



**DRAFT MINUTES**  
**CUPERTINO CITY COUNCIL**  
Tuesday, January 15, 2019

**SPECIAL CITY COUNCIL MEETING**

At 5:30 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the City Hall Conference Room A, 10300 Torre Avenue.

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

**CLOSED SESSION**

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

In open session, Mayor Scharf reported out from the January 15, 2019 closed session that was added at 5:15 p.m. regarding one item:

Subject: Public Employee Dismissal/Release; (Gov't Code Section 54957(b)); Consideration of terms of separation for Acting City Attorney/Senior Assistant City Attorney.

Written communications included an email to Council.

The following individual spoke in open session before Council went into closed session:

Kitty Moore (Cupertino resident)

Mayor Scharf reported that no reportable action was taken.

1. Subject: Conference with Real Property Negotiator (Gov't Code 54956.8); Property: 10800 Torre Avenue, Agency Negotiator: Chad Mosley (Coffee Society); Under Negotiation: Lease Extension

Mayor Scharf reported that further direction was given to the City's negotiators and no reportable action was taken.

2. Subject: Conference with Real Property Negotiators pursuant to Government Code Section 54956.8. Properties: APN 375-21-001, Lawrence Expressway at Mitty Avenue and APN 381-19-015, Lawrence Expressway at Doyle Road. Agency Negotiators: Chad Mosley. Negotiating Parties: San Jose Water Company; County Roads and Airports; City of San Jose. Under Negotiation: Price and terms of payment.

Mayor Scharf reported that further direction was given to the City's negotiators and no reportable action was taken.

Mayor Scharf also reported out from the January 2, 2019 closed session regarding one item:

Subject: Conference with Legal Counsel - Anticipated Litigation: Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9: One Potential Case (regarding tort claim).

Written communications included emails to Council and a statement by Barry Chang.

The following individuals spoke in open session before Council went into closed session:

Barry Chang  
Lisa Warren (Cupertino resident)  
Tessa Parish (Cupertino resident)

Mayor Scharf report that no reportable action was taken. A copy of the claim is available for public inspection in the City Clerk's office.

Mayor Scharf also reported out from the January 8, 2019 closed session regarding two items:

Subject: Public Employee Appointment; Title: City Attorney; Authority: California Gov. Code Sections 54957, 54957(b); Interviews with outside law firms to provide City Attorney services under contract.

Written communications included an email to Council.

The following individuals spoke in open session before Council went into closed session:

Jim Moore (Cupertino resident)  
Kitty Moore (Cupertino resident)

Mayor Scharf reported that Council selected the law firm of Shute, Mihaly & Weinberger and directed staff to negotiate a contract with the firm. The City Attorney contract with Shute, Mihaly & Weinberger will be scheduled for a regular meeting of the City Council once it is finished. This is a contract City Attorney firm.

Subject: Public Employee Appointment; Title: City Attorney; Authority: California Gov. Code Sections 54957, 54957(b); Topic: Recruitment of in-house City Attorney

Mayor Scharf reported that Council discussed whether to recruit for an in-house City Attorney or to not move forward and Council decided to not move forward with an in-house City Attorney.

Mayor Scharf also reported out from the January 14, 2019 closed session regarding three items:

Subject: Conference with Labor Negotiator (Government Code Section 54957.6); City designated representatives: Director of Administrative Services and City Manager; Employee organizations: Operating Engineers Local No. 3 Union; Cupertino Employees' Association; Unrepresented (Management and Confidential) Employees' Compensation Program

Written communications included emails to Council.

The following individuals spoke in open session before Council went into closed session:

Rhoda Fry (Cupertino resident) – distributed written materials  
James Moore (Cupertino resident)  
Kitty Moore (Cupertino resident)

Mayor Scharf reported that no reportable action was taken.

Subject: Conference with Legal Counsel - Anticipated Litigation; (Government Code Section 54956.9(d)):

- a. Significant Exposure to Litigation (Government Code Section 54956.9(d)(2)) (2 matters)
- b. Possible Initiation of Litigation (Government Code Section 54956.9(d)(4)) (2 matters)

Mayor Scharf reported that Council discussed three complaint letters received from the Coblentz Law Firm, attorneys for Vallco Property Owners, alleging common law conflicts

of interests and other allegations pertaining to financial interests under the Political Reform Act and new FPPC rules and that no reportable action was taken.

The Council discussed with legal counsel the letters of complaint it received from the Nielsen law firm attorneys, for Vallco Property Owners, challenging the validity of two referendum petitions related to the Vallco Specific Plan and no reportable action was taken.

The Council discussed possible initiation of litigation in two matters and no reportable action was taken.

Subject: Conference with Legal Counsel - Pending Litigation; (Government Code section 54956.9(d)):

Mayor Scharf reported that the Council met in closed session to discuss with legal counsel pending litigation for which discussion in open session would prejudice the City and the litigation. Legal counsel provided an update on the following matters and the Council requested that the legal counsel return to a future closed session for further updates and deliberation so no reportable action was taken at this time. This was on the cases of *Friends of Better Cupertino, et al. v. City of Cupertino*.

- a. *Friends of Better Cupertino, et al. v. City of Cupertino* (SB 35 Vallco Project); Santa Clara County Superior Court, Case No. 18CV330190
- b. *Friends of Better Cupertino, et al. v. City of Cupertino* (Vallco Specific Plan - 2 Ordinances); Santa Clara County Superior Court, Case No. 18CV337015
- c. *Committee Supporting Cupertino Citizens' Sensible Growth Initiative, et al v. Schmidt, et al.* (Measure C); Santa Clara County Superior Court Case No. 16CV296322
- d. *Sparks, et al., v. Schmidt, et al.* (Gateway Initiative); Santa Clara County Superior Court Case No. 16CV301471

Regarding four items about legal counsel for pending litigation, with respect to two of the items, Vice Mayor Chao recused herself from discussion out of abundance of caution, pending further advice from the Olson Hagel law firm, the City's outside counsel on the matter, and from the FPPC regarding a potential financial conflict. This concerns the Vice Mayor's residence, which is about 939 feet away from Vallco.

And with respect to the item *Committee Supporting Cupertino Citizens' Sensible Growth Initiative*, even though he is no longer a plaintiff on that case, Mayor Scharf recused himself

from that discussion, out of abundance of caution.

## **ADJOURNMENT**

### **REGULAR CITY COUNCIL MEETING**

#### **PLEDGE OF ALLEGIANCE**

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

#### **ROLL CALL**

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

#### **CEREMONIAL MATTERS AND PRESENTATIONS - None**

#### **POSTPONEMENTS**

1. Subject: Continue Item No. 18 to Order the abatement of a public nuisance (weeds) pursuant to provisions of Ordinance No. 724 and Resolution No. 18-111 until February 5 and the item will be re-noticed  
Recommended Action: Continue Item No. 18 to Order the abatement of a public nuisance (weeds) pursuant to provisions of Ordinance No. 724 and Resolution No. 18-111 until February 5 and the item will be re-noticed

Paul moved and Sinks seconded to continue Item No. 18 to Order the abatement of a public nuisance (weeds) pursuant to provisions of Ordinance No. 724 and Resolution No. 18-111 until February 5 and the item will be re-noticed. The motion carried unanimously.

#### **ORAL COMMUNICATIONS**

Gayla Johnson (Cupertino resident) talked about concern over 5G small cell deployment in the City.

Jennifer Griffin talked about concern over new hotel being built in San Jose on Cupertino border in Rancho Rinconada area.

Jean Bedord (Cupertino resident) talked about Councilmembers' conflict of interest

regarding Vallco and posting letters to the City website.

Cathy Helgersen (Cupertino resident) talked about concerns over Lehigh Cement and Quarry – distributed written comments

Jayan Trujillo on behalf of AYSO 64 Soccer talked about using the fields on Sundays to play soccer.

Edwin Chavez on behalf of AYSO 64 Soccer talked about using the fields on Sundays to play soccer.

Barry Chang talked about the former City Attorney's tort claim and the referendum petitions.

Marie Liu (Cupertino resident) talked about the current and potential lawsuits against the City.

Tom Pyke (Cupertino resident) on behalf of Congressman Ro Khanna talked about an upcoming congressional town hall meeting in Cupertino on January 26 at Lawson middle school.

Hemant Buch (Cupertino resident) on behalf of CCA talked about cricket.

Lawrence Fan (Cupertino resident) talked about Regnart Creek Trail.

Victoria Fierce on behalf of CaRLA talked about SB35 - distributed written comments.

Julia Miyakawa (Cupertino resident) talked about the Regnart Creek Trail and feasibility study.

Connie Cunningham (Cupertino resident) talked about affordable housing and traffic.

Heather Dean (Cupertino resident) talked about concern over current Councilmembers' ties to Better Cupertino.

Ganesh Prasad (Cupertino resident) on behalf of CCA talked about using the fields on Sundays to play soccer.

Jay Kanth (Cupertino resident) on behalf of AYSO Soccer talked about using the fields on Sundays to play soccer.

Rhoda Fry (Cupertino resident) talked about concerns with pollution by Lehigh Hanson.

## CONSENT CALENDAR

Sinks moved and Paul seconded to approve the items on the Consent Calendar as presented with the exception of item numbers 10 and 12 which were pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

2. Subject: Approve the December 18 City Council minutes  
Recommended Action: Approve the December 18 City Council minutes
3. Subject: Accept Accounts Payable for the period ending September 21, 2018  
Recommended Action: Adopt Resolution No. 19-001 accepting Accounts Payable for the period ending September 21, 2018
4. Subject: Accept Accounts Payable for the period ending September 28, 2018  
Recommended Action: Adopt Resolution No. 19-002 accepting Accounts Payable for the period ending September 28, 2018
5. Subject: Accept Accounts Payable for the period ending October 05, 2018  
Recommended Action: Adopt Resolution No. 19-003 accepting Accounts Payable for the period ending October 05, 2018
6. Subject: Accept Accounts Payable for the period ending October 12, 2018  
Recommended Action: Adopt Resolution No. 19-004 accepting Accounts Payable for the period ending October 12, 2018
7. Subject: Accept Accounts Payable for the period ending October 19, 2018  
Recommended Action: Adopt Resolution No. 19-005 accepting Accounts Payable for the period ending October 19, 2018
8. Subject: Accept Accounts Payable for the period ending October 26, 2018  
Recommended Action: Adopt Resolution No. 19-006 accepting Accounts Payable for the period ending October 26, 2018
9. Subject: Out of Class Compensation for Interim City Manager Appointment  
Recommended Action: 1. Adopt Resolution 19-007 to revise the Appointed (City Manager and City Attorney) Employees' Compensation Program; and 2. Approve Out of Class Compensation for Interim City Manager, Timm Borden.

10. Subject: Rescind Resolution No. 18-115 which adopted the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials  
Recommended Action: Adopt Resolution No. 19-008 rescinding Resolution No. 18-115 which adopted the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials

Written communications for this item included emails and letter to Council.

Senior Management Analyst Katy Nomura reviewed the staff report.

Mayor Scharf opened public comment and the following individuals spoke:

Heather Dean (Cupertino resident)  
Jean Bedord (Cupertino resident)  
Cathy Helgerson  
Ed Hirshfield (Cupertino resident)  
Marie Liu (Cupertino resident)  
Jennifer Griffin

Mayor Scharf closed public comment.

Paul moved and Scharf seconded to adopt Resolution No. 19-008 rescinding Resolution No. 18-115 which adopted the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials under the November 20, 2018 agenda item, number 11 which was titled, "Overview of City Commissions and recommendations for improving their effectiveness and communications with the City Council." The motion carried with Sinks and Willey voting no.

11. Subject: Approve Budget Modification No. 1819-035 resulting in an increased budget appropriation of \$17,927 to fund Cupertino's contribution to the Santa Clara/Santa Cruz Community Roundtable on aircraft noise  
Recommended Action: Approve Budget Modification No. 1819-035 resulting in an increased budget appropriation of \$17,927 to fund Cupertino's contribution to the Santa Clara/Santa Cruz Community Roundtable on aircraft noise
12. Subject: Santa Clara County Regional Housing Needs Allocation (RHNA) subregion formation.  
Recommended Action: That the City Council adopt Resolution No. 19-009 (Attachment A) to authorize the City Manager to: 1. Enter into discussions related to the formation of a Santa Clara County RHNA subregion and develop a work plan, budget and schedule of



actions leading to the formation of a countywide RHNA subregion; and 2. Present a recommendation on whether or not to participate in the RHNA subregion upon further study and discussions.

Written communications for this item included a staff presentation.

Principal Planner Piu Ghosh reviewed the staff report.

Andi Jordan from the Cities Association of Santa Clara County responded to questions from Council.

Mayor Scharf opened public comment and the following individuals spoke:

Connie Cunningham (Cupertino resident)  
Jennifer Griffin  
Barry Chang (Cupertino resident)

Mayor Scharf closed public comment.

Paul moved and Willey seconded to continue this item to a future meeting. The motion carried unanimously.

13. Subject: Application for Alcohol Beverage License for Kura Sushi USA, Inc. (dba Kura Revolving Sushi Bar), 19600 Vallco Parkway, Suite 160  
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Kura Sushi USA, Inc. (dba Kura Revolving Sushi Bar), 19600 Vallco Parkway, Suite 160

Council recessed from 9:00 p.m. to 9:10 p.m.

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

## **PUBLIC HEARINGS**

14. Subject: Consider whether to authorize the formal submission of a General Plan Amendment application to increase height, revise building plane, and reduce setback for a modified General Plan Amendment Authorization application for a 155-room hotel to replace an existing 8,323 sq. ft. commercial building (Goodyear Tire.) A previous General Plan Amendment Authorization application (GPAAUTH-2017-01) was authorized to submit General Plan Amendment applications by the City Council in August 2017.

(Application No.(s): GPAAuth-2018-01; Applicant: Sherly Kwok(De Anza Properties); Location: 10931 N. De Anza Boulevard; APN(s): 326-10-061)

Recommended Action: Adopt Resolution No. 19-010 after determining if General Plan Amendment Authorization application (GPAAUTH-2018-01) is authorized to move forward to apply for General Plan Amendments.

Written communications for this item included emails to Council, updated page to plan set, and a staff presentation.

Associate Planner Gian Martire reviewed the staff report and presentation.

Applicant John Vidovich gave a presentation regarding the application.

Architect Bill Winkleman answered questions from Council.

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

Peggy Griffin (Cupertino resident)  
Bin Liu (Palo Alto resident)  
Jennifer Griffin  
Sherley (Cupertino resident)  
Claudio Bono (Cupertino resident)  
Khryati (Cupertino resident)  
Barry Chang (Cupertino resident)  
Gilbert Wong (Cupertino resident)  
Charles Cheng (Cupertino resident)  
Rhoda Fry

Mayor Scharf closed the public hearing.

Scharf moved and Paul seconded to adopt Resolution No. 19-010 authorizing General Plan Amendment Authorization application (GPAAUTH-2018-01) to move forward to apply for General Plan Amendments with the following voluntary community amenities:

- Complementary use of conference facilities for public schools within Cupertino and City of Cupertino for up to 12 days per year;
- Reduced rate for use of hotel shuttle for Cupertino residents for airport transportation needs on the hotel's schedule;
- Funding of a one-time payment of \$500,000; and

- An enclosed rooftop restaurant/bar with public access, not to exceed height of any rooftop mechanical equipment enclosure. The motion carried with Willey voting no.

Council recessed from 11:20 p.m. to 11:30 p.m.

## ORDINANCES AND ACTION ITEMS

15. Subject: Accept the City of Cupertino Storm Drain Master Plan dated September 2018  
Recommended Action: Adopt Resolution No. 19-011 accepting the City of Cupertino Storm Drain Master Plan dated September 2018

Written communications for this item included a staff presentation.

City Engineer and Acting Assistant Director of Public Works Chad Mosley reviewed the staff report and presentation.

Paul moved and Sinks seconded to adopt Resolution No. 19-011 accepting the City of Cupertino Storm Drain Master Plan dated September 2018. The motion carried unanimously.

16. Subject: Discussion and consideration of a potential new property-related fee for clean water and storm drainage; approve funding of up to \$140,500 to complete a Proposition 218 compliant storm water management fee study and balloting process; receive completed public opinion survey findings of SCI Consulting Group concerning the proposed fee; and approve the following recommendations:  
Recommended Action: 1. Receive the findings of the survey; and 2. Authorize staff to retain SCI Consulting Group for a contract amount not to exceed \$140,500 to complete a Proposition 218 compliant property related storm water management fee study by March 2019 and completion of a potential balloting process as early as July 2019; and 3. Direct staff to bring the storm water management fee study back for Council consideration with an amount of up to an additional \$50 per year charge for a typical residential parcel and a new additional charge for apartment/commercial/industrial and vacant parcels as will be determined by the storm water management fee study; and 4. Approve Budget Modification 1819-036 and adopt Resolution No 19-012 approving a Budget Adjustment in the amount of \$140,500 to complete a storm water management fee study and balloting process.

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

Acting Director of Public Works Roger Lee reviewed the staff report and presentation.

John Bliss and Susan Barnes from SCI Consulting Group gave a presentation.

Sinks moved Scharf seconded to:

1. Receive the findings of the survey; and
2. Authorize staff to retain SCI Consulting Group for a contract amount not to exceed \$140,500 to complete a Proposition 218 compliant property related storm water management fee study by March 2019 and completion of a potential balloting process as early as July 2019; and
3. Direct staff to bring the storm water management fee study back for Council consideration with an amount of up to an additional \$50 per year charge for a typical residential parcel and a new additional charge for apartment/commercial/industrial and vacant parcels as will be determined by the storm water management fee study; and
4. Approve Budget Modification 1819-036 and adopt Resolution No 19-012 approving a Budget Adjustment in the amount of \$140,500 to complete a storm water management fee study and balloting process.

The motion carried unanimously.

17. Subject: Introduction of an ordinance to amend regulations in Title 2, Administration and Personnel of the Municipal Code Chapter 2.80, to allow up to five (5) members for the Fine Arts Commission  
Recommended Action: Conduct the first reading of Ordinance No. 19-2182: "An Ordinance of the City Council of the City of Cupertino amending regulations in Title 2, Administration and Personnel of the Municipal Code, Chapter 2.80, to allow up to five (5) members for the Fine Arts Commission" and schedule second reading for February 5, 2019 to enact said ordinance

Senior Planner Catarina Kidd reviewed the staff report.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2182: "An Ordinance of the City Council of the City of Cupertino amending regulations in Title 2, Administration and Personnel of the Municipal Code, Chapter 2.80, to allow up to five (5) members for the Fine Arts Commission."

Paul moved and Sinks seconded to read Ordinance No. 19-2182 by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

18. Subject: Order the abatement of a public nuisance (weeds) pursuant to provisions of Ordinance No. 724 and Resolution No. 18-111 (under Postponements was continued to February 5 and will be re-noticed)  
Recommended Action: Order the abatement of a public nuisance (weeds) pursuant to provisions of Ordinance No. 724 and Resolution No. 18-111 (under Postponements was continued to February 5 and will be re-noticed)

Under Postponements, this item was continued to February 5 and will be re-noticed.

19. Subject: Council Committee assignments  
Recommended Action: Approve Council Committee assignments

Paul moved and Willey seconded to approve Council Committee assignments.

The motion carried unanimously.

## REPORTS BY COUNCIL AND STAFF

20. Subject: Report on Committee assignments and general comments  
Recommended Action: Report on Committee assignments and general comments

Councilmember Willey asked staff to look into use of sports fields on Sundays (Mayor agreed to agendize this); noted interest in a Resident Advisory Group and will bring this to the goal setting meeting on February 2; asked staff to explore a new community survey on heights, planes, and setbacks.

Councilmember Paul asked staff to follow-up on a Code of Ethics and Conduct being posted in the Senior Center.

Vice Mayor Chao asked that staff follow-up on these items: Post all letters sent by Coblenz, Patch Duffy & Bass LLP regarding conflict of interest allegations to the City's website; post information regarding the upcoming town hall meeting with Congressman Ro Khanna on January 26 at Lawson Middle School; provide status on Apple transportation in lieu of a head tax (Mayor agreed to agendize this); look into ability to recruit members of the public and/or college students to review legislative bills with the City's Legislative Review Committee.

Councilmember Sinks asked that staff look into the financial impact of the CASA Compact (Mayor agreed to agendaize this); asked staff to explore an op-ed on jobs/housing balance to educate the public on steps the City has taken regarding housing.

Mayor Scharf asked staff to post an updated version of the Regnart Creek Trail Feasibility Study.

Councilmembers highlighted the activities of their committees and various community events.

## **ADJOURNMENT**

At 1:05 a.m. on Wednesday, January 16, 2019, Mayor Scharf adjourned the meeting.

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Grace Schmidt, City Clerk