



CITY OF CUPERTINO

AGENDA

CITY COUNCIL

This will be a teleconference meeting without a physical location.

Tuesday, April 5, 2022

6:45 PM

Televised Regular Meeting

TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION TO HELP STOP THE SPREAD OF COVID-19

In accordance with Government Code 54953(e), this will be a teleconference meeting without a physical location to help stop the spread of COVID-19.

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

- 1) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.**
- 2) 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) E-mail comments by 4:30 p.m. on Tuesday, April 5 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.**
- 2) 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 3 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.**

3) Teleconferencing Instructions

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

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

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_LrrKmwyjQxiPWRRVAIWSmw

Phone

Dial: 669-900-6833 and enter Webinar ID: 964 9080 0078 (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: 964 9080 0078

SIP: 96490800078@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: Proclamation recognizing the Uenaka family and their business Cupertino Florist for more than 50 years of service to our local community
Recommended Action: Present proclamation recognizing the Uenaka family and their business Cupertino Florist for more than 50 years of service to our local community
[A - Proclamation](#)
2. Subject: Proclamation declaring April as Fair Housing Month commemorating the 54th anniversary of the enactment of the Federal Fair Housing Act of 1968 (Title VIII of the Civil Rights Act) which guarantees equal housing opportunities for all
Recommended Action: Present proclamation declaring April as Fair Housing Month commemorating the 54th anniversary of the enactment of the Federal Fair Housing Act of 1968 (Title VIII of the Civil Rights Act) which guarantees equal housing opportunities for all
[A - Proclamation](#)

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 (10 minutes)

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: City Manager update
Recommended Action: Receive City Manager update on City business

CONSENT CALENDAR (Items 6-11)

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.

6. Subject: Approve the March 8 (Continued from March 1) City Council minutes
Recommended Action: Approve the March 8 (Continued from March 1) City Council minutes
[A - Draft Minutes](#)
7. Subject: Approve the March 8 (Council Goals and Work Program) City Council minutes
Recommended Action: Approve the March 8 (Council Goals and Work Program) City Council minutes
[A - Draft Minutes](#)
8. Subject: Approve the March 15 City Council minutes
Recommended Action: Approve the March 15 City Council minutes
[A - Draft Minutes](#)
9. Subject: Approve the March 24 City Council minutes
Recommended Action: Approve the March 24 City Council minutes
[A - Draft Minutes](#)
10. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 5, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361

Recommended Action: Adopt Resolution No. 22-035 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 5, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361

[Staff Report](#)

[A - Draft Resolution](#)

[B – Adopted Resolution No. 22-033](#)

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

11. Subject: Consider Approval of Letter to the Santa Clara County Local Agency Formation Commission in Support of Annexation of Lawrence Expressway and Mitty Avenue Properties

Recommended Action: Approve sending a letter to the Santa Clara County Local Agency Formation Commission in support of annexation of Lawrence Expressway and Mitty Avenue properties

[Staff Report](#)

[A - CC Resolution No. 21-072 Supporting the Annexation of Lawrence-Mitty Properties](#)

[B - Letter to LAFCO Re Lawrence Mitty Annexation](#)

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS - None

ORDINANCES AND ACTION ITEMS

12. Subject: Consider Council Goals and Prioritize Potential Fiscal Year 2022-2023 City Work Program Items

Recommended Action: Adopt Council Goals and Prioritize Potential Fiscal Year 2022-2023 City Work Program Items

Presenter: Katy Nomura, Deputy City Manager

[Staff Report](#)

[A - Proposed Items from March 8 Council Meeting with Council Additions and Rankings](#)

[B - Proposed Items with Resource Considerations in Priority Order \(To be posted under separate cover\)](#)

13. Subject: Consideration of corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission

Recommended Action: Consider making corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission; approve option(s) or provide direction to staff as to other measures to ensure compliance with Cupertino Municipal Code Chapter 2.95

Presenter: Kirsten Squarcia, City Clerk

[Staff Report](#)

[A - Ordinance No. 18-2181 Establishing the Teen Commission](#)

[B - Resolution No. 18-019 Governing Teen Commission Recruitment](#)

[C - May 25, 2011 City Council minutes](#)

14. Subject: Consideration of Municipal Code amendments to the Cupertino Municipal Code related to regulation of single-use plastic foodware and single-use carryout bags
Recommended Action: Conduct the first reading of Ordinance No. 22-2239: "An Ordinance of the City Council of the City of Cupertino amending City Code to change the name of section 9.15, adopt new sections 9.15.090 and 9.15.125, and amend sections 9.15.100, 9.15.110, 9.15.120, 9.15.130, 9.17.130 and 9.17.140 to regulate the use of single-use food service ware by food providers, regulate sale of single-use food service ware and expanded polystyrene foam coolers, and regulate single-use carryout bags" (Attachment A), which includes a finding that adoption of the Ordinance is exempt from the California Environmental Quality Act

Presenter: Ursula Syrova, Environmental Programs Manager

[Staff Report](#)

[A - Draft Ordinance - Blackline Version](#)

[B - Draft Ordinance - Clean Version](#)

[C- Single-Use Plastics Ordinance Elements and Phasing Summary](#)

15. Subject: Consideration of Municipal Code amendments to the Cupertino Municipal Code, Title 2 to add Chapter 2.96 and codify the Economic Development Committee
Recommended Action: 1. Conduct the first reading of Ordinance No. 22-2240; "An Ordinance of the City Council of the City of Cupertino Adding Chapter 2.96 of Title 2 (Administration and Personnel) to Codify the Economic Development Committee"

2. Find that the proposed actions are exempt from CEQA

Presenter: Tina Kapoor, Economic Development Manager

[Staff Report](#)

[A - Draft Ordinance](#)

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

ADJOURNMENT

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

City Council

Agenda

April 5, 2022

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.

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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.



CITY OF CUPERTINO

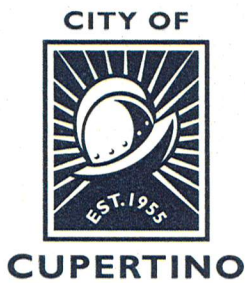
Agenda Item

22-10641

Agenda Date: 4/5/2022
Agenda #: 1.

Subject: Proclamation recognizing the Uenaka family and their business Cupertino Florist for more than 50 years of service to our local community

Present proclamation recognizing the Uenaka family and their business Cupertino Florist for more than 50 years of service to our local community



Proclamation

WHEREAS, The City of Cupertino wishes to recognize Cupertino Florist, a local business with roots going back over 50 years that has served countless customers with their beautiful floral designs and warm customer service;

WHEREAS, As Cupertino Florist prepares to close the doors of its decades-long business, we remember and recognize the founder, Itsuo Uenaka, more affectionately remembered as Its, who passed away last year;

WHEREAS, Its served with the U.S. Army and settled his family in Cupertino before quickly becoming a very active and well-regarded member of the community, including serving as Cupertino Rotary Club president in 1957;

WHEREAS, Today, his son Bobby owns and operates the business, continuing the high-quality service that Cupertino Florist has provided;

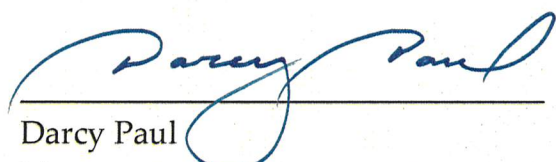
WHEREAS, The City of Cupertino wishes to recognize the Uenaka family and their business for the many years of service and efforts they have dedicated to our local community.

THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby Proclaim our recognition of

Cupertino Florist

and the Uenaka family, and we appreciate the positive impact left by the Uenaka family and their local small business.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, April Fifth, Two Thousand and Twenty Two.


Darcy Paul
Mayor



CITY OF CUPERTINO

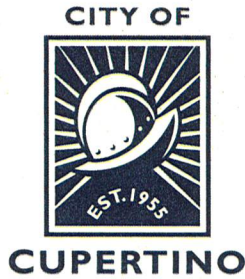
Agenda Item

22-10554

Agenda Date: 4/5/2022
Agenda #: 2.

Subject: Proclamation declaring April as Fair Housing Month commemorating the 54th anniversary of the enactment of the Federal Fair Housing Act of 1968 (Title VIII of the Civil Rights Act) which guarantees equal housing opportunities for all

Present proclamation declaring April as Fair Housing Month commemorating the 54th anniversary of the enactment of the Federal Fair Housing Act of 1968 (Title VIII of the Civil Rights Act) which guarantees equal housing opportunities for all



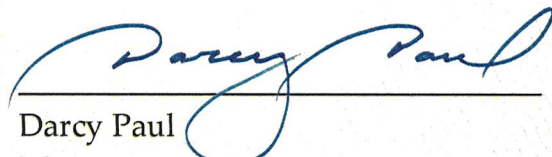
Proclamation

- WHEREAS, Adequate housing is a basic need and right of everyone, and the City of Cupertino wishes to heighten public awareness of fair housing and fair treatment of communities throughout the region;
- WHEREAS, This year marks the 54th anniversary of the enactment of the Federal Fair Housing Act of 1968 (Title VIII of the Civil Rights Act), which states that discrimination in the sale and rental of housing is illegal when based on race, color, religion, sex, national origin, disability, or familial status;
- WHEREAS, California law protects against the aforementioned categories of discrimination, as well as discrimination based upon age, marital status, gender identity, or any other arbitrary factor;
- WHEREAS, Project Sentinel is a nonprofit organization the City is proud to support by providing grant funding so they can continue promoting fairness and equality of housing for everyone and advocating for peaceful resolution of disputes;
- WHEREAS, The City of Cupertino joins Project Sentinel in supporting fair housing efforts, and wishes to focus public attention on April as Fair Housing Month.
- THEREFORE, I, Mayor Darcy Paul, and the Cupertino City Council do hereby Proclaim the month of April as

Fair Housing Month

and encourage every person and community organization to celebrate the value of harmonious and diverse communities, and to support the common goal of fair housing opportunity for everyone.

IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the City of Cupertino to be affixed this Tuesday, April Fifth, Two Thousand and Twenty Two.


Darcy Paul
Mayor



CITY OF CUPERTINO

Agenda Item

21-10217

Agenda Date: 4/5/2022
Agenda #: 3.

Subject: Brief reports on councilmember activities and brief announcements

Receive brief reports on councilmember activities and brief announcements



CITY OF CUPERTINO

Agenda Item

21-10228

Agenda Date: 4/5/2022
Agenda #: 4.

Subject: Report on Committee assignments

Report on Committee assignments



CITY OF CUPERTINO

Agenda Item

21-10239

Agenda Date: 4/5/2022
Agenda #: 5.

Subject: City Manager update

Receive City Manager update on City business



CITY OF CUPERTINO

Agenda Item

22-10556

Agenda Date: 4/5/2022
Agenda #: 6.

Subject: Approve the March 8 (Continued from March 1) City Council minutes

Approve the March 8 (Continued from March 1) City Council minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 8, 2022

SPECIAL MEETING - CONTINUED FROM MARCH 1, 2022

At 6:00 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.

ORDINANCES AND ACTION ITEMS - CONTINUED

Council continued the hearing, consideration, deliberation, and decisions for Items 11 and 12 on the Tuesday, March 1, 2022 City Council Regular Meeting agenda.

1. Subject: (Item 11 on March 1, 2022 Agenda) Consider accepting the Mid-Year Financial Report for Fiscal Year 2021-22; consider adopting Resolution No. 22-032 approving Budget Modification #2122-189 increasing appropriations by \$9,457,951 and revenues by \$10,220,000
Recommended Action: 1. Consider Accepting the City Manager's Mid-Year Financial Report for FY 2021-22
2. Consider Adopting Resolution No. 22-032 approving Budget Modification #2122-189 increasing appropriations by \$9,457,951 and revenues by \$10,220,000
3. Consider Approving the Conversion of (One) Limited-Term Project Manager Position to Full-Term Position.
4. Consider Approving Amendments to City's Committed, Unassigned Fund Balance, and Use of One Time Funds Policy which includes the following changes:
 - a. Consider Approving \$2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust
 - b. Consider Increasing the City's General Fund Economic Uncertainty Committed Reserve by \$5,000,000
 - c. Consider Establishing a General Fund Capital Project Committed Reserve in the

amount of \$10,000,000

Presenter: Kristina Alfaro, Administrative Services Director

Written Communications for this item included a staff presentation.

Administrative Services Director Kristina Alfaro and Senior Management Analyst Thomas Leung gave a presentation.

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

Jean Bedord was concerned about an expenditure under the City Manager discretionary fund for a \$2,400 Housing op-ed piece.

Jennifer Griffin supported engagement with local newspapers to discuss issues and provide information about City business.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Willey seconded to:

1. Accept the City Manager's Mid-Year Financial Report for FY 2021-22;
2. Adopt Resolution No. 22-032 approving Budget Modification #2122- 189 increasing appropriations by \$9,457,951 and revenues by \$10,220,000;
3. Approve the Conversion of (One) Limited-Term Project Manager Position to Full-Term Position; and
4. Approve Amendments to City's Committed, Unassigned Fund Balance, and Use of One Time Funds Policy which includes the following changes:
 - a. Approve \$2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust;
 - b. Increase the City's General Fund Economic Uncertainty Committed Reserve by \$5,000,000; and
 - c. Establish a General Fund Capital Project Committed Reserve in the amount of \$10,000,000.

The motion carried with Moore voting no.

2. Subject: (Item 12 on March 1, 2022 Agenda) Progress update of the Housing Element Update, and review, discuss, and approve selection of stakeholders group
Recommended Action: Receive report and provide feedback on the progress, review the stakeholders selection process, and consider approval of the stakeholders group
Presenter: Ben Fu, Community Development Director

Written Communications for this item included a staff presentation, Updated Staff Report, Updated Supplemental Staff Report Memo by EMC, EMC Attachment A- Stakeholder Application Responses, EMC Attachment B- Stakeholder's Group Scoring Sheets, and emails to Council.

Ande Flower, Principal Planner at EMC Planning Group, gave a presentation.

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

Sujatha Venkatraman, on behalf of West Valley Community Services, supported moving forward with the staff recommendation and Option A or B for the stakeholder group.

Jennifer Griffin opposed having a stakeholder group and supported public input for reviewing every site.

Lisa Warren supported Council comments from the March 1 meeting, appointing an advisory committee, and in-person stakeholder group meetings.

Housing Commissioner Tessa Parish (representing self) supported in-person meeting, was undecided on the stakeholders, and was concerned about diverse representation.

Housing Commissioner Govind Tatachari (representing self) supported in-person meetings and public engagement instead of a stakeholders group.

Planning Commissioner Muni Madhhipatla (representing self) supported improving the public engagement process.

Peggy Griffin supported in-person meetings, appointing an advisory committee to guide the consultant, and improving on the outreach process.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved and Willey seconded to:

1. Form the Strategic Advisory Committee - consisting of two Councilmembers and the Planning Commission Chair and Housing Commission Chair
2. Create the Community Engagement Plan - Strategic Advisory Committee
3. Create the Affirmatively Furthering Fair Housing (AFFH) Engagement Plan – including West Valley Community Services (WVCS) biweekly meetings and focus group meetings to include the protected groups in the Department of Housing and

Community Development (HCD) Guidance – consider geographical diversity, ethnic diversity, faith group diversity, age diversity, work experience diversity, housing experience diversity, income diversity, etc.

- All applicants of the proposed stakeholder group will provide input to help come up with the AFFH Engagement Plan; and
- Without prejudice to selected stakeholder group members

Table 1: Classes/Characteristics Protected under Federal and California Law

Federal Protected Classes/Characteristics	California Protected Classes/Characteristics
Race, ethnicity, color, national origin	All federally protected classes
Religion	Gender, gender identity and gender expression
Sex	Sexual orientation
Familial status	Marital status
Disability	Medical conditions
	Military and veteran status
	Age (for people over 40)*
	Genetic information
	Ancestry
	Source of income

*Note: Age is protected against housing discrimination through the Unruh Civil Rights Act (California Civil Code 51 et seq.).

The motion carried unanimously.

Wei made a substitute motion to accept the proposed stakeholder group but to add 10 more people. There was no second to the substitute motion and it was not considered.

Paul moved and Wei seconded to appoint Vice Mayor Chao and Councilmember Moore to serve on the Strategic Advisory Committee. Paul made a friendly amendment that participation of those candidates who were listed and discussed and considered in the evaluative process would be without prejudice going forward. (Wei accepted the friendly amendment). The motion as amended carried unanimously.

ADJOURNMENT

At 8:00 p.m., Mayor Paul adjourned the Special City Council Meeting.

Kirsten Squarcia City Clerk



CITY OF CUPERTINO

Agenda Item

22-10682

Agenda Date: 4/5/2022
Agenda #: 7.

Subject: Approve the March 8 (Council Goals and Work Program) City Council minutes

Approve the March 8 (Council Goals and Work Program) City Council minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 8, 2022

SPECIAL MEETING (COUNCIL GOALS AND WORK PROGRAM)

At 8:01 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.

ORDINANCES AND ACTION ITEMS

1. Subject: Consider Fiscal Year 2022-2023 Council goals and proposed City Work Program items, and select City Work Program items for prioritization
Recommended Action: Adopt Fiscal Year 2022-2023 Council goals and select City Work Program items for prioritization
Presenter: Katy Nomura, Deputy City Manager

Written Communications for this item included a staff presentation, Amended Attachment C - Commission Proposals, Staff Proposals, and Carryovers, and emails to Council.

Deputy City Manager Katy Nomura gave a presentation.

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

Jennifer Griffin supported prioritizing studying the Housing Element and the Department of Housing and Community Development (HCD) requirements.

Peggy Griffin supported evaluating the feasibility of and alternative plans for the current Lawson Middle School Bikeway proposal.

Janet Van Zoeren supported prioritizing the affordable housing projects on Mary Avenue and the County proposed location at the old Outback site.

Liana Crabtree supported prioritizing improving transportation and travel options to and from the library and the Civic Center Plaza area.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Willey moved and Paul seconded for Councilmembers to rank their prioritization of items with 13 fives, 13 threes, and 13 ones for ranking, and send their lists to Katy Nomura by Tuesday 3/15, and staff will return with a consolidated list for Council consideration at a future meeting. Willey made a friendly amendment to reduce the number of fives from 13 to five. (Paul accepted the friendly amendment).

Chao moved and Moore seconded a substitute motion to modify the list to include the Council proposed items to the list in Attachment C and rank prioritization of items with 13 fives, 13 threes, and 13 ones for ranking. Moore made a friendly amendment to limit the lists to a maximum of five new items per Councilmember. (Chao accepted the friendly amendment).

Paul moved and Willey seconded to call the question. The motion failed with Moore and Chao voting no.

Chao made an amendment to the substitute motion to allow Councilmembers to send proposed items to staff by Thursday 3/10, with the Project title and description, and five maximum items per Councilmember. Staff will send the Council proposed item list and Attachment C for the Council to rank (A1 A2...C1 C2) by Tuesday 3/15. Councilmembers will submit the ranking of 13 ones, 13 threes, and 13 fives by Tuesday 3/22. It will tentatively be on the Council agenda on April 5. The agenda packet will be ready by 3/30. (Moore accepted Chao's amendment to the substitute motion). Council did not vote on Chao's amendment to the substitute motion.

Chao made a second amendment to the substitute motion to allow Councilmembers to send proposed items to staff by Thursday 3/10, with Project title and descriptions, and five maximum items per Councilmember. Staff will send the Council proposed item list and Attachment C for the Councilmembers to rank (A1, A2... C1, C2) by Friday 3/11. Councilmembers will submit the ranking of 13 ones, 13 threes, and 13 fives by **Friday 3/18**. It will tentatively be on the Council agenda on April 5. The agenda packet will be ready by 3/30. (Moore accepted Chao's second amendment to the substitute motion).

Council did not vote on Chao's second amendment to the substitute motion.

Chao made a third amendment to the substitute motion to allow Councilmembers to send proposed items to staff by Thursday 3/10 **at noon**, with Project title and descriptions, and five maximum items per Councilmember. **(Staff will include the items verbatim without any edit)**. Staff will send the Council proposed item list and Attachment C for the Councilmembers to rank (A1, A2... C1, C2) by Friday 3/11. Councilmembers will submit the ranking of 13 ones, 13 threes, and 13 fives by Friday 3/18. It will tentatively be on Council agenda on April 5. The agenda packet will be ready by 3/30. (Moore accepted Chao's third amendment to the substitute motion). Chao's third amendment to the substitute motion failed with Wei, Willey, and Paul voting no.

Paul made a friendly amendment to Willey's main motion for the prioritizations to be due by Wednesday 3/16. (Willey accepted the friendly amendment). Willey's main motion carried with Moore and Chao voting no.

Final Action:

Council considered the Fiscal Year 2022-2023 Council goals and City Work Program items for prioritization.

Willey moved and Paul seconded for Councilmembers to rank their prioritization of items with 5 fives, 13 threes, and 13 ones for ranking, and send their lists to Katy Nomura by Wednesday 3/16, and staff will return with a consolidated list for Council consideration at a future meeting. The motion carried with Moore and Chao voting no.

ADJOURNMENT

At 10:58 p.m., Mayor Paul adjourned the Special City Council Meeting.

Kirsten Squarcia City Clerk



CITY OF CUPERTINO

Agenda Item

22-10488

Agenda Date: 4/5/2022
Agenda #: 8.

Subject: Approve the March 15 City Council minutes

Approve the March 15 City Council minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 15, 2022

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: Consider Options for West Coast Farmers' Market Location at a City Park
Recommended Action: Provide recommendation and direction on location of the West Coast Farmers' Market Association to operate a farmer's market at a City park on the westside of Cupertino
Presenter: Rachelle Sander, Assistant Director of Parks and Recreation

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

Assistant Director of Parks and Recreation Rachelle Sander gave a presentation.

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

Rebecca Smith talked about the farmers' market history and supported finding a good location.

Nori opposed the Memorial Park and parking lot on Alves locations for the farmers' market and supported alternative locations.

Peggy Griffin opposed Memorial Park as a location for the farmers' market and supported alternative locations.

Andy DeBaets talked about farmers' market donations and was concerned about the potential impacts of the proposed location change. (Submitted written comments).

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Willey seconded to form a Subcommittee comprised of Vice Mayor Chao and Councilmember Willey to work with West Coast Farmers' Market Association (WCFMA) Director Jerry Lami to reach out to various entities to try to find a location for the WCFMA going forward. The motion carried unanimously.

ADJOURNMENT

At 6:33 p.m., Mayor Paul adjourned the Special City Council Meeting.

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.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Recognize the receipt of the California Society of Municipal Finance Officers (CSMFO) Innovation Award
Recommended Action: Consider recognition of the receipt of the California Society of Municipal Finance Officers (CSMFO) Innovation Award for the City's Resident Tax Calculator and Budget Forecast Tool
Presenter: Thomas Leung, Senior Management Analyst

Written Communications for this item included a staff presentation.

Senior Management Analyst Thomas Leung gave a presentation.

Councilmembers asked questions and made comments.

Council recognized the receipt of the California Society of Municipal Finance Officers (CSMFO) Innovation Award for the City's Resident Tax Calculator and Budget Forecast Tool.

POSTPONEMENTS AND ORDERS OF THE DAY

Moore moved and Paul seconded to move Item 14 to the Consent Calendar and to accept the staff recommendation to continue Item 8 to April 5. The motion carried unanimously.

ORAL COMMUNICATIONS

Caller-in User 2 was concerned about an illegal structure that was torn down in her backyard and opposed the City's permit requirements.

Jenny Griffin opposed proposed bill AB 2097 which restricts parking minimums for new construction across the State, and loss of local control.

San Rao was concerned about traffic enforcement around the schools and requested a study of the types of citations being issued.

Rick Kitson, on behalf of the Cupertino Chamber of Commerce, noted upcoming new business openings and events in Cupertino.

REPORTS BY COUNCIL AND STAFF (10 minutes)

2. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements

Council received brief reports on councilmember activities and brief announcements.

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

Councilmembers highlighted the activities of their various committees.

4. Subject: City Manager update

Recommended Action: Receive City Manager update on emergency response efforts and other City business

Council received the City Manager update on emergency response efforts and other City business.

CONSENT CALENDAR (Items 5-9 and 14)

Moore moved and Wei seconded to approve the items on the Consent Calendar as presented and Item 14 which was added to the Calendar. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the February 23 City Council minutes
Recommended Action: Approve the February 23 City Council minutes
6. Subject: Approve the March 1 City Council minutes
Recommended Action: Approve the March 1 City Council minutes
7. Subject: Approve the March 7 City Council minutes
Recommended Action: Approve the March 7 City Council minutes
8. Subject: Consider setting application deadline and interview dates for three terms expiring on the Teen Commission
Recommended Action: Set application deadline and interview dates for three terms expiring on the Teen Commission and approve:
 - 1.) Application deadline of 4:30 p.m. on Friday, May 13; and
 - 2.) Interview dates at 5:30 p.m. on Tuesday, May 24 and Wednesday, May 25 (as needed)

As noted under Postponements and Orders of the Day, this item was continued to April 5.

9. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period March 15, 2022 through April 14, 2022 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 22-033 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period March 15, 2022 through April 14, 2022 pursuant to the Brown Act, as amended by AB 361
14. Subject: Receive presentation on the City's drone program and consider accepting

City Council

Minutes

March 15, 2022

accounts payable electronic funds transfer 32909 dated October 29, 2021, for the procurement of a Skydio X2E Drone Starter Kit

Recommended Action: Adopt Resolution No. 22-034 accepting Accounts Payable for EFT 32909, dated October 29, 2021

Presenter: Adam Araza, GIS Business Systems Analyst

As noted under Postponements and Orders of the Day, this item was moved to the Consent Calendar.

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS – None

ORDINANCES AND ACTION ITEMS

10. Subject: Progress on FY 2021-2022 Council Work Program item to develop ELI and BMR housing units for Developmentally Disabled individuals on City-owned property along Mary Avenue

Recommended Action: Provide direction to staff on next steps related to potential future development options

Presenter: Gian Martire, Senior Planner

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

Senior Planner Gian Martire gave a presentation.

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

Orrin Mahoney supported the project and provided a project overview. (Submitted written comments).

Jennifer Griffin supported the project and was concerned about surplus land guidelines.

Jan Stokely, on behalf of Housing Choices, supported the project and the inclusive housing model for Cupertino.

Kiran Varshnaya supported the ELI and BMR housing units as proposed at the Mary Avenue location.

Janet Van Zoeren supported the project and housing in the City with preferences for

people with intellectual and developmental disabilities.

Peggy Griffin supported the project, preserving it as public land forever, and with a priority given to Cupertino residents.

Kathy Robinson, on behalf of Charities Housing, supported the project and bringing high quality affordable housing to the City.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved and Wei seconded to direct staff to initiate the Request for Proposal (RFP) for the property, specifically pointing out that Council would like the project to be developed for the intellectually and developmentally disabled population.

Wei made a friendly amendment to add at least 50% ELI. (Chao and Wei accepted the friendly amendment).

Paul made a friendly amendment to modify Chao's motion to make it 100% affordable with a preference for the intellectually and developmentally disabled population, and to provide flexibility to staff members compiling the RFP and RFQ to optimize our chances of having a successful project. (Chao and Wei accepted the friendly amendment).

Final Motion:

Chao moved and Wei seconded to direct staff to initiate the Request for Proposal (RFP) for the property, specifically pointing out that Council would like the project to be developed for 100% affordable with a preference for the intellectually and developmentally disabled population, and to provide flexibility to staff members compiling the RFP and RFQ to optimize our chances of having a successful project. The amended motion carried unanimously.

Council recessed from 8:53 p.m. to 8:59 p.m.

Moore moved and Wei seconded to reorder the agenda to hear Item 15 before Item 11. The motion carried unanimously.

15. Subject: 2021 General Plan Annual Report and Housing Element Annual Progress Report (APR) on forms required by the Department of Housing and Community Development (HCD)
Recommended Action: Receive 2021 General Plan Annual Report and Housing
-

Element Annual Progress Report (APR) on forms required by the Department of Housing and Community Development (HCD)
Presenter: Kerri Heusler, Housing Manager

Written Communications for this item included a staff presentation.

Housing Manager Kerri Heusler gave a presentation.

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

Jennifer Griffin supported City efforts to meet the current Housing Element requirements and was concerned about HCD operations.

Peggy Griffin requested that Housing Element e-notification subscribers be noticed about this type of item.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Moore seconded that Council note this report as received. The amended motion carried unanimously.

11. Subject: Review of Homeless Jobs Program, FY 2021-22 City Work Program item and consider adoption of Resolution No. 22-026 accepting accounts payable for the period ending January 10, 2022

Recommended Action: 1. Receive report; and
2. Adopt Resolution No. 22-026 accepting Accounts Payable for the period ending January 10, 2022

Presenter: Kerri Heusler, Housing Manager

Written Communications for this item included a staff presentation.

Housing Manager Kerri Heusler gave a presentation.

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

Jennifer Griffin supported the Cupertino Homeless Jobs Program.

Housing Commissioner Connie Cunningham (representing self) supported the Program and asked about offering positions to alternate participants.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Chao seconded to adopt Resolution No. 22-026 accepting Accounts Payable for the period ending January 10, 2022. The motion carried unanimously.

12. Subject: Consider issuing a request to the CUSD Board for reconsideration of the future closures of Regnart and Meyerholz Elementary Schools
Recommended Action: Discuss taking a position that the Cupertino Union School District should reconsider its decision to close Regnart and Meyerholz Elementary Schools
Presenter: Jim Throop, City Manager

Written Communications for this item included emails to Council.

City Manager Jim Throop reviewed the staff report.

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

Xin Li supported requesting Cupertino Union School District (CUSD) Board reconsider its decision to close Regnart and Meyerholz Elementary Schools.

Amy Pang supported requesting CUSD Board reconsider its decision.

Helen Yan supported requesting CUSD Board reconsider its decision.

Jennifer Griffin supported requesting CUSD Board reconsider its decision.

Parks and Recreation Commissioner Minna Xu (representing self) supported requesting CUSD Board reconsider its decision.

Stacy Yao, on behalf of the District, opposed the proposed letter regarding the school closures.

CC Zhou supporting sending a letter to the CUSD Board to reconsider its decision.

Jean Bedord opposed inaccuracies in the proposed letter and supported Council actions that fall within its jurisdiction. (Submitted written comments).

Aegean Lee supported requesting CUSD Board reconsider its decision.

Manuela Silveira supported retracting the proposed letter and ceasing all action in this regard.

Tracy K supported requesting CUSD Board reconsider its decision.

Joan Shu supported requesting CUSD Board reconsider its decision.

Betty Li supported requesting CUSD Board reconsider its decision.

Punam Verna supported requesting CUSD Board reconsider its decision.

Housing Commissioner Tessa Parish (representing self) supported requesting CUSD Board reconsider its decision.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved to draft a letter taking a position that the City would like to be informed before any school closure or change of property use decision is put before the Board, so that the City has a chance to comment. There was no second and the motion was not considered.

Council discussed taking a position that the Cupertino Union School District should reconsider its decision to close Regnart and Meyerholz Elementary.

13. Subject: Consider report on Chamber of Commerce services and payment included in the Accounts Payable report ending December 20, 2021 and approval of Accounts Payable report

Recommended Action: Receive report and adopt Resolution No. 22-015 Accepting Accounts Payable for the period ending December 20, 2021

Presenter: Tina Kapoor, Economic Development Manager

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

Economic Development Manager Tina Kapoor gave a presentation.

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

Liana Crabtree supported a formal agreement and was concerned about the authority of a Memorandum of Understanding (MOU) and a \$25,000 fee for website hosting.

Peggy Griffin supported a formal contract with expected deliverables and was concerned about a \$25,000 fee for website development or hosting.

Planning Commissioner Steven Scharf (representing self) was concerned about the sufficiency of an MOU to give money to an outside agency and past existing contracts.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council unanimously consented to table this item until a later date.

ORAL COMMUNICATIONS - CONTINUED (As necessary) – None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

ADJOURNMENT

At 12:00 a.m. on Wednesday, March 16, Mayor Paul adjourned the Regular City Council Meeting.

Kirsten Squarcia City Clerk



CITY OF CUPERTINO

Agenda Item

22-10680

Agenda Date: 4/5/2022
Agenda #: 9.

Subject: Approve the March 24 City Council minutes

Approve the March 24 City Council minutes



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Thursday, March 24, 2022

SPECIAL MEETING

At 6:00 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 Councilmember Jon Robert Willey. All Councilmembers teleconferenced for the meeting.

In open session before Council convened in closed session, the Mayor called for any members of the public who were present to provide comment regarding any item on the agenda. No members of the public requested to speak.

CLOSED SESSION

1. Subject: Conference with Legal Counsel - Existing Litigation (Government Code § 54956.9(c))
 - a. People v. Jennifer Chang, Santa Clara County Superior Court Case No. C1899743
 - b. City of Cupertino v. Jennifer Chang, Santa Clara County Superior Court Case No. 21CV380291

Conducted Conference with Legal Counsel - Existing Litigation (Government Code § 54956.9(c))

- a. People v. Jennifer Chang, Santa Clara County Superior Court Case No. C1899743

No reportable action was taken.

- b. City of Cupertino v. Jennifer Chang, Santa Clara County Superior Court Case No. 21CV380291

No reportable action was taken.

2. Subject: Conference with Legal Counsel - Anticipated Litigation. Significant exposure to litigation pursuant to Government Code § 54956.9(d) (one case)

Conducted Conference with Legal Counsel - Anticipated Litigation. Significant exposure to litigation pursuant to Government Code § 54956.9(d) (one case).

No reportable action was taken.

OPEN SESSION

REPORT REGARDING CLOSED SESSION

Mayor Paul conducted the open session report regarding the closed session.

ADJOURNMENT

At 7:51 p.m., Mayor Paul adjourned the Special City Council Meeting.

Kirsten Squarcia, City Clerk



CITY OF CUPERTINO

Agenda Item

22-10675

Agenda Date: 4/5/2022
Agenda #: 10.

Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 5, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361

Adopt Resolution No. 22-035 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 5, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: April 5, 2022

Subject

Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 14, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361

Recommended Action

Adopt the Draft Resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period April 14, 2022 through May 5, 2022 pursuant to the Brown Act, as amended by AB 361

Background

On March 2, 2020, Governor Newsom declared a state of emergency due to the public health threat posed by COVID-19. On March 4, 2020, Governor Newsom issued Executive Order No-29-20, which suspended certain elements of the Brown Act and specifically allowed legislative bodies to hold meetings entirely electronically with no physical meeting. In accordance with the Executive Order, the City held its first teleconference meeting on March 24, 2020, to help stop the spread of COVID-19. On June 11, 2021, Governor Newsom issued Executive Order No-08-21, which stated that the provisions in Executive Order No-29-20, suspending certain elements of the Brown Act, would continue to apply through September 30, 2021.

On September 15, 2021, Governor Newsom signed AB 361 into law, which allows state and local agencies to continue using teleconferencing during certain state-declared emergencies under modified Brown Act requirements. AB 361 became effective immediately after signing due to its emergency clause and is set to sunset on January 1, 2024. Under AB 361, teleconference meetings may be held during a state of emergency if (1) state or local officials have imposed or recommended measures to promote social distancing, or (2) a legislative body determines by a majority vote that meeting in person would present imminent risks to the health or safety of attendees. (Gov. Code, § 54953(e)(1).)

To continue teleconference meetings beyond a 30-day period, AB 361 requires the Council to make a determination that either (i) "[t]he state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) "State or local officials continue to impose or recommend measures to promote social distancing." (Gov. Code, § 54953(e)(3)(B).) That determination must be reviewed each 30 days thereafter to continue teleconference meetings. (*Ibid.*)

Discussion

AB 361 allows the City Council and other City legislative bodies to continue meeting exclusively via teleconference so long as a state emergency declaration remains in place and the statute's conditions for permitting remote meetings are met. To continue meeting remotely, the City Council must find that state or local officials have imposed or recommend measures to support social distancing, or that the state of emergency continues to directly impact the ability of the members to meet safely in person.

On March 15, 2022, Council adopted Resolution No. 22-033 affirming findings related to AB 361 and authorizing the City Manager and legislative bodies of the City of Cupertino to meet exclusively by teleconference in accordance with Government Code section 54953(e)(3) and other applicable provisions of the Brown Act through April 14, 2022 (Attachment B). Council may make either or both of the permitted findings to extend the time to allow teleconference meetings to continue. The Santa Clara County Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws (Attachment C). In addition, state Department of Industrial Relations [Emergency Temporary Standards](#) continue to require or recommend social distancing in certain circumstances. These measures are required or recommended based on evidence that indoor activities continue to present imminent health and safety risks, particularly for unvaccinated individuals. It is therefore recommended that Council adopt the Draft Resolution authorizing continued teleconference meetings for the City of Cupertino's legislative bodies in order to protect the health and safety of all attendees and participants, particularly those who are unvaccinated (Attachment A).

Sustainability Impact

Conducting meetings remotely has reduced paper consumption by providing electronic access to meeting materials instead of printed materials.

Fiscal Impact

No fiscal impact.

Prepared by: Kirsten Squarcia, City Clerk

Approved for Submission by: Katy Nomura, Deputy City Manager

Attachments:

A – Draft Resolution

B – Adopted Resolution No. 22-033

C – Health Officer Recommendation Regarding Public Governmental Meetings

RESOLUTION NO. 22-

A RESOLUTION OF THE CUPERTINO CITY COUNCIL AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD APRIL 5, 2022 THROUGH MAY 5, 2022 PURSUANT TO BROWN ACT PROVISIONS

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021, November 2, 2021, November 30, 2021, December 21, 2021, January 18, 2022, February 15, 2022, and March 15, 2022 the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies should comply with

Resolution No. 22-
Page 2

the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54593(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsider the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer's Recommendation Regarding Continued Remote Public Meetings of Governmental Entities dated September 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective January 14, 2022, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer's Recommendations, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953€, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies.

Resolution No. 22-
Page 3

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino, as follows:

1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.
2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through May 5, 2022, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 5th day of April 2022, by the following vote:

Vote Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

RESOLUTION NO. 22-033

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE CITY OF CUPERTINO FOR THE PERIOD
MARCH 15, 2022 THROUGH APRIL 14, 2022 PURSUANT TO BROWN ACT
PROVISIONS**

WHEREAS, the City of Cupertino is committed to preserving and nurturing public access and participation in meetings of the City Council, commissions, and committees; and

WHEREAS, all meetings of the City of Cupertino's legislative bodies are open and public, as required by the Ralph M. Brown Act (Government Code sections 54950–54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition for holding meetings exclusively by teleconference is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, Government Code section 54953(e) further requires that in order to authorize meetings exclusively by teleconference, a legislative body must determine that state or local officials have imposed or recommended measures to promote social distancing, or that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on October 5, 2021, November 2, 2021, November 30, 2021, December 21, 2021, January 18, 2022 and February 15, 2022, the Cupertino City Council made the findings required under Government Code section 54953(e) and resolved that the legislative bodies of the City of Cupertino shall conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953(e), and that such legislative bodies should comply with the

requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, Government Code section 54953(e)(3) provides that to continue to holding meetings of legislative bodies exclusively by teleconference, the legislative body must reconsider the circumstances of the state of emergency every 30 days, and find that either (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (ii) State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, the City Council has reconsidered the circumstances of the state of emergency that now exists, specifically defined in the County of Santa Clara proclamation of a local emergency beginning February 3, 2020, the City of Cupertino proclamation of a local emergency on March 11, 2020, the Governor of the State of California proclamation of a state of emergency beginning on March 4, 2020, and the national emergency declaration in Proclamation 9994 of March 13, 2020, beginning March 1, 2020, concerning the COVID-19 pandemic; and

WHEREAS, the County of Santa Clara Health Officer's Recommendation Regarding Continued Remote Public Meetings of Governmental Entities dated September 21, 2021 and the California Department of Industrial Relations Revised Emergency Temporary Standards, effective January 14, 2022, continue to require or recommend social distancing in the workplace in certain circumstances; and

WHEREAS, the Health Officer's Recommendations, the Revised Emergency Temporary Standards, and evidence documenting the transmission of COVID-19 in indoor spaces establishes that the state of emergency continues to directly impact the ability of the members to meet safely in person; and

WHEREAS, based on the above findings, the Cupertino City Council hereby determines that the legislative bodies of the City of Cupertino shall continue to conduct their meetings without compliance with Government Code section 54953(b)(3), as authorized by Government Code section 54953€, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in section 54953(e)(2); and

WHEREAS, the City has and will continue to provide access for the public to legislative meetings and procedures through video teleconference technologies.

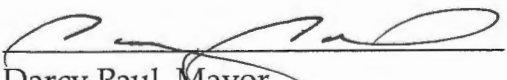

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino, as follows:

1. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Cupertino are hereby authorized and directed to meet exclusively by teleconference and to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.
2. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective through April 14, 2022, or such time as the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Cupertino may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of March 2022, by the following vote:

Vote Members of the City Council

AYES: Paul, Chao, Moore, Wei, Willey
NOES: None
ABSENT: None
ABSTAIN: None

<p>SIGNED:</p> <p> Darcy Paul, Mayor City of Cupertino</p>	<p><u>3/29/2022</u> Date</p>
<p>ATTEST:</p> <p> Kirsten Squarcia, City Clerk</p>	<p><u>3/29/22</u> Date</p>

County of Santa Clara

Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



Recommendation Regarding Continued Remote Public Meetings of Governmental Entities

Issued: September 21, 2021

In light of the continued state of emergency related to COVID-19, the County Public Health Officer continues to recommend that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws.

Among other reasons, this recommendation is made due to the continued threat of COVID-19 to the community, the unique characteristics of public governmental meetings (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings), and the continued increased safety protection that social distancing provides as one means by which to reduce the risk of COVID-19 transmission. This recommendation does not apply to those meetings of a quasi-judicial nature that have been already meeting in person prior to September 21, 2021, for example to allow for credibility determinations of witnesses.

The Health Officer will continue to evaluate this recommendation on an ongoing basis and will communicate when there is no longer such a recommendation with respect to meetings for public bodies.



CITY OF CUPERTINO

Agenda Item

22-10690

Agenda Date: 4/5/2022
Agenda #: 11.

Subject: Consider Approval of Letter to the Santa Clara County Local Agency Formation Commission in Support of Annexation of Lawrence Expressway and Mitty Avenue Properties

Approve sending a letter to the Santa Clara County Local Agency Formation Commission in support of annexation of Lawrence Expressway and Mitty Avenue properties



CITY ATTORNEY'S OFFICE

CITY HALL
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CITY COUNCIL STAFF REPORT

April 5, 2022

Subject

Consider Approval of Letter to the Santa Clara County Local Agency Formation Commission in Support of Annexation of Lawrence Expressway and Mitty Avenue Properties

Recommended Action

Approve sending a letter to the Santa Clara County Local Agency Formation Commission in support of annexation of Lawrence Expressway and Mitty Avenue properties

Discussion

The Lawrence-Mitty properties are made up of two parcels (APNs 375-21-001 and 375-22-001), which together total about 7.83 gross acres, located along the westerly edge of Lawrence Expressway near Mitty Avenue. The properties are currently located within the City of San Jose but separated from the rest of that city by Lawrence Expressway.

Santa Clara County (County) previously owned the Lawrence-Mitty properties and the County's Roads and Airports Department used the properties for materials storage and construction staging. In September 2020, the City purchased the Lawrence-Mitty properties from the County with the intent to seek incorporation of the property into the City of Cupertino and to develop the properties into a public park.

On August 17, 2021, the City Council adopted Resolution No. 21-072, supporting the annexation of Lawrence-Mitty properties into the City of Cupertino, and authorized the City Manager to submit to the Local Agency Formation Commission of Santa Clara County (LAFCO) applications for Sphere of Influence (SOI) and Urban Service Area (USA) amendments, and annexation and detachment of the properties. (Attachment A.)

In February 2022, following the San Jose City Council's approval of a resolution in support of detachment of the parcel from the City of San Jose, City of Cupertino staff submitted an application for annexation and detachment of the Lawrence-Mitty properties to LAFCO. The hearing on the application is set for April 6, 2022. Staff recommends that the City Council authorize the Mayor to submit a letter to LAFCO in

support of the City's application. A draft letter is included in the agenda packet as Attachment B.

Sustainability Impact

Chapter 3 (Measure C-G-1) of the Cupertino Climate Action Plan (CAP) contains measures to expand Green Infrastructure, Open Space and the Urban Forest throughout the City. Annexation of the Lawrence-Mitty properties is consistent with these measures.

California Environmental Quality Act (CEQA)

In 2020, the City Council adopted Resolution No. 20-092, which determined that the acquisition of the Lawrence-Mitty properties was exempt pursuant to CEQA Guidelines section 15316 (Class 16), which exempts acquisition of land in order to establish a park where the land is in a natural condition and the Management Plan for the proposed park has not been prepared, as well as CEQA Guidelines section 15061(b)(3), the "common sense" exemption, because it could be seen with a certainty that the City's acquisition of the properties would not have a significant effect on the environment because the purchase would only result in a change of ownership and a cessation of the County's activities on the site.

The preparation of a letter in support of the properties' annexation is not a project under CEQA.

Fiscal Impact

In December 2013, a Development Agreement between Cupertino and Apple Inc. was approved by City Council. The Development Agreement included a provision for a parkland contribution of \$8,270,994. The use of these funds is restricted for the acquisition of at least 1.1 acre of land and the costs associated with improvements, the purchase of park equipment, and the maintenance and capital replacement for a 20-year period. Cupertino budgeted funds for the purchase and improvement of the Lawrence-Mitty properties as part of the Fiscal Year (FY) 2015-16 Capital Improvement Plan and purchased the properties in September 2020 for \$2,690,000.

There is no direct fiscal impact to the adoption of the recommended action.

Prepared by: Christopher D. Jensen, City Attorney
Approved for Submission by: Jim Throop, City Manager

Attachments:

A – Resolution No. 21-072

B – Letter to LAFCO Re Lawrence Mitty Annexation

Prepared by: Chris Jensen, City Attorney

Reviewed by: Jim Throop, City Manager

Approved by: Jim Throop, City Manager

RESOLUTION NO. 21-072

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
SUPPORTING THE ANNEXATION OF APN 375-21-001 AND APN 375-22-
001, LOCATED ALONG THE WESTERLY BOUNDARY OF LAWRENCE
EXPRESSWAY (LAWRENCE-MITTY PROPERTIES)**

WHEREAS, APN 375-21-001 and APN 375-22-001 ("Properties"), which together total about 7.83 gross acres, are located along the westerly edge of Lawrence Mitty Expressway near Mitty Avenue. The site is generally narrow and linear. The westerly side of the Properties are adjacent to properties located in the City of Cupertino, while the easterly side of the Properties fronts onto Lawrence Expressway. The Properties are reflected in the legal description and map attached hereto and incorporated herein; and

WHEREAS, Santa Clara County ("County") previously owned the Properties and used them for materials storage and construction staging. The Properties are undeveloped and uninhabited. The City of Cupertino acquired the Properties from the County on September 24, 2020; and

WHEREAS, the Properties are currently within the jurisdictional boundary, Sphere of Influence (SOI), and Urban Service Area (USA) of the City of San Jose. San Jose's boundary abuts Cupertino's in this area; and

WHEREAS, the City of Cupertino pre-zoned the Properties as Pre-PR (Public Park or Recreational) on March 20, 2007 by Ordinance No. 07-1998, and the City shows the Properties as Parks and Open Space on its land use map; and

WHEREAS, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Act), Government Code section 56654, the City of Cupertino desires to detach the Properties from the City of San Jose and annex them to the City of Cupertino, including necessary amendments to the Sphere of Influence (SOI) and Urban Service Area (USA); and

WHEREAS, the annexation would clarify the boundary between the cities, and eliminate confusion and/or delays in public services which could be caused by multiple jurisdictional agencies having influence in the area; and

WHEREAS, the City of Cupertino finds and determines that the detachment of the Properties from the City of San Jose and annexation to the City of Cupertino (1) would not affect the delivery of necessary services to the Properties, (2) would not affect the delivery of necessary services to other properties in the City of Cupertino, and (3) would not enable development or land uses incompatible with other properties in the area; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 *et seq.*) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000 *et seq.*) ("CEQA Guidelines"), City staff has independently studied the proposed detachment of the Properties from the City of San Jose and annexation to the City Cupertino and has determined that the annexation is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15316 and the "common sense" exemption in CEQA Guidelines section 15061(b)(3) for the reasons set forth in the staff report; and

WHEREAS, the City Council has independently reviewed and considered the proposed annexation of the Properties and the basis for the exemptions prior to taking any approval action on the proposed annexation, and exercising its independent judgment, based on the entire record before it, has determined that the annexation of the Properties is exempt from environmental review under CEQA pursuant to CEQA Guidelines sections 15316 and 15061(b)(3).

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby:

1. Exercise its independent judgment and determine that supporting the annexation of the Properties is exempt from CEQA pursuant to CEQA Guidelines sections 15316 and 15061(b)(3); and
2. Support the annexation of the Properties into the City of Cupertino; and
3. Authorize the City Manager to submit to the Local Agency Formation Commission of Santa Clara County (LAFCO) applications for Sphere of Influence (SOI) and Urban Service Area (USA) amendments, and detachment and annexation of the Properties, and execute all documentation necessary and take all steps necessary to complete the annexation of the Properties; and
4. Direct that, as generally contemplated by Cupertino Municipal Code section 19.152.040, upon LAFCO's recordation of a Certificate of Completion, which is the effective date of annexation of the Properties,

the City of Cupertino's pre-zoning classification shall become effective on the Properties and the City of Cupertino's zoning map shall be revised accordingly.

The authorization to submit the applications to LAFCO is subject to the following conditions:

1. Adoption by the City Council of the City of San Jose of a resolution in support of the proposed detachment of the Properties; and
2. Adequate demonstration that all necessary services can be provided to the Properties, including obtaining any necessary approvals for the provision of such services.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 17th day of August, 2021, by the following vote:

Vote Members of the City Council

AYES: Chao, Moore, Wei, Willey

NOES: None

ABSENT: Paul

ABSTAIN: None



<p>SIGNED:</p>  _____ Darcy Paul, Mayor City of Cupertino	<p><u>8/30/2021</u> _____ Date</p>
<p>ATTEST:</p>  _____ Kirsten Squarcia, City Clerk	<p><u>8/3/21</u> _____ Date</p>

EXHIBIT "A-1"

**PARCEL 1
LAWRENCE-MITTY PARK
CUPERTINO, CALIFORNIA
LEGAL DESCRIPTION**

Commencing at the most northeasterly corner of Lands of Santa Clara Valley Water District (Book L033 OR Pg. 113) as shown on that certain Parcel Map, which was filed for record on January 4, 1990 in Book 609 of Maps at page 6, Santa Clara County Records,

Thence along the easterly line of said Lands of Santa Clara Valley Water District, South 20°09'45" East, 11.86 feet, and South 02°11' 00" West, 96.08 feet, to the **Point Of Beginning**;

Thence, continuing South 02°11'00" West, 186.30 feet and South 43°00'40" East, 192.89 feet to the westerly line of Lawrence Expressway, as said line is shown upon that unrecorded plans entitled "Lawrence Expressway Unit No. 6A" –layout details for stations 1+00.23 to 40+00;

Thence, North 00°44'33" West along said westerly line, 322.34 feet;

Thence leaving the westerly line of Lawrence Expressway, North 87°40'18" West, 120.40 feet to the **POINT OF BEGINNING**.

Containing an area of 32,126 square feet, (0.74 acres), more or less.

END OF DESCRIPTION



EXHIBIT "A-1"

**PARCEL 2
LAWRENCE-MITTY PARK
CUPERTINO, CALIFORNIA
LEGAL DESCRIPTION**

Beginning at the southeast corner of Lot 278 as shown on the map of Tract 1183, which was filed for record on June 23, 1953 in Book 44 of Maps at Page 11 Santa Clara County Records,

Thence along the easterly line said Tract No. 1183 the following courses and distances:

North 14° 30' 00" East, 46.59 feet;
North 3° 22' 45" West, 191.71 feet;
North 19° 29' 45" West, 151.30 feet;
North 27° 45' 15" West, 189.35 feet;
North 3° 17' 15" West, 147.02 feet;
North 50° 51' 45" West, 121.65 feet;
North 12° 27' 45" West, 107.74 feet;
North 25° 06' 15" East, 61.00 feet;
North 66° 02' 15" East, 113.84 feet;
North 39° 42' 00" East, 194.78 feet;
North 15° 14' 00" East, 85.91 feet;
North 10° 16' 15" West, 138.43 feet;
North 1° 51' 30" East, 103.33 feet;
North 26° 18' 45" East, 126.23 feet to the westerly line of Lawrence Expressway, as said line is shown upon that unrecorded plans entitled "Lawrence Expressway Unit No. 6A"- layout details sheets for stations 1+00.23 to 40+00;

Thence, South 00° 44' 33" East along said westerly line 1055.78 feet to a tangent curve to the right, having a radius of 5433.00 feet, a central angle of 5° 01' 21", an arc length of 476.25 feet;

Thence, South 4° 16' 48" West, 29.03 feet;

Thence, leaving said westerly line of Lawrence Expressway South 87° 39' 53" West, 44.03 feet to the POINT OF BEGINNING.

Containing an area of 197,905 square feet (4.54 acres), more or less.

END OF DESCRIPTION.

Sheet 1 of 1



EXHIBIT "A-1"

**PARCEL 3
LAWRENCE-MITTY PARK
CUPERTINO, CALIFORNIA
LEGAL DESCRIPTION**

Beginning at the southeast corner of Parcel 5 as shown on that certain Parcel Map, which was filed for record on January 4, 1990 in Book 609 of Maps, at page 6, Santa Clara County Records, and being more particularly described as follows;

Thence, along the easterly line of said Parcel 5, North 20°09'45" West, 45.40 feet;

Thence, continuing North 20° 09'45" West, along the easterly line of Lot 292, 291, and 290 as shown on the Map for Tract No. 1183 which was filed for record on June 23, 1953 in Book 44 of Maps, at Page 11, Santa Clara County Records, a distance of 165.91 feet;

Thence, continuing along the easterly line of Lot 290, 289, 288 and 287, as shown on said Tract Map No. 1183, North 04°04'45" East, 125.69 feet;

Thence, continuing along the easterly line of Lot 287, 286, 285, 284, and 283, as shown on said Tract Map No 1183, North 29°51'15" East, 214.50 feet;

Thence, continuing along the easterly line of Lot 282, and 281, as shown on said Tract Map No. 1183, North 06°13'45" West, 116.81 feet;

Thence continuing along the easterly line of Lot 280, and 279, as shown on said Tract Map No. 1183, North 19°26'45" East, 109.24 feet;

Thence, continuing along said easterly line of said Lot 279, North 14°30'00" East, 53.73 feet to the southeasterly corner of the "Lands of San Jose Water Works";

Thence, continuing North 14°30'00" East, 127.88 feet to the northeasterly corner of said "Lands of San Jose Water Works", also being the southeasterly corner of Lot 278 as shown on said Map of Tract 1183;

Thence North 87°39'53" East, 44.03 feet to the westerly line of Lawrence Expressway, as said line is shown upon that unrecorded plans entitled "Lawrence Expressway Unit No. 6A"-layout details sheets for stations 1+00.23 to 40+00;

Thence, South 04°16'48" West along said westerly line, 482.34 feet to a tangent curve to the left, having a radius of 5567.00 feet, a central angle of 5°01'21", an arc length of 488.00 feet;

Thence, continuing along said westerly line, tangent to last said curve, South $00^{\circ}44'33''$ East, 7.33 feet;

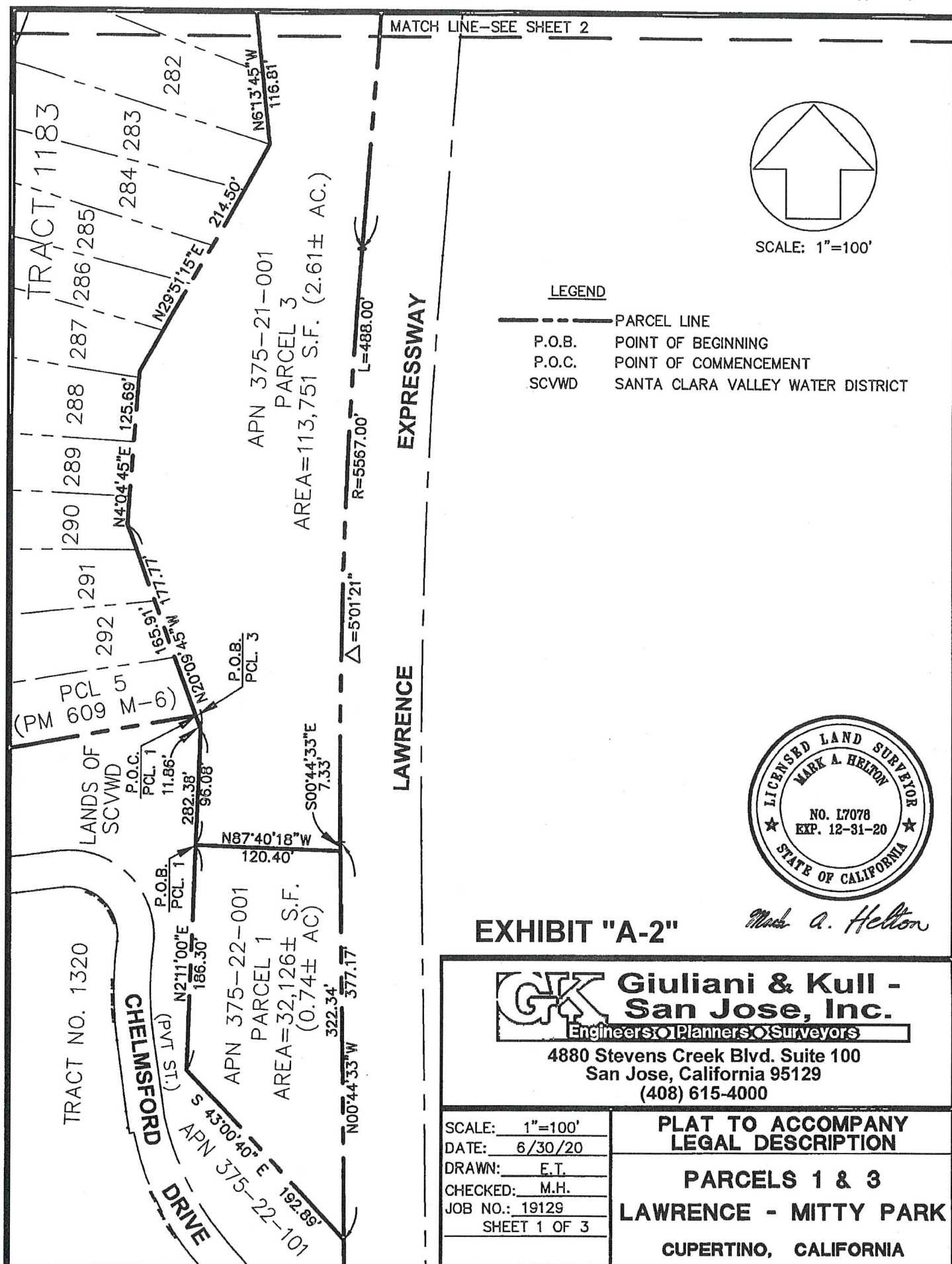
Thence, leaving the westerly line of Lawrence Expressway, North $87^{\circ}40'18''$ West, 120.40 feet to the easterly line of the "Lands of Santa Clara Valley Water District", as shown on said Parcel Map (Book 609 Maps page 6);

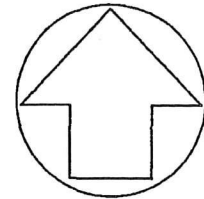
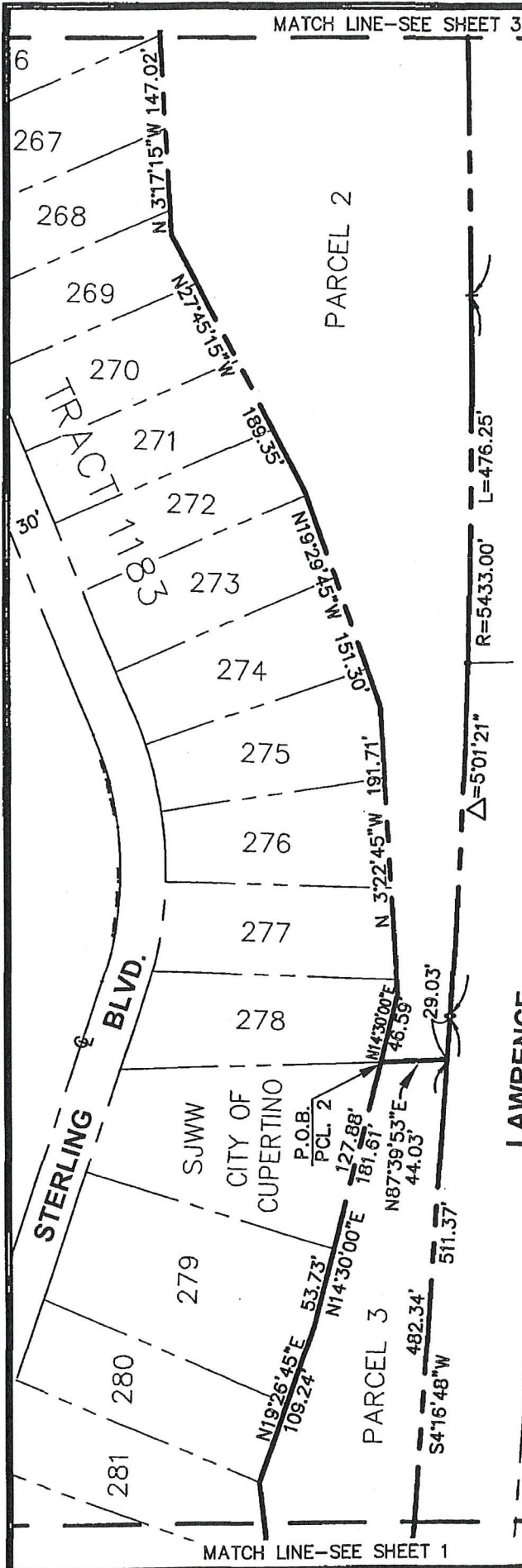
Thence North $02^{\circ}11'00''$ East along said easterly line of said "Lands of Santa Clara Valley Water District", 96.08 feet and North $20^{\circ}09'45''$ West, 11.86 feet to said southeast corner of Parcel 5 (PM 609 M6) and the **POINT OF BEGINNING**.

Containing an area of 113,751 square feet, (2.61 \pm acres), more or less.

End of Description.







SCALE: 1"=100'



EXHIBIT "A-2"

Mark A. Helton



**Giuliani & Kull -
San Jose, Inc.**

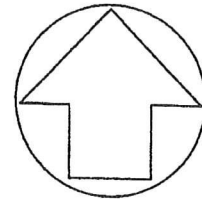
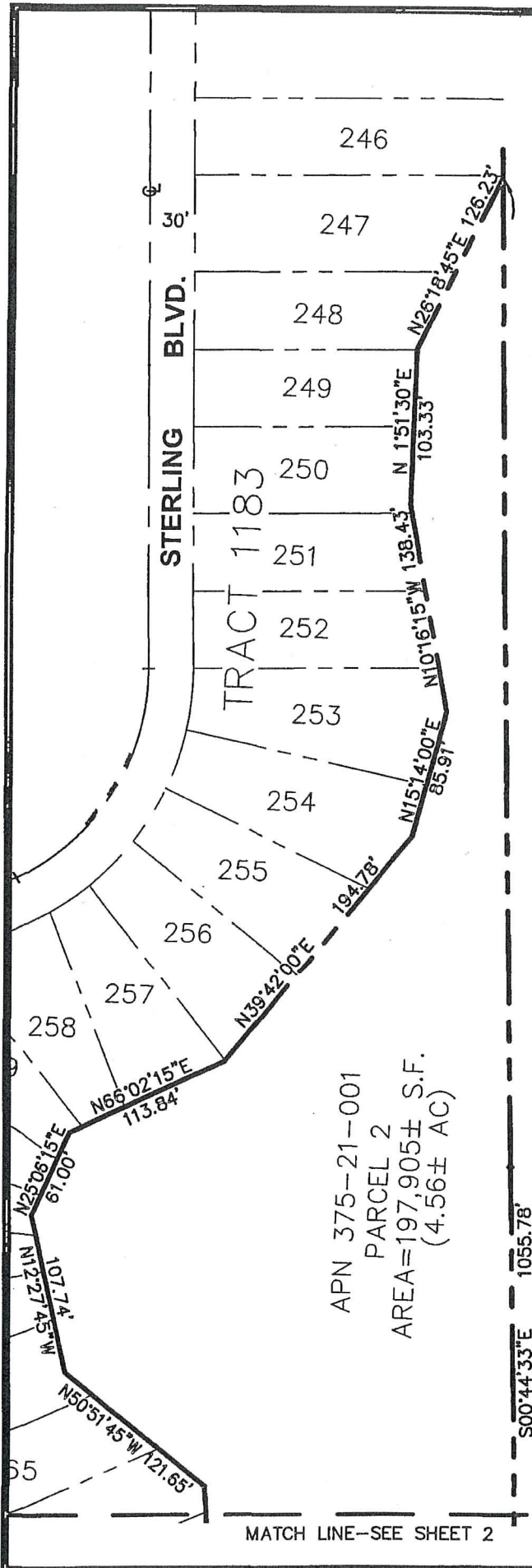
Engineers • Planners • Surveyors

4880 Stevens Creek Blvd. Suite 100
San Jose, California 95129
(408) 615-4000

SCALE: 1"=100'
DATE: 6/30/20
DRAWN: E.T.
CHECKED: M.H.
JOB NO.: 19129
SHEET 2 OF 3

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

**PARCELS 2 & 3
LAWRENCE - MITTY PARK
CUPERTINO, CALIFORNIA**



SCALE: 1"=100'



EXHIBIT "A-2"

Mark A. Helton

GK Giuliani & Kull -
San Jose, Inc.
Engineers • Planners • Surveyors

4880 Stevens Creek Blvd. Suite 100
San Jose, California 95129
(408) 615-4000

SCALE: 1"=100'
DATE: 6/30/20
DRAWN: E.T.
CHECKED: M.H.
JOB NO.: 19129
SHEET 3 OF 3

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

PARCEL 2

LAWRENCE - MITTY PARK

CUPERTINO, CALIFORNIA



MAYOR DARCY PAUL
dpaul@cupertino.org

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April 6, 2022

Local Agency Formation Commission of Santa Clara County
777 North First Street
Suite 410
San Jose, CA 95112
LAFCO@ceo.sccgov.org.

Re: City of Cupertino Application for Annexation (Agenda Item #__)

Dear Commissioners:

Thank you for taking the time to consider the City of Cupertino's application for the annexation of two parcels into the City. I write on behalf of the Cupertino City Council to express the Council's strong support for the annexation and to urge the Commission to take action to approve the City's application.

The City's application would allow the City of Cupertino to annex two parcels, totaling approximately 7.91 acres (referred to as the "Lawrence-Mitty properties"), and would detach those parcels from the City of San Jose. The City of Cupertino acquired the parcels from Santa Clara County for use as parkland in 2020. The properties' annexation and detachment are supported by the City of San Jose as well as by the City of Cupertino.

The annexation will allow for the creation of much-needed open space in an underserved area of Cupertino, which currently lacks the same recreational amenities that are available to residents in other parts of the City. The design process for converting the vacant land to a public park is already underway. The Commission's approval of the annexation application will allow the City to commit fully to completing design of the project and funding and completing the construction of a new park.

On August 17, 2021, the Cupertino City Council voted unanimously to support the annexation of the Lawrence-Mitty properties. The Council's Resolution in support of annexation is enclosed for your reference. On January 25, 2022, the San Jose City Council approved by consent their support for the requested annexation.

Our City Council respectfully requests that the Commission approve the annexation. The City's application meets all legal requirements for approval. In addition, the application would transfer a sliver of land separated from the rest of the City of San Jose by the Lawrence Expressway to the City of Cupertino, where it would provide need open space for an adjacent residential neighborhood within the City's jurisdiction. Thus, the application advances the

Commission's policy of encouraging cities "to exchange territory between them to improve illogical boundary or service situations." (Policies on Annexation, Jan. 1, 2003.)

For these reasons, we ask that the Commission approve the City's application and allow the annexation and detachment of the Lawrence Mitty properties. Thank you again for your consideration of the City's application.

Sincerely,

Darcy Paul
Mayor
City of Cupertino

Enclosure



CITY OF CUPERTINO

Agenda Item

22-10594

Agenda Date: 4/5/2022
Agenda #: 12.

Subject: Consider Council Goals and Prioritize Potential Fiscal Year 2022-2023 City Work Program Items

Adopt Council Goals and Prioritize Potential Fiscal Year 2022-2023 City Work Program Items

Presenter: Katy Nomura, Deputy City Manager



CITY MANAGER'S OFFICE

CITY HALL
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TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
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CITY COUNCIL STAFF REPORT

Meeting: April 5, 2022

Subject

Consider Fiscal Year 2022-2023 Council goals and prioritize potential items for the FY 2022-2023 City Work Program

Recommended Action

Adopt Fiscal Year 2022-2023 Council goals and prioritize potential items for the FY 2022-2023 City Work Program

Discussion

Council Goals

On February 18, 2020 City Council adopted the following goals to provide a framework for the City's priorities and City Work Program:

- **Public Engagement and Transparency**
 - Creating and maintaining key conversations and interactions with the Cupertino Community.
- **Transportation**
 - Providing access to an efficient, safe multi-modal transportation system for our community, and advocating for effective, equitable mass transit in the greater region.
 - Improving Traffic Flow and Alleviating Congestion
- **Housing**
 - Contributing meaningfully and in a balanced manner to the housing inventory in support of our community needs, including affordable housing (from extremely low-income to moderate-income level housing) and addressing homelessness.
- **Sustainability & Fiscal Strategy**
 - Continuing Cupertino's commitment to building a sustainable and resilient community for future generations.
- **Quality of Life**
 - Furthering the health and well-being of all Cupertino community members.
 - Air Quality and Noise
 - Public Safety
 - Recreation
 - Access to Goods and Services

While these are intended as multi-year goals, they are reviewed annually by the City Council. The Council may adopt the same goals or revised goals as the Council sees fit. A community survey

on goals was conducted earlier this year and the results were presented at the March 8 City Council meeting. The results were generally aligned with existing Council goals.

Prioritizing Potential FY 22-23 City Work Program Items

At the March 8 City Council meeting, Council reviewed items proposed by commissions and staff for the FY 22-23 City Work Program. Following the meeting, councilmembers had the opportunity to propose new items and prioritize all proposed items by rating up to five items with a "5", up to thirteen with a "3", and up to thirteen with a "1". A rating of "5" indicated the highest priority while a rating of "1" indicated a lower priority. All other items were considered a "0" and were considered lowest priority. All of these items, along with all Council ratings submitted can be found in Attachment A in the same format seen on March 8. In this spreadsheet, if a rating is blank, it indicates that the item was not considered by that councilmember for rating. For example, any new items proposed by an individual councilmember would not have been seen by the other councilmembers and they would not have been able to consider the item.

Attachment B lists the items in priority order based on the average of the ratings received. Originally, there were 69 proposed items at the first prioritization session on March 8. After Council ranked their preferred items, 14 items received no ratings and were removed from the list, while councilmembers introduced a total of 14 items, which were added to the list. Items that were similar or duplicates were consolidated into one item. After removing, adding, and consolidating items following the first round of prioritization, there are now 57 items for Council to consider at the second round of prioritization. Each department reviewed these 57 items and provided cost, time, and project size estimates in Attachment B for Council's consideration. The project title column indicates whether an item was recommended by a commission, is part of the CIP, or is an existing FY 21-22 City Work Program item. The proposed items in Attachment B also include staff recommendations on whether or not the item should be included in the prioritization process for the FY 22-23 City Work Program. Some items are not recommended for inclusion because they are already performed operationally.

At this time, staff recommends that Council review the items in Attachment B and reprioritize the items with the same ranking system as before: up to five items with a "5", up to thirteen items with a "3", and up to thirteen items with a "1". This round of prioritization should take into account the estimated resource requirements as well as the new items proposed by councilmembers. An Excel version of Attachment B will be provided to councilmembers in advance of the April 5 City Council meeting to aid in the prioritization process. After questions, public comment, and deliberation, it is recommended that councilmembers submit their ratings during the April 5 City Council meeting to ensure adequate time for staff to draft a proposed FY 22-23 City Work Program based on the ratings. Staff recommends a 15-minute break during this agenda item to allow councilmembers to make any final adjustments to their ratings and to submit them to staff. The councilmembers' ratings and resulting priority order will be included with the next FY 22-23 City Work Program discussion on May 3.

Once the items are prioritized, staff will evaluate the prioritized list and draft a proposed FY 22-23 City Work Program for Council's consideration at the May 3 City Council meeting. The

development of the proposed FY 22-23 City Work Program will take into account an item's prioritization, cost, and staff bandwidth.

Sustainability Impact

There are no sustainability impacts associated with this report.

Fiscal Impact

The estimated budget for each item is indicated in Attachment B. After the prioritization process occurs, a draft FY 22-23 City Work Program will be developed, and an estimated total cost will be determined at that time.

Prepared by: Astrid Robles, Management Analyst

Reviewed by: Chris Jensen, City Attorney
Katy Nomura, Deputy City Manager

Approved by: Jim Throop, City Manager

Attachments:

A – Proposed Items from March 8 Council Meeting with Council Additions and Ratings

B – Proposed Items with Resource Considerations in Priority Order

Proposed Items for FY 2022-2023 City Work Program

#*	Project/Task**	Project Objective	Staff Recommendation (Include, Not Include, Not Include-Operational)	Justification / Considerations	Councilmember 1 Rating	Councilmember 2 Rating	Councilmember 3 Rating	Councilmember 4 Rating	Councilmember 5 Rating	Sum Ratings	Average Ratings
Bicycle Pedestrian Commission											
1	1) Bicycle Facilities	Increase the inventory of bicycle facilities and amenities, such as bike racks, citywide.	Include	Item falls within the purview of the Bicycle Pedestrian Commission and can be managed with existing staff resources. Achieving the objective will encourage bicycling within Cupertino, consistent with City's overall goals.		3	1	0	1	5	1.25
2	2) Vision Zero Current City Work Program Item	Retain consultant to complete the development of the Vision Zero program, including finalization of policies and action plans.	Include	Vision Zero is a current FY 21-22 City Work Program item proposed to continue. Evaluation of the City's needs over the course of the year have revealed that a budget allocation will be necessary to hire a consultant to assist with completing the rollout of the Vision Zero program.		5	3	3	3	14	3.5
3	3) Application of Assembly Bill 43	Study the applicability of Assembly Bill 43 to the Cupertino street network. Modify speed limits as appropriate pending the results of the analysis.	Not Include	AB 43 would set certain speed limit regulations. The State of California must define certain procedures within a future update of the traffic Manual before speed limits can be set under AB 43. Speed limits to be set under AB 43 cannot go into effect until June 30, 2024. Considering this as a work plan item for FY 22-23 is therefore premature.		0	0	0	0	0	0
4	4) Near-Miss Pilot Study	Pilot study to perform data collection on near-misses at intersections.	Not Include	The study of near-miss events at intersections lies outside the purview of the Bicycle Pedestrian Commission, and the technology to identify and study near misses is uncertain. To the extent that near misses involve bicycles or pedestrians and the technology exists, this can be incorporated into the Vision Zero study.		0	0	0	0	0	0
Fine Arts Commission											
5	Young Artist Scholarships	Provide scholarships throughout the year for young artists. Work with organizations to sponsor.	Not Include - Operational	This item is already operational as the current Fine Arts Commission Artist Awards program already offers monetary awards to the winning artists. The monetary awards for this program are currently offered to the winning Youth, Emerging, and Distinguished artists.		0	0	0	1	1	0.25
6	Festival that is run by Fine Arts Commission	Event run by Fine Arts Commission for the Cupertino community, in collaboration with Parks and Recreation.	Not Include	The Fine Arts Commission previously worked with the current festivals to have space for fine arts by community members, award winners, etc. The number of festivals has grown since the past collaboration, which will allow for more opportunities to showcase art. If festivals were put on by the Fine Arts Commission, additional staffing will be required, as there is not enough bandwidth to take this on.		0	0	1	0	1	0.25
7	Community Grants for organizations that foster art in Cupertino.	Competition for Grants that would go to organizations who foster art within the City of Cupertino.	Not Include - Operational	This program is already operational since organizations that foster art can and do apply for the City's Community Funding Grant.		0	0	0	0	0	0
8	Art Store for Cupertino	Art designed by community members and approved by Fine Arts Commission for Art store to provide giveaways to visiting Mayors, sister cities, commissioners from other cities, etc.	Not Include	May be a large project and would need to collaborate across departments. It may be possible to incorporate it into the Cupertino store at the Chamber depending on the outcomes of that item.		0 (To be included in Cupertino Store at the Chamber of Commerce)	3 (Merge with #49 Cupertino Store)	0 (Include art component into #49 Cupertino Store)	0	3	0.75

Proposed Items for FY 2022-2023 City Work Program

#*	Project/Task**	Project Objective	Staff Recommendation (Include, Not Include, Not Include-Operational)	Justification / Considerations	Councilmember 1 Rating	Councilmember 2 Rating	Councilmember 3 Rating	Councilmember 4 Rating	Councilmember 5 Rating	Sum Ratings	Average Ratings
Housing Commission											
9	1) Create plans 1. for the City to purchase or lease very low or low income rental housing units to include seniors and developmentally disabled. 2. focus on removing obstacles to development	Provide 5 City owned or leased housing units for very low and low income households.	Not Include	The City is progressing with existing sites for development of affordable housing. The City has funding and staffing challenges if it is to consider this new proposal.		0	0	0	0	0	0
10	2) Homeless Jobs Program Current City Work Program Item	Create a jobs program for up to 2 individuals for 6 months. Could involve a job in maintenance of parks or in Public Works.	Not Include	Current FY 21-22 City Work Program Item. Program will conclude in June 2022. Additional resources and further coordination with provider necessary to extend.		3	3	5	0	11	2.75
11	3) City Plan to End Homelessness Current City Work Program Item	Draft an Implementation Plan to the Santa Clara County Community Plan to End Homelessness 2020-25 to create a roadmap for addressing homelessness in Cupertino.	Include	Current FY 21-22 City Work Program Item proposed to continue.		3	0	3 (combine with #66)	0	6	1.5
12	4) Housing Programs for De Anza College Students Previous City Work Program Item	Explore solutions for homeless and housing insecure students. Assist, as appropriate in, the long-term development of De Anza student housing. Investigate partnership with De Anza on student housing and transportation solutions.	Include	Previous FY 20-21 City Work Program Item. Program/contract will conclude in June 2022 and De Anza College has also expressed interest in extending the program.		3	1	0	1	5	1.25
13	5) Consider options to develop ELI and BMR housing units for developmentally disabled individuals on City-owned property along Mary Avenue as well as the Outback Steakhouse location Current City Work Program Item	Identify ways to build ELI and BMR housing units for developmentally disabled. Investigate additional sites for BMR or ELI housing.	Include	Current FY 21-22 City Work Program Item proposed to continue.		5	3	5 (combine with #65)	Same as 65. 3	16	4
Library Commission											
14	1) Review the Cupertino Poet Laureate Handbook	Review the handbook for the Poet Laureate Program, to simplify, make more user friendly, and update the eligibility requirements.	Include	Recruitment for the Poet Laureate program has been sparse. Reviewing and updating the handbook and eligibility requirements will create a more user friendly process for interested parties.		0	0	0	0	0	0
15	2) Artwork at the Library/Exhibits/Poetry and Art Day	Collaborate with groups such as the Fine Arts Commission and Cupertino Poet Laureate to display artwork, including exhibits, at the Library. Exhibits could potentially be around the library and in the new programming space. Examples could be potential galleries, a poetry/art show, cultural documents and artifacts, or other fascinating exhibits.	Not Include - Operational through the Library	Currently there are already artwork displays in the library, one being from the Fine Arts Commission. Displays and potential exhibits would be operational through the library.		0	5	0	0	5	1.25
16	3) Community Engagement on Alternative Transportation and Parking	Educate and encourage resident use of alternative transportation to the Library. Install signage to point to overflow parking at Eaton Elementary school. Examine how various changes and developments impact library patrons and residents near and around the Library through the program room expansion, Regent Creek Trail, bike locks, book drop, as well as continuing the conversation with CUSD regarding Eaton Elementary Parking slots.	Include	May be a lengthy process, but parking and transportation education will continue to be needed for library access.		0	1	0	3	4	1
Parks and Recreation Commission											
17	1) Enable Additional DOLA Locations	Standardize the process to create DOLA trial programs, with no more than two trials running at a time. Respond and evaluate community-driven DOLA proposals to implement additional DOLAs throughout the City.	Include	In response to overwhelming community interest.		3	5	3 (combine with #54)	Similar to 54. Will need to generate a consolidated item. 3	14	3.5
18	2) Long-Term Strategic Plan	Create a prioritization list of the 22 opportunities listed in the Parks and Recreation System Master Plan.	Include	Community input and Parks and Recreation Commission prioritization is necessary to organize the long-term strategic plan items pointed out in the Parks and Recreation Master Plan.		1	0	0	0	1	0.25
19	3) Labyrinth Program or Similar	Establish maintenance for the two current labyrinths at McClellan Ranch Preserve and Creekside Park and find ways to enhance recreation at more parks throughout the City with labyrinths or nature play. Engage the community to maintain or create new labyrinths or similar.	Not Include - Operational	Could be incorporated into current ongoing CIP projects. (Playground Replacement or Park Amenity Improvements)		3	1	0	0	4	1
20	Memorial Park Improvements *Also Part of CIP Current City Work Program Item	Implement a six-month and 12-month plan for Memorial Park improvements including: 1. Memorial Park - Pond Repurposing 2. Memorial Park - Amphitheater Improvements 3. Memorial Park - Specific Plan Design	Include	Current FY 21-22 City Work Program Item proposed to continue because it is a multi-year project.		5	3	5 (combine with #57)	Same as 57. 3	16	4
21	Lawrence Mitty *Also Part of CIP Current City Work Program Item	Acquire a parcel at Lawrence Expressway and Mitty Ave for trail expansion and park development. Complete the annexation process. Development project for Lawrence Mitty will be included in the CIP. Programming, Outreach, & Design with Outreach expected to start by Q3 FY 21-22.	Include	Current FY 21-22 City Work Program Item proposed to continue because it is a multi-year project.		5	3	5 (combine with #59)	0	13	3.25

Proposed Items for FY 2022-2023 City Work Program

#*	Project/Task**	Project Objective	Staff Recommendation (Include, Not Include, Not Include-Operational)	Justification / Considerations	Councilmember 1 Rating	Councilmember 2 Rating	Councilmember 3 Rating	Councilmember 4 Rating	Councilmember 5 Rating	Sum Ratings	Average Ratings
Planning Commission											
22	1) Impacts to schools	CUSD is shutting schools down and is running classes in portables. City should ensure our planning policies make schools viable. Assessment or score as in net positive or net negative impact to services (schools, particularly) of a project.	Not Include	This may be considered by decision makers when determining Housing Element sites. State law prevents the City from considering the fiscal impacts of housing development upon schools, since SB50 states that payment of school impact fees constitutes full and complete mitigation for any school impacts.		0	0	0	3	3	0.75
23	2) 5G Ordinance Current City Work Program Item	Adapt regulations based on aesthetics.	Not Include	The City's Public Works Department is already drafting 5G regulations which will be completed this fiscal year.		0	0	3	3	6	1.5
24	3) Objective Standards		Include	Carryover from FY 21-22.		0 Overlap with #26	5	0	1	6	1.5
25	4) Second Story Balconies	Need balcony ordinance or guidance.	Not Include	Staffing challenges and existing Work Program and Operational Items make it difficult to consider the item for next fiscal year.		0	0	0	0	0	0
26	Other Carryover Items from FY 2021-22 City Work Program - RHNA related General Plan updates and rezoning (Housing Element) - Development Accountability - Residential and Mixed- Use Residential Design Standards - Sign Ordinance Update Current City Work Program Items	Objectives included in FY 21-22 City Work Program.	Include	Current FY 21-22 City Work Program Items proposed to continue.		5	3	3	0	11	2.75
27	Solar Generation Maximization	Can homes be designed to maximize solar exposure for solar energy generation? Should vents be redirected to ensure that solar generation can be maximized?	Not Include	There are existing building code requirements applicable for solar applications. Allowance for maximum solar panel installation is part of the building permit review process.		0	0	0	1	1	0.25
28	Outreach to renters to explain their rights to them		Not Include - Operational	Current operation and service by the Housing Division.		0	0	0	0	0	0
Public Safety Commission											
29	1) License Plate Readers	1. Research Automated License Plate Reader (ALPR) systems 2. Research state laws, privacy concerns, and regulations related to ALPR 3. Compare fixed location, mobile (in-car), and portable (trailer ALPR) 4. Identify outreach and engagement strategies used by other jurisdictions using ALPR 5. Assess locations for fixed ALPR in Cupertino 6. Estimate ALPR costs for installation, monitoring, and maintenance (Consider: Cameras, LPR, Safe-Exchange Zone, Pilot cameras in a residential area, and commercial developments Research best practices from other similar jurisdictions)	Include	Cities of Saratoga and Los Altos Hills have similar projects and addressed some privacy concerns with Santa Clara County Sheriff's Office. Will likely need at least \$250,000-400,000 in budget.		3	3	1 (combine with #41)	0	7	1.167
30	2) Subsidy program to support small business COVID-19 Policies	Establish a subsidy program to support small business COVID-19 Policies 1. Identify the segment of businesses with identifiable policy 2. Determine the requirement for testing and vaccination Eligible Small businesses - 100 employees or less or \$10M revenue over last 3 years. Suggested \$1M	Not Include	As COVID-19 restrictions are lifted, less money needs to be allocated to support small businesses. If new restrictions or a new threat arises, staff can request funding for programs from Council at that time.		0	0	0	0	0	0
31	3) Catalytic Converter Theft Prevention (Nellore)	1. Warning signs on streets, especially the hotspots. A short and crisp message along with the Neighborhood Watch signs on the streets. We at the PSC could help craft this message with the help of the Captain 2. Monthly newsletters providing tips and suggestions for preventive measures the residents can take to help cut the incidents 3. Promote awareness also through neighborhood watch meetings and block party meetings. 4. Many residents are not technical and don't understand what a catalytic convertor looks like or what it does. Help educate them by displaying these online or during various events in booths. 5. Put in section about catalytic convertor theft prevention on our website and educate the residents	Not Include - Operational	The Sheriff's Office incorporates much of the recommended action into regular operations. The Block Leader program will continue to facilitate a relationship with the Sheriff's Office and promote safety and best practices in the community.		0	0	0	3	3	0.75
32	4) Volunteer Engagement Strategy	Increase volunteer participation. Invest in an app or existing app to see volunteer opportunities in the city. Campaign to increase participation in Neighborhood Watch, Block Leaders, and Citizen Corps.	Not Include - Operational	This is a continued item from the Revamp the Block Leader Program.		0	0	1	1	1	1.5
33	5) Gun Safety Ordinance (Same as Staff Proposal)	Research best practices from neighboring jurisdictions.	Include	Council expressed an interest in this item earlier this fiscal year. Recommended only if the Council has a strong willingness to approach a very difficult process with strong opinions from outside the City.		3	0	1 (combine with #50)	1	5	1.25

Proposed Items for FY 2022-2023 City Work Program

#*	Project/Task**	Project Objective	Staff Recommendation (Include, Not Include, Not Include-Operational)	Justification / Considerations	Councilmember 1 Rating	Councilmember 2 Rating	Councilmember 3 Rating	Councilmember 4 Rating	Councilmember 5 Rating	Sum Ratings	Average Ratings
Sustainability Commission											
34	Micromobility Ordinance	Consider lifting the ordinance that limits micromobility providers from operating in Cupertino. Consider restrictions that would ensure appropriate fit for Cupertino.	Not Include - Operational	Transportation staff, along with coordination with the Sustainability division, will be working on this item as part of operations. They will conduct micromobility research, survey the public, and bring options for the Sustainability Commission to consider in FY22/23.		0	0	0	0	0	0
35	Gas Station Limitations	Consider policy and legal implications for limiting new gas stations and tanks from being built in Cupertino.	Not Include	This may be an innovative policy direction to study in future years. However, it would be a higher priority to examine options to encourage rapid electrification of buildings and expand EV charging infrastructure.		0	0	0	0	0	0
36	Privately-Owned EV Chargers	Explore options for private businesses to open up privately-owned electric vehicle chargers to the public when not in use by employees.	Not Include	The City will be exploring options for EV charging access under the Building Division's proposal to update the local green building ordinance (Reach Codes). The City is also pursuing additional publicly-owned infrastructure.		0	1	0	1	1	1
37	Rapid Electrification of Buildings (Same as staff proposal)	Examine options to encourage rapid electrification of buildings, i.e. via the update of the building electrification reach codes.	Include	A key measure in the draft Climate Action Plan is to develop policy options for addressing emissions in existing buildings. This is also proposed as a staff proposal.		3	1	3 (combine with #47)	Same as 47 1	8	2
38	Climate Victory Gardens Pilot Expansion	Consider expanding and investing in the Climate Victory Gardens Pilot and creating a permanent program for supporting drought-tolerant landscaping.	Not Include - Operational	Staff plans to complete the existing Pilot Program and provide Council with an analysis and recommendations for its continuation operationally.		0	0	0	0	0	0
Teen Commission											
39	Youth and Teen Programming Feedback	Receive quarterly presentations from City staff and the Youth Activity Board on existing and proposed programming and provide feedback.	Not Include - Operational	Already a current practice beginning this past fiscal year.		0	0	0	0	0	0
40	Youth and Teen Social Media Engagement	Increase social media engagement among youth and teens to promote Teen Commission awareness and encourage increased youth participation.	Include	Project would have to be in collaboration with Communications team, which is currently understaffed.		0	1	1	3	5	1.25
Technology, Information, and Communications Commission											
41	1) Pilot: License Plate Recognition	In partnership with the County Sheriff, install LPR devices for the automated detection of license plates. This data will only be for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction, and stolen property recovery.	Include	Both TICC and Public Safety Commissions have expressed interest. A similar solution has been successfully deployed in Los Gatos. Limited staff involvement.		0 Same or similar to License Plate Reader	0	0 (combine with #29)	0	0	0
42	2) Research Vision Zero Technologies for Future Implementation	Research leading edge, and successfully tested collision avoidance technologies and report findings to City Council and City staff.	Not Include - Operational	This is an operational item as technology research is already done on a regular basis. There is already a current City Work Program item for Vision Zero.		0 Overlap with Vision Zero Work Plan	0	0	0	0	0
43	3) Implement AI Bot (Chatbot) Technology for online customer interaction	Explore and implement chatbot technology where practical for online customer interaction. Examples include chatbot guidance in submitting a building permit or registering for a Park & Recreation class.	Not Include - Operational	Already part of Cupertino's tech roadmap.		0	0	0	0	0	0
44	4) Cybersecurity Public Education	Provide education on cybersecurity to City residents, guests and businesses.	Include	This is a repeat of a project completed 3 years ago. Commissioners will take on the majority of the work for this item, including speaker selection and facilitate presentation to Cupertino residents.		0	1	0	1	2	0.5

Proposed Items for FY 2022-2023 City Work Program

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Staff Proposals											
45	Lawson Middle School Bikeway	Retain consultant to prepare feasibility study which will evaluate alternatives that provide a separated bike path for students riding to Lawson Middle School. Feasibility cost will be \$40,000.	Include	The safety of students riding their bicycles to school, and the encouragement of students to ride who may not currently ride, is a high priority for the City and Transportation Division staff. Completion of a protected bikeway for students riding to Lawson Middle School was identified as a necessary improvement through the City's Walk Audit process. Successful completion of this improvement is dependent upon third-party consultant analysis and review of alternatives that would be accomplished through the feasibility study process requested with the current proposal.		3	0	0	0	3	0.75
46	Caltrans Adopt-a-Highway Program	Coordinate with staff, volunteers and Caltrans to look for options to take over current Adopt-a-Highway obligations along highway that run through Cupertino's jurisdiction to create cleaner and more beautiful roadsides by removing litter, overgrown vegetation and other pollutants from entering state waterways through storm drains.	Include	The program is part of Caltrans Clean California pilot program to restore pride in public spaces and make a difference in communities through cleaning and beautifying roadsides. There is no cost to participate in the Adopt-a-Highway program.		1	0	0	1	2	0.5
47	Electrification Study (Same as item proposed by the Sustainability Commission)	Conduct public outreach, conduct policy research, and coordinate with the regional efforts on electrification of buildings and transportation systems.	Include	The Draft Climate Action Plan identifies several high-impact measures. Developing policy options and conducting public outreach specifically for residential and non-residential existing buildings electrification is a key step in achieving the 2030 and 2040 greenhouse gas reduction targets.		0 Overlap with Rapid Electrification of Buildings	0	0 (combine with #37)	0	0	0
48	Economic Development Strategy	The updated Economic Development Strategy will aim to understand the current business environment and market trends. This framework will formulate short- and long-term economic development policies and develop goals and objectives to encourage economic recovery and growth.	Include	Cupertino's Economic Development (ED) Strategy was last updated in 2014. Business models, operations, as well as trends have significantly shifted due to the pandemic. Council has expressed an interest in updating the ED Strategy, which is especially important now as we emerge from the pandemic and move towards recovery. It is recommended that Council include this in the FY 22-23 City Work Program so that there are timely goals and objectives clearly outlined to further economic vitality in Cupertino.		3	1	0	5	9	2.25
49	Cupertino Store at Chamber of Commerce	Implement the Cupertino Store plan, which will be adopted by Council by the end of FY 2021-22 as part of the current City Work Program Item "Cupertino Store at Chamber of Commerce".	Include	Once the draft proposal for the Cupertino store is adopted by Council, the next step will be the implementation phase, which will take place in FY 22-23. It is recommended that Council include this in the FY 22-23 City Work Program so that staff is able to work on Council-approved concept and begin the implementation of the Cupertino Store to make the best use of the space that will benefit the City, Chamber, and entrepreneurs in Cupertino.		1	3	3 (include art component from #49)	0	7	1.75
50	Safe Gun Storage Ordinance (Same as item proposed by the Public Safety Commission)	Adopt safe gun storage ordinance to increase public safety for residents.	Include	The City Council has requested that the City revisit adopting this ordinance to increase public safety. Recommended only if the Council has a strong willingness to approach this topic.		0 Overlap with #33	0	0 (combine with #33)	0	0	0
51	Analyze Potential Revenue Measures	Analyze potential revenue measures, such as transient occupancy tax, sales tax, property tax, and utility users tax, to address possible future financing challenges	Include	The City has a significant list of unfunded Capital Improvement Program (CIP) projects that, if approved, will require substantial financing.		3	1	1	0	5	1.25

Proposed Items for FY 2022-2023 City Work Program

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Carryover Items from FY 2021-2022 City Work Program *											
52	Senior Strategy	Address the needs of seniors in collaboration with the City Council and Commissions. Needs to address include technology resources, housing, food supply, transportation, and mental and physical health and wellbeing.	Include	Extensive community engagement, staffing vacancies, COVID.		0	5	3	0	8	2
53	Blackberry Farm Golf Course Needs Assessment (Also Part of CIP)	Determine short-term and long-term improvements to the golf course and amenities.	Include	Extensive community engagement, staffing vacancies, COVID.		1	1	1	0	3	0.75
54	Dogs Off Leash Area (DOLA) (Also proposed to continue by Parks and Recreation Commission)	Identify additional areas suitable for permitting dogs to be off leash and establish one such area, if the current trial period is successful.	Include	Trial ended October 2021. The ongoing program is to be observed for one year before another such area can be established.		0 Overlap with #17	0	0 [combine with #17]	0	0	0
55	Lehigh and Stevens Creek Quarry	Monitor and report on Lehigh and Stevens Creek Quarries. Utilize IOT sensors to measure noise, particulate, and pollution levels of Lehigh and Stevens Creek Quarry.	Include	Delayed Implementation due to prolonged contract negotiations and supply chain issues. This is an ongoing effort.		1	1	3	3	8	2
56	10455 Tane Avenue Improvements Programming & Feasibility (Also Part of CIP)	Program, plan, and build facility improvements, including seismic, utility and ADA upgrades, for the long-term use of this facility. The scope of work will include public outreach, programming, planning, design, and construction.	Include	Work is in progress but will not be completed by end of FY 21-22.		1	0	3	1	5	1.25
57	Memorial Park Improvements (Also Part of CIP) (Also proposed to continue by Parks and Recreation Commission)	Implement a six-month and 12-month plan for Memorial Park improvements including: 1. Memorial Park - Pond Rejuvenating 2. Memorial Park - Amphitheater Improvements 3. Memorial Park - Specific Plan Design	Include	Work is in progress but will not be completed by end of FY 21-22.		0 Overlap with #20	0	0 [combine with #20]	0	0	0
58	Shuttle Bus Pilot Program Implementation	Community shuttle bus 18-month pilot program to increase connectivity throughout the City, nearby medical locations, and Caltrain in Sunnyvale. Explore complimentary opportunities to expand into other cities.	Include	Work is in progress but will not be completed by end of FY 21-22.		3	0	1	1	5	1.25
59	Lawrence Mitty - Master Plan (Also Part of CIP)	Development project for Lawrence Mitty will be included in the CIP. Programming, Outreach, & Design with outreach expected to start by Q3 FY 21-22.	Include	Work is in progress but will not be completed by end of FY 21-22.		0 Overlap with #21	0	0 [combine with #21]	0	0	0
60	Seismic Retrofits and Upgrades to Existing City Hall (formerly "Investigate Alternatives to City Hall") (Also Part of CIP)	Examine seismic retrofits, upgrades, and remodels to existing City Hall. Remove allocations from budget to a new City Hall.	Include	This is an ongoing effort.		1	1	1	needs public involvement 3	6	1.5
61	Vision Zero (Also proposed to continue by Bicycle Pedestrian Commission)	Develop a Vision Zero Policy and Action Plan. The Plan will guide policies and programs with the goal of eliminating fatalities on Cupertino roadways. Special emphasis will be placed on routes to, and streets surrounding, Cupertino schools.	Include	Work is in progress but will not be completed by end of FY 21-22.		0 Overlap with #2	0	0 [Combine with #2]	0	0	0
62	Municipal Water System	To analyze and recommend options for the continued operation of the system currently and at the end of lease with San Jose Water Company in November 2022.	Include	Work is in progress but will not be completed by end of FY 21-22.		0	0	1	3	4	1
63	RHNA related General Plan updates and rezoning (Housing Element) (Also proposed to continue by Planning Commission)	Review preliminary RHNA numbers. Look at strategies for RHNA compliance including evaluating sites for potential upzoning, and jobs-housing ratio and statistics. Identify Priority Housing sites, update Housing Element and complete rezoning by September 2023.	Include	This is an ongoing project.		0 Overlap with #26	0	3	0	3	1
64	Sign Ordinance Update (Also proposed to continue by Planning Commission)	Update existing provisions, particularly in the temporary sign regulations.	Include	On pause due to City Attorney changeover.		0 Overlap with #26	0	1	0	1	0.25
65	Consider options to develop EI and BMR housing units for developmentally disabled individuals on City-owned property along Mary Avenue as well as the Outback Steakhouse location (Also proposed to continue by Housing Commission)	Identify ways to build EI and BMR housing units for developmentally disabled. Investigate additional sites for BMR or EI housing.	Include	Continue interdepartmental coordination and processing.		0 Overlap with #13	0	0 [combine with #13]	0	0	0
66	City Plan to End Homelessness (Also proposed to continue by Housing Commission)	Draft an Implementation Plan to the Santa Clara County Community Plan to End Homelessness 2020-25 to create a roadmap for addressing homelessness in Cupertino.	Include	To accommodate additional community outreach.		0 Overlap with #11	0	3	0	3	0.75
67	Development Accountability (Also proposed to continue by Planning Commission)	Analyze methods to limit the implementation timeline for entitled/future projects and encourage development. Monitor implementation of development agreements and conditions of approval. Review and establish accountability in the project approval process.	Include	Staffing challenges.		0	0	1	0	1	0.25
68	Review and Update General Plan (GP) and Municipal Code (Also proposed to continue by Planning Commission)	1. Amend General Plan & Municipal Code & zoning code to provide objective standards as identified in 2019/2020 evaluation. 2.Re-evaluate the Heart of the City Specific Plan for sections of the plan that could be clarified and updated easily with objective standards.	Include	Phase 3 of project completed. Other updates to be considered as the need arises		0 Overlap with #26	0	0	0	0	0
69	Residential and Mixed-Use Residential Design Standards (Also proposed to continue by Planning Commission)	Create objective design standards for residential and mixed-use residential projects, including ensuring adequate buffers from neighboring low-density residential development.	Include	Staffing challenges. Ongoing project important for the Housing Element implementation.		0 Overlap with #26	0	0	0	0	0

Proposed Items for FY 2022-2023 City Work Program

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Councilmember Proposed Items											
	Youth Who Work	Encourage more youth and young adults in schools to work and also help small businesses to reduce the burden caused higher minimum wages. For example, the City could provide \$2/hour to compensate local small businesses.					3				
	Intergenerational Engagement	Many seniors have a wealth of lifelong experiences. Many teens do not have grandparents nearby. Activities cross generations could benefit both. Schools could engage seniors in the community to attend school open house or serve as volunteers, such as reading partners.		Teen Commission could take the lead on this project Assigned to the Teen Commission			3				
	Hybrid Meeting for City Council and Commission Meetings	Develop policy and infrastructure to allow hybrid meetings for both City Council, Commission meetings and future community workshops. This allows seniors, caretakers, parents with young children to participate and speak.		Virtual meetings have become the norm nowadays. The community will desire the option to attend a meeting virtually.			3				
	Visitor Center	Develop an online and offline visitor center/guide so that visitors to Cupertino know where to go. Ideally a (digital) map to identify locations to visit or for photo ops to post on social media.		Cupertino is well-known. But besides Apple Store, there is no points of interest. This Visitor Guide will help boost commercial sales and Cupertino's image The Economic Development Committee could take on the planning for this task.			3				
	Integrated Plan for Community Engagement	Create Integrated Plan and Database for Community Engagement so that we do not start from scratch with each project. The plan should include all possible outreach channels, traditional media, newspaper, including Chinese and other languages, city channel, the Scene, social media and influencers, community leaders, community groups, HOAs, block leader programs, Chamber and other business groups etc. Explore the possibility for Library and Community Engagement Commission so that the Library Commission could help review and update this plan as needed.		The City continues to waste precious time since each project appear to be using an ad hoc approach for outreach. Each new project can utilize database and plan to customize for the project needs. Assign to Library Commission to explore possibilities. The Commission could put Library items first so that the Librarians only need to attend the first half of the meeting.			5				
	Single Use Plastics and Mayors Cup Challenge	Phase 2 of existing work program item						3			
	Mental Health Support	Phase 2 of existing work program item						3			
	Resident Engagement	Increase resident engagement in Cupertino. For example: - Greater participation in surveys (possibly incentivizing surveys with gift cards) - Greater interaction with the community (e.g. tabling with swag, encouraging sign ups for updates) - Greater use of partner outlets (e.g. at Library, Chamber, DeAnza, CUSD, FJHSD)						5			
	Regional Transformative Transit Projects Initiative							1			
	Student Internship Program	Implement a trial student summer internship program with the City of Cupertino. Initial year will be on a limited basis. If approved, applications will be sought for one-, two- or three-week internships during the summer, with applications to be released in mid-July. Internships will be project-focused, with participating City departments asked to identify a specific project or projects that a student intern can undertake. The internships will have a common start date, and include an orientation, group activities and exit interviews. Alternatively, if the time and resources do not permit the City to run a trial program in the upcoming summer of the fiscal year (i.e., Summer 2022), Council may form a subcommittee to share practices for student internships, and to bring a report back to Council at the end of Summer 2022 with recommendations as part of the initiation of a student internship program in Summer 2023.		Based upon consistent inquiries for such opportunities each year. Furthermore, both the students and City benefit from a program that matches projects that may not otherwise be completed as timely with students looking to learn more about our models of civic engagement and governance. Timing could be challenging for implementing a formal program in Summer 2022. As such, the alternative is recommended to allow for more time to develop such a program. Note that some work program items may provide an ideal fit for generating projects for a student internship program. In the longer-term, once such a program is implemented, it will provide an array of opportunities for students to learn about civic engagement while contributing meaningfully to the community.					5		
	Senior Outreach Project	Create and maintain a periodical newsletter to the senior community (limited paper copies with opt-in email list) containing news from, and opportunities for engagement with, the City of Cupertino.		Based upon a growing and sustained need for neutral and jurisdiction-driven outreach to the senior community.					3		
	Lawrence Milly - Master Plan (combining 21 and 59 with supplemental direction)	Incorporates items 21 and 59 in this list, with the following additions: - Hire a dedicated Project Manager by the end of Q1 FY2022-2023 for the development of the Lawrence-Milly Park. - Review and modify the current timetable, and bring back an updated schedule to City Council by November 2022 with an aim of delivering a completed park to the public in as timely and effective a manner as possible.		A dedicated project manager should will help to ensure timely completion of the project. A project manager will also help ensure that this traditionally park-under-served area receives appropriate outreach and becomes engaged both in the process of developing a park, and in ongoing community activities which are an integral part of maintaining the space.					5		
	Cupertino Store (combining 8 and 49)	Direction to staff previously was to investigate multiple site possibilities in this current (2021-2022) fiscal year. As such, several additional possible sites come to mind, but are not limited to: - Quinlan Center - Library - City Hall There are likely to be more feasible places. This combined item would first identify a location if one is not identified in fiscal 2021-2022. In the upcoming 2022-2023 fiscal year, with some help from the Fine Arts Commission for some of the items, items would be designed and selected for the store, for sale to the public and also available for exchange purposes for formal delegations to and from the City, with an at-cost charge structure for the latter purposes.		Combines two items and fulfills need of having Cupertino-branded material available to the public.					5		
	Support for the Unhoused (combining 10, 11 and 66)	These items should be combined into formulating a City plan to address the issue of the unhoused and how to provide services in as effective a manner as possible with the resources available. A specific plan would be generated which includes consideration and recommendations for: - City-driven jobs program. Could be fully independent or work in collaboration with a partner or partners, including the County. - Facility development with supportive services. With non-profit organization partnership, space would be identified and a plan for supportive space with an ultimate aim to provide a pathway to permanent sustained housing would be made. - Funding strategy. This would require significant resources, but the social costs of not addressing this growing issue are more significant. With grant money and possible private partnerships available, the deliverable here would be to provide the City with actionable recommendations for securing financial support for this program.							5		

Proposed Items with Resource Considerations in Priority Order

Attachment B - Proposed Items with Resource Considerations in Priority Order will be provided as a desk item and posted under Written Communications.



CITY OF CUPERTINO

Agenda Item

22-10608

Agenda Date: 4/5/2022
Agenda #: 13.

Subject: Consideration of corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission

Consider making corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission; approve option(s) or provide direction to staff as to other measures to ensure compliance with Cupertino Municipal Code Chapter 2.95

Presenter: Kirsten Squarcia, City Clerk



OFFICE OF THE CITY CLERK

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CITY COUNCIL STAFF REPORT

Meeting: April 5, 2022

Subject

Consideration of corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission

Recommended Action

Consider making corrections to the current Teen Commission staggered term groups to return the Commission back to the term cycle that is specified by Cupertino Municipal Code, Chapter 2.95 Teen Commission; approve option(s) or provide direction to staff as to other measures to ensure compliance with Cupertino Municipal Code Chapter 2.95

Discussion

As required by Cupertino Municipal Code (CMC) Chapter 2.95, the Teen Commission is comprised of nine Commissioners who are appointed to two-year terms. The regular terms of commissioners begin on September 1 and end on August 31 of the year their term is due to expire. Membership on the Commission is limited to Cupertino residents. Commissioners must be in the 8th through 11th grade at time of appointment. Chapter 2.95 requires Council to make five (5) new appointments in odd-numbered years and four (4) new appointments in even-numbered years. Members of the Teen Commission must be appointed according to CMC Chapter 2.95 (Attachment A) and the current commission recruitment process adopted by City Council (Attachment B).

Until 2018, the Teen Commission was established and amended by City Council pursuant to resolution. The Commission membership included Commissioners from 12th grade who were appointed to one-year terms. So long as a one-year term appointment was made, the staggered term groups remained in balance, with five vacancies in odd-numbered years and four vacancies in even-numbered years. During the 2011 Teen Commission annual appointment cycle, Council appointed five members to two-year terms and chose not to include a one-year term, thereby resulting in six vacancies for the following appointment cycle (Attachment C). Council continued to make appointments

based on six (6) terms expiring in odd-numbered years and three (3) terms expiring in even-numbered years.

On March 6, 2018, Council adopted Resolution No. 18-019 limiting membership to students in 8th through 11th grade at time of appointment and revoking 12th grade (one-year term) membership (Attachment B).

On December 4, 2018, Council adopted Ordinance No. 18-2181 codifying and establishing the Teen Commission in the Cupertino Municipal Code (CMC). CMC Section 2.95.020 sets the staggered terms of office at five (5) new appointments in odd-numbered years and four (4) new appointments in even-numbered years. However, only three members of Teen Commission have terms that have been set to expire this year. This conflicts with CMC Section 2.95.020, which requires that four new members be appointed this year. Due to this conflict, staff is recommending that Council consider making corrections to the current Teen Commission 6/3 term groups to return the Commission back to the 5/4 two-year cycle that is specified by the Code.

Below are the recommended options for Council to consider:

Option 1: The Council may choose to (retroactively) limit the term of one of the current Commissioners to one year. Staff would poll the Commission to see if any members wish to shorten their term with an expiration on August 31, 2022. If Council selects this option, staff recommends that Council authorize staff to proceed with the recruitment process and set the application deadline and interview dates for **four** terms expiring on the Teen Commission as follows:

- 1.) Application deadline of 4:30 p.m. on Friday, May 13; and
 - 2.) Interview dates at 5:30 p.m. on Tuesday, May 24 and Wednesday, May 25 (as needed);
- or

Option 2: The Council may direct staff to amend the Cupertino Municipal Code (CMC) to set the staggered terms at six (6) appointments in odd-numbered years and three (3) appointments in even-numbered years. An amendment to the CMC would require extending the Teen Commission annual recruitment by at least two months to allow staff to prepare a draft ordinance for introduction and potential enactment by the Council, as well as the requisite thirty days for the ordinance to go into effect. Staff recommends that interviews be scheduled in August to interview applicants after their summer activities end; and authorize staff to proceed with the recruitment process. If Council selects this option, staff recommends that Council set application deadline and interview dates for three terms expiring on the Teen Commission as follows:

- 1.) Application deadline of 4:30 p.m. on July 29; and

2.) Interview dates at 5:30 p.m. on Monday, August 8 and Tuesday, August 9 (as needed)

If Council wishes to establish the application deadline and interview dates, then staff will begin outreach for the recruitment. The Parks and Recreation Department will distribute vacancy notices to the school districts and advertise through other available marketing channels. The City Clerk's Office will advertise the vacancies on the City website and through social media, as well as in the Cupertino Courier, World Journal, and Cupertino Scene (schedule permitting).

Sustainability Impact

None

Fiscal Impact

None

Prepared by: Kirsten Squarcia, City Clerk

Reviewed by: Christopher Jensen, City Attorney and Katy Nomura, Deputy City Manager

Approved for Submission by: Jim Throop, City Manager

Attachments:

A - Ordinance No. 18-2181 Establishing the Teen Commission

B - Resolution No. 18-019 Governing Teen Commission Recruitment

C - May 25, 2011 City Council minutes

ORDINANCE NO. 18 -2181

**AN ORDINANCE OF THE CUPERTINO CITY COUNCIL
ADDING CHAPTER 2.95 TO THE CUPERTINO MUNICIPAL CODE, TITLE 2, TO
ESTABLISH THE TEEN COMMISSION BY ORDINANCE**

WHEREAS, the Teen Commission was established by City Council pursuant to Resolution 02-065, as amended through various other resolutions, including Resolution Nos. 02-167, 04-405, 05-095, 09-078, 09-115, 16-138, and 18-019;

WHEREAS, the City Council desires to codify and establish the Teen Commission in the Cupertino Municipal Code.

NOW, THEREFORE, the Council of the City of Cupertino does ordain as follows:

SECTION ONE - Chapter 2.95 "Teen Commission" is added to Title 2 "Administration and Personnel" of the Cupertino Municipal Code, as follows:

CHAPTER 2.95 TEEN COMMISSION

Section

- 2.95.010 Established.
- 2.95.020 Terms of Office.
- 2.95.030 Vacancy—Removal.
- 2.95.040 Chairperson.
- 2.95.050 Meetings—Quorum.
- 2.95.060 Majority Vote Required.
- 2.95.070 Records.
- 2.95.080 Powers and Functions.
- 2.95.090 Compensation—Expenses.
- 2.95.100 Procedural Rules.
- 2.95.110 Effect.

2.95.010 Established.

The Teen Commission of the City is established. The Teen Commission (hereinafter referred to in this Chapter as "Commission") will be comprised of nine members, at least one person from each public middle school and public high school in Cupertino, if possible. Membership on the Commission will be limited to Cupertino residents. Members may attend schools outside of the City limits, or be schooled at home. Commissioners must be in the 8th through 11th grade at time of appointment. None of the Teen Commissioners shall be otherwise officials or employees of the City of Cupertino nor be related by blood or marriage to any official or employee of the City. Commissioners should reflect the broadest possible representation of Cupertino youth.

2.95.020 Terms of Office.

A. Commission members serve at the pleasure of the City Council. The term of office of Teen Commission members shall be for two years. Five appointments will be made in odd-numbered years and four appointments in even-numbered years. The terms will begin on September 1st and end on August 31st of the year their term is due to expire. Commissioners shall not serve consecutive terms unless there is a vacancy for which there is no eligible applicant, at which time the City Council may waive this restriction.

B. The appointment, reappointment and rules governing incumbent members of the Commission are governed by the Resolution of the Cupertino City Council which governs advisory bodies and the Resolution of the Cupertino City Council which governs the Teen Commission specifically.

2.95.030 Vacancy—Removal.

Any appointee member may be removed by a majority vote of the City Council. Vacancies shall be filled by appointment by the City Council, and shall be for the unexpired portion of the term of office vacated.

2.95.040 Chairperson.

The Commission shall elect its Chairperson and Vice-Chairperson from among its members who shall serve in these capacities for one year.

2.95.050 Meetings—Quorum.

A. The Teen Commission shall hold regular meetings at least every other month, and, at the discretion of the Commission, such other meetings as may be necessary or expedient.

B. A majority of the Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

2.95.060 Majority Vote Required.

A majority vote is required to approve a recommendation or on any matter that is presented to the Commission which requires a vote.

2.95.070 Records.

The Commission shall keep an accurate record of its proceedings and transactions, and shall render such reports to the City Council as may be required. These records shall be filed with the City Clerk.

2.95.080 Powers and Functions.

The powers and functions of the Teen Commission shall be as follows:

- A. Advise the City Council and staff on issues and projects important to youth.
- B. Perform such other tasks as may be expressly requested of it by the City Council.

2.95.090 Compensation—Expenses

Members of the Commission shall serve without compensation. Commissioners may be reimbursed for necessary expenses reasonably incurred by them while acting in their official capacity subject to the approval of the City Manager.

2.95.100 Procedural Rules.

The Commission may adopt from time to time such rules of procedure as it may deem necessary to properly exercise its powers and duties. Such rules shall be subject to the approval by the City Council and shall be kept on file with the Chairperson of the Commission and the City Clerk, and a copy thereof shall be furnished to any person on request.

2.95.110 Effect.

Nothing in this Chapter shall be construed as restricting or curtailing any powers of the City Council or City officers.

SECTION FIVE - IMPLEMENTATION.

The City Council hereby authorizes and directs the City Manager to take any action and sign any documents necessary to implement this Ordinance.

SECTION SIX - SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Cupertino hereby declares that they would have passed this Ordinance and each section or

subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION SEVEN - EFFECTIVE DATE; PUBLICATION.

The City Clerk is directed to post and publish this Ordinance in accordance with law in a newspaper of general circulation printed and published in the County of Santa Clara, or as otherwise required by law. This ordinance shall take effect thirty (30) days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of November, 2018 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 4th day of December 2018, by the following vote:

Vote: Members of the City Council

Ayes: Sinks, Chang, Vaidhyanathan

Noes: Paul, Scharf

Absent: None

Abstain: None

ATTEST:

APPROVED:



Grace Schmidt, City Clerk



Darcy Paul, Mayor
City of Cupertino

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 18-2181, which was enacted on December 4, 2018, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5 day of December, 2018.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California

RESOLUTION NO. 18-019

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO UPDATING THE CUPERTINO TEEN COMMISSION, ESTABLISHING MEMBERSHIP FOR STUDENTS FROM 8TH THROUGH 11TH GRADE, AND RESCINDING ANY AND ALL EARLIER RESOLUTIONS

WHEREAS, the Teen Commission was established by City Council pursuant to Resolution 02-065, as amended through various other resolutions, including resolutions nos. 02-167, 04-405, 05-095, 09-078, 09-115 and 16-138;

WHEREAS, pursuant to Resolution No. 17-033 adopted by Council on April 4, 2017, students enrolled in 8th through 12th grade may apply for membership to the Commission;

WHEREAS, the City Council desires that membership be limited to students who are enrolled in 8th through 11th grade at time of appointment for the purpose of establishing greater effectiveness of the Teen Commission.

NOW, THEREFORE, BE IT RESOLVED that membership in the Teen Commission shall be limited to students enrolled in 8th through 11th grade at time of appointment. Any and all previous resolutions, including those listed above, to the extent they are still in effect, are hereby revoked and superseded by this Resolution. Accordingly, the updated Teen Commission Resolution shall read as follows:

CUPERTINO TEEN COMMISSION

- The Cupertino Teen Commission will be comprised of nine members, at least one person from each public middle school and public high school in Cupertino, if possible. Membership on the Commission will be limited to Cupertino residents. Members may attend schools outside of the city limits, or be schooled at home. Commissioners must be in the **8th through 11th grade at time of appointment**.
- The members of the Teen Commission shall be appointed pursuant to the current commission recruitment process adopted by City Council, with the following exceptions: Applicants under the age of 18 must have written permission of a parent or guardian to participate on the Teen Commission. The Recreation and Community Services Department will work with the City Clerk to notice vacancies so that outreach to schools and youth organizations is accomplished. A letter of recommendation shall be submitted as part of the application process. The Council

shall appoint new commissioners in May, to be seated in September, except in the case of reappointment of vacant seats.

- A) For all applicants, the City Clerk will summarize the applications on a chart that indicates applicants' name, school, and grade level in order to assist the Council decision process. The summary chart will be distributed to the Council members before interviewing begins.
 - B) Each applicant in the interview pool will then be interviewed by Council. The applicant will start with a one-minute speech explaining why the applicant wishes to serve and why they feel qualified to serve.
 - C) Each Council member will then have the opportunity to ask at least one question of the applicant.
 - D) When the entire pool has been interviewed, Council will discuss the applicants. After the discussion, ballot voting will take place to determine the appointments.
 - E) If no applicant is appointed from one of the five public schools in Cupertino, Council may choose to re-advertise for a subsequent appointment process, fill the vacancy with any other applicant or leave the seat vacant.
 - F) Council may appoint alternates to serve on the commission in the event of a vacancy. Such alternates may attend meetings but shall not participate in meetings until such time as a vacancy has occurred and the alternate has filled the vacancy. If Council appoints more than one alternate, Council shall designate the alternates as first alternate, second alternate and so on such that immediately upon a vacancy occurring, the first alternate shall fill such vacancy without the need for further City Council action.
- Commissioners should reflect the broadest possible representation of Cupertino youth.
 - A total of nine Teen Commissioners will be appointed to two-year terms. Five (5) appointments will be made in odd-numbered years and four (4) appointments in

even-numbered years. Vacant seats will be filled with applicants willing to finish the term. The terms will begin on September 1st and end on August 31st of each year.

- Commissioners shall not serve consecutive terms unless there is a vacancy for which there is no eligible applicant, at which time the City Council may waive this restriction.
- None of the Teen Commissioners shall be otherwise officials or employees of the City of Cupertino nor be related by blood or marriage to any official or employee of the city.
- The Commission shall elect a chair and vice-chair at the beginning of each year.
- The annual meeting schedule will coincide with the commission term (i.e., September – August). Meeting times and location will be decided by the commission at the first meeting of the term, and will be adopted as the annual meeting schedule pursuant to the Brown Act.
- Actions taken by the Commission will be by majority vote.
- The Recreation and Community Services Department will provide staff support to the Teen Commission and will post meeting agendas.
- The powers and function of the Teen Commission will be to advise the City Council and staff on issues and projects important to youth.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6th day of March, 2018 by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	Paul, Sinks, Chang, Scharf, Vaidhyanathan
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:	APPROVED:
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/s/Grace Schmidt

/s/Darcy Paul

Grace Schmidt, City Clerk

Darcy Paul, Mayor,
City of Cupertino



CUPERTINO

MINUTES
CUPERTINO CITY COUNCIL
Regular Adjourned Meeting
Wednesday, May 25, 2011

ROLL CALL

At 3:42 p.m. Mayor Gilbert Wong called the meeting to order in City Hall Conference Room A, 10300 Torre Avenue, Cupertino, California.

Present: Mayor Gilbert Wong, Vice-Mayor Mark Santoro, and Council members Barry Chang, and Orrin Mahoney. Absent: Council member Kris Wang.

COMMISSION INTERVIEWS

1. Interview applicants for vacancies on the Teen Commission.

Written Communications for this meeting included a letter to Council from the Teen Commission with a recommended list of characteristics for the upcoming teen commission members.

The City Council interviewed 66 applicants from grades eight through twelve. The following 5 individuals were appointed to 2-year terms:

Madeline Yip
Sanika Puranik
Greg Pommier
Dana Lujack
Ashley Ding

ORAL COMMUNICATIONS - None

ADJOURNMENT

At 11:45 p.m. the meeting was adjourned.

/s/Grace Schmidt

Grace Schmidt, Deputy City Clerk

For more information: Staff reports, backup materials, and items distributed at the meeting are available for review at the City Clerk's Office, 777-3223, and also on the Internet at www.cupertino.org.

May 25, 2011

Cupertino City Council

Most Council meetings are shown live on Cable Channel 26, and are available at your convenience from our web site. Visit www.cupertino.org and click on Watch Meetings. Videotapes are available at the Cupertino Library, or may be purchased from the Cupertino City Channel, 777-2364.



CITY OF CUPERTINO

Agenda Item

21-9691

Agenda Date: 4/5/2022
Agenda #: 14.

Subject: Consideration of Municipal Code amendments to the Cupertino Municipal Code related to regulation of single-use plastic foodware and single-use carryout bags

Conduct the first reading of Ordinance No. 22-2239: "An Ordinance of the City Council of the City of Cupertino amending City Code to change the name of section 9.15, adopt new sections 9.15.090 and 9.15.125, and amend sections 9.15.100, 9.15.110, 9.15.120, 9.15.130, 9.17.130 and 9.17.140 to regulate the use of single-use food service ware by food providers, regulate sale of single-use food service ware and expanded polystyrene foam coolers, and regulate single-use carryout bags" (Attachment A), which includes a finding that adoption of the Ordinance is exempt from the California Environmental Quality Act

Presenter: Ursula Syrova, Environmental Programs Manager



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: April 5, 2022

Subject

Consider conducting the first reading of an Ordinance related to regulation of single-use plastic foodware and single-use carryout bags.

Recommended Action

Conduct the first reading of Ordinance No. 22-xxx "An Ordinance of the City Council of the City of Cupertino amending City Code to change the name of section 9.15, adopt new sections 9.15.090 and 9.15.125, and amend sections 9.15.100, 9.15.110, 9.15.120, 9.15.130, 9.17.130, and 9.17.140 to regulate the use of single-use food service ware by food providers, regulate sale of single-use food service ware and expanded polystyrene foam coolers, and regulate single-use carryout bags" (Attachment A,) which includes a finding that adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA.)

Background

Due to concern for the negative environmental impact of litter, chemical migration into food, waste reduction, and conservation of natural resources, the City of Cupertino seeks to further reduce the use of single-use plastics through regulation of food service ware. The City's Zero Waste Policy, adopted in 2017, acknowledges that reusable foodware is generally preferred to single-use items and particularly seeks to reduce the production of unnecessary plastic food service ware. City Council made single-use plastics a City Work Program item in 2020 and Cupertino's Sustainability Commission recommended restrictions on single-use plastic foodware at their meeting on January 20.

While there are many single-use plastic items, both recyclable and not recyclable used in everyday life, the scope of this Ordinance is limited to single-use plastic food service ware used by food and beverage providers and non-durable expanded polystyrene foam coolers. City Municipal Code currently bans the use of expanded polystyrene (EPS) foam foodware and bans single-use plastic carryout bags (with an exemption for restaurants bagging takeout food orders).

City Council conducted a Study Session on this topic on March 1 and directed staff to:

- Develop Ordinance language and return in April for a first reading

- Include temporary waivers to reduce impacts to businesses
- Reach out to the business community, including larger corporate interests
- Gather information on consultants with restaurant operation and food service experience able to provide technical and financial assistance to food businesses during transition
- Explore collaboration with local schools, which would not be covered under this proposed Ordinance
- Research reusable solutions for boba tea, which is very popular locally and is often very reliant on single-use plastic for serving and presentation
- Explore a pilot of reusable food service ware for takeout food and beverages
- Explore coordinating similar efforts with surrounding cities
- Explore amending Cupertino's single-use carryout bag Ordinance to require compostable or recyclable produce bags
- Compare the greenhouse gas (GHG) impact of plastic versus compostable foodware
- Clarify the concerns about bio-plastics and allow for future changes that may make those materials acceptable to the compost processors

Discussion

Foodware Ordinance Amendments

Environmental Programs Division staff prepared proposed amendments to Municipal Code Chapter 9.15 that would enact a shift away from single-use plastic foodware and toward compostable and reusable foodware.

Cupertino currently prohibits food service providers from using EPS foam foodware. The amended language (Attachments A and B) proposes to expand on that by requiring foodware accessories to be provided only when requested, banning the use of single-use plastic foodware, banning sale of bio-plastic foodware, and requiring reusables for dining in. The Ordinance enacts these prohibitions in two phases. The elements of those phases are summarized below and presented in Attachment C, which serves as an index to the draft Ordinance itself.

The first phase of the Ordinance mirrors the requirements of State law Assembly Bill (AB) 1276 and requires that food service ware accessories such as utensils, chopsticks, condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks be provided only upon request by customers. These requirements become effective on June 1, 2022.

The second phase of the proposed Ordinance includes elements that are proposed to go into effect one year later, on June 1, 2023:

1. Prohibit the use of certain types of food service ware by food providers:
 - Continue to prohibit use of expanded polystyrene foam food service ware

- Prohibit use of single-use plastic items (even if accepted as recyclable.)
 - Prohibit use of compostable food service ware that contains PFAS (a group of chemicals used to make a coating for products that resist heat, oil, stains, grease, and water) (as required by AB 1200.)
 - Prohibit use of bio-plastics (compostable plastics.)
2. Require reusable food service ware for dining on site:
- Reusable food service ware must be provided for customers dining on site at the food provider's location. This would require sufficient dishwashing capacity or a contract with a dishwashing service.
3. Prohibit the sale of certain non-compliant foodware:
- Ban local sale of expanded polystyrene foam foodware.
 - Ban local sale of bio-plastic foodware.
 - Continue to allow local sale of traditional plastic foodware and accessories¹.
4. Exempted items:
- Paper, wood, bamboo, and other fiber-based compostable foodware items accepted in the City's compost program.
 - Containers made entirely from aluminum and aluminum foil.
 - Plastic straws for those with medical need.
 - Food prepared and packaged outside of the City.
 - Compliant single-use food service used for taking home leftovers from dine-in situations.
 - Temporary exemptions allowed if additional time needed to comply.
 - Temporary exemptions allowed for significant economic hardship.
 - Temporary exemptions allowed for unique packaging hardship.
 - .

Why Compostable "Bio-Plastics" Are Not the Answer

Foodware containers and utensils made from polylactic acid (PLA,) or other "bio-plastics" made from corn or potato starch are not allowed in Cupertino's organics recycling program, even if labeled as certified compostable. The one exception is that Biodegradable Products Institute (BPI) certified compostable plastic bags are still allowed for collecting food scraps. Problems with bio-plastics:

- They do not break down fast enough. A 60-day timeframe is typical at California composting facilities, which is different from the 180 days allowed by American Society for Testing and Materials (ASTM) standards.
- Considered a contaminant which must be screened out and sent to landfill.
- Bio-plastics in landfill create methane as they degrade.
- People confuse bio-plastics with recyclable traditional plastic.
- Bio-plastic foodware is usually more expensive than other types.

¹ Plastic food service ware and accessories includes plastic cups, plates, bowls, utensils, stir sticks, etcetera.

- Currently there is no place for bio-plastics in Cupertino's waste streams.

If technological advances in production, processing, or sorting occurs, which changes what is allowed in Cupertino's local composting program, the Ordinance could be amended, but there are currently no solutions to the various issues above.

Single-Use Carryout Bags Ordinance Amendments

City Municipal Code (CMC) currently bans the use of single-use plastic carryout bags at all retail locations with an exemption for restaurants bagging takeout food orders. It requires a fee of ten cents for each paper bag provided at point of checkout and allows reusable bags to be provided with no fee.

- At the recommendation of the Sustainability Commission, a proposed amendment would remove the exemption allowing thin single-use carryout plastic bags for restaurants. If adopted, staff recommends an effective date of June 1, 2023, to align with the new proposed single-use plastic foodware requirements.
- Another amendment to the bag Ordinance would require a ten-cent charge for reusable bags, which would bring Cupertino Code into alignment with State law. As an observational survey showed grocery stores are already charging for both paper and reusable carryout bags, this is more of a Code cleanup issue, but other retailers will be informed for education and compliance.
- In neither the current form of the CMC nor the proposed amended form would restaurants be required to charge a fee for carryout bags containing takeout food orders.
- A further amendment was suggested by City Council which would require compostable bio-plastic or paper produce bags at local supermarkets and farmers markets. This is not currently recommended due to uncertainty from Cupertino's compost processors about the role of bio-plastic bags and because there is a State bill contemplating a similar requirement. Staff advises considering this issue when more information is available.

Environmental Comparison Between Types of Foodware

While single-use foodware is highly visible and often non-essential, it is not a significant contributor of GHG in Cupertino, when compared to transportation or energy sources. While there are lifecycle analyses of the various types of single-use foodware, they do not take into consideration the impacts of items that are littered and end up in the oceans; the concern is over chemicals leaching into food, or that plastic single-use foodware is unlikely in actual practice to be clean enough to be recycled. They also do not take into consideration what has been called the "carrier benefit" of compostable foodware, which is something that does not need to be emptied or wiped clean of food scraps before being placed in a green bin and thus may carry more food scraps into the compost stream. Setting aside those gaps, most of the GHG production and water use are from resource extraction and manufacturing – fossil fuels for plastics, trees for paper, crops for bio-plastics and mining aluminum. Based purely on climate change impact,

there is not a clear best choice among single-use items.² Meanwhile, reusable items made from ceramic, steel, or glass consistently result in a lower carbon footprint after they have been reused and washed a number of times. Washing processes that are energy and water-efficient can reduce the break-even point considerably.³

Outreach to Schools and Large Corporations

Staff interviewed several large institutional food service providers in Cupertino during the summer of 2021 about their use of foodware. Common concerns included being able to quickly transition to reusables for dining in given needed structural changes and labor shortages. Conversations with representatives from Cupertino Union School District (CUSD) revealed concerns over product availability due to supply chain issues and cited a lack of dishwashing capacity and funding shortfalls. While CUSD would not be subject to the City's Ordinance, they are open to collaborating for change and have already made choices to unbundle foodware available to students, have eliminated straws, and already use paper-based trays to hold food. Fremont Union High School District (FUHSD) has members of the Silicon Valley Youth Climate Action organization actively working on issues of climate change with leaders in the District and are requesting to form an advisory group to include representatives from the cities in FUHSD, climate groups, and students to act on a variety of topics, including waste reduction. Staff has also reached out to De Anza College to discuss this topic.

Assistance for Businesses During Transition

If the Ordinance is adopted, staff recommends contracting for technical and financial assistance to help Cupertino's food service businesses understand and adjust to the requirements, including sourcing foodware and connecting businesses with mini grants. A consultant who is deeply knowledgeable about food service business requirements, regulations, supplies, and challenges who also has experience with making these types of transitions will best be able to provide such assistance. A request for proposal is under development.

The Challenge of Bubble Tea

There are at least 14 locations in Cupertino that serve bubble "boba" tea as a primary item and others that serve bubble tea on their menu. Seeing the tea and tapioca pearls through the cup and shaking the drink to mix it are part of the expected experience, and out of the 14 boba-focused tea places, 13 used clear single-use plastic cups and a machine to heat-seal film plastic across the top to cover the drinks. From a limited online search, the heat-sealing machinery can cost around \$2000, and for franchised shops the presentation and packaging could be required. Understanding these concerns, City Council is interested in reusable alternatives. Staff talked to one reusable takeout

² "Food Service Ware LCA Harmonization." State of Oregon Department of Environmental Quality accessed at <https://www.oregon.gov/deq/FilterDocs/FoodLCAreport.pdf>

³ "Reusable Food Service Ware." State of Oregon Department of Environmental Quality and Franklin Associates, a Division of Eastern Research Group accessed at <https://www.oregon.gov/deq/FilterDocs/reusable-fsw.pdf>

foodware solutions company operating out of Mountain View that is specifically piloting a clear cup alternative that would work for boba. Staff also purchased specialized mason jar lids, reusable straws, and travel cups as a demonstration and giveaway items for events such as Earth Day. A readily available solution does not currently exist to replace the experience of the heat-sealed transparent to-go cups. In recognition of this, the proposed Ordinance includes a “unique packaging exemption” that could be employed while reusable and fiber-based compliant options are encouraged.

Piloting Reusables for Takeout

Reusables for takeout food and drinks is a business model that is already gaining some traction in the Bay Area and elsewhere around the country and the world. A common method is to charge a deposit for a reusable to-go container which is refunded once the container is returned to a drop-off site, usually via a smart phone app. The returned containers are cleaned, sanitized, and returned to the food providers. In other models the containers are returned to participating businesses and washed and sanitized by the businesses themselves. City Council and Sustainability Commission were both interested to learn more about such possibilities, as were more than 60% of businesses and customers when asked in surveys. Staff has reached out to two providers for more information. Meanwhile, as a timely indicator that this is a topic of interest more widely, Starbucks announced on March 15, that it is planning to provide easy access to personal and other reusable to-go cups in café, drive-thru, and mobile orders by 2025. This plan includes making use of a double-window for drive-thru orders to enable customers to bring their own cups and a reusable and returnable borrowing cup model like what has already been described. Staff will continue to reach out to companies that provide this service and make a future recommendation to City Council for consideration of a possible local pilot.

Coordinating with other Cities

City Council was interested in the pace and interest of nearby cities to adopt similar restrictions on single-use plastics. While it would be ideal to move together as a region similar to what happened with plastic bags and expanded polystyrene, a model Ordinance effort at the County level was derailed by COVID-19 and a few cities have advanced on their own in the meantime. Pausing this effort in Cupertino to attempt to coordinate efforts more broadly across the County would delay implementation beyond Fiscal Year (FY) 22-23. Acting now will place Cupertino as a leader, paving the way for other jurisdictions considering similar Ordinances. Figure one below shows the current and planned regulations of neighboring jurisdictions.

Figure 1: Comparison of Foodware Ordinances in Neighboring Jurisdictions

Comparison of Food Service Ware Ordinance Provisions		Cupertino (Recommended)	Mountain View	Palo Alto	Sunnyvale	Berkeley	County of San Mateo	San Francisco	Santa Cruz (City)	Sonoma (County)
Use of Single-Use Foodware Ware	All single-use food service ware must be compostable FC/AL = Fiber-based compostable or aluminum C/R = compostable or recyclable	FC/ AL	FC/ AL	x		x	FC	C/ R	FC /R	C/ R
	Prohibit use of some single-use plastic foodware accessories	x	x	x		x	x	x	x	x
	Prohibit use of expanded polystyrene (EPS) foam foodware	x	x	x	x	x	x	x	x	x
Require Reusable Food Service Ware	Requires reusable foodware for dine-in P = Planned for future phase E = Encouraged	x	P	P		x	E		P	E
	Require events to make reusable beverage cups available							x		
Sale of Single-Use Foodware	Prohibit sale of EPS foam foodware	x	x	x	x			x	x	x
	Prohibit sale of single-use plastic accessories		x							
	Prohibit sale of single-use compostable plastic foodware	x								
	Prohibit sale of single-use traditional plastic foodware									
Sale of other EPS Products	Prohibit sale of EPS ice chests, other items		x	x				x	x	x
	Prohibit sale of EPS packing peanuts, blocks			x				x	x	x
Cup Charges	Require a charge for single-use cups E= Encouraged					x			x	E
Container Charges	Require a charge for single-use containers									
Compostable Produce Bags	Require grocery stores and farmer's markets to use compostable bags for meat and produce. C/R = compostable or recyclable			x				C/R		
No Plastic Bags for Takeout Food Orders	Prohibit use of plastic bags for takeout food orders							x		

Impact on Food Providers

Economically, the impact of the Ordinance could be mixed. With the implementation of the first phase per AB 1276 to offer utensils and accessories only on demand, providers could see cost savings from not giving out unwanted items. When the additional foodware requirements go into effect, providers using single-use plastic or bio-plastic food ware will need to use compliant PFAS-free fiber-based compostable or aluminum to-go foodware. The cost of transitioning to use compliant products could vary widely and is not universally more expensive. Food service providers surveyed in summer 2021 were using a combination of products. Transitioning to reusables for dine-in will require

some businesses to purchase washable items and either make use of available dishwashing capacity or increase that capacity. Understanding that this may not be financially or practically possible in some cases, temporary waivers for additional time needed and financial hardship are included. Figure 2 below shows the range of food provider categories in Cupertino and anticipated impact.

Figure 2: Summary of Common Food Provider Types in Cupertino and Potential Impacts (based on business license data)

Type of Food Provider	Number of Businesses	% of Total	Expected Impacts
Dine-in (Full-service restaurants)	73	49%	Moderate: <ul style="list-style-type: none"> Over half of full-service restaurants that offer dine-in provide reusables, but some provide only single-use plastic or a combination of both
Fast-food/casual (Includes locations that also offer dine-in with limited seating, but operates primarily through takeout orders)	34	23%	High: <ul style="list-style-type: none"> Majority of fast-food/casual locations offer only single-use items or a combination of products such as single-use plastics and paper/fiber-based items
Café/bakery/dessert	22	15%	Moderate: <ul style="list-style-type: none"> Majority offer only single-use disposables
Boba tea	13	9%	High: <ul style="list-style-type: none"> High-usage of single-use plastic cups and straws
Grocery/Supermarkets	6	4%	Low: <ul style="list-style-type: none"> Single-use items not primarily given out
Catering Trucks	2	1%	Moderate: <ul style="list-style-type: none"> Use only disposables

California Environmental Quality Act

This Ordinance is not a project under the requirements of the CEQA, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment.

CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers and local sale of prohibited foodware and other expanded polystyrene products would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the Ordinance would not have the potential for causing a significant effect on the environment. In addition, if the proposed Ordinance were a project under CEQA, the project would be exempt from CEQA under CEQA Guidelines section 15307, which exempts from CEQA actions taken by regulatory agencies for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

Next Steps

If adopted, the Ordinance will be brought before Council for a second reading on April 19.

Sustainability Impact

The proposed Ordinance is consistent with two actions in the Cupertino Climate Action Plan as well as California State law. The proposed Ordinance encourages a push towards more reusable foodware which is consistent with Climate Action Plan Measure C-SW-1: Zero Waste Goal. The proposed Ordinance promotes the collection of organics from the local waste stream, which will reduce GHG emissions from the landfill consistent with Climate Action Plan Measure C-SW-2: Food Scrap and Compostable Paper Diversion. Enabling organic items to reach the compost stream supports the diversion requirements of California Senate Bill (SB)1383, the State's short-lived climate pollutant reduction regulations.

Fiscal Impact

If the Ordinance is adopted, staff recommends contracting for technical and financial assistance to help Cupertino's food service businesses understand and adjust to the requirements. The cost to hire technical assistance as described is expected to be approximately \$100,000 to cover support both before and after the implementation of the most significant changes, including offering a defined number of small grants to help cover the costs of switching to reusables or purchasing compliant foodware. Of the money budgeted to the Single-Use Plastics Ordinance and Mayor's Cup Challenge City Work Program Item under 520-81-802 750-084, page 469 of the FY21-22 Adopted Budget, it is anticipated that approximately \$60,000 will be available that could be allocated for a technical assistance contract. The balance of \$40,000 would be drawn from the Resource Recovery Enterprise Fund and has been requested as part of the FY 22-23 proposed budget. Ongoing compliance monitoring and support can be performed by existing staff

conducting inspections and outreach for stormwater pollution prevention program and SB 1383.

Prepared by: Ursula Syrova, Environmental Programs Manager

Reviewed by: Chad Mosley, Acting Director of Public Works

Approved by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Jim Throop, City Manager

Attachments:

A – Single-Use Plastics and Bags Draft Ordinance – Blackline Version

B – Single-Use Plastics and Bags Draft Ordinance – Clean Version

C – Single-Use Plastics Ordinance Elements and Phasing Summary

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO CHANGE THE NAME OF CHAPTER 9.15, ADOPT
NEW SECTIONS 9.15.090 AND 9.15.125, AND AMEND SECTIONS 9.15.100, 9.15.110,
9.15.120, 9.15.130, 9.17.130 AND 9.17.140 TO REGULATE THE USE OF SINGLE-USE
FOOD SERVICE WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF
SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM
COOLERS, AND REGULATE SINGLE-USE CARRYOUT BAGS**

1. The City Council of the City of Cupertino finds that:

WHEREAS, on February 5, 2014, the City of Cupertino adopted an ordinance to prohibit food vendors from providing prepared food using food packaging containing polystyrene foam, currently codified as Chapter 9.15 of the City Code; and

WHEREAS, this ordinance continues to prohibit the sale and use of polystyrene foam food service ware and also further regulates single-use food service ware and food service ware accessories in Cupertino; and

WHEREAS, the State adopted AB 619 in July 2019, which allows consumers to supply their own reusable containers for filling or refilling and requires that food establishments have an established procedure for safely accepting reusable containers; and

WHEREAS, the State recently adopted Assembly Bill 1200, which prohibits the sale or distribution of food packaging made primarily from paper, paperboard, or other natural fiber that contains per- and polyfluoroalkyl substances (PFAS) in California beginning January 1, 2023; and

WHEREAS, Assembly Bill 1200 does not include a verification mechanism to assist food providers in identifying whether the food packaging contains PFAS; and

WHEREAS, this ordinance requires that food service ware used by a food provider in Cupertino be certified as PFAS-free by an independent third-party certifying organization to assist Cupertino food providers in identifying PFAS-free food service ware; and

WHEREAS, the State also recently adopted Assembly Bill 1276, which prohibits the distribution of single-use food service ware accessories and standard condiments packaged for single use by food providers except upon request by the consumer; and

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WHEREAS, this ordinance is consistent with the City of Cupertino's Zero Waste Policy and Climate Action Plan that seek to reduce solid waste at its source and reduce single-use food service ware and packaging;

WHEREAS, the State adopted SB 270 on November 8, 2016 which requires certain retail stores to charge 10 cents for a reusable grocery bag or recycled paper bag and thus requiring an update to the language in Cupertino's municipal code; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on [date], and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

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This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the ordinance would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on [date] and
ENACTED at a regular meeting of the Cupertino City Council on [date] by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

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ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

Attachment A – AN ORDINANCE OF THE CITY OF CUPERTINO TO REGULATE THE USE OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS AND REGULATE THE PROVISION OF SINGLE-USE CARRYOUT BAGS

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.

SECTION 1. ADDITION OF SECTION 9.15.090 CONCERNING THE PURPOSES OF REGULATION OF THE USE AND SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS

9.15.090 Purpose of Chapter

- A. This chapter is determined and declared to be a health, sanitary, and safety measure for the promotion, protection and preservation of the health, safety and general welfare of the people and environment of the City of Cupertino.
- B. Single-use disposable food service ware and beverage packaging - including plates, cutlery, cups, straws, “clamshells” and other containers - are major contributors to street litter, ocean pollution, marine and other wildlife harm, depletion of natural resources, and greenhouse gas emissions.
- C. Plastic litter breaks down into smaller pieces that are not biodegradable, persist in the environment on land and sea, and are present in most of the world’s oceans.

- D. Among other hazards, plastic debris attracts and concentrates ambient pollutants, such as endocrine disrupters and persistent organic pollutants, in seawater and freshwater that can transfer to fish, other seafood, and salt that is eventually consumed. Nine of the top ten most common debris items found on beaches in the U.S. during International Coastal Cleanup Day are single-use food and beverage plastic packaging items.
- E. Discharge of litter into waters of the United States is prohibited by the Federal Clean Water Act and the City's stormwater pollution prevention permit as issued by the San Francisco Bay Regional Water Quality Control Board.
- F. Even if certain types of single-use plastic food service ware are accepted as recyclable by the City of Cupertino's approved recyclables processor, when those items have food and grease residue on them, they become a contaminant to the recycling stream.
- G. Natural fiber-based food service ware items can be diverted from landfill and processed into compost even when they have food and grease residue on them.
- H. Certain synthetic chemicals known as Per- and Polyfluoroalkyl Substances (PFAS), which are commonly used in disposable food service ware to repel water and grease, pose a public health risk as they have been linked to serious health effects.
- I. Polystyrene foam food service ware and other items made from unencapsulated foamed materials are a distinctive litter concern because they are lightweight, break apart easily, are windblown into streets and waterways, and float in water until it reaches the San Francisco Bay and ocean.
- J. The City of Cupertino intends to reduce solid waste at its source and maximize recycling and composting in accordance with Cupertino's Climate Action Plan, Zero Waste Policy, and stormwater pollution prevention permit.
- K. Reducing disposable packaging by eliminating unnecessary items and transitioning to reusable products provides greater environmental benefits than managing the products that become waste, even when recycled or composted.

SECTION 2. AMENDMENTS TO SECTION 9.15.100 CONCERNING DEFINITIONS

9.15.100 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Beverage Provider" means any business, organization, entity, group, or person that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage Provider also includes any organization, entity, group or person that regularly provides beverages to its members or the general public as a part of its activities or services.
2. "Biodegradable Products Institute (BPI)" refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified according to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. As of January 1, 2020, all BPI-certified products are required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.
3. "City" means the City of Cupertino.
4. "City Facility" means any building, structure, or vehicle owned or operated by the City.
5. "City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.
6. "City Manager" means the City of Cupertino's City Manager or their designee.
7. "County" means the County of Santa Clara.
8. "Compostable" means that an item or material is (1) accepted in City's available composting collection program as fully compostable; (2) is listed, described, or referenced on the City's website as compostable; and (3) is certified compostable by the Biodegradable Product Institute or other third party recognized by the Director, or his or her designee.

9. "Contractors and Lessees" means any person or entity that has a contract with the City of Cupertino for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City of Cupertino.
10. "Director" means the City of Cupertino's Director of Public Works or their designee.
 - A. ~~"Disposable food service ware" means single use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells). "Disposable food service ware" does not include straws, utensils, drink lids, or ice chests.~~
11. "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.
12. "Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as per- and polyfluoroalkyl substances, or PFAS chemicals.
13. "Food Container" means a container, bowl, plate, tray, or other vessel used to hold Prepared Food.
14. "Food Provider" means any establishment, provider, non-profit vendor, or business, operating within the City that sells Prepared Food (1) to the public for consumption on or off its premises, at a catered event, and/or (2) at cafeterias and places of employment, whether or not such establishments are open to the general public. Food Provider includes but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public, mobile or temporary food providers, vehicles or carts, or roadside stands.
15. "Food Service Ware" means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrapper or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider's premises.

16. "Food Service Ware Accessory" means any type of accessory or accompanying items usually provided alongside Prepared Food in plates, containers, bowls, or cups, including but not limited to utensils, chopsticks, napkins, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, spill plugs, cocktail sticks, and toothpicks.

~~B. "Food vendor" means any establishment located in the City of Cupertino that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.~~

17. "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

18. "Per- and Polyfluoroalkyl Substances" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

19. ~~C. "Polystyrene fFoam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).~~

~~D. "Prepared Food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include:~~

- ~~a. Any raw, uncooked meat products, fruits, or vegetables, unless it is intended for consumption without further preparation; or~~
- ~~b. Prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.~~

20. "Prepared Food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the

premises of a food provider for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. "Prepared food" does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail method; (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging; or (3) nonpolystyrene foam prepackaged items prepared on-site, which are not made to order and sold as "grocery items."

21. "Raw Food" means any uncooked meat, fish, poultry, vegetable, fruit, or egg.
22. "Recyclable" means material that can be sorted, cleansed, and reconstituted and accepted by the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product.
23. "Reusable Food Service Ware" means all food service ware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
24. "Single-use" means not meeting the definition of Reusable in these definitions.
25. "Standard Condiments and Spices" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes or others as determined by the City.
26. "State" means the State of California.
27. "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Provider's premises. Takeout Food includes Prepared Food delivered by a Food Provider or by a third-party Takeout Food Delivery Service.
28. "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Provider to a customer for consumption off the premises. This service can be provided directly by the Food Provider or by a third-party.

29. “Third Party Food Delivery Platform” means a business engaged in the service of online food ordering and/or delivery from a Prepared Food Provider to a consumer.

SECTION 3. AMENDMENTS TO SECTION 9.15.110 CONCERNING REGULATION OF FOOD SERVICE WARE AND POLYSTYRENE FOAM COOLERS USED BY FOOD PROVIDERS AND SOLD BY RETAILERS

9.15.110 ~~Polystyrene Foam Disposal Food Service Ware Prohibited.~~ Regulation of Food Service Ware and Polystyrene Foam Coolers Used by Food Providers and Sold by Retailers

~~No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after July 1, 2014.~~

A. ACCESSORIES ONLY UPON CUSTOMER REQUEST

On or after June 1, 2022:

1. Food Providers shall provide Single-use Food Service Ware Accessories and Standard Condiments in single serve packets only upon request by customers during on-premises dining or when using a third-party food delivery platform. Single-use Food Service Ware Accessories and Standard Condiments packaged for single use provided by Prepared Food Providers for use by consumers shall not be bundled or packaged in a manner that requires a consumer to take a different type of Single-use Food Service Ware Accessory or Standard Condiment
2. Self-serve accessory stations are prohibited.
3. Food Providers and Beverage Providers, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may provide plastic straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.
4. Prepared Food Providers offering Standard Condiments and Spices are encouraged to use dispensers or bulk containers rather than pre-packaged individual serving packets.
5. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only

offer Single-Use Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Single-Use Food Service Ware Accessories are requested. Each individual Single-Use Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Provider to provide it.

6. A Prepared Food Provider may ask a drive-through consumer if the consumer wants a Single-use Food Service Ware Accessory if the Single-use Food Service Ware Accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.
7. For delivery orders, Prepared Food Providers may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

B. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED

On or after June 1, 2023:

1. Prepared Food or Beverage Providers, including City Facility Prepared Food Providers, and City Contractors and Lessees may not sell, offer for sale, or otherwise distribute Prepared Food prepared or packaged in Cupertino using:
 - a. Single-use Food Service Ware or Food Ware Accessories made, in whole or in part, from Polystyrene Foam;
 - b. Single-use Food Service Ware made, or Food Ware Accessories made, in whole or in part, from plastic including polyethylene, polyethylene terephthalate, polypropylene, polystyrene, even if accepted as recyclable by the City's approved recyclables processing facility;
 - c. Single-use Food Service Ware or Food Ware Accessories that are Compostable and not certified free of Fluorinated Chemicals by an independent third-party certifying organization approved by the Director, or their designee;
 - d. Single-Use Food Service Ware or Food Ware Accessories made in whole or in part from bio- or plant-based or other "compostable" plastic even if labeled or certified as compostable.

2. The Director, or their designee, may adopt a list, or reference an approved list, of suitable alternative Compostable or Recyclable aluminum Single-use Food Service Ware products, which means Single-use Food Service Ware products that serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable aluminum under this Chapter, and are reasonably affordable. If a product is not included or referenced on an approved list, the person using the product as Single-use Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.
3. It shall not be a violation of this Section to sell, provide, or purchase Prepared Food or Raw Food or Beverage packaged in Single-Use Food Service Ware otherwise prohibited by subsection (1) if the Prepared Food or Raw Food or Beverage is packaged outside the City and is sold or otherwise provided to the consumer in the same Single-use Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Single-use Food Service Ware that is Compostable or Recyclable aluminum, is Compostable and free of Fluorinated Chemicals, and is not made, in whole or in part, from Polystyrene.

C. REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES

On or after June 1, 2023:

1. Prepared Food served for consumption on the Prepared Food Provider's premises shall be served only on Reusable Food Service Ware, except that disposable paper food wrappers, sleeves, and bags, foil wrappers, paper napkins, paper tray and plate liners, and straws shall be permitted, so long as they meet the requirements set forth elsewhere in this Chapter.
2. Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption, shall not be served in disposable, individual-serving packets.
3. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food Provider either on its own or in conjunction with another Prepared Food Provider.
4. New building permits and new or renewed business licenses for Food Service Providers applied for, and/or deemed complete after 6/1/2023 shall only be granted to Prepared Food Providers that can demonstrate adequate capacity to comply with subsection C.1.

5. This requirement does not prohibit a Prepared Food Provider from providing, upon a customer's request, Single-use Food Service Ware compliant with subsection B.1 for the customer to take away leftover Prepared Food after dining on the premises.
6. Prepared Food Providers subject to the requirements of subsection C.1 that do not have onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and sanitize Reusable Food Service Ware, in order to comply with applicable provisions of the California Health and Safety Code, may petition the Director for an exemption or extension under 9.15.120.

D. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS PROHIBITED

On or after June 1, 2023:

1. No Person may sell, offer for sale, or otherwise Distribute within the City any Single-use Food Service Ware prohibited under Sections B.1.a. or B.1.d.
2. No person may sell, offer for sale, or otherwise distribute for compensation within the City coolers, ice chests, or similar containers made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.
3. Pursuant to Section B.3, the Director may adopt, maintain, or reference a list of compliant products.

SECTION 4. AMENDMENTS TO SECTION 9.15.120 CONCERNING EXEMPTIONS

- A. A ~~fFood vendor~~ **Provider** may seek an exemption from the requirements under Section 9.15.110 due to a "unique packaging hardship" under Subsection B of this section, ~~or "unused inventory" under Subsection C of this section,~~ **"significant economic hardship" under Subsection D, or request a temporary exemption to request extra time for compliance under Subsection E.**
- B. The ~~fFood vendor~~ **Provider** must demonstrate that no reasonably feasible alternative exists ~~for to~~ a specific and necessary ~~polystyrene foam disposable~~ **prohibited Single-Use** food service ware **item** to qualify for a "unique packaging hardship" exemption.

- C. The ~~Food vendor~~ **Provider** must demonstrate that before January 1, 2014[new effective date of this ordinance], it purchased the **prohibited** polystyrene foam food service ware which cannot be returned to the distributor and, despite the food vendor's best efforts, will remain in inventory on July 1, 2014[date], to qualify for an "unused inventory" exemption.
- D. **The Food Provider must demonstrate that the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Single-use Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Single-Use Food Service Ware is particularly burdensome to the Food Provider based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Provider, and other factors. Reasonable added cost for an item required by this Chapter shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director shall consider the following information: ability of the Food Provider to recover the additional expense by increasing its prices, outside funding, and other options.**
- E. **The Food Provider must demonstrate that for other reasons not already stated it needs additional time to comply with the provisions of this Chapter.**
- F. ~~D. The Food vendor~~ **Provider** may submit a written application for an exemption ~~on a form provided by~~ to the Environmental Programs Division. The Director ~~of Public Works designee ("Director")~~ may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to ~~six (6) months or to January 1, 2015, whichever comes first~~ **one year**. The determination of the Director shall be final and is not subject to appeal.
- G. **Prepackaged Food delivered from outside the City is exempt from the provisions of this Chapter.**
- H. **Disposable Food Service Ware that is entirely Aluminum Foil-based including, but not limited to, aluminum trays, aluminum foil wrappers and aluminum foil baskets, is exempt from the provisions of this Chapter.**

- I. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

SECTION 5. ADDITION OF NEW SECTION 9.15.125 CONCERNING RECORDKEEPING AND INSPECTION

9.15.125 Recordkeeping and inspection.

- A. Food Providers shall keep a complete and accurate record or documents of the purchase of Single-use Food Service Ware evidencing compliance with this Chapter.
- B. The record shall be made available for inspection at no cost during regular business hours to City employees or City-designated agents authorized to enforce this Chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Provider address.
- C. The provision of false or incomplete information, records or documents to the city shall be a violation of this Chapter.

SECTION 6. AMENDMENTS TO SECTION 9.15.130 CONCERNING ADMINISTRATIVE CITATIONS AND FINES

9.15.130 Administrative citations and fines.

- A. ~~(a)~~ Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, ~~when any person or food vendor has provided EPS foam food service ware to a customer or~~ for violation of any other provision of this Chapter.

B. ~~(b)~~ Administrative citation fine amounts. Upon findings made under subsection (Aa), the ~~p~~Person, Beverage Provider, or ~~f~~Food vendor Provider shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:

- (1) First citation: One hundred dollars (\$100.00).
 - (2) Second citation for the same violation within the same twelve month period: Two hundred dollars (\$200.00)
 - (3) Third or any subsequent citation for the same violation within the same twelve month period: Five hundred dollars (\$500.00)
 - (4) Each day that any person or food vendor violates the provisions of this ~~e~~Chapter ~~is~~ a new and separate violation ~~occurs~~.
- (c) Administrative citation appeals and disposition shall be processed in accordance with Chapter 1.10 of this Code.

SECTION 7. AMENDMENTS TO SECTION 9.17.130 CONCERNING REGULATION OF SINGLE-USE CARRYOUT BAGS

9.17.130 ~~Single-u~~Se ~~e~~Carryout bBags

A. No person or retail establishment shall provide a ~~single-use carryout bag~~ Single-Use Carryout Bag to a customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section or in section 9.17.140.

B. ~~Effective October 1, 2013 a~~ A retail establishment may only make recycled paper or reusable bags available to customers if the retailer charges a minimum of ten cents. ~~Reusable bags may be given by retailers without charge.~~

C. Notwithstanding this section, no retail establishment may make available for sale a recycled paper or reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

D. A retail establishment may provide one or more recycled paper or reusable bags at no cost to any of the following individuals: a customer participating in the California Special Supplement Food Program for Women, Infants, and Children

pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

9.17.140 Exemptions

~~The provisions of this Chapter shall not apply in the following circumstances where:~~

1. A plastic or paper carryout bag with or without handles ~~is may be~~ provided by a public eating establishment to transport prepared food; **Beginning June 1, 2023, a public eating establishment may no longer provide single-use plastic carryout bags but may provide a recycled paper or reusable bag to transport prepared food at no charge.**
2. A plastic or paper bag with or without handles ~~is may be~~ provided by a nonprofit charitable reuser;
3. A plastic or paper bag without handles ~~is may be~~ provided to transport prepared food, produce, bulk food, or meat from a department within a store to the point of sale;
4. A plastic or paper bag without handles ~~is may be~~ provided to hold prescription medication dispensed from a pharmacy;
5. A plastic or paper bag without handles ~~is may be~~ used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled bag;
6. A garment bag or garment cover may be used to protect and transport clothing or other textiles.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO CHANGE THE NAME OF CHAPTER 9.15, ADOPT
NEW SECTIONS 9.15.090 AND 9.15.125, AND AMEND SECTIONS 9.15.100, 9.15.110,
9.15.120, 9.15.130, 9.17.130 AND 9.17.140 TO REGULATE THE USE OF SINGLE-USE
FOOD SERVICE WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF
SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM
COOLERS, AND REGULATE SINGLE-USE CARRYOUT BAGS**

1. The City Council of the City of Cupertino finds that:

WHEREAS, on February 5, 2014, the City of Cupertino adopted an ordinance to prohibit food vendors from providing prepared food using food packaging containing polystyrene foam, currently codified as Chapter 9.15 of the City Code; and

WHEREAS, this ordinance continues to prohibit the sale and use of polystyrene foam food service ware and also further regulates single-use food service ware and food service ware accessories in Cupertino; and

WHEREAS, the State adopted AB 619 in July 2019, which allows consumers to supply their own reusable containers for filling or refilling and requires that food establishments have an established procedure for safely accepting reusable containers; and

WHEREAS, the State recently adopted Assembly Bill 1200, which prohibits the sale or distribution of food packaging made primarily from paper, paperboard, or other natural fiber that contains per- and polyfluoroalkyl substances (PFAS) in California beginning January 1, 2023; and

WHEREAS, Assembly Bill 1200 does not include a verification mechanism to assist food providers in identifying whether the food packaging contains PFAS; and

WHEREAS, this ordinance requires that food service ware used by a food provider in Cupertino be certified as PFAS-free by an independent third-party certifying organization to assist Cupertino food providers in identifying PFAS-free food service ware; and

WHEREAS, the State also recently adopted Assembly Bill 1276, which prohibits the distribution of single-use food service ware accessories and standard condiments packaged for single use by food providers except upon request by the consumer; and

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WHEREAS, this ordinance is consistent with the City of Cupertino's Zero Waste Policy and Climate Action Plan that seek to reduce solid waste at its source and reduce single-use food service ware and packaging;

WHEREAS, the State adopted SB 270 on November 8, 2016 which requires certain retail stores to charge 10 cents for a reusable grocery bag or recycled paper bag and thus requiring an update to the language in Cupertino's municipal code; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on [date], and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

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This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the ordinance would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on [date] and
ENACTED at a regular meeting of the Cupertino City Council on [date] by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

Ordinance No. _____

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ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

Attachment B – AN ORDINANCE OF THE CITY OF CUPERTINO TO REGULATE THE USE OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS AND REGULATE THE PROVISION OF SINGLE-USE CARRYOUT BAGS

SECTION 1. ADDITION OF SECTION 9.15.090 CONCERNING THE PURPOSES OF REGULATION OF THE USE AND SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS

9.15.090 Purpose of Chapter

- A. This chapter is determined and declared to be a health, sanitary, and safety measure for the promotion, protection and preservation of the health, safety and general welfare of the people and environment of the City of Cupertino.
- B. Single-use disposable food service ware and beverage packaging - including plates, cutlery, cups, straws, “clamshells” and other containers - are major contributors to street litter, ocean pollution, marine and other wildlife harm, depletion of natural resources, and greenhouse gas emissions.
- C. Plastic litter breaks down into smaller pieces that are not biodegradable, persist in the environment on land and sea, and are present in most of the world’s oceans.
- D. Among other hazards, plastic debris attracts and concentrates ambient pollutants, such as endocrine disrupters and persistent organic pollutants, in seawater and freshwater that can transfer to fish, other seafood, and salt that is eventually consumed. Nine of the top ten most common debris items found on beaches in the U.S. during International Coastal Cleanup Day are single-use food and beverage plastic packaging items.
- E. Discharge of litter into waters of the United States is prohibited by the Federal Clean Water Act and the City’s stormwater pollution prevention permit as issued by the San Francisco Bay Regional Water Quality Control Board.
- F. Even if certain types of single-use plastic food service ware are accepted as recyclable by the City of Cupertino’s approved recyclables processor, when those

items have food and grease residue on them, they become a contaminant to the recycling stream.

- G. Natural fiber-based food service ware items can be diverted from landfill and processed into compost even when they have food and grease residue on them.
- H. Certain synthetic chemicals known as Per- and Polyfluoroalkyl Substances (PFAS), which are commonly used in disposable food service ware to repel water and grease, pose a public health risk as they have been linked to serious health effects.
- I. Polystyrene foam food service ware and other items made from unencapsulated foamed materials are a distinctive litter concern because they are lightweight, break apart easily, are windblown into streets and waterways, and float in water until it reaches the San Francisco Bay and ocean.
- J. The City of Cupertino intends to reduce solid waste at its source and maximize recycling and composting in accordance with Cupertino's Climate Action Plan, Zero Waste Policy, and stormwater pollution prevention permit.
- K. Reducing disposable packaging by eliminating unnecessary items and transitioning to reusable products provides greater environmental benefits than managing the products that become waste, even when recycled or composted.

SECTION 2. AMENDMENTS TO SECTION 9.15.100 CONCERNING DEFINITIONS

9.15.100 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Beverage Provider" means any business, organization, entity, group, or person that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage Provider also includes any organization, entity, group or person that regularly provides beverages to its members or the general public as a part of its activities or services.

2. "Biodegradable Products Institute (BPI)" refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified according to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. As of January 1, 2020, all BPI-certified products are required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.
3. "City" means the City of Cupertino.
4. "City Facility" means any building, structure, or vehicle owned or operated by the City.
5. "City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.
6. "City Manager" means the City of Cupertino's City Manager or their designee.
7. "County" means the County of Santa Clara.
8. "Compostable" means that an item or material is (1) accepted in City's available composting collection program as fully compostable; (2) is listed, described, or referenced on the City's website as compostable; and (3) is certified compostable by the Biodegradable Product Institute or other third party recognized by the Director, or his or her designee.
9. "Contractors and Lessees" means any person or entity that has a contract with the City of Cupertino for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City of Cupertino.
10. "Director" means the City of Cupertino's Director of Public Works or their designee.
11. "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.

12. "Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as per- and polyfluoroalkyl substances, or PFAS chemicals.
13. "Food Container" means a container, bowl, plate, tray, or other vessel used to hold Prepared Food.
14. "Food Provider" means any establishment, provider, non-profit vendor, or business, operating within the City that sells Prepared Food (1) to the public for consumption on or off its premises, at a catered event, and/or (2) at cafeterias and places of employment, whether or not such establishments are open to the general public. Food Provider includes but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public, mobile or temporary food providers, vehicles or carts, or roadside stands.
15. "Food Service Ware" means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrapper or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider's premises.
16. "Food Service Ware Accessory" means any type of accessory or accompanying items usually provided alongside Prepared Food in plates, containers, bowls, or cups, including but not limited to utensils, chopsticks, napkins, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, spill plugs, cocktail sticks, and toothpicks.
17. "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.
18. "Per- and Polyfluoroalkyl Substances" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
19. "Polystyrene Foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene).

20. "Prepared Food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a food provider for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. "Prepared food" does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail method; (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging; or (3) nonpolystyrene foam prepackaged items prepared on-site, which are not made to order and sold as "grocery items."
21. "Raw Food" means any uncooked meat, fish, poultry, vegetable, fruit, or egg.
22. "Recyclable" means material that can be sorted, cleansed, and reconstituted and accepted by the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product.
23. "Reusable Food Service Ware" means all food service ware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
24. "Single-use" means not meeting the definition of Reusable in these definitions.
25. "Standard Condiments and Spices" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes or others as determined by the City.
26. "State" means the State of California.
27. "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Provider's premises. Takeout Food includes Prepared Food delivered by a Food Provider or by a third-party Takeout Food Delivery Service.
28. "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Provider to a customer for consumption off the premises. This service can be provided directly by the Food Provider or by a third-party.

29. "Third Party Food Delivery Platform" means a business engaged in the service of online food ordering and/or delivery from a Prepared Food Provider to a consumer.

SECTION 3. AMENDMENTS TO SECTION 9.15.110 CONCERNING REGULATION OF FOOD SERVICE WARE AND POLYSTYRENE FOAM COOLERS USED BY FOOD PROVIDERS AND SOLD BY RETAILERS

9.15.110 Regulation of Food Service Ware and Polystyrene Foam Coolers Used by Food Providers and Sold by Retailers

A. ACCESSORIES ONLY UPON CUSTOMER REQUEST

On or after June 1, 2022:

1. Food Providers shall provide Single-use Food Service Ware Accessories and Standard Condiments in single serve packets only upon request by customers during on-premises dining or when using a third-party food delivery platform. Single-use Food Service Ware Accessories and Standard Condiments packaged for single use provided by Prepared Food Providers for use by consumers shall not be bundled or packaged in a manner that requires a consumer to take a different type of Single-use Food Service Ware Accessory or Standard Condiment
2. Self-serve accessory stations are prohibited.
3. Food Providers and Beverage Providers, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may provide plastic straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.
4. Prepared Food Providers offering Standard Condiments and Spices are encouraged to use dispensers or bulk containers rather than pre-packaged individual serving packets.
5. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only offer Single-Use Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Single-Use Food Service Ware Accessories are requested. Each individual Single-Use Food Service Ware Accessory (e.g., each fork, knife,

condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Provider to provide it.

6. A Prepared Food Provider may ask a drive-through consumer if the consumer wants a Single-use Food Service Ware Accessory if the Single-use Food Service Ware Accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.
7. For delivery orders, Prepared Food Providers may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

B. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED

On or after June 1, 2023:

1. Prepared Food or Beverage Providers, including City Facility Prepared Food Providers, and City Contractors and Lessees may not sell, offer for sale, or otherwise distribute Prepared Food prepared or packaged in Cupertino using:
 - a. Single-use Food Service Ware or Food Ware Accessories made, in whole or in part, from Polystyrene Foam;
 - b. Single-use Food Service Ware made, or Food Ware Accessories made, in whole or in part, from plastic including polyethylene, polyethylene terephthalate, polypropylene, polystyrene, even if accepted as recyclable by the City's approved recyclables processing facility;
 - c. Single-use Food Service Ware or Food Ware Accessories that are Compostable and not certified free of Fluorinated Chemicals by an independent third-party certifying organization approved by the Director, or their designee;
 - d. Single-Use Food Service Ware or Food Ware Accessories made in whole or in part from bio- or plant-based or other "compostable" plastic even if labeled or certified as compostable.
2. The Director, or their designee, may adopt a list, or reference an approved list, of suitable alternative Compostable or Recyclable aluminum Single-use Food Service Ware products, which means Single-use Food Service Ware products that serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable aluminum under this Chapter, and are reasonably affordable. If a product is not included or referenced on an approved list, the person using the product as Single-use Food Service Ware will have the

burden of establishing to the Director's satisfaction that the product complies with this Section.

3. It shall not be a violation of this Section to sell, provide, or purchase Prepared Food or Raw Food or Beverage packaged in Single-Use Food Service Ware otherwise prohibited by subsection (1) if the Prepared Food or Raw Food or Beverage is packaged outside the City and is sold or otherwise provided to the consumer in the same Single-use Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Single-use Food Service Ware that is Compostable or Recyclable aluminum, is Compostable and free of Fluorinated Chemicals, and is not made, in whole or in part, from Polystyrene.

C. REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES

On or after June 1, 2023:

1. Prepared Food served for consumption on the Prepared Food Provider's premises shall be served only on Reusable Food Service Ware, except that disposable paper food wrappers, sleeves, and bags, foil wrappers, paper napkins, paper tray and plate liners, and straws shall be permitted, so long as they meet the requirements set forth elsewhere in this Chapter.
2. Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption, shall not be served in disposable, individual-serving packets.
3. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food Provider either on its own or in conjunction with another Prepared Food Provider.
4. New building permits and new or renewed business licenses for Food Service Providers applied for, and/or deemed complete after 6/1/2023 shall only be granted to Prepared Food Providers that can demonstrate adequate capacity to comply with subsection C.1.
5. This requirement does not prohibit a Prepared Food Provider from providing, upon a customer's request, Single-use Food Service Ware compliant with subsection B.1 for the customer to take away leftover Prepared Food after dining on the premises.
6. Prepared Food Providers subject to the requirements of subsection C.1 that do not have onsite or off-site dishwashing capacity, or are unable to contract for services

to wash, rinse, and sanitize Reusable Food Service Ware, in order to comply with applicable provisions of the California Health and Safety Code, may petition the Director for an exemption or extension under 9.15.120.

D. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM COOLERS PROHIBITED

On or after June 1, 2023:

1. No Person may sell, offer for sale, or otherwise Distribute within the City any Single-use Food Service Ware prohibited under Sections B.1.a. or B.1.d.
2. No person may sell, offer for sale, or otherwise distribute for compensation within the City coolers, ice chests, or similar containers made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.
3. Pursuant to Section B.3, the Director may adopt, maintain, or reference a list of compliant products.

SECTION 4. AMENDMENTS TO SECTION 9.15.120 CONCERNING EXEMPTIONS

- A. A Food Provider may seek an exemption from the requirements under Section 9.15.110 due to a "unique packaging hardship" under Subsection B of this section, "unused inventory" under Subsection C of this section, "significant economic hardship" under Subsection D, or request a temporary exemption to request extra time for compliance under Subsection E.
- B. The Food Provider must demonstrate that no reasonably feasible alternative exists for a specific and necessary prohibited Single-Use food service ware item to qualify for a "unique packaging hardship" exemption.
- C. The Food Provider must demonstrate that before {new effective date of this ordinance}, it purchased the prohibited food service ware which cannot be returned to the distributor and, despite the food vendor's best efforts, will remain in inventory on [date], to qualify for an "unused inventory" exemption.
- D. The Food Provider must demonstrate that the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Single-use Food Service Ware is not available at a commercially reasonable price and the additional cost

associated with providing the Single-Use Food Service Ware is particularly burdensome to the Food Provider based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Provider, and other factors. Reasonable added cost for an item required by this Chapter shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director shall consider the following information: ability of the Food Provider to recover the additional expense by increasing its prices, outside funding, and other options.

- E. The Food Provider must demonstrate that for other reasons not already stated it needs additional time to comply with the provisions of this Chapter.
- F. The Food Provider may submit a written application for an exemption ~~on a form~~ to the Environmental Programs Division. The Director may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to one year. The determination of the Director shall be final and is not subject to appeal.
- G. Prepackaged Food delivered from outside the City is exempt from the provisions of this Chapter.
- H. Disposable Food Service Ware that is entirely Aluminum Foil-based including, but not limited to, aluminum trays, aluminum foil wrappers and aluminum foil baskets, is exempt from the provisions of this Chapter.
- I. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

*SECTION 5. ADDITION OF NEW SECTION 9.15.125 CONCERNING
RECORDKEEPING AND INSPECTION*

9.15.125 Recordkeeping and inspection.

- A. Food Providers shall keep a complete and accurate record or documents of the purchase of Single-use Food Service Ware evidencing compliance with this Chapter.
- B. The record shall be made available for inspection at no cost during regular business hours to City employees or City-designated agents authorized to enforce this Chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Provider address.
- C. The provision of false or incomplete information, records or documents to the city shall be a violation of this Chapter.

*SECTION 6. AMENDMENTS TO SECTION 9.15.130 CONCERNING ADMINISTRATIVE
CITATIONS AND FINES*

9.15.130 Administrative citations and fines.

- A. Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, for violation of any provision of this Chapter.
- B. Administrative citation fine amounts. Upon findings made under subsection (A), the Person, Beverage Provider, or Food Provider shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:
 - (1) First citation: One hundred dollars (\$100.00).
 - (2) Second citation for the same violation within the same twelve month period: Two hundred dollars (\$200.00)
 - (3) Third or any subsequent citation for the same violation within the same twelve month period: Five hundred dollars (\$500.00)
 - (4) Each day that any person or food vendor violates the provisions of this Chapter is a new and separate violation.

(c) Administrative citation appeals and disposition shall be processed in accordance with Chapter 1.10 of this Code.

SECTION 7. AMENDMENTS TO SECTION 9.17.130 CONCERNING REGULATION OF SINGLE-USE CARRYOUT BAGS

9.17.130 Single-Use Carryout Bags

A. No person or retail establishment shall provide a Single-Use Carryout Bag to a customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section or in section 9.17.140.

B. A retail establishment may only make recycled paper or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. Notwithstanding this section, no retail establishment may make available for sale a recycled paper or reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

D. A retail establishment may provide one or more recycled paper or reusable bags at no cost to any of the following individuals: a customer participating in the California Special Supplement Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

9.17.140 Exemptions

1. A plastic or paper carryout bag with or without handles may be provided by a public eating establishment to transport prepared food; Beginning June 1, 2023, a public eating establishment may no longer provide single-use plastic carryout bags but may provide a recycled paper or reusable bag to transport prepared food at no charge.
2. A plastic or paper bag with or without handles may be provided by a nonprofit charitable reuser;

3. A plastic or paper bag without handles may be provided to transport prepared food, produce, bulk food, or meat from a department within a store to the point of sale;
4. A plastic or paper bag without handles may be provided to hold prescription medication dispensed from a pharmacy;
5. A plastic or paper bag without handles may be used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled bag;
6. A garment bag or garment cover may be used to protect and transport clothing or other textiles.

Attachment C

Cupertino DRAFT PROPOSED Single-Use Plastics Ordinance

REGULATION OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS		
6/1/2022		Enforcement date per AB1276
9.15.110	A	ACCESSORIES ONLY UPON CUSTOMER REQUEST
	A.1	Accessories and condiments only on request and unbundled for dine-in, take-out, and delivery apps
	A.2	Disallow self-serve stations?
	A.3	Plastic straws may be retained and provided as an accommodation
	A.4	Encourage bulk condiment dispensers rather than individual packets
	A.5	Online ordering for pickup/delivery must provide option to affirmatively opt in to choosing each accessory piece individually
	A.6	Exceptions for instances of drive-through and food deliveries in which items like cup lids, lid plugs, hot sleeve cups may be offered to prevent spills or safely transport food
	A.7	For delivery orders, accessories allowed to prevent spills and deliver safely.
6/1/2023		1 year after accessories phase
9.15.110	B	USE OF NON-COMPLIANT FOODWARE PROHIBITED
	B.1	No sale or distribution of Prepared packaged by food providers (including City Facility Prepared Food Providers) in Cupertino using:
	B.1.a	Expanded Polystyrene (EPS) foam
	B.1.b	Single-use plastics (even if accepted as recyclable)
	B.1.c	Compostables with PFAS Allow PFAS-free paper, wood, bamboo, or fiber-based compostable items
	B.1.d	Bio-plastics ("compostable plastics")
	9.15.120(G)	Prepackaged food from outside the City exempted
	9.15.120(I)	Allow aluminum containers and foil (as exemption)
	B.2	Director of Public Works (or designee) to maintain list of suitable products and/or provide reference to an approved list
	B.3	Exemption for food/beverages prepared and packaged outside of the City
9.15.110	C	REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES
	C.1	Dine-in requires Reusables
	C.1	Allowable: disposable paper food wrappers, sleeves, and bags; foil wrappers; paper napkins; paper tray and plate liners; and straws if meet requirements.
	C.2	Condiments shall not be in single-service packets
	C.3	Definition of on-premises as belonging to food provider or shared
	C.4	New building permits trigger condition of approval requiring dishwashing capacity to allow reusables on-premises.
	C.4	New and renewed business licenses trigger condition of approval requiring dishwashing capacity to allow reusables on-premises.
	C.5	Dine-in still allows nonreusable containers for leftovers.
	C.6	Waiver/extension option for existing restaurants without dishwashing capacity
9.15.110	D	SALE OR DISTRIBUTION OF NON-COMPLIANT FOODWARE PROHIBITED
	D.1	Ban sale of compostable plastic food service ware

	D.1	Includes ban on sale of EPS foodware
	D.2	Director may adopt or reference a list of compliant products
EXEMPTIONS		
9.15.120	A	Exemptions available for unique packaging hardship, unused inventory, significant economic hardship, or extra time needed to comply
	B	Unique packaging hardship
	C	Unused inventory
	D	Significant economic hardship
	E	Needs additional time
	F	Method of applying for exemption with time limit of 1 year
	G	Prepackaged food is exempt
	H	Food service ware that is entirely aluminum foil-based is exempt
	I	Emergencies are exempt

NEW SECTION 9.15.125 CONCERNING RECORDKEEPING AND INSPECTION		
9.15.125	A	All food providers must keep records of purchase of single-use foodware showing compliance
	B	Records to be made available for inspection by the City
	C	False or incomplete information is a violation



CITY OF CUPERTINO

Agenda Item

22-10649

Agenda Date: 4/5/2022
Agenda #: 15.

Subject: Consideration of Municipal Code amendments to the Cupertino Municipal Code, Title 2 to add Chapter 2.96 and codify the Economic Development Committee

1. Conduct the first reading of Ordinance No. 22-2240; "An Ordinance of the City Council of the City of Cupertino Adding Chapter 2.96 of Title 2 (Administration and Personnel) to Codify the Economic Development Committee"

2. Find that the proposed actions are exempt from CEQA

Presenter: Tina Kapoor, Economic Development Manager



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
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CITY COUNCIL STAFF REPORT

Meeting: April 5, 2022

Subject

Consideration of Municipal Code amendments to the Cupertino Municipal Code, Title 2 to add Chapter 2.96 and codify the Economic Development Committee.

Recommended Action

1. Conduct the first reading of Ordinance No. ____ "An Ordinance of the City Council of the City of Cupertino Adding Chapter 2.96 of Title 2 (Administration and Personnel) to Codify the Economic Development Committee".
2. Find that the proposed actions are exempt from CEQA.

Discussion

The Economic Development Committee (EDC) has met informally for well over two decades to discuss items of importance pertinent to local businesses and to provide feedback to staff on business-related City initiatives or projects.

As part of the FY 2021-2022 City Work Program discussion, the City Council requested that the EDC be codified in the Municipal Code through an ordinance.

The proposed ordinance for the EDC has been drafted based on input from Council and staff research on economic development committees in other local cities.

Powers and Functions:

The powers and functions of the Committee shall be to serve in an advisory capacity to the City Council and to provide expertise and guidance on policy related to economic development. The Committee shall also actively promote Cupertino as a location of choice for current and prospective businesses.

To fulfill their mission, the Committee may involve itself in the following activities:

1. Make recommendations to City Council on a broad range of strategic matters broadly applicable to the City's economic development goals;

2. Serve as an ambassador to shed a positive light on the City by sharing economic development resources and information to prospective businesses and stakeholders, thus positioning the City as a location of choice; and
3. Encourage public/private partnerships to further the City's economic development goals by identifying potential resources.

Membership:

As proposed, the membership of this new Committee would consist of seven members, including elected officials, industry sector representatives, and key partners:

1. City Councilmember
2. City Councilmember
3. Technology Sector Representative
4. Retail/Small Business Representative
5. Hospitality/Tourism Sector Representative
6. De Anza College Representative
7. President of the Chamber of Commerce or Designee

Term:

Committee members would serve an initial term of four years, with a possibility to serve for an additional four years. Committee members would not serve for more than two consecutive terms.

Economic Development Committees/Commissions in Other Cities

Staff conducted research on economic development committees in other cities in Santa Clara County and the local area. Out of the 18 other cities surveyed, five have active economic development commissions or committees that are subcommittees of Council. Palo Alto is currently in the process of forming one. Details on the composition and purpose of the commissions or committees in these cities are below:

City	Committee	Composition	Purpose
Mountain View	Downtown Committee	11 members <ul style="list-style-type: none"> • Four (4) property owners or downtown business representatives • Two (2) community-at-large members who are residents of Mountain View • Four (4) business-at-large members with 	Encourage economic development specific to the downtown area.

		<p>representatives from:</p> <ul style="list-style-type: none"> - One (1) Downtown Business Association - One (1) Chamber of Commerce - Two (2) businesses not in the Downtown. 	
San Jose	Community and Economic Development Committee	Five (5) Councilmembers	Manage the growth and change of the City of San José in order to encourage a strong economy; ensure a diverse range of arts, cultural, and entertainment offerings; and create and preserve housing and healthy neighborhoods. This committee was previously named the Driving a Strong Economy Committee.
Santa Clara	Economic Development, Communication, and Marketing Committee	Four (4) Councilmembers	The Economic Development Committee and the Marketing Committee were consolidated in 2019. This Committee focuses proactive economic development and effective communication, as well as reviews the City's marketing and branding strategies.
Fremont	Economic Development Advisory Commission	<p>Nine (9) commissioners</p> <ul style="list-style-type: none"> • Five (5) representatives from: Business, Resident; Real Estate; Ohlone Community College. • Three (3) representatives from Commercial / Industrial sector. • One (1) representative from the Chamber of Commerce. 	Promotes and facilitates economic development in the City of Fremont and enhances and supports current businesses in the City.

Milpitas	Economic Development and Trade Commission	<p>Seven (7) commissioners</p> <ul style="list-style-type: none"> • One (1) Councilmember • Six (6) representatives from: <ul style="list-style-type: none"> - Chamber of Commerce - Real Estate - Resident - Milpitas Unified School District/Education - Business - Technology and Trade 	Advise the City Council on business issues, cultivate international trade relationships, and make recommendations on the design, development, and implementation of economic development in the City of Milpitas.
Palo Alto	In the process of hiring an ED Manager and in the planning stages to begin economic development meetings that are cohosted with the chamber, business owners, building owners, and the community.		

Next Steps

City Council to review the proposed ordinance, provide feedback to staff, and conduct the first and second readings when appropriate. If approved, the Committee will convene once the members are appointed.

Sustainability Impact

No sustainability impact.

Fiscal Impact

While the EDC has not always met consistently in the past, this Ordinance will set a regular quarterly meeting schedule. With more consistency and structured functions, the EDC may require more staff time than in past years. However, this consistency and structure will be beneficial and worth the additional staff time costs.

Prepared by: Tina Kapoor, Economic Development Manager

Reviewed by: Chris Jensen, City Attorney

Dianne Thompson, Assistant City Manager

Katy Nomura, Deputy City Manager

Approved for Submission by: Jim Throop, City Manager

Attachments:

A – Draft Ordinance Adding Chapter 2.96 Economic Development Committee

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TITLE 2
CHAPTER 2.96: ECONOMIC DEVELOPMENT COMMITTEE

The City Council of the City of Cupertino finds that:

1. The purpose of this Ordinance is to establish the Economic Development Committee (EDC).
2. The EDC has met informally for well over two decades to discuss items of importance pertinent to local businesses and to provide feedback to staff on business-related City initiatives or projects. As part of the FY 2021-2022 City Work Program discussion, the City Council requested that the EDC be codified in the Municipal Code through an ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended to add Chapter 2.96 as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

Ordinance No. _____
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SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Municipal Code would have no or only a de minimis effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on April 5, 2022, and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

Ordinance No. _____

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<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

ATTACHMENT A- Chapter 2.96: Economic Development Committee

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

2.96.010 Established–Composition.

- A. The Economic Development Committee of the City of Cupertino is established. The Economic Development Committee (hereinafter referred to in this Chapter as "Committee") shall consist of seven (7) members as follows:
1. City Councilmember
 2. City Councilmember
 3. Technology Sector Business Representative
 4. Retail/Small Business Representative
 5. Hospitality/Tourism Sector Representative
 6. De Anza College Representative
 7. President of the Chamber of Commerce or Designee
- B. The Committee shall be comprised of two Council members. Three members shall be from key industry sectors – Technology, Retail, and Hospitality. There shall also be one representative from De Anza College. The Chamber President or their designee shall also serve on the Committee. Committee Members shall be Cupertino residents or own a business or be currently employed at a business/organization located within the City of Cupertino.
- C. None of these representatives shall be officials or employees of the City, nor cohabit with, as defined by law, nor be related by blood or marriage to any other member of the Committee, to the City Manager, or to any staff person(s) who may be assigned to assist this Committee.
- D. Members of the Committee shall be appointed by the City Council.

2.96.020 Terms of Office. of Office.

- A. Committee Members serve at the pleasure of the City Council. The term of office for Committee Members shall be four (4) years unless appointed by the City Council for a shorter term. All terms shall end on January 30 of the year the term is due to expire. No Committee Members shall serve more than two consecutive

terms, except that a Committee Member may serve more than two consecutive terms if he or she has been appointed to the Committee to fill an unexpired term of less than two years.

- B. The appointment, reappointment and rules governing incumbent members of the Committee are governed by the Resolution of the Cupertino City Council which governs advisory bodies.
- C. This Section shall not apply to the ex officio member of the Committee.

2.96.030 Members–Vacancy or Removal.

Any Committee Member may be removed by a majority vote of the City Council. If a vacancy occurs, other than by expiration of a term, it shall be filled by the City Council's appointment for the unexpired portion of the term.

2.96.040 Chairperson.

The Committee shall elect its chairperson and vice chairperson from among its members [and shall appoint a secretary]. Terms of the chair and vice chair shall be for one year.

2.96.050 Meetings–Quorum.

- A. The Committee shall hold regular meetings on a quarterly basis on and at the discretion of the Committee shall hold other meetings as may be necessary or expedient.
- B. A majority of the Committee shall constitute a quorum for the purpose of transacting the business of the Committee.
- C. A special meeting may be called at any time by the chairperson or by a majority of the Committee Members upon notice being given in advance in accordance with the provisions of the Ralph M. Brown Act or successor statute in effect at the time.

2.96.060 Majority Vote Required.

A majority vote of Committee Members present is required to approve a recommendation on any matter that is presented to the Committee that requires a vote.

2.96.070 Records.

The Committee shall keep an accurate record of its proceedings and transactions and shall render such reports to the City Council as may be required. These records shall be filed with the City Clerk.

2.96.080 Powers and Functions.

- A. The powers and functions of the Committee shall be to serve in an advisory capacity to the City Council and to provide expertise and guidance on policy related to economic development. The Committee shall also actively promote Cupertino as a location of choice for current and prospective businesses.
- B. To fulfill their mission, the Committee may involve itself in the following activities:
 - 1. Make recommendations to the City Council on a broad range of strategic matters broadly applicable to the City's economic development goals;
 - 2. Serve as an ambassador to shed a positive light on the City by sharing economic development resources and information to prospective businesses and stakeholders, thus positioning the City as a location of choice; and
 - 3. Encourage public/private partnerships to further the City's economic development goals by identifying potential resources.

2.96.090 City Staff Assistance.

The Committee shall have available to it such assistance of City staff as may be required to perform its functions, the staff assignments and administrative procedures to be under the general direction and supervision of the Economic Development Manager.

2.96.100 Compensation–Expenses.

Committee Members shall serve without compensation. Committee Members may be reimbursed for necessary expenses reasonably incurred by them while acting in their official capacity subject to the approval of the City Manager.

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2.96.110 Procedural Rules.

The Committee may adopt from time to time such rules of procedure as it may deem necessary to properly exercise its powers and duties. Such rules shall be kept on file with the Chairperson of the Committee, the Mayor, and the City Clerk, and a copy thereof shall be furnished to any person on request.

2.96.120 Effect.

Nothing in this Chapter shall be construed as restricting or curtailing any powers of the City Council or City officers.