



AGENDA OF THE CUPERTINO CITY COUNCIL

Tuesday, December 6, 2022

Televised Regular City Council Meeting (6:45)

CITY COUNCIL

DARCY PAUL, MAYOR

LIANG CHAO, VICE MAYOR

KITTY MOORE, COUNCILMEMBER

HUNG WEI, COUNCILMEMBER

JON ROBERT WILLEY, COUNCILMEMBER

IN-PERSON AND TELECONFERENCE MEETING

For more information:

(408) 777-3200 | www.cupertino.org

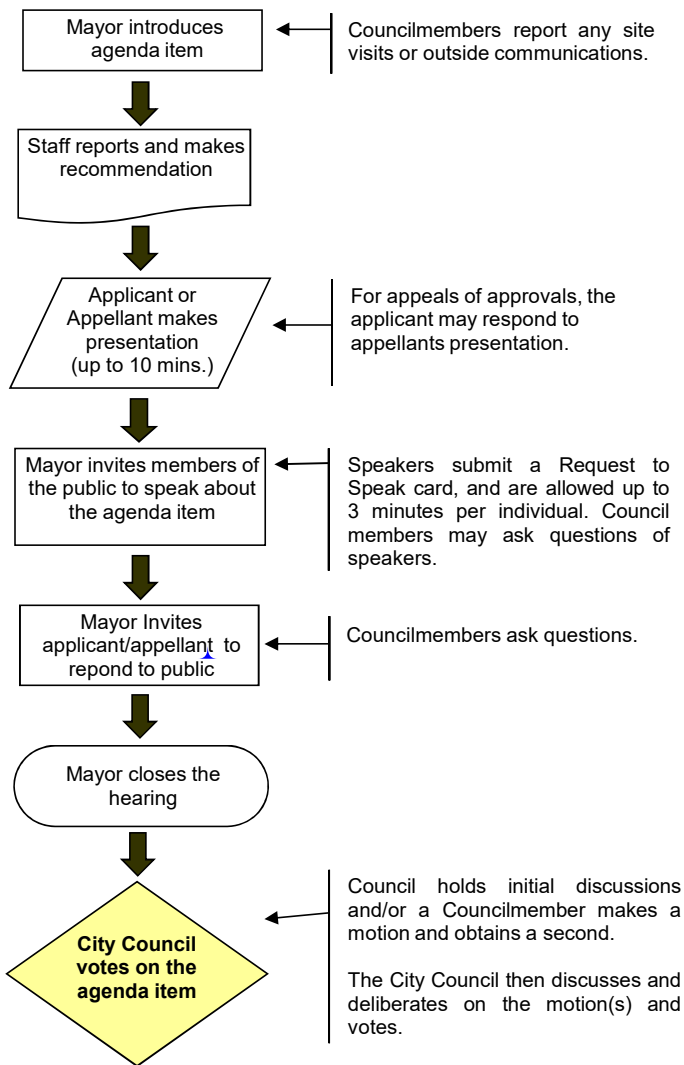
CONDUCT OF BUSINESS

The Mayor is the presiding officer of the City Council. Any member of the public may speak on any item on the agenda for up to three minutes. All statements and questions must be addressed to the Mayor.

City Council hearings serve as a venue for the discussion of sometimes divergent points of view. Please respect the opinions of others and refrain from cheering or clapping. That may delay the meeting or intimidate other persons wishing to express alternate views. Actions that disrupt the meeting will result in a warning, followed by removal if disruption continues.

The proceedings of the meeting are recorded, therefore members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.

FLOWCHART FOR HEARING ITEMS:



PUBLIC HEARINGS

The City Council is required by law to hold public hearings on certain matters prior to making its decision. Notice to interested parties is given by legal advertisement in the local newspaper of general circulation at least 10 calendar days preceding the hearing date. Applications requiring public hearings include change of zoning, variances, use permits, and tentative maps.

COUNCIL MEETINGS

The City Council regularly meets the first and third Tuesdays of each month. These meetings are held in the Council Chamber of the Cupertino Community Hall, 10350 Torre Avenue, at 6:45 p.m. Closed sessions, when needed, are normally held at 6:00 p.m. Closed sessions cover items such as personnel, litigation, or the sale, purchase, or lease of property. The law requires certain actions taken in closed session to be reported in open session.

Urgent business, holidays, or election days may trigger special or adjourned meetings. These meetings will be noticed beforehand.

AGENDAS, MINUTES, AND PACKETS AVAILABLE ON THE WEB

Agendas, minutes, and packets for current and prior City Council and Planning Commission meetings are available at www.cupertino.org, or you can purchase the items on CD.

CITY COUNCIL DECISION IS FINAL

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to [www.http://www.cupertino.org/index.aspx?page=125](http://www.cupertino.org/index.aspx?page=125) for a reconsideration petition form.



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10350 Torre Avenue, Council Chamber and via Teleconference

Tuesday, December 6, 2022

6:45 PM

Televised Regular City Council Meeting (6:45)

IN-PERSON AND TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION

Members of the public wishing to observe the meeting may do so in one of the following ways:

- 1) Attend in person at Cupertino Community Hall, 10350 Torre Avenue.
- 2) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.
- 3) The meeting will also be streamed live on and online at www.Cupertino.org/youtube and www.Cupertino.org/webcast

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

- 1) Appear in person at Cupertino Community Hall. Members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.
- 2) E-mail comments by 4:30 p.m. on Tuesday, December 6 to the Council at citycouncil@cupertino.org. These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.
- 3) E-mail comments during the times for public comment during the meeting to the City Clerk at cityclerk@cupertino.org. The City Clerk will read the emails into the record, and display any attachments on the screen, for up to three minutes (subject to the Mayor's discretion to shorten time for public comments). Members of the public that wish to share a document must email cityclerk@cupertino.org prior to speaking.

Members of the public may provide oral public comments during the meeting as follows:

Oral public comments will be accepted during the meeting. Comments may be made during “oral communications” for matters not on the agenda, and during the public comment period for each agenda item.

Teleconferencing Instructions

To address the City Council, click on the link below to register in advance and access the meeting:

Online

Register in advance for this webinar:

https://cityofcupertino.zoom.us/webinar/register/WN_7WdQzUK5QpGk9hvaGEtulQ

Phone

Dial: 669-900-6833 and enter Webinar ID: 948 2036 6656 (Type *9 to raise hand to speak, *6 to unmute yourself). Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 948 2036 6656

SIP: 94820366656@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter “Cupertino Resident” or similar designation.
3. When the Mayor calls for the item on which you wish to speak, click on “raise hand,” or,

if you are calling in, press *9. Speakers will be notified shortly before they are called to speak.

4. When called, please limit your remarks to the time allotted and the specific agenda topic.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference City Council meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the Council meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

PLEDGE OF ALLEGIANCE

ROLL CALL

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Consider a certificate of appreciation to Captain Rich Urena for his years of service to the Cupertino community as West Valley Patrol Captain
Recommended Action: Present certificate of appreciation to Captain Rich Urena for his years of service to the Cupertino community as West Valley Patrol Captain
[A - Certificate of Appreciation](#)
2. Subject: Consider certificates of appreciation recognizing Rudy Lomas and Kane Wolfe for their years of service to the City of Cupertino upon their retirement
Recommended Action: Present certificates of appreciation recognizing Rudy Lomas and Kane Wolfe for their years of service to the City of Cupertino upon their retirement
[A - Certificate of Appreciation](#)
[B - Certificate of Appreciation](#)

RECESS (15 min)

POSTPONEMENTS AND ORDERS OF THE DAY

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the Council on any matter within the jurisdiction of the Council and not on the agenda. The total time for Oral Communications will ordinarily be limited to one hour. Individual speakers are limited to three (3) minutes. As necessary, the Chair may further limit the time allowed to individual speakers, or reschedule remaining comments to the end of the meeting on a first come first heard basis, with priority given to students. In most cases, State law will prohibit the Council from discussing or making any decisions with respect to a matter

not listed on the agenda. A councilmember may, however, briefly respond to statements made or questions posed by speakers. A councilmember may also ask a question for clarification, provide a reference for factual information, request staff to report back concerning a matter, or request that an item be added to a future City Council agenda in response to public comment.

REPORTS BY COUNCIL AND STAFF

3. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements
4. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments
5. Subject: Report on Subcommittee assignments
Recommended Action: Report on Subcommittee assignments
6. Subject: City Manager update
Recommended Action: Receive City Manager update on City business
7. Subject: Department Update - Community Development
Recommended Action: Receive update regarding the Community Development Department

CONSENT CALENDAR (Items 8-12)

Unless there are separate discussions and/or actions requested by council, staff or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously.

8. Subject: Consider approval of the November 15 City Council minutes
Recommended Action: Approve the November 15 City Council minutes
[A - Draft Minutes](#)
9. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period December 6, 2022 through January 5, 2023 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 22-142 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the December 6, 2022 through January 5, 2023 pursuant to the Brown Act, as amended by AB 361

[Staff Report](#)

[A - Draft Resolution](#)

[B – Adopted Resolution No. 22-133](#)

[C – Health Officer Recommendation Regarding Public Governmental Meetings](#)

10. Subject: Consider the OPEB and Pension Trust Investment Policies
Recommended Action: Adopt Resolution No. 22-143 accepting the OPEB Policy and adopt Resolution No. 22-144 accepting the Pension Trust Investment Policies
[Staff Report](#)
[A - OPEB Trust Investment Policy](#)
[B - OPEB Policy Resolution](#)
[C - Pension Trust Investment Policy](#)
[D - Pension Investment Policy Resolution](#)
11. Subject: Consider the Mitigation Fee Act - an annual and five-year report for Fiscal Year (FY) 2021-2022
Recommended Action: Adopt Resolution No. 22-145 entitled "A Resolution of the City of Cupertino City Council approving the annual and five -year Development Impact Fee report for FY ending June 30, 2022" to:
1. Make the required findings as identified in the Resolution; and
2. Approve the annual and five-year Development Impact Fee report for the FY ending June 30, 2022, as required by Government Code Section 66000 et seq
[Staff Report](#)
[A - Annual and Five-Year Report](#)
[B - Draft Resolution](#)
12. Subject: Consider authorizing the City Manager to award a construction contract with contingency budget for the Blackberry Farm Pool Improvements Capital Improvement Program (CIP) Project
Recommended Action: 1. Authorize the City Manager to award a construction contract in an amount not to exceed 90% of the appropriated project budget limits to the lowest responsive bidder if there are no unresolved bid protests; and
2. Authorize the Director of Public Works to allow a construction contingency budget of 20% of the construction contract amount to address unforeseen conditions discovered during construction
[Staff Report](#)

SECOND READING OF ORDINANCES - None

STUDY SESSION

13. Subject: Consider directing staff to prepare a City Ordinance to govern the permitting of small cellular facilities within the public right of way

Recommended Action: Consider directing staff to prepare a City Ordinance for Council approval to govern permitting of small cellular facilities within the public right of way and provide input on the list of recommended modifications to the regulations listed in the staff report

Presenter: Chad Mosley, Assistant Director of Public Works

[Staff Report](#)

[A - Draft Ordinance](#)

[B - Draft Wireless Regulations](#)

[C - Guidelines for Encroachment Permit Submittals](#)

[D - Small Cell Design Standards](#)

PUBLIC HEARINGS

14. Subject: Consider approval of a proposed development that will include approximately 41,268 sq. ft. of commercial space and 206 residential condominium units. (Application No(s): DP-2022-001, ASA-2022-002, TR-2022-026, TM-2022-003; Applicant(s): Larry Wang (Tectonic Builders Corp.); Location: 10145 N. De Anza Blvd, 10118 Bandle Dr., APN(s): 326-34-066, 326-34-043.)

Recommended Action: Staff recommends that the City Council:

1. Adopt Resolution No. 22-146 adopting an addendum to a previously adopted Mitigated Negative Declaration and approving the Development Permit (DP-2022-001) (Attachment A);
2. Adopt Resolution No. 22-147 approving the Architectural and Site Approval Permit (ASA-2022-002) (Attachment B);
3. Adopt Resolution No. 22-148 approving the Vesting Tentative Map (TM-2022-003) (Attachment C); and
4. Adopt Resolution No. 22-149 approving the Tree Removal Permit (TR-2022-026) (Attachment D)

Presenter: Gian Martire, Senior Planner

[Staff Report](#)

[A - Draft Resolution for DP-2022-001](#)

[B - Draft Resolution for ASA-2022-002](#)

[C - Draft Resolution for TM-2022-003](#)

[D - Draft Resolution for TR-2022-026](#)

[E - Planning Commission Resolution 6964](#)

[F - Planning Commission Resolution 6965](#)

[G - Planning Commission Resolution 6966](#)

[H - Planning Commission Resolution 6967](#)

[I - Project Description](#)

[J - Letter from Erik Ramakrishnan, Esq. of Berliner Cohen, LLP dated March 23, 2022 and July 18, 2022](#)

[K - Marina Plaza Project Initial Study and Mitigated Negative Declaration Addendum No. 1](#)

[L - Public Outreach Summary, dated October 10, 2022](#)

[M - Project Plans](#)

[N - Public Comment](#)

ORDINANCES AND ACTION ITEMS - None**ORAL COMMUNICATIONS - CONTINUED (As necessary)****COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS****ADJOURNMENT**

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence legislative or administrative action may be required by the City of Cupertino's lobbying ordinance (Cupertino Municipal Code Chapter 2.100) to register and report lobbying activity. Persons whose communications regarding any legislative or administrative are solely limited to appearing at or submitting testimony for any public meeting held by the City are not required to register as lobbyists. For more information about the lobbying ordinance, please contact the City Clerk's Office at 10300 Torre Avenue, Cupertino, CA 94107; telephone (408) 777-3223; email cityclerk@cupertino.org; and website: www.cupertino.org/lobbyist.

The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/cityclerk> for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

Any writings or documents provided to a majority of the Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Council packet archives linked from the agenda/minutes page on the Cupertino web site.

IMPORTANT NOTICE: *Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agenda item. These*

written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.

THE CITY COUNCIL AND STAFF

CITY COUNCIL

Cupertino is a General Law city organized under and subject to statutes of the State of California. It is governed by the five-member City Council with the Mayor as the presiding officer. City Council members are elected at-large to four-year, overlapping terms. Each November a mayor and a vice-mayor are selected by the City Council for a one-year term.

The City Council receives advice and assistance from eleven advisory bodies, which are appointed by the Council. These are the Audit Committee, Bicycle Pedestrian Commission, Fine Arts Commission, Housing Commission, Library Commission, Parks and Recreation Commission, Planning Commission, Public Safety Commission, Sustainability Commission, Teen Commission, and Technology, Information, and Communications Commission.

Council members also serve on a variety of regional bodies, including:

- Association of Bay Area Governments
- League of California Cities
- Santa Clara County (SCC) Cities Association
- SCC Emergency Preparedness Council
- SCC Library District
- SCC Emergency Preparedness Commission
- Santa Clara Valley Water Commission and Water District
- SCC Transportation Authority
- West Valley Mayors and Managers

STAFF

The City Manager and the City Attorney are appointed by the Council. The City Manager is responsible for interpreting and carrying out Council policies and direction, and as the chief administrative officer, the City Manager coordinates the many activities of the city and appoints the professional and technical staff. The City Attorney is the advisor to the City Council as a whole.

TYPES OF COUNCIL ACTIONS

ORDINANCES

Ordinances are the means by which the City enacts its local laws. Unless an urgent situation exists, ordinances will first be presented at a Council meeting as a "first reading." At a subsequent Council meeting, there will be a "second reading and adoption." Ordinances go into effect after a waiting period of thirty days, in most cases, during which time the summary of the ordinance is published in a local newspaper approved for this purpose.

RESOLUTIONS

Resolutions and minute orders are the means by which the City Council formally adopts policies or approves specific actions. These go into effect when adopted.

APPEALS

Any interested person, including a Council member, may appeal a Planning Commission or Director of Community Development decision to the City Council. An appeal must be submitted in writing to the City Clerk within 14 calendar days of the mailing of the notice of the decision.

RECONSIDERATION

Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to [www.http://www.cupertino.org/index.aspx?page=125](http://www.cupertino.org/index.aspx?page=125) for a reconsideration petition form.

COMMUNICATING WITH COUNCIL

All Council members: citycouncil@cupertino.org

Darcy Paul	DPaul@cupertino.org	(408) 777-3195
Liang Chao	LiangChao@cupertino.org	(408) 777-3192
Kitty Moore	Kmoore@cupertino.org	(408) 777-1398
Hung Wei	HWei@cupertino.org	(408) 777-3139
Jon Robert Willey	JWilley@cupertino.org	(408) 777-3193
Executive Assistant	Debran@cupertino.org	(408) 777-3212
City Hall	www.cupertino.org	(408) 777-CITY

Please note: the City Council discourages submission of written materials on the day of the meeting as this does not provide enough time to give the materials fair evaluation. If you must provide written materials on the day of the meeting, as least one copy must be given to the City Clerk for the permanent record, and ten copies are preferred.

NEWS AND NOTICES FROM CITY HALL

EMAIL

Sign up for e-notification of agendas, elections, and other news on the city website at www.cupertino.org/notify

TELEVISION

The City Channel broadcasts City Council and Planning Commission meetings, as well as agenda previews, public service announcements, and other programs of community interest, on Channel 26 in Cupertino. The meetings are shown at these times:

Tuesday (live)	6:45 p.m.	Friday (replay)	10:00 a.m.
Thursday (replay)	7:00 p.m.	Saturday (replay)	9:00 a.m.

INTERNET

City Council and Planning Commission videos are available on demand at www.cupertino.org. Select "I Want To, View City Council meetings".

News and community information can also be found at:

<https://www.facebook.com/cityofcupertino/>

<https://twitter.com/CityofCupertino>

<https://www.instagram.com/cityofcupertino>

AUDIO

Tune into Radio Cupertino, 1670 AM, for meeting announcements, public service messages, and emergency announcements.

USEFUL TELEPHONE NUMBERS

City of Cupertino (City Hall)	General Information and Comments	(408) 777-CITY
Fire (Emergency)	Santa Clara County Fire Dept. dispatch	911
Fire (Non-Emergency)	Santa Clara County Fire Dept.	(408) 378-4010
Garbage	Recology South Bay	(408) 725-4020
Gas & Electricity	Pacific Gas & Electric (PG&E)	1-800-743-5000
Recreation & Community Services	Quinlan Community Center	(408) 777-3120
Police (Emergency)	Santa Clara County Sheriff dispatch	911
Police (Non-Emergency)	Santa Clara County Sheriff	(408) 868-6600
Public Health	Santa Clara County Public Health	(408) 732-3720
Sanitary Sewers	Cupertino Sanitary District	(408) 253-7071
Water	San Jose Water	(408) 279-7900
	California Water	(650) 917-0152