

RESOLUTION NO. 26-XXX

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DENYING A PETITION FOR RECONSIDERATION AND AFFIRMING ACTIONS TAKEN BY THE CITY COUNCIL ON FEBRUARY 3, 2026 IN CONNECTION WITH THE MARY AVENUE VILLAS PROJECT (APN 326-27-053)

WHEREAS, on February 3, 2026, the City Council (i) approved an Application for an Architectural and Site Approval Permit (No. ASA-2025-006)(“ASA Permit”) submitted by Charities Housing, (ii) a preliminary determination with respect to CEQA, and (iii) a Disposition and Development Agreement by and between the City of Cupertino, a municipal corporation and Mary Avenue, L.P., a California limited partnership (“DDA”) in connection with the development of a 40-unit affordable housing development, with 1 unit reserved rent-free for a manager and 39 affordable units reserved for extremely low, very low, and low income residents of the community, of which 19 of the affordable units are reserved for individuals or families with at least 1 member living with an intellectual or developmental disability, located on a Housing Element Site along the westerly edge of Mary Avenue (APN: 326-27-053) (“Project”); and

WHEREAS, on February 18, 2026, the City Clerk mailed all notices of decision after the decision of the City Council; and

WHEREAS, pursuant to Cupertino Municipal Code (“CMC”), section 2.08.096, any interested person, prior to seeking judicial review of any adjudicatory decision of the City Council, shall file a petition for reconsideration with the City Clerk within ten days of the date of mailing of the notice of decision; and

WHEREAS, CMC, section 2.08.096 specifies five exclusive grounds upon which reconsideration may be granted, each of which must be stated with specificity and supported by evidence; and

WHEREAS, on February 27, 2026, Joshua Safran, Esq. from Strategy Law, LLP, as council for the Garden Gate Coalition for Mary Avenue Safety (“Petitioner”) submitted a Petition for Reconsideration of the actions taken by Council on February 3, 2026 (“Petition”); and

WHEREAS, on March 26, 2026, City Staff, in coordination with the City Attorney's office, prepared a response to the Petition analyzing allegations made and the grounds set forth in CMC, section 2.08.096 ("Response"); and

WHEREAS, the City Council has reviewed and considered the Petition, the Response, the administrative record, and all testimony and materials submitted in connection with this matter.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby determine, find, and resolve as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
2. Non-Adjudicatory Actions. The City Council finds that the approval of the (i) preliminary CEQA Exemption Determination, and (ii) the DDA are not adjudicatory actions within the meaning of CMC, section 2.08.096 and therefore are not subject to reconsideration. Any request for reconsideration is denied on that basis. In the alternative, and without waiving the foregoing determination, if a court of competent jurisdiction were to find that such actions are adjudicatory, the City Council further finds that the request fails to satisfy any of the five grounds for reconsideration set forth in the CMC, section 2.08.096, as described in further detail in Section 3 below.
3. Denial of Petition. The City Council finds that the Petition fails to cite specific evidence in the record sufficient to meet the standard for reconsideration pursuant to CMC, section 2.08.096, and does not provide a basis for disturbing the City Council's prior approval of (i) the ASA Permit, (ii) preliminary CEQA determination for the Project, and (iii) the DDA (collectively, the "Approvals"). This determination is made without waiving the determination made in Section 2 above, and is applicable with respect to the approval of the preliminary CEQA determination and the DDA in the event that the City Council's findings regarding the above non-adjudicatory actions is not upheld.

The Petition fails to satisfy any of the five grounds for reconsideration set forth in CMC, section 2.08.096, specifically:

- A. **Ground 1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city**

hearing. This is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any new evidence not otherwise available at the time of the original decision, evidence that was improperly excluded, or proof of facts that show that the City Council acted improperly.

B. **Ground 2. An offer of relevant evidence which was improperly excluded at any prior city hearing.** This is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any relevant evidence which was improperly excluded at any prior City hearing.

C. **Ground 3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.** This is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

D. **Ground 4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.** This is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.

E. **Ground 5. Proof of facts which demonstrate that the City Council abused its discretion by: (a) Not preceding in a manner required by law; and/or (b) Rendering a decision which was not supported by findings of fact; and/or (c) Rendering a decision in which the findings of fact were not supported by the evidence.** This is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.

Overall, the Petition fails to present a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any new evidence not otherwise available at the time of the original decision, evidence that was improperly excluded, or proof of facts showing that the City Council acted improperly; accordingly, the Petition is denied.

4. **Effect of Resolution.** The City Council's approval of (i) the ASA Permit, (ii) preliminary determination as to CEQA for the Project, and (iii) the DDA shall

remain in full force and effect. This Resolution constitutes the final administrative action of the City with respect to the Petition.

5. Severability. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 1st day of April, 2026, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> _____ Kitty Moore, Mayor City of Cupertino	 _____ Date
<p>ATTEST:</p> _____ Lauren Sapudar, City Clerk	 _____ Date