

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING CUPERTINO MUNICIPAL CODE CHAPTER 2.40 (CONCERNING  
THE DISASTER COUNCIL AND THE EMERGENCY MANAGEMENT PROGRAM)**

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The City Council of the City of Cupertino finds that:

1. The purpose of Chapter 2.40 of the Municipal Code is to provide clear and effective guidance for emergency management activities including the Disaster Service Worker Volunteer Program.
2. This ordinance makes revisions to Chapter 2.40 to reflect emergency management industry best practices, clarifies the role and membership of the Disaster Council, and addresses requirements specified in the California Emergency Services Act.
3. This ordinance clarifies the penalty for violations of Chapter 2.40 can include administrative citations or misdemeanor penalties to facilitate appropriate and efficient enforcement of emergency orders.
4. The City Council of the City of Cupertino held a duly noticed public hearing on November 17, 2020, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

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

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Exhibit 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 Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

**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 November 17, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on December 1, 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

## Exhibit A – Chapter 2.40 Disaster Council

*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. Title of Chapter Change from Disaster Council to Emergency Management Program**

#### CHAPTER 2.40: ~~DISASTER COUNCIL~~ **EMERGENCY MANAGEMENT PROGRAM\***

##### Section

- 2.40.010 Purposes.
- 2.40.020 Definition.
- 2.40.025 Disaster Council.
- 2.40.030 Reserved **Compliance with California Emergency Services Act.**
- 2.40.040 Powers and duties.
- 2.40.050 Director of Emergency Services–Designated.
- 2.40.060 Director of Emergency Services–Powers and duties.
- 2.40.070 Emergency organization–Membership.
- 2.40.080 Emergency organization–Structure, duties and functions.
- 2.40.090 Mutual aid.
- 2.40.100 Expenditures.
- 2.40.110 Violation–Penalty.

\* For the constitutional provision that states that any city may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws, see Calif. Const. Art. 11 § 11; for statutory provisions regarding the establishment and powers of local war or disaster councils, see Gov. Code § 8610 et seq. -- See Title 9, Health and Sanitation.

### **2. Purpose of Emergency Management Program**

#### 2.40.010 Purposes.

The declared purposes of this chapter are to provide for the **design of the citywide emergency management program for the City of Cupertino. The emergency**

management program includes the preparation and carrying out of plans for the protection of persons and property within this City in the event of an emergency, the direction of the emergency organization, and the coordination of the emergency functions of this City with all other public agencies, corporations, organizations, and affected private persons.

### **3. Disaster Council Membership**

#### **2.40.025 Disaster Council.**

Pursuant to California Government Code section 8610, the Cupertino Disaster Council, shall have the following voting members:

- A. The Mayor City Manager, or his/her their designee, shall be chair.
- B. The City Manager Mayor, or his/her their designee, shall be vice chair.
- C. The Section Chiefs (City Department Heads or their designee) of Emergency Services as are provided for in a current emergency plan of this jurisdiction, adopted pursuant to this ordinance.
- D. In addition to its voting members, the Disaster Council shall include sSuch representatives of civic, business, labor, veterans, professional, or other organizations having an official emergency responsibility, as may be appointed by the chair with the advice and consent of the governing body, to advise the voting members. which includes a representative from the following:
  - 1. Community Emergency Response Team (CERT).
  - 2. Medical Reserve Corps (MRC).
  - 3. Cupertino Amateur Radio Emergency Services (CARES).
  - 4. Public Safety Commission.
  - 5. Police.
  - 6. Fire.
  - 7. Three to Five Business Members.

### **4. Compliance with California Emergency Services Act**

#### **2.40.030 Reserved Compliance with California Emergency Services Act.**

**The City of Cupertino Disaster Council shall comply with the California Emergency Services Act.**

### **5. Powers and Duties of the Disaster Council**

#### **2.40.040 Disaster Council Powers and Duties.**

**The Disaster Council shall have the following duties, powers and responsibilities, and such other as they may be entrusted with by the City Council from time to time:**

- 1. Meet at the discretion of the Chair, but no less than annually.**
- 2. The Disaster Council has the duty and power to develop and Advise on and**  
~~R~~**recommend for adoption emergency plans and mutual aid agreements based on**  
the Standardized Emergency Management System (SEMS) as defined in the  
California Code of Regulations, Title 19, Division 2, Sections 2400 - 2450.
- 3. The Disaster Council will p**~~Provide~~ **guidance to develop disaster exercises and**  
~~community action plan,~~ **support citizen community participation, assist with**  
threat assessments, identify local resources and facilitate multi-agency/inter-  
agency coordination within its membership and other local governments and  
special districts.
- 4. The Disaster Council p**~~Provides~~ **oversight for engaging citizens community**  
**members** in homeland security, emergency planning and response and promoting  
community preparedness and family safety in three principal ways; through  
public education and outreach; through training opportunities; and, through  
volunteer programs that draw on special skills and interests.
- 5. Citizen Corps programs overseen by the Disaster Council may include one or**  
~~more of the following six program components administered by federal agencies:~~  
~~Community Emergency Response Team (CERT); Neighborhood Watch Program;~~  
~~Medical Reserve Corps (MRC); Volunteers in Police Service (VIPS); Operation~~  
~~Terrorist Information and Prevention System (TIPS) and Cupertino Amateur Radio~~  
~~Emergency Services (CARES).~~  
~~These volunteer efforts will be integrated into a strategic, comprehensive approach~~  
~~that will more effectively utilize the time, talents and interests of volunteers in~~  
~~support of first responders and overall community preparedness.~~  
~~The Disaster Council shall provide for the registration of Disaster Service Workers~~  
~~(DSWs) within Cupertino and is thus because of such registration act as an~~  
~~instrumentality of the City in aid of the carrying out of the general governmental~~  
~~functions and policy of the City. It agrees to comply with the rules and regulations~~  
~~governing Disaster Service Workers (DSWs)~~  
**Provide oversight responsibility for the California State Disaster Service Worker**  
**Volunteer Program (DSWVP). The City Office of Emergency Management**  
**manages the DSWVP through its Citizen Corps organization** as established by  
the California Emergency Council pursuant to the provisions of California  
Government Code Section 8585.5.

**6. Director of Emergency Services Designated**

2.40.050 Director of Emergency Services–Designated.

The City Manager or ~~his/her~~ their designee is designated the Director of Emergency Services for the purposes of disaster management under the Standardized Management System.

**7. Director of Emergency Services Powers and Duties**

**2.40.060 Director of Emergency Services–Powers and Duties.**

The Director is empowered to:

- A. Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the Director, the City Council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect;
- B. Request the Governor to proclaim a "state of emergency" when, in the opinion of the Director, the locally available resources are inadequate to cope with the emergency;
- C. Develop emergency plans with the assistance of the emergency ~~service chiefs~~ organization for consideration by the Disaster Council and manage the emergency programs of this City;
- D. Control and direct the effort of the emergency organization for this City for the accomplishment of the purposes of this chapter;
- E. Direct cooperation between and coordination of services and staff of the emergency organization of this City; and resolve questions of authority and responsibility that may arise between them;
- F. Represent this City in all dealings with public or private agencies on matters pertaining to emergencies as defined herein;
- G. In the event of the proclamation of a "local emergency" as herein provided, the proclamation of a "state of emergency" by the Governor or the Director of the State Office of Emergency Services, or the existence of a "state of war emergency," the Director is empowered to:
  1. Make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council;
  2. Obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use;
  3. Require emergency services of any City officer or employee and, in the event of the proclamation of a "state of emergency" in the Santa Clara County Operational Area or the existence of a "state of war emergency," to command the aid of as many citizens of

this community as ~~he~~ **the Director** deems necessary in the execution of ~~his~~ **their** duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by State law for registered disaster services workers;

4. Requisition necessary personnel or material of any City department or agency; and

5. Execute all ~~his~~ **their** ordinary power as City Manager, all of the special powers conferred upon ~~him~~ **them** by this chapter or by resolution or emergency plan pursuant hereto adopted by the City Council, all powers conferred upon ~~him~~ **them** by any statute, by an agreement approved by the City Council, and by any other lawful authority.

### **8. Emergency Organization Structure, Duties, and Functions**

#### **2.40.080 Emergency Organization–Structure, Duties and Functions.**

The City Emergency Organization functions under the Standardized Emergency Management System. Representatives of the Emergency Organization have specific duties and responsibilities to train, plan for and participate in the City’s emergency management response, as assigned by the Director of Emergency Services. These responsibilities are outlined in the Cupertino Emergency **Operations** Plan.

The structure, duties, and functions of the emergency organization and the order of emergency succession to the position of Director of Emergency Services, shall be adopted by resolution of the City Council.

### **9. Violation - Penalty**

#### **2.40.110 Violation–Penalty.**

It shall be a ~~misdemeanor, punishable as provided in Chapter 1.12 of this code,~~ **violation of this Chapter** for any person during an emergency to:

A. ~~Willfully~~ **Willfully** obstruct, hinder, or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon ~~him~~ **them** by virtue of this chapter;

B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof;

C. Wear, carry, or display without authority any means of identification specified by the emergency agency of the state.

**The City may address violations of this Chapter by issuing administrative citations, fines, and penalties as set forth in Chapter 1.10 of this Code. Alternatively, the City may prosecute any violation of this Chapter as a misdemeanor, punishable as**



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**provided in Chapter 1.12 of this Code. Law enforcement officers of the Santa Clara County Sheriff's Office are authorized to enforce this Chapter.**