

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADDING TITLE 17 AND CHAPTER 17.08 TO THE CUPERTINO MUNICIPAL  
CODE, REPLACING LEVEL OF SERVICE (LOS) WITH VEHICLE MILES  
TRAVELED (VMT) FOR USE IN TRANSPORTATION ANALYSIS PURSUANT  
TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

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The City Council of the City of Cupertino finds that:

WHEREAS, Senate Bill (SB) 743, enacted in 2013 and codified in Public Resources Code section 21099, requires changes to the California Environmental Quality Act (CEQA) Guidelines regarding the criteria for determining the significance of transportation impacts of projects; and

WHEREAS, section 15064.7(b) of the State Guidelines implementing CEQA, 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, in 2018, the Governor’s Office of Planning and Research (OPR) proposed, and the California Natural Resources Agency certified and adopted, new CEQA Guideline 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, 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, 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 Council of the City of Cupertino held a duly noticed public hearing on February 16, 2021, and after considering all testimony and written materials provided in connection with that hearing, introduced this ordinance and waived the reading thereof.

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

Members of the City Council

AYES:

NOES:

ABSTAIN:

ABSENT:

<p>SIGNED:</p>  <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p>  <p>_____</p>	<p>_____</p>

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 Definitions.
- 17.08.020 Purpose.
- 17.08.030 Applicability of regulations.
- 17.08.040 Vehicle Miles Traveled (VMT) Standards.

**17.08.010 Definitions.** The following words and phrases when used in this chapter shall have the meanings set forth in this section:

- A. As used in this Chapter, “CEQA” means the California Environmental Quality Act, Public Resources Code section 21000 et seq., and the State CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 et seq.
- B. Vehicle Miles Travelled or “VMT” refers to the distance a vehicle travels regardless of the number of occupants of the vehicle. Vehicle miles traveled is the daily VMT of all vehicle trips, vehicle types, and trip purposes for all project land uses. An adjustment to the VMT should be made to include the full length of trips that leave the travel forecasting model area to fully capture interregional travel.
- C. Total Boundary VMT refers to VMT that occurs within a selected geographic boundary (e.g., city, county or region) by any type of vehicle. Total Boundary VMT

captures all on-road travel occurring on a roadway network for any purpose and includes local trips as well as trips that pass through the area without stopping.

D. Service Population refers to population plus employment and may include students or visitors. Service population is intended to include all independent variables used in estimating trips.

E. High Quality Transit Corridor means an area within ¼ mile walking distance from fixed-route transit service with service intervals no longer than 15 minutes during peak commute hours.

#### **17.08.020 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.

#### **17.08.030 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.

#### **17.08.040 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.