

RESOLUTION NO. 17-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ESTABLISHING A POLICY FOR ACCEPTING DONATIONS

WHEREAS, Government Code Section 37354 permits the City Council of a City to accept or reject any donation, gift, bequest or devise (hereinafter "Donation") made to or for the City for any public purpose, and further empowers a City Council to hold and dispose of such property and funds for such uses as are prescribed in the terms of the Donation;

WHEREAS, if the terms of a Donation do not prescribe or limit the uses to which the property or funds received or their income or increase may be put, Government Code Section 37355 permits a City Council to prescribe the designated uses of said Donations;

WHEREAS, the administration of the City's programs and activities occasionally provide opportunities for the City to receive Donations of property or funds;

WHEREAS, the Cupertino City Council wishes to establish a policy setting forth the circumstances under which Donations may be accepted, and the rules and protocols to be followed by City staff and potential donors;

WHEREAS, the experience of the City is that contributions are made under a variety of circumstances, including those received anonymously, with restrictions as to their use, and in other cases unrestricted as to their use and purpose;

WHEREAS, the timely acceptance, use, and handling of Donations is a critical component of a program involving contributions, and the City wishes to encourage Donations and the administration of City programs that occasionally provide opportunities to receive Donations;

WHEREAS, the City Council further wishes to provide for the effective and legally sufficient means to abide by Donor intentions without compromising the City's ability to manage resources and deliver services;

WHEREAS, the Cupertino City Council finds and determines that the above recitals are true and correct and material to the adoption of this Resolution.

Approved by Council on October 17, 2017

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino adopts and approves the Donation Policy attached and incorporated herein by this reference, as the official donation policy of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 17th day of October, 2017, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	Paul, Chang, Scharf, Sinks
NOES:	None
ABSENT:	Vaidhyanathan
ABSTAIN:	None

ATTEST:

APPROVED:

/s/Grace Schmidt

/s/Darcy Paul

Grace Schmidt, City Clerk

Darcy Paul, Vice Mayor,
City of Cupertino



DONATION POLICY

I. PURPOSE

This policy establishes the Cupertino City Council's policy for accepting donations and provides guidelines to govern the management and disposition of donations.

II. BACKGROUND

Donations of every type are offered to the City of Cupertino (City) for general or specific purposes. This policy establishes uniform criteria and procedures for accepting donations and determining whether the City has adequate resources to administer the donations.

III. SPECIFIC OBJECTIVES

1. To establish an effective and efficient way to manage donations and provide guidelines to donors and City staff;
2. To generate revenue to fund or supplement new and existing programs and activities for the benefit of City and its residents;
3. To work with individuals, organizations and non-profits who support City's mission and goals.

IV. DEFINITIONS

For purposes of this policy, the following terms shall mean as follows:

1. **Donation:** An offer by a donor of any tangible or intangible item which the City is prepared to accept under this policy and guidelines. This includes a

monetary (cash) contribution, endowments, personal property, real property, financial securities, equipment, in-kind goods, services and any other asset for which the donor has not received any goods or services in return.

2. **Donor:** An individual or legal entity making a Donation to the City.
3. **Restricted Donation:** A donation restricted by the Donor for a particular purpose, program, location or City department.
4. **Unrestricted Donation:** A donation without any limitations imposed on its intended use and which the City can use for any public purpose.
5. **Park and Public Improvement Donation:** Real property or items, such as drinking fountains, tables, benches, and equipment that are traditionally intended to improve public areas in parks, in or around public buildings, streets, walkways and trails.

V. TYPES OF DONATIONS

1. Donations may be from a single individual, group, organization, business, corporation, or anonymous sources.
2. Donations may be restricted or unrestricted.
3. Donations may be offered in cash, financial securities, or personal property.
4. Donations of real property or any estate in real property may only be accepted as prescribed by state law, including Government Code section 27281, if applicable.
5. The following are subject to other laws or policies and are not governed by this Policy:
 - a. Donations of public art are subject to the General Guidelines for the Selection of Public Art, Resolution No. 05-040.
 - b. Sponsorships, including personal and financial support for a City event are governed by the City's Sponsorship Policy.
 - c. Contributions intended to benefit a City elected official, appointed official, or employee are governed by state and federal laws.
 - d. Land, real property, concessions, appurtenances, rights of way, street improvements, easements and the like, which are obtained under City authority through regulatory means, negotiations, or as part of a public improvement project, a development project or agreement.

VI. AUTHORITY TO ACCEPT/REJECT DONATIONS

The City at all times shall have the right to accept or decline any Donation, at its sole discretion. Unless otherwise required by federal, state, or local law the City Council authorizes as follows:

1. Donations of any kind, restricted or unrestricted, which are valued above \$25,000 must be presented to the City Council for approval and acceptance, pursuant to a resolution.
2. The City Council delegates the authority to approve and accept Donations valued at or below \$25,000 to the City Manager.
3. The City Manager is authorized to delegate authority to accept Donations valued at or below \$10,000 to the Director/Head of the Department for which the donation is intended.

All Donations are subject to the City Council's budget appropriation rules and must support programs and activities established by or supported by the City.

VII. DONATION EVALUATION GUIDELINES

The following criteria should be considered in evaluating Donations and determining whether City should accept or reject said Donations.

1. Donations must be consistent with City interests and support a public purpose;
2. The fair market value of non-monetary donations;
3. Whether the net benefit of a donation outweighs the cost to the City. Net benefit includes all lifecycle costs of ownership, maintenance, repair, clean-up, administration, and the liability, risk, and expense that may be associated with the donation;
4. Donations may not be used to implement new programs or services that are ongoing, unless the City Council approves the necessary funding to cover the costs of initiating and sustaining the new program or service;
5. Real and projected costs should be considered when a donation requires an immediate or initial expenditure, matching donations, or supplemental funding;
6. Potential costs and liabilities should be considered for donations that exclude indemnification, insurance, bonding, or other warranties that the City would

normally receive or require through the procurement process;

7. Consistent with state law, real property will be evaluated based on its physical condition, market value, and any claims, liens, or encumbrances clouding title to the property or reducing its value; and
8. Park and Public Improvement Donations and similar physical items must meet warranty conditions and City standards, if any, to ensure a long life as well as resistance to the weather, wear and tear, and possible vandalism. These donations must cover the cost of purchase, installation, and basic maintenance for the life cycle of the accessory, unless otherwise agreed by the City. The City reserves the right to modify, remove, or relocate these items, as appropriate.

VIII. DONATION FORMS AND AGREEMENTS

All donors are required to submit the Standard Donation Form to the City Manager's Office or, in the case of a department-specific donation valued at or below \$10,000, to the appropriate department head. The City Manager's Office will be responsible for drafting the Standard Donation Form.

Donations requiring Council approval/acceptance may require a donation agreement outlining the respective obligations of the donor and the City. Restricted Donations may also be subject to an agreement if either the donor or the City deem it necessary or appropriate.

The City Manager's Office will review all donation agreements which, at a minimum, should include:

1. Contact information of the donor and a designated representative;
2. The type, amount, and value of the donation;
3. The purpose and any use restrictions for the donation, if any;
4. Appropriate recognition of the donor, if desired; and
5. Waiver, Release, and Disclosure provisions outlining the procedure the City will follow to handle restricted donations that cannot be implemented.

IX. DONOR RECOGNITION GUIDELINES

In determining the appropriate recognition for a Donor, the following guidelines apply:

1. City will provide Donors an acknowledgement of acceptance of the donation.
2. No City building, facility, structure, equipment or furnishing can be named after a

Donor.

3. The City Council may recognize a donation by a plaque affixed to the appropriate City building, facility, structure, equipment or furnishings. The wording, size, type and location of the plaque shall be determined on a case by case basis.

Approved by Council on October 17, 2017

City of Cupertino
Standard Donation Form

The City of Cupertino acknowledges and thanks individuals and institutions who wish to donate funds, goods/property, and their voluntary time to help the City achieve its public goals and objectives for the betterment of the community. This Donation Form is intended to memorialize the understanding between the City and the Donor. The undersigned Donor wishes to make a donation to the City of Cupertino as described in more detail below.

The Donor is (check and complete all that apply):

- ☐ Donating \$_____ in a lump sum.
- ☐ Donating \$_____ in _____ (monthly, quarterly, etc.)
contributions of \$_____ in _____ installments.
- ☐ Donating the following (describe products, services, investment securities, real property, etc.) valued at \$_____:

Donor wishes to have this donation used as follows (check one):

- ☐ For a general purpose consistent with the City's adopted goals and objectives, based on the City's discretion.
- ☐ By the _____ (Department/Division) for a general purpose at their discretion.
- ☐ By the _____ (City/Department/Division) for the following specific purposes:

Except as provided above, the City may use the donation in any manner at its sole discretion and the Donor has no right or obligation to control the City's use of the donation.

City of Cupertino
Standard Donation Form

Donor understands that the City will endeavor to meet the use conditions of restricted donations, in accordance with the wishes of the donor. If, however, the City is unable to meet the Donor's restrictions, the City will make reasonable attempts to contact the Donor or the representative identified by Donor in the Form/Agreement to discuss alternative uses or to return the Donation. If City receives no response within 60 calendar days of City's first attempt to contact the Donor or the representative, Donor agrees to relinquish all rights Donor may have had to the Donation, on behalf of Donor, Donor's heirs, successors and agents. Donor further understands and agrees that the City shall have the right to use the donation for any other public purpose. The City will make an effort to use the donation for a purpose similar in nature to the originally specified purpose.

For Park and Public Improvement Donations: Donations must cover the cost of purchase, installation, and basic maintenance for the life cycle of the accessory unless otherwise agreed upon by the City. The City reserves the right to modify, remove or relocate the accessory.

City reserves the right to reject donations that are inconsistent with City's mission, values, or standard practices.

In connection with administering this agreement, the City shall contact the Donor through the following primary representative unless the donor chooses to remain anonymous. In the event the primary representative cannot be reached, the City shall contact the secondary representative listed. The Donor agrees that both the primary and secondary representatives hold the authority to execute this agreement.

Donor/Primary Representative: _____ E-Mail: _____

Mailing Address: _____

Phone: _____ Fax: _____

Secondary Representative: _____ E-Mail: _____

Mailing Address: _____

Phone: _____ Fax: _____

☐ I wish to remain anonymous. (Check box)

City of Cupertino
Standard Donation Form

In addition to the foregoing, the Donor understands and agrees that:

- a. Once approved, this form will serve as an acknowledgement of receipt of the donation.
- b. Any recognition will only be made at the City's discretion.

Donor/Representative Signature: _____ Date: _____

Donor/Representative Name (Print): _____

FOR CITY USE ONLY

Approved/Declined by _____ (Name/Title, Council) on _____ (Date).