



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, April 6, 2021**

REGULAR CITY COUNCIL MEETING

At 6:15 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.

CLOSED SESSION

1. Subject: Public Employee Employment (Gov't Code 54957(b)(1)); Title: City Attorney Recruitment.

In open session, Mayor Paul reported out on the Closed Session Meeting:

No reportable action was taken.

RECESS

At 6:59 p.m. Mayor Darcy Paul reconvened 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.

OPEN SESSION

In open session, Mayor Paul reported out on the Special Closed Session Meeting held on March 24, 2021:

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

Rhoda Fry

1. Pursuant to Government Code Section 54956.9(d)(1), conference with Legal Counsel regarding the following existing litigation:
 - a. Huang Family v. City of Cupertino, Santa Clara County Superior Court Case No. 19CV347316.
 - c. City of Arcata et al. v. Pacific Gas & Electric Co., San Francisco County Superior Court Case No. CGC-20-585483

Council discussed with legal counsel these pending cases for which discussion in open session would prejudice the City in the litigation.

No reportable action was taken.

2. Conference with Legal Counsel - Anticipated Litigation. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4) (three potential cases)

Council discussed with legal counsel the potential initiation of litigation for three matters for which discussion in open session would prejudice the City in the potential litigation.

No reportable action was taken on two matters.

For the other matter, Council gave its approval to initiate legal action by a unanimous vote with Mayor Paul, Vice Mayor Chao, and Councilmembers Willey, Moore, and Wei voting yes.

The action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry as provided in Government Code section 54957.1.

CEREMONIAL MATTERS AND PRESENTATIONS – None

POSTPONEMENTS AND ORDERS OF THE DAY

Item No. 7 Fiscal Year (FY) 2021-22 projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by Senate Bill 1 (SB 1) was postponed to May 4.

ORAL COMMUNICATIONS

Jennifer Griffin was concerned about the City of San Jose's proposal regarding single-family housing zoning and the potential impact on adjacent Cupertino neighborhoods.

Rick Kitson, on behalf of the Cupertino Chamber of Commerce, supported the upcoming Thai New Year celebration being held at Pineapple Thai restaurant (Submitted written comments).

Nori supported Memorial Park as an ideal location to build the first magical bridge all-inclusive playground.

Jenny Huang was concerned about a deadline to demolish an unpermitted structure in her backyard and her permit application submittals.

Housing Commissioner Connie Cunningham (representing self) supported Mayor Paul representing the City at the "Stop Asian Hate" rally at Saratoga City Hall.

Steven Scharf supported voting "yes" on the Measure A parcel tax for funding the Cupertino Union School District (CUSD).

REPORTS BY COUNCIL AND STAFF (10 minutes)

2. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements

Councilmember Wei submitted written comments.

Council received brief reports on councilmember activities and brief announcements.

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

City Manager Deborah Feng reported on California's Blueprint for a Safer Economy tier assignments, COVID-19 vaccine information, testing opportunities, and case rates.

Council received the City Manager update on emergency response efforts.

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

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Wei moved and Moore seconded to approve the items on the Consent Calendar except for Item Nos. 6 and 14 which were pulled for discussion and Item No. 7 which was postponed. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the February 6 City Council minutes
Recommended Action: Approve the February 6 City Council minutes
6. Subject: Approve the March 16 City Council minutes
Recommended Action: Approve the March 16 City Council minutes

Moore requested revising the motion for Item No. 16 to include both the permitted and the entitled number of units in a comparison chart with neighboring cities by percentage.

Housing Commissioner Connie Cunningham (representing self) requested revising her comments for Item No. 16 to include the City look beyond the Marina and Hamptons projects to consider other housing locations to meet new RHNA targets.

Moore moved and Wei seconded to direct the City Clerk to review the edits for the March 16, 2021 City Council minutes, as suggested by Connie Cunningham to look at other locations, and by Councilmember Moore to add “entitled” and “permitted” to the number of units in the comparison chart and bring back for approval at the April 20 meeting. The motion carried unanimously.

7. Subject: Fiscal Year (FY) 2021-22 projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by Senate Bill 1 (SB 1)
Recommended Action: Adopt Resolution No. 21-024 to list FY 2021-22 projects proposed to receive RMRA (SB 1) funding.

Under Postponements and Orders of the Day, this item was continued to May 4.

8. Subject: FY 2019-20 Comprehensive Annual Financial Report (CAFR) and related supplemental reports.
Recommended Action: Accept the FY 2019-20 Comprehensive Annual Financial Report (CAFR) and related supplemental reports.
9. 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.
10. Subject: Accept Accounts Payable for the period ending February 08, 2021
Recommended Action: Adopt Resolution No. 21-025 accepting Accounts Payable for the period ending February 08, 2021
11. Subject: Accept Accounts Payable for the period ending February 16, 2021
Recommended Action: Adopt Resolution No. 21-026 accepting Accounts Payable for the period ending February 16, 2021
12. Subject: Accept Accounts Payable for the period ending February 22, 2021
Recommended Action: Adopt Resolution No. 21-027 accepting Accounts Payable for the period ending February 22, 2021
13. Subject: Accept Accounts Payable for the period ending February 28, 2021
Recommended Action: Adopt Resolution No. 21-028 accepting Accounts Payable for the period ending February 28, 2021
14. Subject: Consultant agreement for the Residential and Mixed-Use Residential Design Standards Work Program item for the fiscal year 2020-21 and associated budget modification.
Recommended Action: That the City Council adopt Resolution No. 21-029 (Attachment A) to:
 - 1) Award a consultant agreement for the Residential and Mixed-Use Residential Design Standards Work Program item for the fiscal year 2020-21; and
 - 2) Authorize the City manager to negotiate and execute a consultant agreement with RRM Design Group to provide these services to the City, for an amount not to exceed \$226,757; and
 - 3) Approve a Budget Modification #2021-114 to increase appropriations in 100-71-702 750-090 by \$75,757 for the residential and mixed-use residential design standards for the fiscal year 2020-21 Work Program.

Councilmembers asked questions and made comments.

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

Peggy Griffin requested modifications to Exhibit A including a defined list of stakeholders and list review by the City Council. (Submitted written comments).

Mayor Paul closed the public comment period.

Moore moved and Willey seconded to create an ad hoc subcommittee comprised of two councilmembers to review and approve the stakeholder participants. The motion was not voted on.

Moore amended her motion to include a language amendment to the scope of work to state that the stakeholder interviews will also include residents. (Willey accepted the friendly amendment). The amendment was not voted on.

Willey made a friendly amendment to include the approval of the agreement as recommended by staff. (Moore accepted the friendly amendment). The motion was not voted on.

Chao moved and Wei seconded a substitute motion consistent with Moore's motion except the requirement to have the Subcommittee members present during the stakeholder interviews.

Paul made a friendly amendment to revisit the issue about the Subcommittee members being present at all stakeholder interviews at a later date. (Chao and Wei accepted the friendly amendment).

Chao's motion as amended by Paul carried with Moore and Willey voting no.

Chao moved and Wei seconded to appoint Wei and Willey as the Subcommittee members. The motion carried unanimously.

Final motions summary:

Chao moved and Wei seconded to adopt Resolution No. 21-029 with modifications to:

- 1) Award a consultant agreement for the Residential and Mixed-Use Residential Design Standards Work Program item for the fiscal year 2020-21; and
- 2) Authorize the City manager to negotiate and execute a consultant agreement with RRM Design Group to provide these services to the City, for an amount not to exceed \$226,757; and

3) Approve a Budget Modification #2021-114 to increase appropriations in 100-71-702 750-090 by \$75,757 for the residential and mixed-use residential design standards for the fiscal year 2020-21 Work Program; and

Modifications:

- amend the scope of work to state that the stakeholder interviews will also include residents.
- create an ad hoc subcommittee comprised of two Councilmembers to review and approve the stakeholder participants.
- revisit the issue about the subcommittee members being present at all stakeholder interviews at a later date. (Chao and Wei accepted the friendly amendment).

Chao's motion as amended carried with Moore and Willey voting no.

Chao moved and Wei seconded to comprise the subcommittee members of Wei and Willey. The motion carried unanimously.

Council recessed from 9:06 p.m. to 9:12 p.m.

15. Subject: Authorization of a Sixth Amendment to Agreement 15-206 between the City of Cupertino and Professional Turf Management, extending the contract for one year and resulting in \$205,200 in new turf maintenance related expenses for FY 2021-22.

Recommended Action: Approve the Sixth Amendment of Agreement 15-206 between the City of Cupertino and Professional Turf Management, extending the contract for one year and resulting in \$205,200 in new turf maintenance related expenses for FY 2021-22.

Approved the Sixth Amendment of Agreement 15-206 between the City of Cupertino and Professional Turf Management, extending the contract for one year and resulting in \$205,200 in new turf maintenance related expenses for FY 2021-22.

SECOND READING OF ORDINANCES

16. 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 second reading and enact 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.

Written communications for this item included emails to Council.

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

Rick Kitson, on behalf of the Cupertino Chamber of Commerce, supported the Bird-safe and Dark Sky Ordinance.

Lisa Warren was concerned about minimizing light reflection and glare on buildings and supported the Bird-safe and Dark Sky Ordinance. (Submitted written comments).

Dr. Shani Kleinhaus, on behalf of the Santa Clara Valley Audubon Society, supported the Bird-safe and Dark Sky Ordinance.

Housing Commissioner Connie Cunningham (representing self) supported the Bird-safe and Dark Sky Ordinance. (Submitted written comments).

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

Mayor Paul closed the public hearing.

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”

Wei moved and Willey seconded to read Ordinance No. 21-2225 by title only, and that the City Clerk's reading constitute the second reading thereof; and to enact Ordinance No. 21-2225. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

PUBLIC HEARINGS

17. Subject: Consider whether to authorize the formal submission and processing of a General Plan Amendment Authorization for a change to the Land Use Designation from Low Density (1-5 DU/Ac.) to Low/ Medium Density (5-10 DU/Ac.), which would allow construction of four small lot single family homes where one single family home currently exists. Applicant(s): Homestead Homes; Application No(s): GPAAuth-2020-001; Location: 19820 Homestead Road APN# 316-04-064
Recommended Action: That the City Council conduct the public hearing and:
1) Find that the proposed application is exempt from CEQA; and
2) Adopt Resolution No. 21-030 approving the request for a General Plan Amendment; or deny the request for a General Plan Amendment.

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

Senior Planner Gian Martire gave a presentation.

Michael Shwe, on behalf of the owner, and Project Architect Pratima Shah with Bellomo Architects gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin was concerned about parking for Accessory Dwelling Units (ADUs), no second story setbacks, building aesthetics, and proposed SB 9 potential upzoning.

Jean Bedord supported authorizing the General Plan Amendment.

Peggy Griffin (Submitted written comments) supported requiring affordable housing and voiding approval if sold, and was concerned about ADU's, parking, and upzoning.

Planning Commissioner Steven Scharf (representing self) was concerned about adding ADU's and splitting parcels, no community benefits and no affordable housing.

Mayor Paul closed the public hearing.

Wei moved and Chao seconded to:

- 1) Find that the proposed application is exempt from CEQA; and
- 2) Adopt Resolution No. 21-030 approving the request to submit an application for a General Plan Amendment.

This item was not voted on.

Wiley made a friendly amendment for the applicant to come back in 30 days for clarifications, provide notice to the neighbors according to the City's requirements, and require the surface that abuts adjacent houses to conform with R1 requirements. (Wei and Chao did not accept the friendly amendment and the item was not voted on).

Chao made a friendly amendment to authorize the General Plan Amendment to proceed and when the item returns, require a 12' setback on the second floor and a 9' setback on the east border, a shadow study, staff to look into reasonably noticing the neighbors, and include buffering and landscaping. (Wei accepted the friendly amendment). This amendment was not voted on.

Final motion:

Paul moved and Moore seconded a substitute motion for the applicant to come back within 30 days and in consideration of Council's comments, with a revised proposal emphasizing the Below Mark Rate (BMR) aspect and community benefits relating to the BMR housing impact.

Council's comments:

- require the homes adjacent to the single-family residents have a 12' setback on the second floor and a 9' setback on the east border
- require a shadow study
- staff to look into reasonably noticing the neighbors
- include buffering and landscaping

The motion carried unanimously.

18. Subject: Fiscal Year (FY) 2021-22 Community Development Block Grant (CDBG) Program and Below Market Rate (BMR) Affordable Housing Fund (AHF) funding allocations.
Recommended Action: 1) Adopt Resolution No. 21-031 recommending the FY 2021-22 CDBG and BMR AHF funding allocations.
2) Authorize the City Manager to negotiate and execute FY 2021-22 CDBG and BMR AHF funding agreements.

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

Housing Manager Kerri Heusler gave a presentation.

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

Funding applicant and Westport Cupertino Project owner Mark Tersini and Mike Kelly with The Pacific Companies provided an overview of the project financing.

Mayor Paul closed the public hearing.

Councilmembers asked questions and made comments.

Moore moved and Wei seconded to:

- 1) Adopt Resolution No. 21-031 recommending the FY 2021-22 CDBG and BMR AHF funding allocations.
- 2) Authorize the City Manager to negotiate and execute FY 2021-22 CDBG and BMR AHF funding agreements.

The motion carried unanimously.

Paul moved and Moore seconded to continue the remainder of the agenda to April 20. The motion carried unanimously.

19. Subject: Consider amendments to Cupertino Municipal Code Sections 19.56.030A (Table 19.56.030) and 19.56.030F (Density Bonus Ordinance) to incentivize the development of affordable housing by allowing for density bonuses of up to 40 percent (Application No: MCA-2021-002; Applicant: City of Cupertino; Location: Citywide).
20. Recommended Action: That the City Council conduct the first reading of Ordinance No. 21-2226, "An Ordinance of the City Council of the City of Cupertino Amending Cupertino Municipal Code Section 19.56.030A (Table 19.56.030) and 19.56.030F (Density Bonus Ordinance) to Incentivize the Development of Affordable Housing by Allowing for Density Bonuses of up to 40 Percent," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Council continued this item to April 20.

21. Subject: Consideration of Municipal Code Amendments to the Cupertino Municipal Code, Chapter 10.90, expanding existing policies to reduce exposure to secondhand smoke, including in multi-unit housing, entryways, public events, service areas, and outdoor worksites.

Recommended Action: 1. Reintroduce with amendments and conduct the first reading of Ordinance No. 21-2227: "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas," which adds setback requirements for designated smoking areas and includes detached ADUs and JADUs in the regulations; or

2. Conduct the second reading and enact Ordinance No. 21-2224 "An Ordinance of the City Council of the City of Cupertino amending City Code Chapter 10.90 of Title 10 (Public Peace, Safety, and Morals) to prohibit smoking in multi-unit housing and certain outdoor areas."

Council continued this item to April 20.

ORDINANCES AND ACTION ITEMS - None

ORAL COMMUNICATIONS - CONTINUED - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

This item was not heard.

ADJOURNMENT

At 12:02 a.m. on Wednesday, April 7, Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk