



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, January 21, 2020**

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 and Rod Sinks. Absent: Jon Robert Willey

CLOSED SESSION

1. Subject: Workers' Compensation Claim (Gov't Code Section 54956.95). Claimant: Deborah Martinez. Agency Claimed Against: City of Cupertino.

In open session, Mayor Scharf reported that Council provided direction to outside counsel as to a workers' compensation matter entitled: Deborah Martinez vs. City of Cupertino, WCAB Case #: ADJ9575169

- 1a. Subject: Conference with Legal Counsel - Anticipated Litigation; Initiation of litigation pursuant to Government Code Section 54956.9(d)(4): One potential case (joining an amicus brief).

In open session, Mayor Scharf reported that Council discussed with legal counsel an invitation to sign on to the Cities and Counties Amicus Brief prepared by the City of Los Angeles in litigation to protect immigrant children in detention currently pending in the Ninth Circuit Court of Appeals.

The Council gave its approval to the City Attorney to enter into the litigation, *Jenney Flores v. William Bar*, No. 19-56326 (2019), by signing on to the Cities and Counties amicus brief. The brief will urge the court to enforce the *Flores* settlement, which provides protections for immigrant minors, and strike down new federal government regulations pertaining to the detention of minors that do not include these protections.

This action was taken by the following vote:

AYES: Mayor Scharf, Vice Mayor Paul, and Councilmember Sinks.

NOES: None

ABSTAIN: Councilmember Chao

ABSENT: Councilmember Willey

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul (left dais 5:35 p.m. to 6:01 p.m.), and Councilmembers Liang Chao and Rod Sinks. Absent: Jon Robert Willey

STUDY SESSION

2. Subject: Report on Homelessness

Recommended Action: Receive report and provide input to staff

Housing Manager Kerri Heusler reviewed the staff report and Associate Planner Erika Poveda gave a presentation.

The following agencies gave presentations:

Santa Clara County Office of Supportive Housing Continuum of Care QI Manager Kathryn Kaminski and Housing and Community Development Director Consuelo Hernandez on "SCC Supportive Housing System"

West Valley Community Services Associate Executive Director Sujatha Venkatraman on "Haven to Home"

De Anza College Vice President of Student Services Rob Mieso on "Student Housing Insecurity and Homelessness"

Mayor Scharf opened public comment and the following people spoke:

Jennifer Griffin- county involvement, camping along 280, affordability for students.

Christine Espinosa Pel (Cupertino resident) ceded her time to Genevieve Kolar.

Genevieve Kolar (Sunnyvale resident), Foothill-De Anza Board of Trustees Student Representative- legislative involvement, employer accountability, college employment,

investment in transit, affordable housing, and sheltering programs, partnering with De Anza-Foothill district, policies on landlords and student rent control.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Council received the report and provided the following input to staff:

1. Explore a Home Match Program with De Anza College and the City Senior Center;
2. Address the lack of hygiene services available in Cupertino;
3. Increase efforts to provide transportation to/from service providers and explore funding bus passes;
4. Establish a rotating emergency shelter or safe car park program;
5. Research Governor's \$1.4 billion pledge towards homelessness, work with local agencies and service providers to connect with local funding;
6. Review the City's Housing and Human Services Grant funds: 1. consider increasing the amount of General Fund Human Services Grant funds directed towards homelessness, 2. review the Below Market Rate Affordable Housing Fund to determine if funds can be used for emergency financial assistance programs;
7. Plan out capital costs for future buildings to incorporate amenities for homeless individuals.

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.

Councilmember Willey arrived and announced that he was not feeling well and would not be present at the meeting.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao and Rod Sinks. Absent: Jon Robert Willey

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Presentation from Cupertino Elementary School ROBO Champs regarding their response to the Lego Robotics theme of "Identifying a problem in public space and proposing a solution."

Recommended Action: Receive presentation from Cupertino Elementary School ROBO Champs regarding their response to the Lego Robotics theme of "Identifying a problem in public space and proposing a solution."

First Lego League members Sanshray, Ahan, Aditya, Shreyan, and Arnav gave a presentation.

Council received the presentation from Cupertino Elementary School ROBO Champs regarding their response to the Lego Robotics theme of "Identifying a problem in public space and proposing a solution."

2. Subject: Presentation from CalTutors on "Inspiring Young Students Through Free STEM Training"

Recommended Action: Receive presentation from CalTutors on "Inspiring Young Students Through Free STEM Training"

Raj Palleti from CalTutors gave a presentation.

Council received the presentation from CalTutors on "Inspiring Young Students Through Free STEM Training."

POSTPONEMENTS

3. Subject: Municipal Code Amendments to the Cupertino Municipal Code, Repealing and replacing Cupertino Municipal Code Chapter 5.50 of Title 5 (Business Licenses and Regulations), adopting new policies to regulate the sale of tobacco, such as prohibiting the sale or distribution of electronic cigarette products, extending the look back period for permit suspensions from 24 months to 60 months, and amending the administrative appeal process for permit violations has been continued to February 4.

Recommended Action: This item has been continued to February 4. No Council action

is required.

Municipal Code Amendments to the Cupertino Municipal Code, Repealing and replacing Cupertino Municipal Code Chapter 5.50 of Title 5 (Business Licenses and Regulations), adopting new policies to regulate the sale of tobacco, such as prohibiting the sale or distribution of electronic cigarette products, extending the look back period for permit suspensions from 24 months to 60 months, and amending the administrative appeal process for permit violations was continued to February 4. This item will be re-noticed.

City Clerk Kirsten Squarcia announced that the City Manager continued item 12. De Anza Hotel to a date-certain on Tuesday, March 3, to allow adequate review and response to a comment letter received on January 20, 2020, from Lozeau and Drury, LLP on behalf of the Laborers International Union of North America, Local Union 270. The postponement would allow the City's environmental consultant and city staff to prepare an analysis and response. The applicant was in agreement with this delay.

ORAL COMMUNICATIONS

Paige Fennie (Oakland resident) on behalf of Laborers International Union of North America, Local No. 270, talked about the continuation of item 12 for the proposed De Anza Hotel project.

Jennifer Griffin –talked about SB 50 being reintroduced, gut and amend on bills, and HB 2001 in Oregon.

Anjali Kausar on behalf of Cupertino Chamber of Commerce, talked about the Chamber Business Directory and upcoming events Restaurant Week, Summer Camp Fair, and Lunar New Year luncheon.

Charlene Lee (Cupertino resident) talked about her arrest at Monta Vista High School and her police report issue.

Lisa Warren asked about the use of the data results for the Building Permit Feedback Survey and the definition of retail for the public/as a community benefit at Main Street.

Kitty Moore (representing self) talked about the De Anza Hotel postponement and researching whether information needs to be reviewed again by the Environmental Review Committee, Design Review Committee, and Planning Commission.

John Vidovich (Los Altos Hills), said he was available to answer questions for anyone who may have attended for the hearing and discussed the comment letter.

REPORTS BY COUNCIL AND STAFF (10 minutes)

4. 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 items on the Consent Calendar as presented except for item numbers 6 and 9 which was pulled for discussion. Ayes: Scharf, Paul, Chao and Sinks. Noes: None. Abstain: None. Absent: Willey.

5. Subject: Approve the December 17 City Council minutes
Recommended Action: Approve the December 17 City Council minutes
6. Subject: Resolutions declaring a Trusted System for the management and retention of records and updating the City's Records Retention Schedule to authorize the destruction of records without Council action.
Recommended Action: a. Adopt the Resolution No. 20-001 declaring a Trusted System for the management of records and the automation of retention requirements and adopting the Trusted Electronic System Policy instituting the city's standards for proper management of records. (Attachment A); and b. Adopt the Resolution No. 20-002 rescinding Resolution No. 17-088 and adopting an updated Records Retention Schedule for the City of Cupertino and authorizing the destruction of records. (Attachment B).

The following individuals spoke on this item:

Peggy Griffin – ensuring scan resolution and quality verification.

Staff answered questions from Council.

Paul moved and Scharf seconded to: a. Adopt the Resolution No. 20-001 declaring a Trusted System for the management of records and the automation of retention

requirements and adopting the Trusted Electronic System Policy instituting the city's standards for proper management of records; and b. Adopt the Resolution No. 20-002 rescinding Resolution No. 17-088 and adopting an updated Records Retention Schedule for the City of Cupertino and authorizing the destruction of records. The motion carried unanimously with Willey absent.

7. Subject: Application for Alcohol Beverage License for Karao Tea Food, LLC (dba Crab Lover), 10275 S. De Anza Boulevard
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Karao Tea Food, LLC (dba Crab Lover), 10275 S. De Anza Boulevard
8. Subject: First Amendment to Agreement 2018-006, a Master Agreement between the City of Cupertino and CSG Consultants, Inc. for consultant construction management services on various capital improvement projects. No additional budget appropriations are needed.
Recommended Action: Approve and Authorize City Manager to execute the First Amendment to Agreement 2018-006, a Master Agreement between the City of Cupertino and CSG Consultants, Inc., extending the term for one year to June 30, 2021 and increasing the compensation by \$300,000 for a total compensation of \$800,000
9. Subject: Adopt 2020 Legislative Platform
Recommended Action: Adopt the City's proposed 2020 Legislative Platform.

Written Communications for this item included written comments from Councilmember Sinks.

The following individuals spoke on this item:

Jennifer Griffin- platform is informative, means to join legislative conversation at Sacramento level.

Dashiell Leeds on behalf of Sierra Club Loma Prieta Chapter- spoke and retracted his comments.

Lisa Warren- Sand Hill's plans for an international K-12 private boarding school at El Paseo and the effect on transit.

Paul moved and Scharf seconded to adopt the City's proposed 2020 Legislative Platform with the recommendations as written, with no. 13 (on page 8) on transit as modified on

the screen (and as follows):

13. Support transportation legislation that would provide direct tangible benefits to Cupertino and the surrounding region, including:
 - a. reinforcing the importance of creating new transit on SR85 as well as I-280 that bring people to the jobs-rich cities to the north and west of San Jose.
 - b. supporting the preservation of 2016 Measure B funds of \$350 million, that are dedicated to transit on SR85.
 - c. supporting funding of new transportation measures in an equitable manner.

The motion carried unanimously with Willey absent.

SECOND READING OF ORDINANCES

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

Written communications for this item included emails to Council.

Mayor Scharf opened public comment and the following individuals spoke:

Jennifer Griffin- power line bills, Oregon duplex law HB 2001, developers getting rid of gas and passing on costs.

Rhoda Fry- (in favor) adopt tonight but add on to Building Code, need energy efficiency in buildings.

Diane Bailey on behalf of Menlo Spark- (in favor) twelve cities taking action, electric buildings becoming the norm, saves money

Dashiell Leeds, Sierra Club Loma Prieta chapter- (in favor) strong electrification component, more to do for climate action, adds to momentum across state.

Mayor Scharf closed public comment.

City Clerk Kirsten Squarcia 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 second reading thereof. Ayes: Scharf, Paul, Chao and Sinks. Noes: None. Abstain: None. Absent: Willey. Recuse: None.

Sinks moved and Scharf seconded to enact Ordinance No. 19-2193. Ayes: Scharf, Paul, Chao and Sinks. Noes: None. Abstain: None. Absent: Willey. Recuse: None.

Council recessed from 8:41 p.m. to 8:48 p.m.

PUBLIC HEARINGS

11. Subject: 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: Conduct a public hearing, and;
1. Adopt Resolution No. 20-003 (Attachment A) to vacate portions of a public utility easement for water line purposes located on 23500 Cristo Rey Drive
 2. Adopt Resolution No. 20-004 (Attachment B) to vacate a portion of an emergency access easement located on 23500 Cristo Rey Drive

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

Mayor Scharf opened the public hearing and seeing no speakers closed the public hearing.

Council conducted a public hearing; and

Paul moved and Scharf seconded to:

1. Adopt Resolution No. 20-003 to vacate portions of a public utility easement for water line purposes located on 23500 Cristo Rey Drive; and
2. Adopt Resolution No. 20-004 to vacate a portion of an emergency access easement located on 23500 Cristo Rey Drive. The motion carried unanimously with Willey absent.

12. Subject: Consider approving a new 155-room seven-story hotel (24-hour operations) with underground parking, event meeting rooms, a ground floor restaurant with separate bar, and a rooftop lounge with separate bar by demolishing a commercial building with an

area of 8,323 sq. ft. City Actions would include General Plan Amendments to consider amending Table LU-1 by increasing the development allocation of hotel rooms to 155 hotel rooms in the Homestead Special Area and Figure LU-1 to allow increased heights and reduced building plane within the North De Anza Gateway specific to this development. City permits would include: Development, Architectural and Site Approval, and Use Permits. A Development Agreement is also proposed; (Application No(s): GPA-2018-01, DP-2018-01, ASA-2018-02, DA-2018-01, U-2018-02, EA-2018-03; Applicant(s): Sherly Kwok (De Anza Properties); Location: 10931 N De Anza Blvd.; APN #326-10-061

Recommended Action: Conduct the public hearing and find:

That the City Council conduct a public hearing, consider the Planning Commission's recommendation, and:

1. Adopt Resolution No. 20-005 adopting a Mitigated Negative Declaration, mitigation measures, and a Mitigation Monitoring and Reporting Program (Attachment A).
2. Adopt Resolution No. 20-006 approving a General Plan Amendment (Attachment B).
3. Adopt Resolution No. 20-007 approving a Development Permit (Attachment C).
4. Adopt Resolution No. 20-008 approving an Architectural and Site Approval Permit (Attachment D).
5. Adopt Resolution No. 20-009 approving a Use Permit (Attachment E).

Introduce and waive the first reading of Ordinance No. 20-2195: "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a New 7-Story, 155 Room Hotel With Associated Site and Landscaping Improvements Located at 10931 N. De Anza Blvd. (APN #326-10-061)" (Attachment F).

Written communications for this item included a comment letter from Lozeau and Drury, LLP on behalf of the Laborers International Union of North America, Local Union 270.

Under Postponements, this item was continued to Tuesday, March 3.

ORDINANCES AND ACTION ITEMS

13. Subject: Abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 19-141; hearing for impacted property owners to contest the matter of proposed abatement. Recommended Action: Adopt Resolution No. 20-010 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 19-141; and conduct hearing for impacted property owners to contest the matter of proposed abatement.

Written communications for this item included a presentation.

Councilmember Chao recused herself from this item and left the dais.

City Clerk Kirsten Squarcia reviewed the staff report and introduced Santa Clara County Weed Abatement Inspector Brian Rosa and Weed Abatement Program Manager Moe Kumre.

Weed Abatement Inspector Brian Rosa gave a presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Liang Chao (representing self)- has completed property cleanup and requested removal from the list.

Brent Bardsley (Cupertino resident)- 10408 Menhart, inspection without notice and then added to list, has garden objectives (provided written comments).

Heidi Wong (Cupertino resident)- APN 326-41-032, no notice prior to County letter of being added to Program, has cleaned up property, requested removal from list.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Paul moved and Scharf seconded to continue this item to February 4. The motion carried unanimously with Chao recused and Willey absent.

Councilmember Chao returned to the dais.

14. Subject: Adopt subcommittee recommendations to improve commission and committee engagement with Council, standardize protocol among commissions and committees, and adopt an ordinance repealing Ordinance No. 006 regarding adoption of Robert's Rules of Order and amending Chapter 2.08 of the Cupertino Municipal Code accordingly.

Recommended Action: 1. Adopt the subcommittee's recommendations (Attachment A)
2. Conduct first reading of Ordinance No. 20-2196: "An Ordinance of the City Council of the City of Cupertino Repealing Ordinance No. 006 Regarding Adoption of Robert's Rules of Order and Amending Chapter 2.08 of the Cupertino Municipal Code

Accordingly”

Assistant to the City Manager Katy Nomura reviewed the staff report.

Mayor Scharf opened public comment and seeing no speakers closed public comment.

Councilmembers made comments and asked questions.

Paul moved and Scharf seconded to 1. Adopt the subcommittee’s recommendations. The motion carried unanimously with Willey absent.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2196: “An Ordinance of the City Council of the City of Cupertino Repealing Ordinance No. 006 Regarding Adoption of Robert’s Rules of Order and Amending Chapter 2.08 of the Cupertino Municipal Code Accordingly”

Paul moved and Scharf seconded to read Ordinance No. 20-2196 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, and Sinks. Noes: None. Abstain: None. Absent: Willey. Recuse: None.

2. Conducted first reading of Ordinance No. 20-2196: “An Ordinance of the City Council of the City of Cupertino Repealing Ordinance No. 006 Regarding Adoption of Robert’s Rules of Order and Amending Chapter 2.08 of the Cupertino Municipal Code Accordingly.”

15. Subject: Adopt the City of Cupertino Ethics Policy

Recommended Action: 1. Review and discuss Attachments A, B, and C in order to select an Ethics Policy.

2. Adopt Resolution No. 20-011 adopting the selected Ethics Policy as the City of Cupertino Ethics Policy.

Assistant to the City Manager Katy Nomura reviewed the staff report

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident)- (in favor) prefers option A, have procedures for inappropriate behavior, moratorium on Councilmembers coming back and lobbying.

Jeanne Bedord (Cupertino resident)- (in favor) prefers option A, contains important detail on triggering violations, didn't address commission feedback for enforcement.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Council 1. Reviewed and discussed Attachments A, B, and C in order to select an Ethics Policy; and

Paul moved and Scharf seconded to:

2. Adopt Resolution No. 20-011, adopting the selected Ethics Policy as the City of Cupertino Ethics Policy, with the code of ethics proposed in Attachment A Ethics Policy (Based on Palo Alto), with the modification that subpoint D. Decisions Based on Merit read "City elected/appointed officials and staff make their decisions in the best interest of the City, which might include relevant policy considerations, rather than on unrelated considerations." The motion carried unanimously with Willey absent.

- 16.** Subject: Adopt Updated Community Funding Policy and Approve Community Funding Grant Cap of \$20,000 Per Applicant Per Year.
Recommended Action: Adopt Updated Community Funding Policy and Approve Community Funding Grant Cap of \$20,000 Per Applicant Per Year

Management Analyst Toni Oasey-Anderson gave a presentation.

Councilmembers made comments and asked questions.

Mayor Scharf opened public comment and the following individuals spoke:

Neesha Tambe on behalf of the Parks and Recreation Commission- free events money meant for community so disclosure upfront, Historical Society exclusion opens up funding for new organizations.

Mayor Scharf closed public comment.

Paul moved and Scharf seconded to adopt the Updated Community Funding Policy and approve the Community Funding Grant Cap of \$20,000 per applicant per year. The motion carried unanimously with Willey absent.

17. Subject: Approve the First Amendment to Employment Agreement for City Manager.
Recommended Action: Adopt Draft Resolution No. 20-012 approving the First Amendment to Employment Agreement for City Manager and authorizing the Mayor to execute the Amendment.

Director of Administrative Services Kristina Alfaro reviewed the staff report.

Mayor Scharf opened public comment and seeing no speakers closed public comment.

Councilmembers made comments and asked questions.

Paul moved and Chao seconded to adopt Resolution No. 20-012 approving the First Amendment to Employment Agreement for City Manager and authorizing the Mayor to execute the Amendment. The motion carried unanimously with Willey absent.

18. Subject: Appointment of Council Committee assignments
Recommended Action: Approve Council Committee assignments.

Mayor Scharf reviewed the process.

Paul moved and Chao seconded to approve Council Committee assignments. The motion carried unanimously with Willey absent.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmember Sinks added to a future meeting a transportation impact fee study (Sink/Paul/Scharf).

Councilmember Chao requested staff clarify the definition of “retail use” (Chao/Scharf).

Councilmember Chao added to the Work Plan adoption examining energy efficiency building codes in line with other neighboring cities (Chao/Scharf/Paul).

Mayor Scharf added a future meeting consideration of expanding the Bicycle Pedestrian Commission into the Bicycle Pedestrian and Transportation Commission and the membership

from 5 to 7 members to (Scharf/Sinks).

City Manager Feng announced the first NASA Speaker Series talk with Jerry Davis was being held on Wednesday, January 22 from 4 - 6 p.m. in Community Hall and the event would be recorded.

Mayor Scharf announced the State of the City was being held on Wednesday, January 29 at Quinlan Community Center.

ADJOURNMENT

At 11:40 p.m. on, Mayor Scharf adjourned the meeting.

Kirsten Squarcia, City Clerk