



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

**REGULAR CITY COUNCIL MEETING**

At 6:45 p.m. Mayor Steven Scharf convened the Regular City Council meeting. 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, City Attorney Heather Minner reported out from the Closed Session Meetings held on July 29th and August 12th:

For the Special Closed Session Meeting held on July 29th:

1. Conference with Labor Negotiators (Gov't Code section 54957.6). Agency designated representatives: Mayor Steven Scharf and Councilmember Rod Sinks. Unrepresented employee: City Manager.

Council conferred with the designated representatives regarding the salary and compensation of the City Manager. No reportable action was taken.

For the Special Closed Session Meeting held on August 12th:

2. Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4) (one potential case)

Council conferred with legal counsel regarding one potential new case. No reportable action was taken.

**CEREMONIAL MATTERS AND PRESENTATIONS**

1. Subject: Proclamation recognizing the 100th anniversary of the 19th Amendment granting women the right to vote and commending the League of Women Voters efforts to fight for voters' rights.  
Recommended Action: Present proclamation recognizing the 100th anniversary of the 19th Amendment granting women the right to vote and commending the League of Women Voters efforts to fight for voters' rights.

Roberta Holliman received the proclamation on behalf of the League of Women Voters.

Mayor Scharf presented the proclamation recognizing the 100th anniversary of the 19th Amendment granting women the right to vote and commending the League of Women Voters efforts to fight for voters' rights.

## POSTPONEMENTS

2. Subject: Municipal Code Amendment to Chapter 10.48 Community Noise Control to consider regulations for Leaf Blowers and to consider proposed amendments for clarification, readability and ease of implementation. Application No(s): MCA-2020-002; Applicant(s): City of Cupertino; Location: Citywide was continued to September 15.

## ORAL COMMUNICATIONS

Lisa Warren was concerned about a City press release correcting misinformation in an article regarding delays in the schedule of permitting for Vallco. (submitted written comments).

Justin Li, on behalf of Cupertino Association of Youth LGBTQ+ Advocates, was concerned about Mayor Scharf's campaign signage supporting action for a rainbow crosswalk. (Submitted written comments).

Jenny Wang was concerned about the growth of the homeless site near Vallco and asked about forming a special committee to address the issue.

Donna Austin supported changing the City's morion helmet logo and forming a subcommittee for this purpose. (Submitted written comments).

Joel Wolfe supported pedestrian bicycle infrastructure development in Cupertino for enhanced quality of life, safety, and reduction of traffic and pollution.

Bicycle Pedestrian Commissioner Muni Madhhipatla (representing self) supported clarifying

and posting the source of misinformation in an article regarding delays in the schedule of permitting for Vallco.

Planning Commissioner Kitty Moore (representing self) talked about using symbols of representation for the LGBTQ community in campaign signage and alternatives for a rainbow crosswalk.

Byron Rovegno, on behalf of Walk Bike Cupertino, talked about a person of the year award for board member Jennifer Shearin and supported biking and walking infrastructure.

Dino Sakkas supported separated bike lanes on McClellan Rd., for safety and sustainability, and an extension up to the Library.

Helen Wiant supported the complete stretch of McClellan Rd. bike lane project as a safer path for bikers and prioritizing bike and pedestrian projects in the City.

Fine Arts Commissioner Sudha Kasamsetty (representing self) supported the 100<sup>th</sup> anniversary of the passage of the 19<sup>th</sup> amendment for women's right to vote.

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

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

City Manager Deborah Feng reported on new COVID-19 cases, testing opportunities, designated cooling centers for rotating power outages due to inclement weather, enforcement of the shelter-in-place order, a blood donation event, and wellness checks for the homeless encampment near Highway 280.

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

4. Subject: Report on Committee assignments\_  
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

#### **CONSENT CALENDAR**

Chao moved and Paul seconded to approve the items on the Consent Calendar except for Item 9 which was pulled for discussion. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the July 7 City Council minutes\_  
Recommended Action: Approve the July 7 City Council minutes\_
6. Subject: Approve the July 8 City Council minutes\_  
Recommended Action: Approve the July 8 City Council minutes\_
7. Subject: Approve the July 21 City Council minutes\_  
Recommended Action: Approve the July 21 City Council minutes\_
8. Subject: Treasurer's Investment Report for period ending June 30, 2020  
Recommended Action: Approve Treasurer's Investment Report for period ending June 30, 2020.
9. Subject: Award and authorize the City Manager to execute a construction contract with Golden Bay Construction, Inc. for the Stevens Creek Boulevard Bike Lane Improvements - Phase I Project (Project No. 2019 - 11)  
Recommended Action: Award a construction contract for the Stevens Creek Boulevard Bike Lane Improvements - Phase 1 project; and authorize the City Manager to execute a construction contract with Golden Bay Construction, Inc. in the amount of \$811,156; and further authorize the Director of Public Works to execute any necessary change orders up to a construction contingency budget of \$82,000, approximately 10% of the contract amount, to address unforeseen conditions during construction, for a total of \$893,156.

Written Communications for this item included an email to Council.

Planning Commissioner Kitty Moore (representing self) supported including the project plan sets in the agenda and asked about curb heights.

Jennifer Griffin opposed the project and was concerned about traffic on the eastern side, the cost, and curb heights.

City Clerk Kirsten Squarcia read an email from Larry Dean, on behalf of Walk Bike Cupertino, supporting the project and bicycle safety.

Councilmembers asked questions and made comments

Paul moved and Scharf seconded to award a construction contract for the Stevens Creek Boulevard Bike Lane Improvements - Phase 1 project; and authorize the City Manager to execute a construction contract with Golden Bay Construction, Inc. in the amount of

\$811,156; and further authorize the Director of Public Works to execute any necessary change orders up to a construction contingency budget of \$82,000, approximately 10% of the contract amount, to address unforeseen conditions during construction, for a total of \$893,156. The motion carried unanimously.

10. Subject: Award of a Design-Build contract for the Cupertino Library Expansion Project (Project No. 2020-03), which involves the design and construction of 5,626 square feet expansion to the existing library building ("Project").

Recommended Action: Award a Design-Build contract for the Cupertino Library Expansion Project and authorize the City Manager to execute the contract in the amount of \$6,476,168 with Rodan Builders, Inc., as the Design Build Entity, and further authorize the Director of Public Works to execute any necessary change orders up to a contingency of \$500,000, for a total appropriation of \$6,976,168. If the City Council wishes to approve the Design-Build contract, staff recommends adopting the following resolution:

1. Adopt Resolution No. 20-103, A Resolution of the Cupertino City Council awarding a Design-Build contract for the Cupertino Library Expansion Project and authorizing the City Manager to execute the contract in the amount of \$6,476,158 with Rodan Builders, Inc., and further authorize the Director of Public Works to execute any necessary change orders up to a contingency of \$500,000, for a total authorized appropriation of \$6,976,168 (Attachment A).

Scharf moved and Willey seconded to reorder the agenda to hear Item Nos. 14 - 17 before Item No. 13. The motion carried unanimously.

## SECOND READING OF ORDINANCES

11. Subject: Prohibition of parking along McClellan Road between Stelling Road and De Anza Boulevard, and along Pacifica Drive between De Anza Boulevard and Torre Avenue for accommodation of Class IV bicycle lanes.

Recommended Action: Conduct the second reading of Ordinance 20-2210; "An Ordinance of the City Council of the City of Cupertino amending Table 11.24.150 Related to Prohibition of Parking Along Certain Streets."

Written Communications included a resident presentation, written comment, and email to Council.

Mayor Scharf opened the public comment period and the following people spoke.

Ken Bell was concerned about loss of privacy and parking, affected home values, and opposed concrete barriers. (Submitted written comments).

Jim Huang ceded his time to Ken Bell.

Gary was concerned about loss of parking and supported alternative plans including marked/permitted parking for residents (Submitted written comments).

Bicycle Pedestrian Commissioner Muni Madhhipatla (representing self) was concerned about getting in and out of driveways and supported a horseshoe option.

Planning Commissioner Kitty Moore (representing self) asked about elevated curb heights for cyclist safety.

Ram Sripathi talked about raised curb heights and supported alternative solutions to retain parking and address cars blocking the road.

Lisa Warren supported applying the community input to the upcoming Bollinger Rd. project.

Jennifer Griffin talked about the upcoming Bollinger Rd. project and supported redesigning the bike barriers.

Bicycle Pedestrian Commissioner Erik Lindskog (representing self) supported protected bike lanes along McClellan Rd. and ways to accommodate parking. (Submitted written comments).

City Clerk Kirsten Squarcia read email on behalf of Jennifer Shearin supporting separated bike lanes on McClellan Rd. for cyclist safety and ways to maintain parking and driveways.

Mayor Scharf closed the public comment period.

Councilmembers asked questions and made comments.

Wiley moved to approve with the condition that residents can request a widened or horseshoe driveway for additional parking. There was no second and the motion was not considered.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2210; "An Ordinance of the City Council of the City of Cupertino amending Table 11.24.150 Related to Prohibition of Parking Along Certain Streets."

Sinks moved and Scharf seconded to read the title of Ordinance No. 20-2210 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.

Sinks moved and Scharf seconded to seconded to enact Ordinance No. 20-2210.

Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Council recessed from 9:12 p.m. to 9:18 p.m.

## **PUBLIC HEARINGS**

12. Subject: Petition for Reconsideration of the City Council decision on April 21, 2020 to deny an appeal and uphold the approval of a Minor Residential Permit to allow a second-story balcony. (Application: RM-2017-39; Applicant: Francis Kun (Tsai residence); Project Location: 21865 San Fernando Avenue; A.P.N.: 357-15-043; Petitioners: Shay-Jan Huang and Eric and Cindy Fang)  
Recommended Action: That the City Council adopt the Resolution No. 20-104 (Attachment A) denying the Petition for Reconsideration, which does not meet the requirements of Cupertino Municipal Code (CMC) Section 2.08.096.

Written Communications for this item included staff, appellant, applicant, and resident presentations.

Associate Planner Erika Poveda gave a presentation.

Mayor Scharf opened the grounds for reconsideration public hearing and the following people spoke.

Appellant Shay-Jan (Jay) Huang said the balcony was larger than agreed on in the April 21 hearing and not harmonious in scale and size. (Submitted written comments).

Appellants Eric and Cindy Fang said the permits and carport were not discussed in the Planning Commission meeting and supported reducing the balcony size. (Submitted written comments).

Homeowner David Tsai did not support the new grounds for reconsideration and said the balcony was smaller than required by City code. (Submitted written comments).

Bill Black-Hogins said the balcony did not match surrounding use, identity, or scale of the neighborhood. (Submitted written comments).

Elizabeth said there was only one similar project in neighborhood and talked about

regulations for setbacks and models for future developments.

Mayor Scharf closed the public hearing.

Councilmembers asked questions and made comments.

Scharf moved and Sinks seconded to adopt Resolution No. 20-104 denying the Petition for Reconsideration, which does not meet the requirements of Cupertino Municipal Code (CMC) Section 2.08.096. The motion carried unanimously.

Council heard Item Nos. 14 – 17 before Item No. 13.

- 14.** Subject: Municipal Code Amendments to regulate Short-Term Rental activity in the City. A new Chapter 5.08 (Short Term Rental Activity) is proposed and amendments are proposed to Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions) and Chapter 19.120 (Home Occupations), of the Cupertino Municipal Code. Minor process related clarifications are also proposed in Chapter 19.12. (Application No(s): MCA-2018-02; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action: That the City Council:

1. Conduct the first reading of Ordinance No. 20-2200: An Ordinance of the City Council of the City of Cupertino Amending Title 3, Revenue and Finance: Chapter 3.12 (Transient Occupancy Tax), Revenue and Finance, Amending Title 5, Business License and Regulations: Chapter 5.08 (Short-Term Rental Activity), Amending Specified Chapters of Title 19, Zoning, of the Cupertino Municipal Code Chapter 19.08 (Definitions), Chapter 19.12 (Administration), and Chapter 19.120 (Home Occupations), to Regulate Short-Term Rental Uses in Residential Zoning Districts (Attachment A) to:
  - a. Find the proposed actions exempt from CEQA; and,
  - b. Amend the Municipal Code by adding Chapter 5.08 (Short Term Rental Activity) and amending Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations).
2. Approve a budget appropriation (BMN 2021-088) of either \$408,689, \$283,889, or \$159,089 depending on the selected level of enforcement; and
3. Provide direction on the registration fee in regard to setting the fee for full cost recovery or lower.

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

Senior Planner Erick Serrano gave a presentation.

Mayor Scharf opened the public comment period and the following individuals spoke.



Mayor Scharf read a letter on behalf of Jennifer Griffin regarding parking, business license, and agreement requirements.

Mayor Scharf closed the public comment period.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2200: "An Ordinance of the City Council of the City of Cupertino Amending Title 3, Revenue and Finance: Chapter 3.12 (Transient Occupancy Tax), Revenue and Finance, Amending Title 5, Business License and Regulations: Chapter 5.08 (Short-Term Rental Activity), Amending Specified Chapters of Title 19, Zoning, of the Cupertino Municipal Code Chapter 19.08 (Definitions), Chapter 19.12 (Administration), and Chapter 19.120 (Home Occupations), to Regulate Short-Term Rental Uses in Residential Zoning Districts."

Paul moved and Sinks seconded to 1. Read the title of Ordinance No. 20-2200 by title only and that the City Clerk's reading would constitute the first reading thereof; and 2. Approve a budget appropriation (BMN 2021-088) of **\$283,889**.

Councilmembers asked questions and made comments.

Vice Mayor Paul amended his motion (and Sinks seconded) to:

- a. Find the proposed actions exempt from CEQA; and,
- b. Amend the Municipal Code by adding Chapter 5.08 (Short Term Rental Activity) and amending Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations).

The motion carried as amended. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Final motion summary:

1. Conducted the first reading of Ordinance No. 20-2200: An Ordinance of the City Council of the City of Cupertino Amending Title 3, Revenue and Finance: Chapter 3.12 (Transient Occupancy Tax), Revenue and Finance, Amending Title 5, Business License and Regulations: Chapter 5.08 (Short-Term Rental Activity), Amending Specified Chapters of Title 19, Zoning, of the Cupertino Municipal Code Chapter 19.08 (Definitions), Chapter 19.12 (Administration), and Chapter 19.120 (Home Occupations), to Regulate Short-Term Rental Uses in Residential Zoning Districts to:
  - a. Find the proposed actions exempt from CEQA; and,
  - b. Amend the Municipal Code by adding Chapter 5.08 (Short Term Rental Activity) and amending Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations); and

2. Approve a budget appropriation (BMN 2021-088) of **\$283,889**.

## ORDINANCES AND ACTION ITEMS

15. Subject: Approve the Second Amendment to Employment Agreement for City Manager, related budget modifications, and revised Appointed Employees' Compensation Program.  
Recommended Action: 1. Adopt Resolution No. 20-112 approving the Second Amendment to Employment Agreement for City Manager and authorizing the Mayor to execute the Amendment.  
2. Approve Budget Modification No. 2021-090 increasing General Fund appropriations by \$49,695 in Fiscal Year 2020-2021.

Scharf moved and Sinks seconded to:

1. Adopt Resolution No. 20-112 approving the Second Amendment to Employment Agreement for City Manager and authorizing the Mayor to execute the Amendment.
2. Approve Budget Modification No. 2021-090 increasing General Fund appropriations by \$49,695 in Fiscal Year 2020-2021.

The motion carried unanimously.

16. Subject: Designate a voting delegate and up to two alternates to vote at the Annual Business Meeting (General Assembly) during the League of California Cities Virtual Annual Conference, October 7-9.  
Recommended Action: Designate a voting delegate and up to two alternates to vote at the Annual Business Meeting (General Assembly) during the League of California Virtual Annual Conference, October 7-9.

Scharf moved and Paul seconded to designate Mayor Steven Scharf as the voting delegate and Councilmember Liang Chao as alternate voting delegate to vote at the Annual Business Meeting (General Assembly) during the League of California Virtual Annual Conference, October 7-9. The motion carried unanimously.

17. Subject: Authorization to Amend the Current Agreement with Lifetime Tennis Inc., DBA Lifetime Activities Inc. to Adjust Compensation Accepted by the City Due to the Impacts of COVID-19 and Sports Center Retrofit.  
Recommended Action: Authorize the City Manager to amend the current agreement with Lifetime Tennis Inc., DBA Lifetime Activities Inc. to adjust the compensation accepted by the City from March 13 to May 26 and for Fiscal Year 2020-2021 due to the impacts of COVID-19 and Sports Center retrofit.

Sinks moved and Scharf seconded to authorize the City Manager to amend the current

agreement with Lifetime Tennis Inc., DBA Lifetime Activities Inc. to adjust the compensation accepted by the City from March 13 to May 26 and for Fiscal Year 2020-2021 due to the impacts of COVID-19 and Sports Center retrofit. The motion carried unanimously.

Council recessed from 10:49 p.m. to 10:53 p.m.

13. Subject: Consider approving a development proposal to demolish a 71,250 square foot retail center (The Oaks), remove and replace 74 protected trees, and construct a mixed-used development consisting of 267 housing units (88 Rowhouse/Townhouses, 179 senior apartments of which 131 are senior licensed assisted living units and 48 are affordable or below market rate ("BMR") senior independent living units), 27 memory care licensed assisted living residences ("memory care residences"), and 20,000 square feet of commercial space. The applicant is requesting a Heart of the City Exception for retail frontage along Stevens Creek Boulevard. The applicant is also requesting a density bonus, including associated density bonus parking reduction and density bonus waivers for height, slope line setback, and dispersion of BMR housing units, as well as an incentive/concession for the consolidation of BMR housing units in a single, senior building. City approvals would be certification of the Final Environmental Impact Report, Development Permit (including findings regarding density bonus, parking reduction, concession, and waivers), Architectural and Site Approval Permit, Tree Removal Permit, Use Permit, Heart of the City Exception, and Vesting Tentative Map; (Application No(s): DP-2018-05, ASA-2018-05, TM-2018-03, TR-2018-22, U-2019-03, EXC-2019-03, EA-2018-04; Applicant(s): KT Urban (Mark Tersini); Location: 21267 Stevens Creek Boulevard; APN #326-27-042, -043. (Continued from June 2).

Recommended Action: Staff recommends that the City Council consider the evidence presented and approve the project in accordance with the following draft resolutions (Attachments A-G). If the City Council wishes to approve the project, adopt the following resolutions:

- a. Resolution No. 20-105 certifying the Final Environmental Impact Report and adopting the mitigation measures and Mitigation and Monitoring Reporting Program (EA-2018-04);
- b. Resolution No. 20-106 approving the Development Permit (DP-2018-05); EA-2018-04, DP-2018-05, Westport Cupertino August 18, 2020  
ASA-2018-05, U-2019-03, 21267 Stevens Creek Boulevard TM-2018-03, EXC-2019-03, TR-2018-22
- c. Resolution No. 20-107 approving the Architectural and Site Approval Permit (ASA2018-05);
- d. Resolution No. 20-108 approving the Use Permit (U-2019-03);
- e. Resolution No. 20-109 approving the Vesting Tentative Map (TM-2018-03);
- f. Resolution No. 20-110 approving the Heart of the City Exception (EXC-2019-03); and

g. Resolution No. 20-111 approving the Tree Removal Permit (TR-2018-22).

Written Communications for this item included staff, applicant, and resident presentations, and emails to Council.

Senior Planner Gian Martire gave a presentation.

Councilmembers asked questions and made comments.

KT Urban Principal Executive and Applicant Mark Tersini, Related Principal Matthew Witte, and Atria Senior Living Senior Vice President Randy Bekerman gave presentations.

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

Planning Commissioner Kitty Moore (representing self) talked about below market rate units for the townhouses/rowhomes, height and setback reductions, and noise levels.

Lisa Warren was concerned about language outlining the for-sale units, the stated hearing count for and number of attorneys assigned to the project. (Submitted written comments)

Richard Adler, on behalf of Age Friendly Cupertino Task Force, supported the project and the senior housing complex. (Submitted written comments).

Henry Woo Sang, Jr., on behalf of Age Friendly Cupertino Task Force, supported the Westport project and senior housing component. (Submitted written comments).

Jean Bedord, on behalf of Age Friendly Cupertino Task Force, supported the Westport project and senior housing component. (Submitted written comments).

Dave Stearns, on behalf of Age Friendly Cupertino Task Force, supported the Westport project and senior housing component. (Submitted written comments).

Roma Ankolekar (representing herself) supported the Westport project and the senior memory care facility.

Donna Austin supported the Westport project and senior housing component.

Janet Van Zoeren supported the Westport project and senior housing component.

Peggy Griffin supported the Westport project with certain covenants and conditions of approval.

Housing Commissioner Connie Cunningham (representing herself) supported the Westport project and senior housing component.

City Clerk Kirsten Squarcia read emails on behalf of the following people.

- Geoff Paulsen supported the Westport project and senior housing.
- Jennifer Griffin opposed the large project, building heights, non-conformance to Heart of the City Plan, tree removal, and traffic load.
- Danielle Burnett-Foster supported requiring the project to meet sustainability standards on materials and insulation, window placement, and utilities.
- J.R. Fruen supported the project for housing needs and needs for seniors, and community benefits.

Mayor Scharf closed the public hearing.

Paul moved and Scharf seconded to adopt the following resolutions conditioned upon the applicant foregoing any future concessions on the current project; and requiring a bike route on the west side, the townhouse and rowhouse units are for-sale, all retail is open to the public, and there is no certificate of occupancy until all Below Market Rate (BMR) housing is built.

- a. Resolution No. 20-105 certifying the Final Environmental Impact Report and adopting the mitigation measures and Mitigation and Monitoring Reporting Program (EA-2018-04); and
- b. Resolution No. 20-106 approving the Development Permit (DP-2018-05); EA-2018-04, DP-2018-05, Westport Cupertino August 18, 2020; and
- c. Resolution No. 20-107 approving the Architectural and Site Approval Permit (ASA2018-05); and
- d. Resolution No. 20-108 approving the Use Permit (U-2019-03); and
- e. Resolution No. 20-109 approving the Vesting Tentative Map (TM-2018-03); and
- f. Resolution No. 20-110 approving the Heart of the City Exception (EXC-2019-03); and
- g. Resolution No. 20-111 approving the Tree Removal Permit (TR-2018-22).

The amended motion as carried unanimously.

Sinks made a friendly amendment to add a condition of approval that the developer

will design an alignment for the bicycle access through the property including at the southwest corner that ensures a safe and efficient movement for bicycle traffic to the satisfaction of the City Engineer. (Paul and Scharf accepted the friendly amendment).

Paul amended his motion and Scharf seconded to strike the language that the certificates of occupancy would not be issued to the townhouses and rowhouses until the BMR units are built; and to delete the provision in condition 11b in the development permit resolution. (Scharf accepted the friendly amendment).

Council recessed from 3:22 a.m. – 3:36 a.m.

City Attorney Heather Minner and Attorney Winter King from the City Attorney's Office provided language for the conditions for Paul's amended motion (Paul and Scharf accepted the language as presented by the attorneys).

Final amended motion:

Paul moved and Scharf seconded to adopt the following resolutions as amended:

- a. Resolution No. 20-105 certifying the Final Environmental Impact Report and adopting the mitigation measures and Mitigation and Monitoring Reporting Program (EA-2018-04); and
- b. Resolution No. 20-106 approving the Development Permit (DP-2018-05); EA-2018-04, DP-2018-05, Westport Cupertino August 18, 2020 with the following amendments:
  1. ASA-2018-05, U-2019-03, 21267 Stevens Creek Boulevard TM-2018-03, EXC-2019-03, TR-2018-22  
Finding 4(b) was amended to expand the density bonus law concession to allow the applicant to consolidate all BMR units in Building 2 instead of dispersing them throughout Building 1 and the Townhouse/Rowhouse portion of the project.
  2. Finding 4(g) was amended to deny the requested waiver for the BMR unit dispersion requirement and to note the City Council would have preferred to grant a concession, rather than a waiver, for the height and slope line setback requirements.
  3. Condition 2 of Section III ("Accuracy of Project Plans") was amended to clarify that any misrepresentation on the Vesting Tentative Map related to the statement that the Townhouses/Rowhouses would be for-sale could result in invalidation of the permit and additional review. (This change was made in the "Accuracy of Project Plans" condition in each of the approved resolutions.)
  4. Condition 6 of Section III ("Development Allocation") was amended to state that, by requesting only one density bonus concession, the applicant waived any future claim to a second concession.
  5. Condition 11 of Section III ("Concurrent Development of BMR and Market-Rate

Housing”) was amended to delete subsection 11(b).

6. Condition 3 of Section IV (“Pedestrian and Bicycle Improvements”) was amended to require the applicant to work with staff to design and build bicycle access through the property.
- c. Resolution No. 20-107 approving the Architectural and Site Approval Permit (ASA2018-05); and
- d. Resolution No. 20-108 approving the Use Permit (U-2019-03); and
- e. Resolution No. 20-109 approving the Vesting Tentative Map (TM-2018-03); and
- f. Resolution No. 20-110 approving the Heart of the City Exception (EXC-2019-03) with the following amendments:
  1. Condition 2 of Section III (“Accuracy of Project Plans”) was amended to clarify that any misrepresentation on the Vesting Tentative Map related to the statement that the Townhouses/Rowhouses would be for-sale could result in invalidation of the permit and additional review. (This change was made in the “Accuracy of Project Plans” condition in each of the approved resolutions.)
  2. Condition 6 of Section III (“Public Accessibility to Retail Space”) was added to require that all retail space be open to the public for consumption of goods and services; and
- g. Resolution No. 20-111 approving the Tree Removal Permit (TR-2018-22).

The amended motion as carried unanimously.

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

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

Added a future agenda item to consider a municipal code amendment for balconies and R1 objective standards (Chao/Scharf)

## **ADJOURNMENT**

At 4:25 a.m. on Wednesday, August 19, Mayor Scharf adjourned the meeting.

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Kirsten Squarcia, City Clerk