

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTERS 19.04 (GENERAL PROVISIONS), 19.08 (DEFINITIONS), AND 19.60 (GENERAL COMMERCIAL (CG) ZONES)

The City Council of the City of Cupertino finds that:

1. In order to maintain and enhance the community's quality of life, the City will periodically review and update land use and zoning requirements for retail, commercial and office development in order to attract high-quality sales-tax producing businesses and services, while adapting to the fast-changing retail, commercial and office environment, and ensure that existing businesses are encouraged to reinvest and grow in Cupertino.
2. The City Council of the City of Cupertino held a duly noticed public hearing on October 1, 2024, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

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

SECTION 1. Adoption.

The Cupertino Municipal Code is further amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this

ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: Effective Date.

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

SECTION 4: Publication.

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

INTRODUCED at a regular meeting of the Cupertino City Council on October 1, 2024 and **ENACTED** at a regular meeting of the Cupertino City Council on October 15, 2024 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN

SIGNED:	
_____ Sheila Mohan, Mayor City of Cupertino	_____ Date

ATTEST:	
Kirsten Squarcia, City Clerk	Date
APPROVED AS TO FORM:	
Christopher D. Jensen, City Attorney	Date

**ATTACHMENT A - AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTERS
19.04 (GENERAL PROVISIONS), 19.08 (DEFINITIONS), AND 19.60
(GENERAL COMMERCIAL (CG) ZONES)**

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

1. Amendments to Title 19 concerning General Commercial Land Use

19.04.100 Exclusionary zoning.

When a use is not specifically listed as a permitted or conditional use, it shall be assumed that such use is prohibited, unless it is determined by the Director of Community Development that the use is similar to, and not more intensive than, the uses listed. Requests for determinations for specific uses shall be submitted to the Director of Community Development in writing, with a detailed description of the proposed use, its proposed location, and intended hours of operation. Additional information may be required by the Director of Community Development in order to prepare the determination for individual uses. Any decision by the Director of Community Development regarding a requested determination shall be in writing and shall be final.

19.08.030 Definitions.

"Bar Facility" means part of an establishment used primarily for the sale of alcoholic beverages to be consumed on the premises, provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed. This is in contrast to a "Drinking

establishment” which is a business that is primarily devoted to the selling of alcoholic beverages for consumption on the premises.

~~“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.~~

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

“Farmers’ market” means a market certified by the state or county agricultural commission under Title 3, Chapter 3, Article 6.5 of the California Administrative Code which allows direct retail sale by farms to the public of such items as fruits, vegetables, nuts, eggs, honey, nursery stock, cut flowers, live animals and inspected meats and seafood.

“Food Store” may include, but not be limited to, the following retail establishments:

1. “Grocery store”. A Retail Sales and Services Use that:

a. Offers a variety of unrelated, non-complementary food and non-food commodities, such as beverages, dairy, dry goods, fresh produce and other perishable items, frozen foods, household products, and paper goods; and

b. May prepare food on site for immediate consumption.

2. “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, excluding delicatessens and other specialty food shops and establishments which have a sizable assortment of fresh fruits, vegetables, and fresh-cut meats.

3. “Specialty food stores” means a retail establishment under 3,000 square feet that specializes in selling a specific type of food product with a limited scope of inventory. This food product may be prepared and sold on-site or purchased wholesale, and consumption of the goods occurs primarily off premises. Examples include butcher shops, delicatessens, bakeries, fish mongers, coffee shops, donut shops, ice cream stores, and produce markets. Specialty Food Stores are not considered fast food restaurants.

Food Stores may provide beer, wine, and/or liquor sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general) that occupy less than 15% of the Occupied Floor Area of the establishment (including all areas devoted to the display and sale of alcoholic beverages).

"Pet Day Care" means any premises where animals are trained, exercised and socialized, but not kept or boarded overnight, bred, sold, or let for hire. The hours of operation shall be limited daily from 7.a.m. to 9 p.m..

"Restaurant":

1. Restaurant, Fast-Food/~~Self- Service~~. "Fast-food/~~Self Service~~ 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/~~self-service~~ restaurants.

2. Restaurant, Full Service. "Full-service restaurant" means any restaurant which is not a fast-food or ~~self-service 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.

"Specialized School" means a private academic educational institution, providing specialized education/training. Examples include the following:

- art school
- establishments providing courses by mail/online
- ballet and other dance school
- language school
- business, secretarial and vocational
- music school
- computers and electronics school
- professional school (law, medicine, etc.)
- drama school
- seminaries/religious ministry training facility
- driver education school
- martial arts

Also includes facilities, institutions and conference centers that offer specialized programs in personal growth and development, such as fitness, environmental

awareness, arts, communications, and management. Specialized School does not include pre-schools, after school care and child day care facilities.

~~"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.~~

CHAPTER 19.60: GENERAL COMMERCIAL (CG) ZONES

19.60.030 Permitted, Conditional and Excluded Uses.

Permitted, Conditional and Excluded Uses that may be conducted from property zoned general commercial (CG), are identified in Table 19.60.030, Permitted, Conditional and Excluded Uses in General Commercial Zoning Districts below.

Table 19.60.030: Permitted, Conditional and Excluded Uses in General Commercial Zoning Districts

Zoning Districts	CG
Uses	
1. Retail businesses, such as, but not limited to: a. food stores, ~~(excluding convenience markets),~~ b. drugstores, c. apparel shops, d. variety stores and e. hardware stores	P
2. ~~Full-service r~~ Restaurants (without ~~separate~~ bar facilities), where: a. all public entrances face away from <u>low-density residential (1-5 Dwelling Units an Acre) zoning districts developments that share property lines</u> and b. where the required customer parking is located within close proximity of the entrance	P
3. ~~Specialty food stores which cumulatively occupy more than fifty percent of the building floor space in a single building or shopping center~~ <u>Farmers' Market</u>	CUP - Admin.
4. Eating establishments	
a. Full-service restaurants with ~~separate~~ bar facilities ~~Fast food restaurants,~~ and	CUP - <u>PCAdmin</u>

Zoning Districts	CG
b. Any entertainment facilities (e.g., dancing, live music) in association with full-service or fast-food/self-service restaurant	P
5. Any commercial establishments with drive-through facilities	CUP - PC
6. Late evening activities which occur between eleven p.m. through seven a.m.	CUP - ~~PC~~ <u>Admin</u>
7. Offices such as those below, provided that such uses do not comprise more than twenty-five percent of the building space in a shopping center: a. Professional, b. General, c. Administrative, d. Business offices, e. Business services, such as: i. advertising bureaus, ii. credit reporting, iii. accounting and similar consulting agencies, iv. stenographic services, and v. communication equipment buildings	P
8. Commercial Office uses such as those below which directly serve the public a. Banks, b. Financial institutions, c. Insurance agencies d. Real estate agencies, e. Travel agencies, f. Photography, and g. Similar studios	P
9. Laundry facilities, including those below, provided that the solvents used in the cleaning process shall not be used or stored in any manner not approved by the State Fire Marshal and provided the establishment received approval from the Bay Area Air Quality Management District. a. Self service operations b. Full service operations; and	P

Zoning Districts	CG
c. Retail dry cleaning establishments. Dry cleaning is limited to items directly delivered to the establishment by retail customers	
10. Private clubs, lodges, or fraternal organizations	
a. Uses in (10) above as subordinate uses in buildings intended primarily for other permitted uses provided for in this section	P
b. Uses in (10) above as principal use buildings	CUP - PC
11. Fraternity and sorority houses	CUP - PC
12. Limited repair services, such as: a. Jewelry, b. Household appliance, ~~c. Typewriter and~~ ~~d. c.~~ Business machine repair shops <u>d. Personal electronic devices</u>	P
13. Personal service establishments such as: a. Barbershops, b. Beauty parlors, c. Massage establishments, d. Shoe repair shops, and e. Tailor shops	P
14. Accessory facilities and uses customarily incidental to permitted uses and otherwise conforming with provisions of Chapter 19.100 of this title	P
15. A maximum of four video game machines, provided these machines are incidental to the main activity of the business	P
~~16. Specialty food stores which cumulatively comprise less than fifty percent of the retail space of a single building or shopping center~~	P
~~17.~~ <u>16.</u> Pet shops and ~~pet services~~ facilities ~~(buildings) and for~~ <u>pet services such as,</u> bathing, clipping, trimming, <u>grooming, pet</u> <u>day care,</u> and similar services for pets.	
a. Uses in (~~17~~ <u>16</u>) above which are located in a sound-proof structure, and are in compliance with Santa Clara County Health Department regulations <u>and Chapter 8.05 of this Code</u>	P

Zoning Districts	CG
b. Uses in (~~1716~~) above which are not located in a sound-proof structure, and are in compliance with Santa Clara County Health Department regulations <u>and Chapter 8.05 of this Code.</u>	CUP - ~~PC~~ Admin
~~1817.~~ a. Child care centers, b. Day nurseries, and c. Playgrounds	CUP - PC
~~1918.~~ Vocational and specialized schools, dance and music studios, gymnasiums and health clubs	
a. When the uses in (~~1918~~) above cumulatively comprise < 50% of the space in a shopping center, provide adequate parking as determined by Chapter 19.124 and meet noise requirements as determined by Chapter 10.48	P
b. When the uses in (~~1918~~) above cumulatively comprise ≥ 50% of the space in a shopping center, provide adequate parking as determined by Chapter 19.124 and meet noise requirements as determined by Chapter 10.48	CUP - Admin.
~~2019.~~ Retail/service kiosks that meet the following: a. Are located in an unenclosed space visible from public streets or other publicly owned space, b. Where adequate parking is provided as determined by Chapter 19.124, c. Which do not result in traffic or circulation impacts, d. Have attractive designs and landscaping, and e. Are compatible with the surrounding architecture	CUP - Admin.
~~2120~~ Other uses which, in the opinion of the Director of Community Development, are similar to the permitted uses in the CG zoning district, and which do <u>not have the potential to</u> create significant adverse impacts to the surrounding area due to odor, dust, smoke, glare, fumes, radiation, vibrations, noise, traffic or litter	P
~~2221.~~ Commercial parking and parking garages	CUP - PC
~~2322.~~ Convenience markets	CUP - PC
~~2324.~~ Hotels, motels, and boardinghouses	CUP - PC
~~2425.~~ Liquor stores	CUP - PC
~~2526.~~ Drinking establishments	CUP - PC

Zoning Districts	CG
~~2627~~ . Commercial ~~entertainment~~ <u>recreation</u> establishments, such as: a. Indoor theaters, b. Bowling alleys, c. Billiard and pool parlors, d. Dance halls, e. Skating rinks, and f. Arcades	CUP - PC
~~2728~~ . Mortuaries	CUP - PC
~~2829~~ . Automotive service stations, automobile washing facilities	CUP - PC
~~2930~~ . Automobile, trailer, tire and boat sales and rental, limited to new and used vehicles in operable condition	CUP - PC
~~3031~~ . Automobile and Tire repair shops	CUP - PC
~~3132~~ . Business activities which display merchandise ~~or provide services~~ in an unenclosed space visible from a public street or adjoining residential property, except activities which display merchandise ~~as provided in compliance with requirements of by~~ Section 19.60.050:	~~CUP - PC~~
~~a. The display of merchandise in front of stores with $\geq 20,000$ square feet of floor area.~~	<u>P</u>
~~b. The display of merchandise in front of stores with $< 20,000$ square feet of floor area.~~	<u>CUP - Admin</u>
~~32. Business activities which provide services in an unenclosed space visible from a public street or adjoining residential property, except activities which provide services in compliance with requirements of Section 19.60.050.~~	<u>CUP - Admin</u>
~~33. Outdoor Seating compatible with Chapter 19.124 of this code~~	<u>P</u>
~~3433~~ . Business activities which incorporate contracting services for which a contracting license issued by the State is required	CUP - PC
~~3534~~ . Other commercial uses which are neither permitted uses nor excluded uses and which are, in the opinion of the Planning Commission, consistent with the character of a general commercial (CG) zone of the same general character listed in this section, and which do not have the potential to create significant adverse impacts to the surrounding area due to	CUP - PC

Zoning Districts	CG
odor, dust, fumes, glare, radiation, vibration, noise, traffic or litter	
~~3635~~ . Businesses where the primary activity is related to the on-site manufacturing, assembly or storage of building components intended for use by general contractors or wholesalers	Ex
~~3736~~ . Storage garages, and other wholesale businesses, except computer hardware and software and communications businesses for which the City may generate sales tax revenue where the primary activity is to conduct sales and services to other businesses rather than to direct retail customers	Ex
~~3837~~ . Other uses which, in the opinion of the Planning Commission, are objectionable by reason of odor, dust, smoke, glare, fumes, radiation, vibration, noise, traffic or litter shall be excluded	Ex
~~3938~~ . Warehouses	Ex
~~4039~~ . Lumberyards	Ex
~~4140~~ . Nurseries and greenhouses	Ex
~~4241~~ . Commercial excavating of building or construction materials	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 Ex – Excluded Uses	

19.60.50 Land Use Activity.

A. Land Use Criteria. Unless otherwise provided by a conditional use permit, the following regulations shall apply to all users governed by this chapter.

1. The activity must be conducted entirely within a building or enclosed patio or atrium except for:

a. Vehicular parking including the parking of business-related vehicles that comply with the sign, off-street parking and noise regulations;

b. Outdoor seating for restaurants ~~as long as the number of seats do not exceed twenty percent of the number of authorized indoor seats and is otherwise~~

~~compatible with Chapter 19.124 of this code; in accordance with requirements of Section 19.60.040.~~

c. Special promotional events undertaken by permitted businesses;

d. The display of merchandise in front of stores ~~containing a minimum of twenty thousand square feet of floor area. The merchandise~~ must be displayed under a roof overhang or canopy, and must be displayed in an organized, neat and safe fashion ~~and, in accordance with requirements of Section 19.60.040.~~

e. Incidental activities directly related to the permitted business. The incidental activity must comply with noise standards, all other applicable health and safety regulations and must use equipment which, when not in use, is stored in an approved enclosed space.

2. The activity must comply with the City noise standards, including pick-up and delivery times. Some activities are permitted when located in a sound-proof space. A sound-proof space is an enclosed area which is designed to prevent internally generated noise from being audible from a receptor located outside of the structure. An acoustical engineer shall certify the design and operating conditions of a sound-proof space.

3. The activity must involve direct retailing of goods or services to the general public. The retailing and servicing activity must comprise at least fifty percent of the floor space, including enclosed patio and atrium space, and must represent the primary emphasis of the business. Window displays shall reflect the retail emphasis.

4. Certain activities which require a hazardous material plan are permitted subject to permitting or licensing by an authorized public agency charged with the responsibility to protect the public health and welfare regarding the involved hazardous material. Examples: swimming pool and spa supply, photo finishing, dental office.

5. The activity complies with applicable off-street parking standards including shared parking arrangements specified in the off-street parking ordinance.

19.60.060 Development Standards.

Table 19.60.060 sets forth the rules and regulations pertaining to the development of property located in the General Commercial (CG) zoning district.

Table 19.60.060: Development Standards

A. Lot Area and Coverage	No minimum lot area or coverage. ~~However, if specified in the General Plan or applicable Specific Plan, M~~ must <u>comply with be in conformance with the General Plan or applicable Specific Plan that standard</u> . Must have sufficient
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	area to satisfy off-street parking and loading requirements contained in this title.
B. Height of Buildings and Structures	30 feet unless otherwise permitted by the General Plan or applicable Specific Plan.
C. Required Setbacks for Buildings and Enclosed Patio/Atrium Space – <u>Setbacks are established based upon policies contained in the General Plan and/or applicable Specific Plan. When setbacks are not established in other land use or zoning documents, the setbacks in the CG zone shall apply.</u>	
1. Front Yard	Established based upon special policies contained in the General Plan and/or applicable specific plan to: ▪ Insure sufficient space to provide adequate light, air and visibility at intersections; ▪ Assure general conformity to yard requirements of adjacent or nearby zones, lots or parcels; and ▪ Promote excellence of development.
2. Minimum Side and Rear Yard	No side or rear yard setback required unless lot abuts any residential or agricultural-residential zone in which case the following regulations apply:
a. Side Yard Setback	
i. Interior Side	12 feet, or a total setback equal to one foot of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
ii. Street Side of Corner Lot	12 feet
b. Rear Yard Setback	20 feet, or a total setback equal to one and one-half feet of additional setback for each foot of height of a commercial building measured from its eave line or top of parapet, whichever is more restrictive.
D. Noise Standards –	
1. New Construction and uses ~~approved as a Conditional Use~~ that have a high probability of generating noise that adjoin residential districts shall be:	
a. Exterior Walls	Designed to attenuate all noise emanating from interior retail space.
b. Loading Docks and Doors	Located away from residential districts. Required Fire Doors are excluded.

c. Mechanical and other equipment	Air conditioning, exhaust fans, and other mechanical equipment shall be acoustically isolated to comply with the noise ordinance
d. Sound Wall	Install a minimum eight-foot-high masonry sound wall on or adjacent to the common property line
e. Acoustical Engineer	<u>Design and operational space must be c</u> ertified by an acoustical engineer that the above sound attenuation measures comply with the intent of the regulation and the City's community noise ordinance
2. In addition to (1) above, retail structures in a mixed-use residential development shall employ noise attenuation techniques recommended by an acoustical engineer to comply with the community noise ordinance.	
<u>E. Odors – New construction and uses that have a high probability of generating odors adjoining residential developments or in mixed-use residential developments shall employ odor abatement techniques, including but not limited to, the installation of activated charcoal filtration systems and/or similar odor abatement systems certified by an air quality specialist for use.</u>	
<u>EE</u> . Lighting – New lighting fixtures for any new site construction or building improvements: shall meet the requirements in Chapter 19.102	
<u>EG</u> . Landscaping Plan	<u>1. Shall be designed to provide an effective year-round landscaping screen in the setback area adjoining any lower-density residential property. The intent of the plan is to screen the building from the rear yard of a residence within five years.</u> <u>2. Shall be maintained, with appropriate irrigation, provided to all landscaped areas.</u> <u>3. Shall comply with the requirements of Chapter 14.15 of the Municipal Code.</u> <u>4. Shall be subject to the requirements of Chapter 14.18 of the Municipal Code.</u>
<u>GH</u> . Utilities	1. The following amenities and utilities shall be installed subject to the specifications of the subdivision ordinance: a. All utilities, including water, gas, sanitary and storm sewers, underground power systems, and b. Amenities including, lighting electroliers, curbs, gutters, streets and sidewalks and

	c. Connections to main systems shall be installed subject to the specifications of the subdivision ordinance of the City. 2. All wires, pipes, cables, utilities and connections shall be placed in underground or subsurface conduits subject to the specifications of the subdivision ordinance of the City. 3. Underground vaults, or, <u>utility spaces integrated within buildings, if allowed, or alternatively,</u> well screened areas, if underground vaults <u>or spaces integrated within buildings</u> are deemed to be infeasible by the City Engineer and the Director of Community Development, must be provided for the installation of the necessary utilities.
<u>III.</u> Mechanical Equipment	Air conditioning, exhaust fans, and other mechanical equipment shall be visually screened.