

RESOLUTION NO. 17-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
DENYING THE PETITION OF KIMBERLY SANDSTROM SEEKING COUNCIL
RECONSIDERATION OF ITS DECISION TO DENY AN APPEAL OF A HOUSING
COMMISSION RECOMMENDATION TO DENY AN APPEAL REGARDING
ELIGIBILITY OF THE PETITIONER TO PURCHASE A BELOW MARKET RATE
(BMR) UNIT**

WHEREAS, on September 20, 2016, the Cupertino City Council held a public hearing on Ms. Kimberly Sandstrom's (Petitioner) appeal of a Housing Commission Recommendation to determine her eligibility to purchase a Below Market Rate (BMR) Housing Unit, and at the conclusion of the hearing continued the item to a further date; and

WHEREAS, the matter was also heard and continued on October 4, 2016; and again on November 1, 2016; and

WHEREAS, on December 6, 2016, at the continued hearing, the Cupertino City Council affirmed the recommendation of the Housing Commission regarding the eligibility of Petitioner to purchase a BMR unit; and

WHEREAS, on or about December 19, 2016, Petitioner submitted a Petition for Reconsideration requesting that the City Council reconsider its decision under the provisions of Cupertino Municipal Code Section 2.08.096(B) (2),(4), and (5); and

WHEREAS, on or about January 13, 2017, Petitioner presented an "Amended Reconsideration Petition" stating additional grounds for reconsideration which was returned as untimely; and

WHEREAS, the Cupertino City Council's decision was within its discretion and made at a properly noticed public meeting; and

WHEREAS, the City Council has considered all relevant evidence presented by the parties at all hearings, including evidence presented at the February 7, 2017 reconsideration hearing.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. Petitioner's Petition for Reconsideration does not present relevant evidence that was excluded at a prior hearing; does not present proof of fact demonstrating how the City failed to provide a fair hearing; or proof of facts that the Council abused its discretion by not proceeding in a manner required by law or rendering a decision which was not supported by the evidence as required by Municipal Code Section 2.08.096.
2. Petitioner did not provide new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing (Municipal Code § 2.08.096 (B) (1)).
3. Petitioner did not provide relevant evidence which was improperly excluded at any prior city hearing (Municipal Code § 2.08.096 (B) (2)).
4. Petitioner failed to provide proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction (Municipal Code § 2.08.096 (B) (3)).
5. Petitioner failed to present any evidence that the City Council failed to provide a fair hearing (Municipal Code § 2.08.096 (B) (4)).
6. Petitioner failed to demonstrate that the City Council abused its discretion by not proceeding in a manner required by law; rendering a decision which was not supported by findings of fact; and/or rendering a decision in which the findings of fact were not supported by the evidence (Municipal Code § 2.08.096 (B) (5)).
7. City Council further determines that:
 - a. The Amended Reconsideration presented on January 13, 2017 was untimely under Cupertino Municipal Code Section 2.08.096, and was properly returned;
 - b. The City Council's decision is supported by findings of fact attached as Exhibit A.
 - c. The findings of fact related to the City Council's decision were supported by substantial evidence in the record of proceedings.
 - d. Even if reconsideration were granted, none of the evidence presented in the Petition for Reconsideration changes the outcome previously reached by WVCS, outside Counsel, the Housing Commission and this Council, that Petitioner's income, as calculated under the BMR manual provisions in existence at the time, exceeded the amount for her to be eligible to purchase the unit.

8. The petitioners' Petition for Reconsideration of the City Council's decision of December 6, 2016 is DENIED, thereby affirming the original decision.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 7th day of February, 2017 by the following vote:

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

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Savita Vaidhyanathan, Mayor
City of Cupertino

EXHIBIT A

CITY COUNCIL FINDINGS IN RESPONSE TO PETITION FOR RECONSIDERATION

Cupertino Municipal Code section 2.08.096 states:

A. The City Clerk shall forthwith mail all notices of decision after the decision of the City Council. Any interested person, prior to seeking judicial review of any adjudicatory decision of the City Council, shall file a petition for reconsideration with the City Clerk within ten days of the date of the mailing of the notice of decision. Failure to file a petition for reconsideration constitutes a waiver of the right to request reconsideration and the City Council's decision shall be final for all purposes. Upon timely receipt of a petition for reconsideration, the City Clerk shall schedule a reconsideration hearing to be commenced by the City Council no later than sixty days after the filing of the petition. Mailed notices of the date, time and place of such hearing will be provided to all interested persons at least ten days prior to the hearing. At the conclusion of the hearing for reconsideration, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all city hearings concerning the matter.

B. A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration, precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.

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 proceeding 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."

The Petition for Reconsideration submitted by Kimberly Sandstrom requests reconsideration based upon Cupertino Municipal Code Sections 2.096(B)(2),(4), and (5). Each of the grounds for the reconsideration as submitted by the petitioner and the City's findings of fact and responses to each of the grounds are listed below.

City finding on Municipal Code Section 2.08.096(b)(2): No relevant evidence was improperly excluded from any hearing. The Petitioner has failed to offered *relevant* evidence that was improperly excluded at any prior City meeting, nor was any evidence excluded by the City Council.

Petition	Response and Findings of Fact
<p>A. The Petitioner states that evidence of the transformation and development of the relationship between Ms. Nguyen and Ms. Ma was disallowed from presentation on August 11, 2016, by the Housing Commission Chair, Harvey Barnett. Mr. Barnett required the Petitioner to advance to the closing slides instead of showing the evidence of WVCS employee relationship to the Housing Commission.</p>	<p>A. Petitioner does not present any “relevant” evidence that was excluded from any hearing. The sole issue before the City Council is whether Petitioner’s income exceeded BMR limits. The Housing Commission Chair properly excluded Petitioner’s slides which were snapshots of Facebook pages of WVCS employees and their families (parents and children) and personal details about Ms. Ma’s family. Petitioner presented her allegation regarding the conflict of interest to the Council.</p>
<p>B. The Petitioner states that the evidence was provided to the City Clerk but not reattached to staff report to the City Council. The City Clerk failed to include the evidence in the relevant documents attached to the Appeal as an Agenda item at City Council meetings.</p>	<p>B. The Housing Commission Chair properly excluded Petitioner’s slides which were snapshots of Facebook pages of WVCS employees and their families (parents and children) and personal details about Ms. Ma’s family. Petitioner’s entire presentation submitted to City Council on September 20, 2016, was included as Exhibit “H” at the continued hearing of December 6, 2016.</p>

City finding on Municipal Code Section 2.08.096(b)(4): The City provided fair hearings. The Petitioner has not provided any proof of facts which demonstrate that the City Council failed to provide a fair hearing.

Petition	Response and Findings of Fact
A. The Mayor limited presentation time to the City Council on September 20, 2016, after the matter was postponed on September 6, 2016. A total of twenty minutes was granted but more time was requested but denied. The evidence cited above in section 2 had to be removed from the presentation. The Mayor frequently has provided much more time to individuals regarding matters much less pivotal to residents' quality of life in Cupertino. The fair and unbiased operation of the City's Below Market Rate Housing Program is a serious matter. Anyone who appeals a determination made by consultants of the City or City Staff regarding participation in the BMR program should be afforded sufficient time to present all evidence in support of their appeal.	A. Council provided a fair hearing. Petitioner was given a total of 20 minutes for her oral presentation, and her entire power point presentation was provided and available to Council.

City finding on Municipal Code Section 2.08.096(b)(5): The City proceeded in a manner required by law, its decision was supported by findings of fact, and the decision was supported by the facts. The Petitioner has not provided any proof of facts that demonstrate the Council abused its discretion by not proceeding in a manner required by law, the Council's decision and its findings were fully supported by the evidence.

Petition	Response and Findings of Fact
A. <i>Explain facts and how those facts demonstrate abuse of discretion related to items (a):</i> The Petitioner notes that Michelle Ma and the Petitioner had essentially equivalent salary of about \$96,000 per year. She also notes that Ms. Ma's household income was about \$99,550 or \$2,500 below the limit of \$102,050. She	A. Petitioner's position is that Ms. Ma's income was miscalculated. This allegation is not only irrelevant, it also does not support a claim that the City did not proceed in a manner required by law for Petitioner's appeal. Moreover, Ms. Ma's income calculation was reviewed by the City's outside Counsel, and it was determined she did

<p>further states that this determination by Goldfarb & Lipman was greater than the household income determined by WVCS. She notes that the City Council is required by Section 2.6 of Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units to take action when a purchaser intentionally makes false statements or misrepresents facts in order to appear eligible. Furthermore, Marissa Ma is not Michelle Ma's dependent. Determining their household income should include an examination of Marissa's cost of living and the source for covering these costs. Because the source is not Marissa, nor Michelle, the source is outside the household and must be included in the household income.</p> <p><i>B. Explain facts and how those facts demonstrate abuse of discretion related to items (c):</i> The City Council affirmed the Housing Commission's recommendation to find the Petitioner's family ineligible to purchase the BMR unit because it upheld the statement by Ms. Venkatraman that the Petitioner's income was \$103,648.14, and therefore over the limit. However the facts presented by the Petitioner on September 20, 2016 show this is not income. Nor was it anticipated to be income, based on the evidence provided at the time of application. Pursuant to paragraph C of section 2.08.096, the Petitioner requests that the City refund all of the reconsideration fee. The reconsideration is not related to any</p>	<p>qualify for the unit.</p> <p>B. The evidence presented to the Housing Commission and the City Council, fully support the City Council's finding that Petitioner was not eligible to purchase a BMR unit. The Council's finding was based upon Housing and Urban Development (HUD) standards in the City's Below Market Rate manual, a review of the paychecks, and bonus income.</p>
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<p>income producing opportunity. Rather it is related to protecting my rights as an applicant to a City program for safe and affordable housing in Cupertino.</p>	
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