

DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING THAT THE CUPERTINO CITY COUNCIL ADOPT AN ORDINANCE AMENDING THE CUPERTINO MUNICIPAL CODE TO ADOPT “VEHICLE MILES TRAVELED” THRESHOLDS OF SIGNIFICANCE AND STANDARDS FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTION OF MCA 2021-001, ADDING TITLE 17 (ENVIRONMENTAL REGULATIONS) AND CHAPTER 17.08 TO THE CUPERTINO MUNICIPAL CODE

WHEREAS, under Senate Bill 743 (SB 743), transportation metrics based on automobile delay, previously measured in terms of level of service (LOS), may no longer be used to establish the significance of transportation impacts from land use projects under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et. seq.; and

WHEREAS, section 15064.7(b) of the State CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 et seq. (CEQA Guidelines), encourages public agencies to develop and publish thresholds of significance to be used in determining the significance of a project’s environmental effects; and

WHEREAS, CEQA Guidelines section 15064.7(b) further requires that thresholds of significance to be adopted for general use must be adopted by ordinance, resolution, rule, or regulation and developed through a public review process and be supported by substantial evidence; and

WHEREAS, the Governor’s Office of Planning and Research (OPR) proposed, and the Natural Resources Agency certified and adopted, new CEQA Guidelines section 15064.3, which describes the procedures and criteria for evaluating transportation impacts, and specifies that Vehicle Miles Traveled (VMT) should be used to analyze transportation impacts from land use projects; and

WHEREAS, the City has analyzed and drafted appropriate VMT thresholds of significance, considering local conditions and guidance from OPR, including but not limited to retaining a transportation expert to prepare a technical report titled *SB 743 Implementation Decisions for the City of Cupertino* (October 26, 2020), which contains substantial evidence that was used to inform the decision-making process; and

WHEREAS, the City has worked with the Santa Clara Valley Transportation Authority (VTA) as the County's Congestion Management Agency to establish baseline (existing) VMT reference averages for Cupertino, Santa Clara County, and the Nine-County Bay Area Region; and

WHEREAS, the Planning Commission held a study session on December 8, 2020, and a public hearing on Tuesday, January 26, 2021, on City policy implementing CEQA with regard to evaluation of transportation impacts pursuant to SB 743 and considered all evidence presented at said study session and hearing; and

WHEREAS, at a duly noticed public hearing held on January 26, 2021, the Planning Commission of the City of Cupertino considered the proposed amendment to the City's Municipal Code (Title 17) to add a new chapter (Chapter 17.08) establishing VMT standards relating to the implementation of SB 743; and

WHEREAS, the Planning Commission has duly considered all evidence, including testimony and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission hereby finds and declares that each of the recitals and findings are true and correct and are incorporated into this Resolution and hereby recommends that the City Council adopt the Draft Ordinance as attached hereto as Exhibit A, in substantially similar form.

PASSED AND ADOPTED this 26th day of January 2021, at a Regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Piu Ghosh,
Planning Manager

R Wang
Vice Chair, Planning Commission

ORDINANCE NO. _____

AN ORDINANCE SELECTING VEHICLE MILES TRAVELED (VMT) TO
REPLACE LEVEL OF SERVICE (LOS) FOR USE IN TRANSPORTATION
ANALYSIS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA); AND ADOPTION OF MCA 2021-001, ADDING TITLE 17 AND
CHAPTER 17.08 TO THE CUPERTINO MUNICIPAL CODE

WHEREAS, section 15064.7(b) of the State Guidelines implementing the California Environmental Quality Act, Title 14, Section 15000 et seq. ("CEQA Guidelines") encourage public agencies to develop and publish generally applicable "thresholds of significance" to be used in determining the significance of a project's environmental effects; and

WHEREAS, CEQA Guidelines section 15064.7(a) defines a threshold of significance as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant"; and

WHEREAS, CEQA Guidelines section 15064.7(b) requires that thresholds of significance must be adopted by ordinance, resolution, rule, or regulations, developed through a public review process, and be supported by substantial evidence; and

WHEREAS, pursuant to CEQA Guidelines section 15064.7(c), when adopting thresholds of significance, a public agency may consider thresholds of significance adopted or recommended by other public agencies provided that the decision of the agency is supported by substantial evidence; and

WHEREAS, Senate Bill 743, enacted in 2013 and codified in Public Resources Code section 21099, required changes to the CEQA Guidelines regarding the criteria for determining the significance of transportation impacts of projects; and

WHEREAS, in 2018, the Governor's Office of Planning and Research ("OPR") proposed, and the California Natural Resources Agency certified and adopted, new CEQA Guidelines section 15064.3 that identifies vehicle miles traveled ("VMT") – meaning the amount and distance of automobile travel attributable to a project – as the most appropriate metric to evaluate a project's transportation impacts; and

WHEREAS, as a result, automobile delay, as measured by "level of service" and other similar metrics, generally no longer constitutes a significant environmental effect under CEQA; and

WHEREAS, the City of Cupertino, following a public review process consisting of three staff presentations before the Planning Commission and two staff presentations before the City Council wishes to adopt VMT thresholds of significance for determining the significance of transportation impacts recommended by the Office of Planning and Research.

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

SECTION 1. Adoption.

The City of Cupertino hereby adopts a VMT threshold of significance of 14.4% percent below the citywide baseline VMT rate and amends the Cupertino Municipal Code as set forth in Attachment A.

SECTION 2: Severability and Continuity

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

SECTION 3: California Environmental Quality Act.

Finds that this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et. seq. and the State CEQA Guidelines (collectively, "CEQA") because the adoption of a new transportation threshold of significance under the CEQA in accordance with CEQA Guidelines Section 15064.7 does not require environmental review and is not a "project" pursuant to State CEQA Guidelines Sections 15060(c)(3) and 15378 because it does not involve commitment to any particular project. The use of VMT in CEQA review is

required under SB 743 and Section 15064.3 of the CEQA Guidelines. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

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

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 16th day of February, 2021 and **ENACTED** at a regular meeting of the City Council of the City of Cupertino the 3rd day of March, 2020 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – Adding Title 17 (Environmental Regulations)

The section of the Cupertino Municipal Code set forth below is adopted as follows:

CHAPTER 17.08: Evaluation of Transportation Impacts Under the California Environmental Quality Act

Section

17.08.010 Purpose.

17.08.020 Applicability of regulations.

17.08.030 Vehicle Miles Traveled (VMT) Standards

17.08.010 Purpose.

As a result of California Senate Bill (SB) 743 (2013), the City of Cupertino has implemented the use of Vehicle Miles Traveled (VMT) in environmental review of new land-use development projects, transportation projects, and other projects pursuant to the California Environmental Quality Act and the State CEQA Guidelines (together, CEQA). This section contains standards relating to the use of VMT in Cupertino for evaluating transportation impacts.

17.08.020 Applicability of Regulations.

A. This chapter applies to all land-use development projects, transportation projects, and other projects subject to review by the California Environmental Quality Act (CEQA).

B. Some projects may be screened out from more detailed VMT analysis based on a project's location, characteristics, or a combination of both. A project relying on the following screening must be consistent with applicable General Plan policies and supported by substantial evidence demonstrating cumulative VMT is declining. Project screening may be used for projects that meet one or more of the following criteria:

1. A project located within one-quarter mile of a High-Quality Transit Corridor or transit stop as defined by CEQA;
2. Local-serving retail of 50,000 square feet or less;
3. Land-use projects consisting of 100% affordable housing.

17.08.030 Vehicle Miles Traveled (VMT) Standards.

A. The VMT significance thresholds for land use projects and plans compared to baseline conditions are:

1. **Project Impact:** A significant impact would occur if the total project generated VMT per service population for the project would exceed a level of 14.4% below the citywide baseline VMT rate.
2. **Project Effect:** A significant impact would occur if the project increases total (boundary) countywide VMT compared to baseline conditions.

B. The VMT significance thresholds for land use and transportation projects and plans under cumulative conditions are:

1. **Project Effect:** A significant impact would occur if the project increases total (boundary) countywide VMT compared to cumulative no project conditions.
2. **All land use and transportation projects:** A significant impact would occur if the project is inconsistent with the Regional Transportation Plan/Sustainable Community Strategy Plan (Plan Bay Area).

C. The VMT significance thresholds for transportation projects are:

1. **Baseline Transportation Thresholds:** A significant impact would occur if a project causes a net increase in total (boundary) citywide VMT compared to baseline conditions or opening year no project conditions.
2. **Cumulative Transportation Thresholds:** A significant impact would occur if a project causes a net increase in total (boundary) citywide VMT compared to cumulative no project conditions.

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