

EXHIBIT "A"
Draft Ordinance No. 20-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 1.04, GENERAL PROVISIONS; CHAPTER 1.08, RIGHT
OF ENTRY FOR INSPECTION; CHAPTER 1.09, NUISANCE ABATEMENT;
CHAPTER 1.10, ADMINISTRATIVE CITATIONS, FINES, AND PENALTIES;
CHAPTER 1.12, GENERAL PENALTY AND CRIMINAL ENFORCEMENT

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 will not have a direct or reasonably foreseeable indirect impact 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 using its independent judgment, determines the Ordinance to be not a project under CEQA as stated above;

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

SECTION 1. Chapter 1.04 of Title 1 of the Cupertino Municipal Code is hereby amended to read as follows:

CHAPTER 1.04: GENERAL PROVISIONS

Section

1.04.010 Definitions.

1.04.020 Grammatical Interpretation.

1.04.030 Enforcement Remedies.

1.04.040 Prohibited Acts Include Causing, Permitting and the Like.

1.04.050 Construction.

1.04.060 Repeal Shall Not Revive Any Ordinances.

1.04.010 Definitions.

The following words and phrases, whenever used in the ordinances of the city, shall be construed as defined in this section unless from the context a different meaning is

intended or unless different meaning is specifically defined and more particularly directed to the use of the words or phrases.

1. "City" means the City of Cupertino, California, or the area within the territorial limits of the City of Cupertino, California, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

2. "Computation of Time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day; and if the last day is Sunday or a legal holiday, that day shall be excluded.

3. "Council" means the City Council of the City of Cupertino, California. "All its members" or "all councilpersons" means the total number of Councilpersons provided by the general laws of the State of California.

4. "County" means the County of Santa Clara, California.

5. "Law" means applicable federal law, the constitution and statutes of the State of California, the ordinances of the City of Cupertino and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

6. "May" means the act referred to is permissive.

7. "Month" means a calendar month.

8. "Must" and "Shall" means mandatory.

9. "Oath" means an affirmation or declaration in all cases in which, by law, an "affirmation" may be substituted for an "oath" and, in such cases, the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

10. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

11. "Ordinance" means a law of the City; provided that, a temporary or special law, administrative action, order or directive, may be in the form of a resolution.

12. "Owner" when applied to a building or land includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of the building or land.

13. "Person" means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization or the manager, lessee, agent, servant, officer or employee of any of them.

14. "Personal Property" means and includes money, goods, chattels, things in action and evidences of debt.

15. "Preceding" and "Following" means next before and next after, respectively.

16. "Property" includes real and personal property.

17. "Real Property" includes lands, tenements and hereditaments.
18. "Sidewalk" means the portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.
19. "State" means the State of California.
20. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in the City which have been or may hereafter be dedicated and open to public use or such other public property so designated in any law of the state.
21. "Tenant" and "Occupant" applied to a building or land, includes any person who occupies whole or a part of the building or land, whether alone or with others.
22. "Title of Office" means the use of the title of any officer, employee, board or commission means that officer, employee, department, board or commission of the City.
23. "Written" includes printed, typewritten, mimeographed or multi-graphed.
24. "Year" means a calendar year.
25. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to peculiar and appropriate meaning.

1.04.020 Grammatical Interpretation.

The following grammatical rules shall apply in the ordinances of the City:

- A. Gender. Any gender includes the other genders.
- B. Singular and plural. The singular number includes the plural and the plural includes the singular.
- C. Tenses. Words used in the present tense include the past and the future tenses and vice versa.
- D. Use of words and phrases. Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.

1.04.030 Enforcement Remedies.

Violations of ordinances of the City are subject to administrative, civil, and criminal remedies available under state law and the Cupertino Municipal Code, which at the discretion of the City may be pursued concurrently, including without limitation to fines, penalties, abatement orders and other administrative, civil or criminal remedies provided in the following chapters: Chapter 1.08, Right of Entry for Inspection, Chapter 1.09, Nuisance Abatement, Chapter 1.10 Administrative Citations, Fines and Penalties, and Chapter 1.12, General Penalty, of the Cupertino Municipal Code.

1.04.040 Prohibited Acts Include Causing, Permitting and the Like.

Whenever in the ordinances of the City, any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

1.04.050 Construction.

The provisions of the ordinances of the City and all proceedings under them are to be construed with a view to effect their objects and to promote justice.

1.04.060 Repeal Shall Not Revive Any Ordinances.

The repeal of an ordinance shall not repeal the repealing clause of the ordinance or revive any ordinance which has been repealed thereby.

SECTION 2. Chapter 1.08 of Title 1 of the Cupertino Municipal Code is hereby repealed and readopted as amended to read as follows:

CHAPTER 1.08: RIGHT OF ENTRY FOR INSPECTION

Section

1.08.010 Purpose.

1.08.020 Right of Entry for Inspection.

1.08.010 Purpose.

This chapter clarifies the procedures for entering and inspecting property in order to enforce any ordinance or whenever there is reasonable cause to believe there exists an ordinance violation in any building or upon any premises within the jurisdiction of the City.

1.08.020 Right of Entry for Inspection.

Whenever necessary to make an inspection to enforce any ordinance or whenever there is reasonable cause to believe there exists an ordinance violation in any building or upon any premises within the jurisdiction of the City, any authorized official of the City may, upon presentation of a valid inspection warrant and proper credentials, enter the building or premises at all reasonable times to inspect the building or premises or to perform any duty imposed by ordinance.

The City will obtain an inspection warrant when constitutionally required. In general, the City is not required to obtain an inspection warrant in the following circumstances:

- A. Where the City has obtained consent of the owner or occupant of the property;
- B. Where there is no reasonable expectation of privacy because the property is visible from public streets, sidewalks, parks, parking lots or other open places; and/or

C. In an emergency.

SECTION 3. Chapter 1.09 of Title 1 of the Cupertino Municipal Code is hereby repealed and readopted as amended to read as follows:

CHAPTER 1.09: NUISANCE ABATEMENT

Section

1.09.010 Short Title–Statutory Authority.

1.09.020 Purpose.

1.09.030 Definitions.

1.09.040 Public Nuisances Declared a Violation and Determination of Public Nuisance.

1.09.050 Notice and Order to Abate Nuisance.

1.09.060 Report of Costs.

1.09.070 Appeals of Notice and Order to Abate Nuisance and Report of Costs.

1.09.080 Authorization to Proceed; Abatement Work.

1.09.090 Collection of Abatement Costs.

1.09.100 Emergency Nuisance Abatement Procedure.

1.09.110 Violation – Penalty.

1.09.010 Short Title–Statutory Authority.

This chapter shall be known as the “nuisance abatement ordinance of the City of Cupertino.” It is adopted pursuant to the authority granted to City legislative bodies in Article 6, Division 3 of the Government Code (commencing with § 38771) of the State.

1.09.020 Purpose.

This chapter is enacted to protect the general public health, safety, and welfare from public nuisances and to promote the free use of property and the comfortable enjoyment of life or property within the limits of the City.

1.09.030 Definitions.

A. “Abate” or “Abatement” means to repair, replace, remove, destroy, or otherwise remedy the condition in question by such means and in such manner and to such an extent as the Code Enforcement Officer in his or her judgment determines is necessary in the interest of the general health, safety, and welfare of the community.

B. “Appeal Hearing Officer” means a person, agency, or body designated by the City Manager to hear and decide appeals under this Chapter 1.09. The Appeal Hearing Officer

shall not be any enforcement officer or supervisor. The employment, performance evaluation, compensation, and benefits of an Appeal Hearing Officer, if any, shall not be directly or indirectly conditioned upon the decisions of the Appeal Hearing Officer.

C. “Incidental Expenses” means the actual costs incurred by the City in the enforcement of this chapter, including, but not limited to hearing costs; staff costs; inspection costs; and costs of preparing, copying and mailing documents.

D. “Public Nuisance” means

1. Any condition that affects at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. A public nuisance includes, but is not limited to:

a. A condition that is, or is likely to become, injurious to health, safety or welfare or indecent or offensive to the senses;

b. An obstruction to the free use of property, such as interference with the comfortable enjoyment of life or property;

c. An unlawful obstruction to the free passage or use of any public park, square, street, highway, right-of-way, navigable lake, river, bay, stream, canal or basin;

d. Any unlawful act identified in Section 9.22.020;

e. A condition that diminishes property values and degrades the quality of life within the City;

f. A substandard building as defined in the current Uniform Housing Code adopted by the City; and

2. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of any zoning or building ordinance of the City, or any rule, regulation or order issued or promulgated pursuant thereto, and/or any use of any land, building or premises conducted, operated or maintained contrary to the provisions of any zoning or building ordinance of the City, or any rule, regulation or order issued or promulgated pursuant thereto.

3. Any failure to comply with the provisions of the below listed titles and chapters of this code:

Titles	Chapters
5	All
6	6.24
8	All

9	All
10	All
11	11.04, 11.10, 11.28, 11.31
14	All
15	15.12, 15.20, 15.30
16	All
17	All
18	All
19	All

E. "Private Nuisance" means any nuisance condition that is not a public nuisance.

F. "Record Owner" means the person or persons described as the owner or owners of record of the parcel of land on which the nuisance is maintained, by the last equalized assessment roll or the supplemental roll, whichever is more current.

1.09.040 Determination of Public Nuisance.

When the Code Enforcement Officer has inspected or caused to be inspected any condition on any parcel of land or structure and has found and determined that such condition on such parcel of land or structure constitutes a public nuisance, the Code Enforcement Officer may elect proceed as outlined in Section 1.09.050 and 1.09.100, in addition to other enforcement remedies authorized by this Code.

1.09.050 Notice and Order to Abate Nuisance.

A. Upon determining that a condition constitutes a public nuisance, the Code Enforcement Officer may elect to issue a notice and order directed to the Record Owner of the property on which the Code Enforcement Officer has determined that a public nuisance exists. The notice and order shall contain all of the following:

1. The street address and a description sufficient for identification of the property and any structures where the violation occurred or is occurring.
2. A statement that a condition deemed to be a public nuisance as defined in Section 1.09.030 has been found to exist, with a brief and concise description of the conditions found to constitute a public nuisance under the applicable provisions of this Code.
3. An order specifying
 - a. The curative action required to be taken, and
 - b. The time, generally not less than seven days, in which completion of the curative action must occur, as determined by the Code Enforcement Officer. Any

subsequent order, if issued, may require immediate compliance if a notice of violation has previously been served concerning the same violation of the Code.

4. A statement advising that if the abatement work is not commenced within the time specified, and diligently pursued until completion, the City may proceed to cause the work to be done and charge the costs thereof against the parcel or its owner as a lien against the parcel and/or as a special assessment, and such lien or special assessment may be recorded, and that such property may be sold after three years by the tax collector for unpaid delinquent assessments, and that such remedy shall be in addition to any other rights, remedies, or actions available to the City by reason of the same violation as described in the notice and order.

5. A statement indicating whether the City has elected to seek, as a part of abatement costs, reasonable attorneys' fees incurred in abating the nuisance. Such notice shall also state that if the City elects to seek reasonable attorneys' fees, the prevailing party may be entitled to seek reimbursement of reasonable and necessarily incurred attorneys' fees, provided any such fees awarded against the City shall not exceed the amount of reasonable attorneys' fees incurred by the City.

6. A statement advising:

a. That the Record Owner may appeal the Notice and Order to Abate Nuisance pursuant to Section 1.10.070, and

b. Such appeal must be filed within ten business days from the date of service of the notice and order, and

c. That failure to appeal will constitute a waiver of all rights to an administrative hearing to contest the determination of nuisance and required abatement.

B. Service of the notice and order shall be made as provided in Section 1.10.040.

1.09.060 Report of Costs.

A. The City shall keep an accurate and itemized account of the abatement costs incurred by the City, including Incidental Costs and all other reasonably related costs, including, if the City so elected, reasonable attorneys' fees incurred in abating the nuisance. Such account shall indicate, where appropriate and feasible, the costs attributable to each separate parcel of land upon which the abatement work is performed. Following completion of all abatement work, the City shall prepare a final itemized written Report of Costs showing the total abatement costs.

B. A notice accompanying the Report of Costs shall provide that the Record Owner must pay the City for the cost of abatement within thirty days of service of the Report of Costs, or appeal the reasonableness of the costs within ten business days of the date of service, pursuant to Section 1.09.070.

C. The notice shall also provide that if the costs are not paid, the City may charge the costs against the parcel or its owner as a lien against the parcel and/or as a special assessment, and such lien or special assessment may be recorded, and that such property may be sold after three years by the tax collector for unpaid delinquent assessments, and that and such remedy shall be in addition to any other rights, remedies, or actions available to the City to recover such costs.

D. The notice and a copy of the report of costs shall be served on the Record Owner as provided in Section 1.10.040.

1.09.070 Appeals of Notice and Order to Abate Nuisance and Report of Costs.

A. The Record Owner may within ten business days of service of the notice and order to abate a nuisance or report of costs, or within ten business days after commencement of work to abate an emergency nuisance pursuant to Section 1.09.100, appeal the Notice and Order to Abate the Nuisance, the reasonableness of the Report of Costs, or the need for an emergency abatement by requesting, in writing, an appeal hearing. The appeal must state briefly the appealing party's grounds for objection. Any appeal not timely filed shall be rejected and the applicant shall be deemed to have waived their right to appeal.

B. The City shall schedule an appeal hearing to be held within 30 days after an appeal is received by the City, before the Appeal Hearing Officer. The City shall provide notice of the hearing as provided in Section 1.10.040. Such notice shall be served not less than five business days prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.

C. Any person filing any protest or objection who is affected by the proposed charge in the Report of Costs may, instead of or in addition to appearing in person at the hearing, file a written report of the objections with the City Clerk at any time prior to the time set for the hearing on the report of costs. Each such objection must contain a description of the property in which the signer thereof is interested and the grounds of the objection. However, in the event that the appealing party fails to appear at the hearing or file written objections, the hearing shall be deemed waived and based on whether the appeal is for a Notice and Order to Abate or Report of Costs, would constitute an admission by said party of the nuisance charge or correctness and reasonableness of the report of costs.

D. The Appeal Hearing Officer shall hear and rule on the appeal. The appellant may appear at the hearing by an attorney. The formal rules of evidence shall not apply. All witnesses shall be sworn, and each party shall have the right to cross-examine adverse witnesses. The hearing may be continued from time to time.

E. The Appeal Hearing Officer shall issue a final decision within 10 business days of the appeal hearing, which shall rule on each of the appealing party's objections. The final

decision may modify the report of costs if the Appeal Hearing Officer deems it appropriate.

1. For appeals of a Notice and Order to Abate a Nuisance, the final decision shall include a finding of whether any attorneys' fees incurred by the prevailing party were reasonably and necessarily incurred, provided, however, in no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City. The final decision shall direct the Record Owner to abate the nuisance within a specified, reasonable time period and notify the Record Owner that if he or she fails to do so, the City will do so at the Record Owner's expense. The final decision shall be served on the Record Owner and any other appealing party as provided in Section 1.10.040.

2. For appeals of the reasonableness of a Report of Costs, the final decision shall determine whether any attorneys' fees incurred by the City and assessed for the abatement costs were reasonably and necessarily incurred. The final decision shall direct the Record Owner to pay the costs within thirty days of the date of the final decision and notify the Record Owner that if he or she fails to do so, the City shall cause to make the costs of such abatement a lien against the parcel and/or a special assessment against the parcel and that such parcel may be sold by the tax collector after three years for any unpaid delinquent assessment against the parcel. The final decision shall be served on the Record Owner as provided in Section 1.10.040.

F. Any person aggrieved by the Appeal Hearing Officer's final decision may only seek judicial review pursuant to a timely petition for writ of administrative mandamus in accordance with California Code of Civil Procedure Sections 1094.5 and 1094.6.

1.09.080 Authorization to Proceed; Abatement Work.

A. If an appeal of the Notice and Order to Abate Nuisance is not filed, or if the Appeal Hearing Officer has upheld the determination of nuisance and proposed abatement, or for a nuisance pursuant to Section 1.09.100, the Code Enforcement Officer is authorized to cause the nuisance to be abated, subject to a warrant issued by a court of appropriate jurisdiction.

B. The abatement work may be performed by the City's own employees or by independent contractors, or any combination thereof. Prior to commencement of the abatement work by or on behalf of the City, the Record Owner may abate the nuisance at his or her own expense.

C. If the Record Owner fails to consent to the City entering the property to abate the nuisance, the City may seek a warrant to the extent legally required and proceed with the abatement.

1.09.090 Collection of Abatement Costs.

Upon completion of the Abatement work and appeal proceedings related to the Report of Costs served, if the Record Owner does not pay the abatement costs within the specified time, the City Manager or his or her designee may either:

A. Pursuant to and in accordance with Government Code Section 38773.1, cause a lien to be charged against the parcel. Once payment in full is received by the City, the City shall provide the Record Owner with a Notice of Satisfaction so they may record the notice with the County Recorder. Recordation of the Notice of Satisfaction shall cancel the City's lien; or

B. Pursuant to and in accordance with Government Code Section 38773.5(a), cause a copy of the report of costs to be transmitted, together with a copy of the final decision (if applicable) confirming the same, to the County Tax Collector, who shall add the amount of abatement costs, or unpaid portion thereof, to the next regular tax bill as a special assessment, for the municipal purposes, against such parcel. The amount of the assessment shall be collected at the time and in the manner as ordinary municipal taxes. If such assessment is delinquent, the amount shall be subject to the same interest and penalties and procedure of foreclosure and sale provided for ordinary municipal taxes and the property may be sold after three years by the County Tax Collector for unpaid delinquent assessments. Notice shall be provided, by certified mail, to the property owner and shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

1.09.100 Emergency Nuisance Abatement Procedure.

A. Notwithstanding any other provision of this City Code or other law, if, in the opinion of the City Manager, or his or her designee, any nuisance as defined in Section 1.09.030(A) constitutes an immediate hazard to the public health, safety, or welfare or materially interferes with public travel or passage, the City Manager or his or her designee may summarily abate such nuisance pursuant to Section 1.09.080.

B. Except as specified below, reporting of costs shall be conducted pursuant to Section 1.09.060.

C. Once summary abatement action has been completed, the Record Owner may appeal the need for abatement and the Report of Costs in the manner provided in Section 1.09.070.

D. After the City completes the Report of Costs, the City Manager shall also cause a notice to be conspicuously posted on the property on which the abated nuisance existed or from which the abated nuisance extended. The notice shall also be served on the Record Owner in the manner provided in Section 1.10.040.

E. Payment of abatement costs and collection of the assessment shall proceed as provided in Section 1.09.090.

1.09.110 Violation – Penalty.

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor, which shall be punishable as provided in Chapter 1.12.

SECTION 4. Chapter 1.10 of Title 1 of the Cupertino Municipal Code is hereby repealed and readopted as amended to read as follows:

CHAPTER 1.10: ADMINISTRATIVE CITATIONS, FINES, AND PENALTIES

Section

- 1.10.010 Applicability.
- 1.10.020 Definitions.
- 1.10.030 Administrative Citation.
- 1.10.040 Service of Administrative Citation.
- 1.10.050 Time Period Within Which to Correct or Remedy Violations.
- 1.10.060 Recording Notice of Violation.
- 1.10.070 Administrative Citation Fines.
- 1.10.080 Hardship Waiver for Administrative Citation Fines.
- 1.10.090 Appeal of an Administrative Citation.
- 1.10.100 Advance Deposit Hardship Waiver.
- 1.10.110 Failure to Timely Appeal Administrative Citation.
- 1.10.120 Administrative Citation Appeal Hearing.
- 1.10.130 Hearing Officer's Decision on Administrative Citation.
- 1.10.140 Administrative Penalty Hearing Before the City Council.
- 1.10.150 Administrative Penalties Imposed by Council.
- 1.10.160 Payment of Fine and Penalty Amounts.
- 1.10.170 Notices.
- 1.10.180 Right to Judicial Review of Hearing Office or City Council's Decision.

1.10.010 Applicability.

Whenever a Code Enforcement Officer determines that a violation of the municipal code and/or applicable statute, rule, code or regulation has occurred, the Code Enforcement Officer may issue an administrative citation and assess an administrative fine to any party

responsible for the violation or recommend the imposition of an administrative penalty, in addition to any other enforcement remedies authorized by this Code.

1.10.020 Definitions.

For purpose of this chapter, the following definitions shall apply:

“Administrative Citation Fines” means a penalty to be paid in conjunction with issuance of an administrative citation for a violation of the Municipal Code.

“Administrative Penalty” means a penalty, separate from the Administrative Citation Fine, assessed by the City Council for a violation of the Municipal Code.

“Business day” means a day on which the main operations of the City of Cupertino are open for business and does not mean any day on which only specialized functions are in operation, such as divisions of the City or its agents that operate on a 24/7 schedule.

“Enforcement officer” means any City employee or employee of a contracting agency or any agent of the City with the authority to enforce any provision of this municipal code, including, but not limited to, the City Manager, City Attorney, Director of Administrative Services, Director of Community Development, Director of Parks and Recreation, Director of Public Works and any Sheriff, Animal Control Officer or Code Enforcement Officer.

“Hearing officer” means any person designated by the City Manager to hear appeals of administrative citations. The hearing officer shall not be any enforcement officer or supervisor. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the hearing officer.

“Responsible person” means any person who is in immediate control of the premises or activity which constitutes a violation of this municipal code and/or applicable statute, rule, code or regulation, the business owner, the property owner, and any person engaging in prohibited conduct.

1.10.030 Administrative Citation.

A. Whenever an enforcement officer charged with the enforcement of this municipal code and/or applicable statute, rule, code or regulation determines that a violation of any provision of this municipal code and/or applicable statute, rule, code or regulation has occurred, the enforcement officer shall have the authority to issue an administrative citation to any responsible person.

B. Each administrative citation shall contain the following information:

1. Name of responsible person(s)
2. The date(s) of the violation;

3. The address or a definitive description of the location where the violation occurred;

4. The section of the municipal code and/or applicable statute, rule, code or regulation violated and a description of the violation;

5. A prohibition of the continuation or repeated occurrence of the municipal code and/or applicable statute, rule, code or regulation violation described in the administrative citation;

6. A description of the potential consequences should the violator continue or repeat the violation;

7. The amount of the administrative citation fine for the municipal code and/or applicable statute, rule, code or regulation violation;

8. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid and the process by which the City may collect any unpaid amounts owed;

9. A description of the administrative citation review process, including the time within which the administrative citation may be contested and how to obtain a form to contest the administrative citation; and

10. The name and signature of the citing enforcement officer.

C. An administrative citation may be in letter form or any other form which adequately conveys the information set forth above.

1.10.040 Service of Administrative Citation.

A. An administrative citation may be served in any of the following ways:

1. By personal delivery to the violator; or

2. If the violator is being charged for violations occurring at a business operating within the City, and the violator is the owner or an employee of the business, the citation may be served by causing a copy of the citation to be sent by certified mail, postage prepaid, return receipt requested to the address shown on any permit or license issued by the City to the business; or

3. By causing a copy of the citation to be sent by certified mail, postage prepaid, return receipt requested, to an address otherwise known to the enforcement officer.

B. Where personal delivery or service by mail upon a property owner cannot be made despite a diligent effort, a copy of the citation shall be conspicuously posted at the subject property.

C. Service of a citation which is personally served shall be deemed completed at the time of such personal service. Service of a citation which is served by mail is deemed

completed on the date the document is deposited in the mail. Service of a citation which is served by posting is completed at the time of posting.

D. The failure of any person to receive a copy of an administrative citation shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the citation and retained by the enforcement officer. A copy of any posted notice shall be kept along with a certificate of posting containing the date, time, and identification of the individual performing the posting.

1.10.050 Administrative Citation - Issuance.

A. The enforcement officer may immediately issue an administrative citation for a violation of the Municipal Code and/or applicable statute, rule, code or regulation subject to the following:

1. Prior to the first administrative citation being issued, a reasonable amount of time, but not less than fifteen (15) calendar days, must be provided, in which to correct or otherwise remedy violations pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety.

2. Prior to administrative citations being issued, if the responsible person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation and/or that a proper application for any required permit has been made and is awaiting issuance of the same, in good faith, the enforcement officer may extend the time in which to correct or otherwise remedy a violation.

1.10.060 Recording 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.

1.10.070 Administrative Citation Fines.

A. Any party to whom an administrative citation is issued shall be responsible for payment of a fine for violating the municipal code and/or applicable statute, rule, code or regulation as specified in this section.

B. The administrative citation fine assessed in conjunction with the issuance of an administrative citation, pursuant to Section 1.10.030, shall be in accord with California Government Code Section 53069.4 and is set as follows:

1. A fine not to exceed \$100 for a first violation of a code provision;
2. A fine not to exceed \$200 for a second violation of the same code provision within one year; and
3. A fine not to exceed \$500 for each subsequent violation of the same code provision within one year.

C. A violation of local building and safety codes shall be subject to an administrative citation fine as follows:

1. A fine not to exceed \$130 for a first violation of a code provision;
2. A fine not to exceed \$700 for a second violation of the same code provision within one year; and
3. Either:
 - a. A fine not to exceed \$1,300 for each subsequent violation of the same code provision within one year; or
 - b. A fine not to exceed \$2,500 for each subsequent violation of the same code provision within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

D. If the maximum amounts allowed to be charged in the California Government Code changes, then that change shall become effective with regard to this chapter.

E. A person found to violate the Municipal Code is guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by the person, and is punishable as provided in Section 1.10.070.

1.10.080 Hardship Waiver for Administrative Citation Fines.

A. Any person fined under Section 1.10.070(B)(2) or (3), or Section 1.10.070(C)(2) or (3) may be granted a hardship waiver reducing the amount of the fine if:

1. The party has made a bona fide effort to comply after the first violation; and
2. Payment of the full amount of the administrative citation fine would impose an undue financial burden on the responsible party.

B. A hardship waiver request shall be filed on a hardship waiver application form, available from the City Clerk's office, within ten business days of service of the administrative citation levying the fine. A sworn affidavit, together with any supporting

documents or materials, demonstrating why the requirements of Section 1.10.080(A) are satisfied must be submitted. If the request and supporting materials demonstrate to the satisfaction of the City Manager or his or her designee that the requirements of Section 1.10.080(A) are satisfied, the fine shall be reduced as the City Manager or his or her designee deems appropriate. Any hardship waiver request not timely filed shall be rejected, and the applicant shall be deemed to have waived his or her right to request a waiver.

1.10.090 Appeal of an Administrative Citation.

A. Any recipient of an administrative citation may, within ten business days from the date that service of the administrative citation was completed, contest that there was a violation or that he or she is the party responsible for committing the violation by filing an appeal with the City Clerk for the matter to be heard by a hearing officer. Any appeal not timely filed shall be rejected.

B. All appeals from any administrative citation shall be in writing and shall contain the following information:

1. Name(s) of each appellant;
2. A copy of the administrative citation or the reference number of the administrative citation;
3. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
4. A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside; and
5. The signatures of all parties named as appellants and their mailing addresses.

C. Any recipient of an administrative citation contesting the citation must submit to the City Clerk an advance deposit of the total fine amount or an advance deposit hardship waiver application form as described in Section 1.10.100. Any appeal of the administrative citation filed without payment of the advance deposit or submittal of the advance deposit waiver application shall be deemed incomplete.

D. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten calendar days prior to the date of the hearing.

E. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration, then a copy of this report also shall be served on the person requesting the hearing at least five business days prior to the date of the hearing.

F. Collection of fines on any administrative citation shall be stayed during the pendency of an appeal which is properly and timely filed.

1.10.100 Advance Deposit Hardship Waiver.

A. Any person who intends to request a hearing to contest an administrative citation, and who is financially unable to make the advance deposit of the fine as required in Section 1.10.090, may file a request for an advance deposit hardship waiver which shall include a sworn affidavit as described in subsection (c) below.

B. The request shall be filed on an advance deposit hardship waiver application form, available from the City Clerk's office, in conjunction with submitting the appeal.

C. The City may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the City a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager or designee the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing. In determining the cited party's financial ability or inability to deposit the full amount of the fine in advance, the City Manager or designee shall consider the amount of the fine imposed, the income of the cited party, the expenses of the cited party, and any other factors that are reasonably related to the cited party's ability to deposit the full amount.

D. The requirement of depositing the full amount of the fine as described in Section 1.10.090 shall be stayed unless or until the City makes a full determination not to issue the advance deposit hardship waiver. The City must make its determination within a reasonable period of time, taking into account the complexity of the data pertinent to the application.

E. If the City makes a determination to deny the advance deposit hardship waiver application, a written determination listing the reasons for the denial shall be issued. The written determination to deny the waiver shall be final.

F. The written determination of the City's denial of the advance deposit hardship waiver shall be served by mail upon the person who applied for the waiver.

1.10.110 Failure to Timely Appeal Administrative Citation.

Failure to timely and properly file an appeal from an administrative citation shall constitute a waiver of all rights to an appeal hearing. The determination that the violation occurred and that the violator was responsible for the violation shall be deemed final on the date that service of the administrative citation is deemed completed pursuant to Section 1.10.040.

1.10.120 Administrative Citation Appeal Hearing.

A. A hearing before the hearing officer shall be set for a date that is not less than 15

business days and not more than 60 calendar days from the date that a notice of hearing was issued, unless the enforcement officer determines that the matter is urgent and needs to be heard sooner or that good cause exists for an extension of time.

B. No hearing to contest an administrative citation shall be held unless the fine set forth in Section 1.10.060 has been deposited in advance or an advance deposit hardship waiver application has been filed with and accepted by the City pursuant to Section 1.10.100.

C. The hearing serves to provide the full opportunity of a person subject to an administrative citation to object to the determination that a violation has occurred and/or that the violation has continued to exist.

D. The hearing officer shall consider any written or oral evidence submitted that is relevant to the matter. Formal rules of evidence do not apply. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. All hearings shall be open and public.

E. The failure of any person subject to or the recipient of any administrative citation to appear at the hearing shall constitute a waiver of any objections to the imposition of a fine or other appropriate remedy imposed by the hearing officer, and a failure to exhaust administrative remedies.

F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the person(s) accused of a violation prior to issuing a written decision.

1.10.130 Hearing Officer's Decision on Administrative Citation.

A. Within a reasonable time following the conclusion of the hearing, the hearing officer shall make findings and issue a written determination, a copy of which shall be provided to both the responsible party and the enforcement officer. The determination shall specify the amount of the fine to be imposed and a date by which the fine shall be paid.

B. If the hearing officer finds that no violation has occurred or that the violation was corrected within the time period specified, the hearing officer shall issue a written finding of those facts. If the hearing officer determines that an administrative citation should be cancelled, the City shall promptly refund the amount of the fine. If the hearing officer upholds the violation, the City shall retain any fines paid or shall be entitled to collect and fines owing but unpaid.

1.10.140 Administrative Penalty Hearing Before the City Council.

A. In any instance where staff deems that the imposition of further administrative fines may no longer be effective in compelling compliance, staff may recommend that the City Council consider imposing an administrative penalty due to the egregious nature of a

violation, or the repeated failure to correct a violation, of the municipal code and/or applicable statute, rule, code or regulation. The matter may be brought forward to the City Council for a hearing. The City shall provide at least five business days' notice to the violating party that the City Council will be considering such administrative penalty. If the City Council finds by a preponderance of the evidence that a violation has occurred and that the situation warrants the imposition of an administrative penalty, the City Council may issue a final order that imposes any or all of the following:

1. A directive to cease and desist from committing the violation;
2. A directive to correct the violation, including a schedule for correction where appropriate;
3. Administrative penalties based upon the administrative penalty set pursuant to Section 1.10.150;
4. Administrative costs; and
5. Interest imposed at the legal rate.

B. The order shall state that failure to comply with its provisions may result in the City proceeding with an abatement consistent with the provisions of Section 1.09.100 and charging the cost of abatement plus all administrative costs to the property owner, and may further result in the City collecting the monies due as a personal obligation of the responsible party or as a lien against the parcel and/or as a special assessment, and such lien or special assessment may be recorded, and that such property may be sold after three years by the tax collector for unpaid delinquent assessments.

C. If the violator gives written notice to the enforcement officer, City Manager or City Council that the violation has been corrected and if the City finds that compliance has been achieved, the date the written notice was postmarked or personally delivered or the date of the final inspection, whichever first occurred, shall be deemed to be the date the violation was corrected. If no written notice is provided, the violation will be deemed corrected on the date of the final inspection. If the City determines that compliance has been achieved, the enforcement officer shall document that compliance has been achieved. A copy of the compliance documentation shall be served on the responsible party.

D. The order of the City Council is final at the time it is made; however, the City Council shall maintain continuing jurisdiction and shall have the power to modify the order, after providing the person subject to the order with notice and an opportunity to be heard, until full compliance is achieved. The order of the City Council shall be subject to reconsideration pursuant to Chapter 2.08 of this municipal code.

E. The order shall have the same force and effect as a resolution of the City Council for the purpose of filing a lien with the County of Santa Clara or Tax Collector's office

pursuant to this municipal code and for the purpose of pursuing any other collection or enforcement action to obtain payment of the amounts owed to the City.

F. The order, if recorded, shall have the same force and effect and priority as a judgment lien governed by the provisions of Section 697.340 of the California Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the California Code of Civil Procedure.

1.10.150 Administrative Penalties Imposed by Council.

A. Any party subject to an order by the City Council to pay an administrative penalty shall be responsible for payment of the penalty in the amount specified in this section. The administrative penalty is separate from the amount of any administrative citation fine imposed pursuant to this chapter.

B. The City Council may impose an administrative penalty in an amount not to exceed a maximum of \$1,000 per day for each violation, exclusive of administrative costs, interest and restitution for compliance re-inspections, for any related series of violations or ongoing violations. In determining the amount of the administrative penalty, the City Council may take any or all of the following factors into consideration: duration of the violation; frequency, recurrence and number of violations, related or unrelated, by the same violator; seriousness of the violation; good faith efforts of the violator to come into compliance; economic impact of the penalty on the violator; impact of the violation on the community; and any other factors as justice may require.

C. The imposition of administrative citation fines by staff shall cease at the time that administrative penalties by the City Council are imposed. At no concurrent time shall the combined amount of an imposed administrative fine and administrative penalty exceed a maximum of \$1,000 per day, or the maximum daily fine allowed under Section 1.10.070, whichever is greater, for each violation.

D. If the responsible person fails to correct the violation(s), other enforcement actions may be pursued by the City.

1.10.160 Payment of Fine and Penalty Amounts.

A. The amounts due shall be paid to the City within 30 calendar days from the issuance date of the decision, unless otherwise specified.

B. Payment of any fine and/or penalty shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the City for any continuation or repeated occurrence of the municipal code and/or applicable statute, rule, code or regulation violation that is the subject of the original enforcement action.

C. Any person who fails to pay to the City any amount imposed pursuant to the provisions of this chapter on or before the date the amount is due also shall be liable for

the payment of any applicable late payment charges consistent with the provisions of Section 5.04.250 of this municipal code.

D. If unpaid as of the date specified in any decision or order, all amounts due and any interest assessed shall be collected by the City by use of all available legal means, and may be enforced as:

1. A personal obligation of the violator; and/or
2. If the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the amounts due are paid in full.

E. In addition to any other remedies provided by law, failure to pay amounts due and interest as specified on or before the date specified shall constitute a violation of this municipal code punishable as a misdemeanor.

1.10.170 Notices.

Whenever a notice is required to be given under this chapter, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States mail is made. Where personal service or service by mail upon the property owner cannot be made despite a diligent effort, a copy of any notice shall be conspicuously posted at the property that is the subject of the notice. Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

1.10.180 Right to Judicial Review of Hearing Officer or City Council's Decision.

Any person aggrieved by the decision on an administrative citation fine or penalty pursuant to Sections 1.10.130 and 1.10.150 may obtain review of the decision by filing a petition for review with the Superior Court in Santa Clara County in accordance with the time lines and provisions set forth in California Government Code Section 53069.4.

SECTION 5. Chapter 1.12 of Title 1 of the Cupertino Municipal Code is hereby repealed and readopted as amended to read as follows:

CHAPTER 1.12: GENERAL PENALTY AND CRIMINAL ENFORCEMENT*

Section

1.12.010 Violation of code

1.12.020 Each day a separate offense

* For statutory provisions authorizing cities to impose fines up to \$1,000, imprisonment up to six months, or both, see Gov. Code § 36901

1.12.010 Violation of Code.

A. It is unlawful for any person to perform any act that is prohibited, made or declared to be unlawful or an offense by the code, or to violate any provision or fail to comply with any of the requirements of this code. A violation of any provision or failing to comply with any of the mandatory requirements of the code shall constitute a misdemeanor, except where the violation is specifically declared to be an infraction.

B. Notwithstanding the above, any violation constituting a misdemeanor may, in the discretion of the City Attorney, be charged and prosecuted as an infraction.

C. When a violation of a provision of this code which otherwise constitutes an infraction continues to occur and the violator has been charged with a violation of the same provision as an infraction on at least four separate occasions and within one year has forfeited bail on each such occasion, in that event, the City Attorney, in his or her discretion, may charge a violation of any such provision as a misdemeanor.

D. Unless otherwise specified by this code, an infraction is punishable by:

1. A fine not to exceed \$100 for the first violation of a code provision;
2. A fine not to exceed \$200 for a second violation of the same code provision within one year; and
3. A fine not to exceed \$500 for each subsequent violation of the same code provision within one year.

E. Unless otherwise specified by this code, a misdemeanor is punishable by a fine not to exceed \$1,000, imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

F. Notwithstanding the foregoing and unless otherwise specified by this code, a code violation of Section 8.01.030, Animals Running at Large, Section 8.01.030, Public Nuisance, Section 8.03.010, Restraint of Dogs, Section 13.04.130D, Behavior of Persons in Parks, and Section 13.04.130P, Feeding Waterfowl Prohibited, shall be subject to a maximum fine as follows:

1. \$50 for the first violation of a code provision,
2. \$100 for the second violation of the same code provision within one year, and
3. \$200 for each subsequent violation of the same code provision within one year.

1.12.020 Each Day a Separate Offense.

A person committing an act designated in Section 1.12.010 is guilty of a separate offense for each and every day during any portion of which any violation of any ordinance of the

City is committed, continued or permitted by the person, and is punishable as provided in Section 1.12.010.

SECTION 6: 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 7: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 8: 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 9: 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 5th day of May 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on this 19th day of May 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

City Clerk

1234901.1

Mayor, City of Cupertino