



**DRAFT MINUTES  
CUPERTINO CITY COUNCIL  
Tuesday, May 19, 2020**

**SPECIAL CITY COUNCIL MEETING**

At 5:30 p.m. Mayor Steven Scharf called the Special City Council meeting to order. This was a teleconference meeting with no physical location.

**ROLL CALL**

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao, Rod Sinks, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

**STUDY SESSION**

1. Subject: Study Session regarding the Proposed Fiscal Year 2010 - 2021 Budget  
Recommended Action: Conduct the Study Session regarding the Proposed Fiscal Year 2010 - 2021 Budget

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

City Manager Deborah Feng and Director of Administrative Services Kristina Alfaro gave a presentation.

Councilmembers asked questions and made comments.

Mayor Scharf opened public comment and the following people spoke.

Housing Commissioner Connie Cunningham (representing self) said removal of homeless encampments was untimely and requires shelter alternative resources.

Viji (supports Forecast C) talked about managing the projected hotel occupancy decreases including monthly staff updates, and the library services allocation.

Neil Park-McClintick was concerned about relocating homeless encampments without having a housing plan or an alternative in place, such as West Valley Community Services.

GT talked about allowing more time for public input, looking at the City's property tax limitation, which effects retirement fund contributions, and City Attorney fees.

Parks and Recreation Commissioner Gopal Kumarappan (representing self) talked about making reductions to special contracts and special projects due to COVID-19.

Shani Kleinhaus, on behalf of the Audubon Society, was concerned about budget reductions for Parks and Recreation restoration projects.

Mayor Scharf closed public comment.

Council conducted the Study Session regarding the Proposed Fiscal Year 2020 - 2021 Budget.

### **REGULAR CITY COUNCIL MEETING**

At 7:31 p.m. Mayor Steven Scharf called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

#### **ROLL CALL**

Present: Mayor Steven Scharf, Vice Mayor Darcy Paul, and Councilmembers Liang Chao, Rod Sinks, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

In open session, Mayor Scharf reported out from the closed session held on Friday, May 15, 2020 regarding one item:

Written Communications for this item included an email to Council from J. R. Fruen.

1. Subject: Conference with Legal Counsel pursuant to Government Code section 54956.9(d)(1); Re: Pending Litigation; Vallco Property Owner LLC v. City of Cupertino;

Santa Clara County Superior Court, Case No. 19CV355457 (2019 Vallco General Plan and Zoning Amendments)

Mayor Scharf reported 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.

Councilmember Chao did not attend the discussions because she has recused herself from this litigation out of an abundance of caution due to the proximity of her home to the property line of the Vallco site.

**POSTPONEMENTS – None**

**CEREMONIAL MATTERS AND PRESENTATIONS – None**

### **ORAL COMMUNICATIONS**

Peggy Griffin talked about The Oaks/Westport project and the City giving up features in exchange for density bonus requirements. (Distributed written comments).

Bicycle Pedestrian Commissioner Erik Lindskog (representing self) proposed using parking lots and adjacent streets to provide safe distances when restaurants re-open.

Jennifer Griffin was concerned about oak trees being removed for the Oaks project, SB 899 regarding churches, and state housing bills taking away local control.

Bicycle Pedestrian Commissioner Muni Madhhipatla (representing self) talked about the Vallco SB35 project judgement and City staff and Council ultimately reporting to residents.

Uma Krishnan said citizen surveys should be deployed and authenticated for Cupertino residents versus non-residents.

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

1. Subject: City Manager update on COVID-19 response efforts  
Recommended Action: Receive City Manager update on COVID-19 response efforts

City Manager Deborah Feng gave an update.

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

Council received the City Manager update on COVID-19 response efforts

2. Subject: Annual Pavement Report with COVID-19 Economic Impacts  
Recommended Action: Receive the Annual Pavement Report with COVID-19 Economic Impacts

Written Communications for this item included a staff presentation.

Director of Public Works Roger Lee gave a report.

Mayor Scharf opened public comment and the following people spoke.

Lisa Warren was concerned about utility companies cutting up Tantau Avenue and nearby streets, and the City monitoring and enforcing replacement requirements.

Bicycle Pedestrian Commissioner Erik Lindskog (representing self) proposed using parking lots and adjacent streets for safe distance seating upon restaurants reopening.

Mayor Scharf closed public comment.

Council received the Annual Pavement Report with COVID-19 Economic Impacts.

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

Councilmembers highlighted the activities of their various committees.

## CONSENT CALENDAR

Scharf moved and Paul seconded to approve the items on the Consent Calendar with the exception of item number 19 which was pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

4. Subject: Approve the April 21 City Council minutes  
Recommended Action: Approve the April 21 City Council minutes

5.     Subject: Approve the April 28 City Council minutes  
          Recommended Action: Approve the April 28 City Council minutes
6.     Subject: Approve the May 5 City Council minutes  
          Recommended Action: Approve the May 5 City Council minutes
7.     Subject: Set a hearing date of June 16, 2020 to declare a public nuisance and for objections to proposed removal for the Cupertino Brush Abatement Program (Wildland-Urban Interface Fire Area); and adopt a resolution declaring properties as having potential fire hazards from brush.  
          Recommended Action: Adopt the Resolution No. 20-044 declaring properties as having potential fire hazards from brush; and set a hearing date on June 16, 2020 to declare a public nuisance and to hear objections to proposed removal.
8.     Subject: Late submittal of five Teen Commission application letters of recommendation.  
          Recommended Action: Waive late submittal of five Teen Commission application letters of recommendation and direct staff to accept the applications.
9.     Subject: Approval of a contract amendment for the Agreement with Shute, Mihaly & Weinberger for City Attorney services.  
          Recommended Action: Approve the contract amendment for the Agreement with Shute, Mihaly & Weinberger for City Attorney services.
10.    Subject: Issue a letter to Secretary of the Treasury Honorable Mr. Steven Mnuchin and Small Business Administration Administrator Ms. Jovita Carranza urging them to expand access for underserved and small independently-owned businesses, as well as to award the full amount of the \$10,000 SBA Emergency EIDL Grants as intended under the CARES Act.  
          Recommended Action: Authorize the Mayor to sign the draft letter.
11.    Subject: Accept Accounts Payable for the period ending November 04, 2019  
          Recommended Action: Adopt Resolution No. 20-045 accepting Accounts Payable for the period ending November 04, 2019
12.    Subject: Accept Accounts Payable for the period ending November 12, 2019  
          Recommended Action: Adopt Resolution No. 20-046 accepting Accounts Payable for the period ending November 12, 2019

13. Subject: Accept Accounts Payable for the period ending November 18, 2019  
Recommended Action: Adopt Resolution No. 20-047 accepting Accounts Payable for the period ending November 18, 2019
14. Subject: Accept Accounts Payable for the period ending November 25, 2019  
Recommended Action: Adopt Resolution No. 20-048 accepting Accounts Payable for the period ending November 25, 2019
15. Subject: Accept Accounts Payable for the period ending December 02, 2019  
Recommended Action: Adopt Resolution No. 20-049 accepting Accounts Payable for the period ending December 02, 2019
16. Subject: Accept Accounts Payable for the period ending December 09, 2019  
Recommended Action: Adopt Resolution No. 20-050 accepting Accounts Payable for the period ending December 09, 2019
17. Subject: Accept Accounts Payable for the period ending December 16, 2019  
Recommended Action: Adopt Resolution No. 20-051 accepting Accounts Payable for the period ending December 16, 2019
18. Subject: Accept Accounts Payable for the period ending December 23, 2019  
Recommended Action: Adopt Resolution No. 20-052 accepting Accounts Payable for the period ending December 23, 2019
19. Subject: Approve the Third Quarter Financial Report and recommended budget adjustments for Fiscal Year 2019-20  
Recommended Action: 1. Accept the City Manager's Third Quarter Financial Report for FY 2019-20  
2. Approve Budget Modification 1920-081 for Third Quarter adjustments as described in the Third Quarter Financial Report  
3. Adopt a Resolution No. 20-053 approving Third Quarter budget adjustments

Willey moved and Sinks seconded to:

1. Accept the City Manager's Third Quarter Financial Report for FY 2019-20
2. Approve Budget Modification 1920-081 for Third Quarter adjustments as described in the Third Quarter Financial Report
3. Adopt a Resolution No. 20-053 approving Third Quarter budget adjustments

The motion carried unanimously.

20. Subject: Annual adoption of City Investment Policy  
Recommended Action: Adopt Resolution No. 20-054 accepting the City Investment Policy

21. Subject: Treasurer's Investment Report for period ending March 31, 2020  
Recommended Action: Accept staff report and provide recommendations.

## STUDY SESSION

22. Subject: Study Session regarding Plan Bay Area 2050 and Regional Housing Needs Allocations (RHNA) (including impact of Jobs-Housing Balance and Jobs-Housing Fit to RHNA)  
Recommended Action: That the City Council receive the report and provide input to staff.

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

Director of Community Development Ben Fu introduced the item.

Associate Planner Erika Poveda and Planning Manager Piu Ghosh gave a presentation.

Councilmembers asked questions and made comments.

Mayor Scharf opened public comment and the following people spoke.

Library Commissioner Rahul Vasanth (representing self) read portions of a letter from the West Bay Citizens Coalition opposing action on Plan Bay Area 2050. (Provided written comments).

Lisa Warren expressed support for Mr. Vasanth's letter and talked about unelected people making decisions on these issues in ways that make sense.

Jennifer Griffin talked about housing bill sponsors and Association of Bay Area Governments (ABAG) and Metropolitan Transportation Committee (MTC) members, and ABAG's numbers with COVID-19 impacts.

Palo Alto City Councilmember Lydia Kao (representing self) expressed concern over ABAG's gross geographic region and the RHNA numbers.

Planning Commissioner Kitty Moore (representing self) asked for definitions of the RHNA factor sensitivity analysis terms and methods of calculation.

Los Alto City Councilmember Lynette Lee Eng (representing self) talked about educating residents on the matter and raising concerns to MCT and ABAG.

Palo Alto City Councilmember Terry Holzemer (representing self) talked about notifying MCT and ABAG on jobs/housing, public input, and COVID-19 impacts.

Mayor Scharf closed public comment.

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

- Schools – are the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Committee (MTC) considering school overcrowding in their decisions?
- Divergence Index – new housing in Cupertino might just attract people of the same minority demographic that prefer to live in this community. In Cupertino, the high Divergence Index is a result of choice, not a lack of opportunities and income
- High-Resource Areas – consideration that Cupertino schools is one of the lowest funded schools but in a High-Resource Area (HRA). However, test scores are high. In general, this could be because parents privately fund out-of-school education. How will persons that have a lower income be able to do that? This doesn't equate to more opportunities and may be frustrating for children of such families
- Allocation should be skewed more toward cities that have already increased jobs greatly in the past decade
- Look into a establishing a new Priority Development Area (PDA) designating a Bubb Road corridor and any Regional Housing Needs Allocations (RHNA) implications for the Housing Element update
- Staff research timeline of Vallco and SB 35 entitlement for housing unit credit possibilities based on the next Regional Housing Needs Allocation (RHNA) cycle
- Communicate with MTC/ABAG and various state agencies of concerns about COVID-19 impacts and requesting a delay in the RHNA and to allow additional community input using the letter recently sent by the West Bay Citizens Coalition to City Council

## **SECOND READING OF ORDINANCES**



23. Subject: Second reading of Ordinance No. 20-2203 adopting Municipal Code Amendments to Title 1: General Provisions, to improve process efficiency by adopting Best Practices, readability and internal consistency. (Application No. MCA-2020-001; Applicant: City of Cupertino; Location: City-wide)  
Recommended Action: Conduct the second reading and enact Ordinance No. 20-2203 (MCA-2020-001: "An ordinance of the City Council of the City of Cupertino amending Chapter 1.04, General Provisions; Chapter 1.08, Right of Entry for Inspection; Chapter 1.09, Nuisance Abatement; Chapter 1.10, Administrative Citations, Fines, and Penalties; and Chapter 1.12, General Penalty, to improve process efficiency by adopting Best Practices, readability and internal consistency.")

Mayor Scharf opened public comment and the following people spoke.

Peggy Griffin asked for clarification on development project approvals regarding enforcement of promised items. (Distributed written comments).

Mayor Scharf closed public comment.

Councilmembers asked questions and made comments.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2203 (MCA-2020-001: "An ordinance of the City Council of the City of Cupertino amending Chapter 1.04, General Provisions; Chapter 1.08, Right of Entry for Inspection; Chapter 1.09, Nuisance Abatement; Chapter 1.10, Administrative Citations, Fines, and Penalties; and Chapter 1.12, General Penalty, to improve process efficiency by adopting Best Practices, readability and internal consistency.")

Scharf moved and Chao seconded to read the title of Ordinance No. 20-2203 by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Scharf moved and Sinks seconded to enact Ordinance No. 20-2203. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

## **PUBLIC HEARINGS**

24. Subject: Cupertino BMR Housing Program Update: Below Market Rate (BMR) Residential Housing and Commercial Linkage Fees Update and Recommendations; Discussion of Related Housing Solutions, Including Opportunities to Increase Housing Supply for Extremely Low-Income Households and Approaches to Encourage BMR Housing Production by Non-Residential Land Uses

Application No(s): CP-2019-01; Applicant(s): City of Cupertino; Location: Citywide

Recommended Action: Conduct the public hearing and:

1. Adopt Resolution No. 20-055 attached as Attachment A, amending the Below Market Rate (BMR Housing Mitigation Program Procedural Manual (Housing Mitigation Manual) to increase the affordable housing (BMR) requirement for ownership projects from 15% to 20%, and to make other conforming changes consistent with State law;
2. Adopt Resolution No. 20-056 attached as Attachment B, amending the Housing Mitigation In-Lieu Fees to increase the fees for offices, research and development, and industrial space to \$30 per square foot and the fees for hotels to \$15 per square foot;
3. Receive the report on Housing Solutions, Including Opportunities to Increase Housing Supply for Extremely Low-Income Households and Approaches to Encourage BMR Housing Production by Non-Residential Land Uses and provide further direction to Staff

Written Communications for this item included a two consultant presentations and emails to Council.

Goldfarb and Lipman Attorney Barb Kautz and Strategic Economics Principal Sujatha Srivastava gave presentations.

Councilmembers asked questions and made comments.

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

Planning Commissioner Kitty Moore (representing self) talked increasing fees to adequately cover the needs of funding people across the economic spectrum.

Mayor Scharf closed the public hearing.

Sinks moved and Scharf seconded to:

1. Adopt Resolution No. 20-055 attached as Attachment A, amending the Below Market Rate (BMR Housing Mitigation Program Procedural Manual (Housing Mitigation Manual) to increase the affordable housing (BMR) requirement for ownership projects from 15% to 20%, and to make other conforming changes consistent with State law; and

2. Adopt Resolution No. 20-056 attached as Attachment B, amending the Housing Mitigation In-Lieu Fees to increase the fees for offices, research and development, and industrial space to \$30 per square foot and the fees for hotels to \$15 per square foot; and
3. Receive the report on Housing Solutions, Including Opportunities to Increase Housing Supply for Extremely Low-Income Households and Approaches to Encourage BMR Housing Production by Non-Residential Land Uses and provide further direction to Staff.

Chao made a friendly amendment (seconded by Willey) to not increase the (BMR) percentage of for-sale housing or for-sale condos. (Sinks did not accept the friendly amendment).

Chao moved to amend the main motion to remove the staff recommendation of increasing the inclusionary of for-sale housing to 20%. The motion failed with Sinks, Paul, and Scharf voting no.

Council voted on the main motion. The motion carried unanimously.

25. Subject: Adoption of a Mitigated Negative Declaration, mitigation measures, and a mitigation monitoring or reporting program for Regnart Creek Trail, and authorization to execute an associated Joint Use Agreement and a land exchange with Santa Clara Valley Water District

Recommended Action: For the Regnart Creek Trail project:

1. Consider the recommendation of the Environmental Review Committee, and adopt Resolution No. 20-057 adopting a Mitigated Negative Declaration for the Regnart Creek Trail project, adopting the mitigation measures, and adopting the Mitigation Monitoring or Reporting Program; and
2. Authorize the City Manager to execute a Joint Use Agreement with Santa Clara Valley Water District, including a proposed minor land exchange at Wilson Park; and
3. Conduct a public hearing, determine that the proposed land exchange is in the public interest, and adopt Resolution No. 20-058 authorizing execution of a land exchange with Santa Clara Valley Water District

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

Director of Public Works Roger Lee, Park Restoration and Improvement Manager Gail Seeds, and Transportation Manager David Stillman gave a presentation.

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

Peggy Griffin was concerned about harming the trees along the Library Field and safety at the intersection of Pacifica Drive and Torre Avenue. (Distributed written comments).

Seema Lindskog (supports) said the project has been greenlit many times, the MND was approved by the ERC, and a petition was signed by 2,500 residents for the trail.

Bicycle Pedestrian Commissioner Erik Lindskog (representing self), said Council has already approved the project so why bring it back for the 100% design approval.

Jean Bedord (supports) said the ERC adopted the MND and the land exchange benefits the City and Valley Water, and the project benefits the community.

Bicycle Pedestrian Commissioner Ilango Ganga (representing self) talked about project approval violations on the budget allocation and the CIP project review.

Gary Wong said there was a differential in the square footage for the land swap between the City and Valley Water. (Distributed written comments).

Library Commissioner Liana Crabtree (representing self) was concerned about the sidewalk expansion damaging the trees along Library field and Library parking.

Jeonghee Yi said the MND was flawed and was concerned about noise levels and privacy and safety issues from people using the trail.

Brenda Boyle was concerned about the validity of a petition not being signed by Cupertino residents, and noise levels and pedestrian safety near the trail.

City Clerk Kirsten Squarcia read emails on behalf of the following residents:

- Benaifer Dastoor, regarding a notification from an advocacy group led by one of the Bicycle Pedestrian Commissioners about homeowners on the trail.
- Swati G, regarding concerns about noise and security and the City working to resolve these issues.
- Suraj Dalvi, regarding security and noise concerns and working with residents to address these concerns.

Mayor Scharf closed the public hearing.

Councilmembers asked questions and made comments.

Sinks moved and Scharf seconded to:

1. Consider the recommendation of the Environmental Review Committee, and adopt Resolution No. 20-057 adopting a Mitigated Negative Declaration for the Regnart Creek Trail project, adopting the mitigation measures, and adopting the Mitigation Monitoring or Reporting Program; and
2. Authorize the City Manager to execute a Joint Use Agreement with Santa Clara Valley Water District, including a proposed minor land exchange at Wilson Park; and
3. Determine that the proposed land exchange is in the public interest, and adopt Resolution No. 20-058 authorizing execution of a land exchange with Santa Clara Valley Water District.

Chao made a friendly amendment to add Mitigated Negative Declaration (MND) measures at Torre Avenue and Pacifica Drive to ensure safety. (Sinks did not accept friendly amendment). There was no second and the item was not considered.

The main motion carried unanimously.

## **ORDINANCES AND ACTION ITEMS**

26. Subject: Allocation of \$229,017 of Cupertino's future Community Development Block Grant (CDBG) funds made available through the Federal stimulus Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Recommended Action: Consideration of allocation of \$229,017 of Cupertino's future CDBG funds made available through the Federal stimulus Coronavirus Aid, Relief, and Economic Security (CARES) Act towards the creation of a Cupertino small business relief grant program.

Written Communications for this item included a staff presentation.

Economic Development Manager Angela Tsui gave a presentation.

Mayor Scharf opened public comment and the following people spoke.

Planning Commissioner Kitty Moore (representing self) was concerned about dividing up the funds into smaller amounts and suggested allocating it towards one project.

Mayor Scharf closed public comment.

Councilmembers asked questions and made comments.

Councilmember Sinks left the meeting at 2:10 a.m.

Chao moved and Willey to approve the allocation of \$229,017 of Cupertino's future CDBG funds made available through the Federal stimulus Coronavirus Aid, Relief, and Economic Security (CARES) Act towards the creation of a Cupertino small business relief grant program. The motion carried with Sinks absent.

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

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

Added future agenda item to discuss a making Library Field a park (Chao /Scharf).

Added a work program item for a standards checklist as part of applicant compliance on development projects (Chao/Willey).

#### **ADJOURNMENT**

At 2:22 a.m. on Wednesday, May 20, Mayor Scharf adjourned the meeting.

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Kirsten Squarcia, City Clerk