



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 2, 2021**

SPECIAL MEETING

At 5:30 p.m. Mayor Darcy Paul called the Special City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

STUDY SESSION

1. Subject: Rancho Rinconada Recreation and Park District City Work Program Item Update and Next Steps.
Recommended Action: Receive an update on the Rancho Rinconada Recreation and Park District City Work Program item and provide guidance for next steps.

Written communications for this item included a staff presentation.

Parks and Recreation Director Joanne Magrini gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported the Rancho Rinconada Recreation and Park District (RRRPD) retaining control without some type of compensation.

Jordan Eldridge, RRRPD Board Member, was concerned about the Parks and Recreation Commission assessment and understanding of certain issues.

Parks and Recreation Commissioner Neesha Tambe (representing self) was concerned about the distribution of taxes, number of residents served, and lack of oversight.

Lisa Warren supported listening to Jordan Eldridge's concerns.

Parks and Recreation Commissioner Carol Stanek (representing self) was concerned about the tax distribution, use of reserve assets, and the number of residents served.

Mayor Paul closed the public comment period.

Chao moved and Willey seconded to adopt Option 3 of the staff recommendation to: Delay consideration of the acquisition,

- a. Allow for engagement in long-term planning for aquatics facilities in the City
- b. Until Rancho Rinconada Recreation and Park District (RRRPD) completes their strategic visioning and outreach and makes a recommendation

The motion carried unanimously.

ADJOURNMENT

REGULAR MEETING

At 6:45 p.m. Mayor Darcy Paul called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

In open session, Mayor Paul reported out on the Special Closed Session Meeting held on February 23, 2021:

1. Pursuant to Government Code Section 54956.9(d)(1), conference with Legal Counsel regarding existing litigation (four cases):
 - a. Huang Family v. City of Cupertino, Santa Clara County Superior Court Case No. 19CV347316.

b. Carla Dearnitt v. City of Cupertino, Santa Clara County Superior Court Case No.: 20CV367431

c. City of Arcata et al. v. Pacific Gas & Electric Co., San Francisco County Superior Court Case No. CGC-20-585483

d. Peter Plotzker v. City of Cupertino, Santa Clara County Superior Court Case No.: 19CV354371

Council discussed with legal counsel these pending cases for which discussion in open session would prejudice the City in the litigation.

No reportable action was taken.

2. Conference with Legal Counsel - Anticipated Litigation. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4) (two potential cases)

Council discussed with legal counsel the potential initiation of litigation for two matters for which discussion in open session would prejudice the City in the potential litigation.

No reportable action was taken.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Proclamation proclaiming March as American Red Cross Month and presentation from the American Red Cross regarding local activities
Recommended Action: Present proclamation proclaiming March as American Red Cross Month and receive presentation from the American Red Cross regarding local activities

Written Communications for this item included a recipient presentation.

American Red Cross Specialty Vehicle Assistant Lead Stuart Chessen received the proclamation.

Mayor Paul presented the proclamation proclaiming March as American Red Cross Month and received presentation from the American Red Cross regarding local activities.

2. Subject: Presentation by American Lung Cancer Screening Initiative (ALCSI) on lung cancer awareness
Recommended Action: Receive presentation by American Lung Cancer Screening Initiative (ALCSI) on lung cancer awareness

Written Communications for this item included a presentation.

American Lung Cancer Screening Initiative (ALCSI) Lead Outreach Coordinator Angela Zhou gave a presentation.

Council received the presentation by American Lung Cancer Screening Initiative (ALCSI) on lung cancer awareness.

3. Subject: Proclamation declaring March as Youth Arts Month on behalf of those who advocate for art education to all elementary, middle and secondary students.
Recommended Action: Present proclamation declaring March as Youth Arts Month on behalf of those who advocate for art education to all elementary, middle and secondary students.

Written Communications for this item included a recipient presentation.

Santa Clara County Office of Education Arts Coordinator Sofia Fojas received the proclamation.

Mayor Paul presented the proclamation declaring March as Youth Arts Month on behalf of those who advocate for art education to all elementary, middle and secondary students.

POSTPONEMENTS

4. Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees. This item was previously continued from January 19 and has been continued to a date uncertain.

Consideration of the City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees was continued to a date uncertain.

ORAL COMMUNICATIONS

Jennifer Griffin supported people receiving COVID-19 vaccinations and was concerned about new regulations for driveways in Portland, Oregon.

Aayush and Riyana Goel, on behalf of Apart But Not Alone, gave a presentation to introduce mindfulness as a coping mechanism during the COVID pandemic. (Distributed written comments).

John Ennals supported adding a future City Council agenda item to endorse national legislation that would put a price on carbon.

Dan Marshall supported Council adding an agenda item to sign a draft endorsement that would put a price on carbon.

Housing Commissioner Connie Cunningham (representing self) supported the Bird Safe and Dark Sky Ordinance and publicly condemning anti-Asian hate crimes. (Distributed written comments).

Peggy Griffin was concerned about the delay in the Bird Safe and Dark Sky Ordinance and the sufficiency of the amendments.

Tanish Savlas, on behalf of The Active Circle, gave a presentation on creating active connected communities during the COVID-19 pandemic. (Distributed written comments).

Lisa Warren supported outreach and discussions with staff to ensure public comments received for the Bird Safe and Dark Sky Ordinance were addressed.

Council recessed from 7:24 p.m. to 7:30 p.m.

REPORTS BY COUNCIL AND STAFF (10 minutes)

5. Subject: City Manager update on emergency response efforts

Recommended Action: Receive City Manager update on emergency response efforts

City Manager Deborah Feng reported on changes in the State's Tier assignments, COVID-19 vaccine information, testing opportunities, and case counts; and homeless encampments; and the Take the Pledge to Keep Cupertino Healthy and Big Bunny 5k events.

Council received the City Manager update on emergency response efforts.

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

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Wei moved and Willey seconded to approve the items on the Consent Calendar except Item No. 7 which was pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

7. Subject: Approve the February 6 City Council minutes
Recommended Action: Approve the February 6 City Council minutes

Paul moved and Willey seconded to direct staff to bring back approval of the February 6 City Council minutes in the March 16, 2021 regular Council meeting with the following changes:

- Delete "Exhibit A" from the draft minutes
- Omit "Exhibit A" (in Item 7, "B") as part of the attachments to the agenda item
- Delete "City Work Plan" section of the draft minutes
- Under "Wrap Up and Next Steps" section of the draft minutes:

[Delete first paragraph and insert into the beginning of this section]:

After a brief stretch break, Ms. Feng began to discuss the City's Work Plan, but Councilmember Moore at that point raised concerns with regard to considering the City Council's Work Plan at a workshop where the Work Plan had not been noticed as an item for discussion. Mayor Paul agreed with the concern regarding notice and asked that the City Manager bring back the item at a duly noticed meeting. The City Manager committed to following up on the items identified by Council in the workshop to be addressed at another meeting. The topics are listed below.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported the proposed amendments and noticing accurately.

Lisa Warren supported the proposed amendments and noticing accurately.

Mayor Paul closed the public comment period.

Moore made a friendly amendment to add, "no members of the public were present at the meeting." (Paul and Willey accepted the friendly amendment).

Chao made a friendly amendment to add, "the meeting was not broadcast on the City website or City Channel." (Paul and Willey accepted the friendly amendment).

Moore made a friendly amendment to add, "identify the author of the minutes." (Paul and Willey accepted the friendly amendment).

Paul's motion as amended by Moore and Chao carried unanimously.

Final motion:

Paul moved and Willey seconded to direct staff to bring back approval of the February 6 City Council minutes in the March 16, 2021 regular Council meeting with the following changes:

- Delete "Exhibit A" from the draft minutes
- Omit "Exhibit A" (in Item 7, "B") as part of the attachments to the agenda item
- Delete "City Work Plan" section of the draft minutes
- Under "Wrap Up and Next Steps" section of the draft minutes:

[Delete first paragraph and insert into the beginning of this section]:

After a brief stretch break, Ms. Feng began to discuss the City's Work Plan, but Councilmember Moore at that point raised concerns with regard to considering the City Council's Work Plan at a workshop where the Work Plan had not been noticed as an item for discussion. At this point in the meeting, no members of the public were present. The meeting was not broadcast on the City website or City Channel. Mayor Paul agreed with the concern regarding notice and asked that the City Manager bring back the item at a duly noticed meeting. The City Manager committed to following up on the items identified by Council in the workshop to be addressed at another meeting. The topics are listed below.

- Identify author of the minutes

The motion carried unanimously.

8. Subject: Approve the February 16 City Council minutes
Recommended Action: Approve the February 16 City Council minutes

STUDY SESSION

9. Subject: Review Council goals, City Work Program updates, and proposed draft FY 2021-2022 City Work Program.

Recommended Action: Review Council goals, City Work Program updates, and proposed draft FY 2021-2022 City Work Program and provide any input.

Written communications for this item included a staff presentation and an email to Council.

City Manager Deborah Feng gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported holding a longer special goal setting meeting.

Bicycle Pedestrian Commissioner Ilango Ganga (representing self) supported the Vision Zero program and a longer session to explain individual work program items.

Peggy Griffin supported focusing on setting revised goals according to new priorities and allocating adequate time to review the items. (Submitted written comments).

Housing Commissioner Connie Cunningham (representing self) supported locations for affordable housing, Extremely-Low Income (ELI) for disadvantaged people, and Climate Change 2.0.

Lisa Warren supported holding a longer recorded meeting on the work program and potentially re-prioritizing items.

Mayor Paul closed the public comment period.

Council reviewed Council goals, City Work Program updates, and proposed draft FY 2021-2022 City Work Program and directed staff to schedule a special goal-setting session in March.

SECOND READING OF ORDINANCES

10. Subject: Consider and act on Ordinance No. 21-2223: "An Ordinance of the City Council of the City of Cupertino Adding Title 17 and Chapter 17.08 to the Cupertino Municipal Code, Replacing Level of Service (LOS) with Vehicle Miles Traveled (VMT) For Use in Transportation Analysis Pursuant to the California Environmental Quality Act (CEQA)"Transition from Level of Service (LOS) to Vehicle Miles Traveled (VMT) for determination of transportation impacts under the California Environmental Quality Act (CEQA), as required by Senate Bill (SB) 743," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act
- Recommended Action: Conduct the second reading and enact Ordinance No. 21-2223 "An Ordinance of the City Council of the City of Cupertino Adding Title 17 and Chapter 17.08 to the Cupertino Municipal Code, Replacing Level of Service (LOS) with Vehicle Miles Traveled (VMT) For Use in Transportation Analysis Pursuant to the California Environmental Quality Act (CEQA)"Transition from Level of Service (LOS) to Vehicle Miles Traveled (VMT) for determination of transportation impacts under the California Environmental Quality Act (CEQA), as required by Senate Bill (SB) 743," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2223 "An Ordinance of the City Council of the City of Cupertino Adding Title 17 and Chapter 17.08 to the Cupertino Municipal Code, Replacing Level of Service (LOS) with Vehicle Miles Traveled (VMT) For Use in Transportation Analysis Pursuant to the California Environmental Quality Act (CEQA)"Transition from Level of Service (LOS) to Vehicle Miles Traveled (VMT) for determination of transportation impacts under the California Environmental Quality Act (CEQA), as required by Senate Bill (SB) 743,"

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin supported keeping Level of Service (LOS) as a tool for transparency.

Mayor Paul closed the public comment period.

Wei moved and Willey seconded to conduct the second reading of Ordinance No. 21-2223 by title only and that the City Clerk's reading would constitute the second reading thereof; and to enact Ordinance No. 20-2223. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARINGS - None

ORDINANCES AND ACTION ITEMS

11. Subject: Accept the Mid-Year Financial Report for Fiscal Year 2020-21; consider approving a Budget Modification increasing appropriations by \$32,626,692 and revenues by \$34,509,156.

Recommended Action: 1. Accept the City Manager's Mid-Year Financial Report for FY 2020-21.

2. Adopt Resolution No. 21-017 approving Budget Modification #2021-122 increasing appropriations by \$32,626,692 and revenues by \$34,509,156.

Written communications for this item included a staff presentation.

Director of Administrative Services Kristina Alfaro and Finance Manager Zach Korach gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public comment period and the following people spoke.

Jennifer Griffin asked about new online sales tax collections and recovery in retail brick and mortar revenue and transiency occupancy tax (TOT).

Mayor Paul closed the public comment period.

Moore moved and Wei seconded to:

1. Accept the City Manager's Mid-Year Financial Report for FY 2020-21; and
2. Adopt Resolution No. 21-017 approving Budget Modification #2021-122 increasing appropriations by \$32,626,692 and revenues by \$34,509,156.

Paul made a friendly amendment to add "as amended" to the motion. (Wei and Moore accepted the friendly amendment).

Final motion:

Moore moved and Wei seconded to:

1. Accept the City Manager's Mid-Year Financial Report for FY 2020-21; and
2. Adopt Resolution No. 21-017 as amended approving Budget Modification #2021-122 increasing appropriations by \$32,626,692 and revenues by \$34,509,156.

Amendments to the Draft Resolution:

Appropriation- Amendment by Fund	Appropriation Amendment	Revenue Amendment	Fund Balance (Use of)
General Fund	\$43,758,334	\$32,048,517	(\$11,709,817)
Capital Projects Funds	\$1,058,157	\$20,705,438	(\$19,647,281)
Total Appropriation- Amendment All Funds	\$44,816,491	\$52,753,955	\$7,937,464

Appropriation Amendment by Fund	Appropriation Amendment	Revenue Amendment	Fund Balance (Use of)
General Fund	\$5,076,800	\$3,590,452	(\$1,486,348)
Debt Service Fund	\$27,549,892	\$25,918,704	(\$1,631,188)
Capital Projects Funds	___ \$-	\$5,000,000	\$5,000,000
Total Appropriation Amendment All Funds	\$32,626,692	\$34,509,156	\$1,882,464

Moore's motion as amended by Paul carried unanimously.

Council recessed from 10:28 p.m. to 10:33 p.m.

12. Subject: Consideration of Municipal Code Amendments to the Cupertino Municipal Code, Chapter 10.90, expanding existing policies to reduce exposure to secondhand smoke, including in multi-unit housing, entryways, public events, service areas, and outdoor worksites.

Recommended Action: Conduct the first reading of Ordinance No. 21-2224: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Written communications for this item included a staff presentation.

Public Health Policy & Law Consultant Leslie Zellers gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public comment period and the following people spoke.

Vanessa Marvin supported adoption of the Ordinance to prohibit smoking in multi-unit housing and certain outdoor areas.

Jennifer Griffin supported also regulating Accessory Dwelling Units (ADU's) and Junior Accessory Dwelling Units (JADU's).

Thao Vu, on behalf of Breathe California, supported adoption of the Ordinance.

Peggy Griffin supported regulation of smoking on sidewalks and was concerned about cigarette butts and litter. (Submitted written comments).

Housing Commissioner Tessa Parish (representing self) supported adoption of the Ordinance.

Jen Grand-Lejano, on behalf of the American Cancer Society Cancer Action Network, supported adoption of the Ordinance and regulations for owner-occupied units.

Carol Baker, on behalf of the Tobacco Coalition of Santa Clara County (SCC), supported adoption of the Ordinance.

Mayor Paul closed the public comment period.

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2224 as amended: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Moore moved and Wei seconded to conduct the first reading of Ordinance No. 21-2224 as amended by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

Amendments to Draft Ordinance, Page 2 (in bold):

I. "Multi-unit Residence" means property containing two or more attached units, including, but not limited to, apartment buildings, condominiums, duplexes and triplexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit Residences do not include the following:

6. a detached single-family home with a ~~an attached or~~ detached accessory dwelling unit or second unit.

Council also directed staff to return after researching how other cities address setbacks of designated smoking areas from neighboring properties and to have a draft ordinance amendment to include detached Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmembers added the following future agenda items:

- Adopt a resolution of support for the Asian American Pacific Islander (AAPI) community and condemning racially motivated violence and hate crimes (Wei/Paul)
- Discuss adopting a resolution in support of a carbon fee to address climate change (Wei/Willey)

ADJOURNMENT

At 11:57 p.m., Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk