

**RESOLUTION NO. 26-\_\_\_\_\_**

**OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
APPROVING A DEVELOPMENT PERMIT FOR A NEW RESIDENTIAL  
DEVELOPMENT OF 32 TOWNHOMES, INCLUDING 6 AFFORDABLE UNITS, TO  
REPLACE THREE OFFICE BUILDINGS ON A 1.77-ACRE SITE, LOCATED MID-  
BLOCK CORNER ON STEVENS CREEK BOULEVARD BETWEEN RANDY LANE  
AND BLANEY AVENUE LOCATED 20045 & 20065 STEVENS CREEK BLVD.**

**(A.P.N.: 316-23-095, -096)**

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**SECTION I: PROJECT DESCRIPTION**

Application No.: DP-2025-002

Applicant: Dividend Homes

Property Owner: Arbor Group Investment LLC

Location: 20045 & 20065 Stevens Creek Blvd. (A.P.N.: 316-23-095, -096)

**SECTION II: FINDINGS FOR DEVELOPMENT PERMIT:**

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

WHEREAS, the project is determined to be statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(1) of the CEQA Guidelines; and

WHEREAS, on December 9, 2025, the Planning Commission held a duly noticed public hearing to receive staff's presentation and public testimony, and to consider the information contained in the Infill Exemption Memorandum along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing; and

WHEREAS, on December 9, 2025 the Planning Commission recommended on a 5-0 vote that the City Council approve the Development Permit (DP-2025-002) in substantially similar form to the Resolution presented (Resolution No. 2025-25), approve the Architectural and Use Permit (U-2025-007) in substantially similar form to the Resolution presented (Resolution No. 2025-29), approve the Architectural and Site Approval Permit (ASA-2025-004) in substantially similar form to the Resolution presented (Resolution No. 2025-26), approve the Vesting Tentative Map (TM-2025-002), in substantially similar form to the Resolution presented (Resolution No. 2025-27), approve the Tree Removal Permit (TR-2025-002), in substantially similar form to the Resolution presented (Resolution No. 2025-28); and

WHEREAS, all necessary public notices having been given as required by the City of Cupertino Municipal Code and the Government Code, and the Planning Commission held at least one public hearing in regard to this application, and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, the applicant has met the burden of proof required to support the application for a Development Permit.; and

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

1. The proposed development, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

*The project is consistent with the land use designations in the General Plan, Zoning Ordinance, and the Heart of the City Specific Plan. It has been designed to be compatible with adjoining land uses, as well as providing landscaping along the building frontages to help mitigate potential massing impacts and compatible with the existing streetscape. The project is conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code. Chapter 17.04. The project must meet all Fire and Building Code requirements, which will be further reviewed prior to issuance of building permits. Therefore, the project will not be detrimental or injurious to properties or improvements in the vicinity, and will not be detrimental to public health, safety, general welfare, or convenience.*

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

*The SB330 Preliminary Application was submitted for this project in February 2025, locking in the development standards in effect at that time. The General Plan land use designation for the property was Commercial/Office/Residential with a maximum residential density of 25 dwelling units per acre. The residential use at the proposed 18.1 dwelling units per acre is consistent with the General Plan in terms of density pursuant to state law. The applicant is requesting waivers for the development of this site to allow exclusively residential uses, setbacks, lot coverage, and common open space design, as required by the Heart of the City Specific Plan's and the City's Municipal Code standards. The proposed development has met all other applicable development standards of the Heart of the City Specific Plan. The project is further conditioned to comply with the Environmental Protection Standards of Cupertino Municipal Code Chapter 17.04. In addition, the proposed project would be exempt as a "statutory" exemption under State CEQA Guidelines Section 15061(b)(1) because the*

*proposed project would meet the requirements of the Public Resources Code (PRC) Section 21080.66, as further documented in the memorandum prepared by the City's environmental consultant, PlaceWorks. These include the meeting the standards for infill, environmental criteria, hazardous materials, tribal consultation, and labor code requirements. Therefore, the proposed development will be located and conducted in accordance with the General Plan and underlying zoning regulations and complies with the California Environmental Quality Act (CEQA).*

The applicant has requested a density bonus. Pursuant to Cupertino Municipal Code Section 19.56.070, before approving an application that includes a request for density bonus, incentive, parking reduction and/or waiver, the decision-making body shall make the following findings, as applicable:

- a. A finding that the residential project is eligible for the density bonus and any incentives, parking reductions or waivers requested.

*The project includes 6 Below Market Rate (BMR) units or 20% of the total number of units proposed. Three of the six BMR units will be affordable to median-income households (100-120% of Area Median Income) and the other three will be affordable to moderate-income households (80-100% of Area Median Income) in compliance with the City's BMR Program. As a density bonus project with at least 20% of units reserved for sale to moderate-income households as defined by state law (80-120% of Area Median Income), the applicant may request up to two concessions and an unlimited number of waivers.*

- b. A finding that any requested incentive will result in identifiable, financially sufficient, and actual cost based on the financial analysis and documentation provided.

*The developer has requested a concession that the project will be 100% residential. The development of dedicated retail, office or other commercial space would incur a financial loss for the project, and eliminating the dedicated retail, office or other commercial space would result in identifiable and actual cost reductions to provide for affordable housing costs.*

- c. If the density bonus is based all or in part on donation of land, a finding that all requirements included Section 19.56.030C have been met.

*No density bonus is proposed; therefore, the finding is not applicable.*

- d. If the density bonus is based all or in part on the inclusion of a childcare facility, a finding that all requirements included in Section 19.56.030 (D) have been met.

*No density bonus is proposed; therefore, the finding is not applicable.*

- e. If the density bonus or incentive is based on a condominium conversion, a finding that all the requirements included in Section 19.56.030 (E) have been met.  
*No density bonus is proposed; therefore, the finding is not applicable.*
- f. If the incentive includes mixed-use development, a finding that all requirements including in Section 19.56.40 (B) (2) have been met.  
*The project is not a mixed-use development; therefore, the finding is not applicable.*
- g. If a waiver is requested, a finding that the development standards for which the waivers are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted.  
*The development standards height, setbacks, common area, and tandem parking requirements would physically preclude the development as proposed. These development standard limitations could affect the project by the loss of units or unit sizes, which may include those designated as affordable.*
- h. If a reduction in off-street parking standards for an eligible housing development is requested.  
*No reduction in off-street parking requirements is being requested; therefore, the finding is not applicable.*

3. Since the applicable findings required above can be made, the decision-making body may deny an application for a waiver only if one of the following written findings as applicable to each type of application, supported by substantial evidence:

- a. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or  
*No property listed in the California Register of Historic Resources is within the project vicinity.*
- b. That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low- and moderate-income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or

*Both the Fire and Building departments have preliminarily reviewed the plans and not found conditions proposed which would create a “specific, adverse impact.” In addition, the project is conditioned to ensure compliance with both Fire and Building Code, prior to issuance of building permits. The project is also conditioned to comply with the Environmental Protection Standards of the Cupertino Municipal Code Chapter 17.04. In addition, the proposed project would be exempt as a “statutory” exemption under State CEQA Guidelines Section 15061(b)(1) because the proposed project would meet the requirements of the Public Resources Code (PRC) Section 21080.66(as further documented in the memorandum prepared by the City’s environmental consultant, PlaceWorks. Therefore, the proposed development, incorporating the proposed concessions and waivers, is not expected to have a specific, adverse impact upon public health or safety or the physical environment.*

- c. That the incentive or concession, or waiver is contrary to state or federal law.  
*The requested concessions and waivers are not contrary to state or federal law.*
- 4. When a project complies with objective standards, the HAA allows a city to disapprove the project or to impose a condition that the project be developed at a lower density only if the city finds both of the following, supported by a preponderance of the evidence in the record:
  - a. The project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and
  - b. No feasible method to satisfactorily mitigate or avoid the adverse impact exists.  
*The project, as proposed, meets all applicable objective zoning, General Plan, and subdivision standards. Based on the record, including the findings in the Notice of Exemption, staff does not believe the above findings can be made with respect to the proposed project.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on PAGE 5 thereof, and those contained in all other Resolutions approved for this Project, the City Council hereby approves the application for a Development Permit, Application No. DP-2025-002; and

That the sub-conclusions upon which the findings and conditions specified in this Resolution are based are contained in the Public Hearing record concerning Application

no. DP-2025-002 as set forth in the Minutes of the City Council Meeting of January 21, 2026 and are incorporated by reference as though fully set forth herein.

**SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT.**

**1. APPROVED EXHIBITS**

Approval is based on the plan set entitled "20045 & 20065 Stevens Creek Blvd., Cupertino, CA, Dividend Homes" dated August 15, 2025 consisting of 65 sheets labeled as, A.1–A.33, TM1.0, C2.0 – C7.3, T-1.0 – T-1.2, L-1.0 – L-3.2, INT1.0-INT3.0, PM1.0, and PrSL1.0-PrSL3.0, drawn by Dahlin, BKF, and Michael Arnone & Associates., 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**

The conditions of approval contained in file nos. U-2025-007, TM-2025-002, TR-2025-005, and ASA-2025-004, shall be applicable to this approval.

**4. 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.

**5. CONSULTATION WITH OTHER DEPARTMENTS**

The applicant is responsible to consult with other departments and/or agencies about the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

**6. DEVELOPMENT APPROVAL**

The project is granted approval to construct 32 townhomes, subject to affordability requirements of Condition #7, with 69 parking spaces throughout the development.

## **7. AFFORDABLE UNITS**

The project shall include 3 units affordable to median-income households and 3 units affordable to moderate-income households as determined by the City's BMR Mitigation Manual.

## **8. DENSITY BONUS WAIVERS AND CONCESSIONS**

As allowed through the state's Density Bonus law, the project is granted waivers and a concession as follows:

- a. Concession to address General Plan and Heart of the City requirements for mixed-use development on the property;
- b. Waiver for a portion of the front building to be within the 1:1 slope line;
- c. Waivers for reduced rear, and side setbacks;
- d. Waiver of the requirement for Building Forms (terracing) of buildings facing the single-family residential neighborhood along the north property line;
- e. Waiver to have tandem garages in certain units.
- f. Waiver to increase the maximum lot coverage;
- g. Waiver to deviate from the common Open Space requirement.

## **9. BICYCLE PARKING**

The applicant shall provide bicycle parking and bike racks for the proposed project in accordance with the approved plans and with the City's Parking Regulations under Chapter 19.124 of the Cupertino Municipal Code.

## **10. BMR UNIT DESIGN REQUIREMENTS**

Prior to building permit issuance, the Applicant shall detail how the following requirements are met:

- a. The BMR units shall be comparable to market-rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.
- b. The BMR unit size should generally be representative of the unit sizes within the market-rate portion of the residential project.
- c. Interior features and finishes in the affordable units shall be durable, of good quality and consistent with the contemporary standards of new housing.

## **11. BMR AGREEMENT**

Prior to the recordation of a final map or issuance of any building permit, an affordable housing agreement shall be recorded against the property. The affordable housing agreement shall include, but not be limited to the following, in compliance with the BMR Housing Mitigation Manual:

- a. Total number of BMR units, type, location (site map), square footage, number of bedrooms, and construction scheduling of market-rate and BMR units;

- b. Provisions to ensure concurrent construction and completion of BMR units and market-rate units;
- c. Affordability levels for each BMR unit;
- d. Prices for BMR units as provided for in the BMR mitigation manual;
- e. Provisions for income certification and screening of potential occupants of BMR units;
- f. Restriction control mechanisms;
- g. Financing of ongoing administrative and monitoring costs;
- h. Other reasonably required provisions to implement the Affordable Housing Plan.

## **12. BMR UNIT TERMS OF AFFORDABILITY**

Prior to occupancy, the proposed project shall record covenants that require the units to be sold at prices that are affordable to moderate and median levels for a period not less than 99 years from the date of first occupancy of the unit.

## **13. PUBLIC ART REQUIREMENT**

Public art shall be provided for the project in accordance with General Plan Policy 2-66 and the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). The minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is one (1) percent of the construction valuation for the first \$100 million on construction valuation, or 0.9% of construction valuation for valuation in excess of \$100 million. The project pro forma shall be provided to the City to confirm the project budget. The public art plans (including location and design) shall be reviewed by the Fine Arts Commission during the building permit stage, in advance of final occupancy. Once approved by the Fine Arts Commission, the public artwork shall be installed to the satisfaction of the City prior to final occupancy.

In the event the developer or property owner determines that the placement of artwork on a particular property may not be feasible, the developer or property owner may apply to the City for an in-lieu payment alternative as indicated in Chapter 19.148 of the Cupertino Municipal Code, subject to review of the Fine Arts Commission and the City Council. The in lieu payment shall be 1.25% of the construction valuation.

## **14. PUBLIC ART MAINTENANCE REQUIREMENT**

In accordance with the requirements of Municipal Code Chapter 19.128, the property owner shall maintain approved public artwork in good condition continuously after its installation, as determined appropriate by the City. Maintenance shall include all related landscaping, lighting, and upkeep, including the identification plaque. Artwork required or approved cannot be removed, except for required maintenance or repair, unless approved by the City; at which time the City may require

replacement or relocation of the artwork. In the event that the artwork is relocated in the public right-of-way, a maintenance agreement with the City shall be required.

**15. NOISE LEVELS AND ABATEMENT**

Project uses and all equipment installed on the site shall comply with the City's Community Noise Control Ordinance at all times. Installation of any mechanical or other equipment shall be evaluated to determine that the installation meets the City's Community Noise Control Ordinance. Any documentation or studies required to determine this shall be provided by the applicant as his/her sole expense. Should the project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, an acoustical engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

**16. DEMOLITION REQUIREMENTS**

All demolished building and site materials shall be recycled to the maximum extent feasible subject to the Building Official. The applicant shall provide evidence that materials were recycled prior to occupancy.

**17. FUGITIVE DUST CONTROL**

Prior to issuance of the any demolition, grading, or building permit, include on all permit plans, the full text of each of the Bay Area Air Quality Management District's Basic Control Measures from the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM2.5 and PM10) during demolition, ground disturbing activities and/or construction.

**18. VOLATILE ORGANIC COMPOUND EMISSIONS FROM PAINT**

Prior to issuance of the first building permit, the Applicant shall include a note on all plans where paint specifications or other design specifications are listed, that the project design will incorporate only low-VOC paint (i.e., 50 grams per liter [g/L] or less) for interior and exterior wall architectural coatings.

**19. AVOID NESTING BIRDS DURING CONSTRUCTION**

Prior to issuance of any demolition, grading and building permit, indicate the following on all construction plans:

- a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to be completed prior to nesting season (February 1 through August 31), if feasible.

- b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 and August 31), preconstruction surveys shall be conducted as follows:
  - i. No more than 7 days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities, in order to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.
  - ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in, and immediately adjacent to, the construction areas for active nests, while ensuring that they do not disturb the nests as follows:
    - 1) For projects that require the demolition or construction one single-family residence, ground disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct the preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.
    - 2) For any other demolition, construction and ground disturbing activity or the removal of four or more trees, a qualified ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.
  - iii. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented, and the qualified ornithologist or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.
  - iv. Protective measures may include, but are not limited to, establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist or biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within

an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

- v. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist and submitted to the Director of Community Development or his or her designee, through the appropriate permit review process (e.g., demolition, construction, tree removal, etc.), and be completed to the satisfaction of the Community Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

## 20. ARCHAEOLOGICAL RESOURCES AND TRIBAL CULTURAL RESOURCES

Prior to the issuance of any demolition, grading or building permit involving soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

- a. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.
- b. The potential for undiscovered archaeological resources or tribal cultural resources on site.
- c. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.

- d. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:
  - i. All soil disturbing work within 25 feet of the find shall cease.
  - ii. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.
  - iii. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

## **21. HUMAN REMAINS AND NATIVE AMERICAN BURIALS**

Prior to issuance of the any demolition, grading and building permits that involve soil disturbance, include on plans a note that, during project construction, the project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

- a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.
- b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.
- c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.
- d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.
- e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains.

If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded.

## **22. NOISE AND VIBRATION NOTICE**

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall send notices of the planned activity by first class mail as follows:

- a. For projects on sites that are more than 0.5 acres or four or more residential units the notices shall be sent to off-site businesses and residents within 500 feet of the project site;
- b. For projects on sites between 0.25 to 0.5 acres, or two or three residential units (not including Accessory Dwelling Units) notices shall be sent to off-site businesses and residents within 250 feet of the project site; or
- c. For projects on sites less than 0.25 acres or one residential unit, the notices shall be sent to off-site businesses and residents within 100 feet of the project site.

The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The City will provide mailing addresses for the Applicant's use. The project applicant shall provide the City with evidence of mailing of the notice, upon request. If pile driving, see additional noticing requirements below.

## **23. NOISE DURING CONSTRUCTION**

Prior to issuance of any demolition, grading or building permit, include on plans a note that, during project construction, the project applicant shall incorporate the following measures to reduce noise during construction and demolition activity:

- a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction

documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.

- b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
- c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

#### **24. EXCESSIVE NOISE AND VIBRATIONS**

Per General Plan Policy HS-8.3, construction contractors shall use the best available technology to minimize excessive noise and vibration from construction equipment such as pile drivers, jack hammers, and vibratory rollers during construction.

#### **25. PRE-CONSTRUCTION MEETING AND CONSTRUCTION MANAGEMENT PLAN**

A demolition and construction management plan shall be submitted and reviewed prior to building permit issuance. Prior to commencement of construction activities, the applicant shall arrange for a pre-construction meeting with the pertinent departments (Building, Planning, and Public Works) to review the prepared construction management plan, to ensure that construction complies with the conditions of approval, staging of construction equipment is appropriate, tree protection measures are in place, public access routes are identified, and noise and dust control measures are established. The plan shall include but not be limited to the following:

- a. Appropriate construction staging area

- b. Hours of construction
- c. Compliance with the City noise ordinance
- d. Best management practices
- e. Staging of construction equipment shall not occur within \_\_\_\_ feet of any residential property.
- f. Any other measures as determined to be appropriate by the Director of Community Development

## **26. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS**

The applicant shall indicate compliance with the following grading and construction hours and noise limit requirements on all demolition, construction and grading permits, and in the construction management plan(s), unless otherwise indicated.

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public works.
- b. Construction hours and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and during nighttime period as defined in Section 10.48.053(b) of the Municipal Code.
- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Nighttime construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions.

## **27. GREEN BUILDING**

The project shall be constructed in accordance with the City's Green Building Ordinance (Chapter 16.58 of the Cupertino Municipal Code). The applicant shall obtain LEED Silver certification or an alternative reference standard in accordance

with the ordinance since greater than nine multi-family residences are proposed. Third party LEED certification or alternative reference standard is required per the ordinance criteria.

## **28. BUILDING AND FIRE CODE**

The applicant shall apply for and obtain building permits to allow the construction of the approved project. The applicant shall provide information and plans to allow the Building Official and the Fire Marshall or their designee that the proposed plans comply with Building and Fire Codes in effect at the time of application for a building permit.

## **29. PROPERTY OWNERS' ASSOCIATION**

A Property Owner's Association shall be formed to maintain the common areas of the property. The Conditions, Covenants and Restrictions (CC&Rs) shall be reviewed and approved by the City Attorney and the Director of Community Development prior to recordation. The following terms shall be incorporated into the Association's Conditions, Covenants and Restrictions:

- The members/board shall meet at a minimum of once/year
- The Association dues shall cover:
  - Maintenance of common area on the property in compliance with the approved project conditions of approval, including hardscaping, parking, landscaping and accessory facilities and amenities, such as trash bins/areas, common amenity areas, tree grates, outside trash bins, fences, etc,
  - Building and site repair on a regular schedule, or as otherwise necessary, and building renovation and replacement as necessary to ensure that the property is maintained.
  - Permits, including tree removal permits, required for maintenance and repair of facilities in the common areas
- Any changes to the exterior of the development must be reviewed by the Property Owner's Association and changes must be considered in the context of the development as a whole, and not on a unit-by-unit basis.
- CC&R's shall ensure that private open space is kept tidy and free of clutter and visual blight.
- Any changes to the CC&R's must be reviewed and approved by the City
- Disbanding of the Association shall require an amendment to this permit to be reviewed and approved by the original approval authority.

## **30. TRASH AND DELIVERY ACTIVITIES**

A detailed refuse and truck delivery plan shall be prepared by the applicant. The plan shall specify locations of trash facilities, refuse pick up schedules and truck

delivery schedules and routes. All trash facilities must be screened and enclosed to the satisfaction of the Public Works Department. The final plan shall be submitted to the City for review and approval prior to issuance of building permits.

### **31. NOISE LEVELS AND ABATEMENT**

Project uses and all equipment installed on the site shall comply with the City's Community Noise Control Ordinance at all times. Installation of any mechanical or other equipment shall be evaluated to determine that the installation meets the City's Community Noise Control Ordinance. Any documentation or studies required to determine this shall be provided by the applicant as his/her sole expense. Should the project exceed any of the stipulated maximum noise levels outlined in the City's Community Noise Control Ordinance, an acoustical engineer may be required to submit noise attenuation measures to the satisfaction of the Director of Community Development at the applicant's expense.

### **32. 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.

**33. 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 ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT**

**34. STREET IMPROVEMENTS & DEDICATION**

Roadway dedication in fee title and street improvements along the project frontage will be required to the satisfaction of the Director of Public Works. Street improvements, grading and drainage plans must be completed and approved prior to Final map approval.

Street improvements may include, but not be limited to, new detached sidewalk, driveways, curb and gutter, utility laterals, stormwater treatment facilities, and street tree installations. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

Additional comments will be provided and shall be incorporated prior to Final Map approval.

**35. ACCEPTANCE OF PROPERTY RIGHTS**

The Public Works Director, or his/her designee, shall have the authority to accept all offers of dedications, easements, quitclaims and other property rights and interests on behalf of the City.

**36. CURB AND GUTTER IMPROVEMENTS**

Curbs and gutters, sidewalks and related structures shall be installed in accordance with grades and standards as specified by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

**37. PEDESTRIAN AND BICYCLE IMPROVEMENTS**

Developer shall provide pedestrian and bicycle related improvements (e.g. walkway and bicycle racks, etc.) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Plan, and as approved by the Director of Public Works. All improvements must be completed and accepted by the City prior to Building Final Occupancy or Street Improvement Encroachment Permit acceptance whichever comes first.

**38. STREET LIGHTING INSTALLATION**

Street lighting shall be installed and shall be as approved by the Director of Public Works. Lighting fixtures shall be positioned so as to preclude glare and other forms of visual interference to adjoining properties, and shall be no higher than the maximum height permitted by the zone in which the site is located.

**39. GRADING**

Grading shall be as approved and required by the Director of Public Works in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits maybe required. Please contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

**40. DRAINAGE**

Drainage shall be provided to the satisfaction of the Director of Public Works. Hydrology and pre- and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface

storage of peak stormwater flows (as needed), bioretention basins, vegetated swales, and hydrodynamic separators to reduce the amount of runoff from the site and improve water quality. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

All storm drain inlets shall be clearly marked with the words "No Dumping – Flows to Creek" using permanently affixed metal medallions or equivalent, as approved by the Environmental Programs Division.

Additional comments will be provided and shall be incorporated prior to Final Map approval.

#### **41. C.3 REQUIREMENTS**

C.3 regulated improvements are required for all projects creating and/or replacing 5,000 S.F. or more of impervious surface, collectively over the entire project site. The developer shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures, for storm water treatment, unless an alternative storm water treatment plan, that satisfies C.3 requirements, is approved by the Director of Public Works.

The developer must include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan and a Storm Water Facilities Operation, Maintenance and Easement Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

If the Project is subject to CC&R and Homeowners Association (HOA), CC&R must also include languages pertaining to the stormwater treatment measures.

#### **42. SUBDIVISION IMPROVEMENT AGREEMENT**

The project developer shall enter into a Subdivision Improvement Agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, transportation impact fees, park dedication fees and fees for under grounding of utilities. Said agreement and fees shall be executed and paid prior to Final map approval.

Fees:

Checking & Inspection Fees:	Per current fee schedule (\$5,655 or 5% of improvement costs)
Grading Permit:	Per current fee schedule (\$4,891 or 6% of improvement costs)
Final Map Fee:	Per current fee schedule (\$13,687)
Storm Drainage Fee:	Per current fee schedule (\$4,584 per AC + \$347 per unit)
Transportation Impact Fee:	Per current fee schedule: (\$4,215 per unit)
Encroachment Permit Fee:	Per current fee schedule (\$3,551 or 5% of improvement costs)
Park Fees:	Per current fee schedule: \$54,000 per unit (\$1,404,000 based on 26 new units, 6 BMR units waived)
Storm Management Plan Fee:	Per current fee schedule (\$2,217)
Street Tree Fee:	By Developer or Per current fee schedule: \$513 per tree
Developer Contribution:	\$75,000 (Stevens Creek Blvd Class IV Separated Bike Lane frontage improvements)

Bonds:

- a. Encroachment Bond: 100% of Off-site Improvements
- b. On-site Grading Bond: 100% of site improvements
- c. On-site Grading Bond: 100% of site improvements.

The fees described above are imposed based upon the current fee schedule adopted by the City Council. However, the fees imposed herein may be modified at the time of recordation of a final map or issuance of a building permit in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule.

**43. FINAL MAP**

A final map will be subject to City Council approval and shall be recorded prior to issuance of building permits. Existing buildings must be demolished prior to recordation of the final map as building(s) cannot straddle between lot lines.

**44. TRANSPORTATION**

The Project is subject to the payment of Transportation Impact Fees under City's Transportation Impact Fee Program (Chapter 14.02 of the Cupertino Municipal Code).

Project is also subject to Vehicle Miles Traveled (VMT) analysis as part of environmental reviews per Chapter 17 of the Cupertino Municipal Code. Project shall provide mitigation measure as results of the transportation analysis.

**45. PARKS**

The residential units are subject to the payment of parkland fees in-lieu of parkland dedication per Chapter 13.08 and Chapter 18.24 of the Cupertino Municipal Code.

The Below Market Rate (BMR) program manual, which was last amended by City Council on May 19, 2020 per Resolution 20-055, authorizes the waiver of park fees for BMR units. Pursuant to Resolution 20-055, parkland dedication in-lieu fees for the 6 BMR units proposed for this project are hereby waived.

**46. SURVEYS**

A Boundary Survey and a horizontal control plan will be required for all new construction to ensure the proposed building will be set based on the boundary survey and setback requirements.

**47. TRASH, RECYCLING AND COMPOST ENCLOSURES**

Trash enclosure plans must be designed in accordance with the City's "Public Works Guidelines posted at [www.cupertino.org/nowaste](http://www.cupertino.org/nowaste), and to the satisfaction of the Environmental Programs Manager. Clearance by the Public Works Department is required prior to obtaining a building permit. (CMC 9.18.210 H & K)

Applicant shall enter into an agreement with the City that indemnifies and holds harmless both the City and the refuse and recycling collection company (Recology) from and against any harm, damage or maintenance that may occur or become necessary to onsite paving stone driveway surfaces.

**48. OPERATIONS & MAINTENANCE AGREEMENT**

Developer shall enter into an Operations & Maintenance Agreement with the City prior to Final Map approval. The Agreement shall include the operation and maintenance for non-standard appurtenances in the public road right-of-way that may include, but is not limited to, landscaping, street trees, sidewalk, pavers, and street lights.

**49. UNDERGROUND UTILITIES**

Developer shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. Developer shall submit detailed plans showing utility

underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

**50. TRANSFORMERS & CABINETS**

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

**51. WATER BACKFLOW PREVENTERS**

Domestic and Fire Water Backflow preventers and similar above ground equipment shall be placed outside of the public right of way and away from site driveways to a location approved by the Cupertino Planning Department, Santa Clara County Fire Department and the water company.

**52. BEST MANAGEMENT PRACTICES**

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity, which disturbs soil. BMP plans shall be included in grading and street improvement plans.

**53. NPDES CONSTRUCTION GENERAL PERMIT**

When and where it is required by the State Water Resources Control Board (SWRCB), the developer must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

**54. EROSION CONTROL PLAN**

Developer must provide an approved erosion control plan by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans.

**55. WORK SCHEDULE**

Every 6 months, the developer shall submit a work schedule to the City to show the timetable for all grading/erosion control work in conjunction with this project.

**56. TRAFFIC CONTROL PLAN**

The developer must submit a traffic control plan by a Registered Traffic Engineer to be approved by the City. The plan shall include a temporary traffic control plan for work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs must be reviewed and approved by the City prior to commencement of work. The City has adopted Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City.

**57. STREET TREES**

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a type approved by the City in accordance with Ordinance No. 125.

**58. FIRE PROTECTION**

Fire sprinklers shall be installed in any new construction to the approval of the City.

**59. SANTA CLARA COUNTY FIRE DEPARTMENT**

A letter of clearance for the project shall be obtained from the Santa Clara County Fire Department prior to issuance of building permits. Clearance should include written approval of the location of any proposed Fire Backflow Preventers, Fire Department Connections and Fire Hydrants (typically Backflow Preventers should be located on private property adjacent to the public right of way, and fire department connections must be located within 100' of a Fire Hydrant).

**60. FIRE HYDRANT**

Fire hydrants shall be located as required by the City and Santa Clara County Fire Department as needed.

**61. CALIFORNIA WATER SERVICE COMPANY CLEARANCE**

Provide California Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers prior to Final Map approval.

**62. DEDICATION OF UNDERGROUND WATER RIGHTS**

Developer shall "quit claim" to the City all rights to pump, take or otherwise extract water from the underground basin or any underground strata in the Santa Clara Valley.

**63. SANITARY DISTRICT**

A letter of clearance or sign off of street improvement plans for the project shall be obtained from the Cupertino Sanitary District prior to Final Map approval.

**64. UTILITY EASEMENTS**

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and California Water Company, and/or equivalent agencies) will be required prior to Final Map approval.

**SECTION V: CONDITIONS ADMINISTERED BY THE CUPERTINO SANITARY DISTRICT**

**65. INSTALLERS AGREEMENT**

The property owner shall enter into an Installer's Agreement with the District for the construction of the proposed sewer infrastructure prior to issuance of Building Permits.

**66. PAYMENT OF FEES**

The property owner shall pay all required New Lateral, Sewer Development, Treatment Plant Capacity, plan check, and permit fees to the District prior to issuance of Building Permits.

**67. PLANS**

The property owner shall provide Utility Plan and Profile sheets and shall provide Plat & Legal description of the Public Sanitary Sewer Easement for District's Review. Building Permit approval will be pending allowable system capacity at the time of review.

**68. PROPERTY LINE CLEANOUT**

Each Unit will need its own separate Property Line Cleanout on the laterals. Also, please ensure 10' horizontal separation between sewer and water service lines.

**SECTION VI: CONDITIONS ADMINISTERED BY THE SANTA CLARA COUNTY FIRE DEPARTMENT**

**69. AERIAL ACCESS REQUIRED**

Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater (CFC Appendix D as amended by SCCFD).

**70. FIRE AERIAL APPARATUS TURNAROUND REQUIRED**

Installations shall conform with 2022 CA Fire Code Appendix D as amended by SCCFD. CFC Sec. 503.

**71. GROUND LADDER / EMERGENCY RESCUE OPENINGS**

Ground ladder and emergency rescue openings shall be required. Ground-ladder rescue from second and third floor rooms shall be made possible for fire department operations. Climbing angle of seventy-five degrees shall be demonstrated on the plans and maintained. Landscaping shall not be allowed to interfere with the required access (CFC Sec. 503 and 1031 NFPA 1932 Sec. 5.1.8 through 5.1.9.2).

**72. FIRE APPARATUS ROADWAY REQUIRED**

Installations shall conform to Fire Department Standard Details and Specifications sheet A-1. CFC Sec. 503.

**73. FIRE HYDRANT AND REQUIRED FIRE FLOW**

The Fire hydrants shall be provided along required fire apparatus access roads and adjacent public streets and shall be within 400 feet of the structure (CFC Sec. 507 App. B and App. C).

**74. FIRE DEPARTMENT CONNECTION REQUIRED**

The fire department connection (FDC) for the structure in support of the sprinkler system shall be installed at the street on the street address side of the building. [SCCFD, SP-2 Standard].

**75. FIRE LANE IDENTIFICATION**

The minimum clear width of fire department access roads shall be 20 feet. Fire apparatus access roads shall be designated and marked as a fire lane as set forth in Section 22500.1 of the California Vehicle Code.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of January, 2026, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:	
Kitty Moore, Mayor City of Cupertino	Date
ATTEST:	
Lauren Sapudar, Acting City Clerk	Date