



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, September 6, 2016**

REGULAR CITY COUNCIL MEETING

ROLL CALL

At 6:00 p.m. Mayor Barry Chang called the Regular City Council meeting to order in Cupertino City Hall Conference Room A, 10300 Torre Avenue.

Present: Mayor Barry Chang, Vice Mayor Savita Vaidhyathan, and Council members Darcy Paul, Rod Sinks and Gilbert Wong. Absent: None.

Council went into closed session and reconvened in open session at 6:45 p.m. in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue.

CLOSED SESSION

1. Subject: Conference with legal counsel - Existing Litigation pursuant to Paragraph (1) of subdivision (d) of Gov't Code 54956.9; City of Cupertino v. Siemens Industry, Inc. et al, Case #1-14-CV-272838

Mayor Chang announced that Council gave direction to the City Attorney.

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Barry Chang reconvened the Regular City Council meeting in Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Barry Chang, Vice Mayor Savita Vaidhyathan, and Council members Darcy Paul, Rod Sinks and Gilbert Wong. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS

2. Subject: Present proclamation to Cupertino resident Rajee Shah in recognition of performing community service
Recommended Action: Present proclamation to Cupertino resident Rajee Shah in recognition of performing community service

Mayor Chang and Vice Mayor Vaidhyanathan presented the proclamation to Cupertino resident Rajee Shah in recognition of performing community service.

3. Subject: Present Certificates of Recognition to Cupertino Staff Members Frank Villa and Pete Arnst for responding quickly to aid an injured bicyclist
Recommended Action: Present Certificates to Cupertino Staff Members Frank Villa and Pete Arnst for responding quickly to aid an injured bicyclist

Mayor Chang and Council member Paul presented the Certificates of Recognition to Cupertino Staff Members Frank Villa and Pete Arnst for responding quickly to aid an injured bicyclist.

4. Subject: Cupertino Transit Video II
Recommended Action: Present Cupertino Transit Video II

Council viewed the Transit Video II.

POSTPONEMENTS

5. Subject: Continue Item No. 21 Appeal of Kimberly Sandstrom Appeal Regarding Eligibility to Purchase Below Market Rate (BMR) Unit to September 20, 2016
Recommended Action: Continue Item No. 21 Appeal of Kimberly Sandstrom Appeal Regarding Eligibility to Purchase Below Market Rate (BMR) Unit to September 20, 2016

Wong moved and Sinks seconded to continue item number 21 to September 20. The motion carried unanimously.

Subject: Execute a lease agreement with Self-Help For The Elderly Program for use of Creekside Park Building for the period of September 12, 2016-December 31, 2016
Recommended Action: Staff recommends this item be removed from the agenda.

Wong moved and Sinks seconded to table item number 14. The motion carried unanimously.

ORAL COMMUNICATIONS

Stanley Young representing Cupertino Employee's Association (CEA) IFPTE Local 21 talked about labor negotiations.

Cupertino employee Barbara Banfield representing Cupertino Employee's Association (CEA) IFPTE Local 21 talked about labor negotiations.

Cupertino employee James Steve representing Operating Engineers Local No. 3 (OE3), talked about labor negotiations.

Cupertino employee Jeff Ordway representing Cupertino Employee's Association (CEA) IFPTE Local 21 talked about labor negotiations.

Timm McRae speaking on behalf of the Silicon Valley Leadership Group talked about the Turkey Trot (fun run/walk) and Mayor's Cup held on Thanksgiving Day. He distributed flyers about the event.

Dennis Whittaker speaking on behalf of the Optimist Club of Cupertino talked about issues with City policy regarding minimum number of members needed for non-profit groups to rent City facilities. He distributed written comments.

Homer Tong speaking behalf of the Optimist Club of Cupertino talked about issues with City policy regarding minimum number of members needed for non-profit groups to rent City facilities.

Art Cohen speaking on behalf of Diamond in the Rough Films (DITR) and Blue Light Cinemas and DITR Director Mark Schwab talked about the upcoming film festival at the Blue Lights Cinema on Sept 24 and 25 and the Fourth Annual Star Trek event on Nov 5 and 6.

Val Vitols speaking on behalf of CARE talked about a benefit concert to be held next year at Memorial Park to bring attention to the environment.

Lisa Warren talked about her not being allowed to speak under Oral Communications at the August 2 Council meeting. She distributed written comments.

Ben Lee talked about issues with bushes and City trees growing onto the sidewalk along Bubb Rd.

CONSENT CALENDAR

Wong moved and Sinks seconded to approve the items on the Consent Calendar noting the correction to item number 15 and with the exception of item number 19 which was pulled for discussion and item number 14 which was tabled under postponements. Ayes: Chang, Vaidhyanathan, Paul, Sinks and Wong. Noes: None. Abstain: None. Absent: None.

6. Subject: Approve the August 2 City Council minutes
Recommended Action: Approve the August 2 City Council minutes
7. Subject: Accept Accounts Payable for the period ending July 1, 2016
Recommended Action: Adopt Resolution No. 16-085 accepting Accounts Payable for the period ending July 1, 2016
8. Subject: Accept Accounts Payable for the period ending July 8, 2016
Recommended Action: Adopt Resolution No. 16-086 accepting Accounts Payable for the period ending July 8, 2016
9. Subject: Accept Accounts Payable for the period ending July 15, 2016
Recommended Action: Adopt Resolution No. 16-087 accepting Accounts Payable for the period ending July 15, 2016
10. Subject: Accept Accounts Payable for the period ending July 22, 2016
Recommended Action: Adopt Resolution No. 16-088 accepting Accounts Payable for the period ending July 22, 2016
11. Subject: Accept Accounts Payable for the period ending July 29, 2016
Recommended Action: Adopt Resolution No. 16-089 accepting Accounts Payable for the period ending July 29, 2016
12. Subject: Biennial Review of Conflict of Interest Code of the City of Cupertino for officials and designated positions
Recommended Action: a.) Rescind Resolution No. 14-168 and adopt Resolution No. 16-090 amending the Conflict of Interest Code of the City of Cupertino; and b.) Authorize the City Manager to sign the required 2016 Local Agency Biennial Notice

13. Subject: Second amendment to agreement for consultation services with Insight
Recommended Action: 1. Amend compensation and terms sections of the first amended and restated agreement that expired on June 30, 2016; and 2. Authorize the City Manager to sign the second amended and restated agreement with Insight
14. Subject: Execute a lease agreement with Self-Help For The Elderly Program for use of Creekside Park Building for the period of September 12, 2016-December 31, 2016
Recommended Action: Authorize City Manager to negotiate and execute a lease agreement with Self-Help For the Elderly Program for use of the Creekside Park Building for the period of September 12, 2016-December 31, 2016

Under Postponements, this item was tabled.

15. Subject: Fee waiver request from League of Women Voters of Cupertino-Sunnyvale for approximately \$255 in facility use fees for the use of Community Hall on September 22, September 26 and September 28, 2016 for candidate forums and a presentation.
Recommended Action: Staff recommends approval of fee waiver request.

City Clerk Grace Schmidt noted that the League of Women Voters only needed 2 days rather than 3 and the fee waiver request would be for \$165.

16. Subject: Request from Mr. Leon Chen to sponsor a bench in memory of his son, Erik Chen, at Creekside Park
Recommended Action: Accept a donation for a bench with a special plaque in memory of Erik Chen from his father Mr. Leon Chen to be placed at Creekside Park
17. Subject: Application for Alcohol Beverage License for Lyfe Kitchen Norcal, LLC (dba Lyfe Kitchen), 19399 Stevens Creek Boulevard
Recommended Action: Approve application for Alcohol Beverage License for Lyfe Kitchen Norcal, LLC (dba Lyfe Kitchen), 19399 Stevens Creek Boulevard
18. Subject: Authorization of funding for the Sidewalk Renovation-Stevens Creek Blvd (Stelling-De Anza) Project in order to enhance accessibility in the public right of way
Recommended Action: Authorize funding in the amount of \$250,000 for the Sidewalk Renovation-Stevens Creek Blvd (Stelling-De Anza) Project
19. Subject: Master Agreement between the City of Cupertino and HMM Engineering, Inc. (HMM) to provide civil engineering services on various Capital Improvement Projects

Recommended Action: Authorize the City Manager to execute a Master Agreement between the City of Cupertino and HMM in the amount not to exceed \$1,000,000 for a term of approximately two years

Wong moved and Vaidhyanathan seconded to authorize the City Manager to execute a Master Agreement between the City of Cupertino and HMM in the amount not to exceed \$1,000,000 for a term of approximately two years. The motion carried unanimously.

Council members concurred to hear item number 24 next.

24. Subject: Hearing to approve assessment of fees on private parcels for the annual weed abatement program

Recommended Action: Conduct hearing and adopt Resolution No. 16-098 approving the assessment of fees on private parcels for the annual weed abatement program

Written communications for this item included an updated assessment list and an email to Council.

City Clerk Grace Schmidt reviewed the staff report.

The following speakers asked for fee waivers:

Lea Ann Walters (distributed written comments)

John Lee

Virgina Del Rosario

Andrew Nath (unclear last name spelling)

Meiduo Zhu

Manjunach Bangalore

Santa Clara County Weed Abatement Manager Moe Kumre explained the program and answered questions from Council.

Wong moved and Vaidhyanathan seconded to adopt Resolution No. 16-098 approving the assessment of fees on private parcels for the annual weed abatement program with direction that Mr. Kumre would work with those individuals who spoke tonight regarding possible fee waivers. The motion carried unanimously.

SECOND READING OF ORDINANCES

20. Subject: Second Reading of an ordinance amending Section 11.27.145 of the Cupertino Municipal Code relating to Designation of Preferential Parking Zone on Canyon Oak Way
Recommended Action: Conduct the second reading and enact Ordinance No. 16-2147: "An Ordinance of the City Council of the City of Cupertino amending Section 11.27.145 of the Cupertino Municipal Code relating to designation of preferential parking zones" on Canyon Oak Way on Saturdays, Sundays and holidays between the hours of 7 a.m. and 4 p.m.

City Clerk Grace Schmidt read the title of the ordinance.

Wong moved and Vaidhyanathan seconded to read Ordinance No. 16-2147 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Chang, Vaidhyanathan, Paul, Sinks and Wong. Noes: None. Abstain: None. Absent: None.

Wong moved and Vaidhyanathan seconded to enact Ordinance No. 16-2147. Ayes: Chang, Vaidhyanathan, Paul, Sinks and Wong. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARINGS

21. Subject: Appeal of Kimberly Sandstrom Appeal Regarding Eligibility to Purchase Below Market Rate (BMR) Unit
Recommended Action: Appeal of Kimberly Sandstrom Appeal Regarding Eligibility to Purchase Below Market Rate (BMR) Unit has been continued to September 20, 2016

Under Postponements, this item was continued to September 20.

22. Subject: Redevelopment of Marina Foods with associated site and off-site improvements
Recommended Action: a) Adopt Resolution No. 16-091 approving Development Permit (DP-2015-05) and Environmental Analysis (Negative Declaration) (EA-2015-05); and b) Adopt Resolution No. 16-092 approving Architectural and Site Approval (ASA-2015-22); and c) Adopt Resolution No. 16-093 approving Use Permit (U-2015-06); and d) Adopt Resolution No. 16-094 approving Heart of the City Exception (EXC-2016-03); and e) Adopt Resolution No. 16-095 approving Fence Exception (EXC-2016-05); and f) Adopt Resolution No. 16-096 approving Tree Removal Permit (TR-2016-14); and g)

Conduct the first reading of Ordinance No. 16-2148 (development agreement DA-2016-01): "Ordinance of the City Council of the City of Cupertino approving a Development Agreement by and among the City of Cupertino, Cupertino 10145, LLC, and Marina Plaza LLC, for the Marina Plaza project at 10122 Bandley Drive and 10145 North De Anza Boulevard"

Written communications for this item included letters and emails to Council, an amended Resolution No. 16-091, an amended Development Agreement and a staff PowerPoint presentation.

Assistant Planner Erick Serrano reviewed the staff report via a PowerPoint presentation.

Applicant Amy Chan gave an overview of the project.

John Thatch from Dahlin Group Architecture continued to talk about the project.

Sam Chug from Rossi Hamerslough Reischl & Chuck, attorney representing the applicant talked about the Saich property and private easements.

Staff and applicant answered questions from Council.

Mayor Chang opened the public hearing and the following individuals spoke:

Jennifer Griffin

Joe Zhou

Jon Willey (distributed written comments)

Gale Connor from Miller Starr Regalia, attorney representing the Saich family

Elaine Lee

Abraham Chen

Mark Kao

Vickie Chou

Chris Grisanti

Sukai Chen

Steve Gettel from Gettel & Associates, real estate advisor representing Mr. Saich

John Saich

Mayor Chang closed the public hearing.

Staff, the applicant, Karen Murphy from Burke Williams and Sorensen and Eric Phillips from Goldfarb & Littman answered questions from Council.

Wong moved and Sinks seconded to adopt Resolution No. 16-091 approving Development Permit (DP-2015-05) and Environmental Analysis (Negative Declaration) (EA-2015-05). The motion carried unanimously.

Wong moved and Sinks seconded to adopt Resolution No. 16-092 approving Architectural and Site Approval (ASA-2015-22). The motion carried unanimously.

Wong moved and Sinks seconded to adopt Resolution No. 16-093 approving Use Permit (U-2015-06). The motion carried unanimously.

Wong moved and Sinks seconded to adopt Resolution No. 16-094 approving Heart of the City Exception (EXC-2016-03). The motion carried unanimously.

Wong moved and Sinks seconded to adopt Resolution No. 16-095 approving Fence Exception (EXC-2016-05). The motion carried unanimously.

Wong moved and Sinks seconded to adopt Resolution No. 16-096 approving Tree Removal Permit (TR-2016-14). The motion carried unanimously.

City Clerk Grace Schmidt read the title of Ordinance No. 16-2148 (Development Agreement DA-2016-01).

Wong moved and Sinks seconded to read Ordinance No. 16-2148 by title only and that the City Clerk's reading would constitute the first reading thereof with the following amendments to the Development Agreement (DA):

- The applicant shall make six (6) units accessible to seniors and utilize their best efforts to convert them into senior housing consistent with Federal and State requirements
- The DA will be revised to reflect the final agreement between the School Board and the applicant
- The applicant will add two (2) moderate income units to the 16-very low income units already proposed in the project, for a total of 18 BMR units. They will receive

credit (based on the City's 2014 Nexus Study for the housing mitigation fees) for the additional moderate income units towards the balance of mitigation fees to be paid.

Ayes: Chang, Vaidhyanathan, Paul, Sinks and Wong. Noes: None. Abstain: None. Absent: None.

Council recessed from 10:29 p.m. to 10:38 p.m.

23. Subject: Consideration pursuant to a Lease with San Jose Water Company, of the reasonableness of an increase in water rates to customers served by the Cupertino Municipal Water System leased to San Jose Water Company. The increase in rates is substantially identical to that authorized by the California Public Utilities Commission ("CPUC"), after extensive review, for systems owned and operated by San Jose Water Company in other areas within the City

Recommended Action: 1. Hold a Public Hearing on proposed Cupertino Municipal Water System potable water rates and charges; and 2. Adopt Resolution 16-097, finding no basis to find as unreasonable the increase in Cupertino Municipal Water System potable water rates and charges, effective September 15, 2016 and retroactive to January 1, 2016, by 8.6% which is equivalent to the rate increase authorized by the California Public Utilities Commission ("CPUC"), after extensive review for systems owned and operated by San Jose Water Company in other areas within the City

Written communications for this item included customer comments, an amended chart noting rate increase and a staff PowerPoint presentation.

Council member Sinks recused himself on this item due to a possible conflict of interest and left the dais.

Assistant Director of Public Works Roger Lee reviewed the staff report via a PowerPoint presentation.

Mayor Chang opened the public hearing and the following individuals spoke:

John Kolski
David McLeroy

John Tang from San Jose Water Company answered questions from Council.

Wong moved and Vaidhyanathan seconded to adopt Resolution 16-097, finding no basis to find as unreasonable the increase in Cupertino Municipal Water System potable water rates and charges, effective September 15, 2016 and retroactive to January 1, 2016, by 8.6% which is equivalent to the rate increase authorized by the California Public Utilities Commission ("CPUC"), after extensive review for systems owned and operated by San Jose Water Company in other areas within the City. The motion carried with Sinks recusing.

Council member Sinks returned to the dais.

ORDINANCES AND ACTION ITEMS

25. Subject: Accept resignation of Technology, Information, and Communications Commissioner Shishir Chavan and direct staff to fill the unscheduled vacancy in January; and set application deadline and interview dates for commissions with terms expiring in January, or provide further direction to staff.

Recommended Action: a) Accept the resignation of Technology, Information, and Communications Commissioner Shishir Chavan and direct staff to fill the unscheduled vacancy in January 2017; and b) Set the application deadline of 4:30 p.m. on Friday, January 13, 2017 and interviews beginning at 5:00 p.m. on Monday and Tuesday, January 23 and 24 for commissions with terms expiring January 30, 2017, or provide further direction to staff

Wong moved and Sinks seconded to accept the resignation of Technology, Information, and Communications Commissioner Shishir Chavan and direct staff to fill the unscheduled vacancy in January 2017; and b) Set the application deadline of 4:30 p.m. on Friday, January 13, 2017 and interviews beginning at 5:00 p.m. on Monday and Tuesday, January 23 and 24 for commissions with terms expiring January 30, 2017. The motion carried unanimously.

Vice Mayor Vaidhyanathan left the meeting.

26. Subject: Consider updates to the City's *Policies and Guidelines on Sister Cities* to address friendship cities

Recommended Action: Approve recommended Policies and Guidelines on Sister Cities, Friendship Cities, and International Delegations

City Manager David Brandt reviewed the staff report.

Written communications for this item included an email to Council.

The following individuals spoke on this item:

Vivian Wang, Shiow Hsieh and Elizabeth Chin (Taichung) - distributed written comments

Keita Broadwater, Beverly Hu and Weishy Chen (Chengdu)

Chaochin Lu and Cheney Gaol (Hefei) - distributed written comments

Allen Chang (Taipei) - distributed written comments

Christie Wang (Nanjing)

Helene Davis (Cupertino-Cupertino Sister Cities Association)

Alysa Sakkas (Cupertino-Toyokawa Sister Cities Association)

Jing Liao (Changzhou) – distributed written comments

Dr. Frank Hong, founder of Happy Kids Day Kids'N Fun Festival

Paul moved and Sinks seconded to approve recommended Policies and Guidelines on Sister Cities, Friendship Cities, and International Delegations. Rod made a friendly amendment to not include staff resources for Friendship Cities. Paul didn't accept the friendly amendment. Wong made a friendly amendment to allow reimbursement of expenses related to Sister City student exchange programs as follows: \$2,500 per year for programs with 5-9 students and \$5,000 per year for programs with 10 or more students. The motion carried with Vaidhyathan absent.

REPORTS BY COUNCIL AND STAFF

27. Subject: Construction Project Updates

Recommended Action: Receive Construction Project Updates

Written communications for this item included a staff PowerPoint presentation.

This item was not heard.

28. Subject: Report on Committee assignments and general comments

Recommended Action: Report on Committee assignments and general comments

This item was not heard.

ADJOURNMENT

At 12:44 a.m. on Wednesday, September 7, Mayor Chang adjourned the meeting.

Grace Schmidt, City Clerk

Staff reports, backup materials, and items distributed at the City Council meeting are available for review at the City Clerk's Office, 777-3223, and also on the Internet at www.cupertino.org. Click on Agendas & Minutes, then click on the appropriate Packet.

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