application or permit that had not expired as of March 16, 2020; and (2) any permit issued during the pendency of the County's Shelter-in-Place Order, including the March 16 Order, the March 31 Updated Order, the April 29 Updated Order, and any further continuances of the Order. This extension of permit applications and permits shall be provided automatically and at no cost to a project applicant.

**SECTION 2.** Notwithstanding the provisions of CMC Chapter 19, Sections 19.12.030 and 19.12.180 and any Record of Land Use Action or Final Director's Decision, the time to commence construction for the following Planning Permit Approvals listed in CMC section 19.12.030 is hereby extended until the County's Shelter-in-Place Order is lifted, plus an additional 180 days: (1) Planning Permit Approvals for which the time to commence construction had not expired as of March 16, 2020; and (2) Planning Permit Approvals issued during the pendency of the County's Shelter-in-Place Order, including the March 16 Order, the March 31 Updated Order, the April 29 Updated Order, and any further continuances of the Order. This extension shall be provided automatically and at no cost to a project applicant.

**SECTION 3.** In the event that any of the timelines for City action established in the Permit Streamlining Act (Gov. Code § 65920 et seq.), Housing Accountability Act (Gov. Code § 65589.5), Subdivision Map Act (Gov. Code § 66410 et seq.), Government Code section 65852.2 (permitting of Accessory Dwelling Units), Civil Code section 714(e)(2)(B) (permitting of solar installations) and/or other state law or regulation are extended or suspended by the Governor, the corresponding timelines for the City to act on any application pursuant to Cupertino Municipal Code Titles 16, 18, or 19, including without limitation, Building Permits, Subdivisions, Architectural Review, Standard Staff Review, and Development Permit Review, shall likewise be automatically extended to the maximum extent consistent with state law, including any emergency orders issued by the Governor, without any further action by the City Council.

**SECTION 4.** The Governor's executive order dated April 22, 2020 (Executive Order N-54-20) provides that the public filing, posting, notice, and public access requirements set forth in Public Resources Code sections 21092.3 and 21152, and California Code of Regulations, Title 14, sections 15062(c)(2) and (c)(4); 15072(d); 15075 (a),(d), and (e); 15087(d); and 15094(a), (d), and (e), for projects undergoing, or deemed exempt from, California Environmental Quality Act review, are suspended for a period of 60 days (provisions governing the time for public review are not suspended). Executive Order N-54-20 also provides that the timeframes set forth in Public Resources Code sections 21080.3.1 and 21082.3, within which a California Native American tribe must request consultation and the lead agency must begin the consultation process, are suspended for 60 days. In accordance with Executive Order N-54-20, these 60-day suspensions of requirements apply to City actions subject to the California Environmental Quality Act pursuant to the guidelines adopted in CMC section 2.84.090.

**SECTION 5.** Government Code section 36937 and CMC section 2.12.050 authorize the adoption of an urgency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by four-fifths of the Council.

**SECTION 6.** The City Council hereby finds, determines and declares that this urgency ordinance adopted pursuant to California Government Code section 36937 and CMC section 2.12.050 is necessary because there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, all of which are deemed true and correct, as well any oral and written testimony at the May 5, 2020 City Council meeting.

**SECTION 7.** This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in Section 6 of this Ordinance.

**SECTION 8.** The City Council of the City of Cupertino held a duly noticed public meeting on May 5, 2020, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

**SECTION 9.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 10.** The City Council finds that adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that temporarily extending certain permit approvals and application processing timelines for a limited period of time will not have a significant effect on the environment.

**SECTION 11: *Severability.***

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 12: Effective Date.**

This urgency Ordinance shall take effect immediately upon adoption as provided by Government Code Section 36937 and CMC section 2.12.050 and shall remain in effect until the County’s Shelter-in-Place Order is lifted, plus an additional 180 days, unless the Ordinance is otherwise terminated or extended by the City Council .

**SECTION 13: Certification.**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

**SECTION 14: Continuity.**

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 amendments of the earlier provisions.

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**INTRODUCED and ADOPTED** as an urgency ordinance of the City of Cupertino at a meeting of the City Council held on May 5, 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