

RESOLUTION NO. 26-025

A RESOLUTION OF THE CUPERTINO CITY COUNCIL DECLARING CERTAIN CITY-OWNED REAL PROPERTY LOCATED AT MARY AVENUE, IN THE CITY OF CUPERTINO (APN: 326-27-053) TO BE EXEMPT SURPLUS LAND UNDER THE SURPLUS LAND ACT

WHEREAS, the real property at issue is situated along the westerly edge of Mary Avenue, between Stevens Creek Boulevard and Lubec Street, in the City of Cupertino (APN 326-27-053) (“Property”); is more particularly described as Parcel 1 shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 2, 2023, in Book 953 of Maps, Pages 53 and 54 (“Parcel Map”), attached hereto and as further shown in Exhibit A; and is wholly owned in fee simple by the City of Cupertino; and

WHEREAS, the City of Cupertino (“City”) is considering issuing a declaration that the Property is “exempt surplus land” to allow the Property to be developed as the Mary Avenue housing project, which is included in the City of Cupertino General Plan (Community Vision 2015-2040) and the associated Housing Element, which lists the Property as priority housing Site 10; and

WHEREAS, the Housing Element indicates that priority housing Site 10 is a new parcel carved out from unused right-of-way owned by the City of Cupertino and adjacent to Highway 85 that includes on-street parking. The City’s Housing Element anticipates the disposition of the Property, including the vacation of the on-street parking for the purpose of developing a 40-unit, two-story affordable (100% Low and Very Low Income) housing project, consisting of 39 below market residential units, of which 19 units will be reserved for residents with intellectual or developmental disabilities, and one manager’s unit; and

WHEREAS, the Surplus Land Act (California Government Code section 54220 *et seq.*) governs the disposition of a city’s surplus land and imposes upon a city the requirement that the city declare the land to be either “surplus land” or “exempt surplus land” under California Government Code section 54221(b)(1), and if not exempt, the city must comply with certain noticing procedures before disposing of the surplus land; and

WHEREAS, if surplus land meets the specific conditions for the exemption in the Surplus Land Act, codified at California Government Code subsection

54221(f)(1)(F)(i) (the "Exemption"), the city is relieved of those noticing procedures, and

WHEREAS, that Exemption applies if (i) the surplus land is to be used for the development of a housing project that restricts 100 percent of the residential rentable units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households at an affordable rent for at least 55 years, as well as capping the maximum affordable rent at less than 20 percent below of the median market rents for the neighborhood in which the housing is located; and (ii) a covenant or restriction declaring those restrictions is recorded against the Property, which covenant must run with the land and be enforceable against the Property and the owner of the Property during the term of the covenant; and

WHEREAS, the City previously entered into a Disposition and Development Agreement (the "DDA") pertaining to the Mary Avenue housing project, which prior decision to enter into the DDA has no binding effect on the City Council's ability to exercise its discretion with regard to the current decision of whether to declare the land to be exempt surplus land as the City entered into the DDA with the clear understanding that the DDA is contingent upon the City separately finding the land to be exempt surplus land under California Government Code section 54221(b)(1);

WHEREAS, the City now desires to declare the Property to be "exempt surplus land" as the Property is not necessary for the City's use and the conditions for the Exemption will be met, as the Property is slated to be conveyed to a California non-profit limited partnership, Mary Avenue L.P., that plans to develop the Project as 100% affordable housing, which satisfies the requirements of the Exemption including entering into a Regulatory Agreement containing covenants so restricting the Property, which will be recorded against the Property and will be enforceable against any owner who violates the covenant and each successor in interest who continues the violation;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino does hereby find and report as follows:

Section 1: The City Council has duly considered the full record before it, including the staff report and presentation, facts, exhibits, public testimony and other evidence and materials submitted or provided to the Council. Furthermore, the

recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The City has performed an environmental assessment for the Mary Avenue housing project, and the City hereby determines that it falls within the Categorical Exemption set forth in Section 15332 of the Guidelines for Implementation of the California Environmental Quality Act (“CEQA Guidelines”) which exempts Class 32 Infill Development Projects because (a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value, as habitat for endangered, rare or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services. None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project and, specifically, this project does not present any unusual circumstances. The proposed declaration of exempt surplus land does not constitute a separate project under CEQA and is an implementation action within the scope of the affordable housing development project. Based on the whole of the administrative record, the City Council determines the project is categorically exempt from CEQA pursuant to the Class 32 exemption.

Section 3. The Property is not necessary for the City’s use, pursuant to California Government Code section 54221(b)(1) as 1) the City has previously designated the property for development of a 100 percent affordable housing project with dedicated units for persons with intellectual or developmental disabilities, and 2) the portions of the current public right-of-way which will be vacated (“Vacation Area”) proposed roadway design containing portions of the public right-of-way after the Vacation Area is vacated from the public right-of-way incorporates sidewalks, roadway lanes, and bicycle lanes that meet all applicable design standards, including requirements for width and materials. The design maintains adequate access throughout the area and does not result in any obstruction to public access, and 3) although a portion of the Property has been used for public parking purposes, it is not essential for the agency’s operational needs and thus appropriately declared as surplus land. (*See Airport Business Center v. City of Santa Rosa et al.* (2025) 116 Cal.App.5th 501.)

Section 4. In accordance with state law, based on the evidence in the public record, the Property will developed as a 100 percent affordable housing project with all rentable residential units restricted to persons and families of low or moderate income, such that at least 75 percent of the rentable residential units will be restricted to lower income households at an affordable rent for more than 55 years and in no event shall the maximum affordable rent level be higher than 20 percent below the median market rents for the local neighborhood, in compliance with the exemption codified at California Government Code subsection 54221(f)(1)(F)(i).

Section 5: The City's General Plan and associated Housing Element explicitly anticipate the disposition of the Property, including vacation of the on-street parking for the purpose of developing a 40-unit, two-story affordable (100% Low and Very Low Income) housing project, consisting of 39 below market residential units, of which 19 units will be reserved for residents with intellectual or developmental disabilities, and 1 manager's unit.

Section 6: The proposed roadway design after development incorporates sidewalks, roadway lanes, and bicycle lanes that meet all applicable design standards, including requirements for width and materials. The design maintains adequate access throughout the area and does not result in any obstruction to public access.

Section 7: The Property is "exempt surplus land", as the Property is to be conveyed in fee to a nonprofit developer for the development of affordable housing that will be governed by a Regulatory Agreement, attached hereto as Attachment B, in accordance with the requirements of California Government Code section 54221(f)(1)(F)(i), that shall be recorded against the Property when the Property is transferred to the developer and which (i) restricts the affordability of the residential rental units for 99 years; (ii) prevents the maximum affordable rent level from being higher than 20 percent below the median market rents for the neighborhood in which the site is located, and (iii) shall run with the land and be enforceable against the Property and any owner of the Property who violates the covenant.

Section 8: The City Manager or her designee is authorized to do all things which she may deem necessary or proper to effectuate the purposes of this Resolution. Such actions include, but are not limited to, filing appropriate information with

the California Department of Housing and Community Development in accordance with the Act.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 3rd day of March, 2026 by the following vote:

Members of the City Council

AYES: Moore, Fruen, Mohan

NOES: Chao, Wang

ABSENT: None

ABSTAIN: None

<p>SIGNED:</p> <p> Kitty Moore, Mayor City of Cupertino</p>	<p><u>3/5/2026</u> Date</p>
<p>ATTEST:</p> <p> Lauren Sapudar, Acting City Clerk</p>	<p><u>3/5/2026</u> Date</p>

