



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: March 21, 2023

Subject

Consider petition for reconsideration regarding the City Council decision of February 7, 2023, to uphold the appeal of Planning Commission Resolution No. _____ in part, approve one of the two requested freeway-oriented signs, and deny the requested sign exception. Application No(s): EXC-2022-003; Applicant(s): David Ford (All Sign Services); Location: 20565 Valley Green Dr.; APN #326-10-044.

Recommended Actions

That the City Council conduct a public hearing and adopt Resolution No. 23-XXXX (Attachment A) denying the petition for reconsideration.

Reasons for Recommendation

Basis for Reconsideration

City of Cupertino Municipal Code ("CMC"), Section 2.08.096 authorizes any interested person to petition the City Council to reconsider any adjudicatory decision made by the Council. A petition for reconsideration must "specify, in detail, each ground for reconsideration." (CMC § 2.08.096(B).) The grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by:

- a. Not preceding in a manner required by law; and/or
- b. Rendering a decision which was not supported by findings of fact; and/or
- c. Rendering a decision in which the findings of fact were not supported by the evidence.

(CMC § 2.08.096(B).)

A petition for reconsideration is subject to a reconsideration fee as prescribed by resolution of the City Council. At the conclusion of the reconsideration hearing, the City Council may, in its sole discretion, refund all, or a portion, of the reconsideration fee. (CMC § 2.08.096(C).)

Reconsideration Petition

The petition for reconsideration was submitted by Rhoda Fry (Attachment B). The petition requests reconsideration of the approval of one of the two freeway-oriented signs proposed by the applicant and lists the alleged grounds for reconsideration of the Council's February 7, 2023 decision in a letter submitted with the Reconsideration Petition form.

Municipal Code section 2.08.096 requires Council to conduct a public hearing regarding the reconsideration petition and adopt findings of fact based on the evidence submitted concerning the matter. Council may reverse or modify its decision only if substantial evidence supports one of the grounds for reconsideration listed above. This hearing on the petition for reconsideration constitutes the third full hearing conducted by the City regarding the Project.

The alleged grounds for reconsideration are based on all the grounds for reconsideration as listed in CMC Section 2.08.096. Each of the alleged grounds for reconsideration as submitted by the petitioner are summarized below.

First, the petition argues that reconsideration is warranted because there is no relevant evidence, which, in the exercise of reasonable diligence, could not have been produced at any earlier City hearing. The petition cites a Public Storage blog post, without explaining why the post is relevant to the interpretation of the Sign Ordinance. Otherwise, the petition presents arguments and evidence that were available at the time of Planning Commission and City Council hearings regarding the application, and offers no

explanation as to why such evidence could not have been introduced at the time of those hearings. Staff recommends denying reconsideration on this ground.

Second, the petition argues that the City Council proceeded without or in excess of its jurisdiction, citing an undefined “validation from Caltrans.” However, the Council clearly has jurisdiction to review the Planning Commission’s decision and affirm, modify, or reverse it. Staff recommends denying reconsideration on this ground.

Third, the petition argues that evidence was improperly excluded from the hearing, citing various evidence that was allegedly not presented to Council. However, no evidence was excluded from the hearing. The failure of an interested party to submit evidence that could have been produced at the prior hearing is not a basis for reconsideration. Staff recommends denying reconsideration on this ground.

Fourth, the petition argues that Council failed to provide a fair hearing, citing discussion of the Sign Ordinance by City staff. There is no evidence that any interested party was deprived of the opportunity to present evidence or that the hearing did not meet standards of procedural fairness, including notice and an opportunity to be heard. Staff recommends denying reconsideration on this ground.

Fifth, the petition argues that Council abused its discretion because a Councilmember compared the Public Storage sign to the Cupertino Hotel sign. The petition does not explain why this comparison undermines constitutes an abuse of discretion. Staff recommends denying reconsideration on this ground.

Please review Attachment B for petitioner’s full detail. Based on staff’s review of the petition, as summarized above, none of the grounds for reconsideration in Municipal Code section 2.08.096(B) have been met. Accordingly, staff recommends that the City Council deny the petition for reconsideration and uphold the February 7, 2023, City Council decision. Recommended findings for denial are included in the proposed draft resolution (Attachment A).

Prepared by: Gian Paolo Martire, Senior Planner

Approved by: Benjamin Fu, Director of Community Development

Approved by Submission by: Pamela Wu, City Manager

ATTACHMENTS:

A – City Council Resolution No. 23-XXXX

B - Petition for Reconsideration submitted by Rhoda Fry