

DRAFT INTERIM ORDINANCE NO. 21-2235

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO ADDING OR AMENDING CUPERTINO MUNICIPAL
CODE SECTIONS 18.20.170, 19.08.030, 19.12.030, 19.28.040, 19.28.110,
19.40.050, 19.40.060, 19.40.090, AND 19.112.060 TO ADOPT STANDARDS
FOR MINISTERIAL APPROVAL OF DUPLEXES AND LOT SPLITS IN
SINGLE-FAMILY RESIDENCE DISTRICTS

SECTION I: PROJECT DESCRIPTION

Application No.:

Applicant: City of Cupertino

Location: Single-Family Residential Districts Citywide

SECTION II: RECITALS

WHEREAS, on September 16, 2021, Governor Newsom signed into law Senate Bill 9 (“SB 9”), an act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use; and

WHEREAS, SB 9 require a proposed housing development containing no more than two residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements; and

WHEREAS, SB 9 further require a local agency to ministerially approve a parcel map for a lot split for a parcel in a single-family residential zone that meets certain requirements; and

WHEREAS, SB 9 authorizes local jurisdictions to apply objective zoning standards, objective subdivision standards, and objective design standards, subject to certain limitations in statute, and provides that these standards may be embodied in alternative objective land use specifications adopted by a local agency; and

WHEREAS, prior to SB 9 taking effect on January 1, 2022, the City Council wishes to adopt objective standards for the approval of housing development projects and parcel maps that are protective of the health, safety, peace, morals, and general welfare of Cupertino residents and consistent with the requirements of State law; and

WHEREAS, the implementation of SB 9 without standards for the ministerial approval of development projects and lot splits would create a current and immediate threat to the

public health, safety, or welfare, and therefore the City Council wishes to adopt an interim ordinance that will allow for the orderly and effective implementation of SB 9.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

That after careful consideration of facts, exhibits, testimony and other evidence submitted in this matter the City Council hereby adopts the Ordinance based on the findings described below, the public hearing, and the record, as follows:

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code Sections 19.152.020C and 19.152.030D:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The proposed amendments have been adopted in accord with the requirements of Title 19, and are proposed to implement SB 9 in a manner that is consistent with the requirements of the City's General Plan and internally consistent with Title 19.

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

Under Government Code Sections 66411.7(n) and 65852.21(j), an ordinance adopted to implement the requirements of SB 9 shall not be considered a project under CEQA. The proposed ordinance is therefore exempt from CEQA.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The proposed ordinance amendments are not being applied to any specific site, nor is it reasonably foreseeable which specific sites may elect to utilize the proposed ordinance amendments.

4. The proposed zoning will promote orderly development of the City.

The proposed ordinance is intended to promote the orderly implementation of development permitted under SB 9.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed ordinance amendments are not being applied to any specific site, nor is it reasonably foreseeable which specific sites may elect to utilize the proposed ordinance amendments. The proposed ordinance will regulate the development of projects in single-family residential districts authorized under SB 9 to protect the health, safety, peace, morals and general welfare of persons residing in those districts.

Section 3. The City Council hereby approves the following amendments to the Cupertino Municipal Code:

1. Add a new Section 18.20.170 of the Cupertino Municipal Code to read as follows:

18.20.170 Ministerial Approval of Lot Splits.

A. The City Engineer shall ministerially approve a parcel map application for a lot split if it meets the requirements of Government Code Section 66411.7 and conforms to all applicable objective requirements of the Subdivision Map Act (commencing with Government Code Section 66410). No public hearing shall be required. Notice shall be provided to adjacent property owners (including those across any public or private street) fourteen days prior to any action on the proposed project. The decision of the City Engineer shall be final.

B. The City Engineer shall require a lot split pursuant to this section to comply with objective zoning standards, objective subdivision standards, and objective design review standards applicable to the parcels created by pursuant to this Section, to the extent that such standards do not conflict with Government Code Section 66411.7, including but not limited to the objective subdivision standards in Paragraph G.

C. Notwithstanding Paragraph A, the City Engineer may deny a lot split proposed pursuant to this Section if the Building Official makes a written finding, based upon a preponderance of the evidence, that any housing development project proposed in connection with the lot split would have a specific, adverse impact, as defined and determined Section Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

D. In addition to any other conditions established in accordance with this Section, the City Engineer may require any of the following conditions when considering an application for a parcel map for a lot split pursuant to this Section:

1. Easements required for the provision of public services and facilities.

2. A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

E. Any lot created pursuant to this Section shall be limited to residential uses.

F. An applicant for a lot split shall provide proof that the property has not been occupied by a renter in the three years preceding the application to the satisfaction of the Director of Community Development.

G. An applicant for a lot split pursuant to this Section shall sign an affidavit stating that the applicant intends to occupy a housing unit on one of the lots created as their principal residence for a minimum of three years from the date of the approval of the urban lot split; provided, however, that this Paragraph shall not apply to an applicant that is a community land trust, as defined in Revenue and Taxation Code Section 402.1(a)(11)(C)(ii), or is a qualified nonprofit corporation, as described in Revenue and Taxation Code Section 214.15.

H. Objective Subdivisions Standards for Ministerially Approved Lot Splits. In addition to any applicable objective subdivision standards in this Title or the Subdivision Map Act and the requirements of Government Code Section 66411.7, a lot split approved pursuant to this Section must comply with the objective subdivision standards to the maximum extent permissible under Government Code Section 66411.7, including but not limited to objective standards for ministerial lot splits set forth in Sections 19.28.050 and 19.40.050.

I. This Section shall remain in effect until such time as Government Code Section 66411.7 is repealed or superseded or its requirements for ministerial approval of lot splits are materially amended, whether by legislation or initiative, or are held to be unenforceable by a court of competent jurisdiction, at which time this Section shall become null and void.

2. Amend or add the following definitions in Section 19.08.030 of the Municipal Code to read as follows:

“Bay window” means a projecting window element that is not an extension of the floor area and does not incorporate any useable space for seating or other purposes.

"Duplex" means a ~~building~~ **residential development**, on a lot under one ownership, containing not more than two kitchens, designed and used as two **attached or detached primary** dwelling units, of comparable size independent of each other.

"Floor area" means the total area of all floors of a building measured to the outside surfaces of exterior walls, and including the following:

1. Halls;
2. Base of stairwells;
3. Base of elevator shafts;
4. Services and mechanical equipment rooms;
5. Interior building area above fifteen feet in height between any floor level and the ceiling above;
6. **Residential Basements in the A, A1, R1 and RHS zoning districts** with lightwells that do not conform to Section 19.28.070(I);
7. **Residential basements in the R1 and RHS zoning districts on projects pursuant to Government Code section 64411.7**
7. Residential garages;
8. Roofed arcades, plazas, walkways, porches, breezeways, porticos, courts, and similar features substantially enclosed by exterior walls;
9. Sheds and accessory structures.

“Floor area” shall not include the following:

1. **Residential Basements in the R1 and RHS zoning districts** with lightwells that conform to Section 19.28.070(I);
2. **Required Lightwells**;

3. Attic areas;
4. Parking facilities, other than residential garages, accessory to a permitted conditional use and located on the same site;
5. Roofed arcades, plazas, walkways, porches, breezeways, porticos, courts and similar features not substantially enclosed by exterior walls.

“Gable end” means the exterior wall that supports pitched roofs and is generally triangular in shape.

"Lot" means a parcel or portion of land separated from other parcels or portions by description, as on a subdivision or record of survey map, or by metes and bounds, for purpose of sale, lease or separate use.

1. "Corner lot" means a lot situated at the intersection of two or more streets, or bounded on two or more adjacent sides by street lines.
2. "Flag lot" means a lot having access to a street by means of a private driveway or parcel of land not otherwise meeting the requirement of this title for lot width.
3. "Interior lot" means a lot other than a corner lot.
4. "Key lot" means the first lot to the rear of a corner lot, the front line of which is a continuation of the side line of the corner lot, and fronting on the street which intersects or intercepts the street on which the corner lot fronts.

5. “Pie-shaped lot” means an interior lot where the front lot line abuts a cul-de-sac, is 20% or more shorter than the rear lot line or the lot has five or more lot lines.

“Substantially enclosed” means an area that is covered by a roof or ceiling that is not more than 50% open to the sky/elements and surrounded by solid barriers that are six inches or taller on three sides. Solid barriers do not include open railings that are no taller than 42 inches, decorative arches or trellises. Railings and trellises shall have a visual transparency of more than 50%.

3. Amend Section 19.12.030 Approval Authority, subsection R-1 Ordinance Permits to add the following:

<u>Type of Permit or Decision</u> ^{A, B}	<u>Administrative Review</u>	<u>Design Review Committee</u>	<u>Planning Commission</u>	<u>City Council</u>	<u>Public Hearing/ Public Meeting/ Comment Period</u> ^C	<u>Noticing Radius</u> ^D	<u>Posted Site Notice</u>	<u>Expiration Date</u> ^E	<u>Chapter/ Findings</u>
<u>Miscellaneous Ministerial Permit</u>	<u>F</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>None</u>	<u>Adjacent</u>	<u>None</u>	<u>1 year</u>	<u>19.28.150</u>

2. Amend Section 19.12.030 Approval Authority, subsection R-1 Ordinance Permits to add the following:

<u>Type of Permit or Decision</u> ^{A, B}	<u>Administrative Review</u>	<u>Design Review Committee</u>	<u>Planning Commission</u>	<u>City Council</u>	<u>Public Hearing/ Public Meeting/ Comment Period</u> ^C	<u>Noticing Radius</u> ^D	<u>Posted Site Notice</u>	<u>Expiration Date</u> ^E	<u>Chapter/ Findings</u>
<u>Miscellaneous Ministerial Permit</u>	<u>Not allowed</u>								

2. Amend Section 19.28.110 of the Cupertino Municipal Code to add a new subsection G as follows:

G. Miscellaneous Ministerial Permit: For projects requiring notice of a Miscellaneous Ministerial Permit, notice shall be mailed in accord with subsection 19.12.110A(4), fourteen calendar days prior to the date of action on the application.

3. Amend Section 19.28.170A of the Cupertino Municipal Code to read as follows:

A. An appeal may be filed by any person, firm or corporation aggrieved or affected by any grant, denial, modification or revocation of any permit, or any determination or interpretation related to any provision of this title. **No appeal of a Miscellaneous Ministerial Permit shall be allowed.**

4. Amend Section 19.28.040 of the Cupertino Municipal Code to read as follows:

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

Planning permit required prior to building permit application	Approval authority	Type of Project
		zone, subject to the requirements of Section 19.28.100.
D. Two-Story Permit, pursuant to Chapter 19.12, Administration		Two-story addition or new two-story home in all districts that do not require Residential Design Review per Section 19.28.040 (E) except in an R1-a zone.
E. Residential Design Review, pursuant to Chapter 19.12, Administration	Admin. with design review	Two-story addition or new two-story home in all districts except R1-a where: <ul style="list-style-type: none"> 1. Second floor to first floor area ratio is greater than 66%, except any second to first floor ratio for development on building pads/graded areas with actual slopes equal to or greater than 20%; and/or 2. Where second story side yard setback(s) are less than 15 feet to any interior side property line
	DRC with design review	Two-story addition, new two-story home, and/or second story deck in the R1-a zone
F. Exception, pursuant to Chapter 19.12, Administration & Section 19.28.130, Exceptions	DRC	One or two-story project requesting an exception from Sections 19.28.070 [Development Regulations (Building)], 19.28.080 [Eichler R1-e Building Design Requirements], and/or 19.28.110 [Landscape Requirements].
G. Hillside Exception, pursuant to Chapter 19.12, Administration		Development (area greater than 500 square feet) on slopes greater than 30%
H. Architectural and Site Approval, pursuant to Chapters 19.12, Administration	PC	One or two-story addition or new home on a sloped single-family residential lot with development on building pads/graded areas with actual slopes equal to or greater than 20% and where the cut plus fill of the site exceeds 2,500 cubic yards

Planning permit required prior to building permit application	Approval authority	Type of Project
I. Conditional Use Permit, pursuant to Chapters 19.12, Administration		Two-story addition or new two-story home in an R1 zoning district with an "i" suffix
J. <u>Miscellaneous Ministerial Permit</u>	<u>Admin</u>	<ol style="list-style-type: none"> 1. <u>One or two-story duplex project in an R1 zoning district pursuant to Government Code Section 65852.21</u> 2. <u>New two-story home or two story addition in an R1 zoning district pursuant to Government Code Section 65852.21</u>

5. Amend Section 19.28.050 of the Cupertino Municipal Code to read as follows:

	R1-5	R1-6, 7.5, 8, 10, 20, etc., and R1-6e	R1-a
A. Minimum net lot area ¹	<u>i.</u> 5,000 square feet	<u>ii.</u> the number multiplied by 1,000 square feet	<u>iii.</u> 10,000 square feet
	<u>iv. For lots created under the provisions of Government Code Section 64411.7, the resulting lots shall be 40-60% of the lot being subdivided with no lots less than 1,200 square feet.</u>		
B. Minimum lot width (at the front setback line)	<u>i.</u> 50 feet	<u>ii.</u> 60 feet	<u>iii.</u> 75 feet
	<u>iv. For lots created pursuant to the provisions of Government Code Section 64411.7:</u> <ol style="list-style-type: none"> a. <u>No more than two new property lines may be added to create a new lot.</u> b. <u>Existing interior lots or pie shaped lots with 60 feet or more street frontage: resulting lots shall have a street frontage that is between 40-60% of the lot width of the lot being subdivided.</u> c. <u>Existing interior lots or pie shaped lots with less than 60 feet of street frontage: one of the resulting lots shall be a flag lot with access to the street.</u> 		

	R1-5	R1-6, 7.5, 8, 10, 20, etc., and R1-6e	R1-a
	<p>d. <u>Existing flag lot subdivision: resulting lots must be subdivided in the same orientation as the existing lot (i.e. the existing front lot line must be the front lot line of the future lots and the existing rear lot line shall be the rear lot line of the future lots) and shall be between 40-60% of the lot width of the lot being subdivided.</u></p> <p>e. <u>Corner lots: Shall be subdivided in a manner that the existing street side property line shall be split to create at least one front lot line on that frontage.</u></p>		
C. Landscaping	<p>i. See Chapter 14.15, Landscape Ordinance.</p> <p>ii. <u>At least 50% of the front yard of any project approved pursuant to Chapter 19.28.150 shall be occupied by landscaping (i.e., not hardscaped).</u></p>	<p>iii. Landscaping plans are required for all additions or new homes. The purpose of the landscaping is to beautify the property and to achieve partial screening of building forms from the street and adjacent properties. Generally, the landscaping may include shrubbery, hedges, trees, or lattice with vines on fences.</p> <p>iv. <u>At least 50% of the front yard of any project approved pursuant to Chapter 19.28.150 shall be occupied by landscaping (i.e., not hardscaped).</u></p>	
D. Development proposed on building pads /graded area with slopes equal to or greater than 20%			
1. Total site grading (cut plus fill) ^{2,3}	<p>i. 2,500 cubic yards maximum.</p> <p>ii. Projects that exceed the maximum quantity shall require Architectural and Site Approval per Section 19.28.040 (H).</p>		

	R1-5	R1-6, 7.5, 8, 10, 20, etc., and R1-6e	R1-a
	<p><u>iii. For projects proposed pursuant to Government Code Sections 64411.7 and 65852.21 shall be limited to 2,500 cubic yards for the entire site prior to subdivision.</u></p> <p><u>iv. For projects proposed pursuant to Government Code Sections 64411.7 and 65852.21, flat yard area created by grading areas that are sloped more than 10% shall be limited to 2,500 square feet not including the driveway prior to any subdivision.</u></p>		
2. Fences	See Chapter 19.48, Fence Ordinance		
E. Development (structures, improvements, or grading) on actual slopes ≥ 30%	<p><u>i. Limited to 500 square feet.</u></p> <p><u>ii. Development greater than 500 square feet shall be subject to a Hillside Exception by the Planning Commission in accordance with section 19.40.080 of the RHS Ordinance. No Hillside Exception is permitted on lots developed pursuant to Section 19.28.150.</u></p>		
F. <u>On-site improvements</u>	<p><u>All properties shall provide a 4.5 foot wide pathway and a 4.5 foot wide planting strip, curb and gutter, curb cut, AC pavement, and underground utilities at the street as follows:</u></p> <ol style="list-style-type: none"> <u>1. Detached pathway when the properties on either side of the property being developed has a detached pathway</u> <u>2. Monolithic pathway when the properties on either side of the property being developed has a monolithic pathway</u> <u>3. When properties on either side of the property do not have a pathway, a pathway that matches the pre-dominant pattern of pathways on the street, as determined by the City Engineer, shall be provided, unless the property has a "semi-rural" designation adopted by City Council resolution.</u> <u>4. The City Engineer shall adopt any objective standard necessary to implement the requirements of this paragraph.</u> 		
G. <u>Driveways for developments pursuant to Government</u>	<ol style="list-style-type: none"> <u>1. For new interior lots with a street frontage of 35 feet or less, no more than a 12-foot wide, one-car wide curb cut, shall be permitted. A distance of at least 22 feet shall be provided between the two one-car wide curb cuts, else, a shared driveway curb cut may be provided.</u> 		

	R1-5	R1-6, 7.5, 8, 10, 20, etc., and R1-6e	R1-a
<u>Code Section</u> <u>64411.7</u>	<p>2. <u>Existing pie-shaped lots with a street frontage of more than 70 feet: Resulting lots may provide a maximum 18 foot wide driveway curb cut for each resulting lot provided a distance of at least 22 feet is provided between existing and proposed driveway flares, else a driveway curb cut no more than 12 foot wide (one-car wide curb cut) shall be permitted.</u></p> <p>3. <u>Existing pie-shaped lots with a street frontage 70 feet or less: Driveway access shall be shared over the access area of the resulting flag lot. No other curb cuts shall be permitted.</u></p> <p>4. <u>When subdivision results in a flag lot subdivision, the lots shall share vehicular access off of a minimum 20 foot and a maximum of a 25-foot-wide access area comprising of a minimum 16-foot drive aisle, and minimum 2 foot wide landscaping planter on either side.</u></p> <p>5. <u>Where a shared driveway (not through a flag lot) is proposed:</u></p> <ul style="list-style-type: none"> i. <u>No additional curb cuts shall be permitted.</u> ii. <u>50% of the width of the shared driveway curb cut shall be on each property.</u> iii. <u>A maximum curb cut of 18' feet shall be permitted.</u> <p>6. <u>A maximum 18' wide car curb cut is allowed when a two car approach is permitted.</u></p> <p>7. <u>A covenant necessary for appropriate ingress and egress easements shall be recorded when access is shared prior to final parcel map recordation.</u></p> <p>8. <u>A maintenance agreement shall be recorded to ensure shared maintenance of any shared access easements, stormwater treatment, landscaping and private utilities, prior to final parcel map recordation.</u></p>		
<u>H. Easements and Covenants required for subdivisions pursuant to Government Code Section 64411.7</u>	<p>1. <u>Utility easements shall be recorded prior to final parcel map recordation.</u></p> <p>2. <u>A covenant necessary for maintenance of stormwater treatment facilities shall be recorded prior to final map recordation.</u></p>		

Notes:

¹ Lots, which contain less area than required by its zoning designation, but not less than 5,000 square feet, may nevertheless be used as building sites, provided that all other applicable requirements of this title are fulfilled.

² Maximum grading quantity includes grading for the building pad, yard areas, driveway, and all other areas requiring grading, but does not include basements. The graded area shall be limited to the building pad area to the greatest extent possible. Grading quantities for multiple driveways are divided equally among the participating lots, e.g. two lots sharing a driveway will divide the driveway grading quantity in half. The divided share will be charged against the grading quantity allowed for that lot development.

³ All cut and fill areas shall be rounded to follow the natural contours and planted with landscaping that meets the following requirements:

- i. A landscape plan shall be prepared that addresses measures to prevent soil erosion and to screen cut and fill slopes.
- ii. A tree planting plan shall be prepared for the site which will screen grading areas, and residential structures, to the greatest possible extent, as well as to reintroduce trees on barren slopes which were denuded by prior agricultural activities.
- iii. Landscape improvements shall meet the requirements as established in the Landscape Ordinance, Chapter 14.15.
- iv. Landscape improvements shall be installed prior to final occupancy unless such installation is impracticable, in which case, the applicant shall post a bond, cash, or other security to ensure installation within an 18-month period from occupancy. All such landscape areas shall be properly maintained.

6. Add a new Section 19.28.150 of the Cupertino Municipal Code to read as follows:

19.28.150 Ministerial Approval of Up to Two Units.

A. The Director of Community Development shall ministerially approve a total of two residential units on a parcel in an R-1 single-family residence district if the proposed housing development meets the requirements of Government Code Section 65842.21 and complies with all objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code.

B. The Director of Community Development shall impose all objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code that do not conflict with the requirements of Government Code Section 65842.21, including but not limited to the objective zoning and design standards in Paragraph E.

C. Notwithstanding Paragraph A, the Director of Community Development may deny a housing development project proposed under this Section if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

D. Application and Fees. An application on a form made available by the City shall be completed by the applicant. The form shall be accompanied by a fee that the City Council may adopt by resolution to sufficiently recover the cost of administering the requirements of this section. The application shall be accompanied by all technical reports, plans and information required to make a determination on the proposed project.

E. Objective Zoning and Design Standards for Ministerially Approved Housing Development Projects in the R-1 District. In addition to any applicable objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code, a housing development project approved pursuant to this Section must comply with all applicable objective zoning and design standards to the maximum extent permissible under Government Code Section 65852.21, including but not limited to the following standards for ministerial development projects:

<p><u>1. Development Standards (Gov. Code, § 65852.21)</u></p>	<p><u>a. Except as otherwise provided herein, units shall not exceed 800 square feet per unit and shall comply with Paragraph B.</u></p> <p><u>b. The floor area of the larger unit in a duplex development proposed pursuant to this Section shall be no more than 200 square feet greater than the smaller unit of the duplex development.</u></p> <p><u>c. Notwithstanding subparagraph (a), a duplex developed pursuant to this Section may have a Floor Area Ratio of up to 45% of the net lot area, plus an additional 5% for roof overhangs, patios, porches, and other similar</u></p>
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	<p><u>features not Substantially Enclosed, if it complies with the requirements of Paragraph B and subparagraphs 2 through 16 of this Paragraph; provided, however, that a housing development project on a lot having a slope 30% or greater shall not exceed the floor area allowed under Chapter 19.40.</u></p> <p>d. <u>If proposing a two unit development, no more than 25% of the existing exterior walls of an existing unit shall be demolished unless the site has not been occupied by a tenant in the last three years.</u></p> <p>e. <u>If no dedication was required for creation of the lot, the project shall include a dedication to accommodate the predominant public right of way, as determined by the City Engineer, abutting the corresponding lot line and frontage improvements, including curb, gutter and sidewalk shall be installed by the applicant.</u></p>
<p>2. <u>Second to First Floor Area Ratio:</u></p>	<p>a. <u>The ratio of the second story to first story floor area shall not exceed 50% except that:</u></p> <p>i. <u>In all R1 zoning districts except the R1-a district, the ratio of the second story to first story floor area may be up to a maximum of 66%, if a combined first story setback of 15 feet (with no first story side setback less than five feet) and a combined second story setback of at least 25 feet (with no second story side setback less than 15 feet) and a rear setback of 25 feet is provided.</u></p> <p>ii. <u>In the R1-a zoning district:</u></p> <ol style="list-style-type: none"> 1. <u>The maximum second story to first story floor area ratio is 40% of the existing or proposed first floor area but no larger than 500 square feet;</u> 2. <u>A second floor may be at least 750 square feet in area but shall not in any case exceed 1,100 square feet, if a combined first story setback of 20 feet</u>

	<p><u>(with no first story side setback less than ten feet), a combined second story setback of 35 feet (with no second story side setback less than 15 feet) and a rear setback 40 feet is provided.</u></p> <p>b. <u>Interior areas (measured from the finished floor to the top of the roof rafters) with heights greater than 16 feet shall be double counted as floor area as follows:</u></p> <p>i. <u>For one story homes, the floor area shall be double counted as first floor area.</u></p> <p>ii. <u>For two story homes, the floor area shall be counted once each for first and second floor area.</u></p>
<p>3. <u>Setbacks:</u></p>	<p>a. <u>Minimum first floor front setback is 20 feet, except as otherwise required in a tract map or zoning map except that:</u></p> <p>i. <u>In the R1-a zoning district, the required minimum front setback is 30 feet.</u></p> <p>ii. <u>Garages with up to two parking spaces shall be setback two additional feet from the face of the living area of the unit, not including a front entry feature or porch.</u></p> <p>iii. <u>Third car garage spaces:</u></p> <p>1. <u>On lots when the garage is visible from the street: parking shall be provided in tandem or in a detached accessory structure at the rear of the property.</u></p> <p>2. <u>On flag lots or on side-oriented garages located at the rear of the principal unit: a third parking space may be on the same wall plane as the other two parking spaces.</u></p> <p>b. <u>Minimum second floor front setback is 25 feet except that:</u></p> <p>i. <u>In the R1-a zoning district, the required minimum front setback is 30 feet.</u></p> <p>c. <u>First and Second Floor side and rear yard setbacks: Minimum side and rear setbacks shall be four feet; provided, however, that:</u></p>

	<ul style="list-style-type: none"> i. <u>No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.</u> ii. <u>No new or expanded structures shall encroach upon any existing public or private utility easements.</u> d. <u>Corner Triangle: No portion of a structure shall be located within a corner triangle, provided that in no case a side yard setback of more than four feet would be required.</u> e. <u>Detached primary residential structures: Detached structures shall have a setback of five feet as measured between the eaves of the two structures.</u> f. <u>Basements:</u> <ul style="list-style-type: none"> i. <u>Minimum front setback is 20 feet.</u> ii. <u>Minimum side setback is 5 feet.</u> iii. <u>Minimum rear setback is 20 feet.</u>
<p>4. <u>Maximum height:</u></p>	<ul style="list-style-type: none"> a. <u>Principal Dwelling units are limited to 28 feet, no more than two stories except that:</u> <ul style="list-style-type: none"> i. <u>In R-1 Zoning Districts with "i" suffix, buildings shall be limited to one story (not to exceed 18 feet).</u> b. <u>First floor building envelope: All the maximum exterior wall height and building height on single-story structures and single-story sections of two-story structures must fit into the building envelope defined by:</u> <ul style="list-style-type: none"> i. <u>A 9 foot high vertical line from natural grade measured at the property line; and</u> ii. <u>A 25 degree roof line angle projected inward at the 9 foot high line referenced above;</u> c. <u>Notwithstanding the first floor building envelope, a gable end of a roof enclosing an unfinished attic space may have a maximum wall height of 13 feet to the peak of the roof as measured from natural grade.</u>

	<p>d. <u>Second story building envelope: All the maximum exterior wall height and building height on two-story sections of two-story structures must fit into the building envelope defined by:</u></p> <ul style="list-style-type: none">i. <u>A 15 foot high vertical line from natural grade measured at the property line; and</u>ii. <u>A 25 degree roof line angle projected inward at the 15 foot high line referenced above.</u>
<p>5. <u>Basements:</u></p>	<ul style="list-style-type: none">a. <u>Are allowed only on lots that exceed 5,000 square feet.</u>b. <u>The perimeter of all basements and lightwells shall be treated and/or reinforced with the most effective root barrier measures as determined by an ISA certified arborist in conjunction with recommendations from a certified structural engineer.</u>c. <u>Lightwells shall be limited to the minimum number and size required for light and air standards under the California Residential Code as follows:</u><ul style="list-style-type: none">i. <u>Only windows shall be provided for all required emergency egress.</u>ii. <u>Lightwells are not allowed for areas not required to provide emergency egress. Alternative means of light and air may be provided, such as transoms windows in the basement wall.</u>iii. <u>Exterior doors are not allowed in a basement area except that an independent basement unit may have no more than one side hinged indoor swinging exterior door as a means of egress to the outside with a lightwell stairwell and landing area not to exceed the minimum requirements of the CA Residential Code.</u>iv. <u>For single story developments, a maximum of one 10 foot by 10 foot</u>

	<p><u>lightwell (including all stairs and appurtenances) may be proposed.</u></p> <p>v. <u>Lightwell railings shall have a maximum height of three feet six inches and shall be located immediately adjacent to the lightwell.</u></p> <p>d. <u>Lightwells shall not encroach into any required setback areas and shall not be located in the required front yard or street side yard setback area.</u></p> <p>e. <u>Lightwells that are visible from a street shall be screened by landscaping.</u></p>
<p>6. <u>Landscaping and Privacy Protection:</u></p>	<p>a. <u>Landscaping: All proposed landscaping shall meet the requirements of Chapter 14.15 of the Municipal Code</u></p> <p>i. <u>Front Yard Tree Required: A 24-inch box California native tree that typically grows to a mature height of more than 30 feet is required for all two story homes and must be placed in the center 50% of the front yard.</u></p> <p>ii. <u>An existing mature tree in the front yard that is or can typically grow to a height of 30 feet or more and is located in the center 50% of the front yard can be used as the front yard tree, subject to an ISA certified arborist certifying that the tree is in good health.</u></p> <p>iii. <u>A covenant shall be recorded to identify the front yard tree as a Protected Tree and notifying current and future property owners to retain and maintain the tree in good health.</u></p> <p>b. <u>Privacy Protection planting for windows from second story windows shall be required in the same manner as required pursuant to Section 19.28.070, except as provided below:</u></p> <p>i. <u>Windows or other openings in the wall with a side yard setback less than 10 feet shall have a minimum windowsill height</u></p>

	<p><u>of five feet one inch or shall have obscure glass and be inoperable with a fixed pane(s).</u></p> <p>ii. <u>Windows or other openings in the wall with a rear yard setback less than 25 feet shall have a minimum windowsill height of five feet one inch, or shall have obscure glass and be inoperable with a fixed pane(s).</u></p> <p>iii. <u>Subsections (a) and (b) do not apply to skylights or windows which do not have views into an adjacent side or rear yard or that face a street or a non-residential zoning district.</u></p> <p>iv. <u>Minimum planter width required for privacy planting shall be three feet. Emergency access paths shall not be concurrent with areas designated as privacy planting planters.</u></p>
<p>7. <u>Private open space:</u></p>	<p><u>Each unit must provide at least 15% of the unit floor area as private open space on the first floor, with no dimension less than 10 feet.</u></p>
<p>8. <u>Permitted yard encroachments</u> :</p>	<p>a. <u>Front entry features, but not porches, may encroach into a required front yard setback up to three feet.</u></p> <p>b. <u>May extend into a required yard a distance not exceeding three feet.</u></p> <p>c. <u>No architectural feature, or combination thereof, whether a portion of a principal or accessory structure, may extend closer than three feet to any property line.</u></p> <p>d. <u>Architectural features may not exceed 50% of the wall they are on, as seen from the interior.</u></p>
<p>9. <u>Second story decks, balconies or similar features that are not</u></p>	<p><u>OPTION A:</u></p> <p>a. <u>Not permitted.</u></p> <p><u>OPTION B:</u></p> <p>a. <u>Not permitted if either of the following conditions exist:</u></p>

<p><u>Substantially Enclosed</u></p>	<ul style="list-style-type: none"> i. <u>The lot width is 50 feet or less when measured at any cross-section where the deck is proposed; or</u> ii. <u>The lot has a building pad that is five or more feet higher than the buildings on the adjoining properties.</u> <p>b. <u>Shall have a minimum setback of 20 feet from the side property line and 30 feet from the rear property line.</u></p> <p><u>OPTION C:</u></p> <ul style="list-style-type: none"> a. <u>Only permitted if the deck or balcony faces the front yard of the subject property or a public street.</u> b. <u>Shall have a cumulative maximum area of 200 square feet with each balcony not exceeding 150 square feet nor shall any balcony extend more than nine feet from the exterior wall.</u> c. <u>May encroach into the required front setback area up to a maximum of three feet.</u> d. <u>No roofed second story decks or balconies shall encroach into any required setback area.</u>
<p>10. <u>Design standards:</u></p>	<ul style="list-style-type: none"> a. <u>Entry features:</u> <ul style="list-style-type: none"> i. <u>A maximum of one entry feature per unit is allowed but no more than one entry feature per structure shall be allowed.</u> ii. <u>The entry feature shall be oriented to face the street and shall include a front entry door also oriented to face the street.</u> iii. <u>Maximum entry feature height is as 14 feet to the top of the plate.</u> iv. <u>If a duplex with attached units is proposed, a proposed entry feature may incorporate two entrance doors for the two units. One of the entrance doors or a common opening into a shared entry portal shall be oriented to face the street.</u> v. <u>If duplexes are proposed on corner lots, the entrances to the two units shall be on</u>

different street frontages, except that if the corner lot fronts a major collector, both the entrances may be located on the minor collector or neighborhood street.

- b. If a front porch (not a front entry feature) is proposed, the porch shall be proportionately greater in width than in height.
 - i. Porch elements shall have detailing that emphasizes the base and have caps for posts and fence elements of the porch.
- c. Exterior and/or uncovered stair access shall not be allowed to the second floor.
- d. New structures shall be designed/located in a manner that no more than 10% of an existing solar panel array on an adjoining property is impacted by shade/shadow as demonstrated by a shadow study performed by a licensed engineer qualified to prepare such studies.
- e. All new structures proposed in the R1-e zoning district shall meet the building design requirements in Section 19.28.080 and shall meet the Eichler design guidelines.
- f. In the R1-a zoning district, the second story shall not cantilever over a first story wall plane.
- g. In addition to standards outlined in subsections (1) – (9) above, development on properties with an average slope greater than 10% shall comply with Section 19.40.050(E), (F) and (G) and Section 19.40.060(E), (H), (I) and (J).
- h. Windows and doors shall either:
 - i. Have a minimum three-and-one half inch in width by three-quarter inch in depth trim when protruding from the wall or
 - ii. Be inset a minimum of three inches from the exterior finish of the structure. If recessed, the primary siding material

shall cover the recessed edge faces and wrap toward the interior face of the window glazing or door by not less than three-inch depth.

- i. All garage doors shall be recessed a minimum of six (6) inches from the surrounding building wall and shall include trim of at least one and a half (1.5) inches in depth.
- j. Roof overhangs or building eaves shall be a minimum of 12 inches in width.
- k. Detached structures on a lot must use the same architectural style and materials.
- l. Where the garage faces the side yard, but is visible from the street, the garage shall incorporate a window on the street front facade so that it appears to be a habitable portion of the house. The window style must be the same as the windows on the habitable dwelling unit(s).
- m. Enclosed living area shall be closer to the street than garage space. Garages shall be set back as identified in subparagraph (3) above.
- n. No more than fifty percent of the front elevation of a house shall consist of garage space.
- o. The maximum width of a garage on the front elevation shall be 24 feet for a two-car garage.
- p. Garage doors for no more than two car spaces shall be visible from the public right of way.
- q. Outdoor lighting shall comply with the requirements of Chapter 19.102.
- r. The elevation facing a street shall incorporate at least four architectural features, such as bay windows or an entry feature, and/or elements of architectural interest, such as wall insets or offsets, planters, railings, trellises, a combination of roofing elements (e.g. hip and gable roofs), dormers, change in architectural materials,

	<p><u>quoins, accent tiles, or an accent window inset greater than six inches. Windowsills, door or window trim, and roofing materials do not count as one of the features.</u></p> <p>s. <u>Gable ends and dutch gable ends taller than thirty inches shall include at least one element of architectural interest such as:</u></p> <ul style="list-style-type: none"> ▪ <u>a wall offset with corbels, brackets or change in materials;</u> ▪ <u>louvered wood or metal vents;</u> ▪ <u>clay or terracotta tile vents;</u> ▪ <u>accent tile decoration;</u> ▪ <u>medallion decoration;</u> ▪ <u>metal grille;</u> ▪ <u>a change in architectural materials;</u> ▪ <u>incorporation of corbels;</u> ▪ <u>decorative gable pediments;</u> ▪ <u>eyebrow trellises or pergola structurally attached to the building or</u> ▪ <u>windows/glazing.</u> <p>t. <u>Stone veneer or accent materials used as a wainscot on a street facing façade shall be wrapped around to the side façade and end at a logical terminus, such as a fence line or a chimney.</u></p> <p>u. <u>Stone veneer or any other siding material wrapped on columns shall terminate at the floor.</u></p>
<p>11. <u>Accessory buildings/ structures:</u></p>	<p>a. <u>Allowed pursuant to the requirements of Chapter 19.100, except that Accessory Dwelling units or Junior Accessory Dwelling units shall not be permitted on any lot in the R-1 zoning district if a lot split has been approved pursuant to Section 18.12.70 and two residential units have been approved for construction pursuant to Section 19.28.150 on each lot.</u></p> <p>b. <u>Limited to one story (not to exceed 15 feet)</u></p> <p>c. <u>Accessory Dwelling Units shall meet subsections (1) and (2) above and shall</u></p>

	<u>additionally be in compliance with the regulations of Chapter 19.112.</u>
12. <u>Fences</u>	d. <u>Shall comply with the requirements of Chapter 19.48 of the Municipal Code.</u>
13. <u>Refuse, recycling and other containers</u>	<p>a. <u>A minimum 8 foot by 3 foot space per unit, not visible from the street, shall be provided in an interior yard behind a fence.</u></p> <p>b. <u>This area shall not be concurrent with any emergency access pathway required by the Fire Department.</u></p>
14. <u>Parking</u>	<p>a. <u>Units shall have at least one off-street parking space, except that parking requirements shall not be imposed in either of the following instances:</u></p> <p>i. <u>The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in Public Resources Code Section 21155(b) Code, or of a major transit stop, as defined in Public Resources Code Section 21064.3.</u></p> <p>ii. <u>There is a car share vehicle located within one block of the parcel.</u></p> <p>a. <u>Parking space(s) shall be provided in an enclosed garage encompassing 10' by 20' space for each space.</u></p> <p>b. <u>When additional enclosed parking space(s) is/are provided, the space(s) shall meet the requirements of Chapter 19.124.</u></p>
15. <u>Driveway and curb cuts:</u>	<p>a. <u>A one car driveway shall be a minimum of 10 feet in width and a maximum of 12 feet in width.</u></p> <p>b. <u>A two car driveway shall be a maximum of 20 feet in width. Any third or more driveway spaces shall be in tandem.</u></p> <p>c. <u>Subparagraphs a and b do not apply to the flag lot access area.</u></p> <p>d. <u>A maximum 18' foot wide curb cut when a two car curb cut is permitted, shall be allowed.</u></p>

	e. <u>A maximum 12' foot wide curb cut when a one car curb cut is permitted, shall be allowed.</u>
<u>16. Short Term Rentals Prohibited:</u>	<u>No residential unit created pursuant to this Section may be rented for a term of 30 days or less.</u>

F. This Section shall remain in effect until such time as Government Code Section 65842.21 is repealed or superseded or its requirements for ministerial approval of housing development projects are materially amended, whether by legislation or initiative, or are held to be unenforceable by a court of competent jurisdiction, at which time this Section shall become null and void.

G. [OPTION A]: Any dwelling unit approved pursuant to this Section shall be ineligible for conversion to a condominium, community apartment, or stock cooperative project. Any application for a tentative subdivision map or tentative parcel map for a residential condominium conversion of a unit created pursuant to this Section shall be denied by the Department of Community Development.

[Option B: OMIT]

3. Amend Section 19.40.050 of the Cupertino Municipal Code to read as follows:

A. Density	
1. Dwelling Unit Density	Determined by Appendix F of the General Plan based upon slope density standards described therein.
2. Transfer of density credits	Density credits derived from application of a slope density formula to a lot or a group of lots may not be transferred to property outside any approved subdivision or parcel map boundary.
B. Minimum Lot Area	
1. By zoning district symbol:	Lot area shall correspond to the number (multiplied by one thousand square feet) following the RHS zoning symbol. Examples: RHS-20: Minimum lot size of 20,000 square feet (20 * 1,000 s.f.)

	<p>RHS-120: Minimum lot size of 120,000 square feet (120 * 1,000 s.f.)</p> <p>RHS-218: Minimum lot size of 218,000 square feet (218 * 1,000 s.f.)</p>
2. For subdivision	Minimum lot area shall be in accordance with Appendix F of the General Plan, unless clustered in accordance with Section 18.52.030 (Hillside Subdivisions). The minimum lot area shall be 10,000 square feet for each unit in a clustered subdivision.
3. Subdividable lots	Lot size zoning designation shall be assigned at time of subdivision
4. Non-subdividable legally-created, developed lots	Shall reflect the existing lot size
5. <u>Lots created pursuant to Government Code Section 64411.7</u>	<p>a. <u>Each resulting lot shall be at least 40% of the size of the original lot being split.</u></p> <p>b. <u>Each resulting lot shall share one common driveway.</u></p> <p>c. <u>Up to two new property lines may be added to create a new lot and must follow the contours of the property.</u></p> <p>d. <u>If in an area where direct sanitary sewer connection is unavailable, a percolation test completed within the last five years, or if the percolation test has been recertified, within the last 10 years, must be provided.</u></p> <p>e. <u>Building pads shall be identified on the flattest portion of the resulting lots closest to an existing or proposed new driveway.</u></p>
C. Minimum Lot Width	<p>a. 70 feet at front setback line.</p> <p>b. No minimum lot width for lots served by private driveway and which do not adjoin a public street.</p>
D. Development on Substandard Lots	A Hillside Exception shall be obtained to construct structures or improvements on existing vacant legal lots, <u>except where prohibited by Government Code Section 65852.21.</u>
E. Site Grading	

<p>1. Maximum Grading Quantity</p>	<p>a. Cumulative total of 2,500 cubic yards, cut plus fill. Includes: grading for building pad, yard areas, driveway and all other areas requiring grading. Excludes: basements</p> <p>b. All cut and fill shall be rounded to contour with natural contours and planted with landscaping which meets the requirements in Section 19.40.050G</p> <p>c. <u>For each of the lots developed or created pursuant to Government Code Section 64411.7, a cumulative total of 1,250 cubic yards, cut plus fill (including grading for building pad, yard areas, driveway, all other areas requiring grading, and basements), except if the original lot that was subdivided has already performed prior grading, then the amount of grading that has previously occurred shall be reduced from the maximum grading quantity allowed cumulatively on the two resulting lots.</u></p>
<p>2. Graded Area</p>	<p>a. Shall be limited to the building pad area to the greatest extent possible.</p> <p>b. <u>For lots developed or created pursuant to Government Code Sections 64411.7 and 65852.21, graded areas are limited to within 50 feet of the building pad area.</u></p>
<p>3. <u>Multiple Common Driveways</u></p>	<p>Grading quantities shall be divided equally among the participating lots. E.g., two lots sharing a driveway shall divide the driveway grading quantity in half. The divided share will be charged against the grading quantity allowed for that lot development.</p>
<p>4. Flat Yard Area</p>	<p>a. Limited to a maximum of 2,500 square feet, excluding driveways</p> <p>b. <u>For lots developed or created pursuant to Government Code Section 64411.7, limited to a maximum of 1,250 square feet per lot, excluding driveways, except as limited by subsection (I).</u></p>
<p>5. Soil Erosion and Screening of Cut and Fill Slopes Plan</p>	<p>A licensed landscape architect shall review grading plans and shall, in consultation with the applicant and the City Engineer, submit a plan to prevent soil erosion and to screen cut and fill slopes.</p>

F. Landscaping	
1. Tree Planting Plan	<p>Shall be prepared by a licensed landscape architect to:</p> <p><u>a.</u> Screen the residential structures to the greatest possible extent <u>from the following prominent intersections. For projects pursuant to Government Code Section 65852.21, no more than 10% of the structure shall be visible from the following prominent intersections:</u></p> <ul style="list-style-type: none"> <u>i. Foothill Boulevard and Cristo Rey Drive</u> <u>ii. Foothill Boulevard and Alpine Way</u> <u>iii. Bellevue and Carmen Road</u> <u>iv. Linda Vista Drive and Hyannisport Ave</u> <u>v. Hyannisport Ave and Bubb Road</u> <u>vi. Rainbow Ave and Weymoth Drive.</u> <p><u>A visual simulation from each of the intersections above shall be provided to indicate compliance.</u></p>
	<p><u>b.</u> Reintroduce trees on barren slopes which were denuded by prior agricultural activities</p>
2. Landscape Requirements	<p>Must comply with the Chapter 14.15, Landscaping Ordinance and Wildland Urban Interface Fire Area (WUIFA) requirements.</p> <p><u>At least 50% of the front yard area shall be landscaped (i.e., not hardscaped)</u></p>
3. Installation of Landscape Improvements	<p>Must be installed prior to final occupancy unless it is not practicable. If not installed, the applicant shall post a bond, cash or other security to insure <u>cover the cost of</u> installation within an 18 month period from occupancy.</p>
4. Landscape Maintenance	<p>All such landscape areas shall be properly maintained in conformance with the requirements of Chapter 14.15, Landscape Ordinance.</p>
5. Native Trees	<p>Should be integrated into the site design to the greatest extent possible.</p>
G. Watercourse Protection	
1. Watercourse and Existing Riparian Vegetation	<p>Any watercourse identified in Figure 6-G in the City's General Plan and its existing riparian vegetation must be shown on all development plans.</p>

<p>2. Setback</p> <p>a. Lots < 1 acre b. Lots ≥ 1 acre</p>	<p>The setback shall be measured from the top of bank of the watercourses or from existing riparian vegetation, whichever is greater. The setback from riparian vegetation will be measured from the drip line perimeter.</p> <p>All new development, including structures, grading and clearing, must be set back as follows.</p> <p>50 feet 100 feet</p>
<p>H. Development Near Prominent Ridgelines</p>	
<p>1. New structures</p>	<p>Shall not disrupt a 15% site line from a prominent ridge as identified in Appendix A. The fifteen percent site line shall be measured from the top of ridge at the closest point from the structure.</p>
<p>2. Additions to existing structures within the 15% site line of prominent ridgeline</p>	<p><u>a. MayShall</u> not further encroach into the site line. For example, the addition may not add height or bulk which may increase the disruption to the fifteen percent ridgeline site line.</p>
<p>3. Impracticable Clause</p>	<p>If (1) and (2) above are not practicable, alternatives may be considered through the exception process, <u>provided that no discretionary exemption process is allowed for projects seeking approval under Government Code Section 65852.21.</u></p>
<p>I. Development on Slopes of ≥ 30%</p>	<p><u>a. Hillside Exception required for all grading, structures and other development > 500 square feet, except that on lots developed or created pursuant to Government Code Sections 64411.7 and 65852.21, grading, building pads for structures and other development is limited to a maximum of 500 square feet.</u></p> <p><u>b. If the lots developed or created pursuant to Government Code Sections 64411.7 and 65852.21 have no areas with slopes less than 30% that can accommodate up to two units 800 square foot each, grading and building pads for structures is limited to 800 square feet. No other development shall be</u></p>

	<u>permitted on such lots (e.g. development for flat yard area).</u>
J. Trail Linkages and Lots Adjoining Public Open Spaces Site Plan	<p>1. <u>a.</u> Site plan must identify trail linkages as shown in the General Plan Trail Plan, on and adjacent to the site.</p> <p>2. <u>b.</u> If a trail linkage is identified across a property being developed, development shall not take place within that area unless approved through the exception process, <u>except that on lots developed or created pursuant to Government Code Sections 64411.7 and 65852.21, no development may occur in an area where a trail linkage is identified on the property.</u></p> <p>3. <u>c.</u> For lots adjoining Public Open Spaces, driveways and buildings shall be located as far as feasible from the Public Open Space and designed in a manner to minimize impacts on the Public Open Space.</p>
K. Views and Privacy	<p>It is not the responsibility of City Government to ensure the privacy protection of the building permit applicant or owners of surrounding properties that may be affected by the structure under construction. However, the Director of Community Development may confer with the building permit applicant to discuss alternate means of preventing privacy intrusion and preserving views <u>except that for lots developed or created pursuant to Government Code Sections 64411.7 and 65852.21, privacy protection planting, as required pursuant to Section 19.28.120, is required for second story windows. Windows or other openings in the wall with a side yard setback less than 15 feet or a rear yard setback less than 25 feet shall have a minimum windowsill height of five feet one inch, or shall have obscure glass and be inoperable with a fixed pane(s).</u></p>

4. Amend Section 19.40.060 of the Cupertino Municipal Code to read as follows:

			28%	27%
			29%	28.5%
	c. Average Slope $\geq 30\%$	Allowable floor area shall be reduced by a constant 30 percent Slope Adjustment Factor = $(1 - 0.3)$	$\geq 30\%$	30%

3. Additional Regulations for Lots Within Clustered Subdivisions where Land is Reserved for Common Open Space

a. Lot Area for calculating FAR	May count a proportionate share of the reserved private open space to arrive at lot area for purposes of calculating FAR.
b. Maximum FAR prior to slope consideration	No developable lot in a cluster development can exceed forty-five-percent floor area ratio, prior to applying the slope adjustment factor, when a portion of the private open space is attributed to the lot area for calculating FAR
c. Average slope of lot	Calculated on the developable lot only.

B. Height of Buildings and Structures

Limited to 30 feet

C. Setbacks

	First Floor	Second Floor	Habitable Third Floor (or portions of structures taller than 20 feet)
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1. Front-yard

a. Slope $\leq 20\%$	20 feet	Driveway and garage must be designed to enable vehicles to park off-street	25 feet	25 feet
b. Slope $> 20\%$	10 feet		25 feet	25 feet

2. Side-yard

a. Interior Side	10 feet	15 feet	20 feet
b. Street Side on Corner Lot	15 feet	15 feet	20 feet
<u>c. Lots developed pursuant to Government Code Section 65852.21</u>	<u>4 feet</u>	<u>4 feet</u>	<u>4 feet</u>

3. Rear-yard

20 feet	25 feet	25 feet
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a. <u>Lots developed pursuant to Government Code Section 65852.21</u>	<u>4 feet</u>	<u>4 feet</u>	<u>4 feet</u>
D. Second Story Decks and Patios Minimum Setbacks			
	First Floor	Second Floor	Habitable Third Floor (or portions of structures taller than 20 feet)
1. Front Yard	-	17 feet	17 feet
2. Side Yard	-	15 feet	15 feet
3. Rear Yard	-	20 feet	20 feet
E. Downhill Facing Elevation			
1. Second Story Downhill Facing Wall Plane Offset			
a. Offset from First Floor Downhill Wall Plane	i. Average of 7 feet 6 inches for 75% of the second story downhill facing wall plane shall be setback and ii. Not less than <u>a five feet setback</u> offset . iii. The remaining 25% may not extend past <u>(cantilever over)</u> the first story wall plane.		
b. Multiple Downhill Facing Wall Planes	Offset shall apply only the primary setback affected.		
c. Offset from First Floor Roofed Porches	i. Offset may be measured from the outside perimeter of first-story roofed porches. ii. Roof of the porch must match, in pitch and style, the roof of the main structure. iii. Porch must be at least 5 feet in width and extend the length of the wall on which it is located <u>to be a qualifying offset feature</u> .		
2. Maximum <u>Exposed</u> Wall Height on Downhill Elevation	15 feet		
F. Permitted Yard Encroachments			

<p>1. Extension of a Legal Non-conforming Wall Plane for structures not located within a prominent ridgeline site line</p>	<p>a. Where a building legally constructed according to existing first floor yard and setback regulations at the time of construction encroaches upon present required first floor setbacks, one encroaching side of the existing structure may be extended along existing building lines.</p> <p>b. Only one such extension shall be permitted for the life of the building.</p> <p>c. Encroachments into a required yard which are the result of the granting of a variance may not be further extended.</p> <p>d. Further encroachment into a required setback is not allowed. I.e., a non-conforming setback may not be further reduced.</p> <p>e. In no case shall any wall plane of a first-story addition be placed closer than three feet to any property line.</p> <p>f. <u>Shall not apply to properties developed or created pursuant to Government Code Section 65852.21 and 64411.7.</u></p>
<p>2. Architectural Features</p>	<p>a. May extend into a required yard a distance not exceeding three feet.</p> <p>b. No architectural feature, or combination thereof, whether a portion of a principal or accessory structure, may extend closer than three feet to any property line.</p> <p>c. <u>Second story decks or balconies may not further encroach into a required setback than allowed in Subsection D.</u></p>
<p>G. Accessory Structures (including attached patio covers)</p>	<p><u>a.</u> As allowed by Chapter 19.100, Accessory Buildings/Structures</p> <p><u>b.</u> <u>Lots created and developed as a duplex pursuant to Government Code Section 65852.21 may not develop an Accessory Dwelling Unit or Junior Accessory Dwelling Unit.</u></p>
<p>H. Design Standards</p>	
<p>1. Building and Roof Forms</p>	
<p>a. Natural Contours</p>	<p>Building shall follow as closely as possible the primary natural contour of the lot.</p>
<p>b. Building Mass and Roof Pitches</p>	<p>The main building mass shall be on the upslope side of the building and the roof pitches shall trend downslope.</p>
<p>c. Second Story Dormers</p>	<p>Permitted within the second story setbacks as long as they are minor in shape and size.</p>

d. Downhill Elevation of main structure	Shall have a minimum of four offset building and roof elements to provide varied building forms to produce shadow patterns which reduce the impact of visual mass.
e. High Wall Planes	Wall planes exceeding one story or 20 feet in height, whichever is more restrictive, shall contain architectural elements in order to provide relief and to break up expansive wall planes.
2. Colors	
a. Natural Earth Tones	All structures on the lot shall use natural earth tone and/or vegetation colors which complement the natural surroundings. Natural earth-tone and vegetation colors include natural hues of brown, green and shades of gray.
b. Reflectivity Value	Shall not exceed 60 on a flat surface
3. Outdoor Lighting	
All outdoor lighting shall meet the requirements in Chapter 19.102.	
4. Garages	<p><u>All projects shall strive to attain, except that projects pursuant to Government Code Section 65852.21 shall attain, the following standards:</u></p> <p>a. <u>No more than 50% of the façade visible from the right of way shall comprise the garage.</u></p> <p>b. <u>A two car garage face shall not exceed 24 feet and a one car garage face shall not exceed 12 feet.</u></p> <p>c. <u>Garages visible from the right of way shall be setback a minimum of two feet from the livable areas of the home except if only the garage and/or the entrance to the home, and no other livable portions of the home, are accessible from the street level.</u></p> <p>d. <u>Third car spaces shall be provided in tandem or shall be provided in a detached accessory structure.</u></p>
5. Entry Features	<p><u>All projects shall strive to attain, except that projects pursuant to Government Code Section 65852.21 shall attain, the following standards:</u></p> <p>a. <u>Only one entry feature shall be permitted per structure and only one entry feature shall be visible from the public street.</u></p> <p>b. <u>Duplexes shall have entrances to each unit on different frontages.</u></p> <p>c. <u>Entry features shall be limited to 14 feet in height from the natural grade to the top of wall plate for hip roofed features and to the top of the peak for gable roofed features.</u></p>
<u>6. Uncovered/exterior staircases</u>	<u>Not allowed.</u>

I. Geologic and Soils Reports

1. Applicability

A geological report prepared by a certified engineering geologist and a soils report prepared by a registered civil engineer qualified in soils mechanics by the State shall be submitted prior to issuance of permits for construction of any building or structure which:

- a. Is located on property in an RHS zoning district which has been designated by the General Plan to be within a geological hazard area; and
- b. Where an addition, alteration or repair of an existing building or structure include at least one of the following:
 - i. The improvements include increasing the occupancy capacity of the dwelling such as adding a bedroom or ~~secondary~~ Accessory Dwelling unit, or
 - ii. The cost of the completed addition, alteration or repairs will, during any period of twelve months, exceed twenty-five percent of the value of the existing improvements as determined by the ~~building~~ Building ~~official~~ Official based on current per foot value of the proposed structure to the existing structure's value on a parcel of property. For the purposes of this section, the value of existing improvements shall be deemed to be the estimated cost to rebuild the improvements in kind, which value shall be determined by the ~~building~~ Building ~~official~~ Official.

<p>2. Content of Reports</p>	<p>These reports shall contain, in addition to the requirements of Chapter 16.12 of this code, the following:</p> <ol style="list-style-type: none"> a. All pertinent data, interpretations and evaluations, based upon the most current professionally recognized soils and geologic data; b. The significance of the interpretations and evaluations with respect to the actual development or implementation of the intended land use through identification of any significant geologic problems, critically expansive soils or other unstable soil conditions which if not corrected may lead to structural damage or aggravation of these geologic problems both on-and off-site; c. Recommendations for corrective measures deemed necessary to prevent or significantly mitigate potential damages to the proposed project and adjacent properties or to otherwise insure safe development of the property; d. Recommendations for additional investigations that should be made to insure safe development of the property; e. Any other information deemed appropriate by the City Engineer.
<p>3. Incorporation of Recommendations</p>	<p>All building and site plans shall incorporate the above-described corrective measures and must be approved by the City Engineer, prior to building permit issuance.</p>
<p>J. Private Roads and Driveways</p>	
<p>1. Pavement Width and Design</p>	<p>The pavement width and design for a private road or common driveway serving two to five lots and a single-lot driveway shall comply with development standards contained in the Hillside Subdivision Ordinance, Chapter 18.52 of this code.</p>
<p>2. Reciprocal Ingress/Egress Easement and Reciprocal Maintenance Agreement</p>	<p>The property owner for a lot served by a private road or common driveway shall, prior to issuance of building permits, record an appropriate deed restriction guaranteeing the following, to adjoining property owners who utilize the private road or common driveway for the primary access to their lot(s):</p> <ol style="list-style-type: none"> a. Reciprocal ingress/egress easement, and b. Participation in a reciprocal maintenance agreement.

K. Solar Design	The setback and height restrictions provided in this chapter may be varied for a structure utilized for passive or active solar purposes, provided that no such structure shall infringe upon solar easements or adjoining property owners. Variation from the setback or height restrictions of this chapter may be allowed only upon issuance of an Administrative Conditional Use Permit subject to Chapter 19.12, <u>except that lots developed pursuant to Government Code Section 65852.21 shall not be eligible for such a discretionary permit.</u>
<u>L. Off-street Improvements</u>	<u>For lots developed pursuant to Government Code Section 65852.21, upon development of the lot, appropriate public right of way dedications shall be made to accommodate the predominant width of the street and street improvements shall be installed to the Public Works Departments standards.</u>
<u>M. Short Term Rentals Prohibited.</u>	<u>No residential unit created pursuant to Government Code Section 65852.21 may be rented for a term of 30 days or less.</u>

5. Add a new Section 19.40.090 of the Cupertino Municipal Code to read as follows:

19.40.090 Ministerial Approval of Up to Two Units.

A. The Director of Community Development shall ministerially approve a total of two residential units on a parcel in an RHS residential hillside zoning district if the proposed housing development meets the requirements of Government Code Section 65842.21 and complies with all objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code.

B. The Director of Community Development shall impose all objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code that do not conflict with the requirements of Government Code Section 65842.21, including but not limited to the standards for ministerial development projects in Section 19.40.050 and 19.40.060.

C. Notwithstanding Paragraph A, the Director of Community Development may deny a housing development project proposed under this Section if the Building Official makes a written finding, based upon a preponderance of the evidence, that the proposed housing

development project would have a specific, adverse impact, as defined and determined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

D. Application and Fees. An application on a form made available by the City shall be completed by the applicant. The form shall be accompanied by a fee that the City Council may adopt by resolution to sufficiently recover the cost of administering the requirements of this section. The application shall be accompanied by all technical reports, plans and information required to make a determination on the proposed project.

E. Objective Zoning and Design Standards for Ministerially Approved Housing Development Projects. In addition to any applicable objective zoning standards, objective subdivision standards, and objective design review standards in the Municipal Code, a housing development project approved pursuant to this Section must comply with all applicable objective zoning and design standards to the maximum extent permissible under Government Code Section 65852.21, including but not limited to the standards for ministerial development projects in Section 19.40.050 and 19.40.060.

F. This Section shall remain in effect until such time as Government Code Section 65842.21 is repealed or superseded or its requirements for ministerial approval of housing development projects are materially amended, whether by legislation or initiative, or are held to be unenforceable by a court of competent jurisdiction, at which time this Section shall become null and void.

G. [OPTION A]: Any dwelling unit approved pursuant to this Section shall be ineligible for conversion to a condominium, community apartment, or stock cooperative project. Any application for a tentative subdivision map or tentative parcel map for a residential condominium conversion of a unit created pursuant to this Section shall be denied by the Department of Public Works.

[Option B: OMIT]

6. Add a new Section 19.112.060 of the Cupertino Municipal Code to read as follows:

19.112.060 Accessory Dwelling Units Prohibited on Certain Lots.

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

Section 4. Development standards and other provisions to implement the provisions of Senate Bill 9 allowing for ministerial approval of housing development projects and lot splits in single family residential districts are necessary to protect public health, safety, and welfare of residents of the City of Cupertino. The City Council therefore finds that an interim ordinance adopted pursuant to Government Code Section 65858 is necessary prevent a current and imminent threat to the public, health, safety, and welfare.

Section 5. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 6. Under Government Code Sections 66411.7(n) and 65852.21(j), an ordinance adopted to implement the requirements of Senate Bill 9 shall not be considered a project under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.* Public Resources Code. The Ordinance is therefore exempt from CEQA.

Section 7. This ordinance is adopted pursuant to Government Code Section 65858 and shall take effect on January 1, 2022.

ENACATED on this 7th day of December, 2021, at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

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