



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, April 20, 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 the City of Cupertino's Permitting Guidelines for Small Cell Facilities within the Public Right-of-Way.
Recommended Action: Conduct a Study Session on the Permitting Guidelines for Small Cellular Facilities in the Public Right-of-Way, Provide Input, and Consider Recommending that an Ordinance Regulating Small Cell Installation be Prepared for Adoption.

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

Assistant Director/City Engineer Chad Mosley gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin supported public education on the rollout, and was concerned about colocation issues with other vendors, and the technology life cycle.

Russell Hancock, on behalf of Joint Venture Silicon Valley, supported telecommunications infrastructure and broadband communications connectivity.

David Witkowski, on behalf of Joint Venture Silicon Valley, supported cellular communications coverage for both economic development and public safety.

Cindy Woo supported 100' setbacks and provisional three-year permits for residential zones and 500' distance separation between cell towers.

Bicycle Pedestrian Commissioner Muni Madhhipatla (representing self) opposed adjacent poles and supported 100' setbacks for schools and addressing resident concerns.

Rajul Pandit supported passing an ordinance for 100' minimum distance from residences and three-year provisional permits. (Submitted written comments)

Peter Chu supported transparency and full disclosure, reconsidering cell site distances apart and setbacks, and looking at other city guidelines. (Submitted written comments).

Jeonghee Yi was concerned about radio frequency related health effects and supported 100' setbacks from residences.

Venkat Ranganathan was concerned about planning management, signal measurement, noise pollution, and the public notification process.

Alex Leupp, representing Verizon, supported wireless communications infrastructure for mobile connectivity and gigabit speed internet service to homes and small businesses.

William W supported assessing quality of life with deployment and considering rules in other cities, setback requirements, aesthetic impacts, and accountability in safety issues.

Dinyar Dastoor supported defining a minimum distance from poles, transparency in the guideline determination process, and listening to resident concerns.

Paul Albritton, outside counsel for Verizon, talked about regional regulations of wireless networks and limits to local authority, and legal challenges in other jurisdictions.

Tito Das supported striking a balance between resident concerns and regulatory requirements and exploring exceptions for residential setbacks in less dense areas.

Mayor Paul closed the public comment period for the remaining speakers and said he would request a motion under Postponements and Orders of the Day to continue the Special Meeting Study Session into the Regular Meeting.

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: Arbor Day Proclamation
Recommended Action: Authorize the Mayor to Proclaim April 24, 2021 as Arbor Day for 2021, with activities that support efforts to protect or plant trees.

Mayor Paul presented the proclamation proclaiming April 24, 2021 as Arbor Day for 2021, with activities that support efforts to protect or plant trees.

POSTPONEMENTS AND ORDERS OF THE DAY

Willey moved and Moore seconded to:

1. Continue Special Meeting Item 1 Study Session on the City of Cupertino's Permitting Guidelines for Small Cell Facilities within the Public Right-of-Way to be heard prior to the Consent Calendar at the Regular Meeting; and
2. Postpone Item 11 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 and continue the hearing to May 4; and
3. Postpone Item 12 Fiscal Year (FY) 2021-22 Fee Schedule Update and continue the hearing to May 4.

The motion carried unanimously.

ORAL COMMUNICATIONS

Rhoda Fry submitted an email to Council regarding an article about Lehigh Cement from the Los Altos Town Crier and an update on the proposed Water Board fine and landslide.

Jennifer Griffin was concerned about proposed high density housing bill SB 9 which would potentially increase lot splits ministerially and have environmental impacts.

Jean Bedord supported endorsement of the Measure A parcel tax initiative to fund the Cupertino Union School District with voting by May 4. (Submitted written comments)

Lisa Warren supported replacing Target Express at Main Street with another large retailer and restricting parking to patrons of that building.

Peggy Griffin supported Council's proper consideration of housing projects.

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

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 the status of the State's Tier assignments, COVID-19 variant tracking, 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.

As noted under Postponements and Orders of the Day, Council continued the Special Meeting Study Session.

STUDY SESSION – CONTINUED

1. Subject: Study Session on the City of Cupertino's Permitting Guidelines for Small Cell Facilities within the Public Right-of-Way.

Recommended Action: Conduct a Study Session on the Permitting Guidelines for Small Cellular Facilities in the Public Right-of-Way, Provide Input, and Consider Recommending that an Ordinance Regulating Small Cell Installation be Prepared for Adoption.

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

Nori was concerned about the evolution of existing macro and small cell towers and proposed small facilities throughout the City and the long-term health effects.

Peggy Griffin supported exploring ordinances, distinct rules for businesses and residents, and setting a minimum distance from structures. (Submitted written comments).

Lisa Warren was concerned about artificial tree towers limiting tree canopies and supported addressing visual impacts, height limits, and mapping standalone poles.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Chao moved and Willey seconded to add the following suggestions to the implementation guidelines.

- 1. Resolution and regulation
- 2. Consider new poles in commercial sites - (resolve issues with overhead powerline etc.)
 - Cost for new pole versus existing pole
- 3. Duration of permits:
 - 3 years term for category 3 & 4 site to renew in 3 years
 - Duration of permit before construction: at most 6 months to continue construction (cross reference existing direction allowed for encroachment permit). There should be a processing fee for renewal and a monthly fee charged for permitted and not constructed sites after 6 months.
 - (Existing code permit reasonable extensions up to 6 months)

- 4. Finer categories:
 - Category 3 sites for other sites more than 40 feet away
 - Add Category 4 sites for sites within 40 feet of any residential structure => require public meeting and final approval by the planning commission
 - Add Category 5 sites for any sites within 20 feet of any structure => Planning Commission & Council approval
- 5. Transparency for siting analysis: Establish that Category 1, 2, 3 and other alternative sites **with 1000 feet are not feasible**:
 - the applicant should establish that
 - **“that denial of a small cell site in one of those areas deprives a carrier of its rights under federal and state law” (Los Altos case from staff report)**
 - And “provide documentation with their small cell permit application showing that a closer site is the only feasible location that **meets their service needs.**”
- 6. Require master plan if they submitted 10 or more permits within one year
 - “Applicants are strongly encouraged to **include a master plan** which identifies the location of the proposed facility in relation to all existing and potential locations in the city that are **reasonably anticipated for construction within two years of submittal of the application.**” (Los Altos)
- 7. Letter of notification to include the process to expect:
 - A statement that **“The City will act on the application without a public hearing but that any interested person or entity may appeal the City’s decision** directly to the City Manager or his/her designee”; (Campbell Guidelines)
 - A general statement that **the FCC requires the City to take final action on small cell applications within 60 days or 90 days**, depending on the nature of the proposed facility; (Campbell Guidelines)
 - A statement that, **“Appeals shall not be permitted when based solely on the environmental effects from radio frequency emissions** that are compliant with applicable FCC regulations and guidelines” (Campbell Guidelines)

Wiley made a friendly amendment to direct staff to provide answers to Council’s questions when the resolution comes back with questions submitted to the City Clerk by Friday, April 30. (Chao and Wiley accepted the friendly amendment).

Moore made a friendly amendment to also explore an ordinance along with a resolution and guidelines; include stronger aesthetics requirements and the potential of updating fiber optic lines; and direct staff to provide a comparison table of guidelines in other cities including distance to residences and schools and current litigation. (Chao and Willey accepted the friendly amendment).

Wei made a friendly amendment to add that the rollout will be implemented in a sensible/feasible way. (Chao and Willey accepted the friendly amendment).

Chao amended her motion to add consistent standards to playgrounds and schools; all applications should be posted to the website when it is deemed complete; and consider new light pole sites at parks and any other city sites. (Willey and Chao accepted the friendly amendment).

Final Motion:

Chao moved and Willey seconded to direct staff to answer Council's questions and to produce a combination of an Ordinance, Resolution, and/or guidelines per Chao's suggestions with a pallet of options (Paul) and bring back to future meeting date; Council will submit questions to the City Clerk by Friday, April 30; staff will also provide a comparison table of guidelines in other cities including distance to residences and schools and current litigation.

Chao's suggestions:

Suggestions for Sensible, feasible and transparent small cell rollout (Wei)

- 1. Ordinance/Resolution and regulation (Moore)
- 2. Consider new poles in commercial sites or parks or city sites - (resolve issues with overhead powerline etc.)
 - Cost for new pole versus existing poles are comparable
- 3. Duration of permits:
 - 3 years term for category 3 & 4 site to renew in 3 years
 - Duration of permit before construction: ~~at most 6 months~~ at most 90 days to continue construction (cross reference existing direction allowed for encroachment permit). There should be a processing fee for renewal and a monthly fee charged for permitted and not constructed sites after 6 months.
 - (Existing code permit reasonable extensions up to 6 months)

- 4. Finer categories:
 - Category 3 sites for other sites more than 40 feet away
 - Add Category 4 sites for sites within 40 feet of any residential structure => require public meeting and final approval by the planning commission
 - Add Category 5 sites for any sites within 20 feet of any structure => Planning Commission & Council approval
 - Apply consistent standards on playground and schools
- 5. Transparency for siting analysis: Establish that Category 1, 2, 3 and other alternative sites **with 1000 feet are not feasible**:
 - the applicant should establish that
 - **“that denial of a small cell site in one of those areas deprives a carrier of its rights under federal and state law” (Los Altos case from staff report)**
 - And “provide documentation with their small cell permit application showing that a closer site is the only feasible location that **meets their service needs.**”
 - All applications should be posted to the website when it is deemed complete
- 6. Require master plan if they submitted 10 or more permits within one year
 - “Applicants are strongly encouraged to **include a master plan** which identifies the location of the proposed facility in relation to all existing and potential locations in the city that are **reasonably anticipated for construction within two years of submittal of the application.**” (Los Altos)
- 7. Letter of notification to include the process to expect:
 - A statement that **“The City will act on the application without a public hearing but that any interested person or entity may appeal the City’s decision** directly to the City Manager or his/her designee”; (Campbell Guidelines)
 - A general statement that **the FCC requires the City to take final action on small cell applications within 60 days or 90 days**, depending on the nature of the proposed facility; (Campbell Guidelines)
 - A statement that, **“Appeals shall not be permitted when based solely on the environmental effects from radio frequency emissions** that are compliant with applicable FCC regulations and guidelines” (Campbell Guidelines)
- 8. Staff to provide answers to questions when the resolution comes back (Willey)
- 9. Stronger aesthetics requirements and the potential of updating fiber optic lines (Moore)
- 10. Apply consistent standards on playground and schools
- 11. All applications should be posted to the website when it is deemed complete

The amended motion carried unanimously.

Council recessed from 8:40 p.m. to 8:45 p.m.

CONSENT CALENDAR

Wei moved and Moore seconded to approve the items on the Consent Calendar except for Item Nos. 8 and 9 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the March 16 City Council minutes
 Recommended Action: Approve the March 16 City Council minutes
6. Subject: Approve the March 30 City Council minutes
 Recommended Action: Approve the March 30 City Council minutes
7. Subject: Approve the April 6 City Council minutes
 Recommended Action: Approve the April 6 City Council minutes

Written communications for this item included an amended Attachment A – Draft Minutes.

8. Subject: Approve a Semi-Rural Designation, Eliminating the Requirement for Sidewalks on the Eastern Portion of Carmen Road, between Scenic Boulevard and Stevens Creek Boulevard, Pursuant to Ordinance No. 1925.
 Recommended Action: Adopt Resolution No. 21-032 Designating a Portion of Carmen Road as Semi-Rural.

Written communications for this item included emails to Council.

Assistant Director/City Engineer Chad Mosley reviewed the staff report.

Councilmembers asked questions and made comments.

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

Lisa Warren was concerned about light poles being impacted and safety considerations for the proposed Carmen Road Bridge plan.

Peggy Griffin talked about existing rural and semi-rural designated areas and preserving the character of neighborhood. (Submitted written comments).

Bicycle Pedestrian Commissioner Erik Lindskog (representing self) was opposed to removing the option to build sidewalks with the proposed Carmen Road Bridge plan.

Larry Dean was concerned that the neighborhood has many pedestrians and a Safe Routes to School designation and supported sidewalks in the area.

Mayor Paul closed the public comment period.

Council did not Adopt Resolution No. 21-032 Designating a Portion of Carmen Road as Semi-Rural and directed staff that the following information be provided should the item be brought back to Council.

Requested Information:

- Petition property owners on both sides of Carmen Road along this section of road
- Confirm whether the City has the necessary right of way to allow the City to construct sidewalk in the future
- Confirm whether there is adequate drainage along Carmen Road, as specified in the Code
- Confirm whether or not there are concerns regarding Americans with Disabilities Act (ADA) compliance

9. Subject: Proposed amendment to the Professional/Consulting Services Agreement between the City of Cupertino and HdL ECONsolutions of an additional \$40,800 as an extension of the contract terms and conditions to provide supplemental Economic Development (ED) staffing services for the City of Cupertino through the fiscal year ending on June 30, 2021.

Recommended Action: Approve the proposed amendment of an additional \$40,800 to prevent an interruption in economic development staffing services.

Written communications for this item included an email to Council.

Director of Community Development Ben Fu gave a presentation.

Councilmembers asked questions and made comments.

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

Peggy Griffin supported an in-house position instead of a contracted position. (Submitted written comments).

Lisa Warren was concerned about lack of Council oversight for a consultant to replace an employee and a potential overlap of duties during the process.

Gilbert Wong (representing self) supported the City Manager's recommendation for approval of the contract extension.

Mayor Paul closed the public comment period.

Wei moved to approve the proposed amendment of an additional \$40,800 to prevent an interruption in economic development staffing services. There was no second and there was no vote.

Council did not approve the proposed amendment of an additional \$40,800 to prevent an interruption in economic development staffing services and directed staff to bring the item back after providing the following additional requested information.

- History and materials on the original contract services, invoices to date, and salary comparisons
- Scope of work including number of hours and a description of services
- City staff covering Economic Development Manager duties after departure to HdL ECONsolutions
- City fund allocated for Economic Development (ED) staffing services

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS

10. 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).(Continued from April 6)

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.

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

Housing Manager Piu Ghosh gave a presentation.

Councilmembers asked questions and made comments.

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

Neil Park-McClintick was concerned the proposed ordinance would not increase affordability compared to the state law.

Sean Hughes opposed the proposed changes to the Density Bonus Ordinance.

Jennifer Griffin supported the proposed ordinance and retaining local control.

Amy Jasper was concerned the proposed ordinance would not adequately address affordable housing in the City.

J.R. Fruen referred to written comments and raised concern that the Ordinance would not meet HCD's definition of "incentivizing" affordable housing production.

Housing Commissioner Connie Cunningham (representing self) was concerned the ordinance did not increase affordable housing compared to the state and lacked incentives.

Planning Commissioner Steven Scharf (representing self) supported the 40% maximum density bonus in the proposed ordinance.

Lisa Warren supported the proposed ordinance.

Mayor Paul closed the public hearing.

City Clerk Kirsten Squarcia read the title 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.

Chao moved and Willey seconded to conduct the first reading of Ordinance No. 21-2226, as recommended by staff; and direct staff to come back with a potential program amendment that would allow a 50% Density Bonus for higher percentages of BMR housing to be considered with other Density Bonus Ordinance updates or with the Housing Element update. Ayes: Paul, Chao, Moore, and Willey. Noes: Wei. Abstain: None. Absent: None.

Council recessed from 11:15 p.m. to 11:20 p.m.

11. 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. (Continued from April 6)

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, and which includes a finding that the Ordinance is exempt from CEQA; 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," which includes a finding that the Ordinance is exempt from CEQA.

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

12. Subject: Fiscal Year (FY) 2021-22 Fee Schedule Update.

Recommended Action: 1. Adopt Resolution No. 21-033 amending FY 2020-21 Fee Schedule E to add a community garden fee effective April 21, 2021.

2. Adopt Resolution No. 21-034 approving FY 2021-22 Fee Schedules A, B, C, D, and E effective July 1, 2021.

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

ORDINANCES AND ACTION ITEMS

13. Subject: Consider approving the updated Athletic Field Use Policy
Recommended Action: Approve the updated Athletic Field Use Policy and provide any input

Written communications for this item included Athletic Field Use Policy - New Attachment - Current Policy Compared to Proposed Policy, a staff presentation, and emails to Council.

Recreation Supervisor Jenny Koverman gave a presentation.

Councilmembers asked questions and made comments.

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

Sameer Jain supported field use from 10 a.m. to 5 p.m. and on all Sundays, permitting pickup games in the reservation system, and restricting some fields from adult use.

Lauv Aeron supported the Sunday proposal, reconsidering hourly rates for non-profit youth sports, and addressing field usage overlap.

Roshan Kumar supported allowing kids to play on Sundays and limiting usage for pickup games instead of organized games.

Hemant Buch supported more permitted Sundays with pickup games for kids and continuing the current arrangement with a phasing plan for each group.

Prabhu Kuttiyam supported field usage on Sundays, extending times from 10 a.m. to 5 p.m., and prioritizing pickup games and practices for youth sports.

Amy Jasper, representing Cupertino Little League, supported reconsidering the fee increase which will still impact the League.

Mayor Paul closed the public comment period.

Moore moved and Wei seconded to continue the item to May 4 with the public comment period to remain closed. The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- Added a future study session on traffic and transportation in the Steven's Creek Corridor (Willey/Paul).

ADJOURNMENT

At 12:00 a.m. on Wednesday, April 21, Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk