

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING MUNICIPAL CODE CHAPTER 2.84: ENVIRONMENTAL REVIEW  
COMMITTEE**

WHEREAS, in 1990, the City Council of the City of Cupertino adopted Ordinance No. 1535 establishing the Environmental Review Committee; and

WHEREAS, the Environmental Review Committee Ordinance, as amended, is codified in Chapter 2.84 of the Municipal Code; and

WHEREAS, the City Council desires to amend Chapter 2.84 to improve oversight of the environmental review process as set forth therein.

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

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this Ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this Ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this Ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3:** California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. 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 that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for 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 proposed action would have no or only a de minimis effect 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 June 21, 2022 and **ENACTED** at a regular meeting of the Cupertino City Council on June 21, 2022 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

**Attachment A – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CUPERTINO AMENDING CITY CODE CHAPTER 2.84: ENVIRONMENTAL  
REVIEW COMMITTEE**

*Chapter 2.84 of the Cupertino Municipal Code set forth below is amended as follows:*

**2.84.010 Established-Composition.**

The Environmental Review Committee (ERC) of the City is established. ERC shall consist of ~~one~~ two City Council persons, and ~~one~~ Planning Commissioner, ~~the City Manager, the Director of Public Works and the Director of Community Development or their designated alternates.~~

~~In addition, the chairperson may appoint one at-large nonvoting citizen member to the committee. The at-large member shall receive all agendas, notifications and materials which other members receive and shall be entitled to participate in all discussions at ERC meetings in the same manner as other members of the committee. The at-large member would serve a term of one year; provided, that he or she may be removed at the pleasure of the chair.~~

**2.84.020 Terms of Office.**

~~The terms of staff members are ongoing unless changed by action of the City Council.~~ The term of the City Council persons and Planning Commissioner shall be reviewed periodically by the City Council and Planning Commission respectively for reappointment or a new appointment. Because this Committee is composed of ~~staff and~~ members of other legislative bodies, it is not directly governed by the Resolution of the Cupertino City Council which governs advisory bodies.

**2.84.030 Chairperson.**

The Committee shall elect its chairperson and vice-chairperson from among its members and shall appoint a secretary. The secretary need not be a member of the Committee.

**2.84.040 Meetings-Quorum.**

A. The Environmental Review Committee shall establish a regular time and place of meeting and rules of conduct thereof and shall hold at least two regular meetings each month.

B. A majority of the Environmental Review Committee shall constitute a quorum for the purpose of transacting the business of the Committee.

#### **2.84.050 Compensation–Expenses.**

Members shall serve on the Environmental Review Committee without compensation ~~but all necessary expenses reasonably incurred by them while acting in their official capacity shall be paid following appropriate action by the City Council.~~ Committee members may be reimbursed for necessary expenses reasonably incurred by them while acting in their official capacity subject to the approval of the City Manager.

#### **2.84.060 Majority Vote Required.**

A majority vote of the quorum is required to approve a recommendation on any matter that is presented to the Committee which requires a vote.

#### **2.84.070 Records.**

The Committee shall keep an accurate record of its proceedings and transactions, and shall render such reports to the City Council and Planning Commission as may be required. These records shall be filed with the City Clerk.

#### **2.84.080 Duties–Powers–Responsibilities.**

- A. All discretionary projects which are not categorically exempt or otherwise exempted from further environmental assessment, shall be forwarded to the Environmental Review Committee for evaluation under the California Environmental Quality Act.
- B. The Committee shall evaluate the initial study of a proposed project to determine whether the project may or may not have a significant effect on the environment.
- C. If a determination is made that the project will not have a significant impact on the environment, the Committee will recommend that the final reviewing authority (decisionmaker) grant a negative declaration.
- D. If a determination is made that the project may have a significant impact on the environment, the Committee shall require preparation of an environmental impact report (EIR). ~~The major areas of concern, the selection of the preparer and the preparation of the EIR shall be coordinated by the ERC not including the City Council and Planning Commission members.~~

#### **2.84.090 Guidelines–CEQA.**

California Environmental Quality Act guidelines promulgated by the California Secretary of Natural Resources and as subsequently amended are adopted by this reference.

**2.84.100 Appeals.**

The project sponsor may appeal a decision to prepare an EIR to the City Council. The appeal shall be filed in writing with the City Clerk within five working days of the Committee's decision. An appeal not filed within such time shall be barred. The appeal shall state the grounds and basis thereof. If the City Council determines that an EIR is not necessary, the project shall be returned to the ERC for further consideration.

**2.84.110 Fees.**

The City Council may, by resolution, establish an environmental assessment fee.

**2.84.120 Effect.**

Nothing in this chapter shall be construed as restricting or curtailing any powers of the City Council, Planning Commission or City officers