

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE FINE ARTS COMMISSION OF THE CITY OF CUPERTINO APPROVING THE IN  
LIEU PAYMENT FOR ARTWORK AT THE PUBLIC STORAGE DEVELOPMENT SITE  
LOCATED 20565 VALLEY GREEN DRIVE

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SECTION I: PROJECT DESCRIPTION & RECITALS

Application: Public Art In Lieu Payment  
Applicant(s): Ross Kremers (Public Storage)  
Location: 20565 Valley Green Dr. (APN: 326-10-044)

WHEREAS, the Fine Arts Commission of the City of Cupertino received an application for an in lieu payment for artwork at the Public Storage development site; and,

WHEREAS, artwork in private developments is required per Cupertino Municipal Code Chapter 19.148; and

WHEREAS, the City Council approved the Public Storage development application DP-2018-03, where artwork is identified as a condition of approval #7 of Resolution No. 19-071; and,

WHEREAS, the Cupertino Municipal Code allows a developer or property owner to make an application with the Fine Arts Commission to consider a request for an in lieu payment alternative on projects that potentially lack an appropriate location for public art; and,

WHEREAS, this project is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15301, Class 1 (Existing Facilities); and

WHEREAS, the necessary public notices have been given as required by the Administration Ordinance of the City of Cupertino, and the Fine Arts Commission has held at least one public meeting in regard to the application; and

WHEREAS, the applicant has met the findings required to support said application; and

WHEREAS, the Fine Arts Commission finds as follows with regard to this application:

## SECTION II: FINDINGS

The proposed artwork meets the following criteria:

1. Project lacks an appropriate location for public art.

*The project is not clearly visible from any public right of way as the project site has no public frontage. The project is bounded by significant developments to the south, east and west that obscure the site with Interstate 280 providing no significant visibility or frontage. Additionally, required artwork is to be easily visible from the public street, and be in permanent view to motorist and pedestrians. Because the project site itself is not easily visible from the public street, the artwork would likely not be easily visible from the public street.*

NOW, THEREFORE, BE IT RESOLVED:

After careful consideration of the facts, exhibits, testimony and other evidence submitted in this matter, the Fine Arts Commission hereby approves the public art application, based upon the findings described in Section II of this resolution, the public meeting record and the Minutes of the Fine Arts Commission meeting of November 22, 2021, and subject to conditions specified in Section III of this resolution.

## SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

Approval is based on the completed packet provided dated May 4, 2021, consisting of sixteen (16) sheets, except as may be amended by conditions of this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. IN LIEU PAYMENT

The developer shall be the in lieu artwork payment prior to occupancy or final of any construction permits. The in lieu fee payment shall be \$338,146.86, or 1.25% of the construction valuation.

4. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

3. INDEMNIFICATION

As part of the application, to the fullest extent permitted by law, the applicant shall agree to indemnify, defend with the attorneys of the City's choice, and hold harmless the City, its City Council, and its officers, employees, and agents (collectively, the "indemnified parties") from and against any liability, claim, action, cause of action, suit, damages, judgment, lien, levy, or proceeding (collectively referred to as "proceeding") brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant related to any Ordinance, Resolution, or action approving the project, the related entitlements, environmental review documents, finding or determinations, or any other permit or approval authorized for the project. The indemnification shall include but not be limited to damages, fees, and costs awarded against the City, if any, and cost of suit, attorneys' fees, and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Applicant, the City, or the parties initiating or bringing such proceeding.

The applicant shall agree to (without limitation) reimburse the City its actual attorneys' fees and costs incurred in defense of the litigation. Such attorneys' fees and costs shall include amounts paid to the City's outside counsel and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City. The applicant shall likewise agree to indemnify, defend, and hold harmless the indemnified parties from and against any damages, attorneys' fees, or costs awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against the indemnified parties. The Applicant shall cooperate with the City to enter a Reimbursement Agreement to govern any such reimbursement.

The Applicant shall agree to (without limitation) reimburse the City for all costs incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an Environmental Impact Report, negative declaration, specific plan, or general plan amendment) if made necessary

by proceedings challenging the project approvals and related environmental review, if the applicant desires to continue to pursue the project.

The Applicant shall agree that the City shall have no liability to the Applicant for business interruption, punitive, speculative, or consequential damages.

4. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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PASSED AND ADOPTED this 22<sup>nd</sup> day of November 2021 at a noticed Public Meeting of the Fine Arts Commission of the City of Cupertino, State of California, by the following vote:

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:  
ABSENT: COMMISSIONERS:

SIGNED:  _____ Sudha Kasamsetty, Chair City of Cupertino	  _____ Date
ATTEST:  _____ Kelsey Christian, CPRP Recreation Coordinator	  _____ Date