

CC 06-15-21

Special Meeting #1

General Plan
Amendment
Authorization

Written Comments

From:
David and Lynne Watters
769 Prestwick Ct.
Sunnyvale, CA 94087

June 9, 2021

To:
Cupertino City Hall
10300 Torre Avenue
Cupertino, CA 95014-3255

For the Cupertino City Council Public Hearing on June 15, 2021 at 6:00 PM,
Regarding GPAAuth-2020-001,

We live in the property adjacent to the southeast side of 19820 Homestead Road. The proposed project places a two-story house within eight feet of our backyard. This is not consistent with the surrounding neighborhood of single-story houses with large yards. The view from the second-story window would compromise our privacy and devalue our property. To better match the surrounding neighborhood, we request that the house on the southeast side of the property be limited to a single story. If this is not possible, we request that a tall fence be installed that is high enough to block the view of our yard from the second-story window.

Sincerely,



David Watters
Lynne Watters

Cyrah Caburian

From: Pratima Shah <pratima@bellomoarchitects.com>
Sent: Friday, June 11, 2021 4:25 PM
To: City Council
Cc: Homestead Homes; Jo Bellomo; Gian Martire
Subject: 6/15/2021 Hearing :19820 Homestead Road Responses to Council's Comments
Attachments: 1-19820 Homestead Road Responses to Council's Comments 06112021.pdf; 19820 Homestead Road 05062021 Rev 1 Optimized.pdf

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Respected Council Members,

This is regarding General Plan Amendment Initiation request at 19820 Homestead Road.

Thank you for your review and discussion of our project on April 6th.

We appreciate your comments and guidance. We have submitted a revised design proposal and our project is on agenda for April 15th's City Council meeting.

I am enclosing a summary of responses to your comments in this email.

Please let's know if you have any questions or concerns regarding the project.

We would appreciate your support for this project.

Thank You

Pratima Shah

Architect
Joseph Bellomo Architects
102 University Avenue, 3 C
Palo Alto, CA 94301
650 326 0374 ext 1

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www.bikearc.com



Project Name: 19820 Homestead Road, Cupertino, CA

Date: June 10th, 2021

To: The Council Members, City of Cupertino

Attn: Gian Martire, Senior Planner

Subject: Responses to the City Council's Comments

City Council Hearing: Date April 6th 2021

Final Motion:

Paul moved and Moore seconded a substitute motion for the applicant to come back within 30 days and in consideration of Council's comments, with a revised proposal emphasizing the Below Mark Rate (BMR) aspect and community benefits relating to the BMR housing impact.

Council's comments:

- require the homes adjacent to the single-family residents have a 12' setback on the second floor and a 9' setback on the east border
- require a shadow study
- staff to look into reasonably noticing the neighbors
- include buffering and landscaping

The motion carried unanimously.

Response to the City Council's Comments:

Comment 1: *Require the homes adjacent to the single family residents have a 12' setback on the second floor and a 9' setback on the east border.*

Response: The design proposal includes the following setbacks on the East Side

1. On Ground Floor: 9 feet
2. Second Floor: 12 feet

Comment 2: *Require a shadow study*

Response: Please see sheet number A 21.

A detailed shadow study has been performed for different days and times of the year. Shadow Study performed on June 21st (Summer Solstice) has been included in the submittal. The diagrams show the roof plan and a 3D view with shadows cast at 10 am, 12 noon, 2 pm, 3 pm, and 4 pm. The study clearly shows that the shadows are not cast on neighboring residential buildings and will not shade the solar panels on the roof of the neighboring residence.

Comment 3: *Buffering and landscaping*

Response: This comment is regarding Privacy Protection Standards for Single Family Residential district to mitigate privacy impacts due to Second Story openings.

On the East side of the property, which is abutting a Single-family Residential Zone, there are proposed 5 operable windows and two obscure (white) glass walls.

Mitigation methods proposed:

1. Planting of trees
2. Three windows with a sill level more than 5 feet above the finished second floor.
3. Two obscured, non-operable windows.

Proposed Landscape: There are three existing trees on the east side of the property, which will be retained. There is a mature Mulberry tree with a 30-inch trunk diameter on the neighboring property. Three additional trees have been proposed on the east side at locations, which will screen the second-story openings.

The additional setback of 9 feet on the First floor and 12 feet on the Second Floor with landscape and trees will create a buffer between neighboring residential properties.

Comment 4: *Emphasizing the Below Mark Rate (BMR) aspect and community benefits relating to the BMR housing impact.*

Response: We studied the Below Market Rate Housing Mitigation Manual. Our design proposal is aligned to the Goals of the City of Cupertino's General Plan Housing Element.

1: Goal HE-1: *An Adequate Supply of Residential Units for All Economic Segments.*

• **Goal HE-2:** *Housing is Affordable for a Diversity of Cupertino Households.*

The design proposal includes housing units of diverse sizes for diverse income groups. There are houses with 4 different sizes ranging from approximately 3,500 sq ft to 2,300 sq ft. It also includes two Accessory Dwelling units of 650 sq ft.

Accessory Dwelling Units are a valuable form of dwelling units and an essential component of the housing supply. ADUs provide housing for family members, students, the elderly, and others at lower prices in the neighborhood as well as provide additional rental stock in the City.

2: Policy HE-4: Housing Mitigation: Ensure that all new developments - including market-rate residential developments-help mitigate project-related impact on affordable housing needs.

As per the Staff Report dated April 6, 2021, City Council Hearing:

Provision of affordable housing

- The Below Market Rate (BMR) Mitigation Program Procedural Manual requires that any residential development between one to six units either pay the Affordable Housing Mitigation Fee or provide one BMR unit. The applicant is proposing to pay the Mitigation fee (For reference, the current fee is equal to \$20.88 a square foot.)
- The applicant will receive a credit for the existing unit on the site. Therefore, the calculation will be based on the three (3) net new units minus the garage and ADU square footages. At approximately 8,105 square feet, the estimated fee would be **\$169,232.40**.

As per the Staff Report published on June 10, 2021,

The current fee is equal to \$18.98 a square foot.

At approximately 8,105 square feet, the estimated fee would be \$153,832.30.

The applicant proposes to pay an in-lieu fee of \$ 30.00 a square foot. The estimated fee would be \$ 243,150.00, which is \$89,312.00 more than required by Below Market Rate Program Procedural Manual.

Net Fiscal Impact:

The proposed residential development shares the City of Cupertino's Community Vision of maintaining and enhancing the quality of life. This vibrant improvement will revitalize this underutilized property, enhance the neighborhood and provide the most desirable housing in the City of Cupertino without causing any negative or Net Fiscal impact, on the contrary, generating revenue of \$9,300 annually to the General Fund.

Community Benefit:

In addition to the proposed housing, the development has a Land Dedication of around 3000 square feet along Homestead Road. This is the Prime Real Estate that is dedicated to the "Future Easement" for Pedestrian and Vehicular circulation.

There is no existing sidewalk along with the property. The applicant proposes to develop a sidewalk, a landscape strip, street trees, street lighting, benches, and Storm Water Management of the sidewalk way. The proposed street trees, the landscape along the sidewalk will enhance the streetscape and pedestrian experience.

END



19820 Homestead Road, Cupertino



19820 Homestead Road,Cupertino, CA

A VIEW OF THE EXISTING BUILDING FROM HOMESTEAD ROAD

<div>APPLICANT: HOMESTEAD HOMES 19620 STEVENS CREEK BLVD STE 280, CA 95070 CONTACT: ELLA SUN AND WILLIAM PAN WPAN@WPANRE.COM ELLASUN.HOUSE@GMAIL.COM</div> <div>ARCHITECT: JOSEPH BELLOMO ARCHITECTS 102 UNIVERSITY AVENUE PALO ALTO, CA 94301 (650) 326 0374 PROJECT ARCHITECT: PRATIMA SHAH PRATIMA@BELLOMOARCHITECTS.COM</div> <div>SURVEYOR: SANDIS 1700 S. WINCHESTER BLVD, CAMPBELL, CA 95008 CONTACT: STEVE YAZALINA SYAZ@SANDIS.NET</div> <div>ARBORIST: DAVE DOCKTER CONTACT: DAVEDOCKTER@COMCAST.NET</div>			<div>CIVIL ENGINEER: SANDIS 1700 S. WINCHESTER BLVD, CAMPBELL, CA 95008 CONTACT: STEVE YAZALINA SYAZ@SANDIS.NET</div> <div>GEOTECHNICAL ENGINEER: ROMIG ENGINEERS 1390 EL CAMINO REAL, SAN CARLOS, CA 94070 CONTACT: PAYUM VOSSOUGH PAYUM@ROMIGENGINEERS.COM</div> <div>MECHANICAL, ELECTRICAL, AND PLUMBING ENGINEERS: INTERFACE ENGINEERING, INC 135 MAIN STREET, SUITE 400 SAN FRANCISCO, CA 94105 CONTACT: JOEL CRUZ JOELC@INTERFACEENG.COM</div> <div>LANDSCAPE ARCHITECT: ANYI LANDSCAPE STUDIO CONTACT: ANYI HUANG ANYIHUANG@GMAIL.COM</div>			<div>PROJECT DESCRIPTION: GENERAL PLAN AMENDMENT INITIATION PROPERTY ADDRESS: 19820 HOMESTEAD ROAD, CUPERTINO, CA OWNER: HOMESTEAD HOMES APN: 316-04-064 EXISTING LAND USE: LOW DENSITY (1-5 DU/Ac.) PROPOSED LAND USE: LOW MEDIUM DENSITY (5-10 DU/Ac.) EXISTING LOT ZONING: A1-43 PROPOSED ZONING AMENDMENT: PLANNED UNIT DEVELOPMENT OCCUPANCY: RESIDENTIAL LOT SIZE: 21,780 SQ FT FIRE SPRINKLER: FULLY SPRINKLERED TRASH / RECYCLING: ON SITE</div>			<div>A2VICINITY MAP</div> <div>A3PARCEL MAP</div> <div>A4LAND USE PLAN</div> <div>A5CITY OF SUNNYVALE GENENRAL PLAN</div> <div>A6ZONING MAP</div> <div>A7ZONING CODE COMPLIANCE</div> <div>A8SITE PLAN</div> <div>A9SECOND FLOOR PLAN</div> <div>A10ROOF PLAN</div> <div>A11AREA CALCULATIONS</div> <div>A12PROPOSED SUBDIVISION</div> <div>A13GRAPHIC REPRESENTATION OF CHANGE IN DENSITY</div>		<div>A14EAST AND WEST ELEVATIONS</div> <div>A15NORTH AND SOUTH ELEVATIONS</div> <div>A16ELEVATION FROM DRIVEWAY</div> <div>A17AERIAL VIEW</div> <div>A18STREET VIEW FROM HOMESTEAD ROAD</div> <div>A19CONTEXT PICTURES</div> <div>A21SHADOW STUDY</div> <div>C0SITE SURVEY</div> <div>C1GRADING PLAN</div> <div>L2EXISTING TREE SURVEY</div> <div>L4LANDSCAPE CONSTRUCTION DETAILS</div> <div>L5PLANT PICTURES</div>
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ARCHITECTSJOSEPH BELLOMO

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Project Name:	19820 Homestead Road, Cupertino
	COVER SHEET

DATE05/01/2021

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Project Number2020-04

A1

19820 Homestead Road



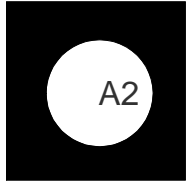
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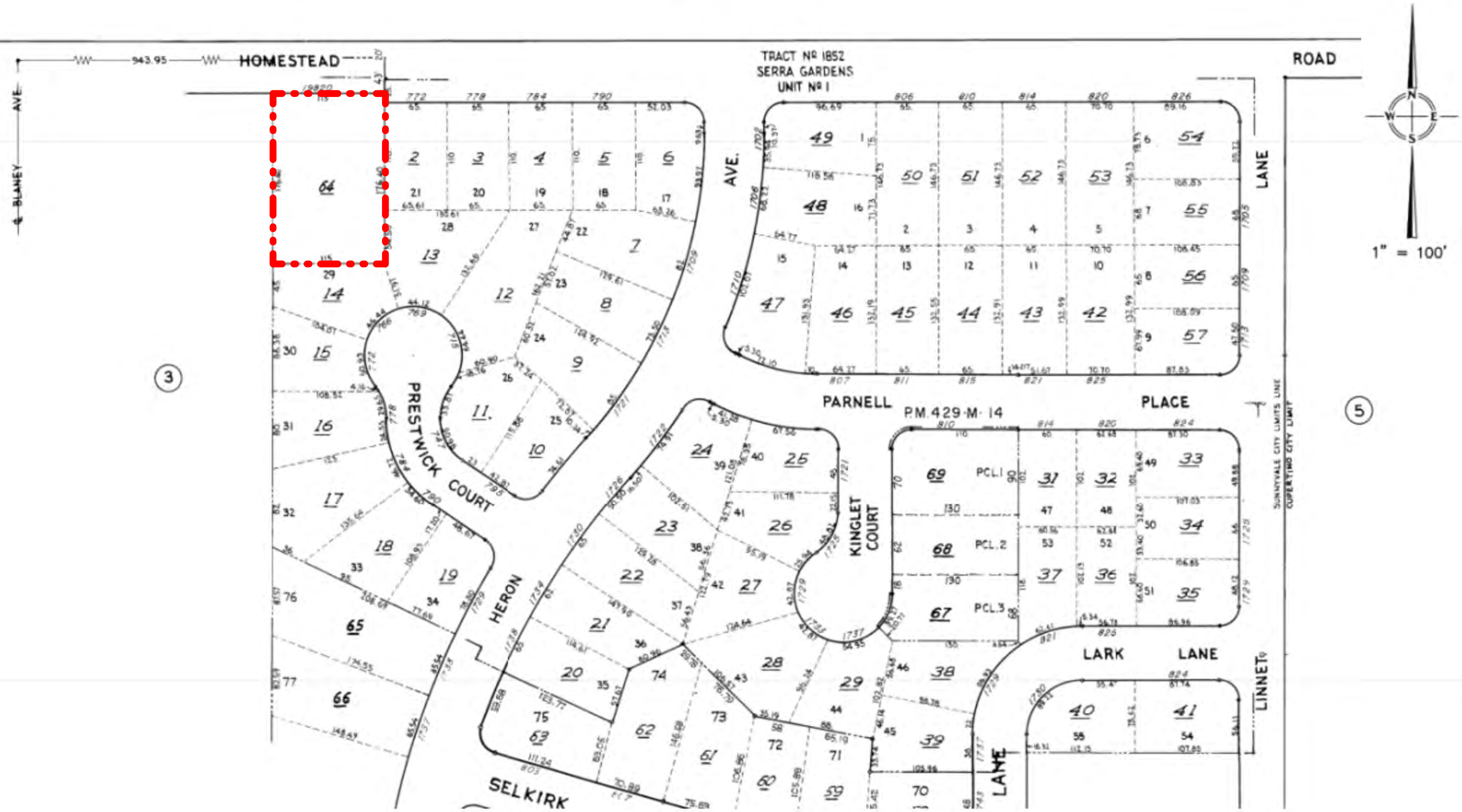
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Rev 1

Project Name:
19820 Homestead Road, Cupertino
PARCEL MAP

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EXISTING GENERAL PLAN LAND USE : LOW DENSITY RESIDENTIAL (1-5 DU/Ac)

ADJOINING PROPERTIES:

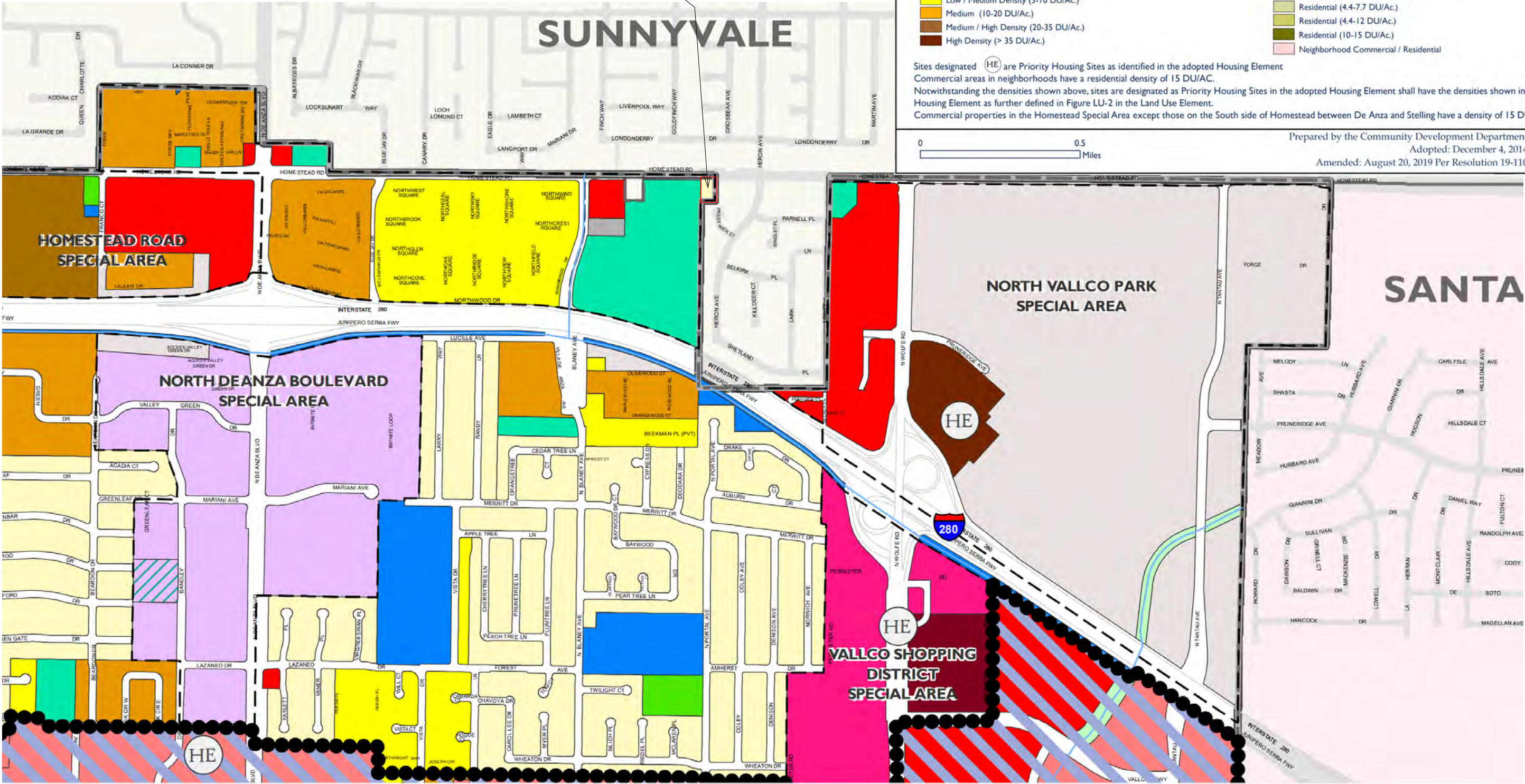
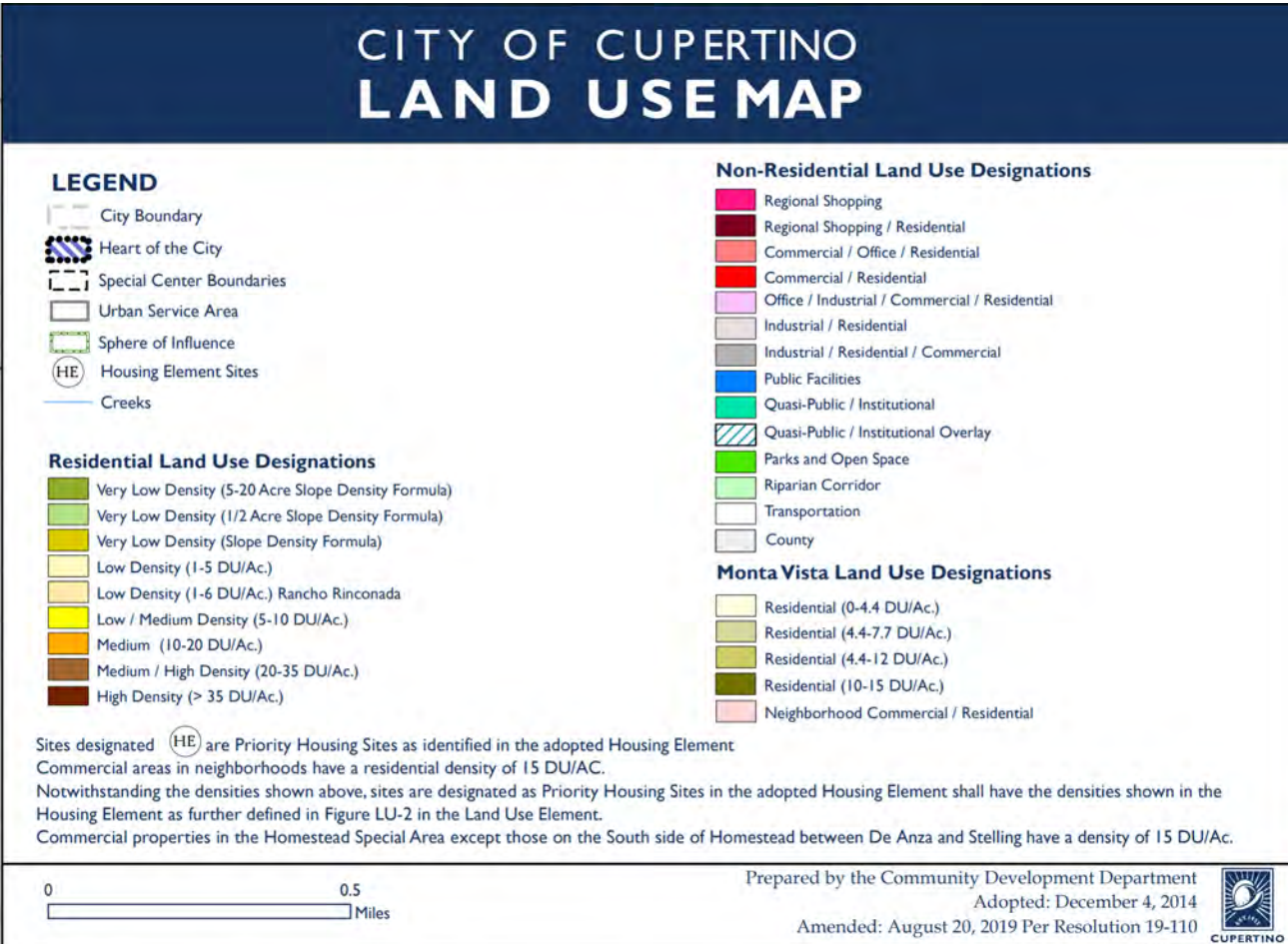
NORTH : HOMESTEAD ROAD

EAST: SINGLE FAMILY RESIDENCE IN CITY OF SUNNYVALE
(ZONE: RO , GENERAL PLAN DEIGNATION: LOW DENSITY RESIDENTIAL)

SOUTH:SINGLE FAMILY RESIDENCE CITY OF SUNNYVALE
(ZONE: RO , GENERAL PLAN DEIGNATION: LOW DENSITY RESIDENTIAL)

WEST: PG&E PROPERTY (QUASI PUBLIC/INSTITUTIONAL)

19820 HOMESTEAD ROAD



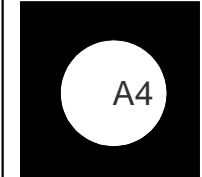
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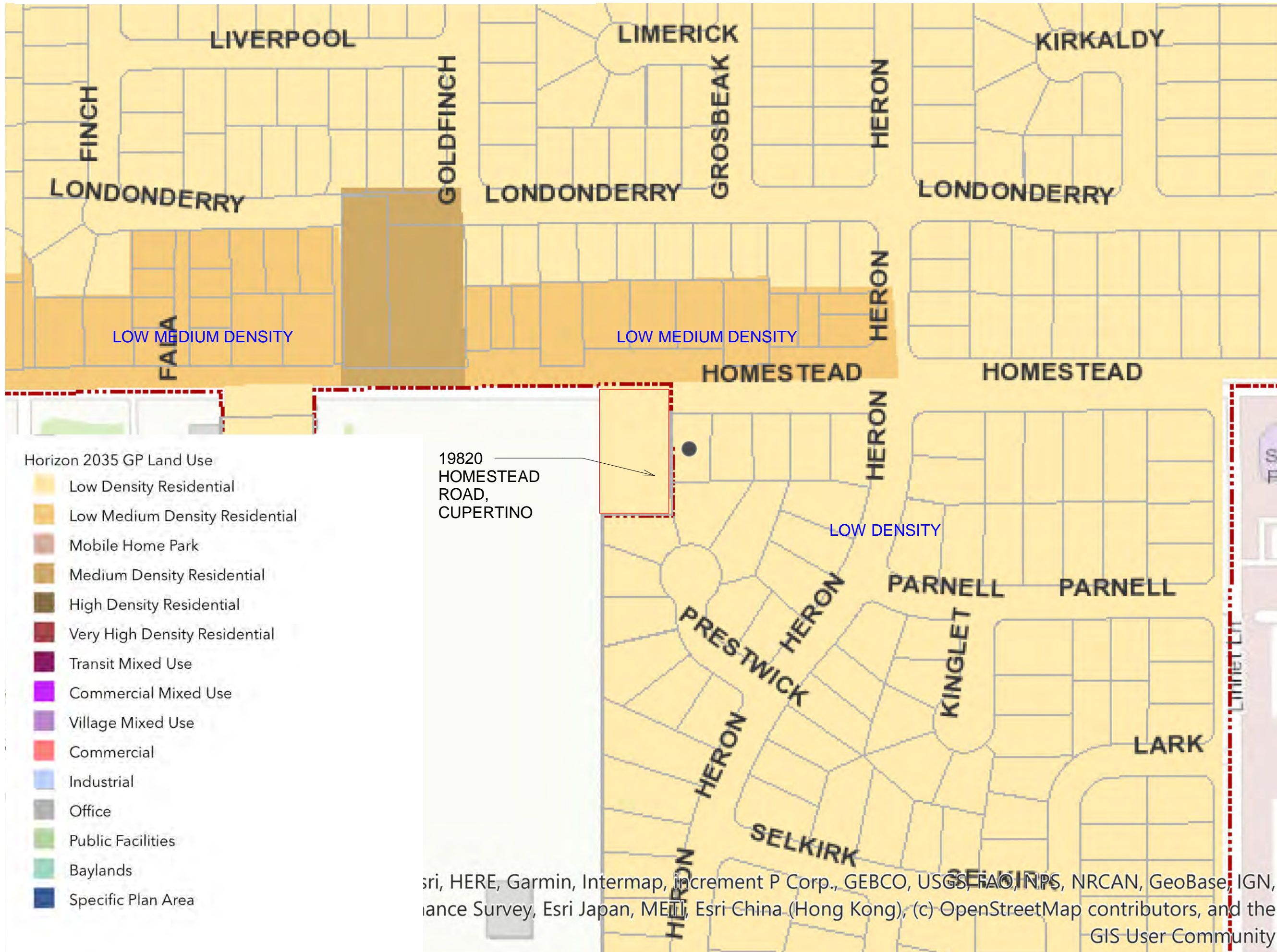
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LAND USE PLAN

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CITY OF SUNNYVALE GENERAL PLAN



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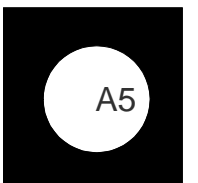
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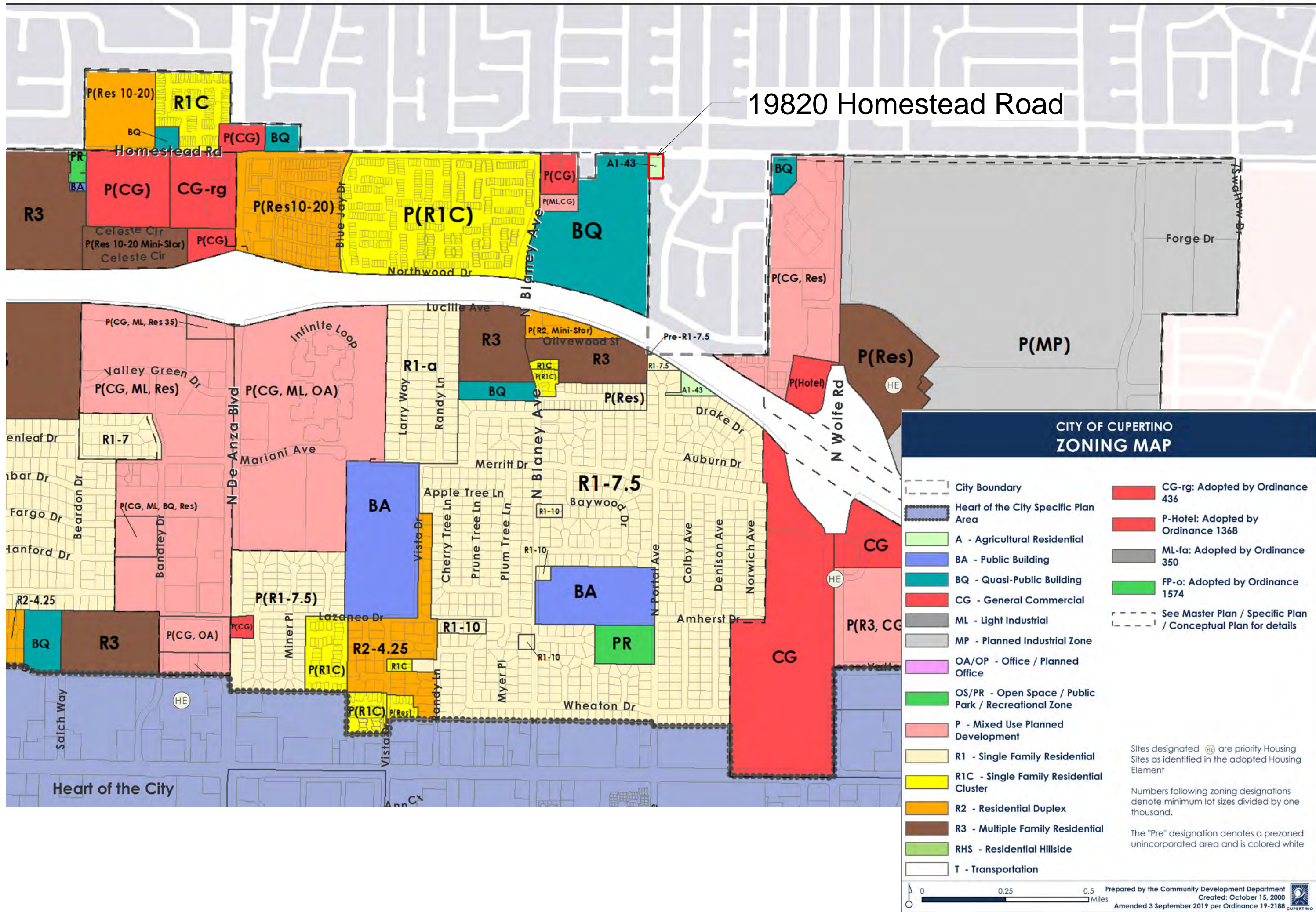
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 CITY OF SUNNYVALE GENERAL PLAN

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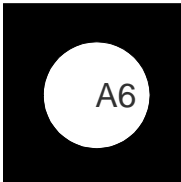
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Project Name:
19820 Homestead Road, Cupertino

ZONING MAP

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GENERAL PLAN AMENDMENT:

EXISTING LAND USE DESIGNATION: LOW DENSITY RESIDENTIAL (1-5 DU/Ac)

ONE RESIDENTIAL UNIT ON 18,900 SQ FT

RESIDENTIAL DENSITY IS: 2.3 DU/Ac

PROPOSED LAND USE DEISGNATION: LOW MEDIUM DENSITY (5-10 DU/Ac)

FOUR RESIDENTIAL UNITS ON 18,900 SQ FT

RESIDENTIAL DENSITY IS: 9.2 DU/Ac

Project: 19820 Homestead Road, Cupertino , CA

Cupertino Municipal Code Analysis

Site Information:

Area of the Property: 21,775 sq ft

Current Assigned Zoning: Agriculture A1

Proposed Zoning : Planned Development Units

Project Program: 4 Single Family Homes in a Planned Development

Zoning Code Requirements: As per Multifamily Residential : R3

Area of the property without easement for future road: 18,900 sq ft

Site Development Regulation:

A. Density – Maximum number of units cannot exceed that allowed by the General Plan

	Required	Proposed : 4 Residential Units
Number of Units	Dwelling net lot area	
Upto 3 Units	9300	
Over 3	2000 additional square feet per dwelling unit Reuired Area for 4 Units: 11,300	4 Units on 21,775 sq ft.
Lot Width	70 feet at front building setback line	115 feet

Building Development Regulations

A. Maximum Lot Coverage	40% of net lot area	38%
B. Maximum Height	Limited to two stories (not to exceed 30 feet)	Two Stories: Height 25 ft
C. Setbacks	First Floor	Second Floor
1. Front-yard	Required : 20 feet	Required : 20 ft
2. Side-yard	Proposed: 20 ft	Proposed: 20 ft
i. Interior side	Required: 6 feet	Required :9 ft
ii. Street side	Proposed :10'6	Proposed : 10' 6 ft on West and
3. Rear-yard	Required: 12 feet	9 ft
	Not Applicable	12 Ft on East side
	20 feet or 20% of the lot depth, whichever is greater. Main building may encroach as close as 10 feet to rear lot line if a useable rear-yard setback area of not less than twenty times the width of the lot.	Not Applicable
D. Private Outdoor Space - Balconies may be provided to fulfill this standard.	Approximately 20% of each unit's gross first-floor area	45 to 51% of each unit's gross first floor area
E. Second Story Decks and Patios		
1. Front-yard	Required :17 feet	Proposed: 20 ft
2. Side-yard	15 feet:	Not Proposed
3. Rear-yard	20 feet	Proposed: 20 ft



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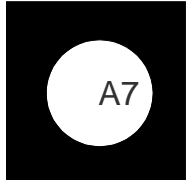
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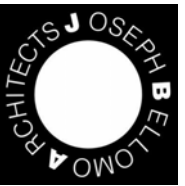
ZONING CODE COMPLIANCE

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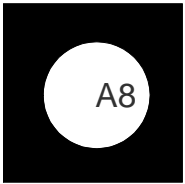
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SITE PLAN

DATE
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2020-04



A8

25 FT FUTURE
ROAD EASEMENT

HOMESTEAD ROAD

North Elevation

A15

PG&E PROPERTY

A14

1 West Elevation 189' - 6"

10' UTILITY EASEMENT

EXISTING MASONRY WALL

KITCHEN

RESIDENCE 1
LVL 1: 930 SQFT.

LIVING ROOM

20' - 10"

20' - 0"

443 SQFT.

ADU 1

656 SQFT.

CAR PARKING

1 2

KITCHEN

RESIDENCE 3
LVL 1: 1090 SQFT.

LIVING ROOM

20' - 0"

460 SQFT.

Elevation from
1 the Driveway 1

A16

DRIVEWAY

24' - 0"

IN

OUT

LIVING ROOM

RESIDENCE 2
LVL 1: 930 SQFT.

KITCHEN

20' - 10"

20' - 0"

443 SQFT.

ADU 2

656 SQFT.

KITCHEN

TURN
AROUND
SPACE

5' 20' - 3"

KITCHEN

12' - 2"

LIVING ROOM

RESIDENCE 4
LVL 1: 1090 SQFT.

DINING AREA

20' - 0"

460 SQFT.

20' - 0"

15' - 9"

NEW SIDEWALK

4' - 6"

4' - 6"

EASEMENT

NEIGHBORING RESIDENTIAL PROPERTY
CITY OF SUNNYVALE
LOW RESIDENTIAL DENSITY :R0

NEIGHBORING RESIDENTIAL PROPERTY
CITY OF SUNNYVALE
LOW RESIDENTIAL DENSITY :R0

1 Site Plan
1/16" = 1'-0"



A15
N South Elevation
115' - 0"

2 East Elevation

A14

110' - 0"

189' - 6"



1 Second Floor Plan
1/16" = 1'-0"



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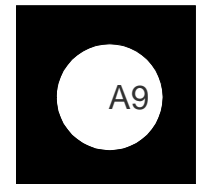
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SECOND FLOOR PLAN

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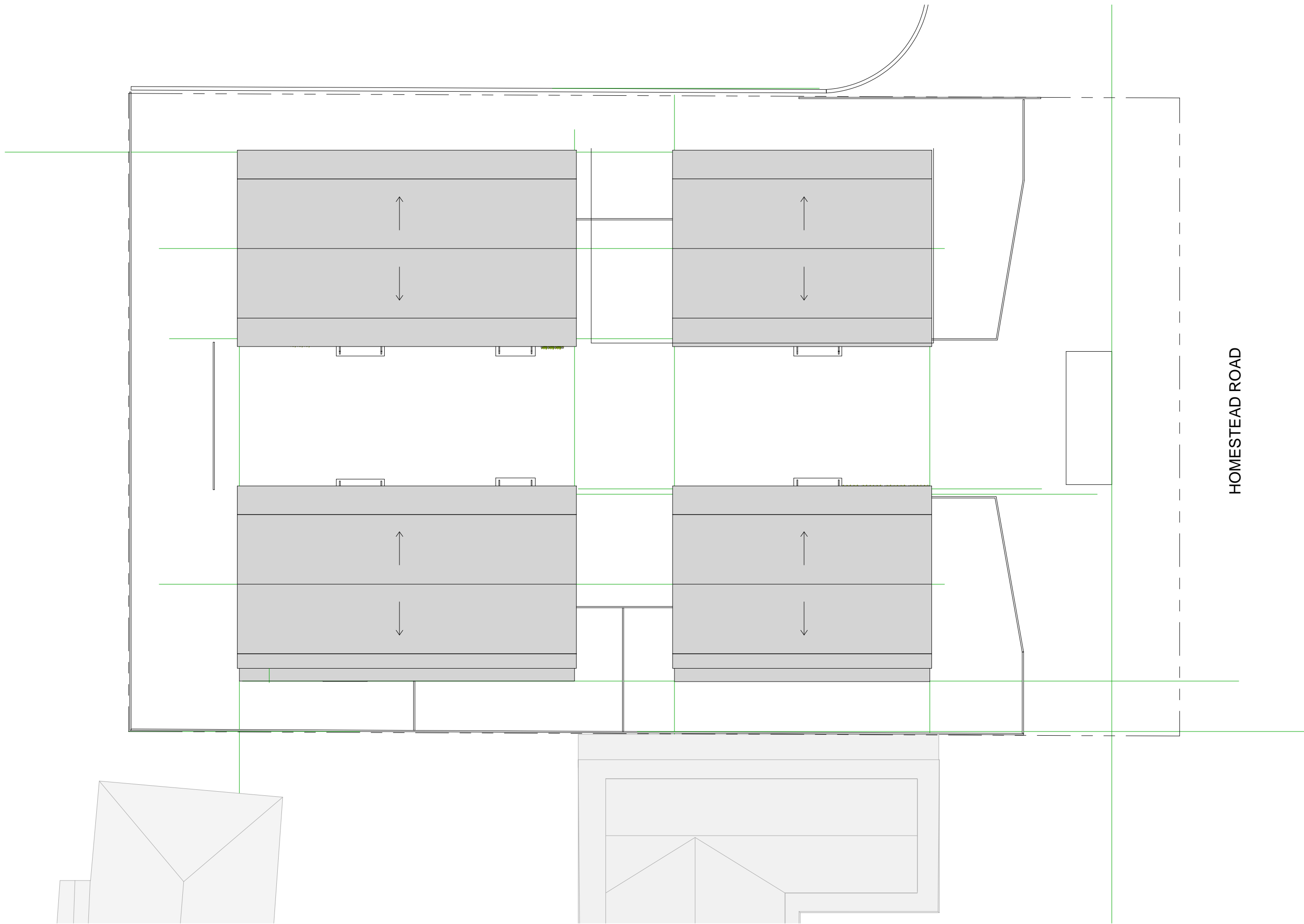
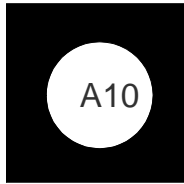
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ROOF PLAN

DATE
05/01/2020

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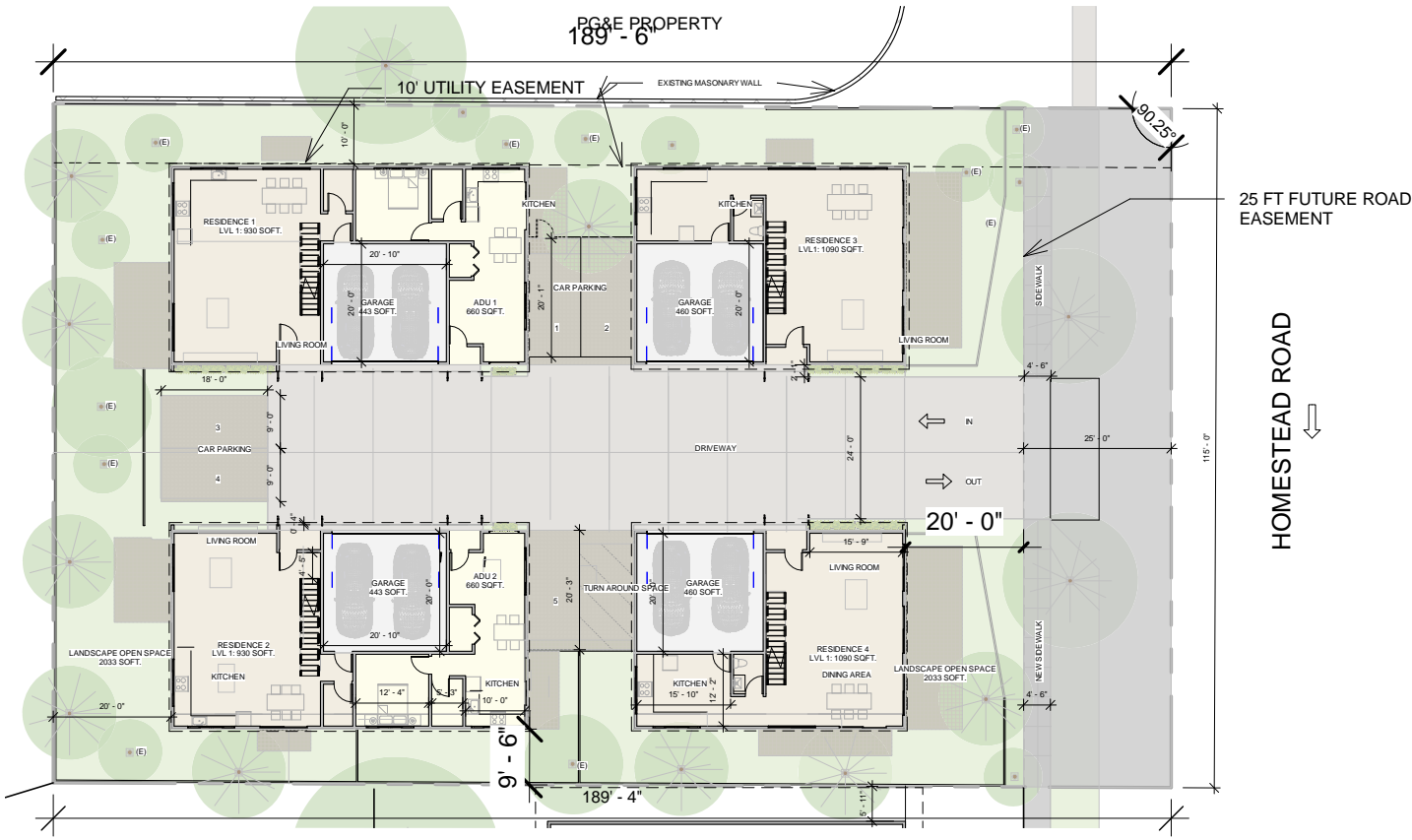
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HOMESTEAD ROAD

1 Roof Plan
1/16" = 1'-0"





1 Site Plan Area Calculations
1/32" = 1'-0"



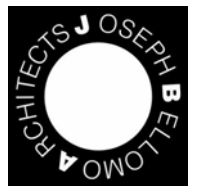
2 Second Floor Plan Area Calculations
1/32" = 1'-0"

19820 Homestead Road, Cupertino
Design Program 4 Residential Units

COLOR CODE	19820 Homestead Road	TOTAL AREA	Residential	PED. OVERLAY	USABLE OPEN SPACE	LANDSC. OPEN	COVERED GARAGES	OPEN PARKING	DRIVEWAY
2ND FLOOR									
beige	RESIDENTIAL UNIT 1	1,890	1,890						
beige	RESIDENTIAL UNIT 2	1,775	1,775						
beige	RESIDENTIAL UNIT 3	1,405	1,405						
beige	RESIDENTIAL UNIT 4	1,270	1,270						
yellow	USABLE OPEN SPACE	752			752				
TOTAL 2ND FLOOR		7,092	6,340	0	752	0	0	0	0
1ST FLOOR									
beige	RESIDENTIAL UNIT 1	1,373	930				443		
beige	RESIDENTIAL UNIT 2	1,373	930				443		
beige	RESIDENTIAL UNIT 3	1,550	1,090				460		
pale yellow	ADU 1	660	660						
beige	RESIDENTIAL UNIT 4	1,550	1,090				460		
pale yellow	ADU 2	660	660						
brown	PEDESTRIAN OVERLAY	2,875		2,875					
green	LANDSCAPE OPEN SPACE	7,300				7,300			
light brown	Open PARKING	1,023						1,023	
grey	DRIVE WAY	3,416							3,416
TOTAL 1ST FLOOR		21,780	5,360	2,875	0	7,300	1,806	1,023	3,416
TOTAL AREA									
		28,872	11,700	2,875	752	7,300	1,806	1,023	3,416

BUILDING AREA SUMMARY:		Site Coverage= Total Area of the First Floor- Pedestrian Overlay-Landscaped Open space-Parking-Driveway= 21780-2875-7300-1023-3416	
SITE AREA			
GROSS	21,780 SF		
NET	18,905 SF		
F.A.R. RESIDENTIAL		7,166 SF	38.00%
	13506 SF:18905 SF		
	0.71:1		
LANDSCAPED (USEABLE OPEN SPACE			OPEN SPACE PROVIDED PER RESIDENTIAL UNIT
LANDSC	7,300		RESIDENCE 1: 2103 SF
USEABLE	752		
LANDSCAPE / OPEN SPACE COVERAGE = LANDSCAPED			RESIDENCE2: 1963 SF
OPEN SPACE + USEABLE OPEN SPACE			RESIDENCE 3:1638 SF
	= 8,052		RESIDENCE 4:1595 SF
	43%		
PEDESTRIAN/VEHICULAR OVERLAY			
PED.	2,875		

Residence	Total Residential Sq Ft	First Floor	Second Floor	Garage	Including Garage
Unit 1	2,820	930	1890	440	3,260
ADU	670				
Unit 2	2,675	930	1745	440	3,115
ADU	670				
Unit 3	2,495	1,090	1405	460	2,955
Unit 4	2,360	1,090	1270	460	2,820



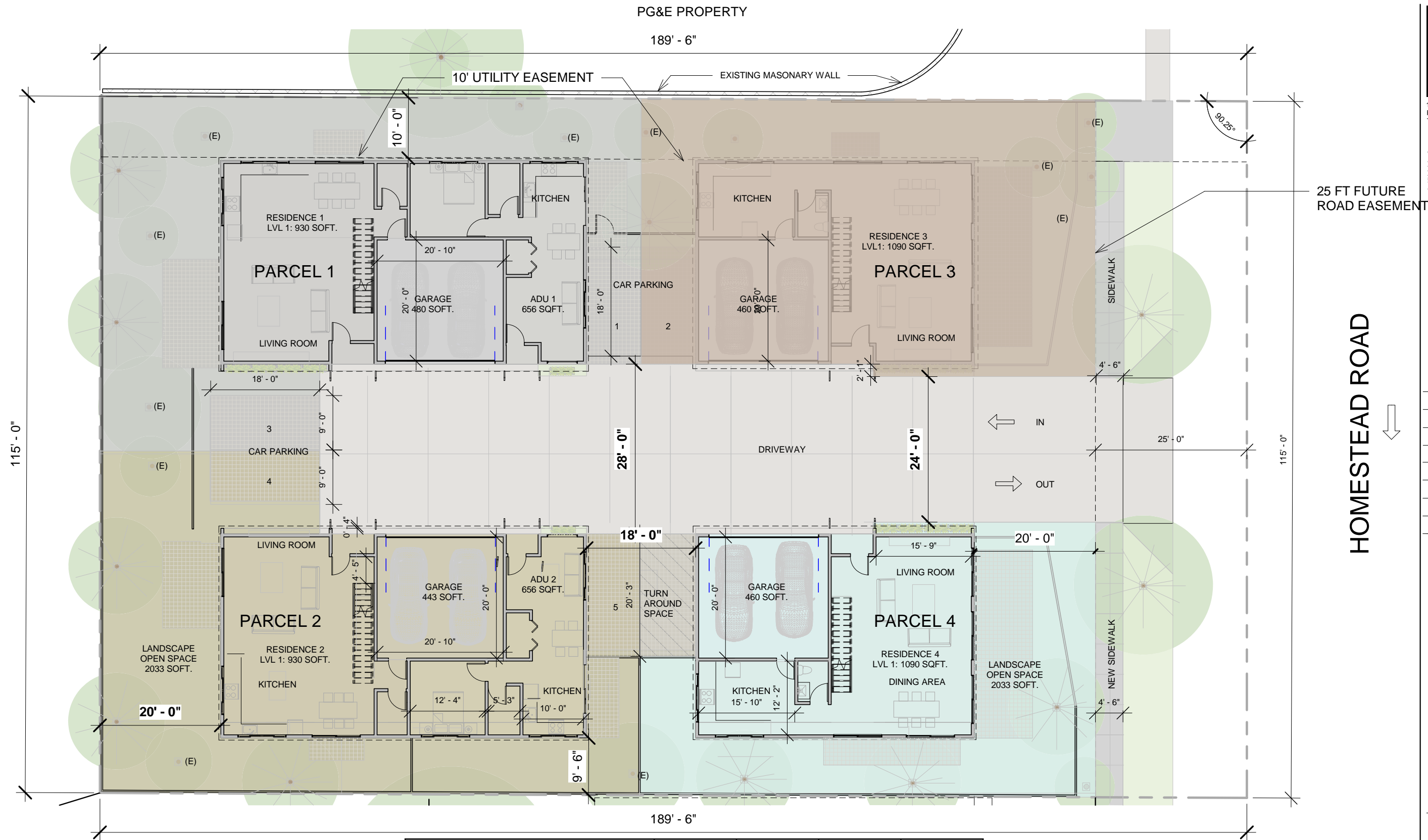
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Rev	1

Project Name:
19820 Homestead Road, Cupertino
AREA CALCULATIONS

DATE
05/01/2021
SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number
2020-04



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Rev	1

Project Name:
19820 Homestead Road, Cupertino

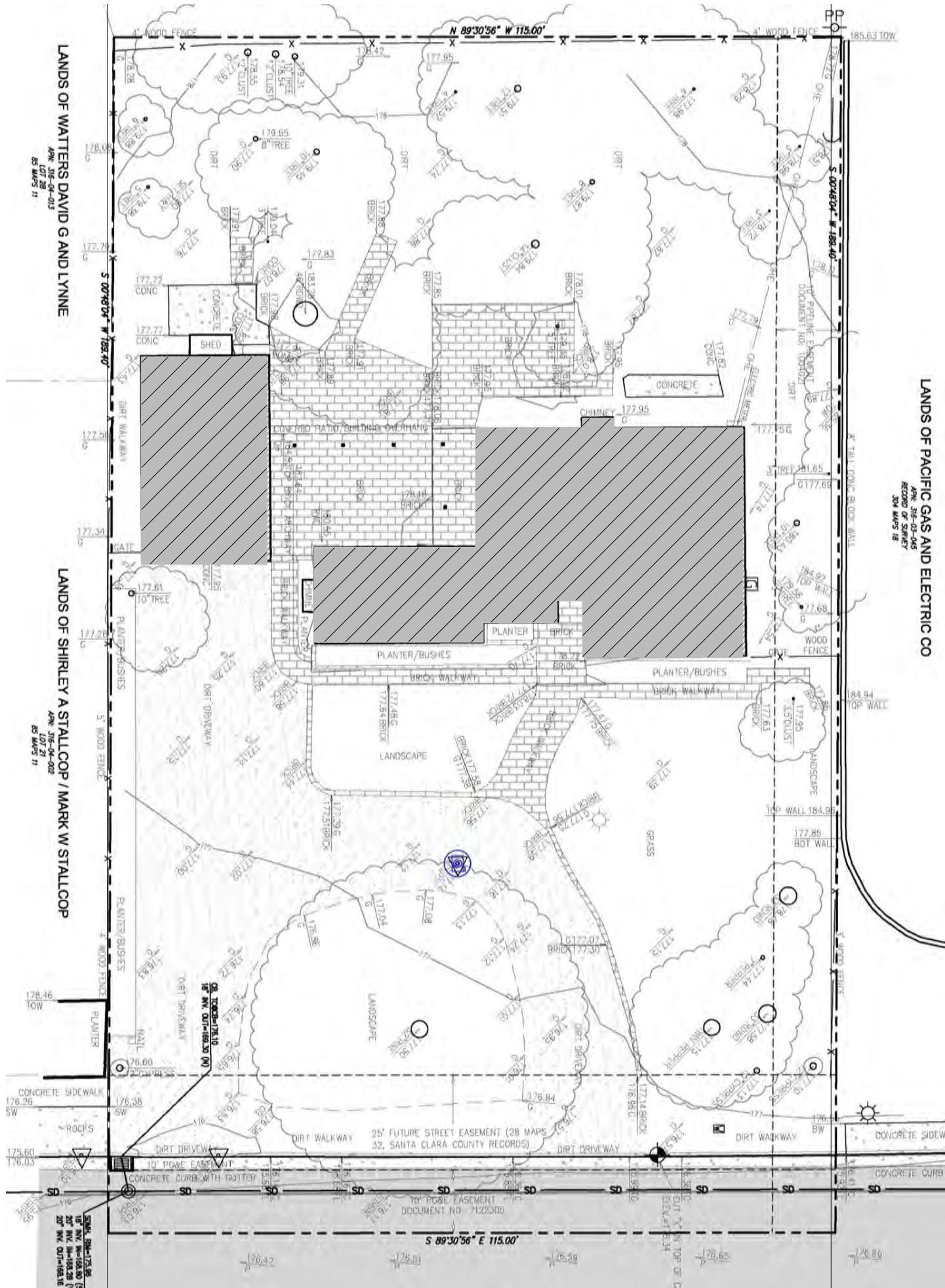
PROPOSED SUBDIVISION

DATE
05/01/2021
SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number
2020-04

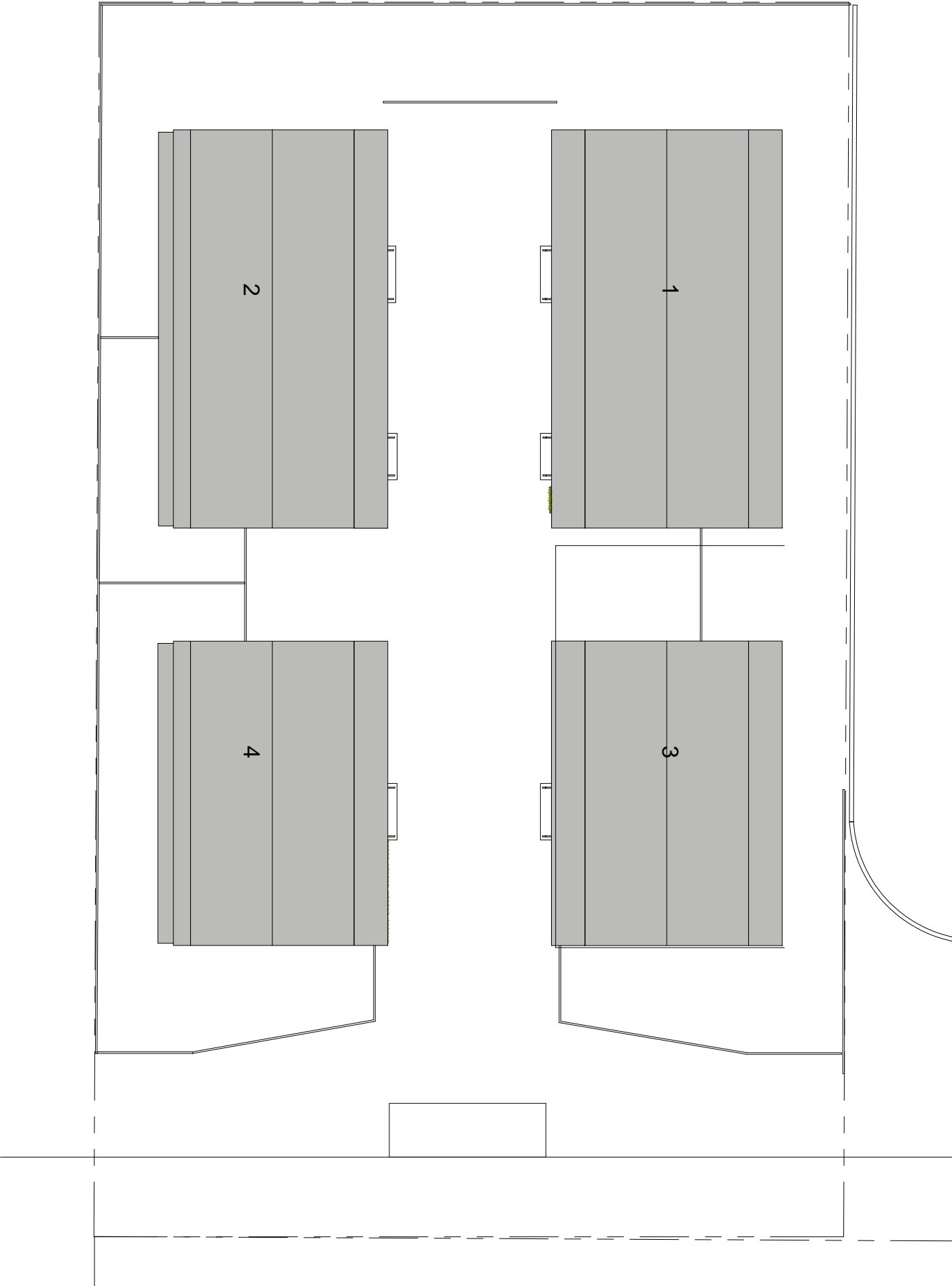


② Site Plan with Proposed Parcel Division
1/16" = 1'-0"

	PARCEL 1	PARCEL 2	PARCEL 3	PARCEL 4
AREA OF THE PARCEL	4460	4320	3350	3145
SITE COVERAGE	2033	2033	1550	1550
SQUARE FOOTAGE	3923	3808	2955	2820
FLOOR AREA RATIO	1:0.87	1: 0.88	1: 0.88	1: 0.89
LANDSCAPED OPEN SPACE	2103	1963	1638	1595
	47%	45%	49%	51%



EXISTING USE LOW RESIDENTIAL (1-5 DU/Ac)



PROPOSED USE :LOW MEDIUM RESIDENTIAL (5-10 DU/Ac)



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Rev	1

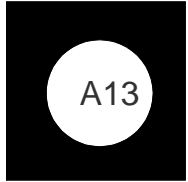
Project Name:
19820 Homestead Road, Cupertino

**GRAPHIC REPRESENTATION OF CHANGE IN
DENSITY**

DATE
05/01/2021

SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"

Project Number
2020-04





② East Elevation
1/16" = 1'-0"



① West Elevation
1/16" = 1'-0"



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Project Name:
19820 Homestead Road, Cupertino

EAST AND WEST ELEVATIONS

DATE
05/01/2021
SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number
2020-04

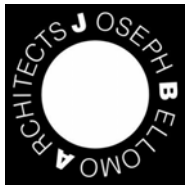




① North Elevation
1/16" = 1'-0"



② South Elevation
1/16" = 1'-0"



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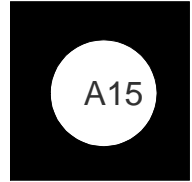
Project Name:
19820 Homestead Road, Cupertino

NORTH AND SOUTH ELEVATIONS

DATE
10/31/20

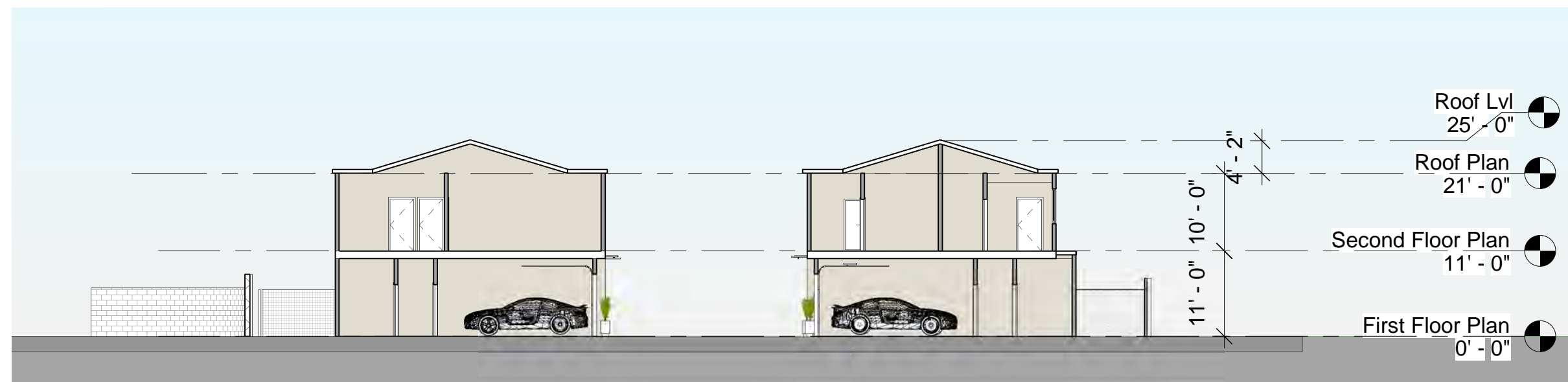
SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"

Project Number
2020-04

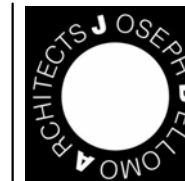




① Elevation from the Driveway 1
1/16" = 1'-0"



② Section 1
1/16" = 1'-0"



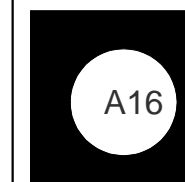
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Project Name:
19820 Homestead Road, Cupertino

ELEVATION FROM DRIVEWAY

DATE
05/01/2021
SCALE
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Project Number
2020-04





Aerial View



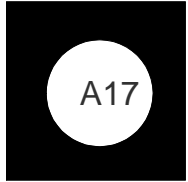
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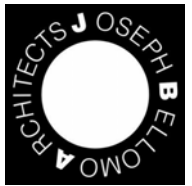
AERIAL VIEW

DATE 05/01/2021
SCALE PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number 2020-04





A View from Homestead Road

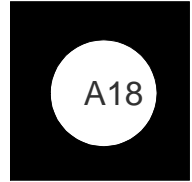


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Project Name: 19820 Homestead Road, Cupertino	STREET VIEW FROM HOMESTEAD ROAD
---	--

DATE 05/01/2021
SCALE PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number 2020-04





Residential Property on East side of the Property: City of Sunnyvale R0
Single Story Single Family Home

Residential Property on East side of the Property: City of Sunnyvale R0
Single Story Single Family Home



PG&E Property on the West Side of the Property.
Land Use: Quasi Public/ Institutional

Residential Property on the North side of the Property: City of Sunnyvale
Double Story Residences with Low Medium Density



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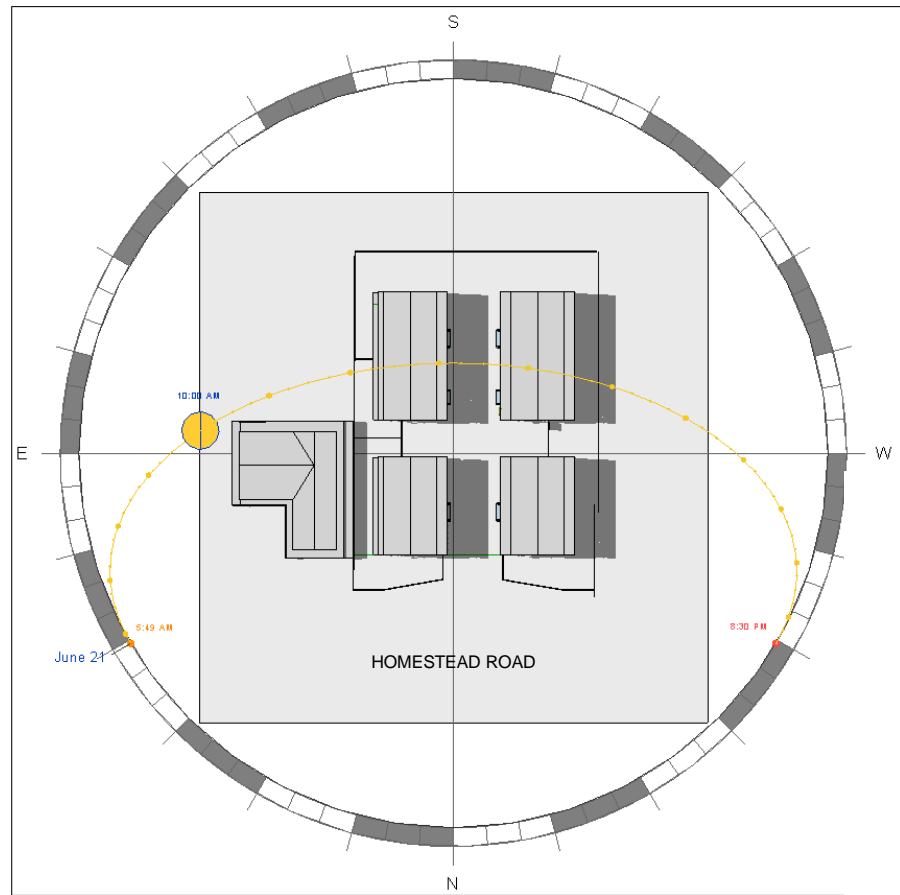
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Project Name:
19820 Homestead Road, Cupertino

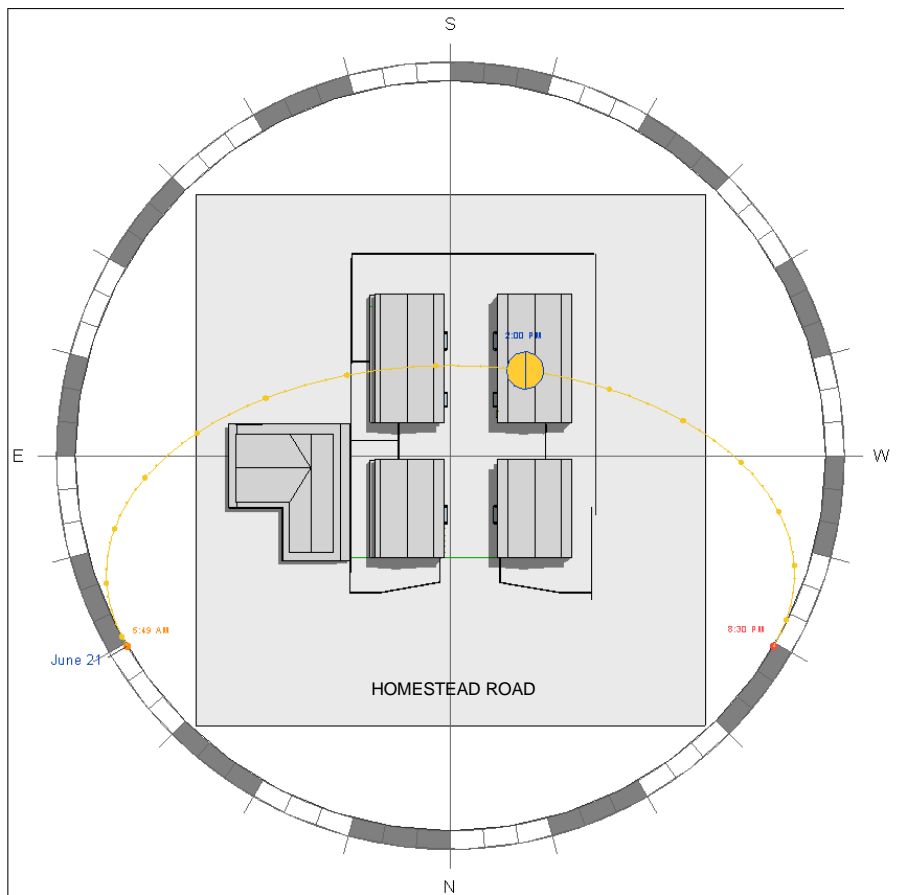
CONTEXT PICTURES

DATE
05/01/2021
SCALE
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Project Number
2020-04

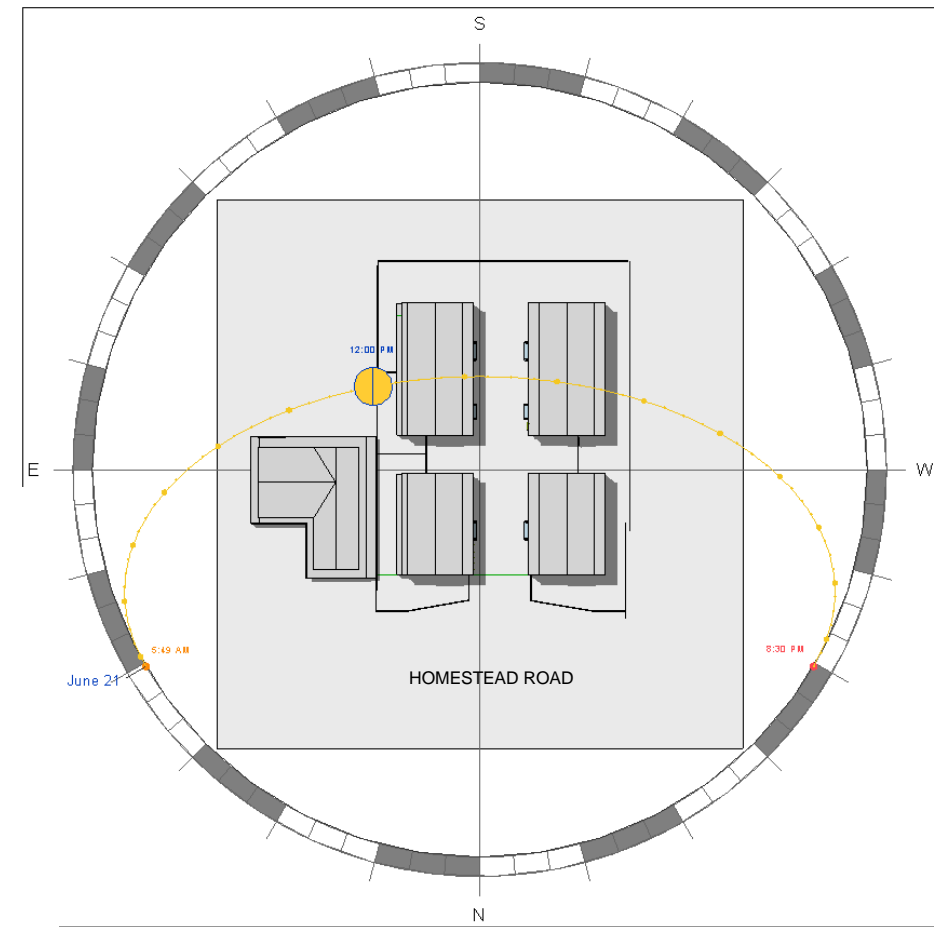
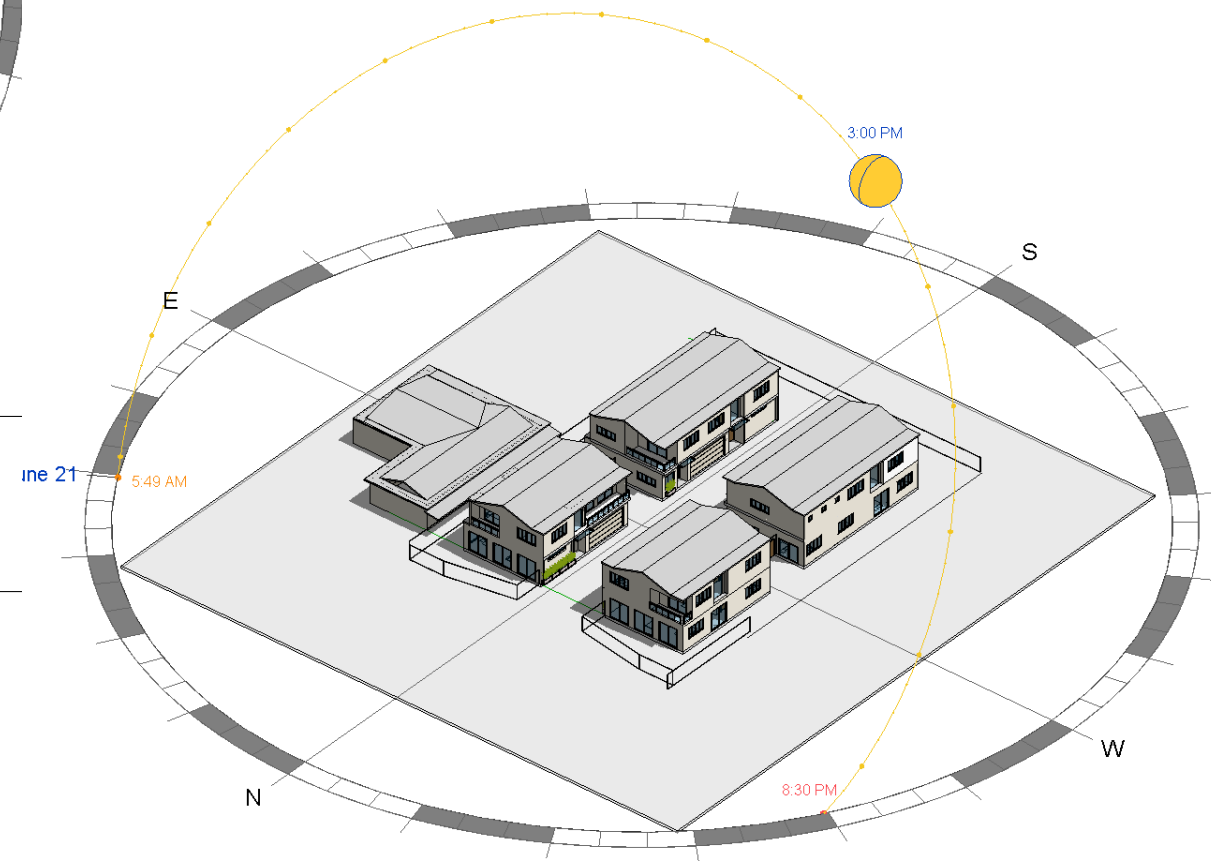
SHADOW STUDY : JUNE 21 ST



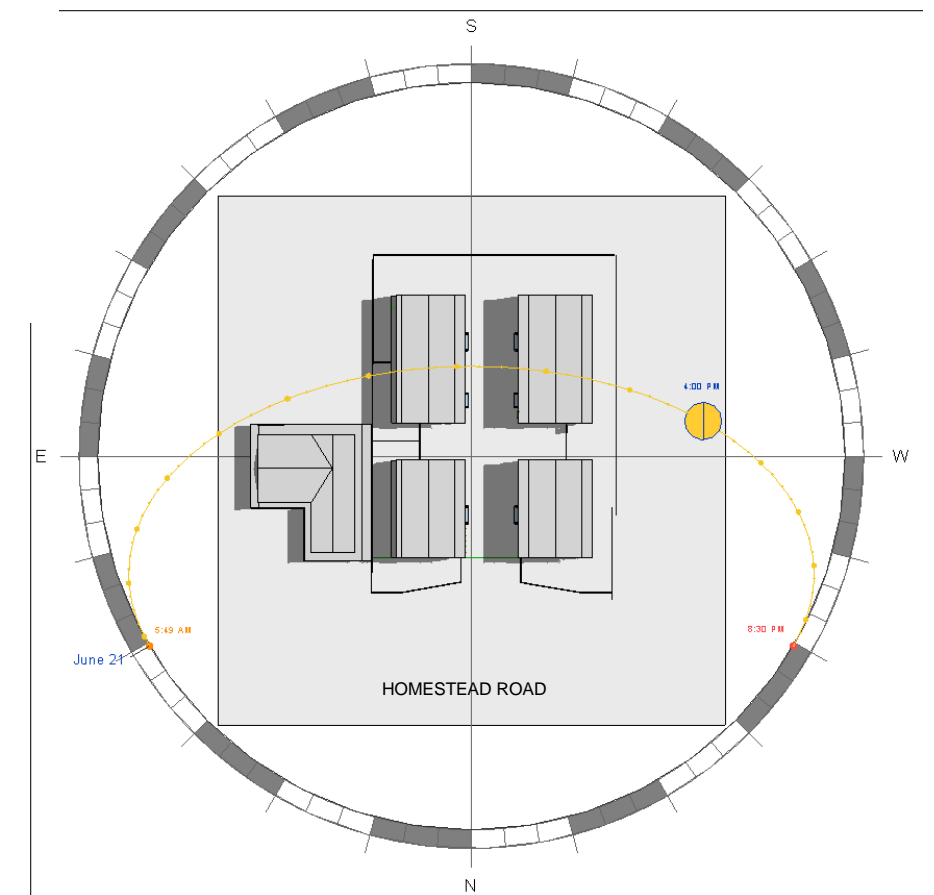
SHADOW AT 10 AM



SHADOW AT 2 PM



SHADOW AT 12 NOON



SHADOW AT 4 PM



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Project Name:
19820 Homestead Road, Cupertino

SHADOW STUDY

DATE
05/01/2021
SCALE
PRINTABLE TO SCALE FORMAT 12" X 18"
Project Number
2020-04

A21



STREET TREE: PISTACIA CHINENSIS 'KEITH DAVEY' - CHINESE PISTACHE



INTERIOR LANDSCAPE TREE: LAGERSTROEMIA 'MUSKOGEE' - CRAPE MYRTLE



INTERIOR LANDSCAPE TREE: CERCIS OCCIDENTALIS - WESTERN REDBUD

PROPOSED PLANT PALETTE

19820 HOMESTEAD RD.
CUPERTINO, CA

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Tuesday, June 15, 2021 10:06 PM
To: City Council
Subject: Homestead Road Project

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council:

I was not able speak about the Homestead Project. Why was this project not considered as a Planned Development project?

I am also concerned about what the neighbors said about the project?

I echo what Vice Mayor is saying.

Thank you,
Jennifer

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Tuesday, June 15, 2021 10:09 PM
To: City Council
Subject: Homestead Road Project

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council:

I am very concerned about the passage of SB 9 which means that any or these lots could be subdivided up to nine homes per lot.

If SB 9 passes in the next few months can they put more houses on the lots?

Thanks.

Jennifer Griffin

CC 06-15-21

Oral
Communications

Written Comments

Cyrah Caburian

From: Jenny Griffin <grenna5000@yahoo.com>
Sent: Friday, June 11, 2021 7:33 AM
To: City Clerk
Subject: Fwd: SB 9 Gives Our Coastal Land Away to Development

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Fyi. Please add to public record. Thank you.

----- Original Message -----

Subject: SB 9 Gives Our Coastal Land Away to Development
From: Jenny Griffin <grenna5000@yahoo.com>
Sent: Friday, June 11, 2021, 7:29 AM
To: "CityCouncil@Cupertino.org" <CityCouncil@Cupertino.org>
CC: "grenna5000@yahoo.com" <grenna5000@yahoo.com>

Dear City Council:

Who are we giving our coastal lands away to? SB 9 is seeking to eliminate the California Coastal Commission? And we, as Californians, don't get a say on it? Some senators and some groups with Lots of money get to take away California's coastline just by throwing money at our "elected" State senators and assemblymembers? People accuse the robber barons of playing fast and loose With California in the past, but this is the past revisited! And trying to get rid of and eliminate CEQA?

How stupid do these people or groups think the rest of California is? Is California their private Playground to take away from the rest of the people of the state? An autocrat trying to grab California by themselves for themselves? How do you run a state as an autocrat in the middle Of a nation of other democratic states? Do you take them over too? Have you seriously thought This out? How does any of this work? Someone was bound to notice something bizarre was Going on.

Eliminate the California Coastal Commission and CEQA all at once, with one bill like SB 9 or Seven or eight or nine other bad bills? Democracy does not work like that. You are treating The state like a medieval monarchy of unlearned vassals who have no skills or altitudes of Their own. You cannot take the state over by manipulating politicians. It does not work Like that.

Again, what planet are these autocrats or autocrat from? California is not a feudal domain to Be taken from her public without someone noticing. You don't get the beaches as yours or CEQA eliminated With one bill or nine in a stacked deck of subterfuge and big money. It does not work that way. California is a democratic state and it will remain one.

You want our beaches and you want to eliminate CEQA? You have an educated public. California

Is not for the taking by an autocrat or autocrats of any kind. There goes the state, there goes the Nation. You can't have any of the beaches or eliminate CEQA anywhere without a say from the Public. It talks about tyrants in the constitution. California and Federal. This is a democracy, Not an autocracy from sea to shining sea.

Sincerely,

Jennifer Griffin

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Sunday, June 13, 2021 5:39 AM
To: City Clerk
Subject: Fw: Parking Problems on Santa Cruz Streets from ADUs

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

FYI. Please add to public record. Thank you.

----- Forwarded Message -----

From: Jennifer Griffin <grenna5000@yahoo.com>
To: CityCouncil@Cupertino.org <citycouncil@cupertino.org>
Cc: grenna5000@yahoo.com <grenna5000@yahoo.com>
Sent: Sunday, June 13, 2021, 05:37:31 AM PDT
Subject: Parking Problems on Santa Cruz Streets from ADUs

Dear City Council:

Santa Cruz and Santa Cruz County have begun to have parking problems on city and county streets because ADUs do not require on-site parking.

ADUs allow many people to live on a property site and the site does not need to have adequate parking for all the vehicles from the additional ADU construction. This is a particular problem in the coastal areas as many of the homes are already on tiny lots and have limited on-site parking for the residences there already. Adding one or two ADUs to the lots cause problems because the two or three cars from the ADUs wind up on the adjacent residential streets and often, ADU residents will park their cars around the block or on other streets to have parking spaces, impacting the street parking for residents on those streets.

This has been a growing problem for Portland, Oregon as neighborhoods built in the 1920s are winding up with clogged residential streets from newly constructed ADUs that do not require on-site parking on their originating lots, which are often only 5,000 square feet or less. One street has had five ADUs constructed in the last six months and people who live in homes and their families cannot even park in the neighborhood anymore.

Santa Cruz and Santa Cruz County are especially impacted because of the proximity to the beach areas. There is already a demand for beach parking. The Coastal Commission has an overlay for communities near the beach areas.

Excessive parking is especially problematic in these areas and an excess of ADUs with no on-site parking requirements will further burden the beach areas with excessive demands for parking of these ADU cars. The fact that SB 9 is also trying to eliminate the Coastal Commission and CEQA is especially troubling.

Why are we trying to get rid of the Coastal Commission and CEQA when it is obvious that excess parking from ADUs on already crowded residential streets in Santa Cruz and Santa Cruz County is already causing problems? Is there a connection, between this push to get rid of the Coastal Commission and CEQA and not requiring ADUs to have on-site parking? It sure seems

so.

SB 9 is seeking to allow more building in coastal areas too. This is as much a problem for Santa Cruz as well as San Diego and other coastal areas in California. Sb 9 is supposed to affect the whole state if enacted.

It sure seems like California will have lots more problems from SB 9 and also from the over-flowing of city streets from parking of extra ADU cars that cannot be parked on their primary housing sites. Santa Cruz and Portland, Oregon are already living the ADU parking drama. Get rid of the Coastal Commission and CEQA and I can predict there will be even more drama from excessive building and parking even more cars on unstable hillsides and coastal beaches.

Sincerely,

Jennifer Griffin

Cyrah Caburian

From: J Shearin <shearin.jen@gmail.com>
Sent: Monday, June 14, 2021 4:35 PM
To: City Clerk
Cc: Cupertino City Manager's Office
Subject: Resignation of Deb Feng, City Manager

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Hi Kirsten:

I have already emailed this to the City Council. As I have a conflict for the Council meeting on Tuesday, can you add this to Written Communication, and also read it out for me during Oral Communication?

Thank you very much!

Jennifer Shearin

Dear Mayor Paul, and City Council members,

I write to you to day to express my dismay that we have lost a great City Manager for Cupertino, Deb Feng. It is a true loss for our city and wider community. Surprisingly, there does not seem to have been any recognition planned by the City Council for her accomplishments on this, her last Council meeting. It's a puzzling oversight by the Council and we, as residents, expect more from our Council.

During her tenure of two years, Deb has accomplished quite a bit, including guiding our city through the extreme circumstances with the pandemic, helping our unhoused residents gain shelter, supporting the grant process for small local businesses, and dramatically improving the city's public outreach through Coffee Talks, Community Forums, and more.

Deb has the ability to listen to your concerns, dialogue with you to fully understand your issue, and then work with you and others to gain a resolution on that issue. During her time in Cupertino this didn't mean that Deb would blindly advance the cause of whatever a resident would ask for; she was comfortable telling you what she wouldn't do, including whether what you were asking for wasn't good for the city or wasn't likely to happen. This is true leadership, something that we residents would wish that all our elected and city staff will do.

It's a major accomplishment of hers that on many issues both large and small, she was able to "bring the temperature down" and get resolution or keep a project moving forward. This is a great skill of Deb's, and will especially be missed by our city.

It will be a huge task to find someone to replace Deb as City Manager who has the same skills, and it is sad that she will be sharing her expertise with another business or locality instead of ours. I wish to thank Deb for all her

excellent and hard work on behalf of Cupertino during the past two years; I hope as a Council you will do the same and give her the proper recognition she deserves.

Best Wishes,
Jennifer Shearin

Cyrah Caburian

From: Connie Cunningham <cunninghamconniel@gmail.com>
Sent: Tuesday, June 15, 2021 4:07 PM
To: City Council; City Clerk
Cc: Cunningham Connie
Subject: Oral Communications, June 15 Council Meeting: Appreciation for City Manager Deb Feng!

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Oral Communications, June 15 City Council Meeting: Appreciation for City Manager Deb Feng!

Dear Mayor, Vice-Mayor, and City Councilmembers:

It seems not too long ago that I was shaking our new City Manager, Deb Feng's, hand and greeting her in the lobby of City Hall. Deb Feng has done a fantastic job as City Manager during an incredibly difficult time. Handling the Covid emergency was an extraordinary job—ensuring essential city operations with a dispersed staff. Communications, which are never easy, were made far more difficult by the need to work over Zoom, phone, email and other social media.

As excellent managers do, she, gave credit to her staff for their very fine work keeping the City running. One example is Bill Mitchell, Chief Technology Officer, who had developed an emergency plan for earthquakes, that worked well for the pandemic emergency.

Other area leaders and voices have recognized Deb Feng. She was recently named one of the 2021 Women of Influence by the Silicon Valley Business Journal!

I particularly remember the extra special effort it took to arrange a new place for the people living in the Homeless Encampment at 280 last October. Providing a pathway to housing for those unhoused residents took creativity and heart. I thank her again tonight, for taking the time, and paying attention to the necessary details, to make it happen in partnership with Santa Clara County.

I, also, remember well the Bird-safe Design and Dark Skies Ordinance process. I very much appreciated her willingness to meet with various stakeholders, including Dr. Shani Kleinhaus, Santa Clara County Audubon Society Environmental Advocate, to ensure that all voices were heard.

Many other activities have happened under her leadership: from immediate financial needs like rental assistance and grants for small businesses to the future oriented goals like the expansion of the Cupertino Library and the Lawrence Mitty park project. She held many coffee talks and community forums to reach out to the community. Small but important details like recreation, such as the virtual Big Bunny 5K, were not overlooked.

I wish Deb Feng a long future of health and happiness. She will be successful wherever she chooses to go, and whatever she chooses to do. Our city is better for her having been on our team. Cupertino has been in excellent hands under her leadership.

Very best wishes,
Connie Cunningham
Housing Commission Chair, self only
Audubon Member

Resident for 34 years

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: Resignation of Deb Feng, City Manager

From: J Shearin <shearin.jen@gmail.com>
Sent: Tuesday, June 15, 2021 7:11 PM
To: City Clerk <CityClerk@cupertino.org>
Subject: Fwd: Resignation of Deb Feng, City Manager

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,
Here it is again!

Thanks,
Jennifer

Begin forwarded message:

From: J Shearin <shearin.jen@gmail.com>
Sent: Monday, June 14, 2021 4:35 PM
To: City Clerk <CityClerk@cupertino.org>
Cc: Cupertino City Manager's Office <manager@cupertino.org>
Subject: Resignation of Deb Feng, City Manager

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten:

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Best Wishes,
Jennifer Shearin

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Tuesday, June 15, 2021 8:12 PM
To: City Clerk
Cc: grenna5000@yahoo.com
Subject: Fw: Hybrid Meetings

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

FYI.

----- Forwarded Message -----

From: Jennifer Griffin <grenna5000@yahoo.com>
To: CityCouncil@Cupertino.org <citycouncil@cupertino.org>
Sent: Tuesday, June 15, 2021, 08:10:28 PM PDT
Subject: Hybrid Meetings

Dear City Council:

Could you all discuss what hybrid city meetings will be?
Does that mean zoom and in person?

Thank you,

Jennifer Griffin

Cyrah Caburian

From: Jean Bedord <Jean@bedord.com>
Sent: Tuesday, June 15, 2021 10:42 PM
To: City Clerk
Subject: Oral Communications for June 15, 2021
Attachments: Bedord-2021-06-15 Deb.docx

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Please add my comments to Written Communications for this meeting.
Thanks much!

Warm regards,
Jean Bedord

June 15, 2021

Good evening, Mayor Paul, honorable council members, and staff,

My name is Jean Bedord and I am a resident of Cupertino. I am here to express appreciation to Deb Feng and the excellent job she has done as city manager for the last two years in our city.

Deb did not sign up to guide the city through a pandemic, but I was impressed by her decisiveness in taking action, everything from sending employees home and closing facilities, as well as having to furlough those who couldn't do their jobs under shelter-in-place. Deb took actions to minimize the financial impact on the city budget, so the city remains fiscally strong. With minimal hiccups, the city continued to operate remotely, through Zoom and technology.

Deb also didn't sign up for the challenges of the camps at Vallco, yet she forged partnerships with other agencies and West Valley Community Services to find housing for unhoused residents.

Deb did more outreach than any other mayor in my over 20 years here in Cupertino, through her NASA talks, Coffee Talks, and community forums, including those in response to the Black Lives Matter protests.

Deb, we will miss your warmth and leadership. Thank you and best wishes for your next engagement with an organization that has a greater appreciation for your talents and leadership.

So let's not have this be farewell... but instead until we meet again.

Thank you for your service.

Jean Bedord

CC 06-01-21

#9

June 1 Draft City
Council Minutes

Written Comments

Seema Lindskog opposed increasing the budget and supported funding alternatives. (Submitted written comments).

Mayor Paul closed the public comment period.

Wei moved and Willey seconded to:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

Chao made a substitute motion to continue this item to June 15 for the City Attorney and staff to conduct research on the suggestion of the members of public to create a private fund for the fencing cost. There was no second and the substitute motion died.

Wei modified her motion to add a privacy fence reimbursement amount of \$100 per foot. ~~(Moore accepted the friendly amendment).~~

~~Wei made a friendly amendment to modify the privacy fence reimbursement amount to \$77 per foot. (Moore declined the friendly amendment, and it was not considered).~~

Wei's main motion as modified carried unanimously.

Cyrah Caburian

From: benaifer dastoor <bddastoor@yahoo.com>
Sent: Monday, June 14, 2021 12:04 AM
To: Darcy Paul; Liang Chao; Jon Robert Willey; Hung Wei; Kitty Moore; Deborah L. Feng; Dianne Thompson
Subject: Motion made in council meeting of June 1st - request correction of error in motion language
Attachments: A - Draft Minutes June 1st.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honorable Mayor Paul, City Council members, City Manager Deborah Feng,

First, I would like to thank the council members for considering the privacy fence reimbursement issue in last council meeting of June 1st along with staff request and approving to cap the reimbursement cost for residents opting for precast concrete fence to \$100. Mayor Paul, your empathy for the impacted residents is very much appreciated.

Reading the draft minutes of June 1st meeting to be approved in the upcoming June 15 meeting, I want to bring to your attention two errors in the motion which need correction/clarification:

The city council in its meeting of 06/01/2021 approved staff request on proposed action agenda item 18 along with an amendment to reduce the reimbursement sought from the residents opting for precast concrete fence. The draft minutes to be approved in the upcoming June 15 council meeting includes the approved motion. Point 6. as written in the motion does not accurately reflect motion amendment made by Council Member Hung Wei to the motion and seconded by Council member Kitty Moore.

6. Add a privacy fence reimbursement amount of \$100 per foot. The motion carried unanimously

The amendment in the motion was to reduce the reimbursement sought by the city from the residents opting for pre-cast concrete fence from \$170 to \$100. The amendment was not to "**Add a privacy fence reimbursement amount of \$100 per foot**" as mentioned in the written motion **but to 'reduce privacy reimbursement amount to \$100 per linear foot for residents opting for precast concrete fence.'** OR **'seek reimbursement of \$100 per linear foot from residents opting for precast concrete fence.'**

Reference - Video recording of agenda item 18 amendment discussion starting at hour 5:11:00.

I am requesting that motion/resolution wordings be corrected to accurately reflect the city council action during the city council meeting of 6/01/2021. It is important that public record documents reflect what the Council intended by adopting this resolution.

Another minor error in the motion is the name of the person seconding the motion. The video shows motion proposed by council member Wei and seconded by council member Moore, while the written motion mentions council member Wiley as having seconded the motion. It may be a minor point because the motion was passed unanimously.

A response is kindly requested.

Regards,
Benaifer Dastoor

PS: Attached for reference- draft minutes posted under agenda for June 15 meeting (approved motion on pg 15 of the minutes)



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, June 1, 2021**

SPECIAL MEETING

At 5:15 p.m. Mayor Darcy Paul called the Special City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

CLOSED SESSION

Council went into closed session at 5:15 p.m. and reconvened in open session at 6:00 p.m. This was a teleconference meeting with no physical location.

1. Subject: Conference with Real Property Negotiators (Government Code Section 54956.8).
Property: Cupertino Municipal Water System. Agency Negotiator: Roger Lee.
Negotiating Parties: City of Cupertino and San Jose Water Company. Under Negotiation:
Terms for City Leased Asset.

In open session after Postponements and Orders of the Day, Mayor Paul reported on the closed session held at 5:15 p.m.

No reportable action was taken.

RECESS

OPEN SESSION

At 6:01 p.m. Mayor Darcy Paul reconvened the Special City Council meeting in open session. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

STUDY SESSION

2. Subject: Recommendation from the Parks and Recreation Commission to approve funds in the amount of \$92,900 for the Fiscal Year (FY) 2021-22 Community Funding Grant Program; annual funding for the Cupertino Historical Society in the amount of \$20,000; and approval of final funding amounts for the Community Funding Program, to be included in the Recommended Budget for FY 2021-22. (Continued from May 18). Recommended Action: Consider the recommendation from the Parks and Recreation Commission to approve funds in the amount of \$92,900 for the FY 2021-22 Community Funding Grant Program and consider annual funding for the Cupertino Historical Society in the amount of \$20,000. Determine and approve final funding amounts for the Community Funding Program, to be included in the Recommended Budget for FY 2021-22; and provide direction to staff.

Assistant Director of Parks and Recreation Rachelle Sander gave a presentation.

Mayor Paul opened the public comment period and the following people spoke.

Kiran Varshneya-Rohra, Seetha Lakshmi, and Shailendra Jain, on behalf of the Cupertino Library Foundation, supported funding for the Cupertino Library Foundation. (Submitted written comments).

Sharon Blaine, Jennifer Furlong, and Neeraj Mathur, on behalf of the Cupertino Historical Society, supported funding for the Cupertino Historical Society. (Submitted written comments).

Mayor Paul closed the public comment period.

Paul moved to continue this item to the Regular Meeting agenda at a time to be determined under Postponements and Orders of the Day.

Moore made a friendly amendment to continue the item to the upcoming Special Meeting (Budget Study Session). (Paul accepted the friendly amendment).

Paul moved and Moore seconded to continue the item to the June 4 Special Meeting (Budget Study Session) at 6:00 p.m.

Chao made a friendly amendment to complete the public comments and close the public hearing. (Paul and Moore accepted the friendly amendment).

Paul modified his motion to reflect a 6:15 p.m. meeting start time on June 4. (Moore accepted the modification).

Final Motion:

Paul modified his motion to continue the public hearing to the Regular Meeting, for the purposes of concluding the public commentary, at a time to be determined under Postponements and Orders of the Day; and continue the remainder of the meeting to the June 4 Special Meeting (Budget Study Session) at 6:15 p.m., for the purposes of Council deliberation and decisions. (Paul and Moore accepted the friendly amendment). The motion as modified carried unanimously.

ADJOURNMENT

REGULAR MEETING

At 6:45 p.m. Mayor Darcy Paul called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Proclamation recognizing June as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Pride Month
Recommended Action: Present proclamation recognizing June as LGBTQ Pride Month

Written materials for this item included a presentation.

Ken Yeager, on behalf of BAYMEC Community Foundation, received the proclamation and gave a presentation.

Mayor Paul presented the proclamation recognizing June as LGBTQ Pride Month.

2. Subject: Proclamation recognizing June as Men's Health Month
Recommended Action: Present proclamation recognizing June as Men's Health Month

Brittney Le, on behalf of Men's Health Network (MHN), received the proclamation.

Mayor Paul presented the proclamation recognizing June as Men's Health Month.

3. Subject: Presentation from Women of Silicon Valley (WomenSV)
Recommended Action: Receive presentation from Founder and Executive Director Ruth Darlene on the work and mission of domestic violence non-profit WomenSV

Written materials for this item included a presentation.

Council received the presentation from Founder and Executive Director Ruth Darlene on the work and mission of domestic violence non-profit WomenSV.

POSTPONEMENTS AND ORDERS OF THE DAY

Paul moved and Wei seconded to:

- Provide the closed session meeting reports for June 1, May 24, and May 28 after Postponements and Orders of the Day;
- Reorder the agenda to hear Reports by Council and Staff items 4 and 5 after the closed session meeting reports; and
- Continue the remainder of the public commentary for the Special Meeting Study Session item 2 to the Regular Meeting.

The motion carried unanimously.

In open session, Mayor Paul reported on the Special Closed Session Meetings held at 5:15 p.m. (as noted under Closed Session) and on Monday, May 24 and Friday, May 28.

For the Special Closed Session Meeting held on May 24, 2021:

1. Pursuant to Government Code Section 54956.9(d)(1), conference with Legal Counsel regarding the following existing litigation:
- a. David Wessel and Karen Platt v. City of Cupertino et al., Santa Clara County Superior Court Case No. 20CV369211
 - b. City of Arcata et al. v. Pacific Gas & Electric Co., San Francisco County Superior Court Case No. CGC-20-585483

- c. Huang Family v. City of Cupertino, Santa Clara County Superior Court Case No. 19CV347316.

Council discussed with legal counsel these pending cases for which discussion in open session would prejudice the City in the litigation.

No reportable action was taken.

2. Conference with Legal Counsel - Anticipated Litigation. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4) (two potential cases)

Council discussed with legal counsel the potential initiation of litigation for two matters for which discussion in open session would prejudice the City in the potential litigation.

No reportable action was taken.

For the Special Closed Session Meeting held on May 28, 2021:

1. Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) (one potential case)

Council discussed with legal counsel a threat of litigation for which discussion in open session would prejudice the City in the potential litigation.

No reportable action was taken.

2. Conference with Legal Counsel - Anticipated Litigation. Initiation of litigation pursuant to Government Code section 54956.9(d)(4) (one potential case)

Council discussed with legal counsel the potential initiation of litigation for one matter for which discussion in open session would prejudice the City in the potential litigation.

No reportable action was taken.

3. Public Employee Appointment/Public Employment (Government Code section 54957(b)(1)); Title: (City Manager)

No reportable action was taken.

City Manager Deborah Feng addressed her recent retirement announcement. Councilmembers recognized City Manager Feng for her service to the City.

SPECIAL MEETING STUDY SESSION – CONTINUED

Council continued the Special Meeting Study Session item 2 for the purposes of hearing public comment.

Mayor Paul opened the public comment period and the following people spoke.

Bruce Parsons supported maintaining the Historical Society funding as a budget line item and supported a community-wide plan for the Snyder-Hammond House.

Lisa Warren was concerned about enforcement of the maintenance and security provisions in the lease for the Snyder-Hammond House and supported further investigation for funding.

Orrin Mahoney talked about supporting upcoming Cupertino Rotary events.

Mayor Paul closed the public comment period.

ORAL COMMUNICATIONS

Ankita Goyal supported the Dog Off-Leash Area (DOLA) at Jollyman Park and adding a future City Council agenda item to approve a permanent DOLA.

Ruchika Varanasi supported the DOLA at Jollyman Park, prioritizing making the trial permanent, and talked about the benefits for the community.

Mary Ellen Chell supported City efforts to address homelessness, the DOLA at Jollyman Park, and adding a future City Council agenda item to approve a permanent DOLA.

Lauren Jacobs, on behalf of Silicon Valley Gun Violence Prevention Organization, supported agendizing and adopting the Santa Clara County Safe Storage of Firearms Ordinance.

Louise Saadati, on behalf of the DOLA Leadership Group, supported the DOLA and adding a future City Council agenda item for approval of a permanent status.

Jean Bedord read an email on behalf of Connie Cunningham supporting gun safety and the adoption of a safe storage of firearms ordinance.

Steve Jacobs supported Council adoption of a safe storage of firearms ordinance to help prevent unintentional deaths of children and teen suicides.

Manajaya Hegde supported the DOLA at Jollyman Park and adding an item for approval of permanent status on a future Council agenda.

Kelly Traver, on behalf of Cupertino Moms Demand Action, supported reducing gun violence, improving gun safety, and adopting a safe storage of firearms ordinance.

Deepa Mahendraker supported the DOLA at Jollyman Park and adding a Council agenda item for the approval of a permanent status.

John Selling supported Council adoption of a safe storage of firearms ordinance like many surrounding cities and educating children on the dangers of firearms.

Rhoda Fry was concerned about the adequacy of Lehigh Cement's bond to fund reclaiming the land for a secondary use and supported signage for the Quarry expansion proposals.

Viggi34 talked about a restraining order issued against Charlene Lee and her police report.

Danessa Techmanski was concerned about the maintenance of the Snyder-Hammond House and the departure of the former property caretaker/tenant.

Charlene Lee was concerned about a restraining order issued against her and her police report.

H Family was concerned about current litigation with the City regarding an illegal structure in her backyard.

Council recessed from 8:17 p.m. to 8:23 p.m.

REPORTS BY COUNCIL AND STAFF (10 minutes)

4. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements

Council received brief reports on councilmember activities and brief announcements.

5. Subject: City Manager update on emergency response efforts
Recommended Action: Receive City Manager update on emergency response efforts

City Manager Deborah Feng reported on California's Blueprint for a Safer Economy tier assignments, COVID-19 vaccination and testing information, and case rates.

Council received the City Manager update on emergency response efforts.

Councilmember Willey re-joined the meeting after the Council recess.

6. Subject: Report on Committee assignments
 Recommended Action: Report on Committee assignments

Mayor Paul reopened Brief reports on councilmember activities and brief announcements and Councilmember Willey spoke. Mayor Paul closed Brief reports on councilmember activities and brief announcements.

Councilmembers highlighted the activities of their various committees.

7. Subject: The 2021 Annual Pavement Report
 Recommended Action: Receive the Annual Pavement Report

Written communications for this item included a staff presentation.

Public Works Project Manager Jo Anne Johnson gave a presentation.

Council received the Annual Pavement Report.

CONSENT CALENDAR (Items 8-14)

Moore moved and Chao seconded to approve the items on the Consent Calendar except for Item Nos. 11 and 12 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

8. Subject: Approve the May 4 City Council minutes
 Recommended Action: Approve the May 4 City Council minutes
9. Subject: Approve the May 5 City Council minutes
 Recommended Action: Approve the May 5 City Council minutes
10. Subject: Approve the May 11 Joint City Council, Planning Commission, and Housing Commission minutes
 Recommended Action: Approve the May 11 Joint City Council, Planning Commission, and Housing Commission minutes

11. Subject: Approve the May 18 City Council minutes
Recommended Action: Approve the May 18 City Council minutes

Written Communications for this item included Amended Attachment A – Draft Minutes (redline).

Paul moved and Wei seconded for the City Clerk to make the correction as noted in the Amended Attachment A – Draft Minutes (redline) and bring back a clean version for Council approval at the June 15 meeting. The motion carried unanimously.

12. Subject: Consider for Approval Mayor's requested changes to Council Agenda-Review schedule.
Recommended Action: Approve Mayor's requested changes to Council's Agenda Review schedule.

Mayor Paul reviewed the requested changes to Council Agenda-Review schedule.

Mayor Paul opened the public comment period and the following people spoke.

Peggy Griffin supported the requested changes to Council Agenda-Review schedule.

Mayor Paul closed the public comment period.

Moore moved and Wei seconded to approve the Mayor's requested changes to Council's Agenda Review schedule with an amendment to request staff work to accommodate Councilmember's requesting agenda review meetings on Thursday's. The motion carried unanimously.

13. Subject: Consideration of Award of Construction Contract for the 2021 Pavement Maintenance Phase 1 - Project No. 2021-105
Recommended Action: Award a Construction Contract for 2021 Pavement Maintenance Phase 1 Project, Authorize the City Manager to Execute a Contract in the Amount of \$1,824,276.55 with O'Grady Paving, Inc. and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$182,428, for a Total Authorized Contract Amount of \$2,006,704.55.

14. Subject: City of Cupertino's participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA)
Recommended Action: Adopt Resolution No. 21-039 extending the City of Cupertino's participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA)

SECOND READING OF ORDINANCES

15. Subject: Consider and act on Ordinance No. 21-2227: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," with multi-unit housing/residence defined for the purposes of this Ordinance to include attached single family homes and other property containing two or more attached units.
Recommended Action: Conduct the second reading and enact Ordinance No. 21-2227: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which includes a finding that the Ordinance is exempt from CEQA

Mayor Paul opened the public comment period and the following people spoke.

Carol Baker, on behalf of Tobacco-Free Coalition of Santa Clara County and American Cancer Society Cancer Action Network, supported adoption of the Ordinance.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

City Clerk Kirsten Squarcia read the title of Ordinance No. Ordinance No. 21-2227: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which includes a finding that the Ordinance is exempt from CEQA

Chao moved and Wei seconded to read Ordinance No. 21-2227 by title only, and that the City Clerk's reading constitutes the second reading thereof; and to enact the Ordinance.
Ayes: Moore, Wei, Willey, Chao, and Paul. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARINGS

16. Subject: Consider Approval of the Renewal with no Increase of the 1992 Storm Drain Fee and the 2019 Clean Water and Storm Protection Fee and an Increase in the Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes.

Recommended Action: Consider Adoption and Approval of:

1. Resolution No. 21-040 (Attachment A) Approving the Renewal and Collection of the 1992 Storm Drain Fee with no Increase in Rates for Fiscal Year (FY) 2021-2022;
2. Resolution No. 21-041 (Attachment B) Approving the Renewal and Collection of the 2019 Clean Water and Storm Protection Fee with No Increase in Rates for FY 2021-2022; and
3. The Increase to an Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes from \$3 Per Square Foot with a \$900 Maximum to \$3 Per Square Foot with a Maximum of \$1,800.

Written communications for this item included a staff presentation.

Director of Public Works Roger Lee introduced the item and Environmental Programs Manager Ursula Syrova gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public hearing and, seeing no speakers, closed the public hearing.

Wei moved and Moore seconded to:

1. Resolution No. 21-040 (Attachment A) Approving the Renewal and Collection of the 1992 Storm Drain Fee with no Increase in Rates for Fiscal Year (FY) 2021-2022;
2. Resolution No. 21-041 (Attachment B) Approving the Renewal and Collection of the 2019 Clean Water and Storm Protection Fee with No Increase in Rates for FY 2021-2022; and
3. The Increase to an Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes from \$3 Per Square Foot with a \$900 Maximum to \$3 Per Square Foot with a Maximum of \$1,800.

The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

17. Subject: Consider adopting a position on Senate Bill 612 (Portantino) Electrical Corporations and Other Load-Serving Entities: Allocation of Legacy Resources, Senate Bill 792 (Glazer) Sales and Use Tax: Retailers: Reporting, and Senate Bill 780 (Cortese) Local Finance: Public Investment Authorities
- Recommended Action: 1) Adopt a support position on SB 612,
2) Adopt an oppose position on SB 792,
3) Adopt a support position on SB 780, and
4) Authorize the Mayor to send position letters to the state legislature.

Written communications for this item included a consultant presentation.

Assistant to the City Manager Katy Nomura introduced Legislative Consultant Casey Elliot with Townsend Public Affairs, who gave a presentation.

Bena Chang yielded her time to Melicia Charles.

Jennifer Griffin was concerned that Senate Bill 612 would trivialize decisions made by the PUC (Public Utilities Commission) and was undecided on Senate Bill 792.

DaVina Flemings, on behalf of PGE, opposed Senate Bill 612 (Portantino).

Melicia Charles, on behalf of Silicon Valley Clean Energy, supported Senate Bill 612 (Portantino). (Submitted written comments).

Moore moved and Wei seconded to:

- 1) Adopt a support position on SB 612,
- 2) Adopt an oppose position on SB 792,
- 3) Adopt a support position on SB 780, and
- 4) Authorize the Mayor to send position letters to the state legislature.

Chao made a friendly amendment to vote on items 1 through 4 separately. (Moore and Wei accepted the friendly amendment).

Final Motions:

Moore moved and Wei seconded to:

- 1) Adopt a support position on SB 612,
The motion for Item 1 carried with Chao abstaining;
- 2) Adopt an oppose position on SB 792,
The motion for Item 2 carried with Chao abstaining;

- 3) Adopt a support position on SB 780, and
The motion for Item 3 carried unanimously;
- 4) Authorize the Mayor to send position letters to the state legislature.
The motion for Item 4 carried unanimously.

18. Subject: Consideration of 1) Authorization of Award of Construction Contract for Privacy Fencing; 2) Request to Increase Regnart Creek Trail Privacy Fencing Project Budget Allocation; 3) Request to Increase Budget Allocation for Regnart Creek Trail Project Contingency; 4) Request to Increase Budget Allocation for Regnart Creek Trail and Regnart Creek Fencing Design Services; and 5) Request to Execute a First Amendment to the Master Agreement Between the City and CSG Consultants, Incorporated to Increase Agreement Amount.

Recommended Action: Recommend that the City Council:

- 1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
- 2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
- 3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
- 4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
- 5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

Mayor Paul opened the public comment period and the following people spoke.

Rhoda Fry supported waiting for lumber prices to drop.

Jennifer Shearin opposed increasing the budget and supported funding alternatives. (Submitted written comments).

Seema Lindskog opposed increasing the budget and supported funding alternatives. (Submitted written comments).

Mayor Paul closed the public comment period.

Wei moved and Willey seconded to:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

Chao made a substitute motion to continue this item to June 15 for the City Attorney and staff to conduct research on the suggestion of the members of public to create a private fund for the fencing cost. There was no second and the substitute motion died.

Wei modified her motion to add a privacy fence reimbursement amount of \$100 per foot. (Moore accepted the friendly amendment).

Wei made a friendly amendment to modify the privacy fence reimbursement amount to \$77 per foot. (Moore declined the friendly amendment, and it was not considered).

Wei's main motion as modified carried unanimously.

Final Motion:

Wei moved and Willey seconded to:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.
6. Add a privacy fence reimbursement amount of \$100 per foot.

The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- Added an agenda item for an update on the Dog Off-Leash Area Trial - DOLA (Chao/Wei)

ADJOURNMENT

At 11:44 p.m., Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk

CC 06-01-21

#11

Proposed Recission
of Emergency Order
No. 20-01 (Face
Coverings)

Written Comments

Cyrah Caburian

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, June 15, 2021 6:47 PM
To: City Clerk; City Council
Subject: 2021-06-15 CC Meeting - PLEASE PULL Consent Calendar Item #11

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council and City Clerk,

Please PULL Consent Calendar Item #11 regarding the proposal to rescind the Emergency Order requiring face covering.

Thank you!

Sincerely,
Peggy Griffin

CC 06-01-21

#22

Accounts Payable
Period Ending
May 11, 2021

Written Comments

Cyrah Caburian

From: Peggy Griffin <griffin@compuserve.com>
Sent: Monday, June 14, 2021 1:40 PM
To: City Council; City Clerk
Subject: 2021-06-15 CC Meeting: Agenda Item 22 (CONSENT CALENDAR) PULL Item 22 May 11, 2020 Accts Payable

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council and City Clerk,

I am requesting you PULL ITEM #22 from tomorrow nights' Consent Calendar. It's Accounts Payable for the period ending May 11, **2020!!!**

I'm asking that the following questions be answered during the discussion of this item:

1. This is over a year old! Slipping it in just after May 3, 2021 makes it "appear" as if it's the following week...until you look again and notice the year!
 - a. Q1: What happened?
 - b. Q2: Why is this coming up now?
2. The checks have already been written and sent.
 - a. Q3: What does it mean for the City Council to "approve" these Accounts Payable?
 - b. Q4: What happens if they don't approve it?
3. Accounts Payable are closed at the end of each week.
 - a. Q5: Why doesn't the Council receive the statements for approval every 2 weeks?
 - b. Q6: What's causing this constipation and diarrhea?

Flooding the Council and the public with these massive number of Accounts Payable statements is a way making the City's expenditures less transparent because it's difficult to review 10 statements all at once!

IMPORTANT REQUEST: Can the Council require the Accounts Payable statements to be presented for approval every 2-weeks as they become closed?

Sincerely,
Peggy Griffin

Cyrah Caburian

From: Anne Ezzat <aezzat95014@gmail.com>
Sent: Tuesday, June 15, 2021 11:29 AM
To: Darcy Paul; Liang Chao; Jon Robert Willey; Kitty Moore
Subject: Consent Calendar Item #22

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor Paul, Vice Mayor Chao, Council Member Wiley and Council Member Moore,

I am writing to request that #22 be pulled from the consent calendar. I am curious as to why this was submitted over a year late. Is it a typo? Does the city allow itself to be billed a year after a service is completed?

It seems that there should be a deadline for submitting a request for payment. It is unfair to staff to have to go through a collection of bills in short order, i.e, disrupts work flow. It also does not give the processing staff time to examine the bills in case there maybe some questions regarding the bill.

Thanks for your time and attention.

Best regards,,

Brooke Ezzat

Cyrah Caburian

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, June 15, 2021 7:02 PM
To: Kirsten Squarcia
Cc: City Clerk
Subject: 2021-06-15 CC Mtg: Item 22 Peggy's Slide
Attachments: Item 22-Peggys Slide.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kirsten,

Please show this slide when I am allowed to speak on Item #22.

Thank you,
Peggy Griffin

Item 22 – PULL Accounts Payable for period ending May 11, 2020!

Please answer these questions:

1. This is over a year old!
 - a. Q1: What happened?
 - b. Q2: Why is this coming up now?
2. The checks have already been written and sent.
 - a. Q3: What does it mean for the City Council to “approve” these Accounts Payable?
 - b. Q4: What happens if they don’t approve it?
3. Accounts Payable are closed at the end of each week.
 - a. Q5: Why doesn’t the Council receive the statements for approval every 2 weeks?
 - b. Q6: What’s causing this constipation and diarrhea?

IMPORTANT REQUEST:

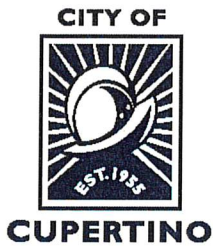
Require Accounts Payable statements to be presented for approval every 2-weeks as they become closed?

CC 06-01-21

#24

Appointment of City
Attorney and
Execution of
Employment
Agreement

Staff Report



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: JUNE 15, 2021

Subject

Consider approval of the Employment Agreement for the City Attorney

Recommended Action

Authorize the Mayor to execute an Employment Agreement with the new City Attorney for the City of Cupertino.

Discussion

The City Council of the City of Cupertino desires to appoint a new full-time, regular City Attorney.

To accomplish that, an Employment Agreement (Attachment A) has been drafted and reviewed by outside special counsel on behalf of the City. The term of the attached Employment Contract for the City Attorney shall be as set forth in the Employment Agreement unless terminated earlier by the City or the City Attorney. The City Attorney's Employment Agreement is attached as Exhibit A..

Staff also proposes to amend the Appointed Employees' Compensation Program to include the City Attorney classification and to reflect the annual salary amount contained in the Employment Agreement, with an effective date of July 1, 2021.

Sustainability Impact

There is no sustainability impact.

Fiscal Impact

There is no fiscal impact. Funding for this position will be offset by decreased contract cost savings resulting from transitioning from a contract City Attorney to an in-house City Attorney.

Prepared by: Kristina Alfaro, Director of Administrative Services
Reviewed by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Draft Resolution approving the City Attorney Employment Agreement

B - Draft City Attorney Employment Agreement

C – Draft Resolution amending the Appointed Employees' Compensation Program (Redline)

D – Draft Resolution amending the Appointed Employees' Compensation Program (Clean)

RESOLUTION NO. 21 - _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
CUPERTINO AND
CHRISTOPHER D. JENSEN, CITY ATTORNEY, AND AUTHORIZING
THE MAYOR TO EXECUTE THE CONTRACT**

WHEREAS, THE City Council has hired an executive search firm which conducted an open recruitment to permanently fill the position of City Attorney; and

WHEREAS, the City Council desires to pay the City Attorney an annual base salary of \$255,000 effective July 27, 2021, deferred compensation of nineteen thousand five hundred dollars (\$19,500) to be paid in bi-weekly installments; and an automobile allowance of three-hundred fifty dollars (\$350) per month. All other terms and conditions of the Agreement shall be unchanged and in full force and effect.

WHEREAS, the terms, conditions and provisions of the Employment Agreement have been reviewed and approved by the Director of Administrative Services;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the aforementioned Employment Agreement and authorizes the Mayor to execute said agreement on behalf of the City of Cupertino.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970 and the 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 the Employment Agreement would have no or only a de minimis physical impact on the environment. Where it can be seen with certainty that the action does not have the potential for causing a significant effect on the environment, CEQA does not apply. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of June 2021, by the following vote:

Resolution No. _____

Page 2

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

EMPLOYMENT AGREEMENT FOR CITY ATTORNEY

This Employment Agreement (the "Agreement") is made and entered into this 27th day of July, 2021, by and between the CITY OF CUPERTINO, STATE OF CALIFORNIA, A Municipal Corporation, by and through its City Council ("EMPLOYER"), and Christopher D. Jensen ("EMPLOYEE" and, together with EMPLOYER, the "PARTIES").

RECITALS:

- A. EMPLOYER is a Municipal Corporation of the State of California.
- B. The City Council of the City of Cupertino, in accordance with the provisions of its Municipal Code, desires to employ the services of EMPLOYEE as City Attorney.
- C. EMPLOYEE desires to accept employment as Cupertino City Attorney.
- D. It is the desire of both EMPLOYER and EMPLOYEE to set forth the terms and conditions of said employment.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE I: TERM OF EMPLOYMENT

Section 1.01. Term of the Contract:

This Contract begins on July 27, 2021, and will automatically expire on July 27, 2026, unless extended in writing by the Parties. This Contract shall automatically renew on a year-to-year basis, for a maximum of two additional years (24 months) as provided herein unless the EMPLOYER gives EMPLOYEE notice of non-renewal. Unless such notice of non-renewal is timely given, this Contract shall automatically renew for an additional year. If notice of non-renewal is given, the City Council may at any time choose to relieve EMPLOYEE of his duties.

On or within 30 days of the expiration date (or any successor expiration date thereof), EMPLOYEE shall notify EMPLOYER of the expiration date]. In the event that EMPLOYER does not intend to extend this Contract beyond expiration, it shall notify EMPLOYEE in writing of its intent not to extend prior to the effective date of expiration. Failure of EMPLOYER to provide such notice shall not affect the expiration date.

Nothing in this Contract shall prevent, limit or otherwise interfere with (a) EMPLOYEE's at-will status; (b) the right of City to terminate the services of EMPLOYEE as provided herein; and (c) the right of EMPLOYEE to resign from his position as provided herein.

Section 1.02. Termination Prior to Expiration. Notwithstanding any provision contained in this Contract to the contrary, EMPLOYEE understands and agrees that he serves at the pleasure of

EMPLOYER and may be terminated prior to expiration of this Contract at the will of the EMPLOYER, subject only to the severance provisions set forth in Article V of this Contract, and the ordinance provisions as set forth in Section 2.18.110 of the Cupertino Municipal Code. In like manner, nothing in this Contract shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from the position of City Attorney subject only to the notice provisions set forth in Article V of this Contract and the ordinance provisions as set forth in Section 2.18.110 of the Cupertino Municipal Code.

EMPLOYEE further acknowledges that EMPLOYER has made no limited expressed, or written assurances of continued employment with the City of Cupertino other than as specifically set forth in this Contract.

In the event EMPLOYEE becomes mentally or physically incapable of performing the City Attorney's essential functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, the City Council may, subject to state and federal law, terminate EMPLOYEE. If the City Council does elect to terminate EMPLOYEE due to incapacity, EMPLOYEE shall not receive severance benefits provided in Section 5.01 below.

ARTICLE II: DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.01. Duties. EMPLOYER hereby agrees to employ EMPLOYEE as City Attorney of the City of Cupertino to perform the functions and duties as specified in the Municipal Code, California Constitution, and California Statutes, and to perform such other legally permissible and proper duties and functions as EMPLOYER shall from time to time assign to EMPLOYEE which are reasonably related to the position of City Attorney, including but not limited to:

- A. Advising the City Council and all City officers in all matters pertaining to their offices;
- B. Furnishing legal services at all meetings of the City Council, except when excused or disabled, and give advice or opinions on the legality of all matters under consideration by the City Council or by any of the boards, commissions, committees or officers;
- C. Preparing and/or approving all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City;
- D. Providing the necessary legal services required in connection with the acquisition of land or easements on behalf of the City;
- E. Subject to the general direction of the City Council, prosecuting and defending the City, and all boards, officers and employees in their official capacities, all civil proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against

the City without permission of the City Council, nor shall the City Attorney commence any civil action without the permission of the City Council.

F. Prosecuting all violations of City ordinance; provided, however, that the City Attorney is not required to prosecute any misdemeanor or infraction within the City arising out of a violation of State law.

Section 2.02. Hours of Work.

A. EMPLOYEE is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Attorney's position.

B. It is recognized that EMPLOYEE must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the EMPLOYEE's schedule of work each day and week shall vary in accordance with the work required to be performed. EMPLOYEE shall spend sufficient hours on site to perform the City Attorney's duties. However, it is expected that, subject to the need to attend off-site meetings or events, EMPLOYEE will be on-site Monday through Friday without an option for an alternative work schedule that includes a regularly scheduled weekday off, unless he is on an approved leave; provided, however, that nothing herein shall be construed to limit EMPLOYEE's ability to work from off-site locations in compliance with applicable City policies to the extent that such off-site work does not interfere with the performance of EMPLOYEE's duties as set forth in Section 2.01.

Section 2.03. Performance Evaluation Procedures.

A. The City Council shall review and evaluate the performance of the EMPLOYEE at least annually, or on any schedule deemed appropriate by the City Council. Said review and evaluation shall be in accordance with specific criteria developed by EMPLOYER after consultation with EMPLOYEE. During EMPLOYEE'S first year of employment, the City Council shall review and evaluate his performance approximately six (6) months following the date on which his employment commences. This six (6) month review shall be for purposes of a performance review only and shall not include any compensation or benefits adjustments.

ARTICLE III COMPENSATION

Section 3.01 Compensation.

A. EMPLOYER agrees to pay to EMPLOYEE for services rendered by him pursuant to this Contract an annual base salary of \$255,000, payable in installments at the time as other employees of EMPLOYER are paid.

B. Except as provided for in Section 2.03(A), at the time of EMPLOYEE's periodic evaluations, EMPLOYER may consider an additional compensation package increase including, but not limited to, merit pay or an additional increase in salary or benefits. Should the City Council, upon

completion of its annual review of EMPLOYEE's performance pursuant to this Contract, determine that EMPLOYEE has met City's performance expectations, the City Council shall may consider an increase in EMPLOYEE compensation, in the exercise of its sole and unfettered discretion. EMPLOYEE understands and agrees that he has no entitlement to an increase in compensation.

Section 3.02 Deferred Compensation.

Subject to the applicable IRS maximum limitations that may be in effect at the time of said payment, the City shall make monthly deposits of one thousand six hundred and twenty-five dollars (\$1,625) into EMPLOYEE's deferred compensation account, for a total of nineteen thousand and five hundred dollars (\$19,500) annually.

ARTICLE IV EMPLOYEE BENEFITS

Section 4.01. Vacation and Sick Leave. Subject to the terms of the Appointed Employees' Compensation Program, annual vacation and sick leave shall be accrued and administered in the same manner as sick leave is administered for appointed employees.

Section 4.02. Administrative Leave. EMPLOYEE shall be entitled to receive eighty (80) hours of Administrative Leave per fiscal year, subject to the terms of the Appointed Employees' Compensation Program.

Section 4.03. Benefits. EMPLOYEE shall be entitled to receive benefits as provided for under the Appointed Employees' Compensation Program, which presently consist of, but are not limited to, retirement benefits, family health coverage, life insurance, disability insurance, Cupertino sports club membership, floating holidays and holidays. The benefits so provided are subject to modification during the course of this Contract at the sole and absolute discretion of EMPLOYER at such times and to such extent as EMPLOYER may deem appropriate provided, however, there shall be no reduction in benefits unless EMPLOYER implements the same reduction of benefits to all other employees covered under the Appointed Employees' Compensation Program (except as specified in this Contract or as otherwise waived or declined by EMPLOYEE).

Section 4.04. Professional Dues and Subscriptions. EMPLOYER agrees to pay for EMPLOYEE's annual membership to the State Bar of California and for professional dues and subscriptions of EMPLOYEE directly related to or beneficial to his duties as City Attorney, provided the City Council has made provisions for such costs in the annual budget.

Section 4.05. Expenses. Subject to the terms of the Appointed Employees' Compensation Program, EMPLOYEE shall be entitled to reimbursement for all reasonable expenses necessarily incurred by him in the performance of his duties upon presentation of vouchers indicating the amount and purpose

thereof, and further provided that such expenses are in accordance with policies established from time to time by EMPLOYER and consistent with budget allocations adopted by EMPLOYER for that purpose during the term of this Employment Contract.

Section 4.06 Professional Development. Subject to the terms of the Appointed Employees' Compensation Program, EMPLOYER hereby agrees to pay travel and subsistence expenses of EMPLOYEE for professional and office travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for EMPLOYER, including but not limited to, city attorney associations and other such national, regional, state, local government groups and committees thereof which EMPLOYEE serves as a member, provided the City Council has made provisions for such costs in the annual budget.

Subject to the terms of the Appointed Employees' Compensation Program, EMPLOYER also agrees to pay tuition, travel, and subsistence expenses of EMPLOYEE for courses, institutes, and seminars that are necessary for his professional development and of the good of the City provided the City Council has provided for same in the annual budget.

Section 4.07. Housing Assistance. EMPLOYEE may elect to receive Housing Assistance in accordance with the EMPLOYER's Housing Assistance Program for Appointed Employees and Department Heads in effect as of the execution date of this Contract, which is subject to approval by the City Council.

ARTICLE V SEPARATION FROM CITY SERVICE AND NOTICE

Section 5.01. Termination of Employment By City and Severance:

A. The City Attorney is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506 and Chapter 2.18 of the EMPLOYER's Municipal Code. Subject to these authorities, nothing herein shall be taken to prevent, limit or otherwise interfere with the right of EMPLOYER to terminate the services of EMPLOYEE with or without cause, and EMPLOYEE shall serve at the will and sole pleasure of the City Council; provided, however, EMPLOYER shall take no action to terminate the services of EMPLOYEE, without cause, within ninety (90) days after an election at which one or more new members are elected to the City Council. There is no express or implied promise made to EMPLOYEE for any form of continued employment. This Contract and the EMPLOYER's Municipal Code Chapter 2.18 are the sole and exclusive bases for an employment relationship between EMPLOYEE and EMPLOYER. Notice of termination shall be provided to the EMPLOYEE in writing.

B. If the EMPLOYEE is terminated by the EMPLOYER prior to expiration of this Contract, while still willing and able to perform the duties of the City Attorney, EMPLOYER agrees to pay EMPLOYEE a single lump sum payment made on the effective date of termination, in an amount

equivalent to three (3) months aggregate salary and aggregate medical insurance benefit allowance if there are three (3) or more months prior to the expiration date of this contract. Any such payment will release EMPLOYER from any further obligations under this Agreement. As a condition precedent to EMPLOYER'S willingness to provide said severance payment, EMPLOYEE agrees to execute and deliver to EMPLOYER a release releasing EMPLOYER of all claims that EMPLOYEE may have against EMPLOYER and contemporaneously provide said release to EMPLOYER at the time of the severance payment is made to EMPLOYEE in a form mutually acceptable to the Parties.

Any severance payment shall exclude all other benefits, such as retirement, health, vision, and dental benefits. In addition, vacation and sick leave accrual shall immediately cease upon the date of City's notification to EMPLOYEE that his employment will be terminated. The severance pay shall be computed from the effective date of EMPLOYEE's termination. The intent of these provisions is to comply with Government Code section 53260.

C. Notwithstanding paragraph (B) above, EMPLOYER shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph (B), if EMPLOYEE is terminated for cause or because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office. Further, EMPLOYER shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under paragraph (B), in the event (i) EMPLOYEE voluntarily resigns or retires without affirmative action by EMPLOYER to terminate, initiate termination proceedings or request resignation or (ii) either EMPLOYER or EMPLOYEE determine not to renew this Agreement as set forth in section 1.01. In the circumstances outlined in this paragraph (C), EMPLOYEE shall only be entitled to the compensation accrued up until date of separation from the City, payments required by paragraph (D) below, and such other termination benefits and payments as may be required by law. Notwithstanding the use of "cause" herein, nothing herein contained shall be deemed to create or establish a property right or a right to continuing employment in the position of employment of EMPLOYEE or affect City's right to terminate the employment of EMPLOYEE with or without cause in accordance with this Agreement.

D. Payments for Unused Leave Balances:

i. Upon separation from City service, EMPLOYEE shall be paid for all unused, accrued vacation balances, and/or EMPLOYEE may apply the leave time to service credit for retirement purposes if permitted by PERS. Accumulated vacation leave balances shall be paid at EMPLOYEE's monthly salary rate at the effective date of separation.

ii. In the event EMPLOYEE dies while employed by the City under this Agreement, EMPLOYEE's beneficiaries or those entitled to EMPLOYEE's estate, shall be entitled to

EMPLOYEE's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

E. All payments required under this subsection 5.01 are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260 regarding maximum severance pay.

F. Notwithstanding any other provision of this Agreement to the contrary, pursuant to California Government Code Section 53243.2, if this Agreement is terminated, any cash settlement related to the involuntary termination that the City Attorney may receive from the City shall be fully reimbursed to the City if the City Attorney is convicted of a crime involving an abuse of his office or position. The City Council may withhold payment of severance pay pending final disposition of any criminal charges.

Section 5.02. Resignation or Retirement. EMPLOYEE may resign at any time and agrees to give the City at least 30 days' advance written notice of the effective date of EMPLOYEE's resignation, unless the Parties otherwise agree in writing. If EMPLOYEE retires from full time public service with the City, EMPLOYEE may provide six months' advance notice. The City Attorney's actual retirement date will be mutually established.

ARTICLE VI MISCELLANEOUS

Section 6.01. Form of Notices. Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United State Postal Service, first class postage prepaid, addressed as follows;

A. The City: Mayor and City Council

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

B. EMPLOYEE:

Christopher D. Jensen
(Address on file with City)

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date three days after deposit of such written notice, postage prepaid, with the United States Postal Service.

Section 6.02. Amendments. This Agreement may be amended at any time by mutual agreement of EMPLOYER and EMPLOYEE. Any amendments are to be negotiated, put in writing, and adopted by EMPLOYER.

Section 6.03. Bonding. EMPLOYER shall bear the full cost of any fidelity or other bonds required

of EMPLOYEE under any law or ordinance.

Section 6.04 Indemnification. Except as otherwise provided by law, and provided that EMPLOYEE complies with the provisions of Sections 825 and 825.6 of the California Government Code, as now existing or hereafter amended, EMPLOYER shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties as City Attorney. EMPLOYER may conduct such defense reserving the rights of EMPLOYER not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of EMPLOYEE's employment as an employee of City. If EMPLOYER compromises or settles any such claim or suit, EMPLOYER shall pay the amount of any settlement, or if the claim results in a judgment against EMPLOYEE, EMPLOYER shall pay any such judgment. This indemnification does not apply to any act, action or omission arising out of the gross negligence or willful misconduct on the part of EMPLOYEE, or acts by EMPLOYEE outside the scope of his duties. Nothing in this Agreement authorizes or obligates EMPLOYER to pay that part of any claim or judgment that is for punitive or exemplary damages.

Section 6.05 Compliance with AB 1344:

Notwithstanding any other provision of this Agreement, EMPLOYER and EMPLOYEE agree to fully comply with the Government Code sections that are part of AB 1344, as it became effective on January 1, 2012 ("AB 1344"), and to fully comply with other applicable law as it exists as of the date of execution of this Agreement, and as the Agreement may be amended from time to time thereafter. In that regard, the following Government Code sections are hereby incorporated into the terms of this Agreement:

- o §53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position,
- o §53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position,
- o §53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position,
- o §53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position and
- o §53243.4. Abuse of office or position defined.

EMPLOYEE has reviewed, is familiar with, and agrees to comply fully with each of those provisions if any are ever applicable to EMPLOYEE.

If EMPLOYEE is convicted of a crime involving an abuse of his office or position, as defined in Government Code Section 53234.4, then EMPLOYEE shall fully reimburse the City for any paid leave salary paid by the City to EMPLOYEE pending any investigation, funds provided to EMPLOYEE for his legal criminal defense, and/or any severance pay or cash settlement paid to EMPLOYEE related to his termination by the City. Said reimbursements are required if such payments are made, even if the payments were made by the City in the absence for any contractual requirement to do so

In addition, pursuant to Government Code Section 3511.2, and notwithstanding any other provisions of this Agreement, EMPLOYER is prohibited through this Agreement or any amendment thereto or in any other way to provide an automatic renewal of this Agreement that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits established by Government Code Section 3511.2. Government Code Section 3511.2 is hereby incorporated into this Agreement.

Section 6.06 Conflict of Interest

A. EMPLOYEE shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal, as distinguished from financial, interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

B. EMPLOYEE shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to EMPLOYEE's City employment

C. EMPLOYEE is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

D. EMPLOYEE shall not engage in any outside employment without the express prior consent of the City Council. This includes, but is not limited to, the practice of law or giving of legal advice for compensation without the express written approval of a majority of the City Council, which may be withheld in the City Council's unfettered discretion.

Section 6.07 General Provisions.

A. The text herein shall constitute the entire Agreement between the Parties, and no representations have been made or relied upon except as set forth herein.

B. This Contract shall be binding upon and inure to the benefit of the heirs at law and

executors of EMPLOYEE.

C. If there is any conflict between this Agreement and the Appointed Employees' Compensation Program, or any other resolution fixing compensation and benefits for employees covered by that Compensation Program, this Agreement shall control.

D. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

E. This Agreement may only be modified upon the written consent of the EMPLOYER and EMPLOYEE.

F. In any action to enforce the terms of this Agreement the prevailing party shall be entitled to recover reasonable attorney's fees and court costs and other non-reimbursable litigation expenses, such as expert witness fees and investigation expenses.

F. This Agreement shall be construed in accordance with the laws of the State of California and the Parties agree that venue shall be in Santa Clara County, California.

Section 6.08 Severability. If any provision thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Section 6.09 Waiver. Waiver by either Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

Section 6.10 Ambiguity. The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

Section 6.11 Approval of City Council. The Parties agree that this agreement will not take effect unless and until it is approved by a majority of the members of the City Council as part of its open session agenda.

IN WITNESS WHEREOF, EMPLOYER has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Contract, both in duplicate, the day and year first above written.

ATTEST:

CITY OF CUPERTINO

Date: _____

Date: _____

Christopher Jensen

"EMPLOYEE"

Mayor

City Clerk

APPROVED AS TO FORM:

Heather M. Minner

City Attorney









Employment Agreement for City Attorney

Final Audit Report

2021-06-16

Created:	2021-06-15
By:	Araceli Alejandre (aracelia@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJQil8Pa0z5VvILZktTZ-FE5GelfKLsXT

"Employment Agreement for City Attorney" History

-  Document created by Araceli Alejandre (aracelia@cupertino.org)
2021-06-15 - 11:25:03 PM GMT- IP address: 73.170.27.253
-  Document emailed to Christopher Jensen (jensenchrisd@gmail.com) for signature
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Signature Date: 2021-06-15 - 11:42:46 PM GMT - Time Source: server- IP address: 209.232.48.218
-  Document emailed to Heather M. Minner (minner@smwlaw.com) for signature
2021-06-15 - 11:42:47 PM GMT
-  Email viewed by Heather M. Minner (minner@smwlaw.com)
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-  Document e-signed by Heather M. Minner (minner@smwlaw.com)
Signature Date: 2021-06-16 - 0:06:23 AM GMT - Time Source: server
-  Agreement completed.
2021-06-16 - 0:06:23 AM GMT



POWERED BY
Adobe Sign

RESOLUTION NO. 21-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE APPOINTED EMPLOYEES' COMPENSATION PROGRAM**

WHEREAS, the City Council desires to amend the Appointed Employees' Compensation Program.

NOW, THEREFORE, BE IT RESOLVED that the Appointed Compensation Program be amended which is incorporated in this resolution by this reference and attached as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of June 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Kirsten Squarcia, City Clerk

Darcy Paul, Mayor,
City of Cupertino

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 1

PROGRAM PURPOSE AND DEFINITIONS FOR ELIGIBILITY

It is City of Cupertino policy that those certain persons holding positions hereinafter defined and designated as appointed management employees by the City Council in the City Manager's Office City Attorney's Office shall be eligible for participation in the Appointed Employees' Compensation Program as hereby adopted by action of the City Council and as same may be amended or as otherwise modified from time to time.

Eligibility for inclusion in this Compensation program is limited to persons appointed by the City Council and holding positions as management employees in the City Manager's Office and the City Attorney's Office, as defined under section 2.52.290 of the Cupertino Municipal Code. Eligible persons are designated by the Appointing Authority and may be modified as circumstances warrant.

Although subject to change in accordance with the Personnel Code, the position in the following classification has been designated as an appointed employee.

MANAGEMENT CLASSIFICATIONS:

Classification Title

City Manager

City Attorney

In the event of any inconsistency between the Compensation Program and any Employment Contracts, the provisions of the Employment Contract and any amendments thereto control.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012; July 2019, August 18, 2020, June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 2

SALARY SCHEDULE
AND OTHER SALARY RATES

It is City of Cupertino policy that eligible persons under this Compensation Program shall be compensated for services rendered to and on behalf of the City on the basis of equitable pay for duties and responsibilities assigned, meritorious service and comparability with similar work in other public and private employment in the same labor market; all of which is contingent upon the City's ability to pay consistent with its fiscal policies.

Effective June 3, 2019, a salary decrease of 9.811% or \$19,916.66 base pay will be reflected in the City Manager classification. Effective June 3, 2020, a salary increase of 15.06% or \$22,916.66 base pay will be reflected in the City Manager classification.

Adopted by Action of the City Council July 1, 2010

Revised October 2, 2012

Revised December 18, 2012, October 2016, September 6, 2017, November 6, 2017, January 7, 2019, July 16, 2019, August 18, 2020

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 3

TRAINING AND CONFERENCES

I. POLICY

It is City of Cupertino policy that eligible persons under this Compensation Program shall be reimbursed or receive advances in accordance with the schedules, terms and conditions as set forth herein for attendance at conferences, meetings and training sessions as defined below for each. It is the intent of this policy to encourage the continuing education and awareness of said persons in the technical improvements and innovations in their fields of endeavor as they apply to the City or to implement a City approved strategy for attracting and retaining businesses in the City. One means of implementing this encouragement is through a formal reimbursement and advance schedule for authorized attendance at such conferences, meetings and training sessions.

II DEFINITIONS

A. Conferences

A conference is an annual meeting of a work related organization the membership of which may be held in the name of the City or the individual.

B. Local Area

The local area is defined to be within Santa Clara and San Mateo Counties and within a 40-mile distance from Cupertino when traveling to Alameda County.

C. Meetings

A "meeting" shall mean a convention, conference, seminar, workshop, meal, or like assembly having to do with municipal government operations. An employee serving on a panel for interviews of job applicants shall not come under this definition.

D. Training Session

A training session is any type of seminar or workshop the attendance at which is for the purpose of obtaining information of a work related nature to benefit the City's operations or to enhance the attendee's capabilities in the discharge of assigned duties and responsibilities.

III REIMBURSEMENT AND ADVANCE PAYMENT SCHEDULE

A. Intent

This schedule is written with the intent that the employee will make every effort to find the lowest possible cost to the City for traveling on City business. For example, if paying for parking at the airport is less expensive than paying for a taxi or airport shuttle, then the employee should drive their car and park at the airport; or if renting a car is lower than taking taxis at the out-of-town location, then a car should be rented; or air reservations should be booked in advance to obtain discounted fares. The following procedures apply whether the expense is being paid through a reimbursement or a direct advance.

B. Registration

Registration fees for authorized attendance at a meeting or training session will be paid by the City.

C. Transportation

The City will pay transportation costs on the basis of the lowest cost intent stated in paragraph A. Eligible transportation costs include airfare (with coach fare being the maximum), van or taxi service to and from the attendee's home and airport, destination or airport parking charges, taxi and shuttle services at the out-of-town location, trains, tolls, or rental cars. Use of a personal automobile for City business shall be reimbursed or advanced at the rate per mile in effect for such use, except in no case shall it exceed air coach fare if the vehicle is being used for getting to the destination. Government or group rates offered by a provider of transportation must be used when available.

Reimbursement or advances for use of a personal automobile on City business within a local area will not be made so as to supplement that already being paid to those persons receiving a monthly mileage allowance.

D. Lodging

Hotel or lodging expenses of the employee resulting from the authorized event or activity defined in this policy will be reimbursed or advanced if the lodging and event occurs outside of the local area. Not covered will be lodging expenses related to person(s) who are accompanying the City member, but who themselves are not on City business. In this instance, for example, the difference between single and multiple occupancy rates for a room will not be reimbursed.

Where the lodging is in connection with a conference or other organized educational activity, City-paid lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, providing that lodging at the group rate is available at the time of booking. If the group rate at the conference hotel is not available, then the non-conference lodging policy described in the next paragraph should be followed to find another comparable hotel.

Where lodging is necessary for an activity that is not related to a conference or other organized educational activity, reimbursement or advances shall be limited to the actual cost of the room at a group or government rate. In the event that a group or government rate is not available, lodging rates that do not exceed the median price for lodging for that area and time period listed on travel websites like www.hotels.com, www.expedia.com or an equivalent service shall be eligible for reimbursement or advancement.

E. Meals

1. With No Conference

Payments toward or reimbursement of meals related to authorized activities or events shall be at the Internal Revenue Service per diem rate for meals and incidental expenses for a given location, as stated by IRS publications 463 and 1542 and by the U.S. General Services Administration. The per diem shall be split among meals as reasonably desired and reduced accordingly for less than full travel days. If per diem is claimed, no receipts are necessary. Alternatively, the actual cost of a meal can be claimed, within a standard of reasonableness, but receipts must be kept and submitted for the expense incurred.

2. As Part of a Conference

When City personnel are attending a conference or other organized educational activity, they shall be reimbursed or advanced for meals not provided by the activity, on a per diem or actual cost basis. The per diem and actual cost rate shall follow the rules described in the meals with no conference paragraph.

F. Other Expenses

Payments toward or reimbursement of expenses at such functions shall be limited to the actual costs consistent with the application of reasonable standards.

Other reasonable expenses related to business purposes shall be paid consistent with this policy.

No payments shall be made unless, where available, receipts are kept and submitted for all expenses incurred. When receipts are not available, qualifying expenditures shall be reimbursed upon signing of an affidavit of expenditure.

No payment shall be made for any expenses incurred which are of a personal nature or not within a standard of reasonableness for the situation as may be defined by the Finance Department.

G. Non-Reimbursable Expenses

The City will **not** reimburse or advance payment toward expenses including, but not limited to:

1. The personal portion of any trip;

2. Political or charitable contributions or events;
3. Family expenses, including those of a partner when accompanying the employee on City-related business, as well as child or pet-related expenses;
4. Entertainment expenses, including theatre, shows, movies, sporting events, golf, spa treatments, etc.
5. Gifts of any kind for any purpose;
6. Service club meals;
7. Alcoholic beverages;
8. Non-mileage personal automobile expenses including repairs, insurance, gasoline, traffic citations; and
9. Personal losses incurred while on City business.

IV ATTENDANCE

A. Budgetary Limitations

Reimbursement or advances for expenses relative to conferences, meeting or training sessions shall not exceed the budgetary limitations.

V. FUNDING

A. Appropriation Policy

It shall be the policy of the City to appropriate funds subject to availability of resources.

B. Training Sessions

Payments toward or reimbursement of expenses incurred in attendance at training sessions, will be appropriated annually through the budget process.

VI. DIRECT CASH ADVANCE POLICY

From time to time, it may be necessary for a City employee to request a direct cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to their supervisor no less than seven days prior to the need for the advance with the following information: 1) Purpose of the expenditure; 2) The anticipated amount of the expenditure (for example, hotel rates, meal costs, and transportation expenses); and 3) The dates of the expenditure. An accounting of expenses and return of any unused advance must be reported to the City within 30 calendar days of the employee's return on the expense report described in Section VII.

VII. EXPENSE REPORT REQUIREMENTS

All expense reimbursement requests or final accounting of advances received must be approved by the Mayor or their designee, on forms determined by the Administrative Services Department, within 30 calendar days of an expense incurred, and accompanied by a business purpose for all expenditures and a receipt for each non- per diem item.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012, August 18, 2020

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 4

AUTOMOBILE ALLOWANCES AND
MILEAGE REIMBURSEMENTS

It is City of Cupertino policy that under this Compensation Program the City Manager shall be compensated fairly for the use of personal automotive vehicles on City business. In many instances the use of personal vehicles is a condition of employment due to the absence of sufficient City owned vehicles for general transportation purposes. It is not intended, however, that such a condition of employment should work an undue hardship. For this reason, the following policies shall apply for mileage reimbursements.

Those persons who occasionally are required to use their personal automobiles for City business shall be reimbursed for such use at an appropriate rate established by the City Council. Submission of reimbursement requests must be approved by the City Council.

The City Manager shall be paid a monthly automobile allowance of \$350.

The City Attorney shall be paid a monthly automobile allowance of \$350.

Employees receiving automobile allowance shall be eligible for reimbursement for travel that exceeds two hundred miles round trip.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012

Revised October 20, 2015

Revised November 6, 2017

Revised August, 18, 2020

Revised June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 5

ASSOCIATION MEMBERSHIPS AND
PROFESSIONAL PUBLICATIONS

It is City of Cupertino policy under this Compensation Program that the City Manager and City Attorney shall be entitled to City sponsored association memberships as well as receiving subscriptions to professional and technical publications. Such sponsorship, however, shall be conditioned upon the several factors as set forth below.

Each association for which membership is claimed must be directly related to the field of endeavor of the person to be benefited.

Subscriptions to or purchase of professional and technical publications may be provided at City expense providing the subject matter and material generally contained therein are related to municipal governmental operations.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, June 15,
2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 6

OVERTIME WORKED

Management employees are ineligible for overtime payments for time worked in excess of what otherwise would be considered as a normal work day or work week for other employees. However, no deduction from leave balances are made when such an employee is absent for less than a regular work day as long as the employee has his/her supervisor's approval. Nothing in this policy precludes the alternative work schedule, which may include an absence of a full eight hour day, when forty hours have been worked in the same seven day work period.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 7

HEALTH BENEFITS PLAN - EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide group hospital and medical insurance under which eligible persons under this Compensation Program and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees and their families through comprehensive health plans available only through employer sponsorship.

Although the premium cost for the insurance provided remains the ultimate responsibility of the employee in these positions, the City shall contribute the amounts listed below towards the premium or pay the full cost of the premium if less than the stated amounts. If the premium amounts for any employee covered by this policy are less than the amounts listed below per month, the difference between the premium amount and the stated amounts will be included in the employee's gross pay.

Effective January 1, 2020	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	848.87	126.78	975.65
Employee +1	1,443.09	126.78	1,569.87
Employee +2	1,876.01	126.78	2,002.79

January 1, 2021	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	891.32	126.78	1,018.10
Employee +1	1,515.24	126.78	1,642.02
Employee +2	1,969.81	126.78	2,096.59

January 1, 2022	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	935.88	126.78	1,062.66
Employee +1	1,591.01	126.78	1,717.79
Employee +2	2,068.31	126.78	2,195.09

Appointed employees in the City Manager and City Attorney positions will have immediate vesting of retiree medical benefits, subject to said employee retiring from City service and CalPERS.

City agrees to pay a monthly amount of three hundred seventy-five (\$375.00) per month to the employee who can demonstrate that they have equivalent health coverage through their spouse, parent, or other group coverage and who request this cash payment in lieu of health insurance coverage.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012, July 2013, October 2016, July 2019; December 2019, June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 8

FIXED HOLIDAYS

It is the policy of the City of Cupertino to recognize days of historical and national significance as holidays of the City without loss of pay or benefits. Recognizing the desirable times throughout the year, it is the policy of the City of Cupertino to provide days off in lieu of holidays for management and confidential employees at such times as are convenient for each employee and supervisor, when such policy is compatible with the workload and schedule of the City.

The City provides the following fixed paid holidays for eligible employees covered by this agreement:

1. New Year's Day
2. Martin Luther King Day
3. Presidents' Day
4. Memorial Day
5. Independence day
6. Labor Day
7. Veteran's Day
8. Thanksgiving Day
9. Day Following Thanksgiving
10. Christmas Eve
11. Christmas Day
12. New Year's Eve

When a holiday falls on a Sunday, the following Monday shall be observed as the non-work day. When a holiday falls on a Saturday, the previous Friday shall be observed as the non-work day.

FLOATING HOLIDAY

In addition to the paid holidays, employees occupying these positions shall be provided 20 floating hours per calendar year as non-work time with full pay and benefits. Employees may accumulate floating holiday hours up to two times their annual accrual.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, July 2013

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 9

LIFE, LONG TERM DISABILITY INSURANCE, AND SHORT TERM DISABILITY INSURANCE

It is the policy of the City of Cupertino to make available group insurance for eligible persons under this Compensation Program that will mitigate the personal and family financial hardships resulting from continuing disability that prevents an employee from performing gainfully in his or her occupation. It is further the policy of the City of Cupertino to provide life insurance benefits in an amount of two and one half times the employee's annual salary to a maximum of \$250,000.00

The City Manager and City Attorney will participate in California State Disability Insurance (SDI). SDI weekly benefits are determined by the State of California and information is available on the State of California Employment Development Department website. Employee may use leave banks to supplement lost salary during the ~~7-day~~ 7-day elimination period. City Manager and City Attorney shall pay the ~~1%~~ employee contribution rate of CA SDI, which will be deducted from their biweekly paychecks. ~~Until full enrollment in CA SDI becomes effective, City Manager will continue to be covered by the current Short Term Disability plan during the transition. Integration of SDI with the City's current Short Term Disability plan will be in accordance with SDI rules and regulations.~~

The City shall provide Long Term Disability (LTD) insurance for employees. LTD income protection coverage shall be up to \$7,000 of covered monthly salary. City Manager and City Attorney may use sick leave and/or vacation leave to supplement lost salary during the 90 day elimination period.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, October
2016, July 2019, August 18, 2020,
June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 10

DEFERRED COMPENSATION

It is the policy of the City of Cupertino to provide equitable current compensation and reasonable retirement security for eligible persons under this Compensation Program for services performed for the City. The City participates in the California Public Employees' Retirement System (PERS) and deferred compensation plans have been established. Both the employee and employer may make contributions from current earnings to these plans. The purpose of this policy is to promote means by which compensation may be provided in such manner and form to best meet the requirements of the City and the needs of individual employees, thereby increasing the ability, to attract and retain competent employees.

The City shall maintain and administer means by which employees in these positions may defer portions of their current earnings for future utilization. Usage of such plans shall be subject to such agreements, rules and procedures as are necessary to properly administer each plan. Employee contributions to such plans may be made in such amounts as felt proper and necessary to the employee. Employer contributions shall be as determined by the City Council.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 11

PUBLIC EMPLOYEES' RETIREMENT SYSTEM CONTRIBUTION

A. Employees hired on or before December 29, 2012 Only:

For employees hired on or before December 29, 2012, the City has contracted with CalPERS for a 2.7% @55 formula.

Effective in the first full pay period in July 2017, each employee shall pay the full 8.0% of applicable salary of the employee's contribution towards CalPERS.

B. For Employees hired by the City of Cupertino on December 30, 2012 or December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations Only:

For Employees hired by the City of Cupertino on December 30, 2012 or December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations only the City has contracted with CalPERS for a 2.0% @ 60 retirement formula, three year average compensation-

Effective October 1, 2016, the City shall not pay the employee's contribution rate to the California Public Employees Retirement System (CalPERS) and each employee shall pay the full 7% of applicable salary of the employee's contribution towards CalPERS.

C. For new employees hired by the City of Cupertino on or after January 1, 2013 and do not qualify as Classic members Only:

For new employees hired by the City of Cupertino on or after January 1, 2013 and do not qualify as classic members as defined by CalPERS, CalPERS has by statute implemented a 2% @ 62 formula, three year average and employees in this category shall pay 50% of the normal cost rate as determined by CalPERS.

Adopted by Action of the City Council
July 1, 2010

Revised October 2, 2012; December 18, 2012, July 2013, October 2016, July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 12

DENTAL INSURANCE - EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide dental insurance under which eligible persons under this Compensation Program and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees.

The premium cost for the insurance provided by the City shall not exceed \$126.78* per month per employee. Enrollment in the plan or plans made available pursuant to this policy shall be in accordance with Personnel Rules of the City and the provisions of the contract for such insurance between the City and carrier or carriers.*Dental Coverage: Effective the first month after Council adoption of agreement, dental coverage is capped at \$2,500.00 per dependent per annual plan year for the term of this contract.

Adopted by Action of City Council
July 1, 2010
Revised October 2, 2012; December 18, 2012,
October 2016, July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 13

ADMINISTRATIVE LEAVE

Eligible persons under this Compensation Program shall receive eighty (80) hours of administrative leave with pay per year.

Employees may accumulate administrative leave hours up to two times their annual accrual.

Employees shall be eligible to convert administrative leave hours to pay one time each calendar year.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, October
2016; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 14

EMPLOYEE ASSISTANCE PROGRAM

It is the policy of the City of Cupertino to provide an Employee Assistance Program for the benefit of eligible persons under this Compensation Program and their eligible dependents. The purpose of this program is to provide professional assistance and counseling concerning financial, legal, pre-retirement, and other matters of a personal nature.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012; July 201

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 15

HOUSING ASSISTANCE PROGRAM

Housing assistance may be offered to eligible persons under this Compensation Program pursuant to Resolution No. 15-092 as amended.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012
Revised October 20, 2015; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 16

VISION INSURANCE — EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide vision insurance under which employees and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees.

The premium cost for the insurance provided by the City shall not exceed \$14.94 per month per employee. Enrollment in the plan or plans made available pursuant to this policy shall be in accordance with the provisions of the contract between the City and carrier or carriers providing vision insurance coverage,

Adopted by Action of the City Council July 1, 2010
Revised October 2, 2012; December 18, 2012

City of Cupertino

APPOINTED EMPLOYEES' COMPENSATION PROGRAM

Policy No. 17

EDUCATION REIMBURSEMENT PROGRAM

It is the intent of the City to recognize the value of continuing education and professional development of its employees; and to adopt an Education Reimbursement Program which will encourage employees to avail themselves of City job related educational opportunities that will advance their knowledge and interests in the direction of their career path. Courses should either: a) maintain or improve job skills in the employee's current position; b) be expressly required by the City or by law; or c) prepare the employee to become a competitive applicant for a different position with the City.

The Education Reimbursement Program is a benefit to all eligible, full time benefited employees ~~who have completed the required probationary period~~ and provides education reimbursement of up to two thousand dollars (\$2,000) per calendar year for the cost of registration, required textbooks and/or materials and parking. Employees who wish to seek reimbursement from the City for educational program costs shall provide a written request for reimbursement in advance of enrollment to the Human Resources Division. The form provided shall include the type of training, sponsoring organization or institution, meeting times and costs. Human Resources and the employee's department head will make the determination if the chosen education program is eligible for reimbursement.

No employee shall receive any reimbursement until they have provided satisfactory proof of successful completion of the coursework with a grade of "C" or above, or "Pass" in the case of a Pass/Fail course. Such proof of completion shall be provided within 30 days of the conclusion of the course.

Education reimbursement is a taxable benefit under IRS Code. Education reimbursement will be applied to the calendar year in which the course is passed and satisfactory proof of completion is submitted.

Mandatory or annual coursework, attendance at conferences and training required to maintain job specific certifications or proficiencies are not included in the Education Reimbursement Program.

Adopted by Action of the City Council July 16, 2019

City of Cupertino

APPOINTED EMPLOYEES' COMPENSATION PROGRAM

Policy No. 18

CITY SPONSORED RECREATION AND WELLNESS PROGRAMS

~~Appointed-Eligible~~ appointed employees shall have the privilege of enrollment in City sponsored recreation programs at the City residents' fee structure and in preference to non-residents wishing to enroll. Each calendar year, employees and family members on the employee's dental plan are eligible to be reimbursed up to \$500 per employee in Rec Bucks. Employees shall be reimbursed for approved recreation services in accordance with the City's Recreation Buck Policies. Programs allowing for preregistration will be reimbursed after completion of the program, including those allowing for or requiring preregistration in the calendar year prior to reimbursement. Reimbursements shall be applied to the year in which they are received. Benefited employees will also receive a free employee-only annual Cupertino Sports Center membership. Part-time benefited employees will have the annual amount of Recreation Bucks prorated based on number of hours worked. Recreation Bucks are a taxable benefit under IRS Code, and must be used by the employee within the calendar year and are non-transferrable.

City employees are eligible to participate in the City's wellness program as provided for in the City's Administrative Rules and Regulations.

Adopted by Action of the City Council July 16, 2019

City of Cupertino

APPOINTED EMPLOYEES' COMPENSATION PROGRAM

EXEMPT POSITIONS

The salaries, wages, or rates of pay for City Attorney and City Manager employees whose positions are exempt under the provisions of the Cupertino Municipal Code, are set forth below. Only the City Council can modify these rates.

Monthly Salary Effective June 3, 2019

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	\$0	\$0	\$0	\$0	\$19,916.67

Monthly Salary Effective June 3, 2020

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	\$0	\$0	\$0	\$0	\$22,916.66

Monthly Salary Effective June 15, 2021

<u>Classification</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>City Manager</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$22,916.66</u>
<u>City Attorney</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$21,250.00</u>

RESOLUTION NO. 21-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE APPOINTED EMPLOYEES' COMPENSATION PROGRAM**

WHEREAS, the City Council desires to amend the Appointed Employees' Compensation Program.

NOW, THEREFORE, BE IT RESOLVED that the Appointed Compensation Program be amended which is incorporated in this resolution by this reference and attached as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of June 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Kirsten Squarcia, City Clerk

Darcy Paul, Mayor,
City of Cupertino

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 1

PROGRAM PURPOSE AND DEFINITIONS FOR ELIGIBILITY

It is City of Cupertino policy that those certain persons holding positions hereinafter defined and designated as appointed management employees by the City Council in the City Manager's Office and the City Attorney's Office shall be eligible for participation in the Appointed Employees' Compensation Program as hereby adopted by action of the City Council and as same may be amended or as otherwise modified from time to time.

Eligibility for inclusion in this Compensation program is limited to persons appointed by the City Council and holding positions as management employees in the City Manager's Office and the City Attorney's Office, as defined under section 2.52.290 of the Cupertino Municipal Code. Eligible persons are designated by the Appointing Authority and may be modified as circumstances warrant.

Although subject to change in accordance with the Personnel Code, the position in the following classification has been designated as an appointed employee.

MANAGEMENT CLASSIFICATIONS:

Classification Title

City Manager

City Attorney

In the event of any inconsistency between the Compensation Program and any Employment Contracts, the provisions of the Employment Contract and any amendments thereto control.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012; July 2019, August 18, 2020, June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 2

SALARY SCHEDULE
AND OTHER SALARY RATES

It is City of Cupertino policy that eligible persons under this Compensation Program shall be compensated for services rendered to and on behalf of the City on the basis of equitable pay for duties and responsibilities assigned, meritorious service and comparability with similar work in other public and private employment in the same labor market; all of which is contingent upon the City's ability to pay consistent with its fiscal policies.

Effective June 3, 2019, a salary decrease of 9.811% or \$19,916.66 base pay will be reflected in the City Manager classification. Effective June 3, 2020, a salary increase of 15.06% or \$22,916.66 base pay will be reflected in the City Manager classification.

Adopted by Action of the City Council July 1, 2010

Revised October 2, 2012

Revised December 18, 2012, October 2016, September 6, 2017, November 6, 2017, January 7, 2019, July 16, 2019, August 18, 2020

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 3

TRAINING AND CONFERENCES

I. POLICY

It is City of Cupertino policy that eligible persons under this Compensation Program shall be reimbursed or receive advances in accordance with the schedules, terms and conditions as set forth herein for attendance at conferences, meetings and training sessions as defined below for each. It is the intent of this policy to encourage the continuing education and awareness of said persons in the technical improvements and innovations in their fields of endeavor as they apply to the City or to implement a City approved strategy for attracting and retaining businesses in the City. One means of implementing this encouragement is through a formal reimbursement and advance schedule for authorized attendance at such conferences, meetings and training sessions.

II DEFINITIONS

A. Conferences

A conference is an annual meeting of a work related organization the membership of which may be held in the name of the City or the individual.

B. Local Area

The local area is defined to be within Santa Clara and San Mateo Counties and within a 40-mile distance from Cupertino when traveling to Alameda County.

C. Meetings

A "meeting" shall mean a convention, conference, seminar, workshop, meal, or like assembly having to do with municipal government operations. An employee serving on a panel for interviews of job applicants shall not come under this definition.

D. Training Session

A training session is any type of seminar or workshop the attendance at which is for the purpose of obtaining information of a work related nature to benefit the City's operations or to enhance the attendee's capabilities in the discharge of assigned duties and responsibilities.

III REIMBURSEMENT AND ADVANCE PAYMENT SCHEDULE

A. Intent

This schedule is written with the intent that the employee will make every effort to find the lowest possible cost to the City for traveling on City business. For example, if paying for parking at the airport is less expensive than paying for a taxi or airport shuttle, then the employee should drive their car and park at the airport; or if renting a car is lower than taking taxis at the out-of-town location, then a car should be rented; or air reservations should be booked in advance to obtain discounted fares. The following procedures apply whether the expense is being paid through a reimbursement or a direct advance.

B. Registration

Registration fees for authorized attendance at a meeting or training session will be paid by the City.

C. Transportation

The City will pay transportation costs on the basis of the lowest cost intent stated in paragraph A. Eligible transportation costs include airfare (with coach fare being the maximum), van or taxi service to and from the attendee's home and airport, destination or airport parking charges, taxi and shuttle services at the out-of-town location, trains, tolls, or rental cars. Use of a personal automobile for City business shall be reimbursed or advanced at the rate per mile in effect for such use, except in no case shall it exceed air coach fare if the vehicle is being used for getting to the destination. Government or group rates offered by a provider of transportation must be used when available.

Reimbursement or advances for use of a personal automobile on City business within a local area will not be made so as to supplement that already being paid to those persons receiving a monthly mileage allowance.

D. Lodging

Hotel or lodging expenses of the employee resulting from the authorized event or activity defined in this policy will be reimbursed or advanced if the lodging and event occurs outside of the local area. Not covered will be lodging expenses related to person(s) who are accompanying the City member, but who themselves are not on City business. In this instance, for example, the difference between single and multiple occupancy rates for a room will not be reimbursed.

Where the lodging is in connection with a conference or other organized educational activity, City-paid lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, providing that lodging at the group rate is available at the time of booking. If the group rate at the conference hotel is not available, then the non-conference lodging policy described in the next paragraph should be followed to find another comparable hotel.

Where lodging is necessary for an activity that is not related to a conference or other organized educational activity, reimbursement or advances shall be limited to the actual cost of the room at a group or government rate. In the event that a group or government rate is not available, lodging rates that do not exceed the median price for lodging for that area and time period listed on travel websites like www.hotels.com, www.expedia.com or an equivalent service shall be eligible for reimbursement or advancement.

E. Meals

1. With No Conference

Payments toward or reimbursement of meals related to authorized activities or events shall be at the Internal Revenue Service per diem rate for meals and incidental expenses for a given location, as stated by IRS publications 463 and 1542 and by the U.S. General Services Administration. The per diem shall be split among meals as reasonably desired and reduced accordingly for less than full travel days. If per diem is claimed, no receipts are necessary. Alternatively, the actual cost of a meal can be claimed, within a standard of reasonableness, but receipts must be kept and submitted for the expense incurred.

2. As Part of a Conference

When City personnel are attending a conference or other organized educational activity, they shall be reimbursed or advanced for meals not provided by the activity, on a per diem or actual cost basis. The per diem and actual cost rate shall follow the rules described in the meals with no conference paragraph.

F. Other Expenses

Payments toward or reimbursement of expenses at such functions shall be limited to the actual costs consistent with the application of reasonable standards.

Other reasonable expenses related to business purposes shall be paid consistent with this policy.

No payments shall be made unless, where available, receipts are kept and submitted for all expenses incurred. When receipts are not available, qualifying expenditures shall be reimbursed upon signing of an affidavit of expenditure.

No payment shall be made for any expenses incurred which are of a personal nature or not within a standard of reasonableness for the situation as may be defined by the Finance Department.

G. Non-Reimbursable Expenses

The City will **not** reimburse or advance payment toward expenses including, but not limited to:

1. The personal portion of any trip;

2. Political or charitable contributions or events;
3. Family expenses, including those of a partner when accompanying the employee on City-related business, as well as child or pet-related expenses;
4. Entertainment expenses, including theatre, shows, movies, sporting events, golf, spa treatments, etc.
5. Gifts of any kind for any purpose;
6. Service club meals;
7. Alcoholic beverages;
8. Non-mileage personal automobile expenses including repairs, insurance, gasoline, traffic citations; and
9. Personal losses incurred while on City business.

IV ATTENDANCE

A. Budgetary Limitations

Reimbursement or advances for expenses relative to conferences, meeting or training sessions shall not exceed the budgetary limitations.

V. FUNDING

A. Appropriation Policy

It shall be the policy of the City to appropriate funds subject to availability of resources.

B. Training Sessions

Payments toward or reimbursement of expenses incurred in attendance at training sessions, will be appropriated annually through the budget process.

VI. DIRECT CASH ADVANCE POLICY

From time to time, it may be necessary for a City employee to request a direct cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to their supervisor no less than seven days prior to the need for the advance with the following information: 1) Purpose of the expenditure; 2) The anticipated amount of the expenditure (for example, hotel rates, meal costs, and transportation expenses); and 3) The dates of the expenditure. An accounting of expenses and return of any unused advance must be reported to the City within 30 calendar days of the employee's return on the expense report described in Section VII.

VII. EXPENSE REPORT REQUIREMENTS

All expense reimbursement requests or final accounting of advances received must be approved by the Mayor or their designee, on forms determined by the Administrative Services Department, within 30 calendar days of an expense incurred, and accompanied by a business purpose for all expenditures and a receipt for each non- per diem item.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012, August 18, 2020

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 4

AUTOMOBILE ALLOWANCES AND
MILEAGE REIMBURSEMENTS

It is City of Cupertino policy that under this Compensation Program the City Manager shall be compensated fairly for the use of personal automotive vehicles on City business. In many instances the use of personal vehicles is a condition of employment due to the absence of sufficient City owned vehicles for general transportation purposes. It is not intended, however, that such a condition of employment should work an undue hardship. For this reason, the following policies shall apply for mileage reimbursements.

Those persons who occasionally are required to use their personal automobiles for City business shall be reimbursed for such use at an appropriate rate established by the City Council. Submission of reimbursement requests must be approved by the City Council.

The City Manager shall be paid a monthly automobile allowance of \$350.
The City Attorney shall be paid a monthly automobile allowance of \$350.

Employees receiving automobile allowance shall be eligible for reimbursement for travel that exceeds two hundred miles round trip.

Adopted by Action of the City Council
July 1, 2010

Revised December 18, 2012

Revised October 20, 2015

Revised November 6, 2017

Revised August, 18, 2020

Revised June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 5

ASSOCIATION MEMBERSHIPS AND
PROFESSIONAL PUBLICATIONS

It is City of Cupertino policy under this Compensation Program that the City Manager and City Attorney shall be entitled to City sponsored association memberships as well as receiving subscriptions to professional and technical publications. Such sponsorship, however, shall be conditioned upon the several factors as set forth below.

Each association for which membership is claimed must be directly related to the field of endeavor of the person to be benefited.

Subscriptions to or purchase of professional and technical publications may be provided at City expense providing the subject matter and material generally contained therein are related to municipal governmental operations.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, June 15,
2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 6

OVERTIME WORKED

Management employees are ineligible for overtime payments for time worked in excess of what otherwise would be considered as a normal work day or work week for other employees. However, no deduction from leave balances are made when such an employee is absent for less than a regular work day as long as the employee has his/her supervisor's approval. Nothing in this policy precludes the alternative work schedule, which may include an absence of a full eight hour day, when forty hours have been worked in the same seven day work period.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 7

HEALTH BENEFITS PLAN - EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide group hospital and medical insurance under which eligible persons under this Compensation Program and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees and their families through comprehensive health plans available only through employer sponsorship.

Although the premium cost for the insurance provided remains the ultimate responsibility of the employee in these positions, the City shall contribute the amounts listed below towards the premium or pay the full cost of the premium if less than the stated amounts. If the premium amounts for any employee covered by this policy are less than the amounts listed below per month, the difference between the premium amount and the stated amounts will be included in the employee's gross pay.

Effective January 1, 2020	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	848.87	126.78	975.65
Employee +1	1,443.09	126.78	1,569.87
Employee +2	1,876.01	126.78	2,002.79

January 1, 2021	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	891.32	126.78	1,018.10
Employee +1	1,515.24	126.78	1,642.02
Employee +2	1,969.81	126.78	2,096.59

January 1, 2022	City Max Health Contribution	City Max *Dental Contribution	City Total Max Contribution
Employee	935.88	126.78	1,062.66
Employee +1	1,591.01	126.78	1,717.79
Employee +2	2,068.31	126.78	2,195.09

Appointed employees in the City Manager and City Attorney positions will have immediate vesting of retiree medical benefits, subject to said employee retiring from City service and CalPERS.

City agrees to pay a monthly amount of three hundred seventy-five (\$375.00) per month to the employee who can demonstrate that they have equivalent health coverage through their spouse, parent, or other group coverage and who request this cash payment in lieu of health insurance coverage.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012, July 2013, October 2016, July 2019; December 2019, June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 8

FIXED HOLIDAYS

It is the policy of the City of Cupertino to recognize days of historical and national significance as holidays of the City without loss of pay or benefits. Recognizing the desirable times throughout the year, it is the policy of the City of Cupertino to provide days off in lieu of holidays for management and confidential employees at such times as are convenient for each employee and supervisor, when such policy is compatible with the workload and schedule of the City.

The City provides the following fixed paid holidays for eligible employees covered by this agreement:

1. New Year's Day
2. Martin Luther King Day
3. Presidents' Day
4. Memorial Day
5. Independence day
6. Labor Day
7. Veteran's Day
8. Thanksgiving Day
9. Day Following Thanksgiving
10. Christmas Eve
11. Christmas Day
12. New Year's Eve

When a holiday falls on a Sunday, the following Monday shall be observed as the non-work day. When a holiday falls on a Saturday, the previous Friday shall be observed as the non-work day.

FLOATING HOLIDAY

In addition to the paid holidays, employees occupying these positions shall be provided 20 floating hours per calendar year as non-work time with full pay and benefits. Employees may accumulate floating holiday hours up to two times their annual accrual.

Adopted by Action of the City Council

July 1, 2010

Revised December 18, 2012, July 2013

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 9

LIFE, LONG TERM DISABILITY INSURANCE, AND SHORT TERM DISABILITY INSURANCE

It is the policy of the City of Cupertino to make available group insurance for eligible persons under this Compensation Program that will mitigate the personal and family financial hardships resulting from continuing disability that prevents an employee from performing gainfully in his or her occupation. It is further the policy of the City of Cupertino to provide life insurance benefits in an amount of two and one half times the employee's annual salary to a maximum of \$250,000.00

The City Manager and City Attorney will participate in California State Disability Insurance (SDI). SDI weekly benefits are determined by the State of California and information is available on the State of California Employment Development Department website. Employee may use leave banks to supplement lost salary during the 7-day elimination period. City Manager and City Attorney shall pay the employee contribution rate of CA SDI, which will be deducted from their biweekly paychecks.

The City shall provide Long Term Disability (LTD) insurance for employees. LTD income protection coverage shall be up to \$7,000 of covered monthly salary. City Manager and City Attorney may use sick leave and/or vacation leave to supplement lost salary during the 90 day elimination period.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, October
2016, July 2019, August 18, 2020,
June 15, 2021

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 10

DEFERRED COMPENSATION

It is the policy of the City of Cupertino to provide equitable current compensation and reasonable retirement security for eligible persons under this Compensation Program for services performed for the City. The City participates in the California Public Employees' Retirement System (PERS) and deferred compensation plans have been established. Both the employee and employer may make contributions from current earnings to these plans. The purpose of this policy is to promote means by which compensation may be provided in such manner and form to best meet the requirements of the City and the needs of individual employees, thereby increasing the ability, to attract and retain competent employees.

The City shall maintain and administer means by which employees in these positions may defer portions of their current earnings for future utilization. Usage of such plans shall be subject to such agreements, rules and procedures as are necessary to properly administer each plan. Employee contributions to such plans may be made in such amounts as felt proper and necessary to the employee. Employer contributions shall be as determined by the City Council.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 11

PUBLIC EMPLOYEES' RETIREMENT SYSTEM CONTRIBUTION

A. Employees hired on or before December 29, 2012 Only:

For employees hired on or before December 29, 2012, the City has contracted with CalPERS for a 2.7% @55 formula.

Effective in the first full pay period in July 2017, each employee shall pay the full 8.0% of applicable salary of the employee's contribution towards CalPERS.

B. For Employees hired by the City of Cupertino on December 30, 2012 or December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations Only:

For Employees hired by the City of Cupertino on December 30, 2012 or December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations only the City has contracted with CalPERS for a 2.0% @ 60 retirement formula, three year average compensation-

Effective October 1, 2016, the City shall not pay the employee's contribution rate to the California Public Employees Retirement System (CalPERS) and each employee shall pay the full 7% of applicable salary of the employee's contribution towards CalPERS.

C. For new employees hired by the City of Cupertino on or after January 1, 2013 and do not qualify as Classic members Only:

For new employees hired by the City of Cupertino on or after January 1, 2013 and do not qualify as classic members as defined by CalPERS, CalPERS has by statute implemented a 2% @ 62 formula, three year average and employees in this category shall pay 50% of the normal cost rate as determined by CalPERS.

Adopted by Action of the City Council
July 1, 2010

Revised October 2, 2012; December 18, 2012, July 2013, October 2016, July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 12

DENTAL INSURANCE - EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide dental insurance under which eligible persons under this Compensation Program and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees.

The premium cost for the insurance provided by the City shall not exceed \$126.78* per month per employee. Enrollment in the plan or plans made available pursuant to this policy shall be in accordance with Personnel Rules of the City and the provisions of the contract for such insurance between the City and carrier or carriers.*Dental Coverage: Effective the first month after Council adoption of agreement, dental coverage is capped at \$2,500.00 per dependent per annual plan year for the term of this contract.

Adopted by Action of City Council
July 1, 2010
Revised October 2, 2012; December 18, 2012,
October 2016, July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 13

ADMINISTRATIVE LEAVE

Eligible persons under this Compensation Program shall receive eighty (80) hours of administrative leave with pay per year.

Employees may accumulate administrative leave hours up to two times their annual accrual.

Employees shall be eligible to convert administrative leave hours to pay one time each calendar year.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012, October
2016; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 14

EMPLOYEE ASSISTANCE PROGRAM

It is the policy of the City of Cupertino to provide an Employee Assistance Program for the benefit of eligible persons under this Compensation Program and their eligible dependents. The purpose of this program is to provide professional assistance and counseling concerning financial, legal, pre-retirement, and other matters of a personal nature.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012; July 201

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 15

HOUSING ASSISTANCE PROGRAM

Housing assistance may be offered to eligible persons under this Compensation Program pursuant to Resolution No. 15-092 as amended.

Adopted by Action of the City Council
July 1, 2010
Revised December 18, 2012
Revised October 20, 2015; July 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
Policy No. 16

VISION INSURANCE — EMPLOYER CONTRIBUTION

It is the policy of the City of Cupertino to provide vision insurance under which employees and their dependents may be covered. The purpose of this program is to promote and preserve the health of employees.

The premium cost for the insurance provided by the City shall not exceed \$14.94 per month per employee. Enrollment in the plan or plans made available pursuant to this policy shall be in accordance with the provisions of the contract between the City and carrier or carriers providing vision insurance coverage,

Adopted by Action of the City Council July 1, 2010
Revised October 2, 2012; December 18, 2012

City of Cupertino

APPOINTED EMPLOYEES' COMPENSATION PROGRAM

Policy No. 17

EDUCATION REIMBURSEMENT PROGRAM

It is the intent of the City to recognize the value of continuing education and professional development of its employees; and to adopt an Education Reimbursement Program which will encourage employees to avail themselves of City job related educational opportunities that will advance their knowledge and interests in the direction of their career path. Courses should either: a) maintain or improve job skills in the employee's current position; b) be expressly required by the City or by law; or c) prepare the employee to become a competitive applicant for a different position with the City.

The Education Reimbursement Program is a benefit to all eligible, full time benefited employees and provides education reimbursement of up to two thousand dollars (\$2,000) per calendar year for the cost of registration, required textbooks and/or materials and parking. Employees who wish to seek reimbursement from the City for educational program costs shall provide a written request for reimbursement in advance of enrollment to the Human Resources Division. The form provided shall include the type of training, sponsoring organization or institution, meeting times and costs. Human Resources and the employee's department head will make the determination if the chosen education program is eligible for reimbursement.

No employee shall receive any reimbursement until they have provided satisfactory proof of successful completion of the coursework with a grade of "C" or above, or "Pass" in the case of a Pass/Fail course. Such proof of completion shall be provided within 30 days of the conclusion of the course.

Education reimbursement is a taxable benefit under IRS Code. Education reimbursement will be applied to the calendar year in which the course is passed and satisfactory proof of completion is submitted.

Mandatory or annual coursework, attendance at conferences and training required to maintain job specific certifications or proficiencies are not included in the Education Reimbursement Program.

Adopted by Action of the City Council July 16, 2019

City of Cupertino

APPOINTED EMPLOYEES' COMPENSATION PROGRAM

Policy No. 18

CITY SPONSORED RECREATION AND WELLNESS PROGRAMS

Eligible appointed employees shall have the privilege of enrollment in City sponsored recreation programs at the City residents' fee structure and in preference to non-residents wishing to enroll. Each calendar year, employees and family members on the employee's dental plan are eligible to be reimbursed up to \$500 per employee in Rec Bucks. Employees shall be reimbursed for approved recreation services in accordance with the City's Recreation Buck Policies. Programs allowing for preregistration will be reimbursed after completion of the program, including those allowing for or requiring preregistration in the calendar year prior to reimbursement. Reimbursements shall be applied to the year in which they are received. Benefited employees will also receive a free employee-only annual Cupertino Sports Center membership. Part-time benefited employees will have the annual amount of Recreation Bucks prorated based on number of hours worked. Recreation Bucks are a taxable benefit under IRS Code, and must be used by the employee within the calendar year and are non-transferrable.

City employees are eligible to participate in the City's wellness program as provided for in the City's Administrative Rules and Regulations.

Adopted by Action of the City Council July 16, 2019

City of Cupertino
APPOINTED EMPLOYEES' COMPENSATION PROGRAM
EXEMPT POSITIONS

The salaries, wages, or rates of pay for City Attorney and City Manager employees whose positions are exempt under the provisions of the Cupertino Municipal Code, are set forth below. Only the City Council can modify these rates.

Monthly Salary Effective June 3, 2019

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	\$0	\$0	\$0	\$0	\$19,916.67

Monthly Salary Effective June 3, 2020

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	\$0	\$0	\$0	\$0	\$22,916.66

Monthly Salary Effective June 15, 2021

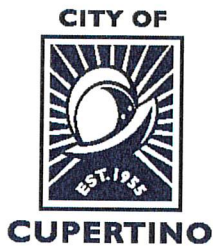
Classification	Step 1	Step 2	Step 3	Step 4	Step 5
City Manager	\$0	\$0	\$0	\$0	\$22,916.66
City Attorney	\$0	\$0	\$0	\$0	\$21,250.00

CC 06-01-21

#25

Recruiting Firm
Agreement for
Permanent City
Manager

Draft Agreement



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: JUNE 15, 2021

Subject

Consideration of approval of the recruitment services contract with Avery and Associates for the City Manager recruitment.

Recommended Action

Authorize the Mayor to execute the recruitment services contract with Avery and Associates in the amount not to exceed \$25,000.

Discussion

The current City Manager announced her resignation on May 26, 2021. The City Manager's last day with the City is June 25, 2021. The City Council on a separate item this evening will vote on an employment contract with an Interim City Manager. City Council will need to begin a recruitment process to fill the permanent position. After the consideration of other firms, the City Council has decided to award the contract to Avery and Associates.

The firm has over 25 years completing executive recruitments for public and non-profit agencies, their recruitment services include:

- I. Position Profile and Organizational Assessment
- II. Development of the Search Strategy
- III. Candidate Assessment
- IV. Candidate Presentation
- V. Selection Process
- VI. Position Closure and Follow-Up

Sustainability Impact

There is no sustainability impact.

Fiscal Impact

There is no fiscal impact. The City's Human Resource budget includes the cost of two executive recruitments annually.

Prepared by: Vanessa Guerra, Human Resources Manager

Reviewed by: Kristina Alfaro, Director of Administrative Services

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Agreement



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and William Avery & Associates, Inc. ("Contractor") for services related to recruiting and hiring a City Manager, and is effective on the last date signed below ("Effective Date").

2. SERVICES

Contractor agrees to provide the services and perform the tasks ("Services") set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with the City's Shelter In Place and Social Distancing Requirements, attached here and incorporated as **Exhibit A-A**.

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on December 31, 2021 ("Contract Time"), unless terminated earlier as provided herein. Contractor's Services shall begin on the effective date and shall be completed by December 31, 2021. The City's appropriate department head or the City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City's purchasing policy.

3.2 Schedule of Performance. Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$25,000 ("Contract Price"), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.

4.2 Invoices and Payments. Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending

claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

51 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

52 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

53 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

54 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

55 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

56 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement.

Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

7.3 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

7.4 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest

therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

11.3 Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnatee.

11.4. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.

11.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

11.6. This Section 11 shall survive termination of the Agreement.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

13.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of

Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns Mayor Darcy Paul as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns William Avery as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal, or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<p>To City of Cupertino 10300 Torre Ave. Cupertino, CA 95014</p> <p>Attention: Mayor Darcy Paul Email: DPaul@cupertino.org</p>	<p>To Contractor: William Avery & Associates, Inc. 3-1/2 N. Santa Cruz Ave, Ste A Los Gatos, CA 95030</p> <p>Attention: William Avery, President Email: bill@averyassoc.net</p>
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27. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO

A Municipal Corporation

By _____

Name _____

Title _____

Date _____

CONTRACTOR

By Bill Avery

Name Bill Avery

Title President

Date Jun 15, 2021

APPROVED AS TO FORM:

Heather M. Minner

HEATHER M. MINNER
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date _____

1383553.1

EXHIBIT "A"

SCOPE OF SERVICES

Recruitment Team for the City of Cupertino

Bill Avery will serve as the Project Lead for this assignment and will be assisted by Bill Lopez and Sam Avery. Mr. Avery will be personally involved in the initial client meetings, development of the ideal candidate profile and search strategy, interviewing and assessment of candidates, the presentation of candidates, attendance at final interviews and will be available throughout the search process to provide other related consulting services.

Recruitment Plan

I. Position Profile and Organizational Assessment

The initial assessment phase is a critical component of the search process. Mr. Avery will individually meet with members of the City Council and as appropriate, members of the City's leadership team to discuss the organizational needs and position requirements and to formalize the job description.

Our goal for this aspect of the recruitment process is to:

- Understand the City priorities for this position.
- Develop a clear understanding and consensus on the expertise, experience, education, performance attributes and operational style of the ideal candidate.
- Discuss the goals, objectives, deliverables, and challenges related to this position.
- Gain insight of the various organizational dynamics and departmental issues that exist within the organization.
- Identify the compelling aspects to this opportunity.

The formal position description and a subsequent ideal candidate profile would be developed from the above discussions and incorporated into the formal position announcement. The candidate profile is also utilized in various other means as a marketing tool, for advertising copy, postings, and for other announcements.

II. Development of the Search Strategy

Our search strategy will be developed in conjunction with the organizational assessment. The final approach is based on your input and considerations during the assessment activity. We would incorporate the following elements into this search:

- Original research, which consists of identification and contact of current incumbents or other candidates who meet the profile, but are not actively seeking other employment.
- Development of a targeted candidate list based on our extensive database of key executive contacts, referrals and recommendations from key sources, and other current and former City Management personnel who have extensive contacts and networks in this area.
- Public information sources that include various membership listings such as the League of California Cities, ICMA and the various municipal organizations within the U.S.
- An extensive mailing campaign to current city managers and select assistant managers throughout the U.S.
- Print advertising in ICMA Newsletter, Jobs Available and any other print publications deemed appropriate by the City.
- Internet job postings on national public-sector employment bulletin boards, City Management and Municipal association-based web sites, and our company website.

III. Candidate Assessment

Our assessment process involves several “tiers” of evaluation. All candidates responding to this position will initially be evaluated based on their resume and if appropriate, an extensive phone “screening” by a member of the project team. Candidates who pass the initial “qualifying” criteria are then scheduled for a formal interview with Mr. Avery. These extended personal interviews typically take one hour and a thorough discussion of their experience, accomplishments, management philosophy and interpersonal style takes place.

In interviewing candidates, we utilize a methodology based on “behavioral” interview techniques. Fundamentally, this approach explores a candidate’s past accomplishments and experiences that relate to the position being considered. The philosophy here is that the best indicator of future performance is to evaluate past behavior. This methodology allows the firm to “project” how a candidate would approach and address the key challenges in the new position.

Those individuals who best fit the position requirements will have a Candidate Assessment Report developed by the Principal who conducted the interview. Additionally, two initial reference interviews are performed on these candidates. The reference interviews provide our clients with additional insights on the candidate's "behavior" and style.

IV. Candidate Presentation

Upon completion of formal interviews, a selection of candidates for presentation is made. We feel our extensive qualification, interview, and reference interviewing process and the knowledge gained during our initial assessment period; enable our client to proceed with fewer rather than more finalists. However, we will not restrict or limit the number of candidates recommended as this decision is related to the overall strength and depth of the candidate pool.

The final candidates are presented in our extensive candidate presentation "book". Each finalist will have a file consisting of a candidate summary sheet, the submitted cover letter and resume, the Candidate Assessment Report (based on the "behavioral" interview), and two candidate reference interviews. This extensive profile on each recommended candidate continually generates positive feedback from our clients as it provides extensive detail beyond just a resume.

The Candidate book also identifies other candidates who were given secondary consideration, which provides the client insight on others who were interviewed. Candidate summary sheets are created for everyone who submitted a resume would also be included. This provides the client an insight to the level and nature of response for their position.

V. Selection Process

Once the final candidate interview group is identified, we will assist in the structuring of the interview process and coordinate the interview scheduling activity. Our firm will also provide candidates with guidance related to travel planning, hotel accommodations, as well as other interview planning issues. Our firm will also develop potential interview questions and be in attendance during final interviews to help facilitate the process and to lead an end of day debrief and evaluation process.

VI. Position Closure and Follow-Up

Based on the firm's experience in human resource management and executive search, we are able to assist our clients in formulating appropriate compensation and other employment arrangements. We will be available throughout our retention to assist in this process.

As a matter of policy, Avery Associates monitors the transition and progress of any executive we place with a client. Within the first three to six months following the hired individual joining the City, we will speak with that individual to ensure the transition has

effectively occurred. During the same period we will also review the individual's status with your office.

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Contractor shall provide services throughout the term of this agreement.

Timeline

The key activities and timeframes are as follows:

Initial client meeting to identify and develop specifications	week 1
Develop job announcement & secure related materials from client	week 3
Advertising developed and website postings	week 4
Print and distribute job announcement	week 5
Outreach period	week 4-8
Assessment/evaluation/referencing of candidates	week 7-10
Candidates presented and discussed with clients	week 10
Final interviews	week 13
Offer extended	week >14

EXHIBIT "C"

COMPENSATION

The budget for the scope of work set forth above is not to exceed amount of \$25,000 unless the contractor receives advance written authorization from Mayor Darcy Paul.

Exhibit A-A – SHELTER IN PLACE AND SOCIAL DISTANCING REQUIREMENTS

A. Health Laws Acknowledged. It is acknowledged that Consultant's/Contractor's ("Contractor") duty to comply with Laws, as defined in Section 13 of the Contract/Agreement ("Contract"), includes immediate compliance by Contractor and its subcontractors with the restrictions on travel and the Social Distancing Requirements set forth in the most recent health order issued by the County of Santa Clara Health Department in response to the COVID-19 pandemic, and any subsequent amendments or superseding orders thereto (the "Health Order"), and any other local, state, or federal laws that have been or may be enacted in response to the COVID-19 pandemic (collectively, "Health Laws").

B. Health Order Compliance. Contractor shall comply with any restrictions on travel and social distancing requirements in the Health Order when performing work under this Contract. If a scope of work item, notice to proceed, or work order under this Contract specifies work that cannot be performed in compliance with the Health Order or other Health Laws, Contractor shall refrain from conducting the work and immediately inform the City.

C. Individuals at High Risk of Severe Illness. Nothing in this Contract shall be interpreted to require any person at high risk of severe illness from COVID-19 to leave their residence to perform work under the Contract. Contractor will inform the City if other arrangements for the work must be made, and City will do so, with no penalty to Contractor, although Contractor will not be compensated for work performed by the City or third parties. Information from the Center for Disease Control ("CDC") on "high risk" categories is available at the CDC's website at: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>.

D. Health Order Requirements and Best Practices. Contractor will immediately undertake all appropriate measures to ensure compliance with the Social Distancing Requirements in the Health Order by all individuals performing work under this Contract, including Contractor's or any subcontractor's workers, employees, representatives, vendors, or suppliers (collectively, "workers"), and shall maintain these measures for as long as required by the Health Order or other Health Laws. As long as required by the operative Health Order or other Health Laws, these measures shall include, but are not limited to, the following:

1. Meetings/Site Access. Use electronic alternatives to in person meetings, e.g., conference calls, video-conferencing, etc., to the greatest extent possible. Limit access to any project site or any work area to workers who are necessary to perform in-person work. Require non-essential personnel to work from home to the extent possible. Avoid all non-essential travel.

2. Distancing. Where workers perform in-person work at a project site or a work area, prohibit workers from being less than six feet apart, unless and only to the extent that would compromise worker safety or violate safety Laws for specific operations. Prohibit handshaking or any physical contact among workers, with the sole and limited exception

of any physical contact required for worker safety or to comply with safety Laws.
Prohibit workers from sharing a vehicle.

E. Changed Requirements. It is understood and acknowledged that circumstances pertaining to the COVID-19 pandemic are evolving rapidly and that new local, state, or federal requirements may modify the requirements under this Exhibit. Contractor agrees to work cooperatively with the City to implement new or changed requirements as quickly as possible.

F. Subcontracts. Contractor shall include the terms of this Exhibit in all subcontracts and require any agents, subcontractors, or subconsultants to comply with its provisions.

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EXHIBIT D
Insurance Requirements
Design Professionals & Consultants Contracts

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
/ Not required. Consultant has provided written verification of no employees.
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or **\$2,000,000** aggregate. If written on a claims made form:
 - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
 - b. Insurance must be maintained for at least five (5) years after completion of the Services.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

Higher Insurance Limits

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Consultant.

Adequacy of Coverage

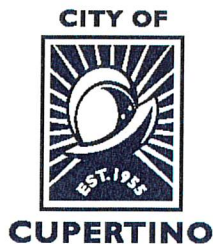
City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.

CC 06-01-21

#26

Appointment of
Interim City Manager
and Employment
Agreement

Draft Agreement



ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: JUNE 15, 2021

Subject

Consider appointment of Interim City Manager and execution of employment agreement.

Recommended Action

Authorize the Mayor to execute employment agreement for Interim City Manager.

Discussion

Current City Manager Deborah Feng announced her resignation on May 26, 2021. City Manager Feng's last day with the City is June 25, 2021. City Council began a recruitment process for a new full-time City Manager shortly after the announcement. Executive level recruitment can take up to six months or more to complete, therefore Council may wish to appoint an Interim City Manager.

On June 11 and 13, 2021, Council met with prospective Interim City Manager candidates and selected Greg Larson. Mr. Larson has had a successful history working in local government including serving as the City Manager of Milpitas and as Los Gatos Town Manager. He is currently the Director of the Santa Clara County Leadership Academy. Mr. Larson will start on July 14, 2021. Assistant City Manager Dianne Thompson will serve as acting City Manager until Mr. Larson's start date.

Sustainability Impact

There is no sustainability impact.

Fiscal Impact

There is no fiscal impact. Funding for this position will be offset by salary savings from the full-time City Manager vacancy.

Prepared by: Kristina Alfaro, Director of Administrative Services

Reviewed by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Draft Agreement

CITY OF CUPERTINO
INTERIM CITY MANAGER EMPLOYMENT AGREEMENT
WITH GREG LARSON

This Interim City Manager Employment Agreement (the "*Agreement*") is made and entered into as of June 15, 2021 by and between the City of CUPERTINO, a municipal corporation (the "*City*"), and Greg Larson (the "*Employee*").

RECITALS

WHEREAS, Government Code Sections 21221(h) and 7522.56 permit retired annuitants under the California Public Employees' Retirement System ("CalPERS") to be employed without reinstatement from retirement upon appointment by a governing body to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position;

WHEREAS, the City's City Manager recently announced her resignation, such that the position will soon be vacant;

WHEREAS, the City has hired or is hiring an executive search firm to begin conducting an open recruitment to permanently fill the position of City Manager, which recruitment is currently ongoing;

WHEREAS, the City anticipates that the City Manager position will be filled with a permanent replacement within six (6) months after the effective date of this Agreement;

WHEREAS, as a CalPERS retired annuitant under Government Code Section 21221(h), Employee possesses extensive experience as a City Manager and possesses the specialized skill set to perform the required duties of Interim City Manager and desires to perform the duties of, and assume responsibility for, the position of Interim City Manager and acknowledges that such employment is at-will and of a limited duration for a definite period of time, as described below;

WHEREAS, since retirement, Employee has not previously served as the Interim City Manager for the City of Cupertino;

WHEREAS, the City desires to hire Employee as an at-will, limited duration employee for the position of Interim City Manager, which is a position that requires specialized skills, for a definite period of time, effective as of the date of this Agreement;

WHEREAS, pursuant to Cupertino Municipal Code Section 2.28.010, "the City Manager shall be appointed by the City Council on the basis of his or her experience, administrative and executive ability. He or she shall hold office at and during the pleasure of the City Council;" and

WHEREAS, the Parties wish to establish the terms and conditions of Employee's services to the City, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

Section 1. Employment as Interim City Manager

(a) Employment.

The City hereby agrees to employ the Employee as the Interim City Manager beginning on the Commencement Date, as defined in Section 3 of this Agreement, and the Employee accepts such employment and agrees to perform the functions and duties set forth in this Agreement and provided in Section 2.28.040 of the Cupertino Municipal Code, and to perform such other legally permissible and proper duties and functions as the City Council may assign from time to time. This is a full-time position subject to the hours limitations of State law.

(b) Employment is At-Will.

Subject to the notice requirement in Section 9 of this Agreement, the Employee is employed at the will of the City Council, and nothing in this Agreement shall create any property right or any other right to the continuation of his employment with the City. No act of the City Council, any City Council member, any City employee, or any legal representative or other agent of the City shall create any such property right or any such other right unless specifically ratified in writing by the City Council.

Section 2. Work Hours

The Employee acknowledges proper performance of the duties of Interim City Manager will generally require Employee to observe normal weekday business hours as well as work occasional time outside of normal office hours. The Employee shall work under the direction of the City Council. Subject to the Term as stated in Section 3 of this Agreement, the Employee shall work the number of hours each week as directed and authorized by the City Council subject to the hours limitations of State law

Section 3. Term

The Employee's term of employment ("*Term*") shall be for a maximum period of 6 months, commencing on July 14, 2021 ("*Commencement Date*") and terminating on January 14, 2022, unless employment is terminated earlier pursuant to Section 9 of this Agreement. In accordance with state law and the requirements of the California Public Employees' Retirement Law, the Employee may not be reappointed to the position of Interim City Manager following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

The Employee is a retiree under the CalPERS system. Pursuant to the Government Code Section 21221(h), Employee is restricted to 960 hours per CalPERS fiscal year. Employee agrees to not exceed the maximum hours of total employment with the City of Cupertino or other contracting agencies pursuant to 21221(h) per CalPERS fiscal year.

Section 4. Sole Employment as Interim City Manager

The Employee must work diligently, utilizing his best efforts in the performance of his

duties. He must devote his entire business time, attention, and energies to the performance of his duties. He may not actively engage (in contrast to passive engagement) in any income- or profit-generating activities without the prior written consent of the City Council. The City Council hereby acknowledges and consents to the Employee's prior commitments to direct the Santa Clara County Local Government Leadership Academy and to facilitate Council appointee performance evaluations for the cities of Saratoga and Redwood City.

Section 5. Compensation; Benefits

(a) Base Salary.

The City will pay the Employee \$132.21 per hour (\$22,916.67 per month) as base salary up to 40 hours per week or the total hours allowed by State law.

(b) Employee Benefit Programs.

As a retiree, the Employee is not eligible to participate in the employee benefit plans and programs provided by the City to other City department heads, including health and life insurance benefit programs, pursuant to the Appointed Employees Compensation Policy.

(c) Vacation and Sick Days.

As a CalPERS retired annuitant, the Employee is not entitled to paid vacation days or sick days pursuant to the terms of the Unrepresented Employees Compensation Policy.

(d) Taxes.

All payments made, or benefits provided, to the Employee pursuant to this Section 5 are subject to the usual and appropriate payroll, personnel, and benefits policies of the City as well as the requirements of any applicable federal, state, or local laws, including appropriate tax withholdings. Nothing in this Agreement may be deemed or interpreted as requiring the City to pay, directly or by way of reimbursement to the Employee, any federal or state income tax liability that the Employee may incur as a result of this Agreement or any of the transactions, benefits, or payments contemplated in this Agreement. The Employee shall comply with all applicable Internal Revenue Service and California Department of Revenue requirements and regulations concerning the transactions, benefits, or payments contemplated in this Agreement.

Section 6. General Business Expenses; Electronic Equipment

(a) General Expenses.

The City will reimburse the Employee for reasonable miscellaneous expenses properly incurred in the course of performing the duties of his position. The Employee shall timely submit all receipts and other supporting documentation requested by the City.

(b) Communications Equipment.

The City will provide the Employee with a combined cellular telephone and e-mail device,

and an ipad device for the Employee's use in the performance of the duties of his position. This equipment remains the property of the City.

Section 7. Confidentiality

The Employee acknowledges that the Employee has had and will have access to confidential information ("*Confidential Information*") of, about, and belonging to, the City. Confidential Information does not include public documents or information that would otherwise constitute Confidential Information but that has become public. The Employee covenants and warrants that, both during and after the Employee's term of employment, the Employee will not directly or indirectly use, divulge, furnish, or make accessible Confidential Information to any person, firm, or corporation other than persons, firms, or corporations employed and/or retained by the City in a fiduciary capacity without the prior express written authorization of the City, but instead the Employee will keep all Confidential Information strictly and absolutely confidential, except as otherwise provided in this Agreement or as required by the California Public Records Act. (Govt. Code §§ 6250 - 6276.48).

Section 8. Property of the City

All data, studies, reports and other documents prepared and/or reviewed by the Employee while performing his duties during the Term of this Agreement shall be furnished to, and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other materials either created by, or provided to, the Employee in connection with the performance of this Agreement shall be held confidential by the Employee to the extent permitted by applicable law. Such materials, without the prior written consent of the City Council, shall not be used by the Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law..

Section 9. Termination

(a) Basis for Termination.

Notwithstanding anything to the contrary contained elsewhere in this Agreement, this Agreement shall terminate upon the occurrence of any of the following events: (a) the Employee's death; (b) the Employee's resignation; or (c) termination of the employment of the Employee by the City Council for any reason, or for no reason, at any time.

(b) Notice of Termination.

The City shall provide the Employee with not less than thirty (30) days' advance written notice of the City's intent to terminate the employment of the Employee pursuant to this Agreement; provided, however, that not less than twenty-four (24) hours' advance written notice need be provided by the City in the event the Employee has been convicted of fraud, misappropriation, or embezzlement involving property of the City, or of a felony offense or other criminal act, or has engaged in conduct that causes, or may cause, substantial harm to the reputation of the City.

(c) Resignation.

In the event that the Employee desires to voluntarily resign the position of Interim City Manager, he must provide the City with not less than thirty (30) days' advance written notice, unless the Employee and the City Council agree otherwise in writing.

Section 10. Indemnification

The City will defend, hold harmless, and indemnify the Employee against and for all losses sustained by the Employee in direct consequences of the discharge of the Interim City Manager's duties on the City's behalf for the period of employment. Such a duty shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this agreement to provide protection for any such acts undertaken were committed in the Employee's capacity as Interim City Manager. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Employee may have under the law.

Section 11. Notices

Notice pursuant to this Agreement must be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

If to the City: Mayor

Copy to: Executive Assistant to the City Manager City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

If to the Employee: Greg Larson
Address on file with Human Resources

Alternatively, notice required pursuant to this Agreement may be served personally. Notice will be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 12. General Provisions

(a) Entire Agreement.

This Agreement constitutes the sole and entire agreement between the City and the Employee relating to the employment of the Employee by the City. This Agreement supersedes all prior or contemporaneous agreements, understandings, and representations, oral and written, with respect to the employment of the Employee by the City.

(b) Amendments.

The parties may amend any provision of this Agreement in writing signed by both parties. Any such amendments will be deemed to be a part of this Agreement.

(c) Binding Effect.

This Agreement is binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives, and successors in interest.

(d) Severability.

The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. If any provision of this Agreement is held to be invalid, then the remaining provisions will be deemed to remain in full force and effect.

(e) No Waiver.

Any failure in the exercise of either party to enforce any provision of this Agreement shall not prejudice the party's right to demand strict performance or enforcement of any future performance required under this Agreement.

(f) Assignment.

This Agreement with respect to the Employee is personal in nature and the Employee will not assign this Agreement or any of the Employee's rights or obligations under this Agreement without the written consent of the City.

(g) Governing Law.

The execution, validity, construction, interpretation, performance, and enforcement of this Agreement is governed by the internal laws, but not the conflict of laws rules, of the State of California. Nothing in this Agreement is intended to abrogate the Employee's rights and obligations under California law.

(h) Acknowledgements.

The parties mutually acknowledge that they have entered into this Agreement voluntarily and have had an opportunity to have this Agreement reviewed by counsel of their choosing.

(i) Effect of Agreement on Employee's CalPERS Retirement Benefits.

The City makes no representation on the impact, if any, this Agreement shall or may have upon the Employee's CalPERS retirement benefits, status, duties and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, the Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

(j) Independent Legal Advice.

The City and the Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this

Agreement, or has at least had the opportunity to do so, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

(k) Government Code §§ 53243 - 53243.4.

Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require that contracts between local agencies and their employees include provisions requiring an employee who is convicted of a crime involving an abuse of his/her office or position to provide reimbursement to the local agency. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

Employee represents he has reviewed, is familiar with and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

[signatures on following page]

IN WITNESS WHEREOF, the City of Cupertino has caused this Agreement to be signed and executed on its behalf by the Mayor, City Attorney, and duly attested to by the City Clerk, and the Employee has signed and executed this Agreement.

CITY OF CUPERTINO

By: Darcy Paul, Mayor

Attest:

Date

By: Kirsten Squarcia, City Clerk

Kirsten Squarcia

Employee

Date

Jun 15, 2021

Date

Approved as to form:

Heather M. Minner

Heather Minner, City Attorney

Jun 15, 2021

Date









Interim CM Employment Agreement - Cupertino

Final Audit Report

2021-06-15

Created:	2021-06-15
By:	Araceli Alejandre (aracelia@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXzPM2RPOuA34hFQtxDAgrjGbpW-Fcf1

"Interim CM Employment Agreement - Cupertino" History

-  Document created by Araceli Alejandre (aracelia@cupertino.org)
2021-06-15 - 10:20:21 PM GMT- IP address: 73.170.27.253
-  Document emailed to Greg Larson (greg@larsonbeaudry.com) for signature
2021-06-15 - 10:22:09 PM GMT
-  Email viewed by Greg Larson (greg@larsonbeaudry.com)
2021-06-15 - 10:23:40 PM GMT- IP address: 174.194.136.69
-  Document e-signed by Greg Larson (greg@larsonbeaudry.com)
Signature Date: 2021-06-15 - 10:27:50 PM GMT - Time Source: server- IP address: 174.194.136.69
-  Document emailed to Heather M. Minner (minner@smwlaw.com) for signature
2021-06-15 - 10:27:52 PM GMT
-  Email viewed by Heather M. Minner (minner@smwlaw.com)
2021-06-15 - 10:32:06 PM GMT- IP address: 104.143.198.15
-  Document e-signed by Heather M. Minner (minner@smwlaw.com)
Signature Date: 2021-06-15 - 10:32:34 PM GMT - Time Source: server- IP address: 52.39.49.65
-  Agreement completed.
2021-06-15 - 10:32:34 PM GMT



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#27

Budget Adoption
Public Hearing,
FY 2021-22

Written Comments

Cyrah Caburian

From: Rhoda Fry <fryhouse@earthlink.net>
Sent: Tuesday, June 15, 2021 5:26 PM
To: City Council; City Clerk; Cupertino City Manager's Office
Subject: 3 items regarding the budget

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi City Council,

3 items regarding the budget

- A. The justification for building a basketball court is that the City has none of its own. I don't think that is a reasonable justification. We have basketball courts throughout the City. The City does not need to have one of each of its own. If there is a deficit of basketball courts, then it should be considered. It worries me that the budget doesn't even consider where this court would be, which is an indicator that this is an amenity that has not been well thought out.
- B. Why \$750K for fixing up the pools at Blackberry Farm. How much have the pools been used by residents? Perhaps 1 pool should be fixed up and City should wait and see? If you average it out over the years, it just seems like an awful lot of money and is the City throwing good money after an amenity that isn't used much by residents? There have been multiple upgrades of the pools. If I recall correctly, some were within the first budget of the corridor and then later.
- C. Other remnants left to be done from the corridor project are:
 - 1. Replacing the dead trees in the parking lot (most are gone now)
 - 2. Restoring the naturalized bird habitat at the ponds
 - 3. Redoing the water for the golf course. The City has water rights and used to use on site water to water the golf course. Now it is watered with San Jose water. The watering system was old a long time ago and it is even older and less efficient now and we're running deep in to a drought season. Watering needs to be more efficient and ideally with onsite water. A big cost of running the golf course (and many of our parks) is watering with potable water. Since COVID, there is a renewed interest in golf for young and old alike and I have to wonder how that pencils out as compared with the pools, for example. Maybe I've missed seeing numbers on that. Anyway, I do think that an investment in the watering system at various levels (re-do some piping / get onsite working again) would save water (eco-friendly) and save money.

Thanks!
Rhoda Fry