



**DRAFT MINUTES**  
**CUPERTINO CITY COUNCIL**  
Tuesday, November 15, 2016

**REGULAR CITY COUNCIL MEETING**

**ROLL CALL**

At 6:00 p.m. Mayor Barry Chang called the City Council meeting to order in Cupertino City Hall Conference Room A, 10300 Torre Avenue.

Present: Mayor Barry Chang, Vice Mayor Savita Vaidhyanathan, and Councilmembers Darcy Paul and Rod Sinks. Absent: Gilbert Wong.

**CLOSED SESSION**

1. Subject: Conference with legal counsel - Existing Litigation pursuant to Paragraph (1) of subdivision (d) of Gov't Code 54956.9; *Caixing Xie and Wei Xie vs. City of Cupertino, Gunes Aybay and Does 1 through 50, inclusive*, Case #16-CV-295371

Mayor Chang announced that Council gave direction to staff.

**PLEDGE OF ALLEGIANCE**

At 6:45 p.m. Mayor Barry Chang re-convened the Regular City Council meeting in Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

**ROLL CALL**

Present: Mayor Barry Chang, Vice Mayor Savita Vaidhyanathan, and Councilmembers Darcy Paul and Rod Sinks. Absent: Gilbert Wong.

**CEREMONIAL MATTERS AND PRESENTATIONS**

2. Subject: Present Certificates of Recognition to volunteers at the Silicon Valley Korean School (SVKS) out of Cupertino High School  
Recommended Action: Present Certificates

Mayor Chang presented Certificates of Recognition to volunteers at the Silicon Valley Korean School (SVKS) out of Cupertino High School.

**POSTPONEMENTS - None**

**ORAL COMMUNICATIONS**

Jon Willey talked about Ethics Week, November 6-12.

**CONSENT CALENDAR**

Vaidhyanathan moved and Sinks seconded to approve the items on the Consent Calendar as presented with the exception of item number 17 which was pulled for discussion. Ayes: Chang, Vaidhyanathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

3. Subject: Approve the November 1 City Council minutes  
Recommended Action: Approve the November 1 City Council minutes
4. Subject: Accept Accounts Payable for the period ending August 19, 2016  
Recommended Action: Adopt Resolution No. 16-116 accepting Accounts Payable for the period ending August 19, 2016
5. Subject: Accept Accounts Payable for the period ending August 26, 2016  
Recommended Action: Adopt Resolution No. 16-117 accepting Accounts Payable for the period ending August 26, 2016
6. Subject: Accept Accounts Payable for the period ending September 2, 2016  
Recommended Action: Adopt Resolution No. 16-118 accepting Accounts Payable for the period ending September 2, 2016
7. Subject: Accept Accounts Payable for the period ending September 9, 2016  
Recommended Action: Adopt Resolution No. 16-119 accepting Accounts Payable for the period ending September 9, 2016
8. Subject: Accept Accounts Payable for the period ending September 16, 2016  
Recommended Action: Adopt Resolution No. 16-120 accepting Accounts Payable for the period ending September 16, 2016
9. Subject: Accept Accounts Payable for the period ending September 23, 2016

Recommended Action: Adopt Resolution No. 16-121 accepting Accounts Payable for the period ending September 23, 2016

10. Subject: Accept Accounts Payable for the period ending September 30, 2016  
Recommended Action: Adopt Resolution No. 16-122 accepting Accounts Payable for the period ending September 30, 2016
11. Subject: Treasurer's Investment report for Quarter ending June 30, 2016  
Recommended Action: Accept the Treasurer's Investment report for Quarter ending June 30, 2016
12. Subject: Treasurer's Investment Report for Quarter ending September 30, 2016  
Recommended Action: Accept the Treasurer's Investment Report for Quarter ending September 30, 2016
13. Subject: Approval of First Quarter Financial Report for Fiscal Year 2016-17  
Recommended Action: 1. Accept the City Manager's First Quarter Financial Reports for Fiscal Year 2016-17; and 2. Adopt Resolution No. 16-123 approving First Quarter Budget Adjustments 3. Adopt Resolution No. 16-128 amending the Unrepresented Employees' Compensation Program
14. Subject: Increase hourly rates to the part-time salary schedule to comply with new local Minimum Wage rate and market wages  
Recommended Action: Adopt Resolution No. 16-124 increasing hourly rates for part-time employees, splitting a classification into three classifications, and eliminating two classifications
15. Subject: Declare weeds a nuisance and set hearing date of January 17 for objections to proposed removal  
Recommended Action: Adopt Resolution No. 16-125 declaring weeds a nuisance and setting a hearing date of January 17 for objections to proposed removal
16. Subject: Approval of the destruction of records from the Recreation & Community Services (Quinlan Community Center) Department  
Recommended Action: Adopt Resolution No. 16-126 approving the destruction of records from the Recreation & Community Services (Quinlan Community Center) Department

17. Subject: Open Space Area Agreement between the City and the Cupertino Union School District

Recommended Action: Approve a new fifteen and one half (15.5) year Open Space Area Agreement, with an option to mutually extend an additional five (5) years, between the City of Cupertino and the Cupertino Union School District; and authorize the City Manager to negotiate and execute all necessary documents to carry out the agreement

Staff answered questions from Council.

Steven Scharf spoke on this item.

Paul moved and Vaidhyathan seconded to approve a new fifteen and one half (15.5) year Open Space Area Agreement, with an option to mutually extend an additional five (5) years, between the City of Cupertino and the Cupertino Union School District; and authorize the City Manager to negotiate and execute all necessary documents to carry out the agreement. The motion carried unanimously with Wong absent.

18. Subject: Accept resignation of Bicycle Pedestrian Commissioner Gary Jones and direct staff to fill the unscheduled vacancy with annual recruitment in January

Recommended Action: Accept resignation of Bicycle Pedestrian Commissioner Gary Jones and direct staff to fill the unscheduled vacancy with annual recruitment in January

19. Subject: Application for Alcohol Beverage License for OH Cupertino, Inc (dba Bull), 10493 S. De Anza Boulevard

Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for OH Cupertino, Inc (dba Bull), 10493 S. De Anza Boulevard

20. Subject: 2017 Pavement Maintenance Project, Project No. 2017-104 contract award

Recommended Action: Authorize the City Manager to award a contract to O'Grady Paving Company, in the amount of \$3,352,709 and approve a construction contingency of \$335,000, for a total of \$3,687,709

## SECOND READING OF ORDINANCES

21. Subject: Amendments to Cupertino Municipal Code Title 16, Buildings and Construction, for the purposes of adopting, amending and implementing the 2016

California Building Standards Code and Fire Code and making local exceptions (effective January 1, 2017).

Recommended Action: 1) Find that the proposed actions are exempt from CEQA; 2) Conduct the second reading and enact Ordinance No. 16-2155: an “Ordinance of the City Council of the City of Cupertino Amending Chapters 16.02, 16.04, 16.06, 16.16, 16.24, 16.40, 16.54, 16.58, and 16.80 and repealing Chapter 16.42 of Title 16 of the Cupertino Municipal Code adopting the 2016 California Building, Residential, Electrical, Mechanical, Plumbing, Energy, Historical, Fire, Existing Building Code, Green Building Standards Codes with Certain Exceptions, Modifications, and Additions”

City Clerk Grace Schmidt read the title of the ordinance.

Sinks moved and Paul seconded to read Ordinance No. 16-2155 by title only and that the City Clerk’s reading would constitute the second reading thereof. Ayes: Chang, Vaidhyathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

Sinks moved and Vaidhyathan seconded to enact Ordinance No. 16-2155. Ayes: Chang, Vaidhyathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

## PUBLIC HEARINGS

22. Subject: Amendments to the Cupertino Municipal Code regarding the regulation, location, and the keeping of bees in the City and to make other conforming changes for clarification and internal consistency; (Application No. MCA-2016-03; Applicant: City of Cupertino; Location: Citywide). *Continued from the October 4, 2016 meeting*  
Recommended Action: 1) Find that the proposed actions are exempt from CEQA; and 2) Conduct the first reading of Ordinance No. 16-2158 “An ordinance of the City Council of the City of Cupertino to amend Chapter 8.07, Beekeeping, and Table 19.20.020 of Chapter 19.20, Permitted, Conditional, and Excluded Uses in Agricultural and Residential Zones, regarding the regulation, location, and the keeping of bees in the City and to make other conforming changes in Table 19.20.020 for clarification and internal consistency”

Written communications for this item included a staff PowerPoint presentation.

Assistant Planner Ellen Yau reviewed the staff report via a PowerPoint presentation.

Staff answered questions from Council.

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

Alysa Sakkas and students from Rolling Hills 4-H Club

Mayor Chang closed the public hearing.

City Clerk Grace Schmidt read the title of the ordinance.

Sinks moved and Vaidhyanathan seconded to amend the location to be 8' from side and rear property lines and driveway easements. Chang offered a friendly amendment to restrict the number of hives based on square footage. Vaidhyanathan withdrew her second and Chang seconded the motion.

Mayor Chang reopened the public hearing and following individuals spoke:

Jennifer Griffin

Mayor Chang closed the public hearing.

Sinks modified his motion to amend the location to be 8' from side and rear property lines and driveway easements and go with staff recommendation regarding the number of hives per square footage. Chang withdrew his second and Paul seconded the modified motion.

Sinks moved and Paul seconded to read Ordinance No. 16-2158 by title only and that the City Clerk's reading would constitute the first reading thereof with the amendment to the location to be 8' from side and rear property lines and driveway easements. Ayes: Chang, Vaidhyanathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

23. Subject: Amendments to the Cupertino Municipal Code relating to accessory dwelling units including, but not limited to approval processes, size, location, and parking as required by State Law and for consistency. The amendments will apply citywide. Application No(s): MCA-2016-05; Applicant(s): City of Cupertino; Location: Citywide  
Recommended Action: 1. Find that that proposed actions are exempt from CEQA; and 2. Conduct the first reading of Ordinance No. 16-2159 "An ordinance of the City Council of the City of Cupertino amending Title 19, Zoning, of the Cupertino Municipal Code including but not limited to Chapter 19.08 (Definitions), Chapter 19.20 (Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones),

Chapter 19.24 (Agricultural (A) and Agricultural - Residential (A-1) Zones), Chapter 19.32 (Residential Duplex (R-2) Zones), Chapter 19.52 (Reasonable Accommodation), and Chapter 19.112 (Second Dwelling Units in R-1, RHS, A and A-1 Zones)", in response to recently adopted State legislation regarding accessory dwelling units for compliance with State Law, and for internal consistency

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

Assistant Planner Gian Martire reviewed the staff report via a PowerPoint presentation.

City Clerk Grace Schmidt read the title of the ordinance.

Staff answered questions from Council.

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

Larry Wilson

Jennifer Griffin

Nicole Montojo on behalf of Silicon Valley at Home

Paula Wallis

Mayor Chang closed the public hearing.

Sinks moved and Vaidhyanathan seconded to read Ordinance No. 16-2159 by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Chang, Vaidhyanathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

24. Subject: Extension of the moratorium on non-medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities and marijuana transport and deliveries

Recommended Action: That the City Council: 1. Find that the proposed actions are exempt from CEQA; and 2. Enact Ordinance No. 16-2160: "An Interim Urgency Ordinance of the City Council of the City of Cupertino extending a Temporary Moratorium on non-medical marijuana dispensaries, marijuana cultivation facilities, commercial cannabis activities and marijuana transport and deliveries within the City of Cupertino pending completion of an update to the City's Zoning Code"

Written communications for this item included a staff PowerPoint presentation.

Principal Planner Piu Ghosh reviewed the staff report via a PowerPoint presentation.

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

Jennifer Griffin

Mayor Chang closed the public hearing.

City Clerk Grace Schmidt read the title of the ordinance.

Sinks moved and Vaidhyanathan seconded to read Interim Urgency Ordinance No. 16-2160 by title only and that the City Clerk's reading would constitute the only reading thereof. Ayes: Chang, Vaidhyanathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

Sinks moved and Vaidhyanathan seconded to enact Interim Urgency Ordinance No. 16-2160. Ayes: Chang, Vaidhyanathan, Paul and Sinks. Noes: None. Abstain: None. Absent: Wong.

## ORDINANCES AND ACTION ITEMS

25. Subject: Mitigation Fee Act - Annual & Five-Year Report - Fiscal Year 2015-2016  
Recommended Action: 1. Accept the Five-Year and Annual Review of the City of Cupertino's Development Impact Fees (Government Code Section 66000 et seq.); and 2. Adopt Resolution No. 16-127 approving the Five-Year and Annual Development Impact Fee Reports and Making Required Findings

Director of Public Works Timm Borden reviewed the staff report.

Paul moved and Sinks seconded to 1. Accept the Five-Year and Annual Review of the City of Cupertino's Development Impact Fees (Government Code Section 66000 et seq.); and 2. Adopt Resolution No. 16-127 approving the Five-Year and Annual Development Impact Fee Reports and Making Required Findings. The motion carried unanimously with Wong absent.

## REPORTS BY COUNCIL AND STAFF

26. Subject: Report on Committee assignments and general comments



Recommended Action: Report on Committee assignments and general comments

Council members highlighted the activities of their committees and various community events.

## **ADJOURNMENT**

At 9:50 p.m., Mayor Chang adjourned the meeting.

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Grace Schmidt, City Clerk