



## PUBLIC WORKS DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Date: March 3, 2026

#### Subject

Conduct a Noticed Public Hearing to Consider Adopting a Resolution Vacating a Portion of Public Right-of-Way Located Along the Westerly boundary of Mary Avenue (APN 326-27-053)

#### Recommended Action

1. Find the project exempt from the California Environmental Quality Act (CEQA)
2. Adopt Resolution No. 26-XXX approving the vacation of a portion of public right-of-way located along the westerly boundary of Mary Ave (APN 326-27-053)

#### Background

On February 3, 2026, the City Council adopted Resolution No. 26-016 approving the Architectural & Site Approval Permit (ASA-2025-006) to allow for the development of forty (39) below market rate units and one manager's unit on the Mary Avenue project site (APN 326-27-053). Of these units, nineteen (19) will be for residents with intellectual or developmental disabilities.

The Mary Avenue project site is Site ID 10 of the General Plan's Housing Element, adopted by the City on May 14, 2024, and which the California Department of Housing and Community Development found in substantial compliance with the State Housing Element Law (Gov. Code § 65580 et seq) on September 4, 2024. The site is in the Garden Gate neighborhood and is located east of Highway 85. Presently, the site is a parcel carved out from 0.79 acres of underutilized right-of-way, owned by the City of Cupertino, adjacent to Highway 85, that includes some on-street parking. Neighboring uses include multi-family residential uses, a dog park, condominiums, and Highway 85. Refer to Attachment A.

To facilitate the project's construction, the City must vacate this portion of Mary Avenue. "Vacation" of a street means the City would terminate the public interest within this portion of public right-of-way. The California Streets and Highways Code (SHC) requires the City Council to conduct a public hearing and adopt a resolution of vacation. The SHC also requires the following notices to be published and posted:

1. Notice of the hearing on the proposed vacation shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper.  
*On February 13, 2026, the Cupertino Courier began posting a legal ad notice of the public hearing.*

2. At least two weeks before the day set for the hearing, the City shall post conspicuously, notices of the vacation along the line of the street proposed to be vacated. The notices shall be posted not more than 300 feet apart, but at least three notices shall be posted.

*On February 13, 2026, staff physically posted four notices at the property as required. Said posting was confirmed through an affidavit filed with the City Clerk.*

3. All public entities having any right, title, or interest in the public street being vacated have been notified.

*Staff notified the public utility companies (AT&T, Comcast, Cupertino Sanitary District, PG&E, and San Jose Water Company) of the proposed vacation and obtained no-objection letters from each entity.*

Additionally, pursuant to Government Code Section 65402(a), the Planning Commission is required to review certain proposed vacations for consistency with the City's General Plan. On February 10, 2026, the Planning Commission adopted Resolution No. 2026-01 finding that the Mary Avenue public right-of-way vacation (APN 326-27-053) is consistent with the General Plan.

#### Reasons for Recommendation and Available Options

Staff has determined that adoption of the resolution to vacate the Mary Avenue project site (APN 326-27-053) to facilitate the housing envisioned in the Housing and Land Use Elements of the City's General Plan can occur without adverse effect. If the City Council does not adopt the resolution, the approved development project would not be able to move forward with construction.

#### Sustainability Impact

No sustainability impact.

#### Fiscal Impact

No fiscal impact.

#### City Work Program (CWP) Item/Description

Yes, FY 21-22

Develop New BMR/ELI Housing: Develop ELI (extremely low income) and BMR housing units for developmentally disabled individuals (IDD) on City-owned property as well as the County-owned sites.

#### Council Goal:

Housing

#### California Environmental Quality Act

No California Environmental Quality Act impact.

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Floy Andrews, Interim City Attorney

Approved for Submission by: Tina Kapoor, City Manager

#### Attachments:

A – Map of Parcel To Be Vacated

B – Draft Resolution