DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, May 18, 2021

REGULAR MEETING

At 6:00 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

Council went into closed session at 6:00 p.m. and reconvened in open session at 6:45 p.m. This was a teleconference meeting with no physical location.

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

In open session, Mayor Paul reported on the closed session held at 6:00 p.m.

No reportable action was taken.

At 6:46 p.m. Mayor Darcy Paul reconvened the Regular City Council meeting in open session. 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

CEREMONIAL MATTERS AND PRESENTATIONS - None

POSTPONEMENTS AND ORDERS OF THE DAY – None

ORAL COMMUNICATIONS

Jennifer Griffin was concerned about the number of housing bills introduced in the State Legislature in 2020 and 2021 and the quality of returning high density housing bills.

William W was concerned about the setbacks, aesthetics, and noticing for the proposed small cell installation near his home, and supported alternative locations.

Jean Bedord supported repealing the Density Bonus Ordinance passed on May 4 and was concerned about compliance with state laws and potential litigation. (Submitted written comments).

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 California's Blueprint for a Safer Economy tier assignments, COVID-19 vaccination information, 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.

Mayor Paul opened the public comment for this item and the following people spoke.

Lisa Warren asked about resident participation in the discussions between Councilmember Willey and Verizon concerning proposed small cell locations.

Mayor Paul closed the public comment period.

As noted under Closed Session, Mayor Paul reported on the closed session held at 6:00 p.m.

CONSENT CALENDAR (Items 5-13)

Willey moved and Wei seconded to approve the items on the Consent Calendar except for Item Nos. 7, 8, and 11 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

5. Subject: Approve the April 20 City Council minutes
Recommended Action: Approve the April 20 City Council minutes

6. Subject: Approve the April 27 Joint City Council, Planning Commission, and Housing Commission minutes
Recommended Action: Approve the April 27 Joint City Council, Planning Commission, and Housing Commission minutes

7. Subject: Approve the May 4 City Council minutes
Recommended Action: Approve the May 4 City Council minutes

Councilmember Moore requested a correction to her vote for item 13 Fee Schedule.

Council consented to direct the City Clerk to make any necessary amendments to the draft minutes and bring back for approval at the next meeting.

8. Subject: Approve the May 5 City Council minutes
Recommended Action: Approve the May 5 City Council minutes

Councilmember Moore requested incorporating her prioritization request for a home for victims of domestic violence.

Council consented to direct the City Clerk to make any necessary amendments to the draft minutes and bring back for approval at the next meeting.

9. Subject: Setting a hearing date of June 15, 2021 to declare brush with potential fire hazard a public nuisance and for objections to proposed removal through the Cupertino Brush Abatement Program (Wildland-Urban Interface Fire Area); and consider adopting a resolution declaring properties as having potential fire hazards from brush and authorizing removal.
Recommended Action: Adopt Resolution No. 21-036 declaring properties as having potential fire hazards from brush; and set a hearing date of June 15, 2021 to declare brush with potential fire hazard a public nuisance and to hear objections to proposed removal.

10. Subject: Late submittal of six Teen Commission application letters of recommendation
Recommended Action: Waive late submittal of six Teen Commission application letters of recommendation and direct staff to accept the applications

11. Subject: Award of Design Services Contract for the Stevens Creek Boulevard Class IV Bikeway - Phase 2 Wolfe Road to Highway 85 Project (Project No. 2021-11)
Recommended Action: Authorize the City Manager to Award a Design Services Contract with Pakpour Consulting Group in the Amount of $213,863 for the Stevens Creek Boulevard Class IV Bikeway - Phase 2, Wolfe Road to Highway 85 Project, and Authorize the Director of Public Works to Execute any Necessary Additional Services, up to the Contingency Amount of $17,300 for a Total Authorized Contract Amount of $231,163.

Jennifer Griffin was concerned about the bike barrier implementation and ensuring traffic and pedestrian safety.

Peggy Griffin asked for confirmation of the design and construction phases and was concerned about and traffic and pedestrian safety.

Lisa Warren was concerned about traffic and pedestrian safety with respect to the right turn lane design at Stevens Creek Boulevard and Finch.

Wei moved to authorize the City Manager to award a design services contract per the staff report.

Moore made a friendly amendment to move the recommended action to authorize the City Manager to Award a Design Services Contract with Pakpour Consulting Group in the Amount of $213,863 for the Stevens Creek Boulevard Class IV Bikeway - Phase 2, Wolfe Road to Highway 85 Project, and Authorize the Director of Public Works to Execute any Necessary Additional Services, up to the Contingency Amount of $17,300 for a Total Authorized Contract Amount of $231,163. (Wei accepted the friendly amendment).

The motion as amended carried unanimously.

12. Subject: Accept Treasurer's Investment Report for period ending March 31, 2021
Recommended Action: Accept Treasurer's Investment Report for period ending March 31, 2021

13. Subject: Resolution No. 21-037 approving City Investment Policy
Recommended Action: Adopt Resolution No. 21-037 approving City Investment Policy

SECOND READING OF ORDINANCES

14. Subject: Consider and act on 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"
Recommended Action: Conduct the second reading and enact 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 also 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

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

Jean Bedord opposed applying the Draft Ordinance to single-family homes with attached ADUs (accessory dwelling units).

Jennifer Griffin supported the Draft Ordinance.

Lisa Warren supported the Draft Ordinance.

Mayor Paul closed the public comment period.

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 also 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.

Chao moved and Willey seconded to modify the draft ordinance by removing the language regarding JADUs (junior accessory dwelling units) and second units from the regulation and to conduct the first reading.

Paul moved and Willey seconded a substitute motion to read Ordinance No. 21-2227 by title only, and that the City Clerk's reading constitute the second reading thereof; and to enact the Ordinance.

Willey withdrew his second of the substitute motion.

Moore seconded the substitute motion.

The substitute motion failed. Ayes: Moore and Paul. Noes: Wei, Willey, and Chao. Abstain: None. Absent: None.

Chao modified her motion to delete, "'Multi-unit Residence' also includes single-family homes with an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit" from the definition of Multi-unit Residence; and the modification, "a detached single-family home **with or** without an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit." (Willey accepted the modification).

City Clerk Kirsten Squarcia read the title of Ordinance No. 21-2227 as modified: "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.

Final motion:
Chao moved and Willey seconded to modify the draft ordinance and conduct the first reading of Ordinance No. 21-2227.
Modifications to Draft Ordinance Attachment A, page 2:
I. "Multi-unit Residence" means property containing two or more attached units, including, but not limited to, apartment buildings, condominiums, duplexes and triplexes, attached single-family homes, senior and assisted living facilities, and long-term health care facilities. ~~**"Multi-unit Residence" also includes single-family homes with an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit.**~~ "Multi-unit Residences" do not include the following:

1. a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);
2. a mobile home park;
3. a campground;
4. a marina or port; and
5. a detached single-family home **with or** without an attached or detached accessory dwelling unit, junior accessory dwelling unit, or second unit.

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

Council recessed from 8:36 p.m. to 8:43 p.m.

PUBLIC HEARINGS - None

ORDINANCES AND ACTION ITEMS

15. 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. (Previously heard on April 20)
Recommended Action: Approve the proposed amendment of an additional $40,800 for economic development staffing services through the fiscal year ending on June 30, 2021.

Written communications for this item included a staff presentation.

Community Development Director 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 the City implementing controls to prevent cost overruns and serve notice to HDL for future invoices. (Submitted written comments).

Lisa Warren supported a tighter system for tracking contract hours and preventing cost overruns.

Mayor Paul closed the public comment period.

Wei moved to approve the proposed amendment of an additional $40,800 for economic development staffing services through the fiscal year ending on June 30, 2021. There was no second and the motion died.

Willey moved and Moore seconded to pay the contract overage amount of $14,250. Council did not vote on this motion.

Chao moved and Moore seconded a substitute motion to stop the contract, not pay the contract overage amount of $14,250, and authorize payment up to the limit of the contracted amount; and to direct the City Manager to manage the vacancy until an in-house position is filled.

Chao amended her substitute motion to direct the City Manager to come back with clarification on how contract hours are tracked and paid out. Moore accepted the amendment and requested the City Attorney come back with clarification on the process for authorizing professional services contracts.

Wei made a friendly amendment to bifurcate the initial substitute motion and Chao and Moore's follow-up amendments to the substitute motion. (Chao and Moore accepted the friendly amendment).

Final Motion:
Chao moved and Moore seconded a substitute motion to:
1. Stop the contract, not pay the contract overage amount of $14,250, and authorize payment up to the limit of the contracted amount; and to direct the City Manager to manage the vacancy until an in-house position is filled;
2. Direct the City Manager to come back with clarification on how contract hours are tracked and paid out (Chao); and direct the City Attorney to come back with clarification on the process for authorizing professional services contracts (Moore).
The substitute motion as amended carried unanimously.

Council recessed from 10:03 p.m. to 10:08 pm.

16. Subject: Accept the Third Quarter Financial Report for Fiscal Year 2020-21 and City Work Program and Key Project Update; consider adopting Resolution 21-038 approving Budget Modification #2021-140 increasing appropriations by $787,279 and revenues by $9,552,599; consider approving $2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust.
Recommended Action: 1. Accept the City Manager's Third Quarter Financial Report for FY 2020-21 and City Work Program and Key Project Update and provide any input.
2. Adopt Resolution 21-038 approving Budget Modification #2021-140 increasing appropriations by $787,279 and revenues by $9,552,599.
3. Approve $2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust.

Written communications for this item included a staff presentation.

Director of Administrative Services Kristina Alfaro introduced the item and Finance Manager Zach Korach and Senior Management Analyst Thomas Leung gave a presentation.

Councilmembers asked questions and made comments.

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

Wei moved and Paul seconded to:
1. Accept the City Manager's Third Quarter Financial Reportfor FY 2020-21 and City Work Program and Key Project Update and provide any input.
2. Adopt Resolution 21-038 approving Budget Modification #2021-140 increasing appropriations by $787,279 and revenues by $9,552,599.
3. Approve $2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust.

Paul made a friendly amendment to direct staff to provide information for Item No. 3 on Cupertino's performance compared to other cities regarding the funding of pension liabilities. (Wei accepted the friendly amendment).

The motion as amended carried unanimously.

Motion Summary:

Wei moved and Paul seconded to:

1. Accept the City Manager's Third Quarter Financial Reportfor FY 2020-21 and City Work Program and Key Project Update and provide any input.
2. Adopt Resolution 21-038 approving Budget Modification #2021-140 increasing appropriations by $787,279 and revenues by $9,552,599.
3. Approve $2,000,000 contribution from the General Fund to the City's Section 115 Pension Trust;
4. Direct staff to provide information for Item No. 3 on Cupertino's performance compared to other cities regarding the funding of pension liabilities.

The motion as amended carried unanimously.

STUDY SESSION

17. Subject: Initial Study Session on Fiscal Year (FY) 21-22 Proposed Budget.
Recommended Action: Conduct initial Study Session on Fiscal Year (FY) 21-22 Proposed Budget and provide direction to staff.

Written communications for this item included a staff presentation.

Director of Administrative Services Kristina Alfaro, Finance Manager Zach Korach, and Senior Management Analyst Thomas Leung gave a presentation.

Councilmembers asked questions and made comments.

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

Peggy Griffin requested all sections also be compiled into a single file and for the file names to match the agenda attachments. (Submitted written comments).

Bruce Parsons opposed the salary and benefit allocations for the six new staff positions.

Mayor Paul closed the public comment period.

Paul moved and Moore seconded to direct to staff to provide written responses to the public and Councilmember feedback and questions prior to a follow-up study session.

Chao made a friendly amendment to direct staff to provide information on the cost recovery rate for each of the proposed new staff positions. (Moore accepted the friendly amendment).

The motion as amended carried unanimously.

Council agreed to submit their questions to the City Clerk to compile along with public comment questions.

Motion Summary:
Paul moved and Moore seconded to direct to staff to provide written responses to the public and Councilmember feedback and questions prior to a follow-up study session; and to direct staff to provide information on the cost recovery rate for each of the proposed new staff positions. The motion as amended carried unanimously. Council agreed to submit their questions to the City Clerk to compile along with public comment questions.

18. Subject: Recommendation from the Parks and Recreation Commission to approve funds in the amount of $92,900 for the Fiscal Year (FY) 2021-22 Community Funding Grant Program, annual funding for the Cupertino Historical Society in the amount of $20,000, and approval of final funding amounts for the Community Funding Program, to be included in the Recommended Budget for FY 2021-22
Recommended Action: Consider the recommendation from the Parks and Recreation Commission to approve funds in the amount of $92,900 for the FY 2021-22 Community Funding Grant Program and consider annual funding for the Cupertino Historical Society in the amount of $20,000. Determine and approve final funding amounts for the Community Funding Program, to be included in the Recommended Budget for FY 2021-22; and provide direction to staff

Council consented to table this item to a study session at the beginning of the June 1 meeting.

ORAL COMMUNICATIONS - CONTINUED (As necessary) – None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- Added an agenda item for the Farmers Market currently located at Memorial Park (Willey/Paul)

- Directed staff to append all written comments for Item 18 to June 1 agenda (Chao/Paul)

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

Bruce Parsons supported placing the community grant funding item at beginning of the June 1 agenda.

Lisa Warren requested Council read all public comments submitted for the continued Community Funding Grant Program item before the June meeting.

Gilbert Wong supported allowing the public comment period for the continued Community Funding Grant Program item, as a courtesy for those who waited to speak on the item.

Kiran Varshneya supported ordering the continued Community Funding Grant Program item at the beginning of the June 1 agenda.

Mayor Paul closed the public comment period.

ADJOURNMENT

At 11:59 p.m. Mayor Paul adjourned the meeting.

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Kirsten Squarcia, City Clerk