

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 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.

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