

ORDINANCE NO. 18-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING SECTION 2.48. OF TITLE II OF THE CUPERTINO MUNICIPAL CODE PERTAINING TO THE APPROVAL OF PLANS AND DESIGNS FOR PUBLIC IMPROVEMENTS AND UPDATING THE ORGANIZATIONAL STRUCTURE OF THE DEPARTMENT OF PUBLIC WORKS

WHEREAS, California Government Code Section 830.6 ("Section 830.6") provides that neither a public entity nor a public employee is liable for an injury caused by the plan or design of construction or an improvement to public property, including subdivision improvement projects (collectively, "Public Improvements"), under certain conditions; and

WHEREAS, such conditions are that such plan or design must be approved in advance of the construction or improvement of public property by the legislative body of the public entity, or by some other body or employee exercising discretionary authority to give such approval; and

WHEREAS, in order to preserve the City's design immunity protection under Section 830.6, the City Council desires to affirm, confer upon, and delegate the authority to approve plans and designs for the City's Public Improvements to the Director of Public Works and the City Engineer, who shall exercise their discretionary authority consistent with the requirements of Section 830.6; and

WHEREAS, such delegation of design approval authority does not change the City Council's discretion and authority to approve City projects and appropriate funding pursuant to other applicable laws, codes, or policies, or to circumvent other established project design review and approval processes (e.g. design review and approval for conformance with discretionary permit requirements); and

WHEREAS, the City of Cupertino's departmental organization is established in Chapter 2.48 of the Cupertino Municipal Code for the intended purpose of providing an efficient organizational structure that designates departments and divisions and describes their functions and authorities; and

WHEREAS, the organizational structure of the Department of Public Works is codified in Chapter 2.48.020.C. and the City Council desires to amend this provision to reflect the

changes and organizational growth of the Department of Public Works;

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

SECTION ONE – ADDITION OF NEW SECTION.

Section 2.48.040 is hereby added to Title II of the Cupertino Municipal Code:

2.48.040. Authority of Director of Public Works and City Engineer to Approve Plans and Designs.

- A. The Director of Public Works if a licensed professional engineer designated by the State of California, and the City Engineer as a licensed professional engineer designated by the State of California, are delegated the authority to exercise discretionary approval (“Design Approval”) of plans, designs and any design amendments or addenda for any public improvement or subdivision improvement project of the City of Cupertino (“Public Improvements”). The Director of Public Works or the City Engineer shall sign the plans and designs to attest their approval.
- B. Design Approval of Public Improvements shall be exercised broadly, in accordance with state law, and shall include the authority to approve modifications to plans or designs previously accepted by the City; approval of City standard details and specifications for design and construction of Public Improvements; acceptance of Public Improvements on behalf of the City; and issuance of notices of completion, cessation notices, and any other instruments and documents related to the exercise of Design Approval of Public Improvements.

SECTION TWO – AMENDMENTS AND UPDATES.

2.48.020.C. Department of Public Works.

- 1. This department shall have the following divisions:
 - a. **Administrative Division.** This division shall be responsible for providing general administration for the Department of Public Works.

- b. **Development Services Division.** This division shall be responsible for all coordination of reviews for private development applications as well as permitting for encroachments into the public right of way.
- c. **Streets Division.** This division shall be responsible for the maintenance of all streets, storm drains, street lights, sidewalks, curbs, gutters, easements and medians.
- d. **Facilities and Fleet Division.** This division shall be responsible for all buildings, and the maintenance of the city's vehicle and equipment fleet.
- e. **Grounds Division.** This division shall be responsible for the maintenance of all park sites, leased school sites and grounds around other City owned properties.
- f. **Trees and Right of Way Division.** This division shall be responsible for public trees, street medians, and other landscaped areas within the public right of way.
- g. **Transportation Division.** This division shall be responsible for the planning and design of transportation facilities, oversight of the Safe Routes to Schools Program, and the operation and maintenance of the city's traffic signals.
- h. **Environmental Programs Division.** This division shall be responsible for the garbage and recycling franchised hauler contract and provides garbage and recycling customer service for residents and business owners, as well as overseeing compliance with the state stormwater permit.
- i. **Capital Improvement Program (CIP) Division.** This division shall be responsible for the design and construction administration for all capital improvement projects including streets, storm drainage, buildings, parks, and other public facilities.

SECTION THREE - CEQA EXEMPTION.

The City Council finds, based on its own independent judgment, that the proposed amendments to the Cupertino Municipal Code are exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) in that the proposed amendments are not a project which has the potential for causing a significant effect on the environment. A notice of Exemption will be filed with the County Clerk.

SECTION FOUR – INCONSISTENCIES REPEALED.

This Ordinance is intended to be controlling on the authority to approve plans and designs of public improvements, and shall supersede all prior ordinances, resolutions, rules, or regulations that are in conflict herewith. Any provisions of the Cupertino

Municipal Code, or appendices thereto, or any other ordinance of the City inconsistent herewith, are repealed only to the extent of such inconsistencies and no further.

SECTION FIVE – IMPLEMENTATION.

The City Council hereby authorizes and directs the City Manager to take any action and sign any documents necessary to implement this Ordinance.

SECTION SIX - SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Cupertino hereby declares that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION SEVEN – EFFECTIVE DATE; PUBLICATION.

The City Clerk is directed to post and publish this Ordinance in accordance with law in a newspaper of general circulation printed and published in the County of Santa Clara, or as otherwise required by law. This ordinance shall take effect thirty (30) days after adoption.

The foregoing ordinance was introduced before the Cupertino City Council at the regular meeting of the City Council, held on the ____ day of _____, 2018, and finally adopted at a regular meeting of the City Council held on the ____ day of _____, 2018, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney