



**DRAFT MINUTES  
CUPERTINO CITY COUNCIL  
Tuesday, March 16, 2021**

**SPECIAL MEETING**

At 5:45 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: Discussion regarding the County Board of Supervisors consideration of Measure A funded potential acquisition of the shopping center site located at 10591 N. De Anza Blvd. Cupertino, where Outback Steakhouse was located.  
Recommended Action: Discussion regarding the County Board of Supervisors consideration of Measure A funded potential acquisition of the shopping center site located at 10591 N. De Anza Blvd. Cupertino, where Outback Steakhouse was located.

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

County of Santa Clara Office of Supportive Housing Director Consuelo Hernandez gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin was concerned about the accuracy of the current RHNA numbers, the loss of retail, and supported a plan for housing and services for unhoused residents.

Peggy Griffin was concerned about the loss of retail and supported housing and services for low income individuals and people with developmental disabilities.

Lisa Warren was concerned about the loss of retail and the size of the units but supported housing and supportive service configurations best suited for the location.

Housing Commissioner Connie Cunningham (representing self) supported the project, housing for all incomes and abilities, and site proximity to transit and services.

Janet Van Zoeren supported the project and affordable housing, including units and services for people with developmental disabilities.

Mayor Paul closed the public comment period.

Council conducted the discussion regarding the County Board of Supervisors consideration of Measure A funded potential acquisition of the shopping center site located at 10591 N. De Anza Blvd. Cupertino, where Outback Steakhouse was located. There was overall support for extremely low income housing for developmentally disabled individuals.

## **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.

In open session, Mayor Paul reported out on the Special Closed Session Meetings held on March 8, 2021 and March 16, 2021:

For the Special Closed Session Meeting held on March 8, 2021:

Before Council went into closed session, the following individual spoke in open session:

Mary Girodo

1. Subject: Conference with Real Property Negotiators pursuant to Government Code Section 54956.8. Property: 10455 Torre Avenue located at the northwest corner of Torre Avenue and Pacifica Drive (APN 369-40-009). Agency Negotiators: Deborah Feng, City Manager and Angela Tsui, Economic Development Manager. Negotiating Parties: property owners, Phillip G Svalya, et al, in care of Teresa Lorenzen. Under Negotiation: Price and terms of payment for potential acquisition of real property.

Council gave direction to its negotiators regarding price and terms of payment for potential acquisition of real property.

For the Special Closed Session Meeting held at 5:15 p.m. on March 16:

1. Subject: Conference with Real Property Negotiators pursuant to Government Code Section 54956.8. Property: 10455 Torre Avenue located at the northwest corner of Torre Avenue and Pacifica Drive (APN 369-40-009). Agency Negotiators: Deborah Feng, City Manager, Angela Tsui, Economic Development Manager, Mayor Darcy Paul, Patty Steele, Senior Managing Director at Newmark. Negotiating Parties: property owners, Phillip G Svalya, et al, in care of Teresa Lorenzen. Under Negotiation: Price and terms of payment for potential acquisition of real property.

During public comment, the City's Planning Manager reported that (a) at a special Planning Commission meeting held earlier today, the Planning Commission determined that the City's acquisition of the property would be exempt from CEQA, and (b) the Planning Commission found, pursuant to Government Code section 65402(a), that the City's acquisition and use of the property would be in conformance with the City's General Plan.

Council authorized the Mayor to execute a purchase and sale agreement for acquisition of the property in the form presented to the Council. Key terms of the agreement include:

- City acquisition of the 0.48 acre-property including an existing 4,715 sq. ft. office building located across the street from Library Field. The property has 20 parking spaces as well as one ADA accessible space.
- \$4,450,000 purchase price with a \$100,000 deposit, which shall be applied to the purchase price at closing;
- 21-day due diligence period for City to complete its investigations of the property to its satisfaction;
- City assumption of existing leases of the property; and
- Close of escrow within 30 days after the effective date of the purchase agreement.
- Seller has until 3:00 pm tomorrow to sign the purchase agreement.

Members of the public may obtain a copy of the purchase and sale agreement signed by the seller upon request.

The City Council action was taken with the following vote:

YES – Wei, Willey, Moore, Chao, Paul

NO – None

ABSTAIN – None

## **CEREMONIAL MATTERS AND PRESENTATIONS**

1. Subject: Certificates of Recognition for the winner and runner-up of the Drafting Cupertino's Future Essay Contest.  
Recommended Action: Present certificates of recognition for the winner and runner-up for the Drafting Cupertino's Future Essay Contest.

Written Communications for this item included a staff presentation.

Parks and Recreation Coordinator Danny Mestizo gave a presentation.

Mayor Paul presented the certificates of recognition for the winner and runner-up for the Drafting Cupertino's Future Essay Contest.

## **POSTPONEMENTS**

Consideration of a Municipal Code Amendment to adopt changes to Chapter 19.56, Density Bonus, of the Cupertino Municipal Code to allow increased density bonuses for projects providing higher percentages of affordable units in a housing development project. The density bonuses vary by income level. Application No(s): MCA-2021-002; Applicant(s): City of Cupertino; Location: citywide, which was previously noticed to be heard on March 16, was continued to April 6.

Council recessed from 6:57 p.m. to 7:00 p.m.

## **ORAL COMMUNICATIONS**

Rhoda Fry was concerned about air pollution from Lehigh and the Bay Area Air Quality Management District's (BAQMD) current rules and reporting on pollution.

Jennifer Griffin was concerned about ensuring COVID-19 vaccinations for unhoused residents.

Peter Chu supported earlier notifications of proposed small cell sites, educating residents on permitting guidelines, and studying guidelines in other cities. (Submitted written comments).

Jenny Huang was concerned about a notice of violation and demolition requirement for an unpermitted structure in her backyard.

William W was concerned about proposed small cell sites and supported alternate locations, earlier notifications to residents, and studying guidelines in other cities.

Rajul Pandit was concerned about proposed small cell sites and talked about a related petition signed by residents and supported adopting alternative guidelines.

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

Paul moved and Willey seconded to allow for Council comments, which is normally heard at the end of the agenda, to be heard before agenda Item No. 2. The motion carried unanimously.

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

City Manager Deborah Feng reported on updates in the State's Tier assignments, COVID-19 vaccine information, testing opportunities, and case rates.

Council received the City Manager update on emergency response efforts.

3.     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 except for Item Nos. 4, 7, and 11 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

4. Subject: Approve the February 6 City Council minutes  
Recommended Action: Approve the February 6 City Council minutes  
  
Paul moved and Moore seconded to direct staff to delete the section labeled "City Work Plan" and adopt the redlines removing the term "bike rack" from the draft minutes and bring back a clean version for approval at the next meeting. The motion carried unanimously.
5. Subject: Approve the March 2 City Council minutes  
Recommended Action: Approve the March 2 City Council minutes
6. Subject: Set application deadline and interview dates for six terms expiring on the Teen Commission.  
Recommended Action: Set application deadline and interview dates for six terms expiring on the Teen Commission and approve:
  - 1.) Applications due in the City Clerk's office by 4:30 p.m. on Friday, May 7; and
  - 2.) Interviews held beginning at 5:30 p.m. on Monday, May 24 and Tuesday, May 25 (as needed)
7. Subject: Consider Renewal of Friendship City Relationships  
Recommended Action: Approve renewal of Friendship City relationships with Taichung and Yilan  
  
Communications Officer Brian Babcock reviewed the staff report.  
  
City Clerk Kirsten Squarcia played a video of Cupertino Taichung Friendship Cities accomplishments on behalf of Weini Liem. (Distributed written comments).  
  
Wiley moved and Wei seconded to approve the renewal of Friendship City relationships with Taichung and Yilan. The motion carried unanimously.
8. Subject: Accept Accounts Payable for the period ending January 11, 2021  
Recommended Action: Adopt Resolution No. 21-018 accepting Accounts Payable for the period ending January 11, 2021
9. Subject: Accept Accounts Payable for the period ending January 19, 2021  
Recommended Action: Adopt Resolution No. 21-019 accepting Accounts Payable for the period ending January 19, 2021

10. Subject: Accept Accounts Payable for the period ending January 25, 2021  
Recommended Action: Adopt Resolution No. 21-020 accepting Accounts Payable for the period ending January 25, 2021
11. Subject: Accept Accounts Payable for the period ending January 31, 2021  
Recommended Action: Adopt Resolution No. 21-021 accepting Accounts Payable for the period ending January 31, 2021

Council consented to direct staff to attach the accounts payable report containing descriptors for this item and bring back for approval at next meeting.

12. Subject: Approval of a Professional Services Contract between the City of Cupertino and Kimley-Horn and Associates, Inc., for design of the De Anza Boulevard and McClellan Road/Pacifica Drive Intersection Modifications Project.  
Recommended Action: Authorize the City Manager to execute a Professional Services Contract between the City of Cupertino and Kimley-Horn and Associates, Inc., in an amount not-to-exceed \$324,410 for design of the De Anza Boulevard and McClellan Road/Pacifica Drive Intersection Modifications Project.
13. Subject: Approval of a Master Agreement between the City of Cupertino and Mesiti-Miller Engineering, Inc. (MME) to provide civil engineering services on various Capital Improvement Projects.  
Recommended Action: Authorize the City Manager to execute a Master Agreement between the City of Cupertino and MME, Inc., in the amount not to exceed \$300,000 for a term of approximately three years.

## **SECOND READING OF ORDINANCES - None**

## **PUBLIC HEARINGS**

14. Subject: Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004; Applicant: City of Cupertino; Location: City-wide)

Recommended Action: That the City Council conduct the first reading of Ordinance No 21-2225 “An Ordinance of the City Council of the City of Cupertino Amending City Code to add 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 Bird-safe and Dark Sky Policies.” (Attachment A) which includes a finding that the proposed actions are exempt from CEQA.

As an alternative to conducting the first reading, the City Council could conduct the second reading of Ordinance No. 20-2219, the Bird-safe only regulations, to implement previously introduced regulations (Attachment B), which includes a finding that the proposed actions are exempt from CEQA. Subsequently, the Council could conduct the first reading of the Dark Sky regulations, to incorporate dark sky regulations into the Bird-safe only Ordinance (Attachment C), which also includes a finding that the proposed actions are exempt from CEQA.

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

Senior Planner Erick Serrano gave a presentation.

Councilmembers asked questions and made comments.

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

Dashiell Leeds, on behalf of the Sierra Club Loma Prieta Chapter, supported the Bird-safe and Dark Sky ordinance with modifications.

Rick Kitson, on behalf of the Cupertino Chamber of Commerce, supported Bird-safe and Dark Sky ordinance with modifications and revisiting at a future date.

Dr. Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, supported the Bird-safe provisions in the Bird-safe and Dark Sky Ordinance with modifications to regulate light pollution. (Submitted written comments).

Linda Ruthruff (ceded her time to Dr. Shani Kleinhaus)

Margaret Hinebaugh (ceded her time to Dr. Shani Kleinhaus)

Lisa Karpinski (ceded her time to Dr. Shani Kleinhaus)

Bob Hirt (ceded his time to Dr. Shani Kleinhaus)

Jill Halloran (ceded her time to Dr. Shani Kleinhaus)

Guilanna Pendelton (ceded her time to Dr. Shani Kleinhaus)



Carolyn Mackenzie (ceded her time to Dr. Shani Kleinhaus)

Recreation Coordinator Keith Wandry (representing self) supported Bird-safe and Dark Sky ordinance.

Rose Grymes supported the Bird-safe and Dark Sky ordinance with modifications.

Peggy Griffin supported the Bird-safe and Dark Sky ordinance with modifications and requested an updated bird safe zone map. (Distributed written comments).

Lisa Warren supported the Bird-safe and Dark Sky ordinance with modifications and a requirement to review in one year.

Housing Commissioner Connie Cunningham (representing self) supported the Bird-safe and Dark Sky ordinance with modifications.

Mayor Paul closed the public hearing.

Chao moved and Moore seconded to approve the ordinance as recommended by staff with the following amendments:

- Council will review the Ordinance at one year; and

Modifications to the Draft Ordinance:

- 19.102.030 Bird-safe Development Requirements
  - E. Exemptions: The following are exempted from bird-safe treatment regulations of subsection 19.102.030(B):
    - 2. First floor ~~commercial~~ retail storefronts, up to a height of 15'; and,;
- 19.102.040 Outdoor Lighting Requirements
  - B. Outdoor Lighting Standards
    - 2. Illumination Levels
      - a. No exterior light, combination of exterior lights, or activity shall cast light exceeding zero point one (0.1) foot-candle onto an adjacent or nearby
      - d. Parking lots, sidewalks and other areas accessible to pedestrians and automobiles on properties with four or more units, mixed-use development, and non-residential development shall be illuminated with uniform and adequate intensity. Typical standards to achieve uniform and adequate intensity are:

- i. Average horizontal maintained illumination ~~should be between one and three foot-candles, but~~ shall not be more than three foot-candle;
- 19.102.040 Outdoor Lighting Requirements
  - 12. String Lighting Regulations:
    - ~~e.b.~~ Residential Areas: String lighting is permitted subject to the following requirements:
      - i. It shall not illuminate more than fifty (50) percent of the rear yard or 500 sq. ft., whichever is more restrictive.
      - ii. It shall not be visible from the City right-of-way.
      - iii. It shall be used primarily to illuminate patio areas.
      - iv. It shall be extinguished by 11:00 p.m.
    - ~~d.c.~~ Commercial and Mixed-Use Commercial Areas: String lighting may be permitted subject to the following requirements, with approval of the Director of Community Development:

Chao amended her motion for staff to further clarify string lighting for commercial zones as specified in the code and apply more stringent standards to industrial light industrial zones. (Moore declined the amendment and the amendment was not included in the motion).

Council recessed from 9:33 p.m. to 10:43 p.m.

City Clerk Kirsten Squarcia read the title of Ordinance No 21-2225 “An Ordinance of the City Council of the City of Cupertino Amending City Code to add 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 Bird-safe and Dark Sky Policies” as amended.

Chao amended her motion to include the finding that the proposed actions are exempt from CEQA. (Moore accepted the amendment).

The motion carried:

Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

## ORDINANCES AND ACTION ITEMS

15. Subject: Consider adopting a resolution affirming the City's commitment to stand in solidarity with the Asian and Pacific Islander community  
Recommended Action: Adopt Resolution No. 21-022 affirming the City's commitment to stand in solidarity with the Asian and Pacific Islander community

Written communications for this item included emails to Council.

Assistant to the City Manager Katy Nomura reviewed the staff report.

Councilmembers asked questions and made comments.

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

Housing Commissioner Connie Cunningham (representing self) supported adoption of the Resolution.

Mayor Paul closed the public comment period.

Chao moved and Paul seconded to adopt Resolution No. 21-022 affirming the City's commitment to stand in solidarity with the Asian and Pacific Islander community with the following amendments to the 5<sup>th</sup> whereas in the Draft Resolution:

~~WHEREAS, politically charged and culturally insensitive rhetoric referring to COVID-19 as the "Chinese virus" or "kung flu" further encourages racism, prejudice, and hate crimes against the Asian and Pacific Islander community; and~~

WHEREAS, as a community, we should all stand against racism, prejudice, and hate crimes against any member of our community, as this runs counter to our shared democratic values, and as such behavior against one diminishes all of us; and

Paul made a friendly amendment to change "special meeting" to "regular meeting" in the "Passed and Adopted" section in the Draft Resolution. (Chao accepted the friendly amendment).

The motion as amended carried unanimously.

16. Subject: 2020 General Plan Annual Report, including the General Plan Annual Housing Element Progress Report.  
Recommended Action: That the City Council receive the General Plan Annual Review Report, including the General Plan Annual Housing Element Progress Report (Attachments A and B) and provide any input to staff.

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

Planning Manager Piu Gosh and Housing Manager Kerri Heusler gave a presentation.

Councilmembers asked questions and made comments.

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

Peggy Griffin was concerned about the preservation of retail and supported City participation in identifying affordable housing sites.

Housing Commissioner Connie Cunningham (representing self) was concerned about entitlements to build housing that are not being built.

Mayor Paul closed the public comment period.

Wiley moved and Moore seconded to accept the General Plan Annual Review Report, including the General Plan Annual Housing Element Progress Report and requested a comparison chart with neighboring cities of their Regional Housing Needs Allocation (RHNA) process by percentage (%). The motion carried unanimously.

**ORAL COMMUNICATIONS - CONTINUED (As necessary) - None**

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

**ADJOURNMENT**

At 11:40 p.m., Mayor Paul adjourned the meeting.

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Kirsten Squarcia, City Clerk