



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, February 4, 2020**

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 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, Rod Sinks, and Jon Robert Willey. Absent: None

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Presentation by Cupertino High School seniors on "What the youth would like to see in Vallco."
Recommended Action: Receive presentation by Cupertino High School seniors "What the youth would like to see in Vallco."

Mayor Scharf announced that he'd received concerns that scheduling the item as a presentation might give the students more time than others wishing to comment on the Vallco site. To make sure that everyone was treated equally he postponed the item and invited the students to give their presentation during Oral Communication- right after the ceremonial matters.

Mayor Scharf postponed this item to Oral Communications.

2. Subject: Certificates of recognition for the 2019 STEM Winners from Cupertino who participated in the Santa Clara County 2019 Synopsys Championship
Recommended Action: Present certificates of recognition to the 2019 STEM Winners from Cupertino who participated in the Santa Clara County 2019 Synopsys Championship

Mayor Scharf presented the certificates of recognition to the 2019 STEM Winners from Cupertino who participated in the Santa Clara County 2019 Synopsys Championship.

3. Subject: Proclamation to Human Resources Manager Maria Delgado-Jimenez upon her retirement and recognizing her thirty-five years of dedicated service to the City of Cupertino.

Recommended Action: Present proclamation to Human Resources Manager Maria Delgado-Jimenez upon her retirement and recognizing her thirty-five years of dedicated service to the City of Cupertino.

Mayor Scharf presented a proclamation to Human Resources Manager Maria Delgado-Jimenez upon her retirement and recognizing her thirty-five years of dedicated service to the City of Cupertino.

POSTPONEMENTS – None

ORAL COMMUNICATIONS

Cupertino High School seniors Aarabhi Achanta and Haritha Kumar (Cupertino residents) gave a presentation on "What the youth would like to see in Vallco."

Saya Maharajan (Cupertino resident) gave her time to Aarabhi Achanta and Haritha Kumar.

Charlene Lee (Cupertino resident) talked about recalling Mayor Steven Scharf and the police report for her arrest at Monta Vista High School on October 11, 2001.

Jenny Wang talked about due process and the rules pertaining to her citation for an accessory dwelling structure on her property.

Roberta Holloman (Cupertino resident) on behalf of the League of Women Voters Cupertino-Sunnyvale and Registrar of Voter Outreach Team talked about preparedness for the March 3 election and the newly adopted Voters Choice Act model.

Peggy Griffin (Cupertino resident) talked about the differences between bond measures and parcel taxes, in progress school bond measures and parcel taxes, and those that were upcoming on the March 3 election ballot.

Danessa Techmanski (Cupertino resident) gave her time to Peggy Griffin.

Lisa Warren talked about considering the City's record for accepting a green roof as parkland,

requirements in the General Plan, and paying the Parkland Mitigation Fee.

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 number 6 which was pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the January 21 City Council minutes.
Recommended Action: Approve the January 21 City Council minutes.
6. Subject: Award of Construction Inspection Services, Plan Review Services, and Public Works Inspection Services contracts for the Vallco Town Center SB 35 project
Recommended Action: 1 - Authorize the City Manager to award a 3-year contract to 4LEAF, Inc., to provide Construction Inspection Services and Public Works Inspection Services for a not to exceed contract price of \$7,407,710 for the Vallco SB35 project;
2 - Authorize the City Manager to award a 3-year contract to CSG Consultants, Inc., for a not to exceed contract price of \$1,150,000 for plan review services for the Vallco SB35 project;
3 - Authorize the City Manager to award a 3-year contract to Independent Code Consulting, Inc., for a not to exceed contract price of \$13,500,000 for plan review services for the Vallco SB35 project

Written communications for this item included emails to Council and revised Attachments A, B, and C.

City Building Official Albert Salvador gave a presentation.

The following individuals spoke on this item:

Lisa Warren- no decision on project approval, questions on contract start date and numbers in project scope, postpone item.

Jennifer Griffin- effects in Los Altos and Saratoga with SB 35, impacts at Cupertino High School from additional residential units, and dust and traffic from development.

Kitty Moore (representing self)- corrections on towers/retail/office, double-counting to qualify for 2/3 residential, Jan. 19 email to invalidate approvals, no lawsuit outcome.

Staff answered questions from Council.

Council gave direction to modify the following sections of the contract per discussions with the City Attorney and bring the item back at the next available Council meeting.

- Proposed Attachment A
- Section 7. Ownership of Materials, 7.1 Property Rights
- Section 4.2 Invoices and Payments
- Add Section 8. Records used in the Design Professional agreements to Professional Consulting agreement

Council requested additional information on the following items.

- City costs that the pass-through fees pay for
- Qualifications to review the structural design of the green roof

Council recessed from 9:02 p.m. to 9:10 p.m.

7. Subject: Planning Commission's recommendation to select Kitty Moore as the Environmental Review Committee representative
Recommended Action: Accept the Planning Commission's recommendation to the Environmental Review Committee
8. Subject: Consider entering into a funding agreement with Santa Clara Valley Transportation Authority (VTA) to allow the City of Cupertino to receive 2016 Measure B funds for expenditure on bicycle and pedestrian educational programs within the City that qualify under the 2016 Measure B Bicycle & Pedestrian Education and Encouragement Program
Recommended Action: Authorize the City Manager to enter into a funding agreement with Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Bicycle & Pedestrian Education and Encouragement Program

SECOND READING OF ORDINANCES

9. Subject: Second reading of 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: Conduct the second reading and enact 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.”

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 Sinks seconded to read Ordinance No. 19-2196 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 Sinks seconded to enact Ordinance No. 19-2196. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

PUBLIC HEARINGS

10. Subject: Relative to Recology Cupertino's Franchise Agreement with the City:

- 1) Termination of the residential on-call, curbside Household Hazardous Waste (HHW) program, termination of collection of the HHW fee, refund of fees collected since January 2019, and establishment of an annual assessment of costs against Recology Cupertino (Recology) in an annual, not to exceed amount of \$93,535; and
- 2) Authorization of Recology's request for a Special Maximum Rate Adjustment of an additional \$2.24 per month for residential customers in single-family homes and a rate increase of 3.93% for all other categories of Service Recipients to cover the increased cost of mixed recycling processing as a result of disruption and volatility of overseas recycling commodity markets for the period of October 2018 through January 31, 2021 (Special Maximum Rate Adjustment effective beginning January 1, 2020); and
- 3) Authorization to execute Franchise Agreement amendment for same.

Recommended Action: Staff recommends that the City Council approve the following:

- 1) Termination of the residential on-call curbside HHW program stipulated in the Franchise Agreement, as amended, Section 4.17; and
- 2) Termination of collection of the HHW fee retroactive to January 1, 2019, with direction for Recology to administer full credits for any fee collected after such date from single and multi-family Cupertino rate payers within no more than thirty calendar days; and
- 3) Approve and direct Recology to annually pay the City for its costs related to termination of the curbside HHW program not to exceed an annual amount of \$93,535 retroactive to January 1, 2019 and through the remainder of the term of the Franchise Agreement; and

- 4) Authorize a Special Maximum Rate Adjustment of an additional \$2.24/per month for residential customers in single-family homes and an increase of 3.93% for all other categories of Service Recipients pursuant to Section 12.3 of the Franchise Agreement to cover the increased cost of mixed recycling processing for the period October 2018 through January 31, 2021 (rate adjustment beginning January 1, 2020 and continuing through January 31, 2021, which is the remainder of the term of the current Agreement); and
- 5) Adopt Resolution No. 20-013 to Authorize the City Manager to execute the Third Amendment to the Franchise Agreement with Recology Cupertino, implementing the above (Attachment B).

Written communications for this item included emails to Council, a revised Attachment A, and a presentation.

Director of Public Works Roger Lee and Environmental Programs Manager Ursula Syrova gave a presentation.

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

Peggy Griffin (Cupertino resident)- the increase compared to current amount, keep service costs down because they add up, don't need bells and whistles.

Mayor Scharf closed the public hearing.

Councilmembers asked questions and made comments.

Recology General Manager John Zirelli answered questions from Council.

Scharf moved and Sinks seconded to approve the following:

- 1) Termination of the residential on-call curbside HHW program stipulated in the Franchise Agreement, as amended, Section 4.17; and
- 2) Termination of collection of the HHW fee retroactive to January 1, 2019, with direction for Recology to administer full credits for any fee collected after such date from single and multi-family Cupertino rate payers within no more than thirty calendar days; and
- 3) Approve and direct Recology to annually pay the City for its costs related to termination of the curbside HHW program not to exceed an annual amount of \$93,535 retroactive to January 1, 2019 and through the remainder of the term of the Franchise Agreement; and
- 4) Authorize a Special Maximum Rate Adjustment of an additional \$2.24/per month for

residential customers in single-family homes and an increase of 3.93% for all other categories of Service Recipients pursuant to Section 12.3 of the Franchise Agreement to cover the increased cost of mixed recycling processing for the period October 2018 through January 31, 2021 (rate adjustment beginning January 1, 2020 and continuing through January 31, 2021, which is the remainder of the term of the current Agreement); and

5) Adopt Resolution No. 20-013 to Authorize the City Manager to execute the Third Amendment to the Franchise Agreement with Recology Cupertino.

The motion carried unanimously.

11. Subject: First reading of 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, requiring a minimum age for individuals selling tobacco products, and amending the administrative appeal process for permit violations.
- Recommended Action: 1. Conduct the first reading of Ordinance No. 20-2197: "An Ordinance of the City Council of the City of Cupertino repealing and replacing Chapter 5.50 of Title 5 (Business Licenses and Regulations) to regulate the sale of tobacco products"
2. Find that the proposed actions are exempt from CEQA.

Written communications for this item included a presentation.

Assistant to the City Manager Katy Nomura and Santa Clara County consultant Leslie Zeller gave a presentation.

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

Carol Baker (Cupertino resident) on behalf of Cancer Society Cancer Action Network and Tobacco Free Coalition- (supports) smoking is on the decline, protect children.

Verlinna Attletweed (Cupertino resident)- prefers the minimum age at 18 instead of 21, would impact her employment opportunity and living expenses.

Jan Parcel (Cupertino)- (opposes) vape product user, CVC has rescinded warnings against vaping, dangerous and unnecessary, switching to e-cigs is a public benefit.

Smitha Gundava- (supports) more retail places makes it easier for youth to find, marketing intentionally attractive to young people.

Barry Chang- (supports) will help young people and public health issues for the youngsters.

Mayor Scharf closed the public hearing.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2197: "An Ordinance of the City Council of the City of Cupertino repealing and replacing Chapter 5.50 of Title 5 (Business Licenses and Regulations) to regulate the sale of tobacco products"

Scharf moved and Sinks seconded to read Ordinance No. 20-2197 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.

Scharf moved and Sinks seconded to find that the proposed actions are exempt from CEQA. The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

12. Subject: Municipal Code Amendment to Cupertino Municipal Code Section 2.20.010 to remove the City Clerk's duty to attend each closed session of the City Council and keep closed session minutes; designate the City Manager as the City employee/official to attend each closed session of the City Council and keep closed session minutes. Recommended Action: 1. Conduct the first reading of Ordinance No. 20-2198: "An Ordinance of the City Council of the City of Cupertino amending City Code Section 2.20.010 (Recordkeeping Duties-Closed Sessions) of Chapter 2.20 (City Clerk) to Title 2 (Administration and Personnel) to remove the City Clerk's duty to attend City Council closed sessions and keep minutes." 2. Adopt Resolution No. 20-014 "A Resolution of the Cupertino City Council designating the City Manager as the City employee/officer to attend City Council closed sessions and keep minutes."

City Attorney Heather Minner reviewed the staff report.

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

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2198: "An Ordinance of the City Council of the City of Cupertino amending City Code Section 2.20.010 (Recordkeeping Duties-Closed Sessions) of Chapter 2.20 (City Clerk) to Title 2 (Administration and Personnel) to remove the City Clerk's duty to attend City Council closed sessions and keep minutes."

Chao moved and Scharf seconded to read Ordinance No. 20-2198 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.

Chao moved and Scharf seconded to adopt Resolution No. 20-014 "A Resolution of the Cupertino City Council designating the City Manager as the City employee/officer to attend City Council closed sessions and keep minutes." The motion carried unanimously.

13. Subject: Hearing regarding 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 (continued from January 21, 2020)
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 emails to Council.

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

City Attorney Heather Minner commented on the legal standards.

Santa Clara County Weed Abatement Program Manager Moe Kumre provided a follow-up summary of the three property owners who contested on January 21.

Councilmembers made comments and asked questions.

Mayor Scharf opened public comment and the following individuals spoke:

Liang Chao (Cupertino resident, representing self)- showed photos of cleanup of grass and low hanging branches, has hired a gardener, voluntary not punitive compliance.
Jeremy Edberg (Cupertino resident, 19641 Drake Drive)- Moe addressed most issues, no warnings prior to being added to program, add funds for inspections for warnings.
Barry Chang- compliance for 20 years, property is on list but not asking to be removed, for safety of the program, no exceptions for Councilmembers.
Jean Bedord- support for the program, Council consideration of weed abatement requests, special exemptions, fire prevention responsibility.

Mayor Scharf closed public comment.

Council conducted the hearing for impacted property owners to contest the matter of proposed abatement; and

Sinks moved and Scharf seconded to 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 with the amendment to remove 10408 Menhart from the list and direct the City to expeditiously repair the trees accordingly, remove 10490 Castine from the list, and accept all other properties on the list into the program. The motion carried unanimously with Chao recused.

Councilmember Chao returned to the dais.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Vice Mayor Paul left the meeting at 11:07 p.m.

ADJOURNMENT

At 11:12 p.m., Mayor Scharf adjourned the meeting.

Kirsten Squarcia, City Clerk