



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, December 17, 2019**

SPECIAL CITY COUNCIL MEETING

At 5:00 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the Cupertino City Hall Conference Room A, 10300 Torre Avenue.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao, Rod Sinks, and Jon Robert Willey (5:30 p.m.). Absent: None.

CLOSED SESSION

1. Subject: Public Employee Performance Evaluation (Gov't Code Section 54957(b)). Title: City Manager

Written communications for this item included an email to Council.

In open session, Mayor Scharf reported that Council provided an evaluation and no reportable action was taken.

2. Subject: Conference with Labor Negotiators (Gov't Code section 54957.6). Agency designated representatives: To be announced in open session immediately before this closed session. Unrepresented employee: City Manager.

In open session, Mayor Scharf reported that Mayor Scharf and Vice Mayor Paul were announced as the Council's designated representatives, direction was given to the representatives, and no reportable action was taken.

ADJOURNMENT

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:55 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 Darcy Paul, and Councilmembers Liang Chao (7:00 p.m.), Rod Sinks (left meeting at 12:11 a.m.), and Jon Robert Willey. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Proclamation to City Clerk Grace Schmidt upon her retirement and recognizing her dedicated service to the City of Cupertino.
Recommended Action: Present proclamation to City Clerk Grace Schmidt upon her retirement and recognizing her dedicated service to the City of Cupertino.

Mayor Scharf opened public comment and the following individuals spoke:

Rahul Vasanth (Cupertino resident)
Peggy Griffin (Cupertino resident)

Mayor Scharf closed public comment.

Mayor Scharf presented a proclamation to City Clerk Grace Schmidt upon her retirement and recognizing her dedicated service to the City of Cupertino.

POSTPONEMENTS – None

ORAL COMMUNICATIONS

Charlene Lee (Cupertino resident) talked about her past arrest and concern over due process.

Pamela Hershey (Cupertino resident) ceded time to Jim Moore.

Jim Moore (Cupertino resident) talked about Vallco easements (provided written comments).

Ignatius Y. Ding (Cupertino resident) talked about SB35 and Vallco easements (provided written comments).

Anjali Kausar on behalf of the Cupertino Chamber of Commerce invited everyone to the grand opening and ribbon cutting for Sleep Number on Wed, Dec 18 at 5:00 p.m.

Kitty Moore talked about Vallco easements.

Jennifer Griffin talked about housing concerns.

Peggy Griffin (Cupertino resident) talked about zoning and office allocation.

Rhoda Fry (Cupertino resident) talked about Lehigh Cement Company (provided written comments).

Caryl Gorska (Cupertino resident) talked about communication regarding the status of Vallco and what the residents want (provided written comments).

Liana Crabtree (Cupertino resident) on behalf of the Library Commission talked about ideas to improve the user experience at the Library; speaking for herself talked about the convenience of VTA transit service and Cupertino Via.

Lisa Warren talked about the safety of bicyclists and pedestrians and workshop feedback from 2014-15.

Cup Rez (Cupertino resident) talked about California housing bills, Vallco development negotiations, and ideas for CG zoning.

REPORTS BY COUNCIL AND STAFF (10 minutes)

2. Subject: Report on Committee assignments

Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Paul moved and Chao seconded to approve items on the Consent Calendar as presented except for item number 5 which was pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

3. Subject: Approve the November 8 City Council minutes

Recommended Action: Approve the November 8 City Council minutes

4. Subject: Approve the December 3 City Council minutes
Recommended Action: Approve the December 3 City Council minutes
5. Subject: Notice of Intent to Vacate Portions of a Public Utility Easement for Water Line Purposes and a Portion of an Emergency Access Easement Located at 23500 Cristo Rey Drive
Recommended Action: 1. Adopt Resolution No. 19-142 (Attachment A) declaring the City Council's intent to vacate portions of a public utility easement for water line purposes located on 23500 Cristo Rey Drive, setting a public hearing on January 21, 2020 at 6:45 p.m., and providing for public notice thereof; and 2. Adopt Resolution No. 19-143 (Attachment B) declaring the City Council's intent to vacate a portion of an emergency access easement located on 23500 Cristo Rey Drive, setting a public hearing on January 21, 2020 at 6:45 p.m., and providing for public notice thereof

Written communications for this item included emails to Council.

Assistant Director of Public Works Chad Mosely reviewed the staff report.

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident)
Kitty Moore

Sinks moved and Scharf seconded to 1. Adopt Resolution No. 19-142 (Attachment A) declaring the City Council's intent to vacate portions of a public utility easement for water line purposes located on 23500 Cristo Rey Drive, setting a public hearing on January 21, 2020 at 6:45 p.m., and providing for public notice thereof; and 2. Adopt Resolution No. 19-143 (Attachment B) declaring the City Council's intent to vacate a portion of an emergency access easement located on 23500 Cristo Rey Drive, setting a public hearing on January 21, 2020 at 6:45 p.m., and providing for public notice thereof. The motion carried unanimously.

6. Subject: Amend the Health In-Lieu cash payment option for the Appointed, Cupertino Employees' Association (CEA), Unrepresented (Management and Confidential) employees, and Elected Officials.
Recommended Action: Adopt Resolution No. 19-144 amending the Health In-Lieu cash payment option for the Appointed, Cupertino Employees' Association (CEA), Unrepresented (Management and Confidential) employees, and Elected Officials.

Written communications for this item included a signed side letter of agreement.

SECOND READING OF ORDINANCES

7. Subject: Second reading of Municipal Code Amendments to Chapter 19.80 to clarify development standards in the Planned Development (P) Zoning Districts (Application No. MCA-2019-005; Applicant: City of Cupertino; Location: In P zoning districts located City-wide); Adoption of the Third Addendum to the 2014 General Plan Final EIR; and Finding the Actions Are Not a Project Under and Exempt from CEQA.

Recommended Action: That the City Council conduct the second reading and enact Ordinance No. 19-2191: "An Ordinance of the City Council of the City of Cupertino adopting the Third Addendum to the 2014 General Plan Final EIR and Amendments to Chapter 19.80 (Planned Development (P) Zones) of the Cupertino Municipal Code to Clarify Development Standards in P Zones."

City Attorney Heather Minner reviewed the staff report.

Mayor Scharf opened public comment and the following individual spoke:

Jennifer Griffin

Mayor Scharf closed public comment.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2191: "An Ordinance of the City Council of the City of Cupertino adopting the Third Addendum to the 2014 General Plan Final EIR and Amendments to Chapter 19.80 (Planned Development (P) Zones) of the Cupertino Municipal Code to Clarify Development Standards in P Zones."

Paul moved and Scharf seconded to read Ordinance No. 19-2191 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

Paul moved and Scharf seconded to enact Ordinance No. 19-2191. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

8. Subject: Second Reading and enactment of Ordinance to amend the Municipal Code Chapter 13.08 (Park Land Dedication and Fee) and Chapter 18.24 (Dedications and Reservations) to Clarify Park Land Dedication and In Lieu Fee Requirements; Adoption of the Fourth Addendum to the 2014 General Plan Final EIR; and Finding the Actions Are Not a Project Under and Exempt From CEQA.

Recommended Action: Conduct the second reading and enact Ordinance No. 19-2192: "An Ordinance of the City Council of the City of Cupertino Adopting the Fourth Addendum to

the 2014 General Plan Final EIR and Amendments to Chapter 13.08 and Chapter 18.24 of the Municipal Code to Clarify Standards for Park Land Dedications and Fees In lieu Thereof.”

Mayor Scharf opened public comment and the following individual spoke:

Jennifer Griffin

Mayor Scharf closed public comment.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2192: “An Ordinance of the City Council of the City of Cupertino Adopting the Fourth Addendum to the 2014 General Plan Final EIR and Amendments to Chapter 13.08 and Chapter 18.24 of the Municipal Code to Clarify Standards for Park Land Dedications and Fees In lieu Thereof.”

Chao moved and Paul seconded to read Ordinance No. 19-2192 by title only and that the City Clerk’s reading would constitute the second reading thereof. Ayes: Scharf, Paul, Chao, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: None.

Chao moved and Paul seconded to enact Ordinance No. 19-2192. Ayes: Scharf, Paul, Chao, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: None.

PUBLIC HEARINGS

9. Subject: Consideration of an amended and restated agreement for lease of the Cupertino Municipal Water System with San Jose Water Company (SJWC); finding that the action is not a project under and exempt from CEQA.

Recommended Action: 1. Conduct a Public Hearing to consider an amended and restated agreement for lease of the Cupertino Municipal Water System with San Jose Water Company; and 2. Adopt Resolution 19-145, approving an amended and restated agreement for lease of real property (water system) with San Jose Water Company.

Written communications for this item included desk items and a presentation.

Director of Public Works Roger Lee reviewed the presentation.

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

John Ennals (Cupertino resident)

Mayor Scharf closed the public hearing.

Staff answered questions from Council.

Sinks moved and Scharf seconded to adopt Resolution 19-145, approving an amended and restated agreement for lease of real property (water system) with San Jose Water Company. The motion carried unanimously.

Council recessed from 9:00 p.m. to 9:05 p.m.

10. Subject: Adoption of Local Amendments to 2019 California Energy & Green Building Standards Codes (Reach Code); determination that adoption of the proposed Ordinance and Resolution is not a project subject to CEQA, or that if it is a project, it is exempt from CEQA.

Recommended Action: 1. Conduct the first reading of Ordinance No. 19-2193: "An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 16.54 and 16.58 Adopting the 2019 California Energy Code and Green Building Standards Code With Certain Exceptions, Deletions, Modifications, Additions and Amendments"; and 2. Adopt Resolution No. 19-146: "A Resolution making factual findings with respect to the local geological, topographical, and climatic conditions necessary to make local amendments to the California Building Standards Code".

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

Sustainability Manager Andre Duurvoort and Ellison Folk from the City Attorney's Office reviewed the presentation.

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

Jenny Green on behalf of Mothers Out Front – in support

Jennifer Griffin – opposed (leery of adopting quickly without study)

Rhoda Fry (Cupertino resident) – opposed (make the ordinance better) – provided written comments

Carol Cross (Redwood City resident) on behalf of Fossil Free Buildings SV – in support

Brett Audersen (Palo Alto resident) – in support (also apply to existing buildings)

Neil – in support

Peggy Griffin (Cupertino resident) – (wanted some questions answered)

Diane Bailey on behalf of Menlo Spark and Fossil Free Buildings – in support (include all ADU's)

Dashiell Leeds on behalf of Sierra Club Loma Prieta Chapter – in support (include commercial kitchens with hardship exemption)

Lloyd McKee (Cupertino resident) – in support (encourage people to switch over existing homes)

Mayor Scharf closed the public hearing.

Councilmembers made comments and asked questions.

Council recessed from 10:38 p.m. to 10:43 p.m.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2193: “An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 16.54 and 16.58 Adopting the 2019 California Energy Code and Green Building Standards Code With Certain Exceptions, Deletions, Modifications, Additions and Amendments.”

Sinks moved and Scharf seconded to read Ordinance No. 19-2193 by title only and that the City Clerk’s reading would constitute the first reading thereof with the following amendments noted below. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

Amendment to 16.54.100 Scope, Exception 3 to read:

Exception 3: Non-residential buildings containing a for-profit restaurant open to the public or an employee kitchen may apply to the Building Official for a modification to install gas-fueled cooking appliances. This request must be based on a business-related reason to cook with a flame that cannot be reasonably achieved with an electric fuel source. The Building Official may grant this modification if he or she finds the following:

1. There is a business-related reason to cook with a flame; and
2. This need cannot be reasonably achieved with an electric fuel source; and
3. The applicant has employed reasonable methods to mitigate the greenhouse gas impacts of the gas-fueled appliance.

If the Building Official grants a modification, the applicant shall comply with the pre-wiring provision of Note 1 below.

Amendment to 16.54.100 Scope, Exception 5 to read:

Exception 5: Attached Accessory Dwelling Units and Junior Accessory Dwelling Units shall be exempt from the all-electric building provisions of this section. For purposes of this exception, “Accessory Dwelling Unit” has the same definition as set out in Government Code Section 65852.2, and “Junior Accessory Dwelling Unit” has the same definition as set out in Government Code Section 65852.22.

Amendment to 16.54.110 Definitions and Rules of Construction, All-Electric Building to read:

ALL-ELECTRIC BUILDING: is a building that has no natural gas or propane plumbing installed within the building, and that uses electricity as the sole source of energy for its space heating, water heating (including indoor and outdoor pools and spas), cooking appliances, outdoor kitchens, outdoor fireplaces, and clothes drying appliances. All-Electric Buildings may include solar thermal pool heating.

Sinks moved and Scharf seconded to adopt Resolution No. 19-146: "A Resolution making factual findings with respect to the local geological, topographical, and climatic conditions necessary to make local amendments to the California Building Standards Code". The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

- 11. Subject:** Consider Adoption of an Urgency Ordinance Under California Government Code section 36937 to Implement Tenant Eviction Protections and Limit Large Rental Rate Increases, Effective Immediately, to Avoid Circumvention of AB 1482 (the Tenant Protection Act of 2019); Find That Adoption of the Ordinance Is Not a Project Under and Exempt from CEQA.

Recommended Action: Adopt, by a vote of at least four City Councilmembers, Ordinance No. 19-2194: "An Urgency Ordinance of the City Council of the City of Cupertino Approving Just Cause Eviction Protections and Rental Rate Limits Effective Immediately"

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

Seph Petta from the City Attorney's Office reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Sujatha V. on behalf of West Valley Community Services – in support
Connie Cunningham (Cupertino resident) – in support (add retroactive provision)
Neil on behalf of Cupertino For All – in support (add retroactive provision)
Jennifer Griffin – in support (concern over author of bill)
Genevieve Kolar (Sunnyvale resident) – in support (add retroactive provision)
Dashiell Leeds on behalf of Sierra Club Loma Prieta – in support (add retroactive provision)
Kitty Moore – in support (add retroactive provision)

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2194: "An Urgency Ordinance of the City Council of the City of Cupertino Approving Just Cause Eviction Protections and Rental Rate Limits Effective Immediately"

Sinks moved and Paul seconded to read Ordinance No. 19-2194 by title only and that the City Clerk's reading would constitute the only reading thereof with the following amendments as noted below: Ayes: Scharf, Paul, Sinks, and Willey. Noes: Chao. Abstain: None. Absent: None. Recuse: None.

Amendment on page 2 of the ordinance to read:

WHEREAS, an urgency ordinance that is effective immediately, and retroactive to pending notices to terminate and notices of rent increase, is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the displacement of the City's residents and community members; and

Amendment to Exhibit A, Just Cause Eviction Protection to read:

(E) The tenant had a written lease that terminated on or after December 18, 2019, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

(g) This ordinance shall apply to pending notices of termination issued to tenants on or after October 19, 2019.

(h) For the purposes of this Chapter, the following definitions shall apply:

Amendment to Exhibit B, Rental Rate Limit Provisions to read:

(g) (1) This section shall apply to all rent increases subject to subdivision (a) effective on or after December 18, 2019. This section shall become operative December 18, 2019.

(2) In the event that an owner has sent any rent increase notice on or after October 19, 2019 to increase the rent effective on or after December 18, 2019, the increased rent may not be by more than the amount permissible under subdivision (a) and the rental rate increase will be deemed to be the rental rate increase permitted by subdivision (a).

Sinks moved and Paul seconded to enact Ordinance No. 19-2194. Ayes: Scharf, Paul, Sinks, and Willey. Noes: Chao. Abstain: None. Absent: None. Recuse: None.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Wiley/Scharf: Study session on housing with concurrent draft of survey created by staff.

Scharf: Study session on easements and library parking issue.

Councilmembers highlighted the activities of their various community events.

ADJOURNMENT

At 12:23 a.m. on Wednesday December 18, Mayor Scharf adjourned the meeting.

Grace Schmidt, City Clerk