



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, January 19, 2021**

SPECIAL MEETING

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

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

STUDY SESSION

1. Subject: Study Session on Lehigh Southwest Cement Company/Permanente Quarry and Stevens Creek Quarry regarding Reclamation Plan Amendment and Use Permit Applications to County of Santa Clara.
Recommended Action: Receive the report and provide input to staff.

Written communications for this item included a staff presentation.

Director of Public Works Roger Lee, County of Santa Clara Planning Manager Rob Eastward and Senior Planner Rob Salisbury, and Shute, Mihaly, Weinberg Attorney Sarah Sigmund and gave a presentation.

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

Peggy Griffin asked about the Environmental Impact Report (EIR) hearing process and the timing of a vested rights determination.

Attorney Patrick Mitchell, on behalf of Stevens Creek Quarry, talked about the quarry's permitting and compliance, progress towards resolving issues, and future use for the site.

Sharon supported Stevens Creek Quarry as an asset for Cupertino and the County and for playing a large role in Cupertino's infrastructure.

Rhoda Fry said Steven's Creek Quarry asked about the status of the portable rock plant permit and function of the conveyor belt project.

Sustainability Commissioner Gary Latshaw (representing self) said the facilities supply important products for infrastructure but impact traffic and pollution in the region.

Mayor Paul closed the public comment period.

Councilmember asked questions and made comments.

Council received the report with the following input.

- Staff will provide future updates on a quarterly basis or sooner if there is developing news
- Conduct future study sessions at an earlier start time

ADJOURNMENT

REGULAR MEETING

At 6:45 p.m. Mayor Darcy Paul called the Regular City Council meeting to order. This was a teleconference meeting with no physical location.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey. Absent: None. All Councilmembers teleconferenced for the meeting.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Certificates of Recognition for Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship
Recommended Action: Present Certificates of Recognition to Cupertino Science Fair winners who participated in the 2020 Santa Clara County Synopsys Championship

Mayor Paul presented the certificates to Santa Clara Valley Science and Engineering Fair Association (SCVSEFA) Publicity Chair Forrest Williams.

2. Subject: Proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino

Recommended Action: Present proclamation to Stanford University in appreciation and acknowledgement of their donation of trees to the City of Cupertino

Mayor Paul presented the proclamation to Stanford University Associate Athletics Director Spenser Ayres.

3. Subject: Proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy

Recommended Action: Present proclamation to the Santa Clara County Library District for their excellent response during COVID-19, providing continuing and invaluable resources to our residents during this time, and for working to keep our community safe and mentally healthy

Mayor Paul presented the proclamation to Santa Clara County Library District Cupertino Community Librarian Clare Varesio.

4. Subject: Proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021

Recommended Action: Present proclamation to the Hindu Swayamsevak Sangh organization to support the national campaign, "Health for Humanity - Yogathon" also known as "Surya Namaskar Yajna" (Sun Salutation Yogathon) running from January 16th to January 31st, 2021

Written communications for this item included a recipient presentation.

Mayor Paul presented the proclamation to Ashwini Kulkarni.

POSTPONEMENTS

5. Subject: Amending the Fiscal Year 2020-21 Fee Schedule to establish updated fees for the Community Gardens.

This item was continued to a date uncertain.

6. Subject: Approving City of Cupertino 2020 Transportation Impact Fee Nexus Study Update, increasing the Transportation Impact Fees, and amending Schedule B of the 2020-21 Fee Schedule to incorporate the increased fees.

This item was continued to March 2.

Paul moved and Willey seconded to continue the following agenda items to March 16.

- 13. Subject: Second reading of Ordinance No. 20-2219 adopting Municipal Code Amendments to CMC to adopt bird safety development regulations to implement the Fiscal Year 2020/21 City Council Work Program items related to bird safety. (Application No. MCA-2019-004; Applicant: City of Cupertino; Location: Citywide); and
- 16. Subject: Municipal Code Amendments to adopt lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky. (Application No. MCA-2019-003; Applicant: City of Cupertino; Location: City-wide) (Continued from December 15)

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

Housing Commissioner Connie Cunningham (representing self) opposed postponing the Bird Safety Ordinance. (Submitted written comments).

Lisa Warren supported postponing the Bird Safety and Dark Sky Ordinances.

Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, opposed postponing the Bird Safety Ordinance.

Dashiell Leeds, on behalf of the Sierra Club Loma Prieta Chapter, opposed postponing the Bird Safety Ordinance.

Anjali Kauser, on behalf of the Cupertino Chamber of Commerce, supported postponing the Bird Safety and Dark Sky Ordinances.

Peggy Griffin supported postponing the Bird Safety and Dark Sky Ordinances.

Mayor Paul closed the public comment period.

Paul's motion carried with Wei and Chao voting no.

ORAL COMMUNICATIONS

John Zhao supported ensuring diversity in the upcoming commission appointment process, including representation for renters on the Housing Commission.

Sunnyvale Commissioner Richard Mehlinger (representing self) opposed reappointing R Wang to the Planning Commission and supported protecting free speech rights.

Peggy Griffin supported educating residents, solving most of the problem, and using objective standards when creating new laws. (Submitted written comments).

Neil Park-McClintick opposed reappointing R Wang to the Planning Commission and supported diversity on commissions, including representation in age and rental status.

Anjali Kausar, on behalf of the Cupertino Chamber of Commerce, shared an exemplary service medal received by the Chamber and an invitation for the Lunar New Year celebration.

Jean Bedord supported considering diverse representation in the upcoming commission appointment process, including women, renters, and professional expertise.

Peter Chu was concerned about 5G cell sites around the City and requested follow-up on citizen concerns and questions.

Lisa Warren was concerned about prior comments opposing reappointments for commissions and developers attempting to compromise the employment of others.

REPORTS BY COUNCIL AND STAFF (10 minutes)

7. Subject: City Manager update on emergency response efforts
Recommended Action: Receive City Manager update on emergency response efforts

City Manager Deborah Feng reported on COVID-19 vaccine phase information, testing opportunities, and case counts; Parks and Recreation activities according to state and county guidelines; and homeless encampments.

Council received the City Manager update on emergency response efforts.

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

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Willey moved and Wei seconded to approve the items on the Consent Calendar as presented. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

9. Subject: Approve the December 15 City Council minutes
Recommended Action: Approve the December 15 City Council minutes

Written communications for this item included an amended page 4 of the December 15 City Council minutes.

10. Subject: License agreements with Pacific Coast Farmers Market Association (PCFMA) to operate weekly Friday farmers market in the Creekside Park north parking lot and with West Coast Farmers Market Association (WCFMA) to temporarily operate weekly Sunday farmers market the Senior Center/Memorial Park parking lot.
Recommended Action: 1. Authorize the City Manager to negotiate and execute a license agreement with Pacific Coast Farmers Market Association (PCFMA) to use the Creekside Park north parking lot for a weekly Friday farmers market; and
2. Authorize the City Manager to negotiate and execute a license agreement with West Coast Farmers Market Association (WCFMA) to temporarily use the Senior Center/Memorial Park parking lot for a weekly Sunday farmers market.
11. Subject: Increase the construction contingency budget for the McClellan Ranch Preserve Community Garden Improvement Project (Project No. 2017-15) due to COVID-19.
Recommended Action: 1. Authorize an increase in the Construction Contingency Budget from \$64,930 to \$280,530 for the McClellan Ranch Preserve Community Garden Improvement Project; and
2. Adopt Resolution No. 21-001 (Attachment A) to approve Budget Modification No. 2021-113 increasing appropriations in the Capital Improvement Fund 420-99-004 in the amount of \$125,600 funded from Capital Project Fund.

SECOND READING OF ORDINANCES

12. Subject: Second reading of Ordinance No. 20-2218: "An ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"
Recommended Action: Conduct the second reading and enact Ordinance No. 20-2218: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

City Clerk Kirsten Squarcia read the title of Ordinance No. Ordinance No. 20-2218: "An Ordinance of the City Council of the City of Cupertino amending Cupertino Municipal Code Chapter 6.24 (Garbage, non-organic recycling and organic waste recycling collection and disposal)"

Wei moved and Willey seconded to conduct the second reading of Ordinance No. 20-2218 by title only and that the City Clerk's reading would constitute the first reading thereof; and to enact Ordinance No. 20-2218. Ayes: Paul, Chao, Moore, Wei, and Willey.

Noes: None. Abstain: None. Absent: None.

13. Subject: Second reading of Ordinance No. 20-2219 adopting Municipal Code Amendments to CMC to adopt bird safety development regulations to implement the Fiscal Year 2020/21 City Council Work Program items related to bird safety. (Application No. MCA-2019-004; Applicant: City of Cupertino; Location: Citywide) Recommended Action: Conduct the second Reading and enact Ordinance No. 20-2219 "An Ordinance of the City Council of the City of Cupertino amending city code to add Chapter 19.102: Bird Safe Development standards and to amend Chapter 19.08: Definitions to implement Bird Safe regulations".

Under Postponements, Council continued this item to March 16 (Wei and Chao voting no).

Council recessed from 8:18 p.m. to 8:23 p.m.

PUBLIC HEARINGS

14. Subject: Abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; hearing for impacted property owners to contest the matter of proposed abatement. Recommended Action: Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136; and conduct hearing for impacted property owners to contest the matter of proposed abatement.

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

Mayor Paul pulled 10175 McLaren Place from the Cupertino Weed Abatement Commencement Report list for consideration first.

Vice Mayor Chao recused herself from discussion about her property at 10175 McLaren Place and left the dais.

City Clerk Kirsten Squarcia gave a presentation.

Councilmembers asked questions and made comments.

Mayor Paul opened the public hearing for 10175 McLaren Place and, seeing no speakers, closed the public hearing.

Wei moved and Willey seconded to:

Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136 for 10175 McLaren Place.

Wei's motion carried unanimously with Chao recused.

Vice Mayor Chao returned to the dais.

Mayor Paul opened the public hearing to consider all remaining properties on the list and the following people spoke.

Brent Bardsley, 10408 Menhart Lane, said his property has been on the list for three years, with all issues resolved, and requested removal from the program.

Larisa Troche, 19160 Stevens Creek Boulevard, said she has provided all documentation and asked about future noticing response requirements.

Hemalatha Yellamilli, 20094 Merritt Drive, was unable to maintain her lawn due to COVID-19 and requested removal from the list. (Provided written comments).

Mathew, 698 Miller Avenue, was unable to maintain the property because of broken equipment but has since removed all fire risk and requested removal from the list.

Wanling Wen, 10251 Tantau Avenue, was unable to maintain the property due to COVID-19 and unemployment and requested removal from the list.

Thorisa Yap, 18880 Pendergast Avenue, was unable to clear weeds due to family illness, job responsibilities, and COVID-19.

Anil Shetty, 10281 Johnson Avenue, said the property is now maintained and requested removal from the list.

Mayor Paul closed the public hearing.

Santa Clara County Weed Abatement Program Manager Moe Kumre confirmed 19160 Stevens Creek Boulevard and 10408 Menhart Lane were erroneously included on the report due to a data transfer error and the properties were removed from the list before the meeting.

Chao moved and Moore seconded to:

Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or

other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136 for all remaining properties on the list with a modification to remove 18880 Pendergast Avenue.

Willey made a friendly amendment to remove 20094 Merritt Drive from the list. (Chao and Moore accepted the friendly amendment).

Paul made a friendly amendment that the County remove any properties from the list that were erroneously included due to a data transfer error and provide the City with an updated report before February 2, to be attached to the adopted resolution. (Chao and Moore accepted the friendly amendment).

Chao's motion as amended by Willey and Paul carried unanimously.

Motions summary:

1) Wei moved and Willey seconded to:

Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136 for 10175 McLaren Place.

Wei's motion carried unanimously with Chao recused; and

2) Chao moved and Moore seconded to:

Adopt Resolution No. 21-002 ordering abatement of public nuisance from weeds or other fire hazards pursuant to provisions of Cupertino Municipal Code Chapter 9.08 and Resolution No. 20-136 for all remaining properties on the list as amended to:

- remove 18880 Pendergast Avenue and 20094 Merritt Drive from the list; and
- the County will remove any properties from the list that were erroneously included due to a data transfer error and provide the City with an updated report before February 2, to be attached to the adopted resolution.

Chao's motion as amended carried unanimously.

15. Subject: Municipal Code Amendments to update existing Mobile Vending regulations, including conforming edits to Titles 5 and 13 in the Municipal Code, adopting new regulations for Sidewalk Vending in compliance with SB 946. Application No(s): MCA-2020-004; Applicant(s): City of Cupertino; Location: citywide. (Continued from December 15).

Recommended Action: Conduct the public hearing and find:

1) Conduct the first reading of Ordinance No. 21-2220: "An Ordinance of the City Council of the City of Cupertino amending Chapter 5.04, Business Licenses Generally, Chapter 5.20, Solicitors, Chapter 5.48, Mobile Vendors, and Chapter 13.04, Parks" to:

A. find that the proposed actions are exempt from CEQA;

B. Adopt regulations to allow sidewalk vending in compliance with SB 946; and

C. Find that the restrictions and requirements contained in the regulations are directly

related to objective health, safety, and/or public welfare concerns; and

2) Provide direction to staff regarding whether to later present draft regulations to allow and/or restrict certain Motorized (Mobile) Vendors consistent with its FY 2020-2021 Work Program Item.

Written communications for this item included a staff presentation.

Economic Development Manager Angela Tsui and Planner Jeff Tsumura gave a presentation.

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

Rick Kitson, on behalf of the Cupertino Chamber of Commerce, supported events being deemed as time limited concessions.

Mayor Paul closed the public hearing.

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2220: "An Ordinance of the City Council of the City of Cupertino amending Chapter 5.04, Business Licenses Generally, Chapter 5.20, Solicitors, Chapter 5.48, Mobile Vendors, and Chapter 13.04, Parks"

Wei moved and Moore seconded to conduct the first reading of Ordinance No. 21-2220 by title only and that the City Clerk's reading would constitute the first reading thereof.

Paul made a friendly amendment to:

A. find that the proposed actions are exempt from CEQA; and

B. Adopt regulations to allow sidewalk vending in compliance with SB 946; and

C. Find that the restrictions and requirements contained in the regulations are directly related to objective health, safety, and/or public welfare concerns. (Wei and Moore accepted the friendly amendment).

Chao added a friendly amendment to:

2) Provide direction to staff regarding whether to later present draft regulations to allow and/or restrict certain Motorized (Mobile) Vendors consistent with its FY 2020-2021 Work Program Item. (Wei accepted and Moore declined the friendly amendment and there was no vote on Chao's friendly amendment).

Wei's motion as amended by Paul carried: Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

Chao moved a separate motion and Willey seconded to add a study session on motorized mobile vendor regulations. Chao's motion carried unanimously.

Motions summary:

1) Wei moved and Moore seconded to conduct the first reading of Ordinance No. 21-2220 by title only and that the City Clerk's reading would constitute the first reading thereof as amended to:

A. find that the proposed actions are exempt from CEQA;

B. Adopt regulations to allow sidewalk vending in compliance with SB 946; and

C. Find that the restrictions and requirements contained in the regulations are directly related to objective health, safety, and/or public welfare concerns.

Wei's motion carried: Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None; and

2) Chao moved and Willey seconded to add a study session on motorized mobile vendor regulations. Chao's motion carried unanimously.

16. Subject: Municipal Code Amendments to adopt lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky. (Application No. MCA-2019-003; Applicant: City of Cupertino; Location: City-wide) (Continued from December 15)

Recommended Action: That the City Council:

1) Find the proposed actions are exempt from CEQA; and

2) Conduct the first reading of Ordinance No. 21-2221 "An Ordinance of the City Council of the City of Cupertino Amending City Code to rename and amend Chapter 19.102: Bird Safe Development Standards to Chapter 19.102: Glass and Lighting Standards and to Amend Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Dark Sky Policies."

Under Postponements, Council continued this item to March 16 (Wei and Chao voting no).

ORDINANCES AND ACTION ITEMS

17. Subject: Approve the updated Commissioner Handbook

Recommended Action: Approve the updated Commissioner Handbook and provide any input

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

Assistant to the City Manager Katy Nomura gave a presentation.

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

Willey moved and Chao seconded to approve the updated Commissioner Handbook.

Chao proposed a modification to City Work Program, page 9: The City Council approves an annual City Work Program to guide the work of the City. **The Commissions will propose recommendations for the Work Program by a certain time. The recommendations from Commissions will be incorporated to the first draft of the City Work Program each year.** ~~Prior to the first draft of the City Work Program each year, staff will reach out to the commissions to ask for recommendations of items to add.~~

Paul made a friendly amendment to include Chao's proposed modification, excluding as specified, "by a certain time."

Chao proposed a second modification to Basis For Your Decision, page 9: If you meet with any individuals outside of the public meeting you should disclose the content of that meeting in the public meeting to again ensure that everybody is aware of the facts and have similar information upon which to base their decision; **this disclosure is required for quasi-judicial matters.**

Paul withdrew his first friendly amendment and made a new friendly amendment to include Chao's second proposed modification regarding quasi-judicial matters. (Willey and Chao accepted the friendly amendment).

Chao proposed a third modification to add a footnote to the second proposed modification regarding quasi-judicial matters.

Paul made a second friendly amendment to add a footnote at the end of the Chao's second proposed modification regarding quasi-judicial matters for more information on quasi-judicial proceedings in the Imposed Restraints document. (Willey and Chao accepted the friendly amendment).

There was no majority support for Chao's initial proposed modification regarding the City Work Program and there was no vote for this amendment.

Willey's motion as amended by Paul to include Chao's second and third modifications carried unanimously.

Final motion:

Willey moved and Chao seconded to approve the updated Commissioner Handbook as amended to include Chao's modifications:

Basis For Your Decision, page 9: If you meet with any individuals outside of the public meeting you should disclose the content of that meeting in the public meeting to again ensure that everybody is aware of the facts and have similar information upon which to base their decision; **this disclosure is required for quasi-judicial matters. (add a footnote for More information on quasi-judicial proceedings can be found in the Imposed Restraints document).**

Willey's motion as amended carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmembers added the following future agenda items.

- Consider balcony modifications for the R1 Ordinance (Moore/Willey)
- Study session on 5G small cell networks (Chao/Willey)
- Under Agenda Item No. 15, added a study session on motorized mobile vending

ADJOURNMENT

At 11:21 p.m., Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk