



**DRAFT MINUTES**  
**CUPERTINO CITY COUNCIL**  
Tuesday, December 21, 2021

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: Recognition of 2021 STEM Winners from the City of Cupertino who participated in the Santa Clara County 2021 Synopsys Championship Science Fair  
Recommended Action: Present Certificates of Recognition to 2021 STEM Winners from the City of Cupertino who participated in the Santa Clara County 2021 Synopsys Championship Science Fair

Santa Clara Valley Science & Engineering Fair Association (SCVSEFA) Board Member Aulena Chaudhuri recognized the winners.

SCVSEFA representative Forrest Williams received the certificates of recognition.

Mayor Paul presented the certificates of recognition to the 2021 STEM Winners from the City of Cupertino who participated in the Santa Clara County 2021 Synopsys Championship Science Fair.

2. Subject: Proclamation recognizing 25 years of volunteer work by the Shin Shin Educational Foundation  
Recommended Action: Present proclamation recognizing 25 years of volunteer work by the Shin Shin Educational Foundation

Shin Shin Educational Foundation representative Steve Ting received the proclamation.

Mayor Paul presented the proclamation recognizing 25 years of volunteer work by the Shin Shin Educational Foundation.

**POSTPONEMENTS AND ORDERS OF THE DAY**

3. Subject: Consider a development proposal to demolish and existing commercial building and construct a new nine (9) unit single-family home development including one (1) home containing an Accessory Dwelling Unit (ADU). (Application No(s): EA-2020-001, Z-2020-001, DP-2020-001, TM-2020-001, ASA-2020-003, and U-2020-001; Applicant(s): Alan Enterprise LLC; Location: 22690 Stevens Creek Boulevard; APN#s 341-14-066, 342-14-104 & 105)

This item was postponed to a future meeting date.

4. Subject: Consider a development proposal to demolish an existing commercial building and residential unit, remove and replace four (4) protected trees, and construct a mixed-use development consistent of 18 units (five apartments, five single-family homes, and eight townhomes), and 4,500 square feet of commercial space. (Application No(s): EA-2018-06, Z-2018-02, DP-2018-07, TM-2018-04, U-2018-04, ASA-2018-09, TR-2018-39; Applicant(s): Dan Shaw (SCR Enterprises); Location 10625 South Foothill Boulevard; APN#s 342-16-087, -088)

This item was postponed to a future meeting date.

Paul moved and Moore seconded to hear Item 25 prior to Item 24. The motion carried Unanimously.

**ORAL COMMUNICATIONS**

Jean Bedord objected to the reordering of agenda items 24 and 25 and supported hearing the consideration of Westport in the order stated on the agenda.

Call-in User 1 was concerned about an unpermitted structure in their backyard which was torn down by the City and requested assistance.

Jennifer Griffin was concerned about AB1401 which proposes a reduction of parking minimums in California and supported trials in cities or designated areas first.

Joe Kunzler supported Councilmember Moore for taking action to support trans visibility in public transit at a recent VTA Policy Advisory Committee meeting.

**REPORTS BY COUNCIL AND STAFF (10 minutes)**

5. 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 December 21, 2021.

Council received brief reports on councilmember activities and brief announcements.

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

Councilmembers highlighted the activities of their various committees.

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

Interim City Manager Dianne Thompson reported on COVID-19 mask mandates, case counts, vaccination rates, and testing locations; Community Funding Grant applications; and City facility holiday closures.

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

#### **CONSENT CALENDAR (Items 8-23)**

Wei moved and Willey seconded to approve the items on the Consent Calendar except for items 11, 16, and 21 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

8. Subject: Approve the November 30 City Council minutes  
Recommended Action: Approve the November 30 City Council minutes
9. Subject: Approve the December 7 City Council minutes  
Recommended Action: Approve the December 7 City Council minutes
10. Subject: Approve the December 11 City Council minutes  
Recommended Action: Approve the December 11 City Council minutes

11. Subject: Accept Accounts Payable for the period ending November 1, 2021  
Recommended Action: Adopt Resolution No. 21-121 accepting Accounts Payable for the period ending November 1, 2021

Councilmembers asked questions and made comments.

Chief Technology Officer Bill Mitchell answered questions.

Paul moved and Wei seconded to adopt Resolution No. 21-121 accepting Accounts Payable for the period ending November 1, 2021, with the exception of EFT Payment 32909, which will be brought back to Council at a future meeting date for further reconsideration. The motion carried unanimously.

12. Subject: Accept Accounts Payable for the period ending November 8, 2021  
Recommended Action: Adopt Resolution No. 21-122 accepting Accounts Payable for the period ending November 8, 2021
13. Subject: Accept Accounts Payable for the period ending November 15, 2021  
Recommended Action: Adopt Resolution No. 21-123 accepting Accounts Payable for the period ending November 15, 2021
14. Subject: Accept Accounts Payable for the period ending November 22, 2021  
Recommended Action: Adopt Resolution No. 21-124 accepting Accounts Payable for the period ending November 22, 2021
15. Subject: Accept Accounts Payable for the period ending November 29, 2021  
Recommended Action: Adopt Resolution No. 21-125 accepting Accounts Payable for the period ending November 29, 2021
16. Subject: Appointment of Council Committee Assignments  
Recommended Action: Approve Council Committee Assignments

Councilmembers discussed the proposed assignments.

Paul moved and Moore seconded to approve the Council Committee Assignments as proposed with the trade-off of Councilmember Willey as primary for the County of Santa Clara Housing and Community Development Advisory Committee instead of Vice Mayor Chao, and Vice Mayor Chao as primary for the Legislative Review Committee instead of Councilmember Willey. The motion carried unanimously.

17. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period December 21, 2021 through January 20, 2022 pursuant to the Brown Act, as amended by AB 361  
Recommended Action: Adopt Resolution No. 21-126 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period December 21, 2021 through January 20, 2022 pursuant to the Brown Act, as amended by AB 361
18. Subject: Consider changes to part-time salary schedules for job classifications and job families impacted by minimum wage adjustments  
Recommended Action: Adopt Resolution No. 21-127 establishing changes to part-time salary schedules for classifications impacted by minimum wage adjustments and realign wage increases with position advancement
19. Subject: Consider an amendment to the Professional Services Agreement between the City of Cupertino and Rincon Consultants, Inc. for Climate Action Plan Update services and technical support  
Recommended Action: Authorize the City Manager to execute the First Amendment to the Professional Services Agreement between the City of Cupertino and Rincon Consultants, Inc., increasing the amount by \$78,000, for a total amount not to exceed \$178,000
20. Subject: Consider authorizing the City Manager to award a construction contract, including a contingency budget for the 2022 Reconstruction of Curbs, Gutters and Sidewalks Project - Project No. 2022-101  
Recommended Action: 1. Authorize the City Manager to award a construction contract to JJR Construction in the amount of \$1,054,968.66; and  
2. Authorize the Director of Public Works to execute any necessary Change Orders, up to the Construction Contingency amount of \$155,000.00
21. Subject: Consider accepting \$1,936,000 of grant funding from Santa Clara County 2016 Measure B Program for Fiscal Year 2022-2023. The total grant allocation is for the Junipero Serra Trail East Segment  
Recommended Action: Accept \$1,936,000 of grant funding from Santa Clara County 2016 Measure B Program for Fiscal Year 2022-2023. The total grant allocation of \$1,936,000 for Junipero Serra Trail East Segment requires:  
1. Adopting Resolution No. 21-128 titled "Request of the Metropolitan Transportation Commission for the allocation of Fiscal Year 2022-2023 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding" requesting \$1,015,022 and authorizing acceptance of said funds when approved

2. Authorizing the City Manager to negotiate and execute "Funding Agreement between the City of Cupertino and Santa Clara Valley Transportation Authority for Junipero Serra Trail, East Segment" for the remaining Measure B allocation of \$920,978 with Santa Clara Valley Transportation Authority

3. Adopting Resolution No. 21-129 approving Budget Modification No. 2122-176 increasing appropriations and revenues for Junipero Serra Trail - East Segment (420-99-036, ST 046) by \$1,936,000

Moore moved and Paul seconded to accept \$1,936,000 of grant funding from Santa Clara County 2016 Measure B Program for Fiscal Year 2022-2023:

1. Adopting Resolution No. 21-128 titled "Request of the Metropolitan Transportation Commission for the allocation of Fiscal Year 2022-2023 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding" requesting \$1,015,022 and authorizing acceptance of said funds when approved

2. Authorizing the City Manager to negotiate and execute "Funding Agreement between the City of Cupertino and Santa Clara Valley Transportation Authority for Junipero Serra Trail, East Segment" for the remaining Measure B allocation of \$920,978 with Santa Clara Valley Transportation Authority

3. Adopting Resolution No. 21-129 approving Budget Modification No. 2122-176 increasing appropriations and revenues for Junipero Serra Trail - East Segment (420-99-036, ST 046) by \$1,936,000

4. Council also provided direction to staff to refer to the Bicycle Pedestrian Commission the option of pursuing alternative names for the trail, and to present Council with alternative naming options at a future City Council meeting; and to use the name "I-280 Trail" in the interim.

The motion carried unanimously.

22. Subject: Consider the Mitigation Fee Act, the annual and five-year report for Fiscal Year (FY) 2020-2021

Recommended Action: 1. Accept the annual and five-year review of the City of Cupertino's Development Impact Fees (Government Code Section 66000 et seq.); and  
2. Adopt Resolution No. 21-116 entitled "A Resolution of the Cupertino City Council approving the annual and five-year Development Impact Fee report for FY ending June 30 and making required findings"

23. Subject: Consider City Participation in Santa Clara County Permanent Local Housing Allocation (PHLA) Partnership to apply for State of California PHLA funds to provide financial assistance for eligible housing-related projects and programs to assist in addressing unmet housing needs in the City

Recommended Action: Conduct a public hearing; and

1. Authorize the City Manager or designee to enter into a Consortium Agreement with the County of Santa Clara (County), that authorizes the County to submit funding applications to the State of California on the City's behalf for the City's allocation of State PLHA program funds, and authorizes the County to administer the funds in accordance with State requirements and in accordance with the Consortium Agreement including an update to the fee terms; and
2. Adopt Resolution No. 21-130 authorizing the County to submit the PLHA program application to the State on behalf of the City (Attachment A)

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

Council recessed from 7:53 p.m. to 8:00 p.m.

As noted under Postponements and Orders of the Day, Council heard Item 25 before Item 24.

## **PUBLIC HEARINGS**

Paul moved and Moore seconded to have Councilmember clarifying questions to staff and the applicant following the applicant responding to comments and questions from members of the public for the procedure of public hearings for 2022. The motion carried unanimously.

- 24.**     Subject: Consider modifications to the approved Westport Development project which include adjusting unit mix in the assisted living facility (Building 1) to 123 assisted living units and 35 memory care rooms, reclassification of approximately 8,000 square feet of public dining area to private dining, reducing the underground parking to reflect adjustments in uses, and reduction of massing on the top floor to accommodate a sixth floor aqua therapy pool; (Application No(s): M-2021-002, ASA-2021-007, EXC-2021-003; Applicant(s): Related California (Cascade Zak); Location: 21267 Stevens Creek Boulevard; APN #326-27-043)

Recommended Action: Consider the evidence presented and determine whether to adopt the following resolutions approving the proposed project modifications:

1. Resolution No. 21-117 approving the Heart of the City Exception (EXC-2021-003);
2. Resolution No. 21-118 approving the Modified Development Permit (M-2021-002); and
3. Resolution No. 21-119 approving the Architectural and Site Approval Permit (ASA-2021-007)

If the City Council wishes to deny the project, adopt the following resolution:

1. Resolution No. 20-120 denying Development Permit (M-2021-002), Architectural and Site Approval Permit (ASA-2021-002), and Heart of the City Exception (EXC-2021-003)

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

Senior Planner Gian Martire gave a presentation.

The following people gave a presentation.

- Matthew Witte, Senior Vice President, Acquisitions and Development at Related California
- Mark Alexander, Senior Vice President and Head of Development at Atria Senior Living
- Mike Kelley, Business Developer at The Pacific Companies

Mayor Paul opened the public hearing and the following people spoke.

Andrew Wang was concerned about the planned landscaping details for the site.

Richard Adler, on behalf of Age Friendly Cupertino, supported the proposed Atria project and combined affordable housing.

Jean Bedord, on behalf of the Senior Center Advisory Council, supported approval of the Westport Cupertino project.

Housing Commissioner Connie Cunningham (representing self) supported the Atria and Westport Cupertino project.

Joseph Wei supported the Westport Cupertino project as assisted living in Cupertino.

David Stearns, on behalf of Age Friendly Cupertino, supported the proposed Atria and Westport Cupertino project.

Peggy Griffin supported the newly proposed Westport Cupertino project. (Submitted written comments).

Janet Van Zoeren supported the Westport Cupertino project.

Mayor Paul closed the public hearing.

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Councilmembers asked questions and made comments.

Chao moved and Moore seconded to adopt the following resolutions approving the proposed project modifications:

1. Resolution No. 21-117 approving the Heart of the City Exception (EXC-2021-003);
2. Resolution No. 21-118 approving the Modified Development Permit (M-2021-002); and
3. Resolution No. 21-119 approving the Architectural and Site Approval Permit (ASA-2021-007).

The motion carried unanimously.

## ORDINANCES AND ACTION ITEMS

25. Subject: Consider an Interim Ordinance to implement new state legislation (Senate Bill 9), that provides for ministerial approval of up to two units and/or a lot split in a residential single-family zone (Application No.: MCA-2021-005; Applicant: City of Cupertino; Location: Citywide in all residential single family zones)  
Recommended Action: Conduct the first and only reading and enact Interim Ordinance No. 21-2235: "An Ordinance of the City Council of the City of Cupertino adding or Amending Cupertino Municipal Code Sections 18.20.170, 19.08.030, 19.12.030, 19.28.040, 19.28.110, 19.40.050, 19.40.060, 19.40.090, and 19.112.060 to adopt standards for ministerial approval of duplexes and lot splits in single-family residence districts"

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

Director of Community Development Ben Fu introduced the item.

Planning Manager Piu Ghosh gave a presentation.

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

Jennifer Griffin was concerned about impacts in her neighborhood and protecting trees and supported the proposed Ordinance.

Andrew Wang supported requiring trees as part of the landscaping and extending this requirement to grasses and shrubbery.

Peggy Griffin supported Option A disallowing second story decks and balconies and Option G disallowing condo conversions. (Submitted written comments).

Lisa Warren supported prohibiting balconies, second story decks, and basements; and was concerned about solar and privacy requirements; and supported noticing.

Planning Commissioner Steven Scharf (representing self) was concerned about parking and making housing less affordable and supported the proposed Ordinance.

Mayor Paul closed the public comment period.

Councilmembers asked question and made comments.

City Clerk Kirsten Squarcia read the title of Interim Ordinance No. 21-2235: "An Ordinance of the City Council of the City of Cupertino adding or Amending Cupertino Municipal Code Sections 18.20.170, 19.08.030, 19.12.030, 19.28.040, 19.28.110, 19.40.050, 19.40.060, 19.40.090, and 19.112.060 to adopt standards for ministerial approval of duplexes and lot splits in single-family residence districts."

Chao moved and Willey seconded to read Interim Ordinance No. 21-2235 by title only, and that the City Clerk's reading constitutes the first and only reading thereof; and to enact Interim Ordinance No. 21-2235, pursuant to the staff recommendation as follows:

1. No balconies and decks shall be allowed in projects approved ministerially pursuant to the Ordinance;
2. No basements shall be allowed in projects approved ministerially pursuant to the Ordinance
3. Projects approved ministerially pursuant to the Ordinance shall not be eligible for condominium conversions; and
4. Units approved ministerially pursuant to the Ordinance shall not be larger than 2,000 s.f.
5. Correction to Page 495 of the Agenda Packet, Section 19.08.030, in the definition of "Floor area": Item 7. Residential basements in the R1 and RHS zoning districts on projects pursuant to Government Code section ~~64411.7~~ 5852.21.

The main motion carried with Wei voting no. Ayes: Moore, Willey, Chao, and Paul. Noes: Wei. Abstain: None. Absent: None.

Moore moved and Paul seconded a substitute motion for the staff recommendation 19.28.050(E)(a) - Option A (no deck), 19.28.050(G) - Option A (no condo conversions), 19.40.090(G) - Option A (no condo conversions). Chao added a friendly amendment to limit units to 2500 s.f. (Moore declined the friendly amendment); and a correction to Page 495 of the Agenda Packet, Section 19.08.030, in the definition of "Floor area": Item 7. Residential basements in the R1 and RHS zoning districts on projects pursuant to Government Code section ~~64411.7~~ 5852.21. The substitute motion failed with Willey and

Chao voting no. Ayes: Moore, Wei, and Paul. Noes: Willey and Chao. Abstain: None. Absent: None.

Chao moved and Willey seconded to provide direction to staff:

- Approval for lot split is valid only for one year and then requires extension.
- Site notice should be clear that there is no appeal. And # units (primary and ADUs) on site and # on-site parking spaces (enclosed or not)
- Specify deadline to start construction and/or pull occupancy permits
- + [Accountability]: A staff review panel to ensure consistent and fair treatment of all projects without potential human error or inconsistent interpretation of the code or possible undue influence by other entities

Council did not vote on this motion.

Moore moved and Paul seconded a substitute motion to conduct a study session within six months regarding potential amendments to the SB9 Interim Ordinance. The substitute motion carried unanimously.

Council recessed from 10:01 p.m. to 10:10 p.m. and heard Item 24 next.

**ORAL COMMUNICATIONS - CONTINUED (As necessary) – None**

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

Added a future study session to provide direction on the authority granted to staff for the approval of Westport project modifications (Willey/Moore)

**ADJOURNMENT**

At 11:57 p.m., Mayor Paul adjourned the Regular City Council Meeting.

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Kirsten Squarcia City Clerk