

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISION OF THE CITY OF CUPERTINO APPROVING  
A FENCE EXCEPTION TO ALLOW AN ELECTRONIC VEHICLE GATE AS PART OF  
THE CONSTRUCTION OF A 166,845 SQUARE FOOT STORAGE FACILITY LOCATED  
AT 10655 MARY AVE (APN 326-06-050)

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The Planning Commission recommends that the City Council approve the Fence Exception Permit, in substantially similar form to the Draft Resolution attached hereto as Exhibit EXC.

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PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 14<sup>th</sup> day of December 2021, by the following roll call vote:

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AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

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Piu Ghosh, Planning Manager

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R "Ray" Wang

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING  
A FENCE EXCEPTION TO ALLOW AN ELECTRONIC VEHICLE GATE AS PART OF  
THE CONSTRUCTION OF A 166,845 SQUARE FOOT STORAGE FACILITY LOCATED  
AT 10655 MARY AVE (APN 326-06-050)**

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**SECTION I: PROJECT DESCRIPTION**

Application No.: EXC-2019-04  
Applicant: Emilia Samudio (Jordan Architects)  
Property Owner: Bass Cupertino, LLC  
Property Address: 10655 Mary Avenue (APN: 326-06-050)

**SECTION II: FINDINGS FOR FENCE EXCEPTION:**

WHEREAS, the City Council of the City of Cupertino received an application for a Development Permit as described in Section I. of this Resolution; and

WHEREAS, all necessary public notices having been given as required by the Procedural Ordinance of the City of Cupertino and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and on January 18, 2022, the City Council held a public hearing to consider the Development Permit; and

WHEREAS, on December 14, 2021 the Planning Commission recommended on a X-X vote that the City Council approve the Development Permit (DP-2019-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Architectural and Site Approval Permit (ASA-2019-05) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Fence Exception Permit (EXC-2019-04) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_), approve the Tree Removal Permit (TR-2019-048) in substantially similar form to the Resolution presented (Resolution No. \_\_\_\_\_); and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City staff has independently studied the proposed Project and has determined that the Project is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15332, and the exemption in CEQA Guidelines section 15183, for the reasons set forth in the staff report dated January 18, 2022 and incorporated herein; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the City Council finds as follows with regard to this application:

1. The literal enforcement of the provisions of this chapter will result in restriction inconsistent with the spirit and intent of this chapter.

*Driveways gates are consistent with the intent of the chapter because the proposed driveway gates are with the project site approximately 65 feet from the property line.*

2. The granting of the exception will not result in a condition which is materially detrimental to the public health, safety or welfare.

*The proposed driveway gates are located 65 feet away from the property line and more than 120 from the nearest residence. A condition of approval has been added from the Santa Clara County Fire Department to ensure access in the event of an emergency.*

3. The exception to be granted is one that will require the least modification of the prescribed regulation and the minimum variance that will accomplish the purpose.

*The exception is consistent with the fence ordinance, as the driveway gate is located approximately 65 feet from the property feet from the front property line and more than 120 feet from the nearest residence.*

4. The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.

*Pedestrian access to the site is provided away from the fence adjacent to the proposed office sales building. The project does not anticipate much traffic; however, the placement of the entry gate has been designed to allow for vehicles to que in the event of multiple vehicles seeking entrance to the site at the same time. The proposed vehicular driveway gate has been reviewed by the Department of Public Works and the Fire Department, and has been determined to not result in a hazardous condition.*

5. The proposed development is otherwise consistent with the City's General Plan and with the purpose of this chapter as described in Section 19.48.010

*The proposed driveway gate is otherwise consistent with the City's General Plan since the fence is not for a residential building and consistent with the requirements of Section 19.48.010.*

6. The proposed development meets the requirements of the Santa Clara Fire Department and Sheriff's Department, and if security gates are proposed, that attempts are made to standardize access.

*A condition of approval has been added to ensure standardized access.*

7. The fence height for the proposed residential fence is needed to ensure adequate screening and/or privacy.

*The proposed fence is not a residential fence and therefore this finding does not apply.*

WHEREAS, on January 18<sup>th</sup>, 2022, the City Council held a duly noticed public hearing to receive public testimony on the Project, including the categorical exemption in CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183 and reviewed and considered the information contained in the staff report pertaining to the Project, all other pertinent documents, and all written and oral statements received by the City Council at or prior to the public hearing; and

NOW, THEREFORE, BE IT RESOLVED:

The application for a Fence Exception Permit, Application No. EXC-2019-04, is hereby approved, and that the subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no. EXC-2019-04 as set forth in the Minutes of the City Council Meeting of January 18, 2022 and are incorporated by reference as though fully set forth herein.

1. The City Council exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332 and the exemption in CEQA Guidelines section 15183. The exemption in CEQA Guidelines section 15332 applies to an infill development project which 1) is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable Zoning designations and regulations; 2) occurs within the City limits on a site of less than 5 acres in size that is substantially surrounded by urban uses; 3) is located on a site that has no value for endangered, rare or threatened species; 4) would not result in any significant effects related to traffic, noise, air quality or water quality; and 5) can be adequately served by all required utilities and public services. The exemption in CEQA Guidelines section 15183 applies to a project that is consistent with General Plan designations and zoning for the site described in the General Plan, the potential impacts of which would be substantially mitigated by the imposition of uniformly applied standard conditions of approval. The General Plan Amendment, Housing Element Update, and Associated Rezoning Final Environmental Impact Report (SCH No. 2014032007), certified by the City Council on December 4, 2014, was prepared consistent with the requirements for applicability of streamlining under CEQA Guidelines Section 15183(d)(2), and there are no environmental effects that are peculiar to the proposed project or project site that were not analyzed in the General Plan EIR;
2. The application for a Fence Exception Permit, Application no. DP-2019-04 is hereby recommended to be approved; and

The subconclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application no.(s) EXC-

2019-04 as set forth in the Minutes of the City Council Meeting of January 18, 2022, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

**1. APPROVED EXHIBITS**

Approval is based on the plan set dated January 15, 2021 consisting of 34 sheets titled as Bay Area Self Storage, A.1 – a.16, C0.1-C3.0, and CLP-01 – CLP-03 prepared by Bruce Jordan Architect, Sandis, and Preinaire Design Group, except as may be amended by conditions in this resolution.

**2. ACCURACY OF PROJECT PLANS**

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

**3. CONCURRENT APPROVAL CONDITIONS**

4. The conditions of approval contained in file nos. ASA-2019-05, DP-2019-05 and TR-2019-048 shall be applicable to this approval.

**5. ANNOTATION OF THE CONDITIONS OF APPROVAL**

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

**6. SECURITY GATE LOCATION**

The final location of the security gate shall be within 2 feet of the location on the approved plans. The final placement of the gate shall be reviewed and approved by the Director of Community Development prior to issuance of building permits to consistency. Any changes determined to be substantial by the Director of Community Development shall either require a modification to this permit or a new permit based on the extent of the change.

**7. FUTURE AMENDMENTS**

The security gate shall not be relocated or replaced without appropriate review and required permits from the City.

**8. CONSULTATION WITH OTHER DEPARTMENTS**

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any

misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

## **9. INDEMNIFICATION**

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

## **10. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS**

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

## **SECTION IV: CONDITIONS ADMINSTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT**

### **1. EMERGENCY GATE/ACCESS GATE REQUIREMENTS:**

Gate installations shall conform with Fire Department Standard Details and Specification G-1 and, when open shall not obstruct any portion of the required width for emergency access roadways or driveways. Locks, if provided, shall be fire department approved prior to installation. Gates across the emergency access roadways shall be equipped with an approved access devices. If the gates are operated electrically, an approved Knox key switch shall be installed; if they are operated manually, then an approved Knox padlock shall be installed. Contact [www.knoxbox.com](http://www.knoxbox.com) to order key switch for gate. CFC Sec. 503.6 and 506. Sheet A.3 - Gate width is noted as 20' clear for NE entrance/exit and that a Knox Key Switch will be provided.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 18<sup>th</sup> day of January 2022, by the following vote:

### **Members of the City Council**

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:	
Darcy Paul, Mayor City of Cupertino	Date
ATTEST:	
Kirsten Squarcia, City Clerk	Date