CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO. 2023-14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING APPROVAL OF AMENDMENTS TO CUPERTINO MUNICIPAL CODE CHAPTER 19.76 (TABLE 19.76.030) TO ALLOW PRIVATELY OPERATED EDUCATIONAL USES AND PRIVATELY OPERATED PUBLIC SERVING USES IN THE BA ZONING DISTRICT

The Planning Commission recommends that the City Council:

1. Determine that the Project, as proposed, is categorically exempt from the California Environmental Quality Act ("CEQA") per section 15301 (Existing Facilities) of the CEQA Guidelines because it can be seen that the regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply;

2. Adopt the proposed amendments to the Municipal Code as indicated in Exhibit A

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 14th day of November, 2023, by the following roll call vote:

AYES: COMMISSIONERS: Lindskog, Mistry, Fung, Madhdhipatla, Scharf
NOES: COMMISSIONERS: None
ABSTAIN: COMMISSIONERS: None
ABSENT: COMMISSIONERS: None

ATTEST:

Piu Ghosh
Planning Manager

APPROVED:

Steven Scharf
Chair, Planning Commission

EXHIBIT A

DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CUPERTINO MUNICIPAL CODE CHAPTER 19.76 (TABLE 19.76.030) TO ALLOW PRIVATELY OPERATED EDUCATIONAL USES AND PRIVATELY OPERATED PUBLIC SERVING USES IN THE BA ZONING DISTRICT

SECTION I: PROJECT DESCRIPTION

Application No.: MCA-2023-003
Applicant: City of Cupertino
Location: Public Building (BA) Zoned Properties

SECTION II: RECITALS

WHEREAS, Cupertino Municipal Code Chapter 19.76 outlines the requirements for uses proposed in the City's Public Building (BA) zoning district; and

WHEREAS, the maintenance and retention of public school sites as educational facilities is considered as being in the public interest; and

WHEREAS, the City has certain General Plan Goals, Policies and Strategies that support the retention of publicly owned property, it does not have regulations that specifically address the private use of these properties, and that the amendments to Chapter 19.76 will provide a standard to review private operations on publicly owned property;

WHEREAS, the Ordinance amends the City's Municipal Code as set forth in Exhibit A to clarify the development standards to be applied to private uses on publicly owned land within BA Zones; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare; and

WHEREAS, adoption of the Ordinance is exempt from CEQA under Guidelines section 15301 because it can be seen that the regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on November 14, 2023 to consider the Ordinance; and

WHEREAS, on November 14, 2023, by Resolution 2023-14, the Planning Commission recommended on a unanimous vote that the City Council adopt the proposed Municipal Code Amendment to clarify development standards in the Public Building (BA) Zones; and

WHEREAS, on December 5, 2023, upon due notice, the City Council has held at least one public hearing to consider the Municipal Code Amendment; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

That after careful consideration of facts, exhibits, testimony and other evidence submitted in this matter the City Council hereby adopts the Ordinance based on the findings described below, the public hearing, and the record, as follows:

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code Sections 19.152.020C and 19.152.030D:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

   The proposed amendments have been adopted in accord with the requirements of Title 19, and the proposed amendments to Section 19.76.030 are proposed to achieve internal consistency. The amendments are consistent with the Recreation, Parks, and Community Servies Element of the General Plan, which in Strategy RPC-2.1.2 states that the City will Zone all public school sites for public use to allow for the public to use [the] sites, when not in use by schools, through shared arrangements. The proposed Ordinance is intended to update the City's conditionally allowed uses in the BA Zone, in accordance with historical practices, as described in the staff report presented to the Planning Commission and City Council.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

   The proposed amendment is categorically exempt from the CEQA pursuant to section 15301 (Existing Facilities) of the CEQA Guidelines because it can be seen that the

regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment and none of the exceptions in CEQA Guidelines section 15300.2 apply.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

   The proposed ordinance amendment is not being applied to any specific site. The modifications would be applied to sites in the BA Zone which are currently maintained as publicly operated public serving uses. The expansion of allowed uses to privately operated public serving uses is not expected to result in a substantial change in operations and therefore, the sites in the BA zone are considered to be physically suitable for the anticipated uses.

4. The proposed zoning will promote orderly development of the City.

   The proposed amendment is intended to promote the continued use of BA zoned properties for public serving uses with flexibility in operator. The amendment is not expected to result in significant modifications or physical changes to these sites which are currently used for public serving uses.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

   The proposed ordinance amendment is not being applied to any specific site. The modifications would be applied to sites in the BA Zone which are currently maintained as publicly operated public serving uses. The expansion of allowed uses to privately operated public serving uses is not expected to result in a substantial change in operations. The effect of the private operation on the health, safety, peace, moral and general welfare of persons residing or working in the neighborhood of a site will be reviewed when an application is made for a specific site.

Section 3. The City Council hereby approves the following amendments to the Cupertino Municipal Code:

1. Table 19.76.030 in Section 19.76.030 of the Cupertino Municipal Code is hereby amended to read as follows:

   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. **Privately operated educational uses and privately operated public serving uses, including, but not limited to, day care and private educational facilities, which, in the opinion of the Director of Community Development, are similar to the permitted uses in the BA zoning district, and which do not create significant adverse impacts to the surrounding area.**[1]	**CUP - PC**		
3. Rotating homeless 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	-
4. Permanent emergency shelter provided the following conditions are met: a. Section 19.76.030(2)(b), (d), (e); b. A management plan is provided which includes a detailed operation plan. c. Shelter is available to any individual or household regardless of their ability to pay; and d. Occupancy is limited to six months or less.	-	P	-
5. 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	-
6. Religious, civic, and comparable organizations, for uses restricted to church buildings, community halls,	-	CUP - PC	-

Uses	Zoning Districts		
administrative buildings, schoolrooms, recreational facilities, and athletic fields, convents, seminaries, and similar uses customarily associated with churches, including parking and landscaping areas;			
7. Childcare facility, residential care facilities, congregate residence, hospitals, vocational and specialized schools;	-	CUP - PC	-
8. 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	-
9. Large-family daycare home;	-	CUP - PC	-
10. Airports, airfields and helicopter terminals, including administration and service buildings, maintenance and storage yards;	-	-	CUP - PC
11. Railroads, including terminals and stations, freight yards, marshaling yards, storage yards, administrative and service buildings;	-	-	CUP - PC
12. Bus terminals and stations, including administration and service buildings, maintenance and storage yards;	-	-	CUP - PC
13. 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			

(1) Provided such use is conducted on property owned by a federal, State, county, or city government or authority, a special district created for public purposes under the laws of the State of California, or any other governmental agency, and leased for said uses.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. This Ordinance shall take effect and be in force thirty (30) days from and after adoption as provided by Government Code Section 36937.

Section 6. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section 7. The City Council hereby finds that the proposed Ordinance amendments are exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines because it can be seen that the regulations for use of existing public facilities for private operations, requiring a discretionary use permit, will result in negligible or no expansion of use and it can be seen with certainty that these regulations related to private uses on publicly owned property will have no possibility of a significant effect on the environment and none of the exceptions in CEQA Guidelines section 15300.2 apply. Therefore, the proposed action is not subject to further review under CEQA. The City Council further directs the Director of Community Development to file a Notice of Exemption with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 8. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as amendments of the earlier provisions.

INTRODUCED this ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino and ENACTED on the ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED: _____ Hung Wei, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Christopher Jensen, City Attorney	_____ Date