



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, February 18, 2020**

SPECIAL CITY COUNCIL MEETING

At 5:30 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. Absent: None

CLOSED SESSION

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

In open session, Mayor Scharf reported that Council continued this item to a future meeting and did not take any reportable action.

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:46 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

POSTPONEMENTS – None**ORAL COMMUNICATIONS**

Resident- talked about penalties for the shed structure in her backyard, seeking resolution with neutral parties, changing City codes, and adding the item to an agenda.

Henry Chang (Cupertino resident), talked about small cell sites, locations away from residents and schools, health effects from exposure, need for research, and effected home values.

Anjali Kauser, on behalf of the Cupertino Chamber of Commerce, presented a video of the Cupertino Education Fair and Lunar New Year Luncheon events for the community and local businesses.

Sanat Singhal, on behalf of Cupertino Youth Climate Action Team, talked about plant-based meals on Green Mondays, single use plastic reduction, and climate restoration and climate negative bills.

Brandon Pan, on behalf of Cupertino Youth Climate Action Team, talked about water conservation and education, environmental property alterations, engaging the youth through summer internships.

Brook Ezzat (Cupertino resident), talked about agendizing an item for a resident who attends the Council meetings and informing her of her options to go to the courts.

City Manager Deborah Feng read the following statement:

“I want to let Ms. Lee and the public know that the City has been receiving and addressing her complaints. As you know, the City contracts with the Sheriff’s Office for police services in Cupertino. Between March of 2017 and April of 2018, the Internal Affairs division of the Sheriff’s Office has received seven inquiries and complaints from Ms. Lee. The Internal Affairs Division investigates allegations of illegal behavior by sheriff deputies and captains. All complaints alleging false statements or false arrests were reviewed by the internal affairs division and the matters were closed without any finding of wrongdoing. Captain Urena has also spoken to Ms. Lee in June of 2017, and most recently in January of 2020. On both occasions he advised that she should direct her complaints to the public defender handling her case (as a defense to her arrests) and to the Sheriff’s office the Internal Affairs Division. I would second that advice. The City Council and the City Manager do not independently investigate these types of allegations. That is the role of the public defender and the Internal Affairs Division of the Sheriff’s Office.”

Nori (Cupertino resident), talked about cell towers, proposed and active locations in Cupertino, 5G technology requirements, legislation and FCC rules, and regulation (provided written comments).

REPORTS BY COUNCIL AND STAFF (10 minutes)

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

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Sinks moved and Paul seconded to approve items on the Consent Calendar as presented except for item numbers 13 and 14 which were pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

2. Subject: Approve the January 27 City Council minutes_
Recommended Action: Approve the January 27 City Council minutes_
3. Subject: Approve the January 28 City Council minutes_
Recommended Action: Approve the January 28 City Council minutes_
4. Subject: Approve the February 4 City Council minutes_
Recommended Action: Approve the February 4 City Council minutes_
5. Subject: Accept Accounts Payable for the period ending September 09, 2019_
Recommended Action: Adopt Resolution No. 20-015 accepting Accounts Payable for the period ending September 09, 2019
6. Subject: Accept Accounts Payable for the period ending September 16, 2019_
Recommended Action: Adopt Resolution No. 20-016 accepting Accounts Payable for the period ending September 16, 2019
7. Subject: Accept Accounts Payable for the period ending September 23, 2019_
Recommended Action: Adopt Resolution No. 20-017 accepting Accounts Payable for the period ending September 23, 2019
8. Subject: Accept Accounts Payable for the period ending September 30, 2019_
Recommended Action: Adopt Resolution No. 20-018 accepting Accounts Payable for

the period ending September 30, 2019

9. Subject: Accept Accounts Payable for the period ending October 07, 2019_
Recommended Action: Adopt Resolution No. 20-019 accepting Accounts Payable for the period ending October 07, 2019
10. Subject: Accept Accounts Payable for the period ending October 14, 2019_
Recommended Action: Adopt Resolution No. 20-020 accepting Accounts Payable for the period ending October 14, 2019
11. Subject: Accept Accounts Payable for the period ending October 21, 2019_
Recommended Action: Adopt Resolution No. 20-021 accepting Accounts Payable for the period ending October 21, 2019
12. Subject: Accept Accounts Payable for the period ending October 28, 2019_
Recommended Action: Adopt Resolution No. 20-022 accepting Accounts Payable for the period ending October 28, 2019
13. Subject: Approval of the Library Commission's Recommendation of Jing Jing Yang for the appointment of the new Cupertino Poet Laureate.
Recommended Action: Adopt Resolution No. 20-023 approving the Library Commission recommendation and appoint the new Cupertino Poet Laureate.

Cupertino Poet Laureate Selection Committee and past and current Laureates Ann Muto and Kaecey McCormick introduced new Cupertino Poet Laureate Jing Jing Yang.

Mayor Scharf presented the proclamation to new Cupertino Poet Laureate Jing Jing Yang and thanked current Poet Laureate Kaecey McCormick for her two years of service.

Sinks moved and Paul seconded to adopt Resolution No. 20-023 approving the Library Commission recommendation and appoint the new Cupertino Poet Laureate. The motion carried unanimously.

14. Subject: Award of Construction Inspection Services, Plan Review Services, and Public Works Inspection Services contracts for the Vallco SB35 project. Continued from the February 4, 2020 meeting.
Recommended Action: 1. Authorize the City Manager to award a 3-year contract to 4LEAF, Inc. (4LEAF) 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. (CSG), for a not to exceed contract price of \$1,149,983 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. (ICCI) for a not to exceed contract price of \$13,500,000 for plan review services for the Vallco SB35 project.

Mayor Scharf opened public comment and the following individuals spoke.

Jennifer Griffin- multiyear construction for Vallco, sweep roads regularly, require sweeping trucks as part of contracts, discuss staging issues, Wolfe Rd. overcrossing.

Council asked questions and made comments.

Mayor Scharf closed public comment.

Paul moved and Scharf seconded to:

1. Authorize the City Manager to award a 3-year contract to 4LEAF, Inc. (4LEAF) 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; and
2. Authorize the City Manager to award a 3-year contract to CSG Consultants, Inc. (CSG), for a not to exceed contract price of \$1,149,983 for plan review services for the Vallco SB35 project; and
3. Authorize the City Manager to award a 3-year contract to Independent Code Consulting, Inc. (ICCI) for a not to exceed contract price of \$13,500,000 for plan review services for the Vallco SB35 project.

The motion carried unanimously.

SECOND READING OF ORDINANCES

15. Subject: Second 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: Conduct the second reading and enact 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."

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."

Sinks moved and Scharf seconded to read Ordinance No. 19-2197 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.

Sinks moved and Scharf seconded to enact Ordinance No. 19-2197 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

16. Subject: Second reading of 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.
Recommended Action: Conduct the second reading and enact 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."

Councilmembers asked questions and made comments.

Council did not conduct the second reading and directed staff to bring back a future agenda item for discussion and to rescind the effective Resolution No. 20-014 designating the City Manager as the city employee/officer to attend City Council closed sessions and keep minutes from February 4, 2020.

PUBLIC HEARINGS

17. Subject: Municipal Code Amendments to Chapter 19.112 - Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones; and Chapter 19.08 - Definitions; for Clarifications, and Consistency with recently adopted State Bills (Application No. MCA-2018-04; Applicant: City of Cupertino; Location: City-wide)
Recommended Action: That the City Council:
1. Find that the proposed actions are exempt from CEQA; and
 2. Conduct the first reading of Ordinance No. 20-2199: "An Ordinance of the City Council of the City of Cupertino amending Chapter 19.112, Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and

Residential Zones; and Chapter 19.08 Definitions.”

Written Communications for this item included an email to Council and a presentation.

Senior Planner Gian Martire gave a presentation.

Attorney Sarah Clark from the City Attorney’s office answered questions.

Councilmembers made comments and asked questions.

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

Jennifer Griffin- pushback for State Accessory Dwelling Unit (ADU) bills, people weren’t able to vote on them, overriding local zoning laws, SB 50 and SB 35.

Lisa Warren- redlines for architectural style, rules on building envelopes, eave depth, covered decks and patios, lofts, setbacks between buildings, and roof designs.

Daniel Boxer (Cupertino resident)- compliance with rules on floor area ratio and increasing size of existing structure.

Joan Meehan- occupancy limits on square footage, over density in shared common areas and Homeowner Association (HOA) environment, maximum number of toilets per person.

Mayor Scharf closed the public hearing.

Sinks moved and Scharf seconded to:

1. Find that the proposed actions are exempt from CEQA; and
2. Conduct the first reading of Ordinance No. 20-2199: “An Ordinance of the City Council of the City of Cupertino amending Chapter 19.112, Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones; and Chapter 19.08 Definitions” with the amendments as added in the staff report and as presented on screen: “Living space” means, for the purposes of Chapter 19.112, the same as that set forth for “living area” in California Government Code Section 65852.2(j)(4). All attic and basement square footage proposed as part of an Accessory Dwelling Unit shall be limited by the maximum size allowed per Chapter 19.112.

Chao made a friendly amendment to direct staff to provide notices to the three houses around the site. The amendment was not considered for lack of a second.

The motion carried unanimously.

Council recessed from 9:47 p.m. to 9:53 p.m.

18. Subject: Adoption of a Mitigated Negative Declaration, mitigation measures, a mitigation monitoring and reporting program and adoption of the Cupertino Parks and Recreation System Master Plan.

Recommended Action: Conduct a public hearing, consider the recommendations of the Parks and Recreation Commission and the Environmental Review Committee, and

1. Adopt Resolution No. 20-024 adopting a Mitigated Negative Declaration for the Cupertino Parks and Recreation System Master Plan; and
2. Adopt Resolution No. 20-025 adopting the Cupertino Parks and Recreation System Master Plan.

Written Communications for this item included a presentation.

Director of Parks and Recreation Director Randy Schwartz introduced the item.

Parks Restoration Manager Gail Seeds and MIG consultant Cindy Mendoza gave a presentation.

Parks and Recreation Chair Neesha Tambe spoke.

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

Mahesh Pokale on behalf of Cupertino Bhubaneshwar Sister City Initiative- healing garden initiative, getting the medicinal plants and stone statues, letter of intent for committal.

Jennifer Griffin- changed vision of neighborhood, city, and state, need parkland on east side, don't change Memorial Park, purchase parkland.

Alicia Schober (Cupertino resident)- Leadership95014 proposal for all-inclusive playground, earmarking funds to offset costs, adopt Parks Master Plan.

Jean Bedord (Cupertino resident)- meeting management issues, people have gone home, long five-year process, approve and implement the Parks Master Plan.

Mayor Scharf closed the public hearing.

Councilmembers made comments and asked questions.

Council conducted the public hearing, and considered the recommendations of the Parks and Recreation Commission and the Environmental Review Committee; and

Sinks moved and Scharf seconded to adopt the item.

Chao made a friendly amendment to 1) add a short term goal item for Lawson on page 91, under School Partnerships and 2) delete “possible” from “healing garden” on page 107, under Advancing Additional Recreation Elements.

Paul moved to amend the motion to include Councilmember Chao’s two amendments and to add an acknowledgment identifying Interim Director of Parks and Recreation Randy Schwartz in the Cupertino Parks and Recreation System Master Plan.

Chao made an amendment to the amended motion to add Lawson as a separate bullet point.

Sinks moved and Scharf seconded to call the question. The motion failed for lack of a two-thirds majority.

Paul moved and Chao seconded to accept Chao’s amendment to the amended motion. The motion carried with Sinks voting no.

Final Amendments:

- on page 91 under School Partnerships, add Lawson as a short-term goal as a separate bullet point.
- on page 107 under Advancing Additional Recreation Elements, delete “possible” from “a healing garden.”
- add an acknowledgment identifying Interim Director of Parks and Recreation Randy Schwartz in the Cupertino Parks and Recreation System Master Plan.

Scharf moved and Paul and seconded to:

1. Adopt Resolution No. 20-024 adopting a Mitigated Negative Declaration for the Cupertino Parks and Recreation System Master Plan. The motion carried unanimously; and

Paul moved and Scharf seconded to:

2. Adopt Resolution No. 20-025 adopting the Cupertino Parks and Recreation System Master Plan. The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

19. Subject: Receipt of the January 28, 2020 Public Review Draft Report from the Local Agency Formation Commission of Santa Clara County (LAFCO), entitled "Special Study: Governance Options, Rancho Rinconada Recreation and Park District," and provide direction to staff.

Recommended Action: Receive the report and forward it to the Parks and Recreation Commission for their review and recommendation. Add the Rancho Rinconada Recreation and Park District Evaluation to the FY 2019-20 City Work Program and to the Parks and Recreation Commission Work Program.

Parks and Recreation Director Randy Schwartz reviewed the staff report.

Mayor Scharf opened public comment and the following people spoke:

Jennifer Griffin- attended meetings, district is well run, cannot dissolve without polling residents, supports leaving as status quo.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Council received the report; and

Sinks moved and Scharf seconded to accept the recommendations for Options 1 and 2, survey the 1,400 homeowners, and discuss with the community by forwarding to it the Parks and Recreation Commission for their review and recommendation; and added the Rancho Rinconada Recreation and Park District Evaluation to the FY 2019-20 City Work Program and to the Parks and Recreation Commission Work Program. The motion carried unanimously.

20. Subject: Project update, report on bids, and contract award for the McClellan Ranch Preserve Community Garden Improvement Project (Project No. 2017-15)
Recommended Action: 1. Receive project update and report of bids; and
2. Authorize the Director of Public Works to award a construction contract to GradeTech, Inc., the apparent low bidder, for the base bid and additive alternates 1 - 3 in the total amount of Six Hundred Forty-Nine Thousand Three Hundred Dollars (\$649,300); and
3. Authorize a 10% construction contingency budget of Sixty-Four Thousand Nine Hundred Thirty Dollars (\$64,930) to address unforeseen conditions during construction; and
4. Authorize up to Ten Thousand (\$10,000) for the purchase of one 16 cubic yard enclosed rolloff container for green waste and manure disposal.

Written Communications for this item included a presentation.

Director of Public Works Roger Lee and Parks and Recreation Director Randy Schwartz

gave a presentation.

Mayor Scharf opened public comment and the following people spoke:

Pamela Roper, on behalf of UC Master Gardener Program of Santa Clara County-submitted report on plan for bid, opportunity to educate community on sustainable gardening, drawn out process.

Jennifer Griffin- McClellan Ranch Park small, competing resources with raising animals, allow public access to gardens, equity for east side.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Council received the project update and report of bids; and

Paul moved and Chao seconded to:

1. Authorize the Director of Public Works to award a construction contract to GradeTech, Inc., the apparent low bidder, for the base bid and additive alternates 1 - 3 in the total amount of Six Hundred Forty-Nine Thousand Three Hundred Dollars (\$649,300); and
2. Authorize a 10% construction contingency budget of Sixty-Four Thousand Nine Hundred Thirty Dollars (\$64,930) to address unforeseen conditions during construction; and
3. Authorize up to Ten Thousand (\$10,000) for the purchase of one 16 cubic yard enclosed rolloff container for green waste and manure disposal.
4. Parks and Recreation staff conduct outreach to schools and other groups for field trips and tours regarding program elements as suggested by the City Council members.

The motion carried unanimously.

Councilmember Sinks left the meeting at 11:56 p.m.

21. Subject: Adopt of FY 2020-21 Council Goals
Recommended Action: Adopt FY 2020-21 Council Goals

Written Communications for this item included a presentation.

City Manager Deborah Feng gave a presentation.

Mayor Scharf opened public comment and the following people spoke:

Jennifer Griffin- local control, repercussions from housing bills, quality of life, knowing issues when voting, notice neighbors.

Mayor Scharf closed public comment.

Councilmembers made comments and asked questions.

Paul moved and Scharf seconded to adopt the FY 2020-21 Council Goals with the following amendments. The motion carried unanimously with Sinks absent.

- Public Engagement and Transparency
 - Creating and maintaining key conversations and interactions with the Cupertino Community.
- Sustainability
 - Continuing Cupertino's commitment to building a sustainable and resilient community for future generations.
- Housing
 - Contributing meaningfully and in a balanced manner to the housing inventory in support of our community needs, including affordable housing (from extremely low-income to moderate-income level housing) and addressing homelessness.
- Transportation
 - Providing access to an efficient, safe multi-modal transportation system for our community, and advocating for effective, equitable mass transit in the greater region.
 - Improving Traffic Flow and Alleviating Congestion
- Quality of Life
 - Furthering the health and well-being of all Cupertino community members.
 - Air Quality and Noise
 - Public Safety
 - Recreation
 - Access to Goods and Service

22. Subject: Amendment to Council Committee assignments to appoint one primary member and one alternate member to the County of Santa Clara Housing and Community Development Advisory Committee.

Recommended Action: Approve amendment to Council Committee assignments to appoint Mayor Steven Scharf as primary member and Vice Mayor Darcy Paul as alternate member to the County of Santa Clara Housing and Community Development Advisory Committee.

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

Councilmembers made comments and asked questions.

Paul moved and Chao seconded to approve the amendment to Council Committee assignments to appoint Mayor Steven Scharf as primary member and Vice Mayor Darcy Paul as alternate member to the County of Santa Clara Housing and Community Development Advisory Committee. The motion carried unanimously with Sinks absent.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- added a study session on small cell issues and ordinances adopted in other cities (Chao/Willey).
- added a joint study session with City Council and Planning Commission on state density bonus law and City policy (Willey/Chao).
- added a study session to review the General Plan Amendment (GPA) procedure (Chao/Paul).

ADJOURNMENT

At 12:39 p.m. on Wednesday, February 19, Mayor Scharf adjourned the meeting.