



**DRAFT MINUTES  
CUPERTINO CITY COUNCIL  
Tuesday, May 4, 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 Capital Improvement Programs (CIP): Review of Projects Proposed for Fiscal Year (FY) 21/22.  
Recommended Action: Receive the Report on Projects Proposed for FY 21-22 and Provide Comments.

Written communications for this item included a staff presentation, Amended Attachment C – Proposed FY21-22 CIP Project Table, and emails to Council.

Public Works Director Roger Lee introduced the item and Capital Improvement Programs Manager Susan Michael gave a presentation.

Councilmembers asked questions and made comments.

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

Peggy Griffin supported a Memorial Park Plan and expediting Lawrence-Mitty Park and opposed vehicle charging stations replacing parking spaces at Library/City Hall.

Mayor Paul closed the public comment period.

Council received the report on projects proposed for Fiscal Year (FY) 21/22 and provided the following direction:

- Amend Lawrence Mitty project to include recommended design budget. Want outreach and design to move in parallel as is practical to the annexation process. Move to category 2 or 3.
- Traffic gardens –Consider using those funds to purchase traffic garden pop ups / coordinate space with schools.
- Provide Citywide Park Master Plan information relative to Memorial Park to support proposed work, inform on status of previous park specific plan

## **ADJOURNMENT**

### **REGULAR MEETING**

At 6:46 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 Meeting held on April 29, 2021:

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.
  - b. City of Cupertino v. Jennifer Chang, Santa Clara County Superior Court Case No. 21CV380291Council 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.

Pursuant to Government Code Section 54956.9(d)(4), conference with Legal Counsel regarding initiation of litigation, (two potential cases):

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

No reportable action was taken.

## **CEREMONIAL MATTERS AND PRESENTATIONS**

1. Subject: Proclamation for Public Works Week, May 16-22, 2021  
Recommended Action: Present Proclamation for Public Works Week, May 16-22, 2021

Public Works Director Roger Lee accepted the proclamation for Public Works Week, May 16-22, 2021.

Mayor Paul presented the Proclamation.

2. Subject: Presentation from Midpeninsula Regional Open Space District ("Midpen") Board members Yoriko Kishimoto and Pete Siemens for an introduction to Midpen and to provide an update on activities  
Recommended Action: Receive presentation from Midpeninsula Regional Open Space District ("Midpen") Board members Yoriko Kishimoto and Pete Siemens for an introduction to Midpen and to provide an update on activities

Midpeninsula Regional Open Space District ("Midpen") Board members Yoriko Kishimoto and Pete Siemens gave a presentation for an introduction to Midpen and to provide an update on activities.

Council received the Presentation.

## **POSTPONEMENTS AND ORDERS OF THE DAY**

Wei moved and Willey seconded to reorder the agenda to hear Item No. 14 Consider approving the updated Athletic Field Use Policy before Item No. 13 Consideration of proposed Fiscal Year (FY) 2021-22 Fee Schedule Update. The motion carried unanimously.

## **ORAL COMMUNICATIONS – None**

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

3. 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.

4. 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 vaccination information, testing opportunities, and case rates.

Council received the City Manager update on emergency response efforts.

5. 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 No. 7 which was pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

6. Subject: Approve the April 12 City Council minutes  
Recommended Action: Approve the April 12 City Council minutes
7. Subject: Approve the April 20 City Council minutes  
Recommended Action: Approve the April 20 City Council minutes

Written communications for this item included an email from J.R. Fruen requesting his public comments for Item 10 Density Bonus Ordinance be changed to, "J.R. Fruen referred to written comments and raised concern that the Ordinance would not meet HCD's definition of "incentivizing" affordable housing production."

Paul moved and Moore seconded to make the requested amendment to the Draft Minutes and bring back a clean version for approval at the next meeting. The motion carried unanimously.

8. Subject: Consider Authorizing the City Manager to Execute a Lease Agreement with the Library Joint Powers Authority of Santa Clara County for the Cupertino Library Located at 10800 Torre Avenue, Cupertino, Ca 95014.  
Recommended Action: Authorize the City Manager to Execute a Lease Agreement with the Library Joint Powers Authority of Santa Clara County for the Cupertino Library Located at 10800 Torre Avenue, Cupertino, CA 95014, for a 25-year Term Starting January 1, 2019. (Attachment A).
9. Subject: Consider Fiscal Year 2021-22 projects proposed to receive \$1,170,317 in funding from the Road Maintenance and Rehabilitation Account (RMRA), created by Senate Bill 1 (SB 1).  
Recommended Action: Adopt Resolution No. 21-024 establishing a list of projects proposed to be funded by \$1,170,317 of RMRA (SB1) revenues, estimated to be received in FY 2021-22.
10. Subject: Consideration of Resolution, allowing the City of Cupertino to accept \$177,952 in per capita grant funds from the State of California, to be used for the implementation of a full-size outdoor basketball court.  
Recommended Action: Adopt Resolution No. 21-035, allowing the City of Cupertino to enter into a contract(s) with the State of California to accept \$177,952 in per capita grant funds under Proposition 68, to be used for the implementation of a full-size outdoor basketball court.

## SECOND READING OF ORDINANCES

11. Subject: Consider and act on Ordinance No. 21-2226 "An Ordinance of the City Council of the City of Cupertino 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." Application No(s): MCA-2021-002; Applicant(s): City of Cupertino; Location: citywide  
Recommended Action: Conduct the second reading and enact Ordinance No. 21-2226, "An Ordinance of the City Council of the City of Cupertino 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," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Written communications for this item included an email to Council.

Councilmembers asked questions and made comments.

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

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2226, "An Ordinance of the City Council of the City of Cupertino 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," which includes a finding that adoption of the ordinance is exempt from the California Environmental Quality Act.

Chao moved and Willey seconded to read Ordinance No. 21-2226 by title only, and that the City Clerk's reading constitute the second reading thereof; and to enact the Ordinance. Ayes: Paul, Chao, Moore, and Willey. Noes: Wei. Abstain: None. Absent: None.

## **PUBLIC HEARINGS**

12. 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. (Postponed from April 20)

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.

Assistant to the City Manager Katy Nomura gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin supported ADUs and JADU's to remain smoke-free because of the potential proximity to all property lines.

Mayor Paul closed the public hearing.

City Clerk Kirsten Squarcia read the title 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.

Wei made a friendly amendment to remove JADUs from the regulations. (Moore declined the friendly amendment and it was not included in the motion).

Chao moved and Wei seconded a substitute motion to remove JADUs from the regulations. The motion failed with Moore, Willey, and Paul voting no.

Moore moved and Willey seconded to read Ordinance No. 21-2227 by title only, and that the City Clerk's reading constitute the first reading thereof. Ayes: Paul, Moore, and Willey. Noes: Chao and Wei. None. Abstain: None. Absent: None.

As noted under Postponements and Orders of the Day, Council heard item 14 before Item 13.

- 13. Subject:** Consideration of proposed Fiscal Year (FY) 2021-22 Fee Schedule Update. (Postponed from April 20)

**Recommended Action:** Consider proposed Fiscal Year (FY) 2021-22 Fee Schedule Update.

1. Adopt Resolution No. 21-033 amending FY 2020-21 Fee Schedule E to add a community garden fee effective May 5, 2021.
2. Adopt Resolution No. 21-034 approving FY 2021-22 Fee Schedules A, B, C, D, and E effective July 3, 2021.

Finance Manager Zach Korach gave a presentation.

Councilmembers asked questions and made comments.

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

George Chong, on behalf of Cupertino Little League, supported reconsidering the field use fees and related proposed field use policy changes.

Mayor Paul closed the public hearing.

Paul moved and Wei seconded to:

1. Adopt Resolution No. 21-033 amending FY 2020-21 Fee Schedule E to add a community garden fee effective May 5, 2021; and
2. Adopt Resolution No. 21-034 approving FY 2021-22 Fee Schedules A, B, C, D, and E effective July 3, 2021; and
3. Excepting Schedule E for draft field use fees and adopting field use fees as directed by Council for Item 14 to reduce the field use fee amounts in FY 21-22 by 50%.

The motion carried with Moore voting no.

## **ORDINANCES AND ACTION ITEMS**

- 14.** Subject: Consider approving the updated Athletic Field Use Policy. (Continued from April 20. The public comment has been closed and remains closed).  
Recommended Action: Approve the updated Athletic Field Use Policy and provide any input

Written communications for this item included emails to Council.

Jenny Koverman gave a recap of the staff recommendation and discussion points from the last meeting.

Councilmembers asked questions and made comments.

Moore moved to approve the updated Athletic Field Use Policy with the amendment to direct staff to conduct a review in one year.

Chao made a friendly amendment to delay the increase of fees by one year. (Moore declined the friendly amendment and it was not included in the motion).

Wei made a friendly amendment to extend the field-use times for the two additional Sundays from 10 a.m. to 2 p.m. to 10 a.m. to 4 p.m. (Moore declined the friendly amendment and it was not included in the motion).

Moore's motion did not receive a second and it was not considered.



Chao moved and Wei seconded to approve the updated Athletic Field Use Policy as recommended by staff with the amendment to extend the field use times for the two additional Sundays to 10 a.m. to 4 p.m.

Moore made a friendly amendment to exempt Creekside Park from 10 a.m. to 4 p.m. and to direct staff to conduct a review of the Policy in one year. (Chao declined the Creekside Park exemption and accepted a review in one year).

Chao amended her motion to add a limit of ten Sundays for each site (by either tournaments or individual Sunday field use). (Wei accepted the amendment).

Paul made a friendly amendment for the proposed fees to be phased over two years with a 50% increase in the first year and 100% increase in the second year. (Chao accepted the friendly amendment).

Chao moved and Wei seconded to approve the updated Athletic Field Use Policy per the staff recommendation, as amended.

Amendments:

1. Individual Sunday Field Use allowed from 10 a.m. to 4 p.m.
2. Add a limit of ten Sundays for each site (by either tournaments or individual Sunday field use)
3. Staff to provide an update to Council in one year
4. Fees to be phased over two years with a 50% increase in the first year and 100% increase in the second year

The motion carried with Moore voting no.

15. Subject: Consideration of a City Council summer recess and cancellation of meeting(s).  
Recommended Action: Consider a City Council summer recess and cancel suggested July 6 and/or August 3 meeting(s) or provide direction to staff.

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

Jennifer Griffin opposed canceling consecutive meetings and supported the ability of Council to convene for a special meeting, if necessary.

Mayor Paul closed the public hearing.

Paul moved Wei seconded to cancel the July 6 and August 3 meetings. The motion carried with Moore voting no.

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

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

Council did not hear this item.

**ADJOURNMENT**

At 9:52 p.m. Mayor Paul adjourned the meeting.

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Kirsten Squarcia, City Clerk