

Draft Ordinance No. 16-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING TITLE 1, CHAPTER 1.10, TO ADD SECTION 1.10.055, "RECORDING NOTICE OF VIOLATIONS"; AMENDING TITLE 19, CHAPTER 19.08, SECTION 19.08.030 "DEFINITIONS", AMENDING CHAPTER 19.12 SECTION 19.12.080 "APPLICATION PROCESS" AND SECTION 19.12.180 "EXPIRATION, EXTENSION AND REVOCATION", AMENDING CHAPTER 19.28 SECTION 19.28.120, "LANDSCAPE REQUIREMENTS", AMENDING CHAPTER 19.32 SECTION 19.32.010 "PURPOSE", REPEALING AND REPLACING CHAPTER 19.56, "DENSITY BONUS", AND AMENDING CHAPTER 19.104 TO ADD SECTION 19.104.205, "MESSAGE SUBSTITUTION"; RELATED TO PERMITS, PROCEDURES, AND REQUIREMENTS OF THE CODE TO CONFORM TO LAW, ENSURE INTERNAL CONSISTENCY, AND PROVIDE CLARIFICATION

WHEREAS, this Ordinance is determined to be not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") in that proposed Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines 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.

WHEREAS, the City Council is the decision-making body for this Ordinance; and

WHEREAS, the City Council before taking action on this Ordinance has reviewed the not a project determination and exemption, and using its independent judgment, determines the Ordinance to be not a project or exempt from CEQA as stated above;

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

SECTION 1. Statement of Purpose.

The Municipal Code is reviewed and amended to ensure consistency with State Law, internal consistency, clarifications and to make clarifications based upon changes in the law. At this time, revisions have been identified to chapters within Title 1 General Provisions and Title 19 Zoning.

SECTION 2. Chapter 1.10 of Title 1 of the Cupertino Municipal Code is hereby amended by adding Section 1.10.055 to be numbered and entitled and to read as follows:

1.10.055 Recording of Notice of Violation.

If the enforcement officer has determined that a violation of the provisions of this Code exist, he or she may also provide a notice of intent to record a notice of code violation to the owner of the property upon which the violation is located. The notice of intent to record shall be provided in the same manner as is required for an administrative citation, and may be appealed in the same manner as an administrative citation. If there is no timely appeal, or at the conclusion of any appeal, should the City prevail, and the violation continues to exist, the enforcement officer may record a notice of violation in the office of the County Recorder.

SECTION 3. Section 19.08.030 of Chapter 19.08 of Title 19 of the Cupertino Municipal Code is hereby amended as follows:

19.08.030 Definitions.

Throughout this title the following words and phrases shall have the meanings ascribed in this section.

A. "A" Definitions:

"Abandon" means to cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

"Abutting" means having property or district lines in common.

"Accessory building" means a building which is incidental to and customarily associated with a specific principal use or facility and which meets the applicable conditions set forth in Chapter 19.100, Accessory Buildings/Structures.

"Accessory structure" means a subordinate structure, the use of which is purely incidental to that of the main building and which shall not contain living or sleeping quarters. Examples include a deck, tennis courts, trellis or car shelter. Fences eight feet or less are excluded.

“Addition” means any construction which increases the size of a building or facility in terms of site coverage, height, length, width, or gross floor area ratio.

“Adjacent property” means property that abuts the subject property, including property whose only contiguity to the subject site is a single point and property directly opposite the subject property and located across a street.

“Adult bookstore” means a building or portion thereof used by an establishment having as a substantial or significant portion of its stock in trade for sale to the public or certain members thereof, books, magazines, and other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as hereinafter defined.

“Adult cabaret” means a building or portion thereof used for dancing purposes thereof or area used for presentation or exhibition or featuring of topless or bottomless dancers, strippers, male or female impersonators or similar entertainers, for observations by patrons or customers.

“Adult motion picture theater” means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as hereinafter defined, for observation by patrons or customers.

“Advertising statuary” means a structure or device of any kind or character for outdoor advertising purposes which displays or promotes a particular product or service, but without name identification.

“Aerial” means a stationary transmitting and/or receiving wireless communication device consisting of one or any combination of the elements listed below:

1. “Antenna” means a horizontal or vertical element or array, panel or dish that may be attached to a mast or a tower for the purpose of transmitting or receiving radio or microwave frequency signals.
2. “Mast” means a vertical element consisting of a tube or rod which supports an antenna.
3. “Tower” means a vertical framework of cross elements which supports either an antenna, mast or both.
4. “Guy wires” means wires necessary to insure the safety and stability of an antenna, mast or both.

“Affordable housing cost” means the amount set forth in the Health and Safety Code Section 50052.5, as may be amended.

“Affordable rent” means the amount set forth in the Health and Safety Code Section 50053, as may be amended.

“Affordable units” means housing units available at affordable rent or affordable housing cost to lower or moderate income households.

“Agriculture” means the tilling of the soil, the raising of crops, horticulture, agriculture, livestock farming, dairying, or animal husbandry, including slaughterhouses, fertilizer yards, bone yard, or plants for the reduction of animal matter or any other similar use.

“Alley” means a public or private vehicular way less than thirty feet in width affording a secondary means of vehicular access to abutting property.

“Alteration”, for purposes of the Sign Ordinance, means any permanent change to a sign.

“Alteration” means any construction or physical change in the arrangement of rooms or the supporting members of a building or structure, or change in the relative position of buildings or structures on a site, or substantial change in appearances of any building or structure.

1. “Incidental alteration” means any alteration to interior partitions or interior supporting members of a structure which does not increase the structural strength of the structure; any alteration to electrical, plumbing, heating, air conditioning, ventilating, or other utility services, fixtures, or appliances; any addition, closing, or change in size of doors or windows in the exterior walls; or any replacement of a building facade which does not increase the structural strength of the structure.

2. “Structural alteration” means any alteration not deemed an incidental alteration.

“Amusement park” means a commercial facility which supplies various forms of indoor and outdoor entertainment and refreshments.

Animal:

1. Animal, Adult. “Adult animal” means any animal four months of age or older.

2. Animal, Large. “Large animal” means any equine, bovine, sheep, goat or swine or similar domestic or wild animal, as determined by the Planning Commission.

3. Animal, Small. “Small animal” means animals which are commonly found in single-family residential areas such as chickens, ducks, geese, rabbits, dogs, cats, etc.

“Animal care” means a use providing grooming, housing, medical care, or other services to animals, including veterinary services, animal hospitals, overnight or short-term boarding ancillary to veterinary care, indoor or outdoor kennels, and similar services.

“Apartment” means a room or a suite of two or more rooms which is designed for, intended for, and occupied by one family doing its cooking there.

“Apartment house” means a building designed and used to house three or more families, living independently of each other.

“Apartment project” means a rental housing development consisting of two or more dwelling units.

“Approval Body” means the Director of Community Development and his/her designee, the Planning Commission or City Council depending upon context.

“Architectural feature” means any part or appurtenance of a building or structure which is not a portion of the living area of the building or structure. Examples include: cornices, canopies, eaves, awnings, fireplaces, or projecting window elements. Patio covers or any projection of the floor area shall not constitute an architectural projection.

“Architectural projection,” for purposes of the Sign Ordinance, means any permanent extension from the structure of a building, including the likes of canopies, awnings and fascia.

“Atrium” means a courtyard completely enclosed by walls and/or fences.

“Attic” means an area between the ceiling and roof of a structure, which is unconditioned (not heated or cooled) and uninhabitable.

“Automotive service station” means a use providing gasoline, oil, tires, small parts and accessories, and services incidental thereto, for automobiles, light trucks, and similar motor vehicles. Automotive maintenance and repair (minor) may be conducted on the site. The sale of food or grocery items on the same site is prohibited except for soft drinks and snack foods, either from automatic vending machines or from shelves. The sale of alcoholic beverages on the site is governed by Chapter 19.132, Concurrent Sale of Alcoholic Beverages and Gasoline.

“Automotive repair and maintenance (minor)” means the supplying of routine automotive services such as lubrication, engine tune-ups, smog certificates, servicing of tires, brakes, batteries and similar accessories, and minor repairs involving engine accessories. Any repair which requires the engine, drive train, transmission assembly, exhaust system, or drive train parts to be removed from a motor vehicle or requires the removal of internal parts shall not be considered minor. Body and paint shop operations are not minor repairs or maintenance.

“Average slope” means the ratio between vertical and horizontal distance expressed in percent; the mathematical expression is based upon the formula described below:

$$S = \left(\frac{I \times L \times 100}{A} \right)$$

S = Average slope of ground in percent; L = Combined length in feet of all contours on parcel;

I = Contour interval in feet; A = Area of parcel in square feet.

B. “B” Definitions:

[NO CHANGE]

C. “C” Definitions:

“Canopy” means any roof-like structure, either attached to another structure or freestanding,

or any extension of a roof line, constructed for the purpose of protection from the elements or aesthetic purposes in connection with outdoor living.

“Car shelter” means a roofed structure or a part of a building not enclosed by walls, intended and designed to accommodate one or more vehicles.

“Caretaker” means a person or persons employed for the purpose of protecting the principal use of the property or structure.

“Centerline” means the centerline as established by the County Surveyor of Santa Clara County, the City Engineer, or by the State Division of Highways of the State of California.

“Changeable copy sign” means any sign, or portion, which provides for each manual changes to the visible message without changing structural surfaces, including the likes of theater marquees and gasoline service station price signs, but excluding electronic reader board signs and signs which display the current time or temperature.

“Change of face” means any changes to the letter style, size, color, background, or message.

“Change of use” means the replacement of an existing use by a new use, or a change in the nature of an existing use, but not including a change in ownership, tenancy or management where the previous nature of the use, line of business, or other function is substantially unchanged.

“Child” means a person who is under eighteen years of age.

“Child day care facility” means a facility, licensed by the State or County, which provides non-medical care to children in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four-hour basis. Child day care facility includes day care centers, employer sponsored child-care centers and family day care homes.

“Church” means a use providing facilities for organized religious worship and religious education incidental thereto, but excluding a private educational facility. A property tax exemption obtained pursuant to Section 3(f) of Article XIII of the Constitution of the State of California and Section 206 of the Revenue and Taxation Code of the State of California, or successor legislation, constitutes prima facie evidence that such use is a church as defined in this section.

“College” or “university” means an educational institution of higher learning which offers a course of studies designed to culminate in the issuance of a degree or defined by Section 94110 of the Education Code of the State of California, or successor legislation.

“Collocation” means the placement of aerials and other facilities belonging to two or more communication service providers on a single mast or building.

“Commercial recreation” means a use providing recreation, amusement, or entertainment services, including theaters, bowling lanes, billiard parlors, skating arenas, and similar

services, operated on a private or for-profit basis, but excluding uses defined as outdoor recreation services.

“Community center” means a place, structure, area, or other facility used for and providing religious, fraternal, social and/or recreational programs generally open to the public and designated to accommodate and serve a significant segment of the community.

“Commercial district,” for purposes of the Sign Ordinance, means an area of land designated for commercial use in the current Cupertino General Plan.

“Common interest development” means the following, all definitions of which are based upon Civil Code Section 4100 or subsequent amendments:

1. A condominium project,
2. A community apartment project,
3. A stock cooperative, or
4. A planned development.

“Community organization” means a nonprofit organization based in the City and whose activities benefit the City, its residents, employees, or businesses.

“Concession” means a benefit offered by the City to facilitate construction of eligible projects as defined by the provisions of Chapter 19.56, Density Bonus. Benefits may include, but are not limited to, priority processing, fee deferments and waivers, granting of variances, and relaxation of otherwise applicable permit conditions or other concessions required by law.

“Condominium conversion” or “Conversion” means a change in the type of ownership of a parcel (or parcels) of land, together with the existing attached structures, to that defined as a common interest development, regardless of the present or prior use of such land and structures and whether substantial improvements have been made or are to be made to such structure.

“Condominium project” or “project” includes the real property and any structures thereon, or any structures to be constructed thereon, which are to be divided into condominium ownership.

“Condominium units” or “units” means the individual spaces within a condominium project owned as individual estates.

“Congregate residence” means any building or portion which contains facilities for living, sleeping and sanitation, as required by the California Building Code and may include facilities for eating and cooking for occupancies other than a family. A congregate residence may be a shelter, convent or monastery but does not include jails, hospitals, nursing homes, hotels or lodging houses.

“Convalescent facility” means a use other than a residential care home providing inpatient services for persons requiring medical attention, but not providing surgical or emergency medical services.

“Convenience market” means a use or activity that includes the retail sale of food, beverages, and small personal convenience items, including sale of food in disposable containers primarily for off-premises consumption, and typically found in establishments with long or late hours of operation and in relatively small buildings, but excluding delicatessens and other specialty food shops and establishments which have a sizable assortment of fresh fruits, vegetables, and fresh-cut meats.

“Corner triangle” means a triangular-shaped area bounded by the following, unless deemed otherwise by the City Engineer:

1. The intersection of the tangential extension of front and street side property lines as formed by the intersection of two public rights-of-way abutting the said property lines; and
2. The third boundary of the triangular-shaped area shall be a line connecting the front and side property lines at a distance of forty feet from the intersection of the tangential extension of front and side property lines.

“Corner triangle,” for purposes of the Sign Ordinance, means a triangular-shaped area of land adjacent to an intersection of public rights-of-way, as further defined in Cupertino Standard Details Drawings Nos. 7-2 and 7-4. (See Appendix A, Cupertino Standard Detail 7-2; Corner Triangle–Controlled Intersections, and B, Cupertino Standard Detail 7-4; Corner Triangle–Uncontrolled Intersections for details.)

“Court” means an open, unoccupied space, other than a yard, on the same lot with a building or buildings and which is bounded on two or more sides by such building or buildings, including the open space in a house court or court apartment providing access.

“Covered parking” means a carport or garage that provides full overhead protection from the elements with ordinary roof coverings. Canvas, lath, fiberglass and vegetation are not ordinarily roof coverings and cannot be used in providing a covered parking space.

D. “D” Definitions:

[NO CHANGE]

E. “E” Definitions:

“Economically feasible” means when a housing development can be built with a reasonable rate of return. The housing developer’s financial ability to build the project shall not be a factor.

Emergency Shelter:

“Emergency shelter, rotating” means a facility that provides temporary housing with minimal supportive services and meets criteria in Section 19.76.030(2).

“Emergency shelter, permanent” means a permanently operated facility that provides temporary housing with minimal supportive services and meets criteria in Section 19.76.030(3).

“Employee Housing” means accommodations for employees as defined by Health and Safety Code 17008, as may be amended.

“Enclosed” means a covered space fully surrounded by walls, including windows, doors and similar openings or architectural features, or an open space of less than one hundred square feet fully surrounded by a building or walls exceeding eight feet in height.

“Entry feature” means a structural element, which leads to an entry door.

“Equestrian center” means a facility for the shelter, display, exhibition, keeping, exercise or riding of horses, ponies or mules, or vehicles drawn by such animals, with related pasture lands, corrals and trails.

“Equipment yard” means a use providing for maintenance, servicing or storage of motor vehicles, equipment or supplies; or for the dispatching of service vehicles; or distribution of supplies or construction materials required in connection with a business activity, public utility service, transportation service, or similar activity, including but not limited to, a construction material yard, corporation yard, vehicular service center or similar use.

F. “F” Definitions:

“Facility” means a structure, building or other physical contrivance or object.

1. “Accessory facility” means a facility which is incidental to, and customarily associated with a specified principal facility and which meets the applicable conditions set forth in Chapter 19.80.
2. “Noncomplying facility” means a facility which is in violation of any of the site development regulations or other regulations established by this title, but was lawfully existing on October 10, 1955, or any amendment to this title, or the application of any district to the property involved by reason of which the adoption or application the facility becomes noncomplying.
3. “Principal facilities” means a main building or other facility which is designed and constructed for or occupied by a principal use.

“Family” means an individual or group of persons living together who constitute a bona fide single housekeeping unit in a dwelling unit. “Family” shall not be construed to include a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house, or institution of any kind.

“Fence” means a man-made structure which is designed, intended or used to protect, defend or obscure the interior property of the owner from the view, trespass or passage of others upon that property.

“Fence height” means the vertical distance from the highest point of the fence (excluding post caps) to the finish grade adjoining the fence. In a case where the finish grade is different for each side of the fence, the grade with the highest elevation shall be utilized in determining the fence height.

“First floor” means that portion of a structure less than or equal to twenty feet in height, through which a vertical line extending from the highest point of exterior construction to the appropriate adjoining grade, passes through one story.

“Flag” means any fabric, banner, or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision, or other entity.

“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. Basements with lightwells that do not conform to Section 19.28.070(I); 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. Basements with lightwells that conform to Section 19.28.070(I) ; 2. 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.

“Floor area ratio” means the ratio of gross floor area on a lot to the lot area.

“Foot-lambert” means a unit measurement of the brightness of light transmitted through or reflected from an object or surface.

“Freeway” means any public roadway so designated by the State of California.

“Front wall” means the wall of a building or other structure nearest the street upon which the building faces, but excluding certain architectural features as defined in this chapter.

G. “G” Definitions:

[NO CHANGE]

H. “H” Definitions:

[NO CHANGE]

I. "I" Definitions:

[NO CHANGE]

J. "J" Definitions:

[NO CHANGE]

K. "K" Definitions:

[NO CHANGE]

L. "L" Definitions:

"Landscaping" means an area devoted to or developed and maintained with native or exotic planting, lawn, ground cover, gardens, trees, shrubs, and other plant materials, decorative outdoor landscape elements, pools, fountains, water features, paved or decorated surfaces of rock, stone, brick, block or similar material (excluding driveways, parking, loading or storage areas), and sculptural elements.

"Late evening activities" means an activity which maintains any hours of operation during the period of eleven p.m. to seven a.m.

"Legal substandard lot" means any parcel of land or lot recorded and legally created by the County or City prior to March 17, 1980, which lot or parcel is of less area than required in the zone; or lots or parcels of record which are reduced to a substandard lot size as a result of required street dedication unless otherwise provided in the City of Cupertino General Plan. The owner of a legally created, substandard property which is less than six thousand square feet but equal to or greater than five thousand square feet may utilize such parcel for residential purposes. The owner of a legally created parcel of less than five thousand square feet may also develop the site as a single-family residential building site if it can be demonstrated that the property was not under the same ownership as any contiguous property on the same street frontage as of or after July 1, 1984.

"Lightwell" means an excavated area required by the Uniform Building Code to provide emergency egress, light and ventilation for below grade rooms.

"Liquor store" means a use requiring a State of California "off-sale general license" (sale for off-site consumption of wine, beer and/or hard liquor) and having fifty percent or more of the total dollar sales accounted for by beverage covered under the off-sale general license.

"Living space" means habitable space and sanitation.

"Loading space" means an area used for loading or unloading of goods from a vehicle in connection with the use of the site on which such space is located.

"Lodging" means the furnishing of rooms or groups of rooms within a dwelling unit or an accessory building to persons other than members of the family residence in the dwelling

unit, for overnight occupancy on a residential occupancy basis, whether or not meals are provided to the person. Lodging shall be subject to the residential density requirements of the district in which the use is located.

“Lodging unit” means a room or group of rooms not including a kitchen, used or intended for use by overnight occupants as a single unit, whether located in a hotel or a dwelling unit providing lodging where designed or used for occupancy by more than two persons; each two-person capacity shall be deemed a separate lodging unit for the purpose of determining residential density; each two lodging units shall be considered the equivalent of one dwelling unit.

“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.

“Lot area” means the area of a lot measured horizontally between boundary lot lines, but excluding a portion of a flag lot providing access to a street and lying between a front lot line and the street, and excluding any portion of a lot within the lines of any natural watercourse, river, stream, creek, waterway, channel or flood control or drainage easement and excluding any portion of a lot acquired, for access and street right-of-way purposes, in fee, easement or otherwise.

“Lot coverage” means the following:

1. “Single-family residential use” means the total land area within a site that is covered by buildings, including all projections, but excluding ground-level paving, landscape features, lightwells, and open recreational facilities. Sheds are included in lot coverage.
2. “All other uses except single-family residential” means the total land area within a site that is covered by buildings, but excluding all projections, ground-level paving, landscape features, and open recreational facilities.

“Lot depth” means the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line, or to the most distant point on any other lot line where there is no clear rear lot line.

“Lot line” means any boundary of a lot.

1. “Front lot line” means on an interior lot, the lot line abutting a street, or on a corner lot, the shorter lot line abutting a street, or on a flag lot, the interior lot line most parallel to and nearest the street from which access is obtained. Lot line length does not include arc as identified on corner parcels.
2. “Interior lot line” means any lot line not abutting a street.
3. “Rear lot line” means the lot line not intersecting a front lot line which is most distant from and the most closely parallel to the front lot line. A lot bounded by only three lot lines will not have a rear lot line.
4. “Side lot line” means any lot line which is not a front or rear lot line.
5. “Street lot line” means any lot line abutting a street.

“Lot of record” means a lot which is part of a subdivision recorded in the office of the County Recorder, or a lot or parcel described by metes and bounds which has been recorded.

“Lot width” means the horizontal distance between side lot lines, measured at the required front setback line.

“Lower-income household” means a household whose gross income does not exceed that established by Health and Safety Code Section 50079.5, as may be amended.

M. “M” Definitions:

“Major renovation,” for purposes of Chapter 19.116, Conversions of Apartment Projects to Common Interest Development, means any renovation for which an expenditure of more than one thousand dollars was made. “Major repair,” for purposes of Chapter 19.116, Conversions of Apartment Projects to Common Interest Development, means any repair for which an expenditure of more than one thousand dollars was made.

“Major Transit Stop,” for purposes of Chapter 19.56, Density Bonus, means an existing site, or a site included in the regional transportation plan, that contains a rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A housing development is considered to be within one-half mile of a major transit stop if all parcels within the housing development have no more than 25 percent of their area farther than one-half mile from the stop and if not more than 10 percent of the units or 100 units, whichever is less, in the housing development are farther than one-half mile from the stop as set forth in Government Code Section 65915(p)(3)(A), as may be amended

“Manufacturing” means a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing fabrication, assembly,

treatment, packaging of products, but excluding basic industrial processing of extracted or raw materials, processes utilizing inflammable or explosive material (i.e., materials which ignite easily under normal manufacturing conditions), and processes which create hazardous or commonly recognized offensive conditions.

"Marijuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

1. "Medical Marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.

"Marijuana cultivation facility" means any business, facility, use, establishment, property, or location where the cultivation of marijuana occurs. A "marijuana cultivation facility" does not include a "qualified patient's" primary residence provided such cultivation of medical marijuana is for his or her personal use.

"Massage" means any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with any mechanical or electrical apparatus or other appliances or devices with or without such supplementary aides as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

"Massage parlor" means a building or portion thereof, or a place where massage is administered for compensation or from which a massage business or service for compensation is operated which is not exempted or regulated by the Massage Establishment Ordinance as contained in Title 9, Health and Sanitation of the Cupertino Municipal Code, Chapter 9.06.

"Maximum allowable residential density," for purposes of Chapter 19.56, Density Bonus, means the maximum density allowed under the zoning ordinance and land use element of the general plan. For purposes of that Chapter, if the maximum density allowed under the

zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

"Medical marijuana dispensary" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, transported, and/or distributed. A "medical marijuana dispensary" does not include the following uses:

- a. A "qualified patient" transporting "medical marijuana" for his or her personal use;
- b. A "primary caregiver" delivering or transporting "medical marijuana" to a "qualified patient;"
- c. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- d. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- e. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- f. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or
- g. A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

"Minor change" means an alteration or modification of an existing plan, development or project which is substantially inferior in bulk, degree or importance to the overall dimension and design of the plan, development or project with no change proposed for the use of the land in question, no change proposed in the character of the structure or structures involved, and no variance required.

"Mobilehome" means a vehicle, other than a motor vehicle, designed or used as semi-permanent housing, designed for human habitation, for carrying persons and property on its own structure, and for being drawn by a motor vehicle, and shall include a trailer coach.

"Mobilehome park" means any area or tract of land where lots are sold, rented, or held out for rent to one or more owners or users of mobilehomes, excluding travel-trailers, for the purpose of permanent or semi-permanent housing.

"Moderate income household" means a household whose gross income does not exceed that established by Section 50093 of the Health and Safety Code, as may be amended.

"Multiple-family use" means the use of a parcel for three or more dwelling units which may be in the same building or in separate buildings on the same parcel.

N. "N" Definitions:

[NO CHANGE]

O. "O" Definitions:

[NO CHANGE]

P. "P" Definitions:

[NO CHANGE]

Q. "Q" Definitions:

[NO CHANGE]

R. "R" Definitions:

"Recreational open space" means open space within a common interest development (exclusive of required front setback areas) which shall be used exclusively for leisure and recreational purposes, for the use and enjoyment of occupants (and their visitors) of units on the project and to which such occupants (and their visitors) have the right of use and enjoyment. Accessory structures such as swimming pools, recreational buildings and landscaped areas may be included as open space.

"Recyclable materials" means discards or waste materials that may be separated or mixed, collected and processed, and used as raw materials for new products. For purposes of Chapter 19.108, Beverage Container Redemption and Recycling Centers, recyclable materials do not include hazardous materials.

"Recycling center" means a facility for the collection and/or processing of recyclable materials. Recycling center does not include storage containers or processing activity located on the premises of a commercial or manufacturing use and use solely for the recycling of material generated by that business or manufacturer.

1. "Recycling center, Certified" or "Certified Processor" means a recycling facility certified by the California Department of Conservation as meeting the requirements of the California Beverage Container Recycling and Litter Reduction Act of 1986.
2. "Recycling center, Mobile" means an automobile, truck, trailer or van licensed by the Department of Motor Vehicles, which is used for the collection of recyclable material. A mobile recycling center also means the bins, boxes or containers transported by trucks, vans, or trailers and used for the collection of recyclable materials. A mobile recycling center may consist of an enclosed vehicle such as box cab or enclosed semi-trailer or an open vehicle such as a flatbed trailer with bins or boxes to contain recyclable materials.

"Recycling facilities" may include the following:

1. "Collection facility" means a facility for the acceptance (donation, redemption or sale) of recyclable materials from the public. Such a facility does not use power-driven processing equipment except as indicated in Chapter 19.108, Beverage Container Redemption and Recycling Centers. Collection facilities may include the following:

- a. Reverse vending machine(s);
 - b. Small collection facilities which occupy an area of not more than five hundred square feet, and may include:
 - i. A mobile recycling unit,
 - ii. Bulk reverse vending machine or a grouping of reverse vending machines occupying more than fifty square feet,
 - iii. Kiosk type units and bulk vending machines,
 - iv. Unattended containers placed for the donation of recyclable materials;
 - c. Large collection facilities which may occupy an area of more than five hundred square feet, or is on a separate property not appurtenant to a host use, and may include permanent structures.
2. "Processing facility" means a building or enclosed space use for the collection and processing of recyclable materials. Processing means the preparation of material for efficient shipment or to an end-user's specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing. Processing facility includes the following:
- a. A light processing facility occupies an area of under forty-five thousand square feet of gross collection, processing and storage area and has up to two outbound truck shipments per day. Light processing facilities are limited to baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials sufficient to qualify as a certified processing facility. A light processing facility shall not shred, compact, or bale ferrous metals other than food and beverage containers.
 - b. A heavy processing facility is any processing facility other than a light processing facility.

"Religious institution" means a seminary, retreat, monastery, conference center, or similar use for the conduct of religious activities including accessory housing incidental thereto, but excluding a private educational facility. Any use for which a property tax exemption has been obtained pursuant to Section 3(f) of Article XIII of the Constitution of the State of California and Section 206 of the Revenue and Taxation Code of the State of California, or successor legislation, or which is used in connection with any church which has received such an exemption, shall be prima facie presumed to be a religious institution.

"Research and development" means a use engaged in study, design, analysis and experimental development of products, processes or services, including incidental manufacturing of products or provisions of services to others.

“Residential care facility” means a building or portion designed or used for the purpose of providing twenty-four-hour-a-day nonmedical residential living accommodations pursuant to the Uniform Building, Housing and Fire Codes, in exchange for payment of money or other consideration, where the duration of tenancy is determined, in whole or in part, by the individual resident’s participation in group or individual activities such as counseling, recovery planning, medical or therapeutic assistance. Residential care facility includes, but is not limited to, health facilities as defined in California Health and Safety Code (H&SC Section 1250 et seq.), community care facilities (H&SC Section 1500 et seq.), residential care facilities for the elderly (H&SC Section 1569 et seq.) or facilities for the mentally disordered or otherwise handicapped (W&I Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11384.11), and other similar care facilities.

“Residential district,” for purposes of the Sign Ordinance, means the R1, RHS, R2, R3, R1C, A, and A1 zoning classifications which are consistent with the residential designation of the Cupertino general plan.

Restaurant:

1. Restaurant, Fast-Food. “Fast-food restaurant” means a retail food service establishment in which prepared foods or beverages are served or sold on or in disposable containers, including those establishments where a substantial portion of the patrons may serve themselves and may consume the food and beverages off-site. A separate bar facility for serving alcoholic beverages is not permitted. Any area, tables or rooms reserved for serving alcoholic beverages shall be considered a separate bar facility. Specialty food stores, such as ice cream stores, bakeries or shops, shall not be considered fast-food restaurants.
2. Restaurant, Full Service. “Full-service restaurant” means any restaurant which is not a fast-food restaurant. Alcoholic beverages may be served with meals at a customer’s dining table; however, a separate bar facility for serving alcoholic beverages is not permitted without a use permit.

“Reverse vending machine(s)” means an automated mechanical device which accepts one or more types of empty beverage containers, including, but not limited to aluminum cans, glass and plastic bottles, and issues a cash refund or a redeemable credit slip with a value not less than the containers redemption value, as determined by the State. A reverse vending machine may sort and process containers mechanically provided that the entire process is enclosed within the machine. In order to accept and temporarily store all three container types in a proportion commensurate with their relative redemption rates, and to meet the requirements of certification as a recycling center, multiple grouping of reverse vending machines may be necessary.

1. A bulk reverse vending machine is a reverse vending machine that is larger than fifty square feet; is designed to accept more than one container at a time; and will pay by weight instead of by container.

S. "S" Definitions:

"Screened" means shielded, concealed, and effectively hidden from view at an elevation of up to eight feet above ground level on adjoining parcels, or from adjoining parcels, within ten feet of a lot line, by a fence, wall, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof.

"Second dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single-family dwelling is situated.

"Senior citizens" means:

1. Persons at least sixty-two years of age; or
2. Persons at least fifty-five years of age or otherwise qualified to reside in a senior citizen housing development, in accordance with State and federal law.

"Senior citizen housing development" means a housing development with at least thirty-five dwelling units as defined in the Civil Code Section 51.3, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code, as may be amended.

"Setback line" means a line within a lot parallel to a corresponding lot line, which is the boundary of any specified front, side or rear yard, or the boundary of any public right-of-way or private road, whether acquired in fee, easement, or otherwise, or a line otherwise established to govern the location of buildings, structures or uses. Where no minimum front, side or rear yards are specified, the setback line shall be coterminous with the corresponding lot line.

Setback Area, Required. "Required setback area" means open space, unoccupied and unobstructed from the ground upward, except as provided in this title, between the lot line and the setback line on the same parcel.

1. Setback Area, Required Front Yard. "Required front-yard setback area" means the setback area extending across the front of a lot between the front lot line and the setback line. Front yards shall be measured either by a line at right angles to the front lot line, or by a radial line in the case of a curved front lot line, except flag lots which is the area extending across the full extent of the buildable portion of the flag lot measured from the property line which is parallel to and nearest the street line and at which point the lot width equals a minimum of sixty feet. The Director of Community Development shall

have the discretion to modify the provisions of this definition when it improves the design relationship of the proposed buildings to adjacent buildings or parcels.

2. Setback Area, Required Rear Yard. "Required rear-yard setback area" means the area extending across the full width of the lot between the rear lot line and the nearest line or point of the main building.
3. Setback Area, Required Side Yard. "Required side-yard setback area" means the area between the side lot line and the nearest line of a building, and extending from the front setback line to the rear setback line.

"Shopping center" means a group of commercial establishments, planned, developed, owned or managed as a unit, with off-street parking provided on the parcel.

"Shopping center," for purposes of the Sign Ordinance, means a retail entity encompassing three or more tenants within a single building or group of buildings, but within which individual business located in defined tenant spaces are owned and managed separately from the shopping center management.

"Sidewalk site triangle" is a triangular shaped area described in Cupertino Standard Detail 7-6. (See Appendix C, Cupertino Standard Detail; Sidewalk Site Triangle (Sidewalk Clearance at Driveway))

"Sign" means any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, to communicate information of any kind to the public.

1. "Animated sign" means any sign which projects action, motion or the illusion thereof, changes intensity of illumination or changes colors, including the likes of balloons, banners and flags, and blowing or air-powered attractions, but excluding electronic readerboard signs and signs that display the current time or temperature.
2. "Blade sign" means a pedestrian oriented sign, adjacent to a pedestrian walkway or sidewalk, attached to a building wall, marquee, awning or arcade with the exposed face of the sign in a plane perpendicular to the plane of the building wall.
3. "Development Identification Sign" means a ground sign at the major entry to a residential development with twenty units or more meant to identify the name and address of the development.
4. "Directional sign" means any sign which primarily displays directions to a particular area, location or site.
5. "Directory sign" means any outdoor listing of occupants of a building or group of buildings.

6. "Electronic readerboard sign" means an electronic sign intended for a periodically-changing advertising message.
7. "Freeway oriented sign" means any sign which is located within six hundred sixty feet and visible from a freeway right-of-way as defined by Section 5200 of the California Business and Professions Code.
8. "Garage sale signs" means any sign used for advertising a garage or patio sale as defined in Chapter 5.16 of the Cupertino Municipal Code.
9. "Ground sign" means any sign permanently affixed to the ground and not supported by a building structure. The height of the sign shall be measured from the grade of the adjoining closest sidewalk to the top of the sign including trim.
10. "Identification sign" means any sign whose sole purpose is to display the name of the site and the names of the occupants, their products or their services.
11. "Illegal sign" means any sign or advertising statuary which was not lawfully erected, maintained, or was not in conformance with the provisions of this title in effect at the time of the erection of the sign or advertising statuary or which was not installed with a valid permit from the City.
12. "Illuminated sign" means any sign utilizing an artificial source of light to enhance its visibility.
13. "Informational sign" means any sign which promotes no products or services, but displays service or general information to the public, including the likes of hours of operation, rest room identifications and hazardous warnings.
14. "Landmark sign" means an existing, legal non-conforming ground sign that has a distinctive architectural style.
15. "Nonconforming sign" means any sign or advertising statuary that was legally erected and had obtained a valid permit in conformance with the ordinance in effect at the time of the erection of the sign but which became nonconforming due to the adoption of the ordinance codified in this title.
16. "Obsolete sign" means any sign that displays incorrect or misleading information, promotes products or services no longer available at that site or identifies departed occupants.
17. "Off-site sign" means any sign not located on the premises of the business or entity indicated or advertised by the sign. This definition shall include billboards, poster panels, painted bulletins and other similar advertising displays.

18. "On-site sign" means a sign directing attention to a business, commodity, service or entertainment conducted, sold or offered upon the same premises as those upon which the sign is maintained.
19. "Political sign" means a temporary sign that encourages a particular vote in a scheduled election and is posted prior to the scheduled election.
20. "Portable Sign or Display" means any outdoor sign or display not permanently attached to the ground or a structure on the premises it is intended to occupy and displayed only during business hours. Portable sign or display includes A-frames, flower carts, statues, and other similar devices used for advertising as determined by the Director.
21. "Project announcement sign" means any temporary sign that displays information pertinent to a current or future site of construction, including the likes of the project name, developers, owners and operators, completion dates, availability and occupants.
22. "Projecting sign" means any sign other than a wall sign that is attached to and projects from a structure or building face or wall.
23. "Real estate sign" means a temporary sign indicating that a particular premises is for sale, lease or rent.
24. "Roof sign" means a sign erected between the lowest and highest points of a roof.
25. "Street address sign" means any sign that displays only the street address number(s) of the site and, at the option of the property owner, the street name.
26. "Temporary Sign" means any sign, display, banner or promotional device which is designed or intended to be displayed only during the allowable business hours or for short periods of time as specified by the Director of Community Development.
27. "V-shaped signs" means any sign consisting of two vertical faces, or essentially vertical faces, with one common edge and which appears as the letter V when viewed directly from above.
28. "Vehicle sign" means a sign painted on or attached to an operable or movable vehicle; in the case of motor vehicles, "operable" shall be defined as having a valid license plate.
29. "Wall sign" means any sign that is attached, erected or painted on a structure attached to a building, a canopy structure, or the exterior wall of a building with the exposed face of the sign parallel to the wall.

30. "Window sign" means any sign that is intended to be read from outside of the structure or painted on a window facing a public street, parking lot, pedestrian plaza or walkway accessible to the public.

"Sign Area" for an individually lettered sign without a background, is measured by enclosing the sign copy with a continuous perimeter in simple rectilinear forms. (See Appendix D for examples of sign area calculation)

The sign area for a sign with borders and/or background is measured by enclosing the exterior limits of the border or background with a single continuous perimeter. The necessary supports, uprights, and/or the base on which such sign is placed, shall be excluded from the sign area.

When a sign is separated by thirty-six inches or more, the area of each part may be computed separately.

"Single-family use" means the use of a parcel for only one dwelling unit.

"Specialty food stores" means uses such as bakeries, donut shops, ice cream stores, produce markets and meat markets, or similar establishments where food is prepared and/or sold primarily for consumption off the premises.

"Site," for purposes of the Sign Ordinance, means a piece of land as shown on a subdivision map, record of survey map or assessor's parcel map, which constitutes one development site and which may be composed of a single unit of land or contiguous units under common ownership, control, or development agreement.

"Special event," for purposes of the Sign Ordinance means a temporary promotional event including, but not limited to, a special sale on merchandise or services, or grand openings.

"Special Event Banner" means any temporary sign constructed of pliable materials such as canvas, fabric, vinyl plastic or similar materials which will withstand exposure to wind and rain without significant deterioration, and which does not require a building permit for its construction, or installation outside of a building.

"Special needs housing," for purposes of Chapter 19.56, Density Bonus, means any housing, including supportive housing, intended to benefit, in whole or in part, persons identified as having special needs relating to mental health; physical disabilities; developmental disabilities, including without limitation intellectual disability, cerebral palsy, epilepsy, and autism; and risk of homelessness, and housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Mental Health Services Fund, as set forth in Government Code Section 65915(p)(3)(C), as may be amended.

"Specified anatomical areas" means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; and

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Specified sexual activities” means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

“Story” means that portion of a building, excluding a basement, between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

“Street” means a public or private thoroughfare the design of which has been approved by the City which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road, and any other thoroughfare except an alley as defined in this chapter.

1. Street, Public. “Public street” means all streets, highways, lanes, places, avenues and portions and including extensions in the length and width, which have been dedicated by the owners to public use, acquired for public use, or in which a public easement for roadway purposes exists.

“Street frontage,” for purposes of the Sign Ordinance, means the length of a site along or fronting on a public or private street, driveway or other principal thoroughfare, but does not include such length along an alley, watercourse, railroad right-of-way or limited access roadway or freeway.

“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

1. Structure, Recreational. “Recreational structure” means any affixed accessory structure or portion, which functions for play, recreation or exercise (e.g., pool slides, playhouses, tree houses, swings, climbing apparatus, gazebos, decks, patios, hot tubs and pools) but does not include portable play structures, such as swings or climbing apparatus.

“Structurally attached” means any structure or accessory structure or portion thereof, which is substantially attached or connected by a roof structure or similar physical attachment.

“Supportive housing” (per Government Code Section 65582(f), as may be amended) means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

T. "T" Definitions:

[NO CHANGE]

U. "U" Definitions:

"Unobstructed Access," for purposes of Chapter 19.56, Density Bonus, means access to a location if a resident is able to access the location without encountering natural or constructed impediments, as set forth in Government Code Section 65915(p)(2), as may be amended.

"Use" means the conduct of an activity, or the performance of a function or operation, on a parcel or in a building or facility.

1. "Accessory use" means a use which is incidental to and customarily associated with a specified principal use.
2. "Conditional use" means a use listed by the regulations of any particular district as a conditional use within that district, and allowable solely on a discretionary or conditional basis, subject to issuance of a conditional use permit, and to all other regulations established by this title.
3. "Nonconforming use" means a use which is not a permitted use or conditional use authorized within the district in which it is located, but which was lawfully existing on October 10, 1955; or the date of any amendments thereto, or the application of any district to the property involved, by reason of which adoption or application the use became nonconforming.
4. "Permitted use" means a use listed by the regulations of any particular district as a permitted use within that district, and permitted therein as a matter of right when conducted in accord with the regulations established by this title.
5. "Principal use" means a use which fulfills a primary function of a household, establishment, institution, or other entity.

"Useable rear yard" means that area bounded by the rear lot line(s) and the rear building line extended to the side lot lines. The side yard adjacent to a proposed minor addition (e.g., addition equaling ten percent or less of the principal structure) may be included in calculation of usable rear yard area.

V. "V" Definitions:

[NO CHANGE]

W. "W" Definitions:

None.

X. "X" Definitions:

None.

Y. "Y" Definitions:

[NO CHANGE]

Z. "Z" Definitions:

None.

SECTION 4. Section 19.12.080 of Chapter 19.12 of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows: **Error! Reference source not found.**

SECTION 5. Section 19.12.180 of Chapter 19.12 of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows:

19.12.180 Expiration, Extension, Violation and Revocation.

A. Expiration.

1. Approval on a permit or variance shall become null and void and of no effect, within the time frame specified in Section 19.12.030 following its issuance, unless a shorter or longer time period is specifically prescribed in the conditions of permit or variance, unless:
 - a. A building permit is filed and accepted by the City (fees paid and control number issued.) In the event that a building permit expires for any reason, the permit shall become null and void.
 - b. The permit or variance has been used. A permit or variance shall be deemed to be "used" when actual substantial and continuous activity has taken place upon the land subject to the permit or variance or, in the event of the erection or modification of a structure or structures, when sufficient building activity has occurred and continues to occur in a diligent manner.
2. Notwithstanding subsection 1 of this section, if the use for which a conditional use permit was granted and utilized has ceased or has been suspended for one year or more, the permit becomes null and void.

3. Unless a variance or exception has expired pursuant to subsection 1 of this section, it shall continue to exist for the life of the existing structure or such structure as may be constructed pursuant to the approval unless a different time period is specified in its issuance. A variance or exception from the parking and loading regulations, and a sign exception shall be valid only during the period of continuous operations of the use and/or structure for which the variance or exception was issued.

B. Extensions. A permit or variance may, in accord with Section 19.12.030, Approval Authority, be extended, one-time only, for the time frame specified in Section 19.12.030, upon timely submittal of an application with the Director of Community Development prior to expiration.

C. Violation. Once a permit or variance is effective, any and all conditions of approval imposed shall become operative, and the violation of any of them shall constitute a violation of this Code.

D. Revocation

1. Process. In any case where, in the judgment of the Director, substantial evidence indicates that the conditions of a permit or variance have not been implemented, or where the permit or variance is being conducted in a manner detrimental to the public health, safety, and welfare, the Director shall set a date for a public hearing before the Approval Body that granted the original permit or variance, and notice a public hearing in accordance with Section 19.12.110, Noticing, of this code.
2. Findings: A permit may be revoked or modified if any one of the following findings can be made:
 - i. That the permit was obtained by misrepresentation or fraud;
 - ii. That the improvement, use or activity authorized in compliance with the permit had ceased or was suspended for one year or more;
 - iii. That one or more of the conditions of the permit have not been met; or
 - iv. That the owner or occupant of the property is conducting the use or any associated or other use of the property in violation of the law.
 - v. In the case of revocation of a sign permit, the sign was abandoned for a period of thirty days.

SECTION 6. Section 19.28.120 of Chapter 19.28 of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows:

19.28.120 Landscape Requirements.

To mitigate privacy impacts and the visual mass and bulk of new two-story homes and additions, tree and/or shrub planting is required. The intent of this section is to provide substantial screening within three years of planting.

A. Applicability. These requirements shall apply to new two-story homes, second-story decks, two-story additions, modifications to the existing second-story decks and/or new windows on existing two-story homes that increase privacy impacts on neighboring residents.

1. These requirements shall not apply to:
 - a. Skylights;
 - b. Windows with sills more than five feet above the finished second floor;
 - c. Obscured, non-openable windows;
 - d. Windows with permanent exterior louvers to a height of five feet above the second floor;
 - e. Non-operable windows with obscure glass to a height of five feet above the second floor; and
 - f. When waivers have been obtained by all affected property owners

B. Planting Plan. Proposals for a new two-story homes, second-story decks, two-story additions, modifications to the existing second-story decks, and/or new windows on existing two-story homes shall be accompanied by a planting plan which identifies the location, species and canopy diameter of existing and proposed trees or shrubs to meet the requirements in Section 19.28.120(C) below.

C. Planting Requirements.

1. Front yard tree planting.
 - a. The tree shall be twenty-four-inch box or larger, with a minimum height of six feet.

b. The tree shall be planted in front of new second stories in the front yard setback area.

i. In the R1-a zone, the tree shall be placed to where views from second story windows across the street are partially mitigated.

c. The Director of Community Development may waive the front yard tree based on a report from an internationally-certified arborist citing conflict with existing mature tree canopies onsite or in the public right-of-way.

2. Privacy planting.

a. New trees and/or shrubs are required on the applicant's property in an area bounded by a thirty-degree angle on each side window jamb.

i. The following is required for all side and rear yard-facing second story windows in the R1-6e zone:

- Cover windows with exterior louvers to a height of five feet above the second floor; or
- Obscure glass to a height of five feet above the second floor;
or
- Have a window sill height of five feet minimum above the finished second floor.

b. The Planning Division shall maintain a list of allowed privacy planting trees and shrubs. The list includes allowed plant species, minimum size of trees and shrubs, expected canopy or spread size, and planting distance between trees.

i. In the R1-a zone, the minimum height of privacy trees at the time of planting shall be twelve feet.

ii. In the R1-a zone, privacy planting shall have a minimum setback from the property line equivalent to one-quarter of the spread noted on the City list.

c. The trees and/or shrubs shall be planted prior to issuance of a final occupancy permit.

3. Waivers.

a. New trees and/or shrubs are not required to replace existing front or

privacy trees or shrubs if an Internationally Certified Arborist or Licensed Landscape Architect verifies that the existing trees/shrubs have the characteristics of privacy planting species, subject to approval by the Director or Community Development.

b. Affected property owner(s) may choose to allow privacy planting on their own property. In such cases, the applicant must plant the privacy screening prior to issuance of a building permit.

c. The privacy mitigation measures may be modified in any way with a signed waiver statement from the affected property owner. Modifications can include changes to the number of shrubs or trees, their species or location.

4. Covenant. The property owner shall record a covenant with the Santa Clara County Recorder's Office that requires the retention of all privacy planting, or use of existing vegetation as privacy planting, and required front yard trees, prior to receiving a final building inspection from the Building Division. This regulation does not apply to situations described in subsection (C)(3)(b) of this section.

5. Maintenance. The required plants shall be maintained. Landscape planting maintenance includes irrigation, fertilization and pruning as necessary to yield a growth rate expected for a particular species.

6. Replacement. Where required planting is removed or dies it must be replaced within thirty days with privacy tree(s) of similar size as the tree(s) being replaced, unless it is determined to be infeasible by the Director of Community Development.

SECTION 7. Section 19.32.010 of Chapter 19.32 of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows:

19.32.010 Purpose.

The residential duplex zoning district is intended to allow a second dwelling unit under the same ownership as the initial dwelling unit. The residential duplex district is intended to increase the variety of housing opportunities within the community while maintaining the existing neighborhood character.

SECTION 8. Chapter 19.56 of Title 19 of the Cupertino Municipal Code entitled "Density Bonus" is hereby repealed and replaced with Chapter 19.56 to be numbered and entitled and to read as set forth in Attachment "I".

SECTION 9. Chapter 19.104 of Title 19 of the Cupertino Municipal Code is hereby amended by adding Section 19.104.205 to be numbered and entitled and to read as follows:

19.104.205 Message substitution

- A. Subject to the private property owner's consent, a constitutionally protected noncommercial message of any category or content may be substituted, in whole or in part, for any allowed commercial message or any other protected noncommercial message, provided that the sign structure or mounting device is legal without consideration of message content. Such substitution of message may be made without any additional approval or permitting. The purpose of this provision is to prevent any favoring of commercial speech over non-commercial speech, or favoring of any particular protected noncommercial message over any other protected noncommercial message. Message substitution is a continuing right which may be exercised any number of times.
- B. The message substitution right does not:
1. Create a right to increase the total amount of sign display area on a site or parcel;
 2. Create a right to substitute an off-site commercial message in place of an onsite commercial message or in place of a noncommercial message;
 3. Affect the requirement that a sign structure or mounting device must be properly permitted;
 4. Authorize changing the physical method of image presentation (such as digital or neon) display without a permit; or
 5. Authorize a physical change to the sign structure without compliance with applicable building codes, safety codes, and neutrally-applicable rules for sign size, height, orientation, setback, separation or illumination.

SECTION 10: Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 11: Effective Date. This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 12: Certification.

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

SECTION 13: Continuity.

To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as amendments of the earlier provisions.

INTRODUCED at a regular meeting of the Cupertino City Council the ____ day of _____ 2016 and **ENACTED** at a regular meeting of the Cupertino City Council on this ____ of _____ 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

City Clerk

Mayor, City of Cupertino

CHAPTER 19.56: DENSITY BONUS

- 19.56.010 Purpose
- 19.56.020 Eligibility for Density Bonus
- 19.56.030 Density Bonus.
- 19.56.040 Incentives or Concessions, Waivers and Reduction of Parking Standards.
- 19.56.050 General Requirements.
- 19.56.060 Application Requirements.
- 19.56.070 Findings.

19.56.010 Purpose.

The density bonus ordinance codified in this chapter is intended to comply with the State Density Bonus Law, Government Code Section 65915, which provides that a local agency shall adopt an ordinance specifying how the agency will comply with that section.

19.56.020 Eligibility for Density Bonus.

A. Housing developments resulting in a net increase of at least five units (excluding density bonus units) are eligible for a density bonus as provided in this chapter, when the applicant for the housing development agrees or proposes at least one of the following and meets the requirements of Section 19.56.020C, if applicable:

1. Construct:
 - a. Ten percent of the total units affordable to lower income households at affordable rent or affordable housing cost; or
 - b. Five percent of the total units affordable to very low income households at affordable rent or affordable housing cost; or
 - c. Ten percent of the total units proposed in a common interest development for sale to moderate income households, provided that all units in the development are offered to the public for purchase; or
 - d. A senior citizen housing development.
2. Donate land in accordance with Section 19.56.030C;

3. Provide affordable housing in a condominium conversion project in accordance with Section 19.56.030E.
- B. In addition to meeting the requirements of 19.56.020A, a housing development which includes a child care facility in accordance with Section 19.56.030D, is entitled to an additional density bonus;
 - C. Housing developments on sites occupied by rental housing in the five-year period preceding the date of submittal of a density bonus application must either meet or provide: (1) affordable units in accordance with Section 19.56.020A; or (2) replacement affordable units in accordance with Government Code Section 65915(c)(3)(B), whichever requires a greater number of affordable units.
 - D. An applicant may also submit a proposal for specific incentives or concessions to be granted in conjunction with the density bonus, as provided in Section 19.56.040;
 - E. The granting of a density bonus, incentive or concession, in and of itself, shall not require a general plan amendment, zone change, or other discretionary approval and shall be reviewed concurrently with the review of the housing development.

19.56.030 Density Bonus

- A. Housing developments that meet the criteria in Section 19.56.020A(1) and Section 19.56.020C, if applicable, are eligible for a maximum density bonus as set forth in Table 19.56.030.

Table 19.56.030: Density Bonus Calculations

Percentage of Affordable Units Provided in Income Category	Density Bonus Percentage by Income Category		
	Very Low Income Units	Low Income Units	Moderate Income Units
5%	20%	-	-
6%	22.5%	-	-
7%	25%	-	-
8%	27.5%	-	-
9%	30%	-	-
10%	32.5%	20%	5%
11%	35%	22%	6%
12%	35%	23%	7%
13%	35%	25%	8%
14%	35%	26%	9%

Percentage of Affordable Units Provided in Income Category	Density Bonus Percentage by Income Category		
	Very Low Income Units	Low Income Units	Moderate Income Units
15%	35%	28%	10%
16%	35%	29%	11%
17%	35%	31%	12%
18%	35%	32%	13%
19%	35%	34%	14%
20%	35%	35%	15%
21%	35%	35%	16%
22%	35%	35%	17%
23%	35%	35%	18%
24%	35%	35%	19%
25%	35%	35%	20%
26%	35%	35%	21%
27%	35%	35%	22%
28%	35%	35%	23%
29%	35%	35%	24%
30%	35%	35%	25%
31%	35%	35%	26%
32%	35%	35%	27%
33%	35%	35%	28%
34%	35%	35%	29%
35%	35%	35%	30%
36%	35%	35%	31%
37%	35%	35%	32%
38%	35%	35%	33%
39%	35%	35%	34%
40%	35%	35%	35%

B. Senior housing developments are entitled to a maximum density bonus of 20 percent provided the development comprises of at least 35 units, conforms to Civil Code Section 51.3 and the units are reserved for qualifying residents. The development does not have to provide affordable units unless subject to Section 19.56.020C.

C. Donation of Land:

1. When an applicant donates land to the City or to a housing developer approved by the City in accordance with the requirements of Section 19.56.030C(2) and meets the requirements of Section 19.56.020C, the development shall be entitled to a 15 percent density bonus. The development is entitled to an additional one percent density bonus for the donation of land that would allow the development of an additional one percent of affordable units above the minimum requirements in Section 19.56.020A(1), up to a maximum of 35 percent.
2. The donation of land must meet the following requirements:
 - a. The land shall be donated and transferred no later than the date of approval of the housing development, final subdivision map, parcel map, or building permit, whichever occurs first.
 - b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent of the number of residential units of the proposed development.
 - c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the density described in Government Code Section 65583.2(c)(3), and is or will be served at the time of construction, by adequate public facilities and infrastructure.
 - d. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land no later than the date of approval of the final subdivision map, parcel map, or building permit, whichever occurs first, except that the City may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the City prior to the time of transfer.
 - e. The land shall be transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

- f. The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- g. A proposed source of funding for the very low income units shall be identified not later than the date of approval of the proposed housing development.
- h. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 19.56.050A, such deed restriction shall be recorded at the time of transfer.

D. Provision of Child Day Care Facilities

1. When a housing development is proposed that contains affordable housing, as provided in Section 19.56.030A and Section 19.56.030C, and includes a child day care facility that will be located on the premises of, as part of, or adjacent to, the project, the City shall grant either of the following if requested by the developer:
 - a. An additional density bonus in residential square footage that is equal to or greater than the square footage of the child day care facility.
 - b. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child day care facility in accordance with Section 19.56.040.
2. The City shall also require that as a condition of approving the housing development:
 - a. The child day care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable.
 - b. Of the children who attend the child day care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income.
3. Notwithstanding any requirement of Section 19.56.030D, the City shall not be required to provide a density bonus or concession for a child day care facility if the City finds, based upon substantial evidence, that the City has adequate child day care facilities.

E. Condominium Conversions

1. When an applicant for approval of a condominium conversion agrees to provide at least 33 percent of the total units of the proposed condominium project to low or moderate income households, or 15 percent of the total units of the proposed condominium project to lower income households; to include the affordable units required by Section 19.56.020C, if applicable, and agrees to pay for the reasonably necessary administrative costs incurred by the City, the City shall either:
 - a. Grant a density bonus of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion; or
 - b. Provide other incentives of equivalent financial value. This shall not require the City to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements that the City might otherwise apply as conditions of conversion approval.
2. The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as the City finds appropriate. The proposed lower or moderate income units shall be subject to a deed restriction ensuring continued affordability to lower or moderate income households consistent with Section 19.56.050A.
3. An application shall be ineligible for a density bonus or other incentives under this section, if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided under Government Code Section 65915 or this Chapter.
4. Nothing in this section shall be construed to require the City to approve a proposal for a condominium conversion. Condominium conversions are subject to the requirements of Chapter 19.116.

F. Density Bonus Calculations:

1. A density bonus may be selected from only one category listed in Section 19.56.020A(1), except that density bonuses for land donation may be combined with others, up to a maximum of 35 percent, and an additional square-foot bonus may be granted for a child day care facility as provided in Section 19.56.030C.

2. In determining the number of density bonus units to be granted, any fractions of density bonus units shall be rounded up to the next whole number.
3. Density bonus units authorized by this section shall not be included when determining the number of affordable units, required to qualify for the density bonus. In determining the number of affordable units required to qualify for a density bonus, any fractions of affordable units shall be rounded up to the next whole number.
4. An applicant may request a lower density bonus than the housing development is entitled to, but no reduction will be permitted in the percentage of required affordable units as shown in Section 19.56.020 or Section 19.56.020C.
5. Regardless of the affordable units, no housing development will be entitled to a density bonus of more than 35 percent, unless approved by the City pursuant to Section 19.56.030F(6).
6. The City, at its discretion, may grant a density bonus higher than the maximum set forth in Table 19.56.030 to a housing development where all units (except manager's unit(s)) are affordable to lower income households.
7. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The bonus units shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

19.56.040 Incentives or Concessions, Waivers and Reduction of Parking Standards.

A. Incentives or Concessions:

1. A housing development is eligible for incentives or concessions as shown in Table 19.56.040A. Incentives or concessions must be selected from only one category (very low, low, or moderate). No incentives or concessions are available for land donation or for a senior citizen housing development that is not affordable. Condominium conversions and day care centers may have one incentive or concession, or a density bonus, at the City's option, but not both.

Table 19.56.040A: Incentives or Concessions Calculations:

Unit Type	Percent of Affordable Units	Number of Incentives/Concessions
Very Low Income Units	5% or greater	1
	10% or greater	2
	15% or greater	3
Low Income Units	10% or greater	1
	20% or greater	2
	30% or greater	3
Moderate Income Units	10% or greater	1
	20% or greater	2
	30% or greater	3

2. For purposes of this chapter, permissible incentives or concessions include, but are not limited to:
 - a. A reduction of development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including but not limited to, a reduction in setback requirements, square footage or parking requirements, such that the reduction or modification results in identifiable, financially sufficient, and actual cost reductions.
 - b. Approval of mixed-use zoning in conjunction with the housing development if commercial, office, industrial or other land uses will reduce the cost of the housing development, and if the commercial, office, industrial or other land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located;
 - c. Other regulatory incentives or concessions proposed by the developer or the City, which result in identifiable, financially sufficient, and actual cost reductions.
3. Nothing in this section requires the provision of direct financial incentives for the housing development, including but not limited to the provision of financial subsidies, publicly owned land by the City or the waiver of fees or dedication

requirements. The City, at its sole discretion, may choose to provide such direct financial incentives;

4. A housing development which requests incentives or concessions must demonstrate, in compliance with Section 19.56.060B, that the requested incentives or concessions are required to provide for affordable rents or affordable housing costs, as applicable.

B. Waivers:

1. An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a housing development meeting the criteria outlined in Section 19.56.020 at the densities or with the concessions or incentives permitted under this chapter.
2. A proposal for the waiver or reduction of development standards shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled to subject to Section 19.56.040A.
3. The applicant shall demonstrate that the development standards that are requested to be waived will have the effect of physically precluding the construction of the development with the density bonuses and incentives or concessions.

C. Reduction of Parking Standards:

1. If a housing development is eligible for density bonus as provided in Section 19.56.020, upon request of the applicant, the maximum off-street parking standards that can be applied to the housing portion of the development, inclusive of handicapped and guest parking are indicated in Table 19.56.040B. These may include tandem and uncovered parking spaces but not on-street parking spaces.

Table 19.56.040B: Off-street parking standards for projects eligible for a density bonus:

Number of bedrooms	Maximum number of required off-street parking spaces
0 – 1	One (1)

2 – 3	Two (2)
4 +	Two and one-half (2.5)

2. For certain other housing developments that are eligible for a density bonus as provided in Section 19.56.020, upon request of the applicant, the maximum off-street parking standards that can be applied for the housing portion of the development, inclusive of handicapped and guest parking, are indicated in Table 19.56.040C. These may include tandem and uncovered parking spaces but not on-street parking spaces.

Table 19.56.040C: Off-street parking standards for certain housing developments:

Type of development	Maximum number of required off-street parking spaces
1. Rental or ownership housing development with: a. At least 11% very low income or 20% low income units; and b. Within one-half mile of a Major Transit Stop; and c. Unobstructed Access to the Major Transit Stop.	0.5 per bedroom
2. Rental housing development with: a. All units affordable to lower income households except manager's unit(s); and b. Within one-half mile of a Major Transit Stop; and c. Unobstructed Access to the Major Transit Stop.	0.5 per unit
3. Rental housing development with: a. All units affordable to lower income households except manager's unit(s); and b. A senior citizen housing development; and either c. Has paratransit service; or d. Is within one-half mile of fixed bus route service that operates 8 times per day, with Unobstructed Access to that service.	0.5 per unit

Type of development	Maximum number of required off-street parking spaces
4. Rental housing development with: <ul style="list-style-type: none"> a. All units affordable to lower income households except manager's unit(s); and b. A Special Needs Housing development; and either c. Has paratransit service; or d. Is within one-half mile of fixed bus route service that operates 8 times per day, with Unobstructed Access to that service. 	0.3 per unit

3. If the City, at its cost, has conducted an area-wide or City-wide parking study in the last seven years, then the City may find, based on substantial evidence, that a higher parking ratio is required than shown in Table 19.56.040C. In no event, may the required parking be greater than the ratio shown in Table 19.56.040B. The parking study must conform to the requirements of Government Code Section 65915(p)(7).

19.56.050 General Requirements.

- A. Affordable rental low and very low income units must remain affordable to low or very low income households, as applicable, for fifty-five (55) years or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Affordable for-sale moderate income units must remain affordable to moderate-income households for the duration required by Chapter 19.172, Below Market Rate Housing Program and implementing procedures and policies adopted by the City Council, or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or subsidy program. Sales price for for-sale affordable very low, low, and moderate income units shall be set at affordable housing cost. Rents for affordable low and very low income rental units shall be set at an affordable level.

- B. The affordable dwelling units and land dedication that qualify a housing development for a density bonus may also be used to meet the below-market-rate housing provisions of the City's Residential Housing Mitigation Program, provided that the affordable units and land dedication comply with the requirements of both Chapter 19.56, Density Bonus, Chapter 19.172, Below Market Rate Housing Program; and implementing procedures and policies adopted by the City Council regarding the required number of affordable units, required level of affordability, and term of affordability so as to provide the greatest affordability to the most households for the longest term.
- C. Unless otherwise governed by other funding sources, to the extent consistent with fair housing laws, preferences for the affordable units will be given as specified in Chapter 19.172, Below Market Rate Housing Program, and implementing procedures and policies adopted by the City Council.
- D. An agreement shall be entered into between the developer and the City to ensure compliance with the provisions of this chapter and state law and shall include, without limitation the household type, number, location, size, affordability, and construction scheduling of all affordable units, and such information as shall be required by the City for the purpose of determining the developer's compliance with this chapter. For rental affordable very low and low income units, the agreement shall additionally contain, without limitation, provisions for certification of tenant incomes, reporting and monitoring of affordable units, and management and maintenance of affordable units.
- E. The agreement shall be recorded against the housing development prior to final or parcel map approval, or, prior to issuance of any building permits, whichever occurs first, and shall be binding on all future owners and successors in interest.
- F. Affordable units in a project and phases of a project shall be constructed concurrently with or prior to the construction of market-rate units.
- G. Affordable units shall be provided as follows:
 - 1. Affordable units shall be dispersed throughout the project;
 - 2. Affordable units shall be identical with the design of any market rate rental units in the project with the exception that a reduction of interior amenities for affordable units will be permitted upon prior approval by the City Council as necessary to retain project affordability.

- H. Prior to the rental or sale of any affordable unit, the City or its designee, shall verify the eligibility of the prospective tenant or buyer. All affordable units shall be occupied by the household type that qualified the housing development for the density bonus and incentives or concessions.
- I. The City may establish fees for processing applications under this chapter and recovery of costs associated with the establishment and monitoring of affordable units.

19.56.060 Application Requirements.

- A. An applicant may submit a preliminary proposal for housing development for a density bonus and incentives or concessions prior to the submittal of any formal application.
- B. All requests pursuant to this Chapter shall be submitted to the City concurrently with the application for the first discretionary permit or other permit required for the housing development and shall be processed concurrently with the discretionary application following the review process as set forth for permits in Chapter 19.12, Administration, of the Cupertino Municipal Code established by the City. The applicant shall provide additional information as specified in this chapter, specifically:
 - 1. A summary table showing the maximum number of units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, proposed number of density bonus units, and total number of proposed dwelling units on site;;
 - 2. A site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units and the type, size, and construction scheduling of affordable and market-rate units;
 - 3. For a housing development that replaces rental housing on a site within the five-year period preceding the date of an application:
 - a. A description and documentation of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are rented as of the date of application, income and household size of

- all residents of the occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size, if known, of residents occupying dwelling units when the site contained the maximum number of dwelling units; and
- b. Documentation of recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.
- 4. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Section 19.56.030C can be met.
 - 5. If a density bonus or incentive or concession is requested for a child care facility, evidence that all of the requirements in Section 19.56.030D can be met.
 - 6. If a density bonus or incentive or concession is requested for a condominium conversion, evidence that all of the requirements in Section 19.56.030E can be met.
 - 7. A written statement specifying the various incentives or concessions, waivers and reduction in off-street parking standards requested;
 - 8. To ensure that each incentive or concession contributes significantly to the economic feasibility of the proposed affordable housing, for any incentive(s) or concession(s) requested, the following shall be submitted:
 - a. A project financial report (which may be in the form of a pro forma) demonstrating that the requested incentive(s) or concession(s) will result in identifiable, financially sufficient, and actual cost reductions to the housing development and that they are required to provide for affordable rents or affordable housing costs, as applicable. The financial report shall include the capital costs, operating expenses, return on investment, loan-to-value ratio and the debt coverage ratio including the contribution(s) provided by any applicable subsidy program(s);
 - b. An appraisal report indicating the value of the density bonus and of the incentive(s) or concession(s); and

- c. A use of funds statement identifying the financial gaps for the housing development with the affordable housing units. The analysis shall show how the funding gap relates to the incentive(s) or concession(s); and
 - d. A deposit to cover any expenses that the City expects to incur in retaining consultant(s) and in administering consultant contract(s) to provide a peer review of the above information. However, if the applicant is a federally recognized nonprofit organization proposing a housing development where all units (except manager's unit(s)) are affordable to lower income households, the cost of consultant(s) may be paid by the City upon prior approval of the City Council;
- 9. For any requested waiver of a development standard, plans showing the existing development standard, the requested waiver and a demonstration that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions that the applicant is entitled to.
- 10. If a mixed use building or project is proposed as an incentive or concession, evidence that non-residential land uses will reduce the cost of the housing development and that the non-residential land uses are compatible with the development and the existing or planned development in the area.
- 11. If a parking reduction is proposed, a table showing parking otherwise required by the zoning ordinance and the proposed parking. If a parking reduction shown in Table 19.56.040C is requested, evidence that the housing development is eligible for the requested parking reduction.
- 12. Any other information requested by the Director of Community Development to determine if the required findings can be made.

19.56.070 Findings.

- A. Before approving an application that includes a request for a density bonus, incentive or concession, waiver or reduction in parking standards, pursuant to this chapter, the decision-making body shall determine that the proposal is consistent with State Law by making the following findings, as applicable:

1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.
 2. That all the requirements included in Section 19.56.030C have been met, if the density bonus is based all or in part on donation of land.
 3. That all the requirements included in Section 19.56.030D have been met, if the density bonus or incentive(s) or concession(s) are based all or in part on the inclusion of a child care facility.
 4. That all the requirements included in Section 19.56.030E have been met, if the density bonus or incentive or concession is based on a condominium conversion.
 5. That the requested incentive(s) or concession(s) will result in identifiable, financially sufficient, and actual cost reductions based upon the financial analysis and documentation provided by the applicant and the findings of the peer-reviewer, if incentive(s) or concession(s) are requested (other than mixed use development) .
 6. That the proposed non-residential land uses within the proposed development will reduce the cost of the housing development and are compatible with the housing development and the existing or planned development in the area where the proposed development will be located, if an incentive or concession is requested for mixed use development.
 7. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted, if a waiver is requested.
 8. That all the applicable requirements in Section 19.56.040C have been met, if a reduction in off-street parking standards for an eligible housing development is requested.
- B. If the findings required by subsection (A) of this section, as applicable, can be made, the decision-making body may deny an application for an incentive or concession or waiver requested pursuant to Section 19.56.040 only if one of the following written findings as applicable to each type of application, supported by substantial evidence:

1. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or
 2. That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low and moderate income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or
 3. That the incentive or concession, or waiver is contrary to state or federal law.
- C. An application for an incentive or concession may also be denied if the decision-making body makes the written finding, supported by substantial evidence, that the requested incentive or concession is not required to provide for affordable housing costs or affordable rents.
- D. If the findings required by subsection A. of this section can be made, the decision-making body may deny an application for a density bonus or incentive or concession that is based on the provision of child care only if it makes a written finding, based on substantial evidence, that the city already has adequate child care facilities.

