

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

RESOLUTION NO.

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO
APPROVING A MODIFICATION OF AN EXISTING USE PERMIT (U-2005-04)
TO ALLOW THE CONSTRUCTION OF A 275-CRYPT GARDEN MAUSOLEUM
AT THE GATES OF HEAVEN CEMETERY LOCATED AT 22557 CRISTO REY
DRIVE (APN: 342-63-002)

SECTION I: PROJECT DESCRIPTION

Application No.: M-2024-002
Applicant: Gates of Heaven Cemetery
Location: 22557 Cristo Rey Drive (APN: 342-63-002)

SECTION II: FINDINGS FOR A USE PERMIT:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an amendment to an existing Use Permit (U-2005-04) to allow above ground crypts on a portion of the Gates of Heaven Cemetery;

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the application; 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 15303 for the reasons set forth in the staff report dated March 11, 2025 and incorporated herein; and

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

WHEREAS, the Planning Commission finds:

1. The proposed development and/or use, 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 proposed 275 garden crypt mausoleum will not cause any further traffic, noise, or visual impacts to the existing uses onsite. Surrounding residential uses will be over 750 feet from the nearest residences, and for those visiting the cemetery, the crypts will be visually mitigated by being adjacent to the other mausolea onsite.

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 proposed project is consistent with and will be conducted in a manner in accordance with, the General Plan, Zoning Ordinance and is consistent with previous approvals. Furthermore, the use is categorically exempt under CEQA in that the proposed project involves minor changes to an existing facility.

WHEREAS, the Planning Commission is the approval authority for this project and is granted the authority by the Municipal Code to exercise its independent judgment, based on the record before it, for purposes of the California Environmental Quality Act; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission takes the following actions:

1. Exercises its independent judgment and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines sections 15301 and 15303. The Class 1 exemption applies to existing facilities that involve negligible or no expansion of existing or former use. The proposed project is for four crypts that take up around 3,000 square feet of a an approximately 58-acre site. Therefore, the proposed project would not involve the expansion of the former use (Section 15301, Class 1), will not significantly expand the use beyond the current use that already exists or previously existed, and will not have a significant effect on the environment. Further, Class 3 exemptions consist of construction and location of limited numbers of new, small facilities or structures. Each crypt is small in relation to other approved structures within the site. Therefore, the proposed project is small and consistent with Section 15303, Class 3.

2. Approves the application for a Modification to Use Permit, Application no. M-2024-002 subject to the conditions which are enumerated in this Resolution beginning on PAGE

3 thereof. The conclusions and sub conclusions upon which the findings and conditions specified in this resolution are based, including those contained in the Public Hearing record concerning Application no. M-2024-002 as set forth in the Minutes of Planning Commission Meeting of March 11, 2024, are hereby 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 dated March 6, 2024, and entitled “New Garden Mausoleum” consisting of eight (8) sheets labeled A0-A2, C0.0 – C3.0, and L-1, prepared by Chris Kelly Architects, except as may be amended by conditions in this resolution.

2. 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.

3. 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.

4. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval shall remain in effect except as may be amended by conditions contained in this resolution.

1. CONCURRENT CONDITIONS

The conditions of approval contained in file nos. ASA-2024-002 and TR-2024-023 shall be applicable to this approval.

5. MODIFICATIONS APPROVED

Four above ground crypts are approved to allow up to eight deceased to be interred. No increase in the total number of burials allowed at the Cemetery is permitted with this approval.

6. 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.

7. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- 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 the 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. Night time 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.

The applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

8. 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 to off-site businesses and residents within 500 feet of the project site. The City will provide a template notice and mailing addresses for the Applicant's use. The notice must be approved by City staff prior to sending. The project applicant shall provide the City with evidence of mailing of the notice, upon request.

Please note that, if pile driving, the requirements for noticing and monitoring outlined in City Code Section 17.04.050 G (3) shall apply.

9. NOISE AND VIBRATION SIGNAGE

At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant/contractor shall ensure that a sign measuring at least four feet by six feet shall be posted on construction fencing at the entrance(s) to the job site, clearly visible to the public, and include the following:

- a. Permitted construction days and hours;
- b. A description of proposed construction activities;
- c. Telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint; and
- d. Contact information for City's and contractor's authorized representatives that are assigned to respond in the event of a complaint related to fugitive dust, pursuant to the requirements for compliance with [BAAQMD's CEQA Air Quality Guidelines](#).

If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the complaint and the action taken to the City within three business days of receiving the complaint.

10. 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.

11. 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.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

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.

13. 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.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT

14. 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.

15. 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. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten percent flood water surface elevation to the satisfaction of the Director of Public Works. 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 Building Permit approval.

16. FEES AND BONDS

The project developer shall provide 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 issuance of Building permit.

Fees:

- | | |
|--------------------------------|---|
| a. Checking & Inspection Fees: | Per current fee schedule (\$1,302) |
| b. Grading Permit: | Per current fee schedule (\$1,352) |
| c. Storm Drainage Fee: | Per current fee schedule (\$2,375 per AC) |

Bonds:

- a. 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.

17. 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.

18. WATER BACKFLOW PREVENTERS

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

19. 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.

20. 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.

21. 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.

22. FIRE PROTECTION

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

23. 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).

24. FIRE HYDRANT

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

25. SAN JOSE WATER SERVICE COMPANY CLEARANCE

Provide San Jose Water Service Company approval for water connection, service

capability and location and layout of water lines and backflow preventers before issuance of a building permit approval.

26. 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.

27. UTILITY EASEMENTS

Clearance approvals from the agencies with easements on the property (including PG&E, AT&T, and San Jose Water Company, and/or equivalent agencies) will be required prior to issuance of building permits.

PASSED AND ADOPTED this 13th day of March, 2025 at a noticed Public Hearing of the Planning Commission of the City of Cupertino, State of California, held by the Director of Community Development, or his or her designee, pursuant to Cupertino Municipal Code Section 19.12.120.

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Piu Ghosh
Planning Manager

Santosh Rao
Chair, Planning Commission