

ORDINANCE NO. 16-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO AMENDING SECTIONS 14.04.100 AND 18.56.040 OF
THE CUPERTINO MUNICIPAL CODE TO PROVIDE FOR A
LIMITED WAIVER OF REIMBURSEMENT REQUIREMENTS WHEN
A PROPERTY OWNER DEDICATES RIGHT-OF-WAY FOR A CITY
STREET IMPROVEMENT OR FACILITY PROJECT**

WHEREAS, Section 14.04.110 of the City of Cupertino Municipal Code provides that if the City or another property owner installs street improvements that benefit a property, the owner of the benefitted property is required to reimburse the City or the property owner for its reasonable share of the costs of such improvements when the benefitted property owner seeks a land use permit from City; and

WHEREAS, Section 18.56.040 of the City of Cupertino Municipal Code imposes a similar reimbursement requirement for street facilities in connection with subdivision maps; and

WHEREAS, City would like to improve the walkability of routes to schools, particularly those areas lacking curb, gutter and sidewalk; and

WHEREAS, in order to incentivize the dedication of land necessary to improve such routes, prior to an owner's application for a land use permit or subdivision map, the City desires to provide a limited waiver of future reimbursement charges in exchange for an owner's dedication of land to City, at no cost, in connection with the City's commencement of a street improvement project; and

WHEREAS, The City Council is the decision making body for this Ordinance and, before taking action on this Ordinance, hereby finds that the amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3): General Rule Exemption, since it can be seen with certainty that there is no possibility that the activity would have a significant effect on the environment. The amendments, which allow the dedication of right-of-way by property owners in certain circumstances in consideration of a limited waiver of future reimbursement charges, address only the procedures by which the dedication and waiver would be allowed. Any proposed street improvement or facilities project would be subject to subsequent project-specific CEQA review; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO
DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Section 14.04.110 of Chapter 14.04 of Title 14 of the Cupertino Municipal Code, Improvements Installed Prior to Permit-Imposition of Street Improvement Reimbursement Charges, Cost of Land and Interest, is hereby amended by adding subsection (D) to read as follows:

14.04.110 Improvements Installed Prior to Permit-Imposition of Street Improvement Reimbursement Charges, Cost of Land and Interest.

A. In some instances, the public welfare, safety and economy can be best served by the installation of improvements on unimproved streets prior to the time that an adjoining property owner seeks a permit. Since such adjoining property benefits from the street improvements, the owners of such property are required to contribute their share of the cost of those street improvements (just as permittees who seek a permit prior to the installation of improvements are required to do) when they seek a building permit unless it is exempt pursuant to Section 14.04.230(D) of this chapter, a planned development permit, use permit, or a site and architectural approval.

B. Where street improvements have been installed by the City, or by another property owner, without cost to the adjoining property owner, the adjoining property owner, as a condition precedent to obtaining a permit or any entitlement to use for his/her property, shall pay the City for the cost of the land at the cost to the City, or another property owner, and shall pay a street improvement reimbursement charge for the improvements which the City, or another property owner, installed on the streets abutting or included in the benefitted property, in an amount equal to the total improvement costs for each particular benefitted property as set forth in the reimbursement agreement. Payments for both land and improvements shall include simple interest in the amount of seven percent per year, to be calculated in the following manner:

1. Land Cost. Interest to accrue from the date the street improvements are accepted by the City to the date the street improvement reimbursement charge is paid, or if the land is purchased by the City for a City project, from the date of purchase to the date the charge is paid;

2. Improvement Cost. Interest to accrue from the date the street improvements are accepted by the City to the date the street improvement reimbursement charge is paid, or if installed by the City, from the date installation commenced to the date the charge is paid.

C. Provided, however, that the interest shall be waived if the adjoining property owner dedicates or has dedicated to the City land necessary for the street improvements, or where no such dedication is necessary.

D. Notwithstanding any other provision of this Code, if, upon request by the City in connection with the City's commencement of a street improvement project, a property owner dedicates to the City land necessary for such street improvement project at no cost to City, the City's Director of Public Works, on behalf of the City, may provide a limited waiver of future reimbursement charges for the cost of the street improvements. The City Council shall provide direction as to the amount or percentage of the waiver for a particular project either at the time that a Capital Improvement Project for street improvements is approved, or by separate action. The waiver shall be signed by the City Manager or his or her designee and shall be in a form as approved by the City Attorney.

SECTION 2. Section 18.56.040 of Chapter 18.56 of Title 18 of the Cupertino Municipal Code, Imposition of Street Facility Reimbursement Charges, Cost of Land and Interest upon Benefitted Properties, is hereby amended by adding subsection (C) to read as follows:

18.56.040 Imposition of Street Facility Reimbursement Charges, Cost of Land and Interest upon Benefitted Properties

A. Where street facilities have been installed by the City or the initial developer without cost to the benefitted property owner, the benefitted property owner, as a condition precedent to obtaining a final map, a final parcel map or a conditional certificate of compliance, shall pay the City for the cost of the land at the cost to the City or to the initial developer, and shall pay a street facility reimbursement charge for the facilities which the City or the initial developer installed on the streets abutting or on the benefitted property in an amount equal to such benefitted property owner's share of the total cost of the street facilities as set forth in the reimbursement agreement.

Payment for both land and facilities shall include simple interest in the amount of seven percent per year, to be calculated in the following manner:

1. Land Cost. Interest to accrue from the date the street facilities are accepted by the City to the date the street facility reimbursement charge is paid, or if the land is purchased by the City for a City project, from the date of purchase to the date the charge is paid.

2. Street Facility Cost. Interest to accrue from the date the street facilities are accepted by the City to the date the street facility reimbursement charge is paid, or if installed by the City, from the date installation commenced to the date the charge is paid.

B. Provided, however, that the interest shall be waived if the benefitted property owner dedicates or has dedicated to the City land necessary for the street facilities, or where no such dedication is necessary.

C. Notwithstanding any other provision of this Code, if, upon request by the City in connection with the City's commencement of a street improvement project, a property owner dedicates to the City land necessary for such street improvement project at no cost to City, the City's Director of Public Works, on behalf of the City, may provide a limited waiver of future reimbursement charges for the cost of the street improvements. The Council shall provide direction as to the amount or percentage of the waiver for a particular project either at the time that a Capital Improvement Project for street improvements is approved, or by separate action. The waiver shall be signed by the City Manager or his or her designee and shall be in a form as approved by the City Attorney.

SECTION 3. The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

SECTION 4. This Ordinance shall be effective thirty (30) days following its adoption.

INTRODUCED at a meeting of the Cupertino City Council the 19th day of January, 2016, and **ENACTED** at a regular meeting of the Cupertino City Council on this 2nd day of February, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Grace Schmidt, City Clerk

APPROVED:

Barry Chang
Mayor, City of Cupertino