



**DRAFT MINUTES**  
**CUPERTINO CITY COUNCIL**  
Tuesday, September 3, 2019

**SPECIAL CITY COUNCIL MEETING**

At 5:30 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue.

**ROLL CALL**

Present: Mayor Steven Scharf, Vice Mayor Liang Chao (5:34 p.m.), and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

**STUDY SESSION**

1. Subject: Study Session regarding Below Market Rate (BMR) Residential Housing Mitigation and Commercial Linkage Fees for the Cupertino BMR Housing Program. Application No(s): CP-2019-01; Applicant(s): City of Cupertino; Location: Citywide  
Recommended Action: Receive update and provide any input to Staff

Written communications for this item included two presentations.

Director of Community Development Ben Fu introduced the item.

Eric Phillips from Goldfarb & Lipman and Sujata Srivastava from Strategic Economics reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Jean Bedord (Cupertino Resident) – concern over increase in linkage fees.

Jennifer Griffin – Need BMR rental; don't reduce parking requirements; need vital City resources

Mayor Scharf closed public comment.

Council comments included: possibly lower retail fees and increase hotel fees; get away from linkage fee and develop BMR housing for each type of individual project; provide example of a development that includes a commercial bonus in connection with BMR housing; there is a delta (4.2% and 4.6%) between in lieu fees for lower and higher density rentals so calculate how linkage fees would change to get to baseline of 4.2% including looking at historical ranges to justify any change; include Extremely Low Income (ELI) category in City's BMR program; have staff look at change in rental unit mix and made up of ELI and Moderate keeping total percentage at 15%; would also consider going to 10% to include ELI; have a second round of peer review; incent diversity of companies including small and medium sized; hesitant to increase demands on developers who build housing in the City; increase on-site production for ownership housing but don't increase fees; consider higher percentage of BMR for ownership housing with mixed-use development under certain conditions; have staff work out numbers as don't want to discourage for sale housing; incent more moderate and medium income housing for government employees, teachers, etc.; levy fee on office and not housing; also look into fees for hotel.

Direction to staff included: more information regarding incentive programs to encourage more affordable housing in commercial developments; in-lieu fees as compared with the cost of on-site compliance; changes in feasibility thresholds over time; possible reductions in fees for retail uses; and options for providing more extremely low income housing, housing for the developmentally disabled, and moderate income housing; and also requested additional peer review of the office and hotel feasibility studies.

## **ADJOURNMENT**

### **REGULAR CITY COUNCIL MEETING**

#### **PLEDGE OF ALLEGIANCE**

At 7:08 p.m. Mayor Steven Scharf called the Regular City Council meeting to order 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

1. Subject: Present award to Vishnu Athrey from Saint Andrews Episcopal School for winning the Qalaxia Build\_your\_ BOT contest.  
Recommended Action: Present award to Vishnu Athrey from Saint Andrews Episcopal School for winning the Qalaxia Build\_your\_ BOT contest.

This item was not heard as the recipient was not in attendance.

2. Subject: Proclamation for September as National Preparedness Month  
Recommended Action: Present Proclamation for September as National Preparedness Month

Mayor Scharf presented a proclamation to Citizen Corps Coordinator Ken Erickson and the CERT group for September as National Preparedness Month.

Mayor Scharf reported out from the Special Meeting Closed Session held on September 3, 2019:

Subject: Conference with Legal Counsel pursuant to Government Code section 54956.9(d)(1); Re: Pending Litigation; Friends of Better Cupertino, et al. v. City of Cupertino; Santa Clara County Superior Court, Case No. 18CV330190 (SB 35 Vallco Project).

He reported that the Council discussed with legal counsel this pending litigation for which discussion in open session would prejudice the City in the litigation. No reportable action was taken.

**POSTPONEMENTS** – None

## ORAL COMMUNICATIONS

Jennifer Griffin talked about R1 housing in Seattle and Oregon.

Julia Miyakawa (Cupertino resident) talked about protecting creeks, riparian habitats, wildlife, etc. when trails are built, and to pursue an alternative to Regnart Creek Trail outside of the creek corridor.

Linda Wyckoff (Cupertino resident) talked about Regnart Creek Trail and outreach.

Gary Wong (Cupertino resident) speaking on behalf of Campo De Lozano HOA talked about requesting a boundary survey for Regnart Creek Trail.

Suraj Dalvi (Cupertino resident) talked about Regnart Creek Trail and 65% design.

Ilango Ganga (Cupertino resident) talked about Regnart Creek Trail and concern over privacy and noise; should be reviewed by the Planning Commission; publish information early.

Benaifer Dastoor (Cupertino resident) talked about Regnart Creek Trail and asked to see a feasibility report for alternatives 4 and 5.

Beth Knodel (Cupertino resident) talked about no support for Regnart Creek Trail due to dirt path and erosion, and accessibility concerns with crossing at Rodrigues, Estates, and Blaney.

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

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

Councilmembers highlighted the activities of their various committees.

### **CONSENT CALENDAR**

Paul moved and Scharf seconded to approve the items on the Consent Calendar as presented except for item number 9 which was pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

4. Subject: Approve the August 6 City Council minutes  
Recommended Action: Approve the August 6 City Council minutes
5. Subject: Approve the August 20 City Council minutes  
Recommended Action: Approve the August 20 City Council minutes
6. Subject: Resolution adopting the City of Cupertino's State-mandated Green Stormwater Infrastructure (GSI) Plan  
Recommended Action: Adopt Resolution No. 19-112 adopting the City of Cupertino's Green Stormwater Infrastructure (GSI) Plan which demonstrates the City's long-term commitment to implementation of green stormwater infrastructure as required by the City's Municipal Regional Stormwater Permit for the San Francisco Bay Region

7. Subject: Award of contract to G. Bortolotto & Company, Inc. for \$270,000 for 2019 Speed Table Installation Project No. 2019-112  
Recommended Action: Authorize the City Manager to award a contract to G. Bortolotto & Company, Inc. in the amount of \$246,100 and approve a construction contingency of \$24,000 for a total of \$270,000 for 2019 Speed Table Installation Project No. 2019-112
8. Subject: 2018-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority"  
Recommended Action: Approval of response to the 2019-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority"
9. Subject: Amendment to existing voluntary collection agreement with Airbnb regarding transient occupancy taxes to allow certain short-term rental hosts to remit taxes directly to the City  
Recommended Action: Authorize the City Manager to enter into Amendment No. 1 to the voluntary collection agreement with Airbnb and to enter into other minor amendments to the voluntary collection agreement in the future

Mayor Scharf opened public comment and the following individual spoke:

Jennifer Griffin

Mayor Scharf closed public comment.

Assistant to the City Manager Katy Nomura answered questions from the speaker and Council.

Sinks moved and Scharf seconded to authorize the City Manager to enter into Amendment No. 1 to the voluntary collection agreement with Airbnb and to enter into other minor amendments to the voluntary collection agreement in the future. The motion carried unanimously.

10. Subject: Library Commission Fiscal Year (FY) 2019-20 Work Program  
Recommended Action: Approve the Library Commission FY 2019-20 Work Program

## **SECOND READING OF ORDINANCES**

11. Subject: Second reading of Ordinance Nos. 19-2187 and 19-2188 adopting Zoning Text and Map Amendments related to the Vallco Shopping District Special Area. (Application No(s).:

MCA-2019-02, Z-2019-01 (EA-2013-03); Applicant(s): City of Cupertino; Location: 10101 to 101333 North Wolfe Road APN#s:316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095)

Recommended Action: Conduct the second reading and enact: 1. Ordinance No. 19-2187 (MCA-2019-01): "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))" and 2. Ordinance No. 19-2188 (Z-2019-01): "An Ordinance of the City Council of the City of Cupertino amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)"

City Clerk Grace Schmidt read the title of Ordinance No. 19-2187: "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))."

Written communications for this item included a letter to Council.

Vice Mayor Chao recused herself from this item out of an abundance of caution and left the dais.

Director of Community Development Ben Fu corrected an address in the subject to read, "10133 North Wolfe Road."

Mayor Scharf opened public comment and the following individuals spoke:

Jennifer Griffin – concern with loss of shopping and retail in Cupertino; don't overload Cupertino High School.

Tim Cornwell (San Rafael resident) on behalf of The Concord Group and retained by the property owner – economic, BMR, and other concerns.

Jonathan Bass on behalf of the property owner – asked Council to reconsider General Plan Amendment and zoning ordinances adopted at the last meeting; legal concerns.

Katherine Van Dusen ceded her time to Jonathan Bass.

Jean Bedord (Cupertino resident) – concerns over zoning and asked Council to reconsider actions as makes no economic sense.

Lisa Warren – support for moving forward with rezoning.

Liana Crabtree (Cupertino resident) – support for moving forward with rezoning.

Mayor Scharf closed public comment.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2187: "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))."

Paul moved and Scharf seconded to read Ordinance No. 19-2187 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

Paul moved and Scharf seconded to enact Ordinance No. 19-2187: Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2188: "An Ordinance of the City Council of the City of Cupertino amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)."

Paul moved and Scharf seconded to read Ordinance No. 19-2188 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

Paul moved and Scharf seconded to enact Ordinance No. 19-2188: Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

Vice Mayor Chao returned to the dais.

## **ORDINANCES AND ACTION ITEMS**

12. Subject: Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)  
Recommended Action: That the City Council find adoption of the proposed Resolution exempt from CEQA, adopt Resolution No. 19-113 for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35, and review and provide any input on the Draft Senate Bill 35 Application Package.

Written communications for this item included a presentation and exhibit.

Director of Community Development Ben Fu introduced Caitlin Brown from Shute, Mihaly & Weinberger who reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Lisa Warren – shorten age of title report accepted with application to one month.

Jennifer Griffin – concern with SB35 and other housing bills coming out of the State.

Kitty Moore – spoke on item #21 from chart in packet; add language to certification of compliance of eligibility requirements and/or hazardous waste and substances statement.

Mayor Scharf closed public comment.

Paul moved and Sinks seconded to find adoption of the proposed Resolution exempt from CEQA, adopt Resolution No. 19-113 for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35 with an amendment to the language in Section 5, page 3 of the resolution to read, “.... the City will determine whether the project conflicts with any of all of the required objective planning standards.” The motion carried unanimously.

Council also directed staff:

- Regarding Application Checklist Item # 5, consider requiring a title report prepared within the last one month if appropriate. Also consider requiring submission of a hyperlinked title report.
- Consider color coding the square footage exhibit to visually demonstrate residential, non-residential, and shared uses. Encourage applicants to also color code their plan exhibits demonstrating compliance with the 2/3 residential requirement.
- Consider explaining how square footage in structures utilized by both residential and non-residential uses will be credited proportionally to intended use.



- City should double check all square footage calculations submitted with an application.
- As the Council makes updates to the objective standards in the municipal code, make sure to also update the Application Package, as necessary.
- Consider publishing/providing the City's standard conditions of approval along with the Application Package (including any revocation standards).
- Amend Section 5 on page 3 of the Resolution to read "the City will determine whether the project conflicts with any of all of the required objective planning standards."

**13. Subject:** Options for unofficial transcription of City Council meetings (continued from July 16)

**Recommended Action:** Receive options for unofficial transcription of City Council meetings and provide direction to staff to use the free YouTube auto-captioning feature for transcription of Council meetings.

City Clerk Grace Schmidt reviewed the staff report.

Council received options for unofficial transcription of City Council meetings and provided direction to staff to try the free YouTube auto-captioning feature for transcription of Council and other City meetings.

**PUBLIC HEARINGS** - None

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

Brent Bardsley (Cupertino resident) talked about parcel taxes for rental units built at Vallco.

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

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

City Manager Deborah Feng noted that documents regarding Regnart Creek, including options, would be posted September 6 and that the staff report would be ready for review by September 9.

**ADJOURNMENT**

At 9:43 p.m., Mayor Scharf adjourned the meeting.

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Grace Schmidt, City Clerk