



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, November 5, 2019

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Steven Scharf called the Regular City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Presentation from Toyokawa Sister City delegation regarding recent student exchange
Recommended Action: Receive presentation from Toyokawa Sister City delegation regarding recent student exchange

Cupertino-Toyokawa Sister City President Alysa Sakkas gave a presentation about Toyokawa and the organization. The delegation members spoke about their experiences on the trip.

Council received the presentation from Toyokawa Sister City delegation regarding recent student exchange.

2. Subject: Fine Arts Commission presentation of the 2019 Distinguished and Emerging Artist Winners.
Recommended Action: Receive Fine Arts Commission presentation of the 2019 Distinguished and Emerging Artist Winners.

Fine Arts Commission Chair Rajeswari Mahalingam introduced the winners and Mayor Scharf presented the awards.

Council received the Fine Arts Commission presentation of the 2019 Distinguished and Emerging Artist Winners.

3. Subject: Presentation on pedestrian safety by Divergent Debuggers First Lego League robotics team.

Recommended Action: Receive presentation on pedestrian safety by Divergent Debuggers First Lego League robotics team.

The Divergent Debuggers gave a presentation.

Council received the presentation on pedestrian safety by Divergent Debuggers First Lego League robotics team.

POSTPONEMENTS – None

ORAL COMMUNICATIONS

Sandy James (Cupertino resident) on behalf of the Cupertino Veterans Memorial talked about the upcoming Veterans Day celebration on November 11 at Memorial Park.

Dennis Whittaker (Cupertino resident) on behalf of American Legion Post 642 talked about the upcoming Wreaths across America event on December 14 at Gate of Heaven Cemetery.

Brooke Ezzat (Cupertino resident) talked about good governance and transparency.

Keith Kraft (Cupertino resident) talked about traffic concerns around the “tri-school” area. (Provided written comments).

Jim Moore (Cupertino resident) talked about hillside development and calculating slope percentages.

Connie Cunningham (Cupertino resident) talked about Apple funding and affordable housing.

Caryl Gorska (Cupertino resident) talked about general governance, housing, and overcrowding.

Lisa Warren talked about an upcoming meeting regarding the Flint Center; concern over bad driving in Cupertino and safety; request to agendaize recently passed housing bills.

REPORTS BY COUNCIL AND STAFF (10 minutes)

4. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Paul moved and Scharf seconded to approve items on the Consent Calendar as presented except for item numbers 6 and 7 which were pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the October 15 City Council minutes
Recommended Action: Approve the October 15 City Council minutes

Written communications included an amended page to the minutes.

6. Subject: Mitigation Fee Act - Annual & Five-Year Report - Fiscal Year 2018-2019
Recommended Action: 1) Accept the Annual & Five-Year Review of the City of Cupertino's Development Impact Fees (Government Code Section 55000 et seq.); and 2) Adopt Resolution No. 19-132 entitled "A Resolution of the Cupertino City Council Approving the Annual & Five-Year Development Impact Fee Report for FY Ending June 30, 2019 and Making Required Findings."

Lisa Warren spoke on this item – request to go to Planning Commission first.

Sinks moved and Scharf seconded to 1) Accept the Annual & Five-Year Review of the City of Cupertino's Development Impact Fees (Government Code Section 55000 et seq.); and 2) Adopt Resolution No. 19-132 entitled "A Resolution of the Cupertino City Council Approving the Annual & Five-Year Development Impact Fee Report for FY Ending June 30, 2019 and Making Required Findings." The motion carried unanimously.

7. Subject: Adopt Resolution No. 19-133 to accept the September 30, 2019 Carmen Road Pedestrian/Bicycle Bridge Feasibility Study Report. No authorization for design, construction or budget action requested at this time.

Recommended Action: Adopt Resolution No. 19-133 to accept the September 30, 2019 Carmen Road Pedestrian/Bicycle Bridge Feasibility Study Report.

Written communications included emails to Council and a presentation.

Director of Public Works Roger Lee reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Stephanie and Jake Miller (Cupertino resident) – in favor

Cade Feldman (Cupertino resident) – in favor

Tanith Feldman (Cupertino resident) – in favor

Amritha Sessaadin and kids (Cupertino resident) – in favor

Julie Orr (Cupertino resident) – in favor

John Jensen (Cupertino resident) - in favor

Vaasav Molas (Cupertino resident) - in favor

Demitri Verstarc (Cupertino resident) - in favor

Yulin (Cupertino resident) - in favor

Wil Fluewelling on behalf of Stevens Creek PTO (Cupertino resident) - in favor

Pamela Hawkes on behalf of Sunny View Manor (Cupertino resident) – in favor

Rich Williams (Cupertino resident) - in favor

Neesha Tambe (Cupertino resident) - in favor

Jian He (Cupertino resident) – in favor

Carol Stanek (Cupertino resident) - in favor

Shani Kleinhaus on behalf of Audubon Society – no transparent structures on bridge for bird safety

Byron Rovegno (Cupertino resident) – in favor

Richard Lowenthal (Cupertino resident) - in favor

Tom Scannell (Cupertino resident) - in favor

Geoff Paulsen (Cupertino resident) – in favor

Keith Kraft (Cupertino resident) – in favor

Mayor Scharf closed public comment.

Sinks moved and Scharf seconded to adopt Resolution No. 19-133 to accept the September 30, 2019 Carmen Road Pedestrian/Bicycle Bridge Feasibility Study Report. The motion carried unanimously.

Council recessed from 8:45 p.m. to 8:55 p.m.

SECOND READING OF ORDINANCES

8. Subject: An Ordinance amending Title 16, Buildings and Construction, of the Cupertino Municipal Code adopting the 2019 California Building Standards Code as mandated by the State of California with certain exceptions, deletions, modifications, additions, and amendments.

Recommended Action: Staff recommends that the City Council conduct the second reading to enact Ordinance No. 19-2189: "An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 16.02, 16.04, 16.06, 16.16, 16.20, 16.24, 16.40, 16.54, and 16.58 and Adding Chapters 16.62, 16.64, and 16.68 of Title 16 of the Cupertino Municipal Code adopting the 2019 California Building, Residential, Electrical, Mechanical, Plumbing, Energy, Fire, Historical Building Code, Existing Building Code, Referenced Standards Code, and Green Building Standards Code with certain exceptions, deletions, modifications, additions and amendments," (the "Ordinance"), attached as Attachment A.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2189: "An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 16.02, 16.04, 16.06, 16.16, 16.20, 16.24, 16.40, 16.54, and 16.58 and Adding Chapters 16.62, 16.64, and 16.68 of Title 16 of the Cupertino Municipal Code adopting the 2019 California Building, Residential, Electrical, Mechanical, Plumbing, Energy, Fire, Historical Building Code, Existing Building Code, Referenced Standards Code, and Green Building Standards Code with certain exceptions, deletions, modifications, additions and amendments."

Paul moved and Scharf seconded to read Ordinance No. 19-2189 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

Paul moved and Scharf seconded to enact Ordinance No. 19-2189. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

PUBLIC HEARINGS

9. Subject: Consideration of Municipal Code Amendments to the Cupertino Municipal Code, Title 5, adopting new policies regulating the sale of tobacco, such as requiring a local permit to sell tobacco products, prohibiting the sale of flavored tobacco, prohibiting new businesses from selling tobacco near schools and reducing tobacco retailer density, prohibiting tobacco sales at pharmacies and in vending machines, and limiting storefront signage.

Recommended Action: 1. Conduct the first reading of Ordinance No. 19-2190: "An ordinance of the City Council of the City of Cupertino adding chapter 5.50 to title 5

(Business Licenses and Regulations) to regulate the sale of tobacco products and repealing chapter 10.27 of the Municipal Code (Cigarette and/or Tobacco Vending Machines)”; 2. Authorize the City Manager to negotiate and enter into a Memorandum of Understanding (MOU) with the County of Santa Clara to administer, implement, and enforce Cupertino’s ordinance; and 3. Find that the proposed actions are exempt from CEQA.

Written communications for this item included emails to Council and a presentation.

Consultant from Santa Clara County Department of Public Health Leslie Zellers and Assistant to the City Manager Katy Nomura reviewed the presentation.

Staff answered questions from Council.

Mayor Scharf opened the public hearing and the following individuals spoke:

William Yang (Cupertino resident) – in favor

Marissa Jensen (Cupertino resident) – in favor

Carol Baker (Cupertino resident) on behalf of Tobacco Free Coalition of SCC - in favor

Rosalyn Moyan on behalf of Santa Clara County Coalition - in favor

Randy Uang on behalf of Breathe California - in favor

Tanya Paygappilly on behalf of breathe California – in favor

Dionisio Palencia (San Jose resident) on behalf of American Heart Association – in favor

Jan Parcel (Cupertino resident) – opposed

Smitha Gundavajhala (Cupertino resident) on behalf of San Mateo County Tobacco Education Coalition – in favor

Bobo Kwok (Sunnyvale resident) on behalf of CADA– in favor

Afroze Khan (Cupertino resident) on behalf of API-CHAT and CADA – in favor

Geoff Paulsen (Cupertino resident) – in favor

Barry Chang (Cupertino resident) – in favor

Mayor Scharf closed the public hearing.

Staff answered questions from Council.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2190: “An Ordinance of the City Council of the City of Cupertino adding chapter 5.50 to title 5 (Business Licenses and Regulations) to regulate the sale of tobacco products and repealing chapter 10.27 of the Municipal Code (Cigarette and/or Tobacco Vending Machines)”.

Paul moved and Sinks seconded to read Ordinance No. 19-2190 by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

Paul moved and Sinks seconded to authorize the City Manager to negotiate and enter into a Memorandum of Understanding (MOU) with the County of Santa Clara to administer, implement, and enforce Cupertino's ordinance. The motion carried unanimously.

Paul moved and Sinks seconded to find that the proposed actions are exempt from CEQA. The motion carried unanimously.

Sinks moved and Scharf seconded to direct staff to bring back changes to the ordinance but not as part of the second reading after appropriate outreach to ban all vaping products and bring back information regarding smoke free housing. After further discussion, Sinks withdrew his motion and Council gave consensus to bring back both items to a future meeting.

ORDINANCES AND ACTION ITEMS

- 10. Subject:** Consider whether to authorize the formal submission and processing of a General Plan Amendment application to allow 29 units where four (4) units are currently allowed on an 86-acre hillside property, on the west side of the City adjacent to Linda Vista Park, with an average slope of ~48% which would require General Plan Amendments to change the existing General Plan Land Use Designation. (Application No.(s): GPAAuth-2019-01; Applicant: Lixin Chen; Location: APN(s): 356-27-026, 356-05-007, 356-05-008.
Recommended Action: Determine if the proposed project described in General Plan Amendment Authorization application (GPAAuth-2019-01) is authorized to proceed to apply for the requested General Plan Amendments. If authorized, adopt Resolution No. 19-134 authorizing a perspective development proposal described in the Canyon View Project General Plan Amendment Authorization application, No: GPAAuth-2019-01, to proceed with a General Plan Amendment application.

Written communications for this item included emails to Council and a presentation.

Senior Planner Erick Serrano reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Stephen Jacobs (Cupertino resident) – opposed

Dr. Wagee Ishak (Cupertino resident) – neither in favor or against

Lareen Jacobs (Cupertino resident) - opposed
Geoff Paulsen (Cupertino resident) – opposed
Ethan Thorman (Cupertino resident) – opposed
Steve Garrity (Sunnyvale resident) on behalf of Friends of Stevens Creek Trail
Neil McClintick (Cupertino resident) – in favor
Rose Friedland (Cupertino resident) – opposed
Peter Friedland (Cupertino resident) - opposed
Jim Moore (Cupertino resident) – opposed (provided written comments)
Govind (Cupertino resident) – opposed (provided written comments)
Connie Cunningham (Cupertino resident) – opposed
Caryl Gorska (Cupertino resident) – opposed
Linda Ruthruff on behalf of California Native Plant Society – opposed
Yixin Pan (Cupertino resident) – in favor
Bob McKibbin (Cupertino resident) – opposed
Jean Bedord (Cupertino resident) – in favor
Susan Chen (Cupertino resident) and architect of project – in favor
Shani Kleinhaus o behalf of Santa Clara County Audubon Society – opposed
Gary Newman (Cupertino resident) – opposed
LisaWarren - opposed

Mayor Scharf closed public comment.

The applicant gave a presentation.

Staff and the applicant answered questions from Council.

Paul moved and Scharf seconded to not authorize the project to proceed to apply for the requested General Plan Amendments and advise the applicant to follow the GPA Authorization process either to resubmit in 30 days or resubmit in May with respect to feedback and commentary from the public and the Council. The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmembers highlighted the activities of their various community events.

Sinks/Scharf concurred to agendize a Council discussion on the FASTER initiative to raise sales tax 1%.

ADJOURNMENT

At 1:44 a.m. on Wednesday, November 6, Mayor Scharf adjourned the meeting.

Grace Schmidt, City Clerk