

**CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014**

**RESOLUTION NO.**

**OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO  
RECOMMENDING FINDING THE PROPOSED CAPITAL IMPROVEMENTS  
PROGRAM FISCAL YEAR 2023-2024 CONSISTENT WITH THE CITY OF  
CUPERTINO GENERAL PLAN**

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The Planning Commission recommends that the City Council find the proposed Capital Improvements Program fiscal year 2023-2024 consistent with the City of Cupertino General Plan, in substantially similar form to the Draft Resolution attached hereto as Exhibit CIP:

PASSED AND ADOPTED at a Regular Meeting of the Planning Commission of the City of Cupertino the 28<sup>th</sup> day of March 2023, 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

\_\_\_\_\_  
Steven Scharf  
Chair, Planning Commission

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
FINDING THE PROPOSED CAPITAL IMPROVEMENTS PROGRAM  
FISCAL YEAR 2023-2024 CONSISTENT WITH THE CITY OF CUPERTINO  
GENERAL PLAN**

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WHEREAS, the City of Cupertino's Capital Improvement Program (CIP) guides the funding and scheduling of infrastructure improvement projects over the coming Fiscal Year. The current CIP recommendations have been updated for the Fiscal Year (FY) 2023-2024 time period for City Council review and consideration; and

WHEREAS, California Government Code Section 65401 requires that City's Planning Commission make a determination that the annual CIP is in conformance with the City's General Plan; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA) 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"), City staff has independently studied the proposed action and has determined that the finding of consistency with the General Plan is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Furthermore, the finding of consistency with the General Plan is not a "project" in that it has no "potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment." CEQA Guidelines § 15378(a); and

WHEREAS, on March 28, 2023, the Planning Commission recommended on a X-X vote that the City Council find the proposed Capital Improvements Program fiscal year 2023-2024 consistent with the City of Cupertino General Plan; 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 May 17, 2023 the City Council held a public hearing to consider the Capital Improvements Program fiscal year 2023-2024 consistent with the City of Cupertino General Plan; and

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

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

Section 1: The City Council has duly considered the full record before it, including the staff report and presentation, maps, facts, exhibits, public testimony and other evidence and materials submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The City Council hereby exercises its independent judgment and determines that the action is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3). CEQA Guidelines section 15061(b)(3) states that a project is exempt from CEQA if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The action is a determination of consistency with the General Plan and therefore it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment.

Section 3: The City Council finds in accordance with the Cupertino Municipal Code (CMC) section 2.32.070 (C) and state law based on the evidence in the public record that the City's CIP (FY 2023-2024) conforms to the City's General Plan (Community Vision 2015-2040.)

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a

significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action of "Adopt a Resolution finding that the Fiscal Year 2023 - 2024 Capital Improvement Program proposal is consistent with the City's General Plan" would have no or only a de minimis effect on the environment because it is an administrative action. The foregoing determination is made by the City of Cupertino Planning Commission in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this 17th day of May 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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| SIGNED:<br><br>_____<br>Hung Wei, Mayor<br>City of Cupertino | _____<br>Date |
| ATTEST:<br><br>_____<br>Kirsten Squarcia, City Clerk         | _____<br>Date |

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