



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, June 1, 2021**

SPECIAL MEETING

At 5:15 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.

CLOSED SESSION

Council went into closed session at 5:15 p.m. and reconvened in open session at 6:00 p.m. This was a teleconference meeting with no physical location.

1. Subject: Conference with Real Property Negotiators (Government Code Section 54956.8).
Property: Cupertino Municipal Water System. Agency Negotiator: Roger Lee.
Negotiating Parties: City of Cupertino and San Jose Water Company. Under Negotiation:
Terms for City Leased Asset.

In open session after Postponements and Orders of the Day, Mayor Paul reported on the closed session held at 5:15 p.m.

No reportable action was taken.

RECESS

OPEN SESSION

At 6:01 p.m. Mayor Darcy Paul reconvened the Special 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.

STUDY SESSION

2. 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. (Continued from May 18). 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.

Assistant Director of Parks and Recreation Rachelle Sander gave a presentation.

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

Kiran Varshneya-Rohra, Seetha Lakshmi, and Shailendra Jain, on behalf of the Cupertino Library Foundation, supported funding for the Cupertino Library Foundation. (Submitted written comments).

Sharon Blaine, Jennifer Furlong, and Neeraj Mathur, on behalf of the Cupertino Historical Society, supported funding for the Cupertino Historical Society. (Submitted written comments).

Mayor Paul closed the public comment period.

Paul moved to continue this item to the Regular Meeting agenda at a time to be determined under Postponements and Orders of the Day.

Moore made a friendly amendment to continue the item to the upcoming Special Meeting (Budget Study Session). (Paul accepted the friendly amendment).

Paul moved and Moore seconded to continue the item to the June 4 Special Meeting (Budget Study Session) at 6:00 p.m.

Chao made a friendly amendment to complete the public comments and close the public hearing. (Paul and Moore accepted the friendly amendment).

Paul modified his motion to reflect a 6:15 p.m. meeting start time on June 4. (Moore accepted the modification).

Final Motion:

Paul modified his motion to continue the public hearing to the Regular Meeting, for the purposes of concluding the public commentary, at a time to be determined under Postponements and Orders of the Day; and continue the remainder of the meeting to the June 4 Special Meeting (Budget Study Session) at 6:15 p.m., for the purposes of Council deliberation and decisions. (Paul and Moore accepted the friendly amendment). The motion as modified carried unanimously.

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: Proclamation recognizing June as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Pride Month
Recommended Action: Present proclamation recognizing June as LGBTQ Pride Month

Written materials for this item included a presentation.

Ken Yeager, on behalf of BAYMEC Community Foundation, received the proclamation and gave a presentation.

Mayor Paul presented the proclamation recognizing June as LGBTQ Pride Month.

2. Subject: Proclamation recognizing June as Men's Health Month
Recommended Action: Present proclamation recognizing June as Men's Health Month

Brittney Le, on behalf of Men's Health Network (MHN), received the proclamation.

Mayor Paul presented the proclamation recognizing June as Men's Health Month.

3. Subject: Presentation from Women of Silicon Valley (WomenSV)
Recommended Action: Receive presentation from Founder and Executive Director Ruth Darlene on the work and mission of domestic violence non-profit WomenSV

Written materials for this item included a presentation.

Council received the presentation from Founder and Executive Director Ruth Darlene on the work and mission of domestic violence non-profit WomenSV.

POSTPONEMENTS AND ORDERS OF THE DAY

Paul moved and Wei seconded to:

- Provide the closed session meeting reports for June 1, May 24, and May 28 after Postponements and Orders of the Day;
- Reorder the agenda to hear Reports by Council and Staff items 4 and 5 after the closed session meeting reports; and
- Continue the remainder of the public commentary for the Special Meeting Study Session item 2 to the Regular Meeting.

The motion carried unanimously.

In open session, Mayor Paul reported on the Special Closed Session Meetings held at 5:15 p.m. (as noted under Closed Session) and on Monday, May 24 and Friday, May 28.

For the Special Closed Session Meeting held on May 24, 2021:

1. Pursuant to Government Code Section 54956.9(d)(1), conference with Legal Counsel regarding the following existing litigation:
- a. David Wessel and Karen Platt v. City of Cupertino et al., Santa Clara County Superior Court Case No. 20CV369211
 - b. City of Arcata et al. v. Pacific Gas & Electric Co., San Francisco County Superior Court Case No. CGC-20-585483

- c. Huang Family v. City of Cupertino, Santa Clara County Superior Court Case No. 19CV347316.

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) (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.

For the Special Closed Session Meeting held on May 28, 2021:

1. Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) (one potential case)

Council discussed with legal counsel a threat of litigation for which discussion in open session would prejudice the City in the potential 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) (one potential case)

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

No reportable action was taken.

3. Public Employee Appointment/Public Employment (Government Code section 54957(b)(1)); Title: (City Manager)

No reportable action was taken.

City Manager Deborah Feng addressed her recent retirement announcement. Councilmembers recognized City Manager Feng for her service to the City.

SPECIAL MEETING STUDY SESSION – CONTINUED

Council continued the Special Meeting Study Session item 2 for the purposes of hearing public comment.

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

Bruce Parsons supported maintaining the Historical Society funding as a budget line item and supported a community-wide plan for the Snyder-Hammond House.

Lisa Warren was concerned about enforcement of the maintenance and security provisions in the lease for the Snyder-Hammond House and supported further investigation for funding.

Orrin Mahoney talked about supporting upcoming Cupertino Rotary events.

Mayor Paul closed the public comment period.

ORAL COMMUNICATIONS

Ankita Goyal supported the Dog Off-Leash Area (DOLA) at Jollyman Park and adding a future City Council agenda item to approve a permanent DOLA.

Ruchika Varanasi supported the DOLA at Jollyman Park, prioritizing making the trial permanent, and talked about the benefits for the community.

Mary Ellen Chell supported City efforts to address homelessness, the DOLA at Jollyman Park, and adding a future City Council agenda item to approve a permanent DOLA.

Lauren Jacobs, on behalf of Silicon Valley Gun Violence Prevention Organization, supported agendizing and adopting the Santa Clara County Safe Storage of Firearms Ordinance.

Louise Saadati, on behalf of the DOLA Leadership Group, supported the DOLA and adding a future City Council agenda item for approval of a permanent status.

Jean Bedord read an email on behalf of Connie Cunningham supporting gun safety and the adoption of a safe storage of firearms ordinance.

Steve Jacobs supported Council adoption of a safe storage of firearms ordinance to help prevent unintentional deaths of children and teen suicides.

Manajaya Hegde supported the DOLA at Jollyman Park and adding an item for approval of permanent status on a future Council agenda.

Kelly Traver, on behalf of Cupertino Moms Demand Action, supported reducing gun violence, improving gun safety, and adopting a safe storage of firearms ordinance.

Deepa Mahendraker supported the DOLA at Jollyman Park and adding a Council agenda item for the approval of a permanent status.

John Selling supported Council adoption of a safe storage of firearms ordinance like many surrounding cities and educating children on the dangers of firearms.

Rhoda Fry was concerned about the adequacy of Lehigh Cement's bond to fund reclaiming the land for a secondary use and supported signage for the Quarry expansion proposals.

Viggi34 talked about a restraining order issued against Charlene Lee and her police report.

Danessa Techmanski was concerned about the maintenance of the Snyder-Hammond House and the departure of the former property caretaker/tenant.

Charlene Lee was concerned about a restraining order issued against her and her police report.

H Family was concerned about current litigation with the City regarding an illegal structure in her backyard.

Council recessed from 8:17 p.m. to 8:23 p.m.

REPORTS BY COUNCIL AND STAFF (10 minutes)

4. 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.

5. 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 and testing information, and case rates.

Council received the City Manager update on emergency response efforts.

Councilmember Willey re-joined the meeting after the Council recess.

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

Mayor Paul reopened Brief reports on councilmember activities and brief announcements and Councilmember Willey spoke. Mayor Paul closed Brief reports on councilmember activities and brief announcements.

Councilmembers highlighted the activities of their various committees.

7. Subject: The 2021 Annual Pavement Report
 Recommended Action: Receive the Annual Pavement Report

Written communications for this item included a staff presentation.

Public Works Project Manager Jo Anne Johnson gave a presentation.

Council received the Annual Pavement Report.

CONSENT CALENDAR (Items 8-14)

Moore moved and Chao seconded to approve the items on the Consent Calendar except for Item Nos. 11 and 12 which were pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

8. Subject: Approve the May 4 City Council minutes
 Recommended Action: Approve the May 4 City Council minutes
9. Subject: Approve the May 5 City Council minutes
 Recommended Action: Approve the May 5 City Council minutes
10. Subject: Approve the May 11 Joint City Council, Planning Commission, and Housing Commission minutes
 Recommended Action: Approve the May 11 Joint City Council, Planning Commission, and Housing Commission minutes

11. Subject: Approve the May 18 City Council minutes
Recommended Action: Approve the May 18 City Council minutes

Written Communications for this item included Amended Attachment A – Draft Minutes (redline).

Paul moved and Wei seconded for the City Clerk to make the correction as noted in the Amended Attachment A – Draft Minutes (redline) and bring back a clean version for Council approval at the June 15 meeting. The motion carried unanimously.

12. Subject: Consider for Approval Mayor's requested changes to Council Agenda-Review schedule.
Recommended Action: Approve Mayor's requested changes to Council's Agenda Review schedule.

Mayor Paul reviewed the requested changes to Council Agenda-Review schedule.

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

Peggy Griffin supported the requested changes to Council Agenda-Review schedule.

Mayor Paul closed the public comment period.

Moore moved and Wei seconded to approve the Mayor's requested changes to Council's Agenda Review schedule with an amendment to request staff work to accommodate Councilmember's requesting agenda review meetings on Thursday's. The motion carried unanimously.

13. Subject: Consideration of Award of Construction Contract for the 2021 Pavement Maintenance Phase 1 - Project No. 2021-105
Recommended Action: Award a Construction Contract for 2021 Pavement Maintenance Phase 1 Project, Authorize the City Manager to Execute a Contract in the Amount of \$1,824,276.55 with O'Grady Paving, Inc. and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$182,428, for a Total Authorized Contract Amount of \$2,006,704.55.

14. Subject: City of Cupertino's participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA)
Recommended Action: Adopt Resolution No. 21-039 extending the City of Cupertino's participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA)

SECOND READING OF ORDINANCES

15. 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," with multi-unit housing/residence defined for the purposes of this Ordinance to include attached single family homes and other property containing two or more attached units.
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 includes a finding that the Ordinance is exempt from CEQA

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

Carol Baker, on behalf of Tobacco-Free Coalition of Santa Clara County and American Cancer Society Cancer Action Network, supported adoption of the Ordinance.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

City Clerk Kirsten Squarcia read the title of Ordinance No. 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 includes a finding that the Ordinance is exempt from CEQA

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

PUBLIC HEARINGS

16. Subject: Consider Approval of the Renewal with no Increase of the 1992 Storm Drain Fee and the 2019 Clean Water and Storm Protection Fee and an Increase in the Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes.

Recommended Action: Consider Adoption and Approval of:

1. Resolution No. 21-040 (Attachment A) Approving the Renewal and Collection of the 1992 Storm Drain Fee with no Increase in Rates for Fiscal Year (FY) 2021-2022;
2. Resolution No. 21-041 (Attachment B) Approving the Renewal and Collection of the 2019 Clean Water and Storm Protection Fee with No Increase in Rates for FY 2021-2022; and
3. The Increase to an Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes from \$3 Per Square Foot with a \$900 Maximum to \$3 Per Square Foot with a Maximum of \$1,800.

Written communications for this item included a staff presentation.

Director of Public Works Roger Lee introduced the item and Environmental Programs Manager Ursula Syrova gave a presentation.

Councilmembers asked questions and made comments.

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

Wei moved and Moore seconded to:

1. Resolution No. 21-040 (Attachment A) Approving the Renewal and Collection of the 1992 Storm Drain Fee with no Increase in Rates for Fiscal Year (FY) 2021-2022;
2. Resolution No. 21-041 (Attachment B) Approving the Renewal and Collection of the 2019 Clean Water and Storm Protection Fee with No Increase in Rates for FY 2021-2022; and
3. The Increase to an Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes from \$3 Per Square Foot with a \$900 Maximum to \$3 Per Square Foot with a Maximum of \$1,800.

The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

17. Subject: Consider adopting a position on Senate Bill 612 (Portantino) Electrical Corporations and Other Load-Serving Entities: Allocation of Legacy Resources, Senate Bill 792 (Glazer) Sales and Use Tax: Retailers: Reporting, and Senate Bill 780 (Cortese) Local Finance: Public Investment Authorities
- Recommended Action: 1) Adopt a support position on SB 612,
2) Adopt an oppose position on SB 792,
3) Adopt a support position on SB 780, and
4) Authorize the Mayor to send position letters to the state legislature.

Written communications for this item included a consultant presentation.

Assistant to the City Manager Katy Nomura introduced Legislative Consultant Casey Elliot with Townsend Public Affairs, who gave a presentation.

Bena Chang yielded her time to Melicia Charles.

Jennifer Griffin was concerned that Senate Bill 612 would trivialize decisions made by the PUC (Public Utilities Commission) and was undecided on Senate Bill 792.

DaVina Flemings, on behalf of PGE, opposed Senate Bill 612 (Portantino).

Melicia Charles, on behalf of Silicon Valley Clean Energy, supported Senate Bill 612 (Portantino). (Submitted written comments).

Moore moved and Wei seconded to:

- 1) Adopt a support position on SB 612,
- 2) Adopt an oppose position on SB 792,
- 3) Adopt a support position on SB 780, and
- 4) Authorize the Mayor to send position letters to the state legislature.

Chao made a friendly amendment to vote on items 1 through 4 separately. (Moore and Wei accepted the friendly amendment).

Final Motions:

Moore moved and Wei seconded to:

- 1) Adopt a support position on SB 612,
The motion for Item 1 carried with Chao abstaining;
- 2) Adopt an oppose position on SB 792,
The motion for Item 2 carried with Chao abstaining;

- 3) Adopt a support position on SB 780, and
The motion for Item 3 carried unanimously;
- 4) Authorize the Mayor to send position letters to the state legislature.
The motion for Item 4 carried unanimously.

18. Subject: Consideration of 1) Authorization of Award of Construction Contract for Privacy Fencing; 2) Request to Increase Regnart Creek Trail Privacy Fencing Project Budget Allocation; 3) Request to Increase Budget Allocation for Regnart Creek Trail Project Contingency; 4) Request to Increase Budget Allocation for Regnart Creek Trail and Regnart Creek Fencing Design Services; and 5) Request to Execute a First Amendment to the Master Agreement Between the City and CSG Consultants, Incorporated to Increase Agreement Amount.

Recommended Action: Recommend that the City Council:

- 1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
- 2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
- 3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
- 4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
- 5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

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

Rhoda Fry supported waiting for lumber prices to drop.

Jennifer Shearin opposed increasing the budget and supported funding alternatives. (Submitted written comments).

Seema Lindskog opposed increasing the budget and supported funding alternatives. (Submitted written comments).

Mayor Paul closed the public comment period.

Wei moved and Willey seconded to:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

Chao made a substitute motion to continue this item to June 15 for the City Attorney and staff to conduct research on the suggestion of the members of public to create a private fund for the fencing cost. There was no second and the substitute motion died.

Wei modified her motion to add a privacy fence reimbursement amount of \$100 per foot.

Wei's main motion as modified carried unanimously.

Final Motion:

Wei moved and Willey seconded to:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.
6. Add a privacy fence reimbursement amount of \$100 per foot.

The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

- Added an agenda item for an update on the Dog Off-Leash Area Trial - DOLA (Chao/Wei)

ADJOURNMENT

At 11:44 p.m., Mayor Paul adjourned the meeting.

Kirsten Squarcia, City Clerk