

CHAPTER 13.08 PARK LAND DEDICATION/FEE

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CHAPTER 18.24

13.08.010 Purpose.

The purpose of this Chapter is to regulate, in the public interest, convenience, health, welfare and safety, the provision of park and recreational facilities upon development for which dedication of land and/or payment of a fee is required in accordance with the open space and conservation element of the adopted General Plan of the City of Cupertino, and any amendments.

13.08.020 Definitions

“Dwelling unit” or “unit” means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy on a non-transient basis and having not more than one kitchen.

13.08.030 Applicability.

A. Upon development of a new dwelling unit, at the option of the City, a parkland dedication, or a payment of a fee in lieu thereof, or both, shall be required.

13.08.050 Parkland Dedication.

A. Where the City determines that a park or recreational facility is to be located in whole or in part within the proposed development, land sufficient in topography and size shall be dedicated per the formula below.

$$\text{Parkland dedication/DU} = \left(\frac{(\text{Average number of persons/DU}) \times (\text{Park Acreage Standard})}{1000 \text{ persons}} \right)$$

B. The Park Acreage Standard is three acres of property for each one thousand persons.

C. Parkland dedication based on development density: Table 13.08.050 indicates the average parkland dedication required per dwelling unit based on development density per the formula above (13.08.050.A).

Table 13.08.050: Park Land Dedication Formula Table

<u>Density (DU/acre)</u>	<u>Average number of persons/DU</u>	<u>Average Parkland Dedication/DU (in acres)</u>
<u>0—5</u>	<u>3.5</u>	<u>.0105</u>
<u>5—10</u>	<u>2.0</u>	<u>.0060</u>
<u>10—20</u>	<u>2.0</u>	<u>.0060</u>
<u>20 +</u>	<u>1.8</u>	<u>.0054</u>
<u>10 +</u>	<u>1.8</u>	<u>.0054</u>
<u>Senior Citizen Housing Development</u>	<u>1.0</u>	<u>.0030</u>

13.08.060 Fees in Lieu of Parkland Dedication.

A. General Standard.

1. If the City determines that a parkland dedication is not required, a fee shall be paid in lieu thereof.
2. Fees in Lieu of Land—Fifty units or Less. If a proposed development contains fifty units or less, a fee in lieu of parkland dedication shall be paid, unless dedication is deemed appropriate and in the public interest by the City.

B. Amount. The amount of the fee shall be equal to the fair market value of the land prescribed for dedication pursuant to Section 13.08.050. The fee shall be calculated as follows:

In lieu fee = ((Average Parkland Dedication/DU)*(Net new dwelling units)*(Fair Market Value of land/acre))

C. Fair Market Value of land per acre. The Department of Public Works shall establish the fair market value of land within the City and update the value on an annual basis in the City's Fee Schedule. The fair market value shall be determined by reference to comparable land within the City. As used herein, the term "comparable" means land of similar size and development potential as the land which would otherwise be dedicated.

D. Use of Money. The money collected shall be paid to the Treasurer of the City or his or her authorized agent. Such money shall be placed in a special revenue fund which shall be known as the "park dedication in-lieu fee fund" and shall be used for all purposes allowed by State Law.

13.08.070 Combination of Parkland Dedication and Fee.

A. The City shall determine whether it accepts parkland dedication, elects to require payment of a fee in lieu, or a combination of both a parkland dedication and a fee in lieu, upon consideration of the following:

1. Topography, geology, access and location of land in the development available for dedication;
2. Size and shape of the development and land available for dedication;
3. Feasibility of dedication;

4. Availability of previously acquired park property.

B. The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

13.08.080 Credit for Private Recreation or Open Space.

A. Where private open space for park and recreational purposes is provided in a proposed development, fifty percent credit shall be given against the requirement of land dedication or payment of fees in lieu thereof, if the approval authority finds that it is in the public interest to do so and that all the standards in Section 13.08.080 B, below are met and findings in Section 13.08.080C can be made.

B. That the open space for which credit is given complies with the following standards:

1. The total usable open space acreage for the development must be equivalent to the parkland dedication calculated pursuant to Section 13.08.050.
2. The open space must contain the mandatory elements and at least four of the six optional elements indicated in Table 13.08.080 below and meet the following criteria:
 - a. The combined minimum acreage for a facility with a recreation center and children’s play apparatus area is 1.3 acres.
 - b. The minimum combined acreage for a facility not including a recreation center or children’s play area is 1.5 acres.

Table 13.08.080 – Mandatory and Optional Elements for private open space

	<u>Minimum Acreage</u>
<u>Mandatory Element</u>	
<u>Turfed playfield</u> <u>The playfield shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities.</u>	<u>.50</u>
<u>Optional Elements</u>	
<u>Children’s play apparatus area</u>	<u>.15</u>
<u>Recreational community gardens</u>	<u>.25</u>
<u>Family picnic area</u>	<u>.25</u>
<u>Game court area</u>	<u>.25</u>
<u>Swim pool (42’ x 75’ with adjacent deck and lawn areas)</u>	<u>.25</u>
<u>Recreation center buildings and grounds</u>	<u>.15</u>

C. The approval authority may grant park credit for a combination of the above elements or a combination of the above elements and other recreation improvements that will meet the specific recreation needs of a specialized housing development, such as a senior housing development, with occupancy controlled via a covenant with the City named as a third party beneficiary.

D. Findings. The approval authority shall adopt the following written findings and shall require the recordation of covenants running with the land to ensure that credited elements are maintained, before credit is given:

1. That yards, court areas, setbacks, decorative landscape areas normally associated with residential site design and other areas required to remain free and clear by zoning and building ordinances and regulations shall not be included in the computation of such private open space;
2. That such space is to be wholly or partially owned and maintained by the future residents of the development and that the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance or restrictions;
3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be eliminated without the consent of the City or its successor;
4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;
5. That the facilities proposed for private recreation or open space are in substantial conformance with General Plan policies.

18.24.090 Credit for Existing Dwelling Units.

When dwelling units exist on the property where development is proposed, a credit shall be given against the requirement of land dedication or payment of fees in lieu thereof for the number of units existing. As used herein, the term "existing" refers to units which exist at the time of approval of the dwelling units or which were demolished within one year prior to the submittal of an application for development of the dwelling units.

13.08.100 General Procedures.

- A. At the time of approval of the dwelling units, the approval authority shall determine whether a parkland dedication or a fee in lieu thereof is required unless a parkland dedication or fee has already been provided.
- B. At the time of building permit application, land shall be dedicated to the City or the fee in lieu thereof shall be paid.
- C. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the building permits and shall be recorded simultaneously with the issuance of final occupancy.
- D. If parkland dedication is required, the design of the park shall be reviewed and approved and construction shall be completed prior to occupancy of the development.

CHAPTER 18.24: DEDICATIONS AND RESERVATIONS

Section

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18.24.230 Waiver of Direct Street Access.

Article I. Dedication of Streets, Alleys, Rights-of-Way and Easements.

18.24.010 Dedication of Streets, Alleys, and Other Public Rights-of-way or Easements.

- A. As a condition of approval of a final map or parcel map, the subdivider shall dedicate or make an irrevocable offer of dedication of all parcels of land within the subdivision that are needed for streets and alleys, including access rights and abutters' rights; drainage; public utility easements; bicycle paths, transit facilities, solar access easements, park land, fire stations, libraries, access to public resources and other public easements as required.
- B. Improvements shall be in accordance with Chapter 18.32, Subdivision Improvements, of this title.

Article II. Park Land Dedication.

18.24.020 Purpose.

This section is enacted pursuant to the authority granted by the Government Code. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this chapter are in accordance with the open space and conservation element of the adopted General Plan of the City of Cupertino, and any amendments.

18.24.030 Requirements.

- A. As a condition of approval of a final subdivision map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City, for park or recreational purposes at the time and according to the standards and formula contained in this chapter.
- B. The provisions of this chapter are not applicable to the following land use categories:
 - 1. Commercial or industrial subdivisions;
 - 2. Condominium conversion projects or stock cooperatives which consist of the subdivision of air space in an existing apartment building which is more than five years old when no new dwelling units are added;
 - 3. Convalescent hospitals and similar dependent care facilities.

MOVED TO CHAPTER 13.08

18.24.040 General Standard.

The Parkland Dedication standard shall be as identified in the City's General Plan and Chapter 13.08~~public interest, convenience, health, welfare and safety require that three acres of property for each one thousand persons be devoted for neighborhood park and recreational purposes.~~

18.24.050 ~~Standards and Formula for~~ Dedication of Land.

- A. Where a park or recreational facility has been designated in the open space and conservation element of the General Plan of the City, and is to be located in whole or in part within the proposed subdivision to serve the immediate and future need of the residents of the subdivision, the subdivider shall dedicate land for a local park sufficient in size and topography to serve the residents of the subdivision.

~~The subdivider shall provide park lands as related to the need for a neighborhood park and therefore, the formula for dedication of park land for residential development should be based upon three acres of park land per one thousand persons.~~

~~B.—The formula for determining acreage to be dedicated shall be pursuant to Section 13.08.050, as follows:~~

~~—Average number of Persons/Unit~~

~~—Park Acreage Standard~~

~~—1000 Population~~

~~—Example for single family DU:~~

~~— $\left(\frac{3.5 \times 3}{1000}\right) = 0.0105 \text{ ac/U}$~~

~~B.—Table 18.24.050, of population density, is to be followed.~~

~~In the event apartment zoned land is subdivided, the park land dedication formula shall be applied as related to the maximum number of units permitted by the zoning classification of the property.~~

TABLE 18.24.050			
Park Land Dedication Formula Table			
Types of Dwellings	Density DU/acre	Average Household Size/DU	Average Acreage Requirement/DU, Based on 3-acre Standard
Single Family	0-5	3.5	.0105
Duplex, medium low	5-10	2.0	.0060
Cluster, medium	10-20	2.0	.0060
Cluster, medium high	20+	1.8	.0054
Apartments	10+	1.8	.0054
Elderly housing*	All ranges	1.0	.0030

~~* A project which is occupied by an elderly household as defined in Section 50067 of the Health and Safety Code.~~

18.24.060 Formula for Fees in Lieu of Land Dedication.

~~A.—General Formula. If there is no park or recreation facility designated in the open space and conservation element of the General Plan to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall, in lieu of dedicating land, pay a fee pursuant to the formula in Section 13.08.060, equal to the market value of the land prescribed for dedication in Section 18.24.080, Amount of Fee in Lieu of Park Land Dedication, this fee to be~~

~~determined to be used for a local park which will serve the residents of the area to be subdivided.~~

- ~~A. Valuation of the land described above shall be determined, for in lieu fee purposes, under the procedures described in Section 18.24.080, Amount of Fee in Lieu of Park Land Dedication.~~
- B. Fees in Lieu of Land—Fifty Parcels or Less. If the proposed subdivision contains fifty parcels or less, the subdivider shall pay a fee in lieu of dedication, unless dedication is deemed appropriate and in the public interest by the City. ~~equal to the land value of the portion of the local park required to serve the needs of the residents of the proposed subdivision as prescribed in Section 18.24.050 and in an amount determined in accordance with the provisions of Section 18.24.080, Amount of Fee in Lieu of Park Land Dedication.~~
- C. Fair Market Value of land per acre. The Fair Market Value of land per acre shall be established pursuant to Section 13.08.050C.
- D. Use of Money. The money collected shall be paid and used pursuant to Section 13.08.060D. ~~paid to the treasurer of the City or his or her authorized agent. Such money shall be placed in a special revenue fund which is hereby created and which shall be known as the “park dedication in lieu fee fund.” Money within this fund shall be used and expended solely for the acquisition, improvement, expansion or implementation of parks and recreational facilities reasonably related to serving the public by way of the purchase of necessary land, or, if the City Council deems that there is sufficient land available for this use, then secondly this money shall be used for improving such land for park and recreational purposes.~~

~~E.—~~

18.24.070 Criteria for Requiring Both Dedication and Fee.

In subdivisions of over fifty parcels, the subdivider shall both dedicate land and pay a fee in lieu thereof in accordance with the following formula:

- A. When only a portion of the land to be subdivided is proposed in the open space and conservation element of the General Plan as the site for a local park, the portion shall be dedicated for local park purposes and a fee computed pursuant to the provisions of Section 18.24.~~080-060~~, shall be paid for any additional land that would have been required to be dedicated pursuant to Section 18.24.050, ~~Standards and Formula for~~ Dedication of Land.
- B. When a major part of the local park or recreational site has already been acquired by the City and only a small portion of land is needed from the subdivision to complete the site, the remaining portion shall be dedicated and a fee computed pursuant to the provisions of Section 18.24.~~080-060~~, shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to Section 18.24.050, ~~Standards and Formula for~~ Dedication of Land, the fees to be used for the improvement of the existing park and recreational facility or for the improvement of other local parks and recreational facilities in the area serving the subdivision.

18.24.080 Amount of Fee in Lieu of Park Land Dedication.

- ~~A. When a fee is required to be paid in lieu of park land dedication, the amount of the fee shall be determined, by the Director of Public Works, based upon the fair market value of the land which would otherwise be required to be dedicated pursuant to Section 18.24.050, Standards and Formula for Dedication of Land, determined by reference to comparable land within the general area of the subject land. As used herein, the term "comparable" means land of similar size and development potential as the land which would otherwise be dedicated. The date of valuation of the property for in lieu fee purposes shall be the date that the subdivider submits his or her written request for a final subdivision map.~~
- ~~B. The fee shall be paid pursuant to the provisions contained in Section 18.24.060, Formula for Fees in Lieu of Land Dedication.~~
- ~~C. If a subdivider objects to the fair market value determination made by the Director of Public Works, he or she may, at his or her own expense, obtain an appraisal of the property by a qualified real estate appraiser approved by the City, which appraisal of fair market value may be accepted by the City Council, if found reasonable. Alternatively, the City and the subdivider may agree as to the fair market value.~~

18.24.090-080 Subdividers Not Within General Plan.

Where the proposed subdivision lies within an area ~~not then~~not included but to be included within the City's General Plan, the subdivider shall dedicate land, pay a fee in lieu, or both, in accordance with the adopted park and recreational principles and standards of the City's General Plan and in accordance with the provisions of this chapter.

18.24.100-090 Determination of Land or Fee.

- ~~A. If the relationship between a proposed subdivision containing fifty parcels or more and the open space and conservation element is unclear, the City Council shall determine whether it accepts land dedication or elects to require payment of a fee, by consideration of the standards identified in Section 13.08.070 following:~~
- ~~1. Topography, geology, access and location of land in the subdivision available for dedication;~~
 - ~~2. Size and shape of the subdivision and land available for dedication;~~
 - ~~3. Feasibility of dedication;~~
- ~~4.A. Availability of previously acquired park property.~~
- B. The determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.

18.24.110-100 Credit for Private Recreation or Open Space.

Where private open space for park and recreational purposes is provided in a proposed subdivision, ~~a fifty percent~~ credit shall be given against the requirement of land dedication or payment of fees in lieu thereof, pursuant to requirements of Section 13.08.080. ~~if the City~~

~~Council finds that it is in the public interest to do so and that all the following standards are met:~~

~~A. That yards, court areas, setbacks, decorative landscape areas normally associated with residential site design and other open areas required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private open space;~~

~~B. That such space is to be wholly or partially owned and maintained by the future residents of the subdivision and that the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance or restrictions;~~

~~C. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the City or its successor;~~

~~D. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;~~

~~E. That facilities proposed for the open space are in substantial accordance with the provisions of the open space and conservation element of the General Plan; and~~

~~F. That the open space for which credit is given complies with the following standards:~~

~~1. The total usable open space acreage must be equivalent to a ratio of three acres of land for each one thousand person, or a fraction thereof, generated by the development. The computation for determining acreage is described in Section 18.24.050, Standards and Formula for Dedication of Land.~~

~~2. The open space must contain the following mandatory elements and at least four of the six optional elements:~~

~~The combined minimum acreage for a facility with a recreation center and children's play apparatus area is 1.3 acres. The minimum combined acreage for a facility not including a recreation center or children's play area is 1.5 acres.~~

~~The City Council may grant park credit for a combination of the above elements or a combination of the above elements and other recreation improvements that will meet the specific recreation needs of a specialized housing development, such as a senior housing development with occupancy controlled via a covenant with the City as beneficiary.~~

~~Before credit is given, the City Council shall adopt written findings that the above standards are met, and shall require the recordation of covenants running with the land to ensure that credited elements are maintained.~~

	Minimum Acreage
Mandatory Element	-
Turfed playfield	.50
The playfield shall be a single unit of land which is generally level and free of physical barriers which would inhibit group play activities.	-
Optional Elements-	-
Children's play apparatus area	.15
Recreational community gardens	.25
Family picnic area	.25
Game court area	.25
Swim pool (42' x 75' with adjacent deck and lawn areas)	.25
Recreation center buildings and grounds	.15

18.24.115-110 Credit for Existing Residential Units.

Where any lot or lots of a proposed subdivision contains existing residential units, a credit shall be given against the requirement of land dedication or payment of fees in lieu thereof for each lot which contains residential unit or units. As used herein, the term "existing" refers to a residential unit or units which exist at the time of the recordation of a final map or which were demolished within one year prior of the tentative map application.

18.24.120 Procedure.

- A. At the time of approval of the tentative subdivision map, the City Council shall determine pursuant to Section 18.24.100 the land to be dedicated and/or fees to be paid by the subdivider.
- B. At the time of the filing of the final subdivision map, the subdivider shall dedicate the land/or pay the fees as previously determined by the City Council.
- C. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the final subdivision map and shall be recorded simultaneously with the final subdivision map.

18.24.130 Commencement of Development.

At the time of approval of the final subdivision map, the City Council shall specify when development of the park or recreational facilities shall be commenced.

Article III. School Site Dedication.

18.24.140 General.

Unless otherwise prohibited by law, as a condition of approval of a final subdivision map, a subdivider who develops or completes the development of one or more subdivisions within a school district shall dedicate to the school district such lands as the City Council shall deem to be necessary for the purpose of constructing thereon schools necessary to assure the residents of the subdivision adequate elementary school service.

18.24.150 Procedure.

The requirement of dedication shall be imposed at the time of approval of the tentative map. If within thirty days after the requirement of dedication is imposed by the City the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to sixty days after the filing of the final map on any portion of the subdivision.

18.24.160 Payments to Subdivider for School Site Dedication.

The school district shall, if it accepts the dedication, repay to the subdivider or his or her successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:

- A. The cost of any improvements to the dedicated land since acquisition by the subdivider;
- B. The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication;
- C. Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

18.24.170 Exemptions.

The provisions of this article shall not be applicable to a subdivider who has owned the land being subdivided for more than ten years prior to the filing of the tentative maps.

Article IV. Reservations.

18.24.180 General.

As a condition of approval of a map, the subdivider shall reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards and formula contained in this article.

18.24.190 Standards for Reservation of Land.

Where a park, recreational facility, fire station, library, or other public use is shown on an adopted specific plan or adopted general plan containing a community facilities element, recreation and parks element and/or a public building element, the subdivider may be required by the City to reserve sites as so determined by the City or County in accordance with the definite principles and standards contained in the above specific plan or General Plan. The reserved area must be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner. The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically unfeasible. The reserved area shall conform to the adopted specific plan or General Plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

18.24.200 Procedure.

The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map or parcel map, enter into a binding agreement to acquire reserved area within two years after the completion and acceptance of all improvements, unless the period of time is extended by mutual agreement.

18.24.210 Payment to Subdivider.

The purchase price shall be the market value at the time of the filing of the tentative map plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of the reserved area, including interest costs incurred on any loan covering the reserved area.

18.24.220 Termination.

If the public agency for whose benefit an area has been reserved does not enter into a binding agreement, the reservation of the area shall automatically terminate.

Article V. Waiver of Direct Street Access.

18.24.230 Waiver of Direct Street Access.

- A. The City may require as a condition of approval of any subdivision the waiver of direct access rights to proposed or existing streets from any property within the subdivision and abutting thereon.
- B. Any waiver shall become effective in accordance with its provisions and shall be contained in the owner's certificate of the final map or parcel map.

CHAPTER 19.08: DEFINITIONS

Section

19.08.010 Purpose and Applicability.

19.08.020 General Rules for Construction of Language.

19.08.030 Definitions.

19.08.010 Purpose and Applicability.

The purpose of this chapter is to promote consistency and precision in the interpretation of zoning regulations. The meaning and construction of words and phrases defined in this chapter shall apply throughout the zoning regulations, except where the context of such word or phrases clearly indicates a different meaning or construction.

19.08.020 General Rules for Construction of Language.

The following general rules of construction shall apply to the text of the zoning regulations:

- A. The particular shall control the general.
- B. In case of any difference of meaning or implication between the text of any provision and any caption or illustration, the text shall control.
- C. The word "shall" is always mandatory and not discretionary. The word "may" is discretionary.
- D. References in the masculine and feminine genders are interchangeable.
- E. Words used in the singular include the plural, and the plural includes the singular, unless the context clearly indicates the contrary.
- F. The words "activities" and "facilities" include any part thereof.
- G. Unless the context clearly indicates to the contrary, the following conjunctions shall be interpreted as follows:
 - 1. "And" indicates that all connected items or provisions shall apply;
 - 2. "Or" indicates that the connected items or provisions may apply singly or in any combination;
 - 3. "Either . . . or" indicates that the connected items or provisions shall apply singly but not in combination.
- H. The words "lot" and "parcel" are interchangeable.
- I. The word "building" includes the word "structure."
- J. All public officials, bodies, and agencies to which reference is made are those of the City unless otherwise indicated.
- K. "City" means the City of Cupertino.

19.08.030 Definitions.

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

- A. "A" Definitions:

"Abandon" means to cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of

remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

“Abutting” means having property or district lines in common.

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

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

“Addition” means any construction which increases the size of a building or facility in terms of site coverage, height, length, width, or gross floor area ratio. “Adjacent property” means property that abuts the subject property, including property whose only contiguity to the subject site is a single point and property directly opposite the subject property and located across a street.

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

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

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

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

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

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

4. "Guy wires" means wires necessary to insure the safety and stability of an antenna, mast or both. "Affordable units" means housing units in which the rent does not exceed thirty percent of the HUD income limits for lower and very low income households for the Santa Clara County Metropolitan Statistical Area, adjusted for household size.

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

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

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

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

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

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

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

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

Animal:

1. Animal, Adult. "Adult animal" means any animal four months of age or older.
2. Animal, Large. "Large animal" means any equine, bovine, sheep, goat or swine or similar domestic or wild animal, as determined by the Planning Commission.
3. Animal, Small. "Small animal" means animals which are commonly found in single-family residential areas such as chickens, ducks, geese, rabbits, dogs, cats, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

S = Average slope of ground in percent; L = Combined length in feet of all contours on parcel;
I = Contour interval in feet; A = Area of parcel in square feet.

B. “B” Definitions:

“Banner” means a temporary display consisting of fabric, canvas, plastic or paper material which is attached to a building, vehicle, pole or other form of support.

“Basement” means any floor below the first story in a building that is fully submerged below grade except for lightwells required for light, ventilation and emergency egress. A basement may have a maximum exterior wall height of two feet between natural grade and ceiling.

“Block” means any lot or group of contiguous lots bounded on all sides by streets, railroad rights-of-way, or waterways, and not traversed by any street, railroad right-of-way or waterway.

“Boarding house” means any building used for the renting of rooms or providing of table board for from three to five persons, inclusive, over the age of sixteen years, who are not members of the same family.

“Building” means any structure used or intended for supporting or sheltering any use or occupancy when any portion of a building is completely separated from every other portion by a “Fire Barrier” as defined by the California Building Code, then each portion shall be deemed to be a separate building.

1. “Attached building” means buildings which are structurally connected by any structural members or wall, excluding decks, patios or fences.

“Building coverage” means that portion of the net lot area encompassed within the outermost wall line which defines a building enclosure.

“Building frontage” means the length or the surface of the building wall which faces, and is visible to the general public from, a private or public right-of-way or driveway.

“Business” or “commerce” means the purchase, sale or other transaction involving the handling or disposition of any article, substance or commodity for profit or livelihood, including, in addition, office buildings, offices, shops for the sale of personal services, garages, outdoor advertising signs and structures, hotels and motels, and recreational and amusement enterprises conducted for profit.

“Business or trade school” means a use, except a college or university, providing education or training in business, commerce, language, or similar activity or pursuit, and not otherwise defined as a home occupation.

C. “C” Definitions:

“Canopy” means any roof-like structure, either attached to another structure or freestanding, or any extension of a roof line, constructed for the purpose of protection from the elements or aesthetic purposes in connection with outdoor living.

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

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

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

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

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

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

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

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

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

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

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

“Commercial recreation” means a use providing recreation, amusement, or entertainment services, including theaters, bowling lanes, billiard parlors, skating arenas, and similar services, operated on a private or for-profit basis, but excluding uses defined as outdoor recreation services.

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

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

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

1. a condominium project,

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- ~~2. aA community apartment project, containing two or more rights of exclusive occupancy, or~~
- ~~3. aA stock cooperative, containing two or more separately owned lots, parcels or areas, or~~
- ~~4. A planned development all definitions are based upon Civil Code Section 1351 or subsequent amendments.~~

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

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

~~“Condominium” means and includes:~~

- ~~1. “Condominium” as defined by Section 783 of the Civil Code;~~
- ~~2. “Community apartment project” as defined by Section 11004 of the Business and Professions Code;~~
- ~~3. “Stock cooperative” as defined by Section 11003.2 of the Business and Professions Code; and~~
- ~~4. “Planned development” as defined by Section 11003 of the Business and Professions Code.~~

~~The term “condominium” specifically includes, but is not limited to, the conversion of any existing structure for sale pursuant to a method described in this title.~~

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

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

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

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

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

“Convenience market” means a use or activity that includes the retail sale of food, beverages, and small personal convenience items, including sale of food in disposable containers primarily

for off-premises consumption, and typically found in establishments with long or late hours of operation and in relatively small buildings, but excluding delicatessens and other specialty food shops and establishments which have a sizable assortment of fresh fruits, vegetables, and fresh-cut meats.

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

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

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

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

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

D. “D” Definitions:

“Day care center” means any child day care facility, licensed by the State or County, other than a family day care home, and includes infant centers, preschools, and extended day care facilities.

Day Care Home, Family. “Family day care home” means a home, licensed by the State or County, which regularly provides care, protection and supervision for fourteen or fewer children, in the provider’s own home, for periods of less than twenty-four hours per day, while the parents or guardian are away, and includes the following:

1. “Large-family day care home,” which means a home which provides family day care for seven to fourteen children, inclusive, including children under the age of ten years who reside at the home, as set forth in the California Health and Safety Code Section 1597.465;
2. “Small-family day care home,” which means a home which provides family day care to eight or fewer children, including children under the age of ten years who resides at the home, as set forth in the California Health and Safety Code Section 1597.44.

“Decorative statuary,” for purposes of the Sign Ordinance, means any structure or device of any kind or character placed solely for aesthetic purposes and not to promote any product or service.

“Demonstrated safety” means a condition requiring protection from the threat of danger, harm, or loss, including but not limited to the steepness of a roadway or driveway that may create a hazardous parking situation in front of a gate.

“Demonstrated security” means a condition requiring protection from the potential threat of danger, harm or loss, including but not limited to a location that is isolated and invisible from public view or that has experienced documented burglary, theft, vandalism or trespassing incidences.

“Density bonus” means a density increase over the otherwise maximum allowable residential density in accordance with the provisions of Chapter 19.56. an increase in the number of dwelling units authorized for a particular parcel of land beyond the maximum allowed by the General Plan range specified on the land use map of the City of Cupertino General Plan as of the date of the project application, ~~controlled through the Government Code process.~~

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“Developer” means the owner or subdivider with a controlling proprietary interest in the proposed common interest development, or the person or organization making application, or a qualified applicant who has entered into a development agreement pursuant to the procedures specified in Chapter 19.144.

“Development agreement” means a development agreement enacted by legislation between the City and a qualified applicant pursuant to Government Code Sections 65864 through 65869.5.

“Development standard” means a site or construction regulation, including, but not limited to, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

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“District” means a portion of the property within the City within which certain uses of land, premises and buildings are permitted and certain other uses of land, premises and buildings are prohibited, and within which certain yards and other open spaces are required and certain building site areas are established for buildings, all as set forth and specified in this title.

“Drinking establishment” means an activity that is primarily devoted to the selling of alcoholic beverages for consumption on the premises.

“Drive-through establishment” means an activity where a portion of retailing or the provision of service can be conducted without requiring the customer to leave his or her car.

“Driveway” means any driveway that provides direct access to a public or private street.

Driveway, Curved. “Curved driveway” means a driveway with access to the front property line which enters the garage from the side at an angle of sixty degrees or greater to the front curblineline and which contains a functional twenty-foot-deep parking area that does not overhang the front property line.

“Duplex” means a building, on a lot under one ownership, containing not more than two kitchens, designed and used to house not more than two families living independently of each other.

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“Dwelling unit” means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a nontransient basis and having not more than one kitchen.

E. “E” Definitions:

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

Emergency Shelter:

“Emergency shelter, rotating” means a facility that provides temporary housing with minimal supportive services. ~~Shelters shall be limited to a time period of two months in a twelve-month period at any single location and shall~~ and meets criteria in Section ~~19.76.030(2)19.64.040(A)~~.

“Emergency shelter, permanent” means a permanently operated facility that provides temporary housing with minimal supportive services ~~that is limited to occupancy of six months or less. Shelters may be permanently operated and shall~~ and meets criteria in Section ~~19.76.030(3)19.64.040(B)~~.

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

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

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

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

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

F. “F” Definitions:

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

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

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becomes noncomplying. (For the definition for “nonconforming use” see the definition “use” in this chapter.)

3. “Principal facilities” means a main building or other facility which is designed and constructed for or occupied by a principal use.

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

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

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

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

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

“Floor area” means the total area of all floors of a building measured to the outside surfaces of exterior walls, and including the following: 1. Halls; 2. Base of stairwells; 3. Base of elevator shafts; 4. Services and mechanical equipment rooms; 5. Interior building area above fifteen feet in height between any floor level and the ceiling above; 6. Basements with lightwells that do not conform to Section 19.28.060I; 7. In all zones except residential, permanently roofed, but either partially enclosed or unenclosed building features used for sales, service, display, storage or similar uses.

“Floor area” shall not include the following: 1. Basements with lightwells that conform to Section 19.28.060I; 2. Lightwells; 3. Attic areas; 4. Parking facilities, other than residential garages, accessory to a permitted conditional use and located on the same site; 5. Roofed arcades, plazas, walkways, porches, breezeways, porticos, courts and similar features not substantially enclosed by exterior walls.

“Floor area ratio” means the maximum ratio of gross floor area on a site to the total site area.

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

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

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

G. "G" Definitions:

"Garage" means an accessory building (completely enclosed) or an attached building used primarily for the storage of motor vehicles.

"Gasoline service station" means any place of business which offers for sale any motor vehicle fuel to the public.

"Grade" or "finished grade" means the lowest point of adjacent ground elevation of the finished surface of the ground paving, or sidewalk, excluding areas where grade has been raised by means of a berm, planter box, or similar landscaping feature, unless required for drainage, within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building.

"Gross lot area" means the horizontal area included within the property lines of a site plus the street area bounded by the street centerline up to thirty feet distant from the property line, the street right-of-way line and the extended side yard to the street centerline.

~~"Group home" means a state authorized, certified or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children.~~

"Guest room" means a room which is intended, arranged or designed to be occupied by occasional visitors or nonpaying guests of the occupants of the dwelling unit in which the room is located, and which contains no kitchen facilities.

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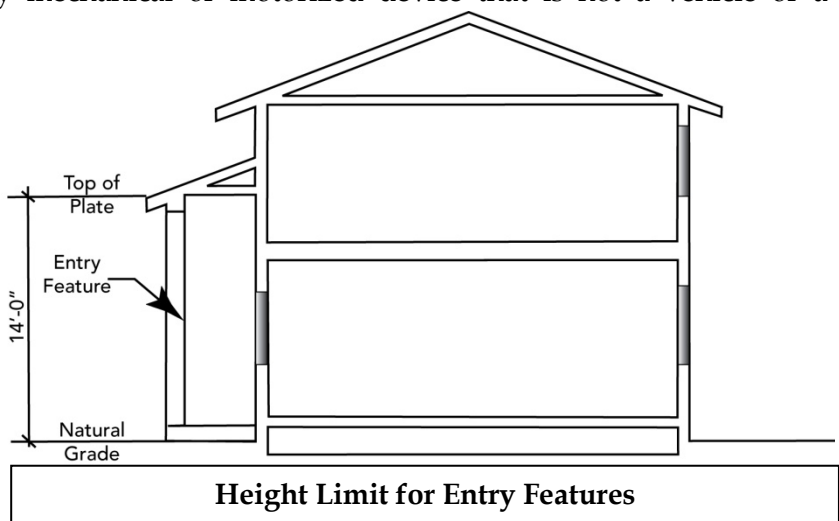
H. "H" Definitions:

"Habitable floor" means the horizontal space between a floor area of at least seventy square feet and the ceiling height measuring at least seven feet six inches above it, except for a kitchen which shall have a ceiling height not less than seven feet above the floor.

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartment, closets, halls, storage or utility space and similar areas are not considered habitable space.

"Heavy equipment" means any mechanical or motorized device that is not a vehicle or a commercial vehicle as defined in 19.08.030(V), including, but not limited to, a backhoe, cement mixer, crane, ditch witch, dozer, earth mover, generator, grader, tractor or any similar device.

"Height" means a vertical distance measured parallel to the natural grade to the



highest point of exterior construction, exclusive of chimneys, antennas or other appurtenances, except that entry features are measured to the top of the wall plate.

Height restriction shall be established by establishing a line parallel to the natural grade.

“Height”, for purposes of the Accessory Buildings/ Structures, encompasses the entire wall plane nearest the property line, including roof, eaves, and any portion of the foundation visible above the adjoining finished grade.

“Home occupation” means a business, profession, occupation or trade activity which is performed by the resident(s) of a dwelling unit within that dwelling unit, or a yard area or garage associated with that dwelling unit, or a yard area or garage associated with that unit, for purposes of generating income, by means of the manufacture, and/or sale of goods and/or services, but which activity is clearly incidental to the use of the dwelling for residential purposes.

“Hospital” means a facility for providing medical, psychiatric or surgical services for sick or injured persons, primarily on an inpatient basis, and including ancillary facilities for outpatient and emergency treatment, diagnostic services, training, research, administration, and service to patients, employees or visitors.

“Hotel” means a facility containing rooms or groups of rooms, generally without individual kitchen facilities, used or intended to be used by temporary overnight occupants, whether on a transient or residential occupancy basis, and whether or not eating facilities are available on the premises. Hotel includes motel, motor hotel, tourist court, or similar use, but does not include mobilehome parks or similar uses.

“Household pets” means small animals commonly found in residential areas such as chickens, ducks, geese, rabbits, dogs, and cats, but excluding animals such as any bovine or equine animal, or any goat, sheep or swine. This title does not regulate the keeping of small household pets, such as fish, birds or hamsters, which is incidental to any permitted use. However, no animal including household pets may be kept, maintained and/or raised for commercial purposes except where permitted with required permits.

“Household type” means whether the occupants of the housing units are very low income, lower income, moderate income, or senior citizens.

“Housing development” means, for the purposes of Chapter 19.56, Density Bonus, a development project for five or more residential units. For the purposes of that chapter, "housing development" also includes a subdivision or common interest development, approved by the City that consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in Government Code Section 65863.4(d), where the result of the rehabilitation would be a net increase in available residential units. ~~one or more groups of projects with residential units constructed in the planned development of the City.~~

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I. "I" Definitions:

"Industrial district," for purposes of the Sign Ordinance, means all ML districts and any other zoning classifications which are consistent with the industrial designation of the Cupertino general plan.

"Institutional district," for purposes of the Sign Ordinance, means all BQ, PR, FP, and BA districts and other zoning classifications and uses which are considered institutional in nature and are consistent with the institutional or quasi-public designation of the general plan.

J. "J" Definitions:

"Junkyard" means the use of more than two hundred square feet of the area of any lot for the storage or keeping of junk, including scrap metals or other scrap material, and/or for the dismantling or wrecking of automobiles or other vehicles or machinery.

K. "K" Definitions:

"Kitchen" means an area in habitable space used for the preparation of food and including at least three of the following: 1. Cooking appliance(s) or provision for a cooking appliance (such as 220V outlets, gas connections and space for appliances between counters; 2. Counter; 3. Refrigerator; and 4. Sink.

L. "L" Definitions:

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

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

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

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

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

“Living space” means habitable space and sanitation.

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

“Lodging” means the furnishing of rooms or groups of rooms within a dwelling unit or an accessory building to persons other than members of the family residence in the dwelling unit, for overnight occupancy on a residential occupancy basis, whether or not meals are provided to the person. Lodging shall be subject to the residential density requirements of the district in which the use is located.

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

“Lot” means a parcel or portion of land separated from other parcels or portions by description, as on a subdivision or record of survey map, or by metes and bounds, for purpose of sale, lease or separate use.

1. “Corner lot” means a lot situated at the intersection of two or more streets, or bounded on two or more adjacent sides by street lines.
2. “Flag lot” means a lot having access to a street by means of a private driveway or parcel of land not otherwise meeting the requirement of this title for lot width.
3. “Interior lot” means a lot other than a corner lot.
4. “Key lot” means the first lot to the rear of a corner lot, the front line of which is a continuation of the side line of the corner lot, and fronting on the street which intersects or intercepts the street on which the corner lot fronts.

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

“Lot coverage” means the following:

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

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

“Lot line” means any boundary of a lot.

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

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

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

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

M. “M” Definitions:

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

“Manufacturing” means a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing fabrication, assembly, treatment, packaging of products, but excluding basic industrial processing of extracted or raw materials, processes utilizing inflammable or explosive material (i.e., materials which ignite easily under normal manufacturing conditions), and processes which create hazardous or commonly recognized offensive conditions.

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

“Massage parlor” means a building or portion thereof, or a place where massage is administered for compensation or from which a massage business or service for compensation

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is operated which is not exempted or regulated by the Massage Establishment Ordinance as contained in Title 9, Health and Sanitation of the Cupertino Municipal Code, Chapter 9.06.

“Maximum allowable residential density,” for purposes of Chapter 19.56, Density Bonus, means the maximum density allowed under the zoning ordinance and land use element of the general plan. For purposes of that Chapter, if the maximum density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

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

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

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

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

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

N. “N” Definitions:

“Natural grade” means the contour of the land prior to improvements or development, unless otherwise established by a city approved grading plan that is part of a subdivision map approval.

~~“Net lot area” means the total area included within the property lines of a parcel, excluding the following: 1. Any portion of a parcel within the right of way of an existing public street; 2. The portion of a flag lot constituting the access corridor lying between the front property line and the frontage line of the corridor at the street; 3. The full width of any legal easement used for access purposes.~~

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“Nightclub” means an establishment providing alcoholic beverage service and late evening (past eleven p.m.) entertainment, with or without food service.

O. “O” Definitions:

“Office” means:

1. “Administrative or executive offices” including those pertaining to the management of office operations or the direction of enterprise but not including merchandising or sales services.

2. "Medical office" means a use providing consultation, diagnosis, therapeutic, preventative or corrective personal treatment services by doctors, dentists, medical and dental laboratories, and similar practitioners of medical and healing arts for humans, licensed for such practice by the State of California and including services related to medical research, testing and analysis.
3. "Professional offices" such as those pertaining to the practice of the professions and arts including, but not limited to, accounting, architecture, dentistry, design, engineering, including associated testing and prototype development, but excluding product manufacturing and/or assembly, law and medicine, but not including sale of drugs or prescriptions except as incidental to the principal uses and where there is external evidence of such incidental use.
4. "Office district," for purposes of the Sign Ordinance, means those buildings or groups of buildings for which the permitted uses are professional offices, is within an OA or OP zone or which are designated for offices on the general plan.

"Offset" means the indentation or projection of a wall plane.

"Open" means a space on the ground or on the roof of a structure, uncovered and unenclosed.

"Organizational documents" means the declaration of restrictions, articles of incorporation, bylaws and any contracts for the maintenance, management or operation of all or any part of a common interest development.

"Outdoor recreation use" means a privately owned or operated use providing facilities for outdoor recreation activities, including golf, tennis, swimming, riding or other outdoor sport or recreation, operated predominantly in the open, except for accessory or incidental enclosed services or facilities.

P. "P" Definitions:

"Park" means any open space, reservation, playground, swimming pool, golf course, recreation center, or any other area in the City owned or used by the City or County and devoted to active or passive recreations.

"Parking area" means an unroofed, paved area, delineated by painted or similar markings, intended and designed to accommodate one or more vehicles.

"Parking facility" means an area on a lot or within a building, or both, including one or more parking spaces, together with driveways, aisles, turning and maneuvering areas, clearances and similar features, and meeting the requirements established by this title. Parking facility includes parking lots, garages and parking structures.

1. "Temporary parking facility" means parking lots which are not required under this title and which are intended as interim improvements of property subject to removal at a later date.

"Parking space" means an area on a lot or within a building, used or intended for use for parking a motor vehicle, having permanent means of access to and from a public street or alley independently of any other parking space, and located in a parking facility meeting the

requirements established by this title. Parking space is equivalent to the term “parking stall” and does not include driveways, aisles or other features comprising a parking facility as previously defined in this chapter.

“Pennant” means any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in a series, designed to move in the wind.

“Permit” means a permit issued by the City Council, Planning Commission, Design Review Committee, Director of Community Development, or any other decision body as empowered by the Cupertino Municipal Code, approving architecture, site improvements, buildings, structures, land and/or uses. Permits may include but shall not be limited to Administrative Approvals, Two-story Permits, Minor Residential Permits, Architectural and Site Approvals, Development Permits, Conditional Use Permits, Exceptions, Variances or Subdivision Maps.

“Person” means an individual, group, partnership, firm, association, corporation, trust, governmental agency, governmental official, administrative body, or tribunal or any other form of business or legal entity.

“Personal fitness training center” means a facility providing space and equipment, with or without supervision, for group or individual athletic development, increased skill development in sports activity, or rehabilitative therapy for athletic injury.

“Perspective drawing” means a rendering of a three-dimensional view depicting the height, width, depth, and position of a proposed structure in relation to surrounding properties and structures when viewed from street level.

“Picnic area” means a facility providing tables and cooking devices for preparation and consumption of meals out of doors or within an unenclosed shelter structure.

“Practice range” means a facility providing controlled access to fixed or movable objects which are used to test and measure accuracy of discharge from a weapon.

“Private educational facility” means a privately owned school, including schools owned and operated by religious organizations, offering instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California.

“Project improvements” means all public road improvements, undergrounding utility improvements, and improvements to the on-site utility networks as required by the City of Cupertino for a common interest development.

“Projection” means architectural elements, not part of the main building support, that cantilevers from a single building wall or roof, involving no supports to the ground other than the one building wall from which the element projects.

“Promotional Device” means any sign, display, fixture, placard, vehicle or structure that uses color, form, graphic, symbol, illumination or writing to advertise a special event or the opening of a new business.

“Property” means real property which includes land, that which is affixed to the land, and that which is incidental or appurtenant to the land as defined in Civil Code Sections 658 through 662.

1. Property, Adjoining. “Adjoining property” means any unit of real property, excluding lands used as public streets, sharing one or more common points with another property.

“Provider” means a person who operates a child day care home and is licensed by the State of California.

“Public dancehall” is a building or portion used for dancing purposes to and in which the general public is admitted and permitted to dance, upon payment of any fee other than compensation, or upon payment of a charge for admission, or for which tickets or other devices are sold, or in which a charge is made for the privilege of dancing with any other person employed for such purpose by the operator of the establishment, including but not limited to taxi dances, but excluding restaurants, hotel rooms and nightclubs in which the dancing is incidental only to other entertainment.

Q. “Q” Definitions:

“Qualified applicant” is a person who has a legal or equitable interest in real property which is the subject of a development agreement, determined pursuant to Section 19.116.070. Qualified applicant includes an authorized agent.

“Qualifying resident,” for purposes of Chapter 19.56, Density Bonus, of this Code, means a senior citizen or other persons eligible to reside in a senior citizen housing development.

R. “R” Definitions:

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

“Recyclable materials” means discards or waste materials that may be separated or mixed, collected and processed, and used as raw materials for new products. For purposes of this chapter, recyclable material does not include hazardous materials.

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

1. “Recycling center, Certified” or “Certified Processor” means a recycling facility certified by the California Department of Conservation as meeting the requirements of the California Beverage Container Recycling and Litter Reduction Act of 1986.

2. “Recycling center, Mobile” means an automobile, truck, trailer or van licensed by the Department of Motor Vehicles, which is used for the collection of recyclable material. A

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mobile recycling center also means the bins, boxes or containers transported by trucks, vans, or trailers and used for the collection of recyclable materials. A mobile recycling center may consist of an enclosed vehicle such as box cab or enclosed semi-trailer or an open vehicle such as a flatbed trailer with bins or boxes to contain recyclable materials.

“Recycling facilities” may include the following:

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

~~a. i.~~ Reverse vending machine(s);

~~b. ii.~~ Small collection facilities which occupy an area of not more than five hundred square feet, and may include:

~~i. (A)~~ A mobile recycling unit,

~~ii. (B)~~ Bulk reverse vending machine or a grouping of reverse vending machines occupying more than fifty square feet,

~~iii. (C)~~ Kiosk type units and bulk vending machines,

~~iv. (D)~~ Unattended containers placed for the donation of recyclable materials;

~~c. iii.~~ Large collection facilities which may occupy an area of more than five hundred square feet, or is on a separate property not appurtenant to a host use, and may include permanent structures.

2. ~~b.~~ “Processing facility” means a building or enclosed space use for the collection and processing of recyclable materials. Processing means the preparation of material for efficient shipment or to an end-user’s specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing. Processing facility includes the following:

~~a. i.~~ A light processing facility occupies an area of under forty-five thousand square feet of gross collection, processing and storage area and has up to two outbound truck shipments per day. Light processing facilities are limited to baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials sufficient to qualify as a certified processing facility. A light processing facility shall not shred, compact, or bale ferrous metals other than food and beverage containers.

~~b. ii.~~ A heavy processing facility is any processing facility other than a light processing facility.

“Religious institution” means a seminary, retreat, monastery, conference center, or similar use for the conduct of religious activities including accessory housing incidental thereto, but excluding a private educational facility. Any use for which a property tax exemption has been obtained pursuant to Section 3(f) of Article XIII of the Constitution of the State of California and Section 206 of the Revenue and Taxation Code of the State of California, or successor legislation,

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or which is used in connection with any church which has received such an exemption, shall be prima facie presumed to be a religious institution.

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

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

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

Restaurant:

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

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

~~“Residential care home” means the use of a dwelling unit or portion licensed by the State of California or County of Santa Clara, for care of up to six persons, including overnight occupancy or care for extended time periods, and including all uses defined in Sections 5115 and 5116 of the California Welfare and Institutions Code, or successor legislation.~~

MOVED FROM
BELOW

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MOVED FROM
BELOW

MOVED UP

REDUNDANCY

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

MOVED UP

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

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

~~“Rotating homeless shelter” means a shelter located in an existing church structure, the shelter provided not to exceed two months in any twelve month period at any single location, and the number of occupants not to exceed twenty five, hours of operation not to exceed six p.m. to seven a.m.~~

DUPLICATION

S. “S” Definitions:

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

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

“Senior citizens” means:

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

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

- ~~1. — Government subsidized housing units for senior citizens;~~
- ~~2. — Housing intended for, and solely occupied by, persons at least sixty two years of age; or~~

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~~3. Housing consisting of at least one hundred fifty units in which eighty percent of the units have at least one person aged fifty-five or older and which provide special facilities and services designed for seniors.~~

~~Eligibility for a density bonus or other concession for senior citizen units must be in conformity with State and federal laws governing senior housing projects.~~

MOVED TO CHAPTER 19.56

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

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

1. Setback Area, Required Front Yard. “Required front-yard setback area” means the setback area extending across the front of a lot between the front lot line and the setback line. Front yards shall be measured either by a line at right angles to the front lot line, or by a radial line in the case of a curved front lot line, except flag lots which is the area extending across the full extent of the buildable portion of the flag lot measured from the property line which is parallel to and nearest the street line and at which point the lot width equals a minimum of sixty feet. The Director of Community Development shall have the discretion to modify the provisions of this definition when it improves the design relationship of the proposed buildings to adjacent buildings or parcels.
2. Setback Area, Required Rear Yard. “Required rear-yard setback area” means the area extending across the full width of the lot between the rear lot line and the nearest line or point of the main building.
3. Setback Area, Required Side Yard. “Required side-yard setback area” means the area between the side lot line and the nearest line of a building, and extending from the front setback line to the rear setback line.

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

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

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

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

1. "Animated sign" means any sign which projects action, motion or the illusion thereof, changes intensity of illumination or changes colors, including the likes of balloons, banners and flags, and blowing or air-powered attractions, but excluding electronic readerboard signs and signs that display the current time or temperature.
2. "Blade sign" means a pedestrian oriented sign, adjacent to a pedestrian walkway or sidewalk, attached to a building wall, marquee, awning or arcade with the exposed face of the sign in a plane perpendicular to the plane of the building wall.
3. "Development Identification Sign" means a ground sign at the major entry to a residential development with twenty units or more meant to identify the name and address of the development.
4. "Directional sign" means any sign which primarily displays directions to a particular area, location or site.
5. "Directory sign" means any outdoor listing of occupants of a building or group of buildings.
6. "Electronic readerboard sign" means an electronic sign intended for a periodically-changing advertising message.
7. "Freeway oriented sign" means any sign which is located within six hundred sixty feet and visible from a freeway right-of-way as defined by Section 5200 of the California Business and Professions Code.
8. "Garage sale signs" means any sign used for advertising a garage or patio sale as defined in Chapter 5.16 of the Cupertino Municipal Code.
9. "Ground sign" means any sign permanently affixed to the ground and not supported by a building structure. The height of the sign shall be measured from the grade of the adjoining closest sidewalk to the top of the sign including trim.
10. "Identification sign" means any sign whose sole purpose is to display the name of the site and the names of the occupants, their products or their services.
11. "Illegal sign" means any sign or advertising statuary which was not lawfully erected, maintained, or was not in conformance with the provisions of this title in effect at the time of the erection of the sign or advertising statuary or which was not installed with a valid permit from the City.
12. "Illuminated sign" means any sign utilizing an artificial source of light to enhance its visibility.
13. "Informational sign" means any sign which promotes no products or services, but displays service or general information to the public, including the likes of hours of operation, rest room identifications and hazardous warnings.
14. "Landmark sign" means an existing, legal non-conforming ground sign that has a distinctive architectural style.
15. "Nonconforming sign" means any sign or advertising statuary that was legally erected and had obtained a valid permit in conformance with the ordinance in effect at the time of the erection of the sign but which became nonconforming due to the adoption of the ordinance codified in this title.

16. "Obsolete sign" means any sign that displays incorrect or misleading information, promotes products or services no longer available at that site or identifies departed occupants.
17. "Off-site sign" means any sign not located on the premises of the business or entity indicated or advertised by the sign. This definition shall include billboards, poster panels, painted bulletins and other similar advertising displays.
18. "On-site sign" means a sign directing attention to a business, commodity, service or entertainment conducted, sold or offered upon the same premises as those upon which the sign is maintained.
19. "Political sign" means a temporary sign that encourages a particular vote in a scheduled election and is posted prior to the scheduled election.
20. "Portable Sign or Display" means any outdoor sign or display not permanently attached to the ground or a structure on the premises it is intended to occupy and displayed only during business hours. Portable sign or display includes A-frames, flower carts, statues, and other similar devices used for advertising as determined by the Director.
21. "Project announcement sign" means any temporary sign that displays information pertinent to a current or future site of construction, including the likes of the project name, developers, owners and operators, completion dates, availability and occupants.
22. "Projecting sign" means any sign other than a wall sign that is attached to and projects from a structure or building face or wall.
23. "Real estate sign" means a temporary sign indicating that a particular premises is for sale, lease or rent.
24. "Roof sign" means a sign erected between the lowest and highest points of a roof.
25. "Street address sign" means any sign that displays only the street address number(s) of the site and, at the option of the property owner, the street name.
26. "Temporary Sign" means any sign, display, banner or promotional device which is designed or intended to be displayed only during the allowable business hours or for short periods of time as specified by the Director of Community Development.
27. "V-shaped signs" means any sign consisting of two vertical faces, or essentially vertical faces, with one common edge and which appears as the letter V when viewed directly from above.
28. "Vehicle sign" means a sign painted on or attached to an operable or movable vehicle; in the case of motor vehicles, "operable" shall be defined as having a valid license plate.
29. "Wall sign" means any sign that is attached, erected or painted on a structure attached to a building, a canopy structure, or the exterior wall of a building with the exposed face of the sign parallel to the wall.
30. "Window sign" means any sign that is intended to be read from outside of the structure or painted on a window facing a public street, parking lot, pedestrian plaza or walkway accessible to the public. .

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

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

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

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

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

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

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

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

“Specified anatomical areas” means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Specified sexual activities” means:

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

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

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

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

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

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

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

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

“Supportive housing” (per ~~CA Health and Safety Code 50675.14(b)(1)~~Government Code Section 65582(f), as may be amended) means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

CONFORMANCE
WITH STATE LAW

T. “T” Definitions:

“Target population” (per ~~CA Health and Safety Code 50675.14(b)(2)~~Government Code Section 65582(g), as may be amended) means persons with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) ~~and may, among other populations, emancipated youth, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people.~~

“Transient” means any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days, and including any individual who actually physically occupies the premises, by permission of any other person entitled to occupancy.

“Transitional housing” ~~and “transitional housing development”~~ (per ~~CA Health and Safety Code 50675.2 (h)~~Government Code Section 65582(h), as may be amended) means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months from the beginning of assistance.

CONFORMANCE
WITH STATE LAW

“Trim” means the molding, battens, cappings, nailing strips, lattice and platforms which are attached to a sign.

U. "U" Definitions:

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

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

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

V. "V" Definitions:

"Variance application" means an application for which an exception process is not identified in the Municipal Code.

"Vehicle" means any boat, bus, trailer, motor home, van, camper (whether or not attached to a pickup truck or other vehicle), mobilehome, motorcycle, automobile, truck, pickup, airplane, boat trailer, truck tractor, truck trailer, utility trailer or recreational vehicle, or parts, or any device by which any person or property may be propelled, moved or drawn upon a public street, excepting a device moved exclusively by human power.

1. Vehicle, commercial. "Commercial vehicle" means a vehicle of a type required to be registered under the California Vehicle Code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of goods.
2. Vehicle, Recreation. "Recreation vehicle" means a vehicle towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for temporary dwelling, recreational or sporting purposes. The term recreation vehicle includes, but is not

limited to, trailers, motor coach homes, converted trucks and buses, and boats and boat trailers.

“Very low income household” means a household whose gross income ~~is as does not exceed~~ that established by Health and Safety Code Section 50105, as may be amended.

“Visual privacy intrusion” means uninterrupted visual access from a residential dwelling or structure into the interior or exterior areas of adjacent residential structures, which area is either completely or partially private, designed for the sole use of the occupant, and/or which serves to fulfill the interior and/or exterior privacy needs of the impacted residence or residences.

W. “W” Definitions:

None.

X. “X” Definitions:

None.

Y. “Y” Definitions:

“Yard” means an area within a lot, adjoining a lot line, and measured horizontally, and perpendicular to the lot line for a specified distance, open and unobstructed except for activities and facilities allowed therein by this title.

1. “Front yard” means a yard measured into a lot from the front lot line, extending the full width of the lot between the side lot lines intersecting the front lot line.
2. “Rear yard” means a yard measured into a lot from the rear lot line, extending between the side yards; provided that for lots having no defined rear lot line, the rear yard shall be measured into the lot from the rearmost point of the lot depth to a line parallel to the front lot line.
3. “Side yard” means a yard measured into a lot from a side lot line, extending between the front yard and rear lot line.

Z. “Z” Definitions:

None.

CHAPTER 19.12 – ADMINISTRATION

Section

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19.12.010 Purpose and intent.

The purpose and intent of the Administration section is to establish procedures for the discretionary review of development in the city in order to ensure that new development and changes to existing developments comply with city development requirements and policies. This chapter establishes the procedures for review of applications before the approval authorities for each type of project and the process for appeals of any requirement, decision or determination made by any Approval Body.

19.12.020 Applicability of Regulations.

Except as otherwise provided in this section, Development Review is required for all zoning map and text amendments, new construction, modifications to building exteriors or site improvements, and changes in Land Use, including, but not limited to, the following:

A. In the A, A1, R1 and RHS Zones, the following activities:

1. Conditional uses in accord with Chapter 19.20, Chapter 19.24, Chapter 19.28, Chapter, 19.32, Chapter 19.36, Chapter 19.40 and Chapter 19.44;
 2. Removal of protected trees identified in Chapter 14.18;
 3. Projects in R1 zones identified in Section 19.28.040;
 4. Height Exceptions identified in Section 19.24.070(B)(3);
 5. Hillside Exceptions identified in Section 19.44.070 and Chapter 19.48;
 6. Parking Exceptions identified in Chapter 19.124;
 7. Fence Exceptions identified in Chapter 19.48
 8. Variance to all other zoning regulations
- B. In R2, R3, R1C and all Commercial, Industrial, Office, Planned Community Districts and other non-residential zoning districts:
1. New structures or property development, including signs and sign programs.
 2. Building additions, exterior modifications to existing structures including signs and sign programs, and site changes (including, but not limited to, new or modified landscaping, tree removals, fencing, changes to parking lot space striping or circulation);
 3. Changes in property or building use that involve exterior modifications;
 4. Exceptions or modifications to the development's required and/or existing parking;
 5. Conditional uses in accord with Chapter 19.60, Chapter 19.64, Chapter 19.68, Chapter 19.72, Chapter 19.76, Chapter 19.80, Chapter 19.84, Chapter 19.88, Chapter 19.92, Chapter 19.96, Chapter 19., Chapter 19.128, Chapter 19.116, Chapter 19.132, Chapter 19.136;

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

<u>Type of Permit or Decision</u> ^{A, B}	<u>Administrative Review</u>	<u>Design Review Committee</u>	<u>Planning Commission</u>	<u>City Council</u>	<u>Public Hearing/ Public Meeting/ Comment Period</u> ^C	<u>Noticing Radius</u> ^D	<u>Posted Site Notice</u>	<u>Expiration Date</u> ^E	<u>Chapter/ Findings</u>
General Plan Amendment									
Major ^F	-	-	R	F	PH	300'	Yes	-	CA. Govt. Code
Minor ^G	-	-	R	F	PH	300'	Yes	-	
Zoning Map Amendments									
Major ^F	-	-	R	F	PH	300'	Yes	-	19.152.020
Minor ^G	-	-	R	F	PH	300'	Yes	-	19.152.020
Zoning Text Amendments	-	-	R	F	PH	300'	-	-	19.152.030
Specific Plans	-	-	R	F	PH	300'	-	-	20.04.030
Development Agreements	-	-	R	F	PH	300'	Yes	-	19.144.120
Development Permits									
Major ^{F, H}	-	-	F/R	A ¹ /F	PM	300'	Yes	2 years	19.156.050
Minor ^G	F	-	A ¹	A ²	PM	300'	Yes	2 years	
Conditional Use Permits									
Major ^{F, H, I}	F	-	A ¹ /F/R	A ¹ /A ² /F	PH	300'	Yes	2 years	19.156.050
Minor ^{G, I}	F	-	A ¹ /F/R	A ¹ /A ² /F	PH	300'	Yes	2 years	
Temporary	F	-	A ¹	A ²	-	None	No	1 year	19.160.030
Density Bonus (Residential)			R	F	Based on concurrent application				19.52
Adult-Oriented Commercial Activity (CUP)		-	R	F	PH	300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval									
Major ^J	F	-	A ¹	A ²	PM	Adjacent	Yes	2 years	19.168.030
Minor ^K	F	-	A ¹	A ²	PM	Adjacent	Yes	2 years	

<u>Type of Permit or Decision</u> ^{A, B}	<u>Administrative Review</u>	<u>Design Review Committee</u>	<u>Planning Commission</u>	<u>City Council</u>	<u>Public Hearing/ Public Meeting/ Comment Period</u> ^C	<u>Noticing Radius</u> ^D	<u>Posted Site Notice</u>	<u>Expiration Date</u> ^E	<u>Chapter/ Findings</u>
Amendment									
Major ^{F, H}	-	-	F	A ¹	PM/PH	300'	Yes	2 years	19.44, 19.156, 19.164
Minor ^G	F	-	A ¹	A ²	PM/PH	300'	Yes	2 years	
Minor Modification	F	-	A ¹	A ²	-	None	No	2 years	19.164
Hillside Exception/ Height Exception / Heart of the City Exception ^I	-	-	F	A ¹	PH	300'	Yes	2 years	19.40.080, 19.24.070, 19.136.090
Variance	F	-	A ¹	A ²	PH	300'	Yes	2 years	19.156.060
Status of non-conforming Use	-	-	F	A ¹	PH	300'	Yes	-	19.140.110
Wireless Antennas ^I	F	-	F/ A ¹	A ²	Varies ^I	300'	Yes	2 years	19.136.090
Signs									
Permits	F	-	A ¹	A ²	-	None	No	1 year	19.104
Neon, Reader board & Freeway Oriented Signs ^I	-	F	F	A ^{1L}	PM	300'	No	1 year	19.104
Programs	F	-	A ¹	A ²	-	None	No	1 year	19.104
Exceptions ^I	-	F	-	A ^{1L}	PM	Adjacent	Yes	1 year	19.104.290
Parking Exceptions ^I	F	F	A ¹	A ^{1L} / A ²	Varies ^M	Adjacent/ 300' ^N	Yes	1 year	19.124.050
Fence Exceptions	-	F	-	A ^{1L}	PM	Adjacent	Yes	1 year	19.48.060
Front Yard Interpretation	F	-	A ¹	A ²	PM	Adjacent	Yes	1 year	19.08
R1 Ordinance Permits									
Two-story ^I	F	F	F/A ¹	A ^{1L} / A ²	Varies ^I	Adjacent	Yes	1 year	19.28.140
Minor Residential	F	-	A ¹	A ²	CP	Adjacent	No	1 year	19.28.140
Exceptions ^I	-	F	-	A ^{1L}	PM	Adjacent	Yes	1 year	19.28.140

<u>Type of Permit or Decision</u> ^{A, B}	<u>Administrative Review</u>	<u>Design Review Committee</u>	<u>Planning Commission</u>	<u>City Council</u>	<u>Public Hearing/ Public Meeting/ Comment Period</u> ^C	<u>Noticing Radius</u> ^D	<u>Posted Site Notice</u>	<u>Expiration Date</u> ^E	<u>Chapter/ Findings</u>
Protected Trees									
Tree Removal	F	-	A ¹	A ²	CP	Adjacent	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-	-	F	A ¹	PM	300'	Yes	-	14.18
Tree Management Plan	F	-	A ¹	A ²	-	None	No	-	14.18
Retroactive Tree Removal	F	-	A ¹	A ²	-	None	No	-	14.18
Reasonable Accommodation	F	-	A ¹	A ²	-	None	No	1 year	19.52.050
Extensions ^o									
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F	-	A ¹	A ²	-	None	No	1 year	
Neon, Reader board & Freeway Oriented Signs	F		A ¹	A ²	-	None	No	1 year	
Two Story Permits, Minor Residential Permits and Exceptions	F		A ¹	A ²	-	None	No	1 year	
Tree Removals	F	-	A ¹	A ²	-	-	No	1 year	
All other projects	F	-	A ¹	A ²	-	None	No	2 years	19.12

Key:

R—Review and recommendation body	F — Final decision-making body unless appealed
A ¹ — Appeal Body on first appeal	A ² — 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. Appeals of Design Review Committee decisions shall be heard by the City Council.
- M. 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.
- N. 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.
- O. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the one-time extension.

19.12.040 Authority of the Director of Community Development.

Subject to the provisions of this chapter and general purpose and intent of this title, the authority of the Director of Community Development is as follows:

- A. Grant any permits which are authorized to be issued by the Director pursuant to Section 19.12.030 and any other provisions of this code;
- B. Grant parking exceptions for projects that are reviewed in conjunction with permits which are authorized to be issued by the Director of Community Development pursuant to Section 19.12.030;
- C. Grant a variance from site development regulations and parking and loading regulations (except those handicapped parking regulations mandated by State law) applicable within any zoning district established by this title;
- D. Grant a variance from the special conditions of approval that apply to site development and parking and loading regulations (including conditions attached to planned developments) applicable within any zoning district established by this title.
- E. Grant a request for reasonable accommodation made by any person with a disability, when the strict application of the provisions within residential districts acts as a barrier to fair housing opportunities, pursuant to Chapter 19.52.
- F. Make reasonable interpretations of the regulations and provisions of this title, and any chapter therein, consistent with the legislative intent. Persons aggrieved by an interpretation of the Director of Community Development may petition the Planning Commission in writing for review of the interpretation.
- G. May refer an application to another Approval Body for review, decision or recommendation.

19.12.050 Authority of the Design Review Committee.

Subject to the provisions of this chapter and general purpose and intent of this title, the authority of the Design Review Committee is as follows:

- A. Grant any permits and exceptions which are authorized to be issued by the Design Review Committee pursuant to Section 19.12.030 and any other provisions of this code;
- B. Grant parking exceptions for projects that are in conjunction with permits which are authorized to be issued by the Design Review Committee pursuant to Section 19.12.030.

19.12.060 Authority of the Planning Commission.

Subject to the provisions of this chapter and general purpose and intent of this title, the authority of the Planning Commission is as follows:

- A. Grant any permits which are authorized to be issued by the Planning Commission pursuant to Section 19.12.030 and any other provisions of this code;
- B. Grant parking exceptions for projects that are in conjunction with permits which are authorized to be issued by the Planning Commission pursuant to Section 19.12.030;

- C. Make recommendations to the City Council on applications in which it is a recommending body; and
- D. Decide on appeals of decisions pursuant to Section 19.12.030.

19.12.070 Authority of the City Council.

Subject to the provisions of this chapter and general purpose and intent of this title, the authority of the City Council is as follows:

- A. Grant any permits which are authorized to be issued by the City Council pursuant to Section 19.12.030 and any other provisions of the code;
- B. Decide on appeals of decisions pursuant to Section 19.12.030.

19.12.080 Application Process

The following provisions outline the requirements for the filing of applications for permits, entitlements, amendments, and approvals. Unless otherwise specified in this title, all applications for permits, entitlements, amendments and approvals required by this title shall be filed in compliance with this section.

Applications for permits, permit modifications, amendments and other matters pertaining to this Chapter shall be filed with the Director of Community Development with the following:

- A. An application for permit may be made by the owner of record, his or her agent, lessee(s) of property, or person(s) who have contracted to purchase or lease property contingent upon their ability to acquire the necessary permit under this title and who have written authorization from the property owner to make an application.
- B. Application shall be made on a form provided by the City, and shall contain the following, unless waived by the Director of Community Development based on the scope of the proposed project:
 - 1. A complete legal description of the subject property and map showing the location of the property for which the permit is sought;
 - 2. A preliminary title report of the subject property;
 - 3. The proposed site development plan indicating: the location of all buildings and structures; the location and types of land uses; paved areas, such as roadways, driveways and walkways; and general landscaping scheme;
 - 4. Architectural drawings of the proposed development, building additions or other structures. Drawings shall indicate building height, colors, materials, window treatment and other architectural features;
 - 5. Maps showing the locations of buildings;
 - 6. Renderings showing building heights and square footages;
 - 7. Maps showing the precise location of roads, streets, alleys and access points;
 - 8. A traffic analysis, if required;

9. A construction plan,
 10. Any property/development with a Homeowner's Association (HOA) or Architectural Review Board (ARB) shall provide a letter of approval from said HOA Board or ARB.
 11. The Director of Community Development may reasonably require additional information which is pertinent and essential to the application.
 12. Zoning Map or Text Amendments shall also include information required per Chapter 19.152.
 - a. Zoning applications for Planned Development Zoning Districts shall also include information required per Section 19.80.040;
 - b. Zoning applications for Multi-Family (R3) Residential shall also include information required per Section 19.36.040; and
 - c. Zoning applications for Residential Single-family Cluster (R1C) initiated by a property owner, or his or her designee, shall also include items identified in Section 19.44.050H.
 13. Planned Development Permit and Development Permit applications shall also include information required per Section 19.156.010:
 14. Conditional Use Permits and Variances shall also include information required per Section 19.156.020.
 15. Density Bonus Permit applications shall also include information required per Section 19.56.060.
 16. Conversion of Apartment Projects to Common Interest Developments applications shall also include information required per Section 19.116.050.
 17. Sign Permit Applications should also include information required per Section 19.104.040.
- C. Application shall be accompanied by the fee prescribed by City Council resolution, no part of which shall be returnable to the applicant.

19.12.090 Action by Director.

Upon receipt of an application for a permit, the Director of Community Development shall:

- A. Within thirty days determine whether the application is complete or needs additional information and shall inform the applicant.
- B. Not later than a period stipulated in Section 19.12.100, Decision, below:
 1. Set a date for a public hearing or public meeting upon the matter at a regular or special meeting of the approval authority for the project for applications that require a public hearing or public meeting, or
 2. Send notice in accord with the requirements of 19.12.110(D) for applications that do not need a public hearing or public meeting.

19.12.100 Decision

Unless postponed or continued with the mutual consent of the Director of Community Development and the applicant and written confirmation from the applicant, a decision shall be rendered:

- A. No later than sixty (60) days following the date the application is deemed complete and either categorically exempt under the California Environmental Quality Act (CEQA) or the adoption of a negative declaration or one hundred and eighty (180) days of certification of an Environmental Impact Report (EIR).
- B. Notwithstanding the above, no later than one hundred and fifty (150) days upon receipt of a complete application for a new personal wireless communication facility or ninety (90) days upon receipt of an application for collocation of a personal wireless communication facility/antennas.

19.12.110 Noticing.

- A. Notice of Public Hearing: Noticing shall be provided in the following manner for applications that need a public hearing:
 - 1. Notice of hearing shall be given by publication once in a local newspaper of general circulation not less than ten days prior to the date of the hearing as provided in Section 65090 of the California Government Code;
 - 2. The City shall mail written notice by first class mail to:
 - a. Each owner of record of real property within the noticing radius per Section 19.12.030 of the exterior boundary of the property for which the application is made as the owner of record is shown in the last tax assessment roll pursuant to Section 65091 of the California Government Code;
 - b. Owner(s) of subject site or his or her authorized agent
 - c. Project applicant(s)
 - d. Local agencies expected to provide water, sewage, streets, roads, schools or other essential facilities or services to the proposed project;
 - e. Any individual or entity that has filed a written request with the City Clerk requesting notification of public hearings
 - 3. If the number of owners to whom notice would be mailed or delivered pursuant to subsection A2 above is greater than one thousand, in lieu of mailed or delivered notice, the Director may provide published notice as provided in Government Code Section 65091(3).
 - 4. The notice shall contain the following:
 - a. The exact address of the property, if known, or the location of the property, if the exact address is not known;
 - b. The date on which action on the application will be taken;

- c. A brief description, the content of which shall be in the sole discretion of the City, of the proposed project;
- d. Reference to the application on file for particulars;
- e. A statement that any interested person, or agent thereof, may contact the city for additional information and/or plans.

Typographical and/or publishing errors shall not invalidate the notice nor any City action related to the notice.

B. Notice of Public Hearing for Zoning Text Amendments:

- 1. For amendments to zoning regulations: Notice of such hearing (publication) shall be given in the manner prescribed in Section 19.12.110 A(1) of this chapter.
- 2. For amendments to permitted uses of real property: Notice (mailing or publication) shall be given pursuant to Sections 19.12.110 A(2) or A(3), as the case may be.

C. Notice of Public Meeting: For projects requiring notice of a public meeting, notice shall be mailed in accord with 19.12.110A(2) or A(3), as the case may be, at least ten days prior to the date of the meeting date.

D. Notice of Comment Period: For projects requiring notice of a comment period, notice shall be mailed in accord with 19.12.110A(2) and A(5), fourteen calendar days prior to the date of action on the application.

- 1. For permits issued pursuant to Chapter 19.28, Single Family Residential, the mailed notice shall include a copy of the site plan and elevation plans of the proposed project.
- 2. For permits issued pursuant to Chapter 14.18, Protected Trees, the mailed notice shall include a copy of the site plan and tree replacement/mitigation plan.

E. The City may also give notice of public hearings/public meetings in any other manner it deems necessary or desirable. If the Director of Community Development believes the project may have impacts beyond the range of the mailed notice, particularly on nearby residential areas, the Director, in his or her discretion, may expand noticing beyond the stated requirements in Section 19.12.030.

Compliance with the procedures set forth in this section shall constitute a good-faith effort to provide notice, and the failure to provide notice, and the failure of any to receive notice, shall not prevent the City from proceeding with a hearing, meeting or from taking any action nor affect the validity of any action.

F. Posted Site Notice:

- 1. Applicants shall install notice(s) on the subject site that is/are clearly visible from the street in accord with the requirements of Table 19.12.030.
 - a. Applicants must install a public notice in the front yard of the subject site.
 - b. For all applications other than Two Story Permits, Residential Design Review and Tree Removal applications in R1 or R2 zones, if the subject site has more than one

- property line abutting a street, the applicant may be required to install more than one notice.
2. The notice shall be a weatherproof sign, at least 2 feet tall and 3 feet wide, firmly attached to a 5 foot tall post.
 3. The notice shall be placed at least 14 days prior to the decision/public hearing and shall remain in place until an action has been taken on the application and the appeal period has passed.
 4. The notice shall contain the following:
 - a. The exact address of the property, if known, or the location of the property, if the address is not known;
 - b. A brief description of the proposed project, the content of which shall be at the sole discretion of the City;
 - c. City contact information for public inquiries;
 - d. A deadline for the submission of public comments;
 - e. If proposing a physical alteration to an existing building or new buildings, at least one of the following visual representations of the proposed project:
 - i. A color perspective drawing or three-dimensional (3-D) photographic simulation of the proposed project, in a size deemed appropriate by the Director of Community Development.
 - ii. For Two Story Permits and Residential Design Review applications, a color or black and white perspective drawing or three-dimensional (3-D) photographic simulation of the proposed project, at least 11 inches by 17 inches in size.
 - iii. Visual Representation is not required for applications that do not have a material change in the physical appearance of the property.

19.12.120 Action by Director of Community Development – Administrative.

- A. For applications requiring Administrative approval with a public meeting, public hearing or comment period, the Director of Community Development or his or her designee may, subject to the requirements of Section 19.12.100, Decision:
 1. Issue his or her decision at the conclusion of the public meeting, public hearing or comment period;
 2. Continue the item for additional public hearings, public meetings or comment period; or
 3. Defer action by taking the item under advisement and issuing the decision no later than thirty (30) days following the public meeting, public hearing or comment period.
- B. No additional noticing is required if a project is continued.

- C. For applications where a public meeting or public hearing is required to be held before the Director of Community Development, the meeting shall be held in the same manner as a Design Review Committee meeting.

19.12.130 Action by Design Review Committee and Planning Commission.

- A. For applications where the Design Review Committee or Planning Commission is the Approval Body, it shall render a decision, which is supported by the evidence contained in the application or presented at the meeting, at the meeting, or at a subsequent meeting after conclusion of the public hearing or public meeting, subject to the requirements of Section 19.12.100, Decision.
- B. For zoning map amendments, on the basis of evidence and testimony presented to the Planning Commission at the public hearing, the Planning Commission may determine that the public interest will be served, either by revising the area being considered for reclassification to include properties not originally part of the application, or by giving consideration to district classifications not originally requested by the application. The Planning Commission may, solely at its option, consider additional properties or district classifications, or both.
- C. For applications requiring City Council approval, the reviewing body shall forward its written findings, determinations and recommendation to the City Council for final action, subject to the requirements of Section 19.12.100, Decision.

19.12.140 Action by City Council.

- A. Upon receipt of a recommendation of the reviewing body, the City Council may by resolution approve, modify, or disapprove the recommendation of the reviewing body, subject to the requirements of Section 19.12.100, Decision.
- B. Upon final approval of a zoning or rezoning application, the City Council shall enact an ordinance zoning or rezoning the subject property or properties, incorporating within the ordinance:
 - 1. A Conceptual development plan, if required, and
 - 2. Conditions of approval.
- C. For a Development Agreement, the City Council shall enact an ordinance that shall refer to and incorporate the text of the Development Agreement by reference.
- D. For applications requiring City Council approval, the City Council shall issue its decision at the conclusion of the public hearing or public meeting.

19.12.150 Notice of Decision and Reports.

- A. Notice of decision:
 - 1. The decision for applications approved with a public meeting or public hearing shall be mailed to the property owner and applicant at the address shown on the application.

2. The decision for applications approved with a notice period shall be mailed to the property owner and the applicant at the address shown on the application and any person who has commented on the proposed project within the notice period.
 3. The decision shall contain the following:
 - a. Applicable findings;
 - b. Any reasonable conditions or restrictions deemed necessary to secure the purpose of this title and to assure operation of the development and/or use in a manner compatible with existing and potential uses on adjoining properties and in the general vicinity; and
 - c. Reporting/monitoring requirements deemed necessary to mitigate any impacts and protect the health, safety and welfare of the city.
 4. The decision of the Director of Community Development, Design Review Committee or Planning Commission shall be final unless appealed in accord with Section 19.12.170, Appeals. A decision of the City Council shall be final.
- B. Reports: The Director of Community Development shall endeavor to forward reports, within five calendar days from the date of the decision, to the:
1. Planning Commission and the City Council of a decision by the Director of Community Development
 2. Planning Commission and the City Council of a decision by the Design Review Committee.
 3. City Council of a decision by the Planning Commission.

19.12.160 Effective date.

- A. A permit approved by the City Council shall take effect ten days following the date that the findings are adopted.
- B. Specific Plans, General Plan Amendments, Zoning Ordinance/Map Amendments, and Development Agreements shall become effective thirty (30) days following the final date of action (e.g., adoption) by the City Council.
- C. All other permits shall take effect fourteen calendar days following the date that the findings are adopted by the appropriate Approval Body, unless an appeal is filed as provided in Section 19.12.170.

19.12.170 Appeals

- A. An appeal may be filed by any person, firm or corporation aggrieved or affected by any grant, denial, modification or revocation of any permit, or any determination or interpretation related to any provision of this title.
- B. Filing:
 1. An appeal shall be in writing on forms prescribed by the City and shall be filed during

regular office hours with the City Clerk within fourteen calendar days after the City decision or if a notice of decision is not required, from the date of the decision or determination, under this title. An appeal not filed within such time shall be barred. The appeal shall state the grounds and basis thereof.

2. Appeals under this chapter are subject to an appeal fee as prescribed by resolution of the City Council.
- C. Noticing: Notice of hearing shall be given in the same manner in which the original notice was given. If a project with no noticing is appealed, appropriate noticing shall be determined by the Director of Community Development.
- D. Appeal hearing body shall be determined in accord with Section 19.12.030, Approval Authority.
- E. Decision of the appeal hearing body: The decision or determination of the appeal hearing body on any appeal shall be final and effective immediately.
- F. Notice of Decision: Notice of the appeal hearing body's decision shall be mailed to the original applicant, to the person filing the appeal, and to any other person who has filed a written request with the City Clerk.

19.12.180 Expiration, Extension and Revocation.

A. Expiration.

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

- B. Extensions. A permit or variance may, in accord with Section 19.12.030, Approval Authority, be extended, one-time only, for the time frame specified in Section 19.12.030, upon timely submittal of an application with the Director of Community Development prior to expiration.
- C. Revocation
 - 1. Revocation.—Process. In any case where, in the judgment of the Director, substantial evidence indicates that the conditions of a permit or variance have not been implemented, or where the permit or variance is being conducted in a manner detrimental to the public health, safety, and welfare, the Director shall set a date for a public hearing before the decision maker granting the original permit or variance, and notice a public hearing in accordance with Section 19.12.110, Noticing, of this code.
 - 2. Findings: A permit may be revoked or modified if any one of the following findings can be made:
 - i. That the permit was obtained by misrepresentation or fraud;
 - ii. That the improvement, use or activity authorized in compliance with the permit had ceased or was suspended for one year or more;
 - iii. That one or more of the conditions of the permit have not been met; or
 - iv. That the owner or occupant of the property is conducting the use or any associated or other use of the property in violation of the law.
 - v. In the case of revocation of a sign permit, the sign was abandoned for a period of thirty days.

CHAPTER 19.20 - PERMITTED, CONDITIONAL AND EXCLUDED USES IN AGRICULTURAL AND RESIDENTIAL ZONES

Section

19.20.010 Applicability of Regulations

19.20.020 Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones

19.20.010 Applicability of Regulations

No building or structure or land shall be used in an A, A-1, R-1, RHS, R1C, R-2, or R-3 zoning district, otherwise than in conformance with the provisions of this chapter.

19.20.020 Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones

Table 19.20.020 sets forth the Permitted, Conditional and Excluded Uses in Agricultural and Residential zones

Table 19.20.020 – Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
1. Agriculture, horticulture, viticulture and forestry, including the following and similar uses:		P	P	-	-	-	-	-
a.	Field and truck crops, including drying and storage,	P	P	-	-	-	-	-
b.	Orchards and vineyards, including bottling and storage,	P	P	-	-	-	-	-
c.	Tree farms, botanical conservatories and arboreta,	P	P	-	-	-	-	-
d.	Barns and sheds,	P	P	-	-	-	-	-
e.	Keeping of draft animals, animals providing products used on the property, and household pets,	P	P	-	-	-	-	-
f.	Livestock ranches and dairy farms depending mainly on grazing on the property,	P	CUP - PC	-	-	-	-	-
g.	Processing of dairy products produced on the property,	P	CUP - PC	-	-	-	-	-
h.	Poultry raising and hatcheries,	P	CUP - PC	-	-	-	-	-
i.	Apiaries,	P	CUP - PC	-	-	-	-	-
j.	Nurseries, greenhouses and landscaping gardens,	P	CUP - PC	-	-	-	-	-

REDUNDANCY

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
k.	Boarding kennels,	CUP - PC	CUP - PC	-	-	-	-	-
1.	Animal breeding;	P	CUP - Admin.	-	-	-	-	-
2.	Fur farms	-	CUP - PC	-	-	-	-	-
3.	Retail sale of wine, fruit or berries produced on the property;	CUP - CC	CUP - CC	-	-	-	-	-
4.	Single-family dwelling unit with not more than one dwelling unit per lot/defined air space for condominiums;	P	P	P	P	P	-	-
5.	Two-story structures in an area designated for a one-story limitation pursuant to Section 19.28.060 G(6) of this chapter, provided that the Planning Commission determines that the structure or structures will not result in privacy impacts, shadowing, or intrusive noise, odor, or other adverse impacts to the surrounding area;	-	-	CUP - PC	-	-	-	-
6.	<u>Employee housing:</u>							
a.	<u>For six or fewer employees in each dwelling unit on each lot</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
b.	<u>With no more than 36 beds in group quarters or 12 units/ spaces designed for use by a single family or household on each lot</u>	<u>P</u>	<u>P</u>	=	<u>CUP-Admin.</u>	=	=	=
	6. Residences of farm workers and their families whose primary employment is incidental and necessary to agricultural operations conducted on the same parcel of land on which such residences are located;	P	P	-	-	-	-	-
	7. Two family use under one ownership;	-	-	-	-	-	P	-
8.7	A second dwelling unit which conforms to the procedures, standards and requirements of Chapter 19.64 except for a second dwelling unit requiring a conditional use permit;	P	P	P	P	-	-	-
a.	<u>Which conforms to the requirements of Chapter 19.112;</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	=	=	=
b.	<u>Which requires a conditional use permit pursuant to Chapter 19.112;</u>	<u>CUP - Admin.</u>	<u>CUP - Admin.</u>	<u>CUP - Admin.</u>	<u>CUP - Admin.</u>	=	=	=

CONFORMANCE WITH STATE LAW

MOVED TO DEFINITIONS

READABILITY/ INTERNAL CONSISTENCY

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
9.	Second dwelling units which require a conditional use permit pursuant to Chapter 19.84;	-	-	CUP-Admin.	CUP-Admin.	-	-	-
10.8.	Multiple-family residential dwellings	-	-	-	-	-	-	P
11.9.	Accessory facilities and uses customarily incidental to permitted uses and otherwise conforming with the provisions of Chapter 19. 80-100 of this title;	P	P	P	P	P	P	P
12.10.	Utility facilities essential to provision of utility services to the neighborhood but excluding business offices, construction or storage yards, maintenance facilities, or corporation yards;	P	P	P	P	P	P	CUP-CC
13.11.	Temporary buildings for construction purposes (including trailers) for a period not to exceed the duration of such construction;	-	-	-	-	-	-	P
14.	Riding academies, commercial stables, and the boarding of horses;	CUP-CC	CUP-CC	-	-	-	-	-
15.	Noncommercial stables, and the keeping of riding horses; the number of horses on each lot at any time shall be limited to three except that additional foals may be retained for a period of six months;	P	P	-	-	-	-	-
16.	Noncommercial stables for riding horses in excess of the number permitted by #16 above of this chapter;	CUP-PC	CUP-PC	-	-	-	-	-
17.12.	Home occupations, when accessory to permitted use and otherwise conforming to the provisions of Chapter 19.120 of this title and subject to any conditional use permit requirements of that chapter;	P	P	P	P	P	P	P
a.	<u>When accessory to permitted use and otherwise conforming to the provisions of Chapter 19.120 of this title;</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
b.	<u>Requiring a Conditional Use Permit pursuant to Chapter 19.120 of this title;</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>
18.	Home occupations requiring a conditional use permit pursuant to Chapter 19.92 of this title;	CUP-Admin.	CUP-Admin.	CUP-Admin.	CUP-Admin.	-	CUP-Admin.	CUP-Admin.
19.13.	Small-family day care home per dwelling unit;	P	P	P	P	P	P	P

CORRECTION/ INTERNAL CONSISTENCY

MOVED BELOW

READABILITY/ INTERNAL CONSISTENCY

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
20.14.	Large-family day care home per dwelling unit, which meets the parking criteria contained in Chapter 19.124, and which is at least three hundred feet from any other large-family day care home. The Director of Community Development or his or her designee shall administratively approve large-day care homes to ensure compliance with the parking and proximity requirements;	-	P	P	P	-	P	-
a.	<u>Which meets the parking criteria contained in Chapter 19.124, and which is at least three hundred feet from any other large-family day care home. The Director of Community Development or his or her designee shall administratively approve large day care homes to ensure compliance with the parking and proximity requirements;</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	P	<u>CUP-Admin.</u>
b.	<u>Which otherwise does not meet the criteria for a permitted use. The conditional use permit shall be processed as provided by CA Health and Safety Code Section 1597.46 (3);</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>	<u>CUP-Admin.</u>
21.	Large family day care home, which otherwise does not meet the criteria for a permitted use. The conditional use permit shall be processed as provided by Section 1597.46 (3) of the State of California Health and Safety Code;	-	CUP-Admin.	CUP-Admin.	CUP-Admin.	-	CUP-Admin.	CUP-Admin.
22.	Child day care facilities	-	-	-	-	-	-	CUP-PC
23.15.	Residential care facility that is licensed by the appropriate State, County agency or department with six or less fewer residents, not including the provider, provider family or staff, provided that the facility obtains any license, if required, issued by appropriate State and/or County agencies and/or departments;	P	P	P	P	P	P	P
	24. Residential care facility, in each dwelling unit, that is not required to obtain a license by the State, County agency or department and has six or less residents, not including the provider, provider family or staff;	CUP-PC	CUP-PC	CUP-PC	CUP-PC	CUP-PC*	CUP-PC	CUP-PC

READABILITY/INTERNAL CONSISTENCY

CONFORMANCE WITH STATEW LAW

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3	
Uses									
25.	16. Residential care facility, in each dwelling unit, that has the appropriate State, County agency or department license and with seven or greater residents, not including the provider, provider family or staff, <u>and</u> is a minimum distance of five hundred feet from the property boundary of another residential care facility, <u>provided that the facility obtains any license, if required, issued by appropriate State and/or County agencies and/or departments;</u>	CUP - PC	CUP - PC	CUP - PC	CUP - PC	CUP - PC *	CUP - PC	CUP - PC	READABILITY
26.	Residential care facility, in each dwelling unit, that is not required to obtain a license by the State, County agency or department and has seven or greater residents, not including the provider, provider family or staff, is a minimum distance of five hundred feet from the property boundary of another residential care facility;	CUP - PC	CUP - PC	CUP - PC	CUP - PC	CUP - PC *	CUP - PC	CUP - PC	REDUNDANT
27.	Residential care homes in each dwelling unit	-	-	-	-	-	CUP - PC	-	
28.	17. Congregate residence, in each dwelling unit, with ten or less residents;	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	READABILITY/CONFORMANCE
a.	<u>With ten six or less fewer residents</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	
b.	<u>With eleven seven or more greater residents which is a minimum distance of one thousand feet from the boundary of another congregate residence and has a minimum of seventy-five square feet of usable rear yard area per occupant</u>	<u>CUP - PC</u>	<u>CUP - PC</u>	<u>CUP - PC</u>	<u>CUP - PC</u>	<u>CUP - PC *</u>	<u>CUP - PC</u>	<u>CUP - PC</u>	WITH STATE LAW
29.	Congregate residence, in each dwelling unit, with eleven or more residents which is a minimum distance of one thousand feet from the boundary of another congregate residence and has a minimum of seventy five square feet of usable rear yard area per occupant.	CUP - PC	CUP - PC	CUP - PC	CUP - PC	CUP - PC *	CUP - PC	CUP - PC	
30.	Group home with six or fewer persons with continuous twenty four hour care	P	P	P	P	P	P	P	REDUNDANT
31.	Group home with greater than six persons;	-	-	CUP - PC	-	-	-	-	

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
32.	18. Transitional and supportive housing <u>located in housing of a type permitted in the zone;</u>	P	P	P	P	P	P	P
33.	19. <u>Supportive housing located in housing of a type permitted in the zone;</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
34.	20. Horticulture, gardening, and growing of food products:	-	-	<u>P</u>	-	-	-	-
a.	<u>Recreational for personal use;</u> CLARIFICATION	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	-
b.	<u>Limited to maximum of ten percent of the lot area and for consumption by occupants of the site;</u>	-	-	-	-	-	-	<u>P</u>
c.	<u>Produce grown on site may be sold if the business activity is conducted in a manner consistent with Chapter 19.120, Home Occupations;</u>	-	-	-	<u>P</u>	-	-	-
d.	<u>Commercial purposes;</u>	<u>See #1</u>	<u>See #1</u>	-	<u>CUP - Admin.</u>	-	-	-
35.	Horticulture, gardening, and growing of food products for consumption by occupants of the site and limited to a maximum of ten percent of the lot area.	-	-	-	-	-	-	P
36.	Crop, tree or horticultural farming for personal use. Produce grown on the site may be sold if the business activity is conducted in a manner consistent with the home occupation ordinance;	-	-	-	P	-	-	-
	37. Crop, tree or horticultural farming for commercial purposes;	-	-	-	<u>CUP - Admin.</u>	-	-	-
38.	21. Limited commercial recreation uses, such as riding clubs and related stables and trails, golf courses, swimming and picnic grounds,	-	-	-	CUP - PC	-	-	-
39.	22. Golf courses and driving ranges;	CUP - CC	CUP - CC	-	-	-	-	-
40.	23. Commercial swimming pools and picnic areas;	CUP - CC	CUP - CC	-	-	-	-	-
41.	24. Temporary uses subject to regulations established by Chapter 19.156	CUP - Admin.	CUP - Admin.	CUP - Admin.	CUP - Admin.	CUP - Admin	CUP - Admin.	CUP - Admin.

READABILITY/ CLARIFICATION

CLARIFICATION

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
42.	25. Buildings or structures which incorporate solar design features that require variation from setbacks upon a determination by the Director that the design feature, or features, will not result in privacy impacts, shadowing, or intrusive noise, odor, or other adverse impacts to the surrounding area.	CUP – Admin.	CUP – Admin.	-	CUP – Admin.	-	-	-
43.	26. Transmission lines, transformer stations, television and radio towers, and other public utility and communication structures;	CUP - PC	CUP - PC	-	-	-	-	-
44.	27. The keeping of a maximum of four a <u>Adult</u> (over 4 months of age) household pets per dwelling unit, <u>limited as follows:</u> ; <u>provided that no more than two adult dogs or cats may be kept on the site;</u>	-	-	<u>P</u>	-	-	<u>P</u>	<u>P</u>
a.	<u>No specified number</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>
b.	<u>Maximum of four, provided no more than two adult dogs or cats may be kept on the site</u>	<u>=</u>	<u>=</u>	<u>P</u>	<u>=</u>	<u>P</u>	<u>P</u>	<u>P</u>
c.	<u>Limited to one per three thousand square feet of lot area, except:</u>							
<u>1.</u>	<u>Dogs are limited to a maximum of two on lots less than one acre and four for lots greater than one acre.</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>P†</u>	<u>=</u>	<u>=</u>	<u>=</u>
<u>2.</u>	<u>The number of geese, ducks, chickens, rabbits and other farm animals are not limited on a site greater than one acre</u>							
45.	28. The keeping of one <u>Litter</u> of dogs or cats up to four months of age;	-	-	<u>P</u>	-	<u>P</u>	<u>P</u>	<u>P</u>
a.	<u>No specified number</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>P</u>	<u>=</u>	<u>=</u>	<u>=</u>
b.	<u>Maximum of one</u>	<u>=</u>	<u>=</u>	<u>P</u>	<u>=</u>	<u>P</u>	<u>P</u>	<u>P</u>
	46. Household pets <u>limited to one animal per three thousand square feet of lot area, except:</u>	-	-	-	<u>P†</u>	-	-	-
a.	Adult dogs are <u>limited to a maximum of two for lots less than one acre and four for lots greater than one acre,</u>							
b.	The number of geese, ducks, chickens, rabbits and other farm animals are not limited on a site greater than one acre,							
	47. Small household pets	-	-	-	<u>P†</u>	-	-	-

REDUNDANT

READABILITY/CLARIFICATION

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
48:29.	Large animals, such as horses, cows, sheep, and goats, <u>limited as follows</u> , provided no animals are kept, maintained and raised for commercial purposes, <u>limited as follows</u> :							
a.	Two large animals for the first 40,000 square feet of land area, except mules and donkeys which require 80,000 square feet for the first animal,	-See #1	-See #1	-	P †	-	-	-
b.	One additional large animal for each <u>additional</u> 20,000 square feet of land area,							
c.	One additional large animal if said animal is raised for a 4H project, a project sponsored by a recognized agricultural organization or a school project,							
49:30.	The keeping of any animal not otherwise permitted above: <u>in #27, 28, 45, 46 and 4729;</u>	-	-	-	CUP – Admin.	-	-	-
50:31.	<u>Riding academies, commercial stables, and the boarding of horses;</u>	<u>CUP - CC</u>	<u>CUP - CC</u>	=	=	=	=	=
51:32.	<u>Noncommercial stables, and the keeping of riding horses:</u>							
a.	<u>Limited to three horses on each lot at any time except that additional foals may be retained for a period of six months;</u>	<u>P</u>	<u>P</u>	=	=	=	=	=
b.	<u>In excess of the number permitted in 32(a)</u>	<u>CUP - CC</u>	<u>CUP - CC</u>	=	=	=	=	=
52:33.	Cemeteries, crematoriums, mausolea, and columbariums	CUP - CC	CUP - CC	-	-	-	-	-
53:34.	Mines, quarries and gravel pits;	CUP - CC	CUP - CC	-	-	-	-	-
54:35.	Guest ranches;	CUP - CC	CUP - CC	-	-	-	-	-
55:36.	Public and quasi-public buildings and uses.	CUP - CC	CUP - CC	-	-	-	-	-
56:37.	Hog farms;	Ex	Ex	-	-	-	-	-
57:38.	Cattle farms mainly depending upon feed brought onto the property;	Ex	Ex	-	-	-	-	-

CLARIFICATION

READABILITY/MOVED FROM ABOVE

Zoning Districts		A	A-1	R-1	RHS	R1C	R-2	R-3
Uses								
58.39.	Slaughterhouses, fertilizer yards, feed yards, boneyards or plants for the reduction of animal matter;	Ex	Ex	-	-	-	-	-
59.40.	Commercial feed sales;	Ex	Ex	-	-	-	-	-
60.41.	Other semiagricultural uses mainly depending upon raw materials, semifinished products, or feed brought on to the property;	Ex	Ex	-	-	-	-	-
61.42.	Other agricultural uses which, in the opinion of the Director of Community Development, create a private or public nuisance.	Ex	Ex	-	-	-	-	-

- Key:**
- P – Permitted Use
 - Not Allowed
 - CUP – Admin.** – Conditional Use Permit issued by the Director of Community Development
 - CUP – PC** – Conditional Use Permit issued by the Planning Commission
 - CUP – CC** – Conditional Use Permit issued by the City Council
 - * May be permitted in locations where the use is compatible with existing and planned uses within the development area in the opinion of the Director of Community Development,
 - † The required lot area for a large animal shall not be included in the required lot area for a household pet or vice versa, except that a maximum of two household pets may be kept with large animals,
All animals must be kept and maintained in accordance with other Cupertino or Santa Clara County codes and ordinances,
 - Ex** - Excluded Uses

CHAPTER 19.56: DENSITY BONUS

Section

- 19.56.010 Purpose.
- 19.56.020 Applicability of Regulations.
- 19.56.030 ~~Concessions~~Density Bonus.
- 19.56.040 ~~General Requirements~~Incentives/Concessions.
- 19.56.050 ~~General Requirements for Projects with Affordable Units.~~
- 19.56.060 Application Requirements.
- 19.56.070 Findings.

CONFORMANCE WITH STATE LAW

19.56.010 Purpose.

The density bonus ordinance codified in this chapter is intended to comply with the State Density Bonus Law, Government Code Section 65915, which provides that a local agency shall adopt an ordinance specifying how the agency will comply with that section. government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a developer of a housing development agreeing to construct a specified percentage of housing for lower income households, very low income households or senior citizens.

19.56.020 Applicability of Regulations.

A. ~~All housing developments greater than~~Housing developments greater than resulting in a net increase of at least five units (excluding density bonus units) are eligible for ~~one a~~ density bonus ~~of at least twenty five percent, and an additional concession as provided in this chapter, when the applicant for the housing development, to developers agreeing or proposes to construct~~ at least one of the following:

1. Construct:

~~1-a.~~ Twenty-Ten percent of the total units affordable to~~for~~ lower income households at affordable rent or affordable housing cost; or

~~2-b.~~ Ten-Five percent of the total units affordable to~~for~~ very low income households at affordable rent or affordable housing cost; or

c. Ten percent of the total units proposed in a common interest development for sale to moderate income households, provided that all units in the development are offered to the public for purchase; or

~~d.~~ Fifty percent of the units for a senior citizens housing development, unless prohibited by State and/or Federal law.

2. Donate land in accordance with Section 19.56.030C;

3. Provide affordable housing in a condominium conversion project in accordance with Section 19.56.030E.

- B. In addition to meeting the requirements of 19.56.020A, housing developments which include a child care facility in accordance with Section 19.56.030D, is entitled to an additional density bonus;
- C. An applicant may also submit a proposal for specific incentives or concessions to be granted in conjunction with the density bonus, as provided in Section 19.56.040;
- D. The granting of a density bonus, incentive or concession, in and of itself, shall not require a general plan amendment, zone change, or other discretionary approval and shall be reviewed concurrently with the review of the housing development.

~~If a development agrees to construct both twenty percent of the total units for lower income households and ten percent of the total units for very low income households, the developer remains entitled to only one density bonus and an additional concession. However, in such circumstance, the City, at its discretion, may grant more than one density bonus.~~

- ~~C. Projects with affordable units which meet the requirements set forth in this chapter are entitled to a density bonus and additional concession, unless:
 - 1. ~~The City Council adopts a written finding that the additional concession is not required to make the units affordable.~~~~
- ~~D. Nothing in this chapter limits the City's right to deny an affordable housing project if the City Council finds, based on substantial evidence, any one of the following:
 - 1. ~~The City has adopted an adequate housing element, and the project is not needed for the City to meet its share of the regional housing need of lower income housing.~~
 - 2. ~~The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower income households.~~
 - 3. ~~The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower income households.~~
 - 4. ~~Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households.~~
 - 5. ~~The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.~~
 - 6. ~~The development project is inconsistent with the City's General Plan land use designation as it existed on the date the application was deemed complete, and the City has adopted a housing element pursuant to State law.~~~~
- ~~E. Nothing in this chapter limits the City's right to deny a senior citizen housing project if the City finds, based on substantial evidence, that the project would have a specific, adverse~~

~~impact upon the public health or safety; and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified.~~

CONFORMANCE WITH
STATE LAW

19.56.030 Density Bonus

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

Table 19.56.030: Density Bonus Calculations

<u>Percentage of Affordable Units Provided in Income Category</u>	<u>Very Low Income Units</u>	<u>Low Income Units</u>	<u>Moderate Income Units</u>
<u>5%</u>	<u>20%</u>	<u>=</u>	<u>=</u>
<u>6%</u>	<u>22.5%</u>	<u>=</u>	<u>=</u>
<u>7%</u>	<u>25%</u>	<u>=</u>	<u>=</u>
<u>8%</u>	<u>27.5%</u>	<u>=</u>	<u>=</u>
<u>9%</u>	<u>30%</u>	<u>=</u>	<u>=</u>
<u>10%</u>	<u>32.5%</u>	<u>20%</u>	<u>5%</u>
<u>11%</u>	<u>35%</u>	<u>22%</u>	<u>6%</u>
<u>12%</u>	<u>35%</u>	<u>23%</u>	<u>7%</u>
<u>13%</u>	<u>35%</u>	<u>25%</u>	<u>8%</u>
<u>14%</u>	<u>35%</u>	<u>26%</u>	<u>9%</u>
<u>15%</u>	<u>35%</u>	<u>28%</u>	<u>10%</u>
<u>16%</u>	<u>35%</u>	<u>29%</u>	<u>11%</u>
<u>17%</u>	<u>35%</u>	<u>31%</u>	<u>12%</u>
<u>18%</u>	<u>35%</u>	<u>32%</u>	<u>13%</u>
<u>19%</u>	<u>35%</u>	<u>34%</u>	<u>14%</u>
<u>20%</u>	<u>35%</u>	<u>35%</u>	<u>15%</u>
<u>21%</u>	<u>35%</u>	<u>35%</u>	<u>16%</u>
<u>22%</u>	<u>35%</u>	<u>35%</u>	<u>17%</u>
<u>23%</u>	<u>35%</u>	<u>35%</u>	<u>18%</u>
<u>24%</u>	<u>35%</u>	<u>35%</u>	<u>19%</u>
<u>25%</u>	<u>35%</u>	<u>35%</u>	<u>20%</u>
<u>26%</u>	<u>35%</u>	<u>35%</u>	<u>21%</u>
<u>27%</u>	<u>35%</u>	<u>35%</u>	<u>22%</u>
<u>28%</u>	<u>35%</u>	<u>35%</u>	<u>23%</u>
<u>29%</u>	<u>35%</u>	<u>35%</u>	<u>24%</u>
<u>30%</u>	<u>35%</u>	<u>35%</u>	<u>25%</u>
<u>31%</u>	<u>35%</u>	<u>35%</u>	<u>26%</u>
<u>32%</u>	<u>35%</u>	<u>35%</u>	<u>27%</u>
<u>33%</u>	<u>35%</u>	<u>35%</u>	<u>28%</u>
<u>34%</u>	<u>35%</u>	<u>35%</u>	<u>29%</u>
<u>35%</u>	<u>35%</u>	<u>35%</u>	<u>30%</u>

<u>Percentage of Affordable Units Provided in Income Category</u>	<u>Very Low Income Units</u>	<u>Low Income</u>	<u>CONFORMANCE WITH STATE LAW</u>
<u>36%</u>	<u>35%</u>		
<u>37%</u>	<u>35%</u>	<u>35%</u>	<u>32%</u>
<u>38%</u>	<u>35%</u>	<u>35%</u>	<u>33%</u>
<u>39%</u>	<u>35%</u>	<u>35%</u>	<u>34%</u>
<u>40%</u>	<u>35%</u>	<u>35%</u>	<u>35%</u>

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

C. Donation of Land:

1. When an applicant donates land to the City in accordance with the requirements of Section 19.56.020C(2), the development shall be entitled to a 15 percent density bonus. The development is entitled to an additional one percent density bonus for the donation of land that would allow the development of an additional one percent of affordable units above the minimum requirements in Section 19.56.020C(2), up to a maximum of 35 percent.

2. The donation of land must meet the following requirements:

- a. The land shall be donated and transferred no later than the date of approval of the application.
- b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.
- c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation, is appropriately zoned with appropriate development standards for development at the density described in Government Code Section 65583.2(c)(3), and is or will be served by adequate public facilities and infrastructure.
- d. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the City may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the City prior to the time of transfer.

- e. The land shall be transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify developer.
- f. The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- g. A proposed source of funding for the very low income units shall be identified not later than the date of approval of the proposed development.
- h. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Government Code Section 65915(c)(1) or (2), as applicable.

D. Provision of Child Day Care Facilities

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

E. Condominium Conversions

1. When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to low or moderate income households, or 15 percent of the total units of the proposed

condominium project to lower income households, and agrees to pay for the reasonably necessary administrative costs incurred by the City, the City shall either:

a. Grant a density bonus of 25 percent over the number within the existing structure or structures proposed for

CONFORMANCE WITH
STATE LAW

b. Provide other incentives of equivalent financial value. This shall not require the City to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the City might otherwise apply as conditions of conversion approval.

2. The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as the City finds appropriate, including but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

3. An application shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided under Government Code Section 65915.

4. Nothing in this section shall be construed to require the City to approve a proposal to convert apartments to condominiums.

F. Density Bonus Calculations:

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

2. In determining the number of density bonus units to be granted, any fractions of density bonus units shall be rounded up to the next whole number.

3. Density bonus units authorized by this section shall not be included when determining the number of affordable units, required to qualify for the density bonus. In determining the number of affordable units, any fractions of affordable units shall be rounded up to the next whole number.

4. An applicant may request a lower density bonus than the housing development is entitled to, but no reduction will be permitted in the percentage of required affordable units as shown in Section 19.56.020.

5. Regardless of the affordable units, no housing development will be entitled to a density bonus of more than 35 percent unless approved by the City pursuant to Section 19.56.030F(7).

6. The City, at its discretion, may grant additional density bonuses. While the maximum density bonus, the City is required to provide pursuant to State Law, is thirty-five (35)

percent; this is not the maximum amount that an applicant may obtain. An applicant may negotiate with the City to obtain a density bonus higher than the maximum set forth in Table 19.56.030 in exchange for including even more affordable units than are provided in the table and/or the provision of other amenities or considerations.

A.7. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

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19.56.030040 Incentives and Concessions.

The State-mandated concession will be selected from the following list:

CONFORMANCE WITH STATE LAW

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

Table 19.56.040A: Incentives and Concessions Calculations:

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

B. For purposes of this chapter, permissible concessions and incentives include, but are not limited to:

A.1. A reduction in-of site-development standards or a modification of the-zoning code requirements or of the Zoning Ordinance architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including but not limited to, a reduction in setback requirements, square footage or parking requirements, such that the reduction or modification results in identifiable, financially sufficient, and actual cost reductions. For applications involving the modification of zoning or development standards, the housing

~~developer shall show that the waiver or modification is necessary to make the housing units economically feasible. Permissible incentives include, but are not limited to:~~

- ~~1. Reduction of parking requirements,~~
- ~~2. Reduction of open space requirements,~~
- ~~3. Reduction of setback requirements,~~

CONFORMANCE WITH STATE LAW

2. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the cost of the housing development, and if the commercial, office, industrial or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located;

~~B.3.~~ 3. Other regulatory incentives or concessions proposed by the developer or the City, which result in identifiable financially sufficient and actual cost reductions.

~~Permissible concessions include, but are not limited to:~~

- ~~1. Reduction of park dedication fees,~~
- ~~2. Reduction of application or construction permit fees,~~
- ~~3. Provision of tax exempt financing or other financial assistance as approved by the City Council;~~

C. Nothing in this section requires the provision of direct financial incentives for the housing development, including but not limited to the provision of financial subsidies, publicly owned land by the City or the waiver of fees or dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives;

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

E. If the housing development is eligible for density bonus as provided in Section 19.56.020, upon request of the applicant, the maximum off-street parking standards that can be applied, inclusive of handicapped and guest parking are indicated in Table 19.56.040B. These may include tandem and uncovered parking spaces.

Table 19.56.040B: Off-street parking standards with

<u>Number of bedrooms</u>	<u>Maximum number of off-street parking spaces</u>
<u>0 – 1</u>	<u>One (1)</u>
<u>2 – 3</u>	<u>Two (2)</u>

4+

Two and one-half (2.5)

~~C.F.~~ A housing development which ~~provides affordable units requests incentives or concessions~~ must show that the requested concessions ~~directly affect the economic feasibility of including the affordable units in the project~~ affordable rents or affordable housing costs, as applicable.

CONFORMANCE WITH
STATE LAW

19.56.040050 General Requirements.

~~B.A.~~ Affordable for-sale and rental low and very low income units must remain affordable to low or very low income households, as applicable, for thirty years ~~if both a density bonus and an additional concession are granted. These units shall remain affordable or~~ for a longer period of time if required by ~~the a~~ construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. ~~If only a density bonus is granted, the affordable units shall remain affordable for ten years.~~ Affordable for-sale moderate income units must remain affordable to moderate-income households for the duration required by the City's Residential Housing Mitigation Program or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Sales price for for-sale affordable very low, low, and moderate income units shall be set at affordable housing cost. Rents for affordable low and very low income rental units shall be set at an affordable rent.

~~B.~~ The affordable dwelling units and land dedication that qualify a housing development for a density bonus may also be used to meet the below-market-rate housing provisions of the City's Residential Housing Mitigation Program, provided that the affordable units and land dedication comply with the requirements of both Chapter 19.56, Density Bonus, and the Residential Housing Mitigation Program regarding the required number of affordable units, required level of affordability, and term of affordability so as to provide the greatest affordability to the most households for the longest term.

~~C.~~ Unless otherwise governed by other funding sources, ~~F~~first priority for the affordable units will be given to individuals who reside, work, go to school, or have family in the City of Cupertino.

D. A master regulatory agreement shall be made between the developer and the City which indicates the household type, number, location, size and construction scheduling of all affordable units, and such information as shall be required by the City for the purpose of determining the developer's compliance with this chapter. The regulatory agreement shall be recorded against the housing development prior to final or parcel map approval or, where a map is not being processed, prior to issuance of any building permits, and shall be binding on all future owners and successors in interest.

E. Affordable units in a project and phases of a project shall be constructed concurrently with or prior to the construction of market-rate units.

F. Affordable units shall be provided as follows:

1. Affordable units shall be dispersed throughout the project;

~~2.~~ Affordable units shall be identical with the design of any market rate rental units in the project with the ~~following~~ exception: that a

~~a.2.~~ Reduction of interior amenities for affordable units will be permitted upon prior approval by the City Council as necessary to retain project afford-ability.

~~G. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.~~

H. The developer shall submit a project financial report (pro forma) ~~to allow the City to evaluate the financial need for the State mandated additional incentives~~ demonstrating that the requested incentives or concessions are required to provide for affordable rents or affordable housing costs, as applicable. The City may retain a consultant to review the financial report. The cost of the consultant shall be borne by the developer with the following exception:

CONFORMANCE WITH STATE LAW

1. If the applicant is a nonprofit organization, the cost of the consultant may be paid by the City upon prior approval of the City Council.

19.56.050 — Requirements for Projects with Affordable Units.

READABILITY

~~A.I.~~ All affordable units shall be occupied by the household type specified in the written agreement required under Section 19.52. ~~020C050C.~~ The developer’s obligation to maintain these units as affordable housing shall be evidenced by the master regulatory agreement which shall be recorded as deed restriction running with the land.

~~B. Those units targeted for lower income households shall be affordable at a rent that does not exceed thirty percent of the HUD income limits for lower income households for Santa Clara County adjusted for household size.~~

~~C. Those units targeted for very low income households shall be affordable at a rent that does not exceed twenty five percent of the HUD income limits for very low income households for Santa Clara County adjusted for household size.~~

~~J.~~ Prior to the rental or sale of any affordable unit, the City or its designee, shall verify the eligibility of the prospective tenant or buyer.

~~I.K.~~ The City may establish fees associated with the setting up and monitoring of affordable units.

L. For rental affordable very low and low income units:

~~D.1.~~ _____ The owner shall obtain and maintain on file certifications by each household. Certification shall be obtained immediately prior to initial occupancy by each household and annually thereafter, in the form provided by the City or its designee. The owner shall obtain updated forms for each household on request by the City, but in no event less frequently than once a year. The owner shall maintain complete, accurate and current records pertaining to the housing development, and will permit any duly

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CONFORMANCE WITH STATE LAW
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authorized representative of the City to inspect the records pertaining to the affordable units and occupants of these units.

~~E. The City may establish fees associated with the setting up of units.~~

CONFORMANCE WITH
STATE LAW

~~F.2.~~ The owner shall submit an annual report to the City, on a form provided by the City. The report shall include for each affordable unit the rent, income, and family size of the household occupying the unit.

3. The owner shall provide to the City any additional information required by the City to insure the long-term affordability of the affordable units by eligible households.

19.56.060 Application Requirements.

A. ~~An applicant developer may submit to the Planning Department a preliminary proposal for the development of housing development pursuant to this chapter prior to the submittal of any formal application. The City shall, within ninety days of receipt of a written proposal, notify the housing developer in writing of its local density procedures. The City shall establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on a particular site. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements. The housing developer shall show that the requested waiver or modification is necessary to make the affordable units economically feasible.~~

B. All requests pursuant to this Chapter shall be submitted to the City concurrently with the application for the first discretionary permit or other permit required for the housing development and shall be process concurrently with the discretionary Formal application shall following the review process as set forth for permits in Chapter 19.12, Administration of the Cupertino Municipal Code established by the City. and The applicant shall provide additional information as specified in this chapter, specifically:

1. Provide a written statement specifying the desired density increase, incentives and any waivers requested, proposed rent schedules and/or sales prices, and the type, location, size and construction scheduling of all dwelling units;

2. Submit a project financial report (pro forma) demonstrating that the requested incentives will result in identifiable, financially sufficient, and actual cost reductions to the housing development and they are required to provide for affordable rents or affordable housing costs, as applicable. The pro forma shall include the capital costs, operating expenses, return on investment, loan-to-value ratio and the debt coverage ratio including the contribution(s) provided by any applicable subsidy program(s), as required;

3. An appraisal report indicating the value of the density bonus and of the incentive(s)/concession(s);

4. A use of funds statement identifying the financial gaps for the housing development with the affordable housing units. The analysis shall show how the funding gap relates to the incentive(s)/concession(s);
5. For any requested waiver of a development standard, evidence that the standard for which the waiver is requested will have the effect of reducing the cost of the construction of the housing development with the density bonus and incentives requested.
6. If a mixed use building or project is proposed as an incentive, evidence that non-residential land uses will reduce the cost of the housing development and that the non-residential land uses are compatible with the development and the existing or planned development in the area.
7. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Section 19.56.030C can be met.
8. If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements in Section 19.56.030D can be met.
- 2.9. If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements in Section 19.56.030E can be met.
- 3.10. Any other information requested by the Director of Community Development to determine if the required findings can be made.

<p>CONFORMANCE WITH STATE LAW</p>

19.56.070 Findings.

- A. Before approving an application that includes a request for a density bonus, incentive, parking reduction and/or waiver pursuant this chapter, the decision-making body shall make the following findings, as applicable:
1. A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.
 2. A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost reductions based upon the financial analysis and documentation provided.
 3. If the density bonus is based all or in part on donation of land, a finding that all the requirements included in Section 19.56.030C have been met.
 4. If the density bonus or incentive is based all or in part on the inclusion of a child care facility, a finding that all the requirements included in Section 19.56.030D have been met.
 5. If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030E have been met.
 6. If the incentive includes mixed-use development, a finding that all the requirements included in Section 19.56.040B(2) have been met.

CONFORMANCE WITH
STATE LAW

7. If a waiver is requested, a finding that the development standards for which the waiver is requested would have the effect of physically precluding housing development with the density bonus and incentive.

B. If the findings required by subsection (A) of this section can be made, the decision-making body may deny an application for an incentive or waiver requested pursuant to Section 19.56.040 only if it makes one of the following written findings as applicable to each type of application, supported by substantial evidence:

1. That the incentive is not required to provide for affordable rents or affordable sales prices; or

2. That the incentive or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or

3. That the incentive or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the residential project unaffordable to low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or

4. That the incentive or waiver is contrary to state or federal law.

C. If the findings required by subsection (A) of this section can be made, the decision-making body may deny an application for a density bonus or incentive that is based on the provision of child care only if it makes a written finding, based on substantial evidence, that the city already has adequate child care facilities.

CHAPTER 19.76: PUBLIC BUILDING (BA), QUASI PUBLIC BUILDING (BQ) AND TRANSPORTATION (T) ZONES

Section

- 19.76.020 Applicability of Regulations.
- 19.76.030 Permitted, Conditional and Excluded Uses in BA, BQ and T Zones.
- 19.76.040 Permits Required for Development.
- 19.64.050 Application Requirements.
- 19.64.060 Site Development Regulations.

19.76.010 Purpose.

The BA, BQ and T zoning districts are designed to accommodate governmental, public utility, educational, religious, community service, transportation, or recreational facilities in the City.

19.76.020 Applicability of Regulations.

The specific regulations of this chapter shall apply to all BA, BQ and T zoning districts.

19.76.030 Permitted, Conditional and Excluded Uses in BA, BQ and T Zones.

Permitted, Conditional and Excluded Uses that may be conducted from property zoned Public Building (BA), Quasi-Public Building (BQ), and Transportation (T) are identified in Table 19.76.030, Permitted, Conditional and Excluded Uses in Public, Quasi-Public and Transportation Zoning Districts.

Table 19.76.030 – Permitted, Conditional, and Excluded Uses in BA, BQ and T Zones

Uses	Zoning Districts		
	BA	BQ	T
1. Buildings and other uses on land owned or utilized by a federal, state, county, or city government or authority, or by a special district created for public purposes under the laws of the State of California are permitted in a BA zone.	P	-	-
2. Rotating homeless emergency shelter provided that the following conditions are met: a. Shelter is located within an existing church structure; b. The number of occupants does not exceed twenty-five; c. The hours of operation do not exceed six p.m. to seven a.m.; d. Adequate supervision is provided; e. Fire safety regulations are met; and f. Operation period does not exceed two months in any twelve-month period at any single location.	-	P	-
3. Permanent emergency shelter provided the following conditions are met: <u>a.</u> Section 19.76.030(2)(ab), (d), (e);	-	P	-

CONFORMANCE WITH STATE LAW

Uses	Zoning Districts			CONFORMANCE WITH STATE LAW
	BA	BQ	T	
<u>b. A management plan is provided which includes a detailed operation plan;</u> a-c. <u>Shelter is available to any individual or household regardless of their ability to pay;</u> and b-d. _____ Occupancy is limited to six months or less.				
4. Public utility companies regulated by the Public Utility Commission for uses restricted to administrative and office buildings, communication equipment buildings, including parking, landscaping and maintenance within an enclosed area or storage yard;	-	CUP - PC	-	
5. Religious, civic, and comparable organizations, for uses restricted to church buildings, community halls, administrative buildings, schoolrooms, recreational facilities, and athletic fields, convents, seminaries, and similar uses customarily associated with churches, including parking and landscaping areas;	-	CUP - PC	-	
6. Child care facility, residential care facilities, congregate residence, hospitals, vocational and specialized schools;	-	CUP - PC	-	
7. Lodges, clubs, country clubs, including accessory uses such as swimming pools, picnic areas, golf courses, driving tees or ranges, miniature golf courses (all uses to be restricted to members of the above organizations and their guests);	-	CUP - PC	-	
8. Large-family daycare home;	-	CUP - PC	-	
9. Airports, airfields and helicopter terminals, including administration and service buildings, maintenance and storage yards	-	-	CUP - PC	
10. Railroads, including terminals and stations, freight yards, marshaling yards, storage yards, administrative and service buildings	-	-	CUP - PC	
11. Bus terminals and stations, including administration and service buildings, maintenance and storage yards	-	-	CUP - PC	
12. Freeways, expressways, and other roads with limited or controlled access, including administrative buildings and maintenance yards	-	-	CUP - PC	

Key:

P – Permitted Use

-- Not Allowed

CUP – Admin. – Conditional Use Permit issued by the Director of Community Development

CUP – PC – Conditional Use Permit issued by the Planning Commission

CUP – CC – Conditional Use Permit issued by the City Council

Ex - Excluded Uses

19.76.040 Permits Required for Development.

Prior to the erection of a new building or structure or enlargement or modification of an existing building, structure, or site (including landscaping and lighting) in a BA, BQ or T zoning district, the applicant for a building permit must obtain permits in accord with Chapter 19.12.

19.64.050 Application Requirements.

Prior to the issuance of development permits, or any amendment thereto, an application shall be made that, in addition to the requirements in Chapter 19.12, shall include a development plan. The plan shall include:

- A. Types and heights of buildings/structures and location of areas where buildings are to be placed;
- B. A proposed system of public and private streets, including cross-sections for all types of streets;
- C. Landscape plans;
- D. Parking and loading plans as required by this title;
- E. Any other information, which the Director of Community Development requires in order to evaluate the effects of the proposed facilities on the surrounding areas.

19.64.060 Site Development Regulations.

- A. Maximum Height of Buildings and Structures. The height of buildings in BA, BQ and T zone districts is regulated by the development plan.
- B. Setbacks and Screening.
 - 1. There are no minimum setbacks in BA, BQ or T zoning districts; provided, however, that the Planning Commission may establish minimum setbacks with respect to each individual application for a development permit or a conditional use permit in order to provide adequate light, air and visibility at intersections, and to provide general conformity with adjacent and nearby zones and lots, or to promote the general excellence of the development;
 - 2. Adequate screening to limit noise, to reduce glare of lights, and to prevent obnoxious emissions shall be provided when deemed appropriate by the Planning Commission.

CHAPTER 19.84: PERMITTED, CONDITIONAL AND EXCLUDED USES IN OPEN SPACE, PARK AND RECREATION AND PRIVATE RECREATION ZONING DISTRICTS

Section

19.84.010 Applicability of Regulations

19.84.020 Permitted, Conditional and Excluded Uses in Open Space, Park and Recreation and Private Recreation Zones

19.84.010 Applicability of Regulations

No building or structure or land shall be used in an OS, PR and FP zoning district, otherwise than in conformance with the provisions of this chapter.

19.84.020 Permitted, Conditional and Excluded Uses in Open Space, Park and Recreation and Private Recreation Zones

Table 19.84.020 sets forth the Permitted, Conditional and Excluded Uses in Open Space, Park and Recreation and Private Recreation zones.

Table 19.84.020 – Permitted, Conditional and Excluded Uses in Open Space, Park and Recreation and Private Recreation Zones

Uses	Zoning Districts			REDUNDANT CLARIFICATION
	OS	PR	FP	
A. Low-intensity recreational uses such as hiking, birdwatching, walking, picnicking and other similar activities	P	P	-	
B. Minor maintenance of vegetation such as mowing or trimming	P	P	P	
C. Incidental gardening	P	P	P	
D. The erection or maintenance of minor structures, such as fences, gates, culverts and drainage ditches.	P	P	P	
E. Any legal nonconforming use as provided for in Chapter 19.140 of the City’s Ordinance Code	P	P	P	
F. Temporary uses subject to regulations established by Chapter 19.160	CUP – Admin	P	CUP-Admin	
G. Noncommercial stables for riding horses	CUP – Admin	-	-	

Uses	Zoning Districts	OS	PR	FP
H. Artificial or constructed pools, ponds, lakes or streams	CUP - Admin	P	CUP - PC	
I. Playgrounds	CUP - Admin	P	CUP - PC	
J. Any other use which is compatible with open space <u>or park and recreation</u> and otherwise is in conformance with the purposes of the OS <u>or PR</u> zoning districts	CUP - Admin	P	-	
K. Parks, playgrounds , and recreation facilities, as regulated by Title 13 of this code	-	P	-	
L. Agricultural <u>activities for educational and recreational purposes, such as community gardens and hobby farms uses such as crop and tree farming, and the keeping of domestic barnyard animals</u>	-	P	-	
M. Single-family residences for the purpose of housing a caretaker for the park. The residence may take the form of a mobilehome as well as a permanent residential structure.	-	P	-	
N. Accessory facilities and uses customarily incidental to permitted uses and otherwise conforming with the provisions of Chapter 19.92 of this title	P	P	P	
O. Parking facilities as necessary for park usage	-	P	-	
P. Outdoor Uses: <ol style="list-style-type: none"> 1. Equestrian center including riding academies, stables and horse rental, 2. Practice range for archery or firearms, 3. Golf course with or without driving range, 4. Swim and racquet club, 5. Swimming, diving or related sports center, 6. Picnic areas, 7. Racquet sports center for tennis, racquetball, badminton and similar activities, 8. Specialty outdoor activity center encompassing one or more of the following or similar uses: <ol style="list-style-type: none"> a. Roller skating, b. Skateboarding, c. Lawn bowling, bocce ball, d. Miniature golf, 	-	-	CUP - PC	

CLARIFICATION

CONFORMANCE WITH STATE LAW

Uses	Zoning Districts		
	OS	PR	FP
<ul style="list-style-type: none"> e. Waterslide, 9. Commercial athletic field for one or more of the following or similar uses: <ul style="list-style-type: none"> a. Baseball, softball or batting cage training, b. Football c. Soccer, d. Volleyball, e. Field hockey, f. Basketball, 10. Amusement parks with or without rides or live entertainment, 11. Bicycle motocross course/go-cart track or similar specialty raceway, but excluding facilities for racing of automobiles or motorcycles, 12. Air sports field for hang gliding, ultralight aircraft or ballooning, but excluding common carrier passenger aircraft service, 13. Other outdoor recreation uses which are found by the Director of Community Development to be of similar intensity and characteristics of use to those enumerated in this subdivision; 	-	-	CUP - PC
<ul style="list-style-type: none"> Q. Indoor Uses: <ul style="list-style-type: none"> 1. Museums and galleries, 2. Theaters for film, stage or music entertainment, 3. Specialty indoor activity center encompassing one or more of the following or similar uses: <ul style="list-style-type: none"> a. Bowling, b. Video games, c. Pool, billiards, d. Martial arts, e. Ice or roller skating rink, 4. Personal fitness or sports training center with primary location of facilities and equipment enclosed within a structure, 5. Dancehall or facility for dance instruction, 6. Other indoor recreation uses which are found by the City Council or Planning Commission to be of similar intensity and characteristics of use to those enumerated in this subsection. 	-	-	CUP - PC

Uses	Zoning Districts		
	OS	PR	FP
R. Subsidiary Uses: <ol style="list-style-type: none"> 1. Competition and tournament facilities, including stadium seating, concession stands and box office/ticket sales for on-premises events only, 2. Restaurant without separate bar facility, 3. Repair shop, servicing equipment associated with the activities authorized under the principal use permit, 4. Retail sales of equipment and supplies customarily associated with the activities authorized under the principal use permit, 5. Caretaker's or security officer's residence 6. Other uses deemed by the Planning Commission or City Council to be subsidiary to the principal use authorized on the site. 	-	-	CUP - PC
S. Card Clubs and similar businesses operating games of chance	-	-	Ex
T. Nightclubs	-	-	Ex
U. Other uses which are found by the Director of Community Development to be in conflict with the objective of the FP zoning district	-	-	Ex

Key:

P – Permitted Use

-- Not Allowed

CUP – Admin. – Conditional Use Permit issued by the Director of Community Development

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CUP – CC – Conditional Use Permit issued by the City Council

Ex - Excluded Uses

CHAPTER 19.144: DEVELOPMENT AGREEMENTS

Section

- 19.144.020 Purpose of Development Agreement.
- 19.144.030 Authority for Adoption.
- 19.144.040 Application Requirements.
- 19.144.050 Qualification as an Applicant.
- 19.144.060 Proposed Form of Development Agreement.
- 19.144.070 Contents of a Development Agreement.
- 19.144.080 Consistency with General and Specific Plans.
- 19.144.090 Public Hearing and Ordinance Required.
- 19.144.110 Findings.
- 19.144.120 Irregularity in Proceeding.
- 19.144.140 Time for and Initiation of Review.
- 19.144.150 Finding of Compliance–Appeal.
- 19.144.160 Finding of Noncompliance–Appeal.
- 19.144.170 Appeal of Determination.
- 19.144.190 Cancellation or Modification by Mutual Consent.
- 19.144.200 Cancellation by the City.
- 19.144.210 Rights of the Parties after Cancellation or Termination.
- 19.144.220 Rules Affecting Development Agreement.
- 19.144.230 Separate Procedure.
- 19.144.240 Effect of Development Agreement.
- 19.144.250 Construction.
- 19.144.260 Execution and Recordation of Development Agreement, Amendment or Cancellation.
- 19.144.270 Judicial Review–Time Limitation.

19.144.010 Findings and Declaration of Intent.

- A. The California Legislature in Section 65864 of the Government Code has found that the lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public. The City Council finds and determines that under appropriate circumstances, development agreements will

strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services and the allocation of costs therefor in order to achieve the maximum utilization of public and private resources in the development process, and assure, to the extent feasible, that appropriate measures to enhance and protect the environment of the City are achieved. . The City Council further finds that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing.

- B. The City Council further finds and determines that the public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the adoption of this chapter in order to provide a mechanism for the enactment of development agreements to accomplish the foregoing purposes and aims and the realization of the benefits.

19.144.020 Purpose of Development Agreement.

Development agreements enacted pursuant to this chapter are to ensure to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to specified conditions of approval, in order to implement the intent of the City Council in enacting this title. Development agreements will also ensure that all conditions of approval, including the construction of off-site improvements made necessary by such land developments, will proceed in an orderly and economical fashion to the benefit of the City.

19.144.030 Authority for Adoption.

This chapter is adopted under the authority of Government Code Sections 65864 through 65869.5.

19.144.040 Application Requirements.

An application for a development agreement shall include, in addition to the requirements of Chapter 19.12, Administration, a development agreement proposal as described in 19.144.060, Proposed Form of Development Agreement.

19.144.050 Qualification as an Applicant.

~~A.~~ Only a qualified applicant may file an application to enter into a development agreement. The Director of Community Development shall require an applicant to submit proof of his or her interest in the real property and of the authority of the agent to act for the applicant. This proof may include a title report, policy or guarantee, issued by a title company licensed to do business in the State evidencing the requisite interest of the applicant in the real property. B. Other Parties. In addition to the City and developer, any federal, State or local governmental agency or body may be included as a party to any development agreement. Any additional party shall be made a party to the development agreement pursuant to the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.) providing for joint powers agreements, or provisions of other applicable federal, State or local law, in order to create a legally binding agreement between such parties.

19.144.060 Proposed Form of Development Agreement.

Each application shall be accompanied by the form of development agreement proposed by the City. This requirement may be met by designating the City's then standard form of development agreement as prepared by the City Attorney and including specific proposals for changes in or additions to the language of the standard form. The City's Proposed Form of Development Agreement shall include the following:

- A. The parties to the development agreement;
- B. The nature of the applicant's legal or equitable interest in the real property constituting such applicant as a qualified applicant under this chapter;
- C. A description of the development project sufficient to permit the development agreement to be reviewed under the applicable criteria of this chapter. Such description may include, but is not limited to, references to site and building plans, elevations, relationships to adjacent properties and operational data. Where appropriate, such description may distinguish between elements of the development project which are proposed to be fixed under the development agreement, those which may vary and the standards and criteria pursuant to which the same may be reviewed;
- D. An identification of the approvals and permits for the development project enacted to the date of or contemplated by the development agreement;
- E. The duration of the development agreement;
- F. The permitted uses of the property;
- G. The maximum height and size of the proposed buildings, and provisions for dedications of land for public purposes;
- H. A program and criteria for periodic review under this chapter;
- I. Appropriate provisions guaranteeing or securing performance of the development agreement on the part of the developer;
- J. Specific standards for periodic review of a development agreement;
- K. Specific standards to insure compliance by the parties to a development agreement;
- L. The Development Agreement may provide that construction shall be commenced within a specified time and that the project or any phase shall be commenced within a specified time and that the project and any phase be completed within a specified time.
- M. Information required in accord with Section 19.140.070, Content of a Development Agreement;
- N. Any other relevant information which may be deemed necessary by the Director of Community Development pursuant to this chapter.

19.144.070 Contents of a Development Agreement.

- A. A development agreement shall specify its duration, the permitted uses of the property-, the density and/or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.
- B. A development agreement shall attach and incorporate by reference all conditions of approval imposed by the City with respect to the development project.
- C. All development agreements shall contain an indemnity and insurance clause in form and substance acceptable to the City Attorney, requiring the developer to indemnify the City against claims arising out of the development process and limiting the developer's sole remedy to specific performance and thereby eliminating any potential damages to be paid by the City under the development agreement; provided, that, these provisions do not violate applicable law or constitute a joint venture, partnership or other participation in business affairs of developer by the City.

D. All development agreements, or any part of development agreements, subsequent condemnation proceedings by the City.

CONFORMANCE WITH GENERAL PLAN

E. Community Benefits: At the discretion of the City Council, additional heights over the base height standard in gateways and nodes identified in the Special Areas Map (Fig. X of the General Plan) may be approved as shown in the Community Form Map (Fig. Y of the General Plan). In order to obtain additional height, a development should include the following community benefits.

- 1. Ground floor retail component; and
- 2. One or more of the following benefits equivalent to at least 15% of the increase in value of the site attributed to the increase in height, based on a pro-forma, prepared by the developer and peer-reviewed by the City. The cost to the City of the peer-review shall be paid for by the developer:
 - a. Transportation and Mobility Improvements
 - i. New or expanded bicycle and pedestrian facilities;
 - ii. Transit improvements and/or amenities including adaptive traffic signal management systems;
 - iii. Participation in a community shuttle program (to provide connections to major employment and community nodes, including community facilities and shopping).
 - b. Public Entity or Facilities: Provide land or space for public entities, such as the City or schools.
 - c. Senior Housing. Provide at least 15% of housing for seniors, if the proposed project includes a residential component and is not already targeted towards seniors.
 - d. Public Art and Cultural Facilities
 - i. Construction of a new, or expansion to, a community facility (e.g. recreation center, teen facility, etc.)

- ii. Construction of a new, or expansion of, a community gathering space (e.g. meeting/conference space, cultural center or museum).
- e. Parks and Open Space
 - i. New publicly accessible park and/or open space within a project in excess of park dedication requirements.
 - ii. Dedication of land for a new or expanded park outside the project boundary in excess of park dedication requirements.
- f. Cash-in-Lieu Contribution. A Cash-in-Lieu contribution is a contribution made to the City by a developer or applicant and is equivalent to at least 15% of the increase in value of the site attributed to the increase in height achieved through the Community Benefits Program. The funds are allocated exclusively for purchase of land, capital improvements or operations related to items a, b, d, e, and towards the construction of affordable housing. All Cash-in-Lieu Contributions shall be made to the City.

~~D.~~

19.144.080 Consistency with General and Specific Plans.

Before the City Council may approve the development agreement, it must find that its provisions are consistent with the General Plan and any applicable specific plans of the City. If the City Council approves the development agreement in the form recommended by the Planning Commission, without further findings, then it shall be deemed to have also adopted the findings of the Planning Commission.

19.144.090 Public Hearing and Ordinance Required.

A development agreement is a legislative act and shall be enacted by ordinance only after a public hearing before the City Council. The ordinance shall refer to and incorporate by reference the text of the development agreement.

19.144.110 Findings.

- A. Development Agreement shall be enacted by ordinance by the City Council upon making the following findings:
- B. Is consistent with the objectives, policies, general land uses and programs specified in the General plan and any applicable specific plan;
- C. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located;
- D. Is in conformity with and will promote public convenience, general welfare and good land use practice;
- E. Will not be detrimental to the health, safety and general welfare;
- F. Will not adversely affect the orderly development of property or the preservation of property values; and

G. Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

19.144.120 Irregularity in Proceeding.

Formal rules of evidence or procedure which must be followed in a court of law shall not be applied in the consideration of a proposed development agreement under this chapter and the provisions of Chapter 19.12, Administration, shall provide the procedure for such consideration. No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to the application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court finds that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error has not occurred or existed. There is no presumption that error is prejudicial or that injury resulted if error is shown.

19.144.140 Time for and Initiation of Review.

The Director of Community Development shall review the development agreement annually in order to ascertain the good faith compliance by the developer with its terms. The Developer shall submit documentation as required by the Director of Community Development to demonstrate good faith compliance by the developer of the terms of the development agreement. The time for review may be modified by the City Council at any time upon reasonable notice to the developer, and the development agreement may prescribe a procedure and standards and different times for review of compliance with its terms; provided, however, that a development agreement shall in any event be reviewed for compliance at least once every twelve months.

19.144.150 Finding of Compliance–Appeal.

If the Director of Community Development finds good faith compliance by the developer with the terms of the development agreement, he or she may issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records. The issuance of a certificate of compliance by the Planning Director and the expiration of the appeal period hereinafter specified without appeal, or the confirmation by the City Council of the issuance of the certificate on such appeal, shall conclude the review for the applicable period and such determination shall be final.

19.144.160 Finding of Noncompliance–Appeal.

If the Planning Director, on basis of substantial evidence, finds the developer has not complied in good faith with the terms of the development agreement, he or she may specify in writing to the developer the respects, in which developer has failed to comply. The Director of Community Development shall also specify a reasonable time for the developer to meet the terms of compliance. If such areas of noncompliance are not perfected within the reasonable

time limits as prescribed, the development agreement shall be subject to modification or cancellation by the City Council.

19.144.170 Appeal of Determination.

Any interested person may file an appeal of the issuance of a certificate of compliance to the City Council within ten days after the certificate's issuance. The developer may also file an appeal to the City Council of the finding of the Director of Community Development of noncompliance within ten days after the giving of notice of such determination. All appeals before the City Council shall be conducted pursuant to a noticed hearing in the same manner as any other appeal before the City Council, at which evidence shall be taken and findings made.

19.144.190 Cancellation or Modification by Mutual Consent.

Any development agreement may be canceled or amended by mutual consent of the parties, but only in the manner provided in California Government Code Section 65868. Any proposal to cancel or amend a development agreement shall be heard and determined in accordance with the same procedures specified by this chapter for approval of a development agreement.

19.144.200 Cancellation by the City.

- A. The City Council shall conduct a noticed hearing on the recommendations of the Director of Community Development at which the developer and any other interested person shall be entitled to submit evidence and testimony as may be germane to the issue of the developer's good faith compliance with the terms of the development agreement. If the City Council finds, based on substantial evidence, noncompliance with the terms and conditions of the development agreement, it may either cancel the development agreement upon giving sixty days' notice to the developer, or in its discretion, may allow the development agreement to be continued by imposition of new terms and conditions intended to remedy noncompliance. The City Council may impose conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final.
- B. Any cancellation or imposition of new terms and conditions pursuant to this section shall be noticed in accordance with the procedures specified in Chapter 19.12, Administration of this code.

19.144.210 Rights of the Parties after Cancellation or Termination.

In the event that a development agreement should be canceled, or otherwise terminated, unless otherwise agreed, all rights of the developer, property owner or successors in interest under the development agreement shall terminate. Any and all benefits, including money or land, received by the City shall be retained by the City. Notwithstanding the above provision, any termination of the development agreement shall not prevent the developer from completing and occupying a building or other improvements authorized pursuant to a valid building permit previously approved by the City or under construction at the time of termination, but the City may take any action permitted by law to prevent, stop, or correct any violation of law occurring during and after construction, and the developer or any tenant shall not occupy any portion of the project or any building not authorized by a previously issued building permit. As

used herein, "construction" means work under a valid building permit, and "completing" means completion for beneficial occupancy for developer's use, or if a portion of the project is intended for use by a lessee or tenant, then for such portion "completion" means completion except for interior improvements such as partitions, duct and electrical runouts, floor coverings, wall coverings, lighting, furniture, trade fixtures, finished ceilings, and other improvements typically constructed by or for tenants of similar buildings. All such uses shall, to the extent applicable, be deemed nonconforming uses and shall be subject to the nonconforming use provisions of the planning code.

19.144.220 Rules Affecting Development Agreement.

All development agreements shall be subject to the regulation and requirements of the laws of the State, the Constitution of the United States and any codes, statutes or executive mandates and any court decisions, State or federal. In the event that any such law, code, statute, mandate or decision made or enacted after a development agreement has been entered into prevents or precludes compliance with one or more provisions of the development agreement, then such provisions of the development agreement shall be modified or suspended in the manner and pursuant to the procedures specified in the development agreement, as may be necessary to comply with such law, code, statute, mandate or decision.

19.144.230 Separate Procedure.

All development agreements entail and consist of a separate procedure from other land use planning procedures and shall not take the place of the zoning ordinances, the General Plan, planned development permits, development permits, conditional use permits, subdivision approvals, building permits or any other City planning functions. If so specified in the development agreement, it shall constitute an approval pursuant to such planning procedures as if separately enacted under other City planning ordinances. To the extent practicable, public hearings on a proposed development agreement shall be held concurrently with the public hearings on all related land use approvals and all such approvals shall be made concurrently with the approval of the development agreement.

19.144.240 Effect of Development Agreement.

When approved, the development agreement and any development control maps and all notations, references and regulations which are a part of the development agreement shall be part of the development agreement ordinance. Development control maps include, but are not limited to, regulations intended to carry out any plan respecting location or type of activities; height, bulk, siding or design of structures; location or design of open areas; and landscaping and other comparable regulations.

19.144.250 Construction.

This chapter and any subsequent development agreement shall be read together. With respect to any development agreement enacted under this chapter, any provision of such a development agreement which is in conflict with this chapter shall be void. Unless otherwise provided by the development agreement, the City's rules, regulations and official policies governing permitted uses of the land, governing density and governing design, improvement

and construction standards and specifications applicable to development of the property subject to a development agreement shall be those City rules, regulations and official policies in force at the time of the approval of the development agreement by the City Council; provided, however, that the developer is subject to all increases in City imposed fees and charges with respect to subsequent applications for development and construction within the property subject to a development agreement.

19.144.260 Execution and Recordation of Development Agreement, Amendment or Cancellation.

A. Within ten days after the ordinance approving the development agreement takes effect, the City Council shall execute the development agreement, and the City Council Clerk shall have the development agreement recorded with the County Recorder.

B. If the parties to the development agreement or their successors in interest amend or cancel the development agreement as provided in Government Code Section 65868, and this chapter, or if the City Council terminates or modifies the development agreement as provided in Government Code Section 65865.1 and this chapter for failure of the developer to comply in good faith with the terms or conditions of the development agreement, the City Council Clerk shall, after such action takes effect, have notice of such action recorded with the County Recorder.

19.144.270 Judicial Review–Time Limitation.

Any action or proceeding to attack, review, set, set aside, void or annul, any decision of the City pursuant to this chapter shall not be maintained by any person unless the action or proceeding is commenced within ninety days after the date of decision as provided in Section 1094.6 of the Code of Civil Procedure, State of California.

CHAPTER 19.172: BELOW MARKET RATE HOUSING PROGRAM

Section

CONFORMANCE WITH
GENERAL PLAN

19.172.010 Purpose

19.172.020 Below Market Rate Housing Program Requirements

19.172.030 BMR Program Administration

19.172.010 Purpose

The purpose of this chapter is to:

- A. Encourage the development and availability of housing affordable to a broad range of households with varying income levels within the city as mandated by State Law, California Government Code Sections 65580 and the City of Cupertino's General Plan, including its Housing Element.
- B. Promote the city's goal to add affordable housing units to the city's housing stock in proportion to the overall increase in new jobs and market rate housing units.
- C. Mitigate the need for affordable housing created by new market-rate housing development and ensure that market-rate housing development does not utilize all land available in the city for affordable housing.
- D. Mitigate environmental and other impacts that accompany new residential and commercial development by protecting the economic diversity of the city's housing stock, with the goal of reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region.
- E. Increase the supply of for-sale and rental housing for families and individuals employed in Cupertino whose incomes are insufficient to afford market rate housing. Since the historical rate of production of affordable housing in the city, by private developers is very low, the BMR program is essential to meet the city's need for affordable housing.

19.172.020 Below Market Rate (BMR) Housing Program Requirements

- A. Developers of housing development projects must comply with the requirements set forth in Residential Housing Mitigation Program of the City of Cupertino's Housing Element of the General Plan.
- B. To the extent permitted by law, the City's objective is to obtain actual affordable housing units within each development rather than off-site units or mitigation fee payments. Provision of off-site units, land donation, or payment of Housing Mitigation Fees may only be permitted as specified in the Residential Housing Mitigation Program rules and regulations.

19.172.030 BMR Program Administration

- A. The City Council shall adopt rules and regulations consistent with the provisions of this chapter and the Housing Element for the purpose of carrying out the administration of the

Residential Housing Mitigation Program. Such rules and regulations shall address, but are not limited to, program eligibility requirements, affordable housing cost, income limits, preferences for housing applicants, minimum occupancy limits, waiting list procedures, buyer selection procedures, methodology for the calculation of affordable housing cost and affordable rent, resale restrictions and reasonable accommodations for disable applicants. The rules and regulations shall also address Residential Housing Mitigation Program components such as the provision of rental BMR units in for-sale housing developments or off-site BMR units. A copy of such policies, rules and regulations shall be on file and available for public examination in the office of the city clerk.

B. Failure or refusal to comply with any such rules, regulations or agreements promulgated under this section shall be deemed a violation of this chapter.