



**DRAFT MINUTES  
CUPERTINO CITY COUNCIL  
Tuesday, November 16, 2021**

**SPECIAL MEETING**

At 5:15 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: Housing Element Update: Sites inventory and upcoming community engagement  
Recommended Action: That the City Council receive the report and provide input to staff on the sites inventory and community engagement.

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

Community Development Director Ben Fu introduced the item and EMC Planning Group consultant Andy Flower gave a presentation.

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

Jennifer Griffin was concerned the RHNA numbers and rules for rezoning sites that are identified in the Housing Element and preserving the Heart of the City.

Peggy Griffin supported providing a memo on selecting adequate sites and posting a list of stakeholders.

Bruce Naegel supported continuing the work to make buildings more sustainable including safe and efficient housing.

Scott Connelly asked about ramifications if the City cannot meet the RHNA numbers requirement and whether the Vallco development would reduce those numbers.

Ryan O'Connell supported greater transparency and a good faith effort to provide housing sites that will get developed in a responsible way that benefits the community.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council received the report and provided input to staff on the sites inventory and community engagement.

2. Subject: Consider Climate Action Plan Update draft measures

Recommended Action: Provide input on Climate Action Plan Update draft measures

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

Sustainability Manager Andre Duurvoort introduced the item and Climate and Utilities Analyst Gilee Corral gave a presentation.

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

Paul Soto supported adopting an objective definition for "equity."

Giuliana Pendleton, on behalf of Santa Clara Valley Audubon Society, supported the inclusion of a tree canopy goal and adopting a biodiversity goal.

Sean Hughes supported a thorough Council review of the proposed measures and prioritizing the highest impact measures.

Housing Commissioner Connie Cunningham (representing self) supported the inclusion of the Climate Action Plan in the City Work Program and protecting biodiversity.

Tara Sreekrishnan supported increasing climate action efforts in the education sector and submitted email comments on behalf of the following:

Elise Chiu, on behalf of Silicon Valley Youth Climate Action Team, supporting developing climate action plans in schools and regulating plant species;

Kunal Gupta, on behalf of Silicon Valley Youth Climate Action Team and CHS Environmental Club, supporting ambitious carbon reduction goals in Cupertino; and

Gwyn Azar, on behalf of Silicon Valley Youth Climate Action Team, supporting a stronger GHG reduction goal and climate action plans in schools.

Sarah Liu, on behalf of Silicon Valley Youth Climate Action Team, supported stronger goals for the proposed Plan and climate action plans for school districts.

Jennifer Griffin was concerned about the implementation of SB 9 and SB 10 and losing much of the tree canopy in Cupertino.

Peggy Griffin supported presenting significant impacts to businesses and residents and modifications to the Plan. (Submitted written comments).

Lisa Warren supported the inclusion of a tree canopy goal and an analysis of the impacts of State housing bills, and modifications to the definition of “equity.”

Eugene Lin supported the Plan and using native trees in the tree canopy goal.

Bruce Naegel supported continued citizen outreach, defining “equity,” and ensuring equity among households when managing transportation issues.

Dashiell Leeds, on behalf of Sierra Club Loma Prieta Chapter, supported increased biodiversity and stronger goals, equity issues, and building decarbonization.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council provided input on the Climate Action Plan Update draft measures. Some of the comments from two or more Councilmembers included:

- General support for the efforts of the Climate Action Plan update
- Support for an aggressive/accelerated plan
- Interest in a tree canopy measure with further study on inclusion of native trees and protection of existing trees
- A desire for a clearer definition of equity

## ADJOURNMENT

At 6:42 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.

## ORDERS OF THE DAY

Paul moved and Wei seconded to reorder the agenda to hear Item No. 14 Consider appointment of the selected candidate as City Manager, approval of the employment agreement, and amending the Appointed Employee's Compensation Program after Orders of the Day. The motion carried unanimously.

Council heard Item No. 14 before Ceremonial Matter and Presentations.

## CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Proclamation to Women Impacting Public Policy (WIPP) and the Small Business Saturday Coalition supporting Small Business Saturday in Cupertino  
Recommended Action: Present proclamation to Women Impacting Public Policy (WIPP) and the Small Business Saturday Coalition supporting Small Business Saturday in Cupertino

Anjali Kauser, on behalf of the Cupertino Chamber of Commerce, received the proclamation.

Mayor Paul presented the proclamation supporting Small Business Saturday in Cupertino

## POSTPONEMENTS

Paul moved and Moore seconded to continue Item No. 17 Consider conducting a first reading of an ordinance that prohibits parking along the west side of Vista Drive between Forest Avenue and Merritt Drive, and along the south side of Merritt Drive between Vista Drive and the western end, to accommodate the construction of a Class IV bicycle lanes to a date uncertain. The motion carried unanimously.

## ORAL COMMUNICATIONS

Jennifer Griffin was concerned about potential new State housing bills being introduced in January and loss of local control.

Planning Commissioner Muni Madhhipatla (representing self) supported Vice Mayor Chao's personal stance in a discussion and opposed those groups requesting an apology from her.

Tony G. was concerned that Vice Mayor Chao's personal comments on the Chinese Exclusion Act were taken out of context and opposed negative comments on social media.

Yi Ding discussed the Vice Mayor's personal statement on the Chinese Exclusion Act and expressed opposition for the Act.

Pilar Furlong, on behalf of the Bill Wilson Center, supported November as "Runaway and Homeless Youth Prevention Month" and resources for youth in crisis.

Brooke Ezzat opposed attacks against Vice Mayor Chao concerning her personal comments in an online parent group and supported voting for her as a City Council candidate in 2022.

Tessa Parish opposed attacks against Vice Mayor Chao concerning her personal comments in an online discussion and supported voting for her as a City Council candidate in 2022.

Alex Vobansa supported creating a City Commission to study Cupertino's history and role in the region concerning discriminatory policies against Asian Americans.

Parks and Recreation Commissioner Minna Xu (representing self) opposed attacks against Vice Mayor Chao concerning her personal comments in a local parents group discussion.

CC Zhou supported Vice Mayor Chao's help in the community to fight school closures and opposed unfair comments concerning her personal comments in an online discussion.

Paul Soto supported the City crafting a legal definition for "equity."

Sean Hughes opposed Vice Mayor Chao's recent personal comments on racism and her defense of those comments.

Lisa Warren opposed calling for public figures to apologize for expressing personal opinions as citizens.

Gilbert Wong thanked Vice Mayor Chao for personally acknowledging that the Chinese Exclusion Act is racist and supported a symposium on diversity, equity, and inclusion.

Calley Wang was disappointed on how Vice Mayor Chao's personal comments were reported and found her use of the Chinese Exclusion Act disappointing.

#### **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

Written Communications for this item included Cupertino Mayor's Corner November 16, 2021 and Vice Mayor Chao's personal statement.

Chao moved and Willey seconded to allow Vice Mayor Chao to read a 3-minute personal statement. The motion carried with Paul voting no.

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

Interim City Manager Greg Larson reported on Wilson Park Upgrades, upcoming holiday events; Covid-19 testing, vaccinations, boosters, and mask mandates; and the Lawrence Mitty Master Plan.

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

**CONSENT CALENDAR (Items 5-13)**

Wei moved and Willey seconded to approve the items on the Consent Calendar except for Item No. 13 which was pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

5.     Subject: Approve the November 2 City Council minutes  
          Recommended Action: Approve the November 2 City Council minutes
  
6.     Subject: Department of Housing and Community Development (HCD) Permanent Local Housing Allocation Funding (PHLA) Grants Program Application  
          Recommended Action: Adopt Resolution No. 21-100 authorizing application for, and receipt of, PHLA Grants Program Funds
  
7.     Subject: Adopt a resolution increasing the employer's contribution for medical and hospitalization insurance consistent with the Public Employees' Medical and Hospital Care Act ("PEMHCA" or the "Act") for the Unrepresented (Management and Confidential), Cupertino Employees' Association (Employees Association), Operating Engineers, Local Union No. 3 (Operating Engineers), Appointed (City Attorney and City Manager), Elected Official groups and retired annuitants.  
          Recommended Action: 1. Adopt Resolution No. 21-101 fixing the employer contribution under the public employees' medical and hospital care act at an equal amount for employees and annuitants. (Employees and Annuitants hired prior to August 1, 2004).  
  2. Adopt Resolution No. 21-102 fixing the employer's contribution for public agency vesting under section 22893 of the public employees' Medical and Hospital Care Act. (Retirees hired on/after August 1, 2004).
  
8.     Subject: Accept Accounts Payable for the period ending October 4, 2021  
          Recommended Action: Adopt Resolution No. 21-103 accepting Accounts Payable for the period ending October 4, 2021
  
9.     Subject: Accept Accounts Payable for the period ending October 11, 2021  
          Recommended Action: Adopt Resolution No. 21-104 accepting Accounts Payable for the period ending October 11, 2021
  
10.    Subject: Accept Accounts Payable for the period ending October 18, 2021  
          Recommended Action: Adopt Resolution No. 21-105 accepting Accounts Payable for the period ending October 18, 2021

11. Subject: Accept Accounts Payable for the period ending October 25, 2021  
Recommended Action: Adopt Resolution No. 21-106 accepting Accounts Payable for the period ending October 25, 2021
12. Subject: Consider accepting Treasurer's Investment Report for period ending September 30, 2021  
Recommended Action: Consider accepting Treasurer's Investment Report for period ending September 30, 2021
13. Subject: Consider donations from the Library Foundation for the Cupertino Library Expansion Project.  
Recommended Action: Authorize the City of Cupertino to accept all monetary donations from the Cupertino Library Foundation for the Library Expansion Project (Project No. 2020-03) in accordance with the City Donation Policy (Attachment A.)

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

Gilbert Wong supported the Cupertino Library fundraiser for Phase 1.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Council unanimously consented to table this item until the December 7 Regular City Council meeting.

## **SECOND READING OF ORDINANCES - None**

## **PUBLIC HEARINGS - None**

## **ORDINANCES AND ACTION ITEMS**

Mayor Paul read an oral summary prior to Council's approval of Item. No. 14 regarding the City Manager's employment agreement.

Jim Throop was introduced as being selected to be Cupertino's next City Manager.

14. Subject: Consider appointment of the selected candidate as City Manager, approval of the employment agreement, and amending the Appointed Employee's Compensation Program



Recommended Action: Appoint the selected candidate as City Manager, effective January 3, 2022; adopt Resolution No. 21-110 to authorize the Mayor to execute the Employment Agreement for City Manager; and adopt Resolution No. 21-107 to amend the Appointed Employees' Compensation Program

Written communications for this item included: City Manager Appointment Supplemental Staff Report, Draft Resolution approving the City Manager Employment Agreement, Draft City Manager Employment Agreement, Draft Resolution amending the Appointed Employees' Compensation Program, Appointed Employees Compensation Policy (Clean), Appointed Employees Compensation Policy (Redline).

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

Paul Soto supported the new City Manager learning the history of the area and adopting a legal definition of "equity."

Peggy Griffin supported appointing Jim Throop as City Manager.

Planning Commissioner Muni Madhhipatla (representing self) supported appointing Jim Throop as City Manager.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Moore seconded to appoint the selected candidate as City Manager, effective January 3, 2022; adopt Resolution No. 21-110 to authorize the Mayor to execute the Employment Agreement for City Manager; and adopt Resolution No. 21-107 to amend the Appointed Employees' Compensation Program. The motion carried unanimously.

15. Subject: City Manager's First Quarter Financial Report for Fiscal Year 2021-22  
Recommended Action: Consider adopting Resolution No. 21-108 which approves Budget Modification #2122-167 increasing appropriations and revenues by \$1,601,245 and \$495,289, respectively.

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

Mayor Paul opened the public comment period and, seeing no one, closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved and Wei to adopt Resolution No. 21-108 which approves Budget Modification #2122-167 increasing appropriations and revenues by \$1,601,245 and \$495,289, respectively. The motion carried with Moore voting No.

Council recessed from 9:25 p.m. to 9:30 p.m.

16. Subject: Consider approval of a Final Map, the Subdivision Improvement Agreement, and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the BMR Agreement) for Westport Cupertino Development Project; Tract No. 10579; Applicant: 190 West St. James, LLC (KT Urban); Location: 21267 Stevens Creek Boulevard; APN #326-27-042 & 043.

Recommended Action: Adopt Resolution No 21-109:

- 1) Approving the final map;
- 2) Accepting the street dedication and public service easements and abandoning redundant public roadway and drainage easements as shown on the map;
- 3) Authorizing the City Engineer to execute and record the Subdivision Improvement Agreement;
- 4) Authorizing the City Manager to execute and record the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the BMR Agreement); and
- 5) Consider a request for deferral of payment for parkland dedication in-lieu fees.

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

Assistant Public Works Director/City Engineer Chad Mosely gave a presentation.

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

Peggy Griffin was concerned about relocating the bus stop in front of Westport and the safety impacts for Senior Center patrons and De Anza College students.

Jennifer Griffin supported releasing the development's BMR units to become part of the Cupertino BMR program and opposed for-sale or profit BMR units.

Lisa Warren was concerned about the relocation and safety of the bus stop and whether the bike path issues had been resolved.

San R was concerned about the bus stop being in a traffic congestion area and supported a traffic study and replacing Oak trees.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Paul moved and Moore seconded the staff recommendation to Adopt Resolution No 21-109:

- 1) Approving the final map;
- 2) Accepting the street dedication and public service easements and abandoning redundant public roadway and drainage easements as shown on the map;
- 3) Authorizing the City Engineer to execute and record the Subdivision Improvement Agreement;
- 4) Authorizing the City Manager to execute and record the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the BMR Agreement); and
- 5) Allow deferred payment of the parkland dedication in-lieu fees until December 31, 2021 or closing of any property transfer, whichever occurs first; and
- 6) Staff to provide a written explanation for the relocation of the bus stop from the eastside of the Stevens Creek Blvd/Mary Ave intersection, to the west side of the intersection; Staff to investigate the usage by members of the Senior Center of the bus stop at Mary Avenue and Stevens Creek Boulevard, and to report back to Council on potential additional measures that may help enhance the safety of pedestrians of the intersection.

The motion as amended carried unanimously.

17. Subject: Consider conducting a first reading of an ordinance that prohibits parking along the west side of Vista Drive between Forest Avenue and Merritt Drive, and along the south side of Merritt Drive between Vista Drive and the western end, to accommodate the construction of a Class IV bicycle lanes.

Recommended Action: Conduct the first reading of Ordinance No. 21-2233, "An Ordinance of the City Council of the City of Cupertino amending Table 11.24.150 of the Cupertino Municipal Code Relating to Prohibition of Parking Along Certain Streets."

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

As noted under Postponements, this item was continued to a date uncertain.

18. Subject: Consider conducting a first reading of an ordinance to make minor and technical corrections to the Cupertino Municipal Code as follows: (1) enacting new Sections 2.36.085 and 2.74.075 and new Chapter 2.110; (2) amending Sections 1.12.010, 2.48.020, 2.60.050, 2.68.050, 2.74.040, 2.80.090, 2.86.070, 2.92.090, 3.23.060, 8.06.030, 14.04.125, 14.18.090, 16.52.043, 16.52.053, 18.04.020, 19.102.030, and 19.104.220 and Table 19.124.040; and (3) repealing Section 11.08.020

Recommended Action: That the City Council conduct the first reading of Ordinance No. 21-2234: "An Ordinance of the City Council of the City of Cupertino to update the Municipal Code to improve City operations and bring the Cupertino Municipal Code up to date by (1) enacting new Sections 2.36.085 and 2.74.075 and new Chapter 2.110; (2) amending Sections 1.12.010, 2.48.020, 2.60.050, 2.68.050, 2.74.040, 2.80.090, 2.86.070, 2.92.090, 3.23.060, 8.06.030, 14.04.125, 14.18.090, 16.52.043, 16.52.053, 18.04.020, 19.102.030, and 19.104.220 and Table 19.124.040; and (3) repealing section 11.08.020."

City Attorney Christopher Jensen gave a presentation.

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

Peggy Griffin supported having an in-house City Attorney.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2234: "An Ordinance of the City Council of the City of Cupertino to update the Municipal Code to improve City operations and bring the Cupertino Municipal Code up to date by (1) enacting new Sections 2.36.085 and 2.74.075 and new Chapter 2.110; (2) amending Sections 1.12.010, 2.48.020, 2.60.050, 2.68.050, 2.74.040, 2.80.090, 2.86.070, 2.92.090, 3.23.060, 8.06.030, 14.04.125, 14.18.090, 16.52.043, 16.52.053, 18.04.020, 19.102.030, and 19.104.220 and Table 19.124.040; and (3) repealing section 11.08.020."

Wei moved and Chao seconded to read Ordinance No. 21-2234 by title only, and that the City Clerk's reading constitutes the first reading thereof, and that the item was not subject to CEQA. Ayes: Moore, Wei, Willey, Chao, and Paul. Noes: None. Abstain: None. Absent: None.

**ORAL COMMUNICATIONS - CONTINUED (As necessary)**

Randy Shingai talked about Anti-Asian violence and opposed Vice Mayor Chao's personal views of Chinese Americans and opposed her as the next Cupertino Mayor.

Leon Zhu supported Vice Mayor Chao's work as a CUSD Board Member and a Councilmember and was concerned about traffic impacts related to school closures.

Aegean Lee supported Vice Mayor Chao's work in the community including during the school closures process and disagreed with those requesting an apology for her personal comments.

Shaohua Yang supported Vice Mayor Chao and opposed false information that she personally defended the Chinese Exclusion Act in a discussion group.

Fine Arts Commissioner Sudha Kasamsetty (representing self) supported Vice Mayor Chao as being honest and thorough in her opinions and opposed personal attacks against her.

Vera supported Vice Mayor Chao's work in the community and for the schools and opposed the deliberately misconstrued attacks against her.

Neil Park McClintick, on behalf of Cupertino for All, was concerned about Vice Mayor Chao's personal comments concerning the Chinese Exclusion Act and accountability.

San R supported the City Council investigating the school district closures and potential traffic impacts, and graffiti on freeway signage.

## **COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS**

### **ADJOURNMENT**

At 10:52 p.m., Mayor Paul adjourned the Regular City Council Meeting.

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Kirsten Squarcia, City Clerk