

**DRAFT ORDINANCE NO. 18-2177**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CUPERTINO AMENDING THE MUNICIPAL CODE TO ALLOW  
ADOPTION AND IMPLEMENTATION OF VALLCO TOWN  
CENTER SPECIFIC PLAN

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**SECTION I: PROJECT DESCRIPTION**

Application No: MCA-2018-01

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105,  
316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099,  
316-20-100, 316-20-095

**SECTION II: RECITALS**

WHEREAS, the Housing Element of the Cupertino General Plan identifies the Vallco Special Area as being appropriate to accommodate at least 389 dwelling units to be developed pursuant to a specific plan for the Vallco Special Area; and

WHEREAS, the Vallco Special Area Specific Plan has been developed pursuant to City Council direction to initiate a project to prepare a specific plan for the Vallco Special Area, including any required changes to the adopted goals and objectives for the Special Area, in order to implement the Housing Element of the Cupertino General Plan and to plan for anticipated future development activity; and

WHEREAS, pursuant to the City Council direction to conduct extensive public outreach the City conducted multiple forms of public outreach including 14 small group Interviews, eight presentations, five open studio times, three brown bags, three EIR public comment meetings, three open houses, two student/youth outreach sessions, one online civic engagement survey, one Fine Arts Commission check-in/update, one Housing Commission check-in/update, one Parks & Recreation Commission check-in/update, one Teen Commission check-in/update, one Economic Development Committee check-in/update, one Block Leader Group check-in/update; and

WHEREAS, these Municipal Code Amendments to allow adoption of the Vallco Town Center Specific Plan are part of the Vallco Special Area Specific Plan, all as fully described and analyzed in the May 2018 Vallco Special Area Specific Plan Environmental Impact Report ("Draft EIR") (State Clearinghouse No. 2018022021), as amended by the July 2018 Vallco Special Area Specific Plan Environmental Impact Report Amendment ("EIR Amendment") and by text revisions in the August 2018 Vallco Special Area Specific Plan

Final EIR document which contains Response to Comments to the Draft EIR and the EIR Amendment, and the August 2018 and September 2018 Supplemental Text Revisions to the Vallco Special Area Specific Plan Final Environmental Impact Report; (together, the “Final EIR”); and

WHEREAS, the Final EIR was presented to the Environmental Review Committee (“ERC”) for review and recommendation on August 31, 2018, and after considering the Final EIR, and Staff’s presentation, the ERC recommended that the City Council certify the EIR; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on September 4, 2018 to consider the Municipal Code Amendments; and

WHEREAS, based on substantial evidence in the administrative record, on September 4, 2018 the Planning Commission recommended on a 5-0 vote that the City Council certify that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment and analysis of the City, adopt the Findings and Statement of Overriding Considerations, and implement all of the mitigation measures for the Project that are within the responsibility and jurisdiction of the City that are identified in Findings, in substantially similar form to the Resolution presented (Resolution No. 6860); and

WHEREAS, on September 4, 2018, the Planning Commission recommended on a 5-0 vote that the City adopt the Municipal Code Amendments (MCA-2018-01), in substantially similar form to the Resolution presented (Resolution no. 6864); and

WHEREAS, following a duly noticed public hearing on September 18, 2018, and prior to the Council’s consideration of the Municipal Code Amendments, the Council adopted: Resolution No. 18-085, approving a General Plan Amendment to Development Allocations, the General Plan Land Use Map and development standards related to the Vallco Special Area and Resolution No. 18-086, adopting the Vallco Town Center Specific Plan; and

WHEREAS, the Ordinance is consistent with the City’s General Plan and the public health, safety, convenience, and general welfare, and the amendment herein are necessary to implement the Vallco Town Center Specific Plan as adopted; and

WHEREAS, on September 18, 2018 and October \_\_, 2018, upon due notice, the City Council has held at least two public hearings to consider the Municipal Code Amendments; and;

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

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment in carefully considering the information in the Final EIR and finds that the scope of this Ordinance falls within the certified Final EIR, in that the aspects of the Rezoning proposed in this Ordinance that have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the Final EIR and therefore, no recirculation of the Final EIR is required; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 18, 2018, the City Council adopted Resolution No. 18-084 certifying the Final EIR, adopting Findings and a Statement of Overriding Considerations, adopting Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program.

### SECTION III

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

That after careful consideration of the facts, exhibits, testimony and other evidence submitted in this matter, the City Council adopts the Rezoning based upon the findings described above, the public hearing record and the Minutes of Planning Commission Meeting of September 4, 2018, and subject to the conditions specified below:

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

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

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

*The Housing Element of the General Plan calls for the City to enact a specific plan to permit at least 389 dwelling units in the Vallco Special Area. The General Plan Amendment modifies the Land Use Element of the General Plan to designate late and define development standards that are consistent with the level of development contemplated in the Vallco Town Center Specific Plan. The proposed municipal code amendments would incorporate the Vallco Town Center Specific Plan into Title 19 of the Municipal Code to implement the General Plan and the Vallco Town Center Specific Plan, and therefore the proposed zoning regulations are consistent with the General Plan and other relevant portions of the Municipal Code.*

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

*As set forth above, the City examined the environmental effects of the Project, including the zoning amendments adopted herein, in an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act. On September 18, 2018, the City Council adopted Resolution no. \_\_\_\_ to certify that the Final Environmental Impact Report ("Final EIR") for the Project; and adopting CEQA Findings, a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, which Resolution together with the EIR is incorporated herein by reference. The significant environmental effects of the project have been fully analyzed and disclosed in compliance with CEQA. All mitigation measures identified in the Final EIR have been adopted and incorporated into the project to reduce the impacts of new development to the extent feasible. Therefore, the proposed zoning complies with the provisions of CEQA.*

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

*The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. In addition, in connection with the Vallco Town Center Specific Plan process, the site has been analyzed thoroughly to ensure that the site would not constrain future development proposed under this zoning designation. The proposed zoning would implement the Vallco Town Center Specific Plan, which includes development standards to require appropriate transitions from adjoining land uses.*

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

*The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated. This would also allow the easier applicability of zoning regulations adopted under the Vallco Town Center Specific Plan.*

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

*The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement adopted changes in the Land Use Element of the City's General Plan. Additionally, where health or safety impacts have been identified in the Project's EIR, mitigation measures have been identified which would be applicable to any development on these sites.*

Section 3. The City Council approves the following:

1. That Section 19.16.010 of the Municipal Code, be amended as shown below:

19.16.010 Zoning Districts Designated.

A. The several classes of general districts into which the City is divided are ~~designated as follows~~ identified in Table 19.16.010A below:

Table 19.16.010A: Zoning Districts

**(NO CHANGE TO TABLE)**

<b>Zoning Map Designation and District Name</b>	<b>Chapter Number</b>
A Agricultural Zone	19.24
A-1 Agricultural-Residential Zone	19.24
R-1 Single-Family Residential Zone	19.28
R-2 Residential Duplex District	19.32
R-3 Multi-Family Residential Zone	19.36
RHS Residential Hillside District	19.40
R1C Residential Single-Family Cluster Zone	19.44
P Planned Development Zone	19.80
CG General Commercial Zone	19.60
ML Light Industrial Zone	19.72
BA Public Building Zone	19.76
T Transportation Zone	19.76
BQ Quasi Public Building Zone	19.76
PR Park and Recreation Zone	19.92
FP Private Recreation District	19.96
O-A Administrative and Professional Office District	19.68
OP Planned Office	19.68
MP Industrial Park	19.72
OS Open Space	19.88

B. In addition to the zones identified in Table 19.16.010A, the City may establish be separate zoning districts in individual specific plans adopted to promote the orderly development of the plan area. These zoning districts are identified in Table 19.16.010B below:

Table 19.16.010B: Specific Plan Districts

<b><u>Zoning Map Designation</u></b>	<b><u>Specific Plan Name</u></b>
<u>Heart of the City</u>	<u>Heart of the City</u>
<u>VTC Vallco Town Center</u>	<u>Vallco Town Center</u>

Land uses and development standards within a specific plan zone shall be as prescribed in the specific plan.

C. All notations, references, and other information shown in the above-referenced specific plans are incorporated by reference and shall be deemed as much a part of this Title 19 as if the matter and information set forth in the plan were fully described in this chapter. All terms not otherwise defined in a specific plan shall have the meaning set forth in this Title 19. Notwithstanding the provisions or standards set forth in this Title 19, individual specific plans may establish additional or separate provisions and standards for said plan area, including without limitation, standards for: regulating physical development, granting greater density bonuses than otherwise required, requiring below market rate housing production, and processing of subsequent applications. In the event of a conflict between the terms, conditions, requirements, policies, or other provisions of a specific plan and this Title 19, the specific plan shall take precedence.

2. That Section 19.12.030 of the Municipal Code, be amended as shown below:

19.12.030 Approval Authority.

Table 19.12.030 shows the approval authority, Noticing Radius, Expiration Date and Extension Dates for different types of Permits.

**Table 19.12.030 - Approval Authority**

Type of Permit or Decision <sup>A, B</sup>	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period <sup>C</sup>	Noticing/ Noticing Radius <sup>D</sup>	Posted Site Notice	Expiration Date <sup>E</sup>	Chapter/ Findings
General Plan Amendment									
Major <sup>F</sup>	-	-	R	F	PH	CA. Govt. Code 65350-65362	Yes	-	CA. Govt. Code 65350-65362
Minor <sup>G</sup>	-	-	R	F	PH		Yes	-	
Zoning Map Amendments									
Major <sup>F</sup>	-	-	R	F	PH	CA. Govt. Code 65853-65857	Yes	-	19.152.020
Minor <sup>G</sup>	-	-	R	F	PH		Yes	-	
Zoning Text Amendments	-	-	R	F	PH	CA. Govt. Code 65853-65857	-	-	19.152.030
Specific Plans	-	-	R	F	PH	CA. Govt. Code 65350-65362	-	-	20.04.030
Development Agreements	-	-	R	F	PH	CA. Govt. Code 65867	Yes	-	19.144.120

Table 19.12.030 - Approval Authority									
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Development Permits									
Major <sup>F, H</sup>	-	-	F/R	A <sup>1</sup> /F	PM	19.12.110/ 300'	Yes	2 years	19.156.050
Minor <sup>G</sup>	F	-	A <sup>1</sup>	A <sup>2</sup>	PM		Yes	2 years	
Conditional Use Permits									
Major <sup>F, H, I</sup>	F	-	A <sup>1</sup> /F/R	A <sup>1/</sup> A <sup>2/F</sup>	PH	CA. Govt. Code 65905	Yes	2 years	19.156.050
Minor <sup>G, I</sup>	F	-	A <sup>1</sup> /F/R	A <sup>1/</sup> A <sup>2/F</sup>	PH		Yes	2 years	
Temporary	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	None 19.160.030
Density Bonus (Residential)			R	F	Based on concurrent application	19.52			
Adult-Oriented Commercial Activity (CUP)		-	R	F	PH	CA. Govt. Code 65905/300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval									
Major <sup>J</sup>	F	-	A <sup>1</sup>	A <sup>2</sup>	PM	19.12.110/ Adjacent	Yes	2 years	19.168.030
Minor <sup>K</sup>	F	-	A <sup>1</sup>	A <sup>2</sup>	PM		Yes	2 years	
Amendment									
Major <sup>F, H</sup>	-	-	F	A <sup>1</sup>	Varies <sup>L</sup>	Depends on	Yes	2 years	19.44,



**Table 19.12.030 - Approval Authority**

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Minor <sup>G</sup>	F	-	A <sup>1</sup>	A <sup>2</sup>	Varies <sup>L</sup>	permit being amended <sup>L</sup>	Yes	2 years	19.144, 19.156, 19.164
Minor Modification	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	2 years	19.164
Hillside Exception/ Height Exception/ Heart of the City Exception <sup>I</sup>	-	-	F	A <sup>1</sup>	PH	19.12.110/ 300'	Yes	2 years	19.40.080, 19.24.070, 19.136.090
Variance	F	-	A <sup>1</sup>	A <sup>2</sup>	PH	CA. Govt. Code 65905	Yes	2 years	19.156.060
Status of non-conforming Use	-	-	F	A <sup>1</sup>	PH	19.12.110/ 300'	Yes	-	19.140.110
Wireless Antennas <sup>I</sup>	F	-	F/ A <sup>1</sup>	A <sup>2</sup>	Varies <sup>I</sup>	Depends on application type	Yes	2 years	19.136.090
<b>Signs</b>									
Permits	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	19.104

**Table 19.12.030 - Approval Authority**

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Neon, Reader board & Freeway Oriented Signs <sup>I</sup>	-	F	F	A <sup>1M</sup>	PM	19.12.110/ 300'	No	1 year	19.104
Programs	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	19.104
Exceptions <sup>I</sup>	-	F	-	A <sup>1M</sup>	PM	19.12.110/ Adjacent	Yes	1 year	19.104.290
Parking Exceptions <sup>I</sup>	F	F	A <sup>1</sup>	A <sup>1M</sup> /A <sup>2</sup>	Varies <sup>N</sup>	19.12.110/ Adjacent/ 300' <sup>O</sup>	Yes	1 year	19.124.050
Fence Exceptions	-	F	-	A <sup>1L</sup>	PM	19.12.110/ Adjacent	Yes	1 year	19.48.060
Front Yard Interpretation	F	-	A <sup>1</sup>	A <sup>2</sup>	PM	19.12.110/ Adjacent	Yes	1 year	19.08
R-1 Ordinance Permits									
Two-story <sup>I</sup>	F	F	F/A <sup>1</sup>	A <sup>1L</sup> /A <sup>2</sup>	Varies <sup>I</sup>	19.12.110/ Adjacent	Yes	1 year	19.28.140
Minor Residential	F	-	A <sup>1</sup>	A <sup>2</sup>	CP		No	1 year	
Exceptions <sup>I</sup>	-	F	-	A <sup>1M</sup>	PM		Yes	1 year	
Protected Trees									

**Table 19.12.030 - Approval Authority**

<b>Type of Permit or Decision <sup>A, B</sup></b>	<b>Administrative Review</b>	<b>Design Review Committee</b>	<b>Planning Commission</b>	<b>City Council</b>	<b>Public Hearing/ Public Meeting/ Comment Period <sup>C</sup></b>	<b>Noticing/ Noticing Radius <sup>D</sup></b>	<b>Posted Site Notice</b>	<b>Expiration Date <sup>E</sup></b>	<b>Chapter/ Findings</b>
Tree Removal	F	-	A <sup>1</sup>	A <sup>2</sup>	CP	Adjacent unless exempt	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-	-	F	A <sup>1</sup>	PM	19.12.110/ 300'	Yes	-	14.18
Tree Management Plan	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	-	14.18
Retroactive Tree Removal	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	-	14.18
Reasonable Accommodation	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	19.52.050
<b>Extensions <sup>P</sup></b>									
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F	-	A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	
Neon, Reader board & Freeway Oriented Signs	F		A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	

**Table 19.12.030 - Approval Authority**

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Two Story Permits, Minor Residential Permits and Exceptions	F		A <sup>1</sup>	A <sup>2</sup>	-	None	No	1 year	
Tree Removals	F	-	A <sup>1</sup>	A <sup>2</sup>	-	-	No	1 year	
All other projects	F	-	A <sup>1</sup>	A <sup>2</sup>	-	19.12.110/ None	No	2 years	

**For permits within the Vallco Town Center Zone – see Vallco Town Center Specific Plan**

KEY:

R—Review and recommendation body

F—Final decision-making body unless appealed

A<sup>1</sup>—Appeal Body on first appeal

A<sup>2</sup>—Appeal body on second appeal

PH—Public Hearing

PM—Public Meeting

CP—Comment Period

Notes:

- A. Permits can be processed concurrently with other applications, at the discretion of the Director of Community Development.
- B. Projects with combined applications shall be processed at the highest level of approval in conformance with Section 19.04.090.
- C. Public Hearing: Projects types that need noticing pursuant to the CA Government Code; Public Meeting: Project types that need only a mailed notice and no newspaper notices; Comment Period: Project types that need only a mailed notice and do not need a public hearing or public meeting.
- D. Noticing Radius of an application in a combined application shall correspond to the maximum noticing radius required for any one of the applications.
- E. Expiration date of an application in a combined application shall correspond to the maximum expiration date allowed for any one of the development applications (not including Subdivision Map Act applications, General Plan Amendments and Zoning Map or Text Amendments.)
- F. Major General Plan Amendment, Conditional Use Permit, Development Permit application - for more than ten thousand square feet of commercial and/or industrial and/or office and/or other non-residential use, or greater than six residential units.
- G. Minor General Plan Amendment, Conditional Use Permit, Development Permit application - for ten thousand square feet or less of commercial and/or industrial and/or office and/or other non-residential use, or six or less residential units.
- H. City Council review for applications with new development greater than fifty thousand square feet of commercial, and/or greater than one hundred thousand square feet of industrial and/or office and/or other non-residential use, and/or greater than fifty residential units.  
Planning Commission review for all other applications.
- I. Please see specific zoning district regulations or chapters in this title that apply to the subject property or project for approval authority.
- J. Major Architectural and Site Approval application - architectural and site approval for all projects that are not a Minor Architectural and Site Approval application.
- K. Minor Architectural and Site Approval application - single family home in a planned development zoning district, minor building architectural modifications, landscaping, signs and lighting for new development, redevelopment or modification in such zones where review is required and minor modifications of duplex and multi-family buildings.
- L. Meeting type and noticing are dependent on the underlying permit being modified.
- M. Appeals of Design Review Committee decisions shall be heard by the City Council.
- N. Parking Exceptions approved by the Director of Community Development need a comment period.  
Parking Exceptions approved by the Design Review Committee need a public meeting.
- O. Parking Exceptions in Single-family residential (R1) zones and Duplex (R2) zones need adjacent noticing.  
All other Parking Exceptions need notices within three hundred feet of the exterior boundary of the subject property.
- P. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the extension.

3. That Section 20.04.040 of the Municipal Code, be amended as shown below:

20.04.040 Zoning District Applicable to a Specific Plan.

~~The zoning for A~~all areas governed by a specific plan shall be ~~zoned as a planned development (P) zoning district under Chapter 19.48~~ identified in Chapter 19.16 of the City's ~~Municipal Ordinance~~ Code and all regulations governing land use approvals in a ~~planned development zone specific plan area~~ shall be applicable ~~to as identified in that individual~~ specific plans. A proposal for a specific plan may be combined with any application for land use entitlements in the City's ~~planned development zoning districts~~.; and

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

Section 6. The City Council finds the Municipal Code Amendments are within the scope of the EIR and directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA guidelines.

Section 7. This Ordinance shall be effective thirty (30) days following its adoption.

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**INTRODUCED** at a special meeting of the Cupertino City Council the \_\_\_\_ day of \_\_\_\_\_ 2018 and **ENACTED** at a regular meeting of the Cupertino City Council on this \_\_\_\_ day of \_\_\_\_\_ 2018 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

**APPROVED:**

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Grace Schmidt  
City Clerk

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Darcy Paul, Mayor  
City of Cupertino