



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, February 19, 2019**

SPECIAL CITY COUNCIL MEETING

At 5:30 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the City Hall Conference Room A, 10300 Torre Avenue.

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

CLOSED SESSION

Council went into closed session and reconvened in open session at 6:45 p.m. in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue for the Regular Meeting.

1. Subject: Conference with Legal Counsel - Pending Litigation; (Government Code section 54956.9(d)):
 - a. *Friends of Better Cupertino, et al. v. City of Cupertino* (SB 35 Vallco Project); Santa Clara County Superior Court, Case No. 18CV330190
 - b. *Friends of Better Cupertino, et al. v. City of Cupertino* (Vallco Specific Plan - 2 Ordinances); Santa Clara County Superior Court, Case No. 18CV337015
 - c. *Committee Supporting Cupertino Citizens' Sensible Growth Initiative, et al v. Schmidt, et al.* (Measure C); Santa Clara County Superior Court Case No. 16CV296322

The following individual spoke in open session before Council went into closed session:

Jim Moore (Cupertino resident) – distributed written comments

Written communications received for the closed session included an email to Council.

Mayor Scharf reported that the Council met in closed session to discuss with legal counsel the following pending litigation for which discussion in open session would prejudice the City in the litigation.

With respect to these items, Mayor Scharf reported that Vice Mayor Chao did not attend the discussions out of an abundance of caution, pending advice from the FPPC regarding a potential financial conflict. This concerns the location of the Vice Mayor's residence, which is about 939 feet away from the Vallco property line.

With respect to Item c, Mayor Scharf reported that he recused himself from the discussions of the Measure C litigation on the basis that he was a named plaintiff in the litigation. For the benefit of the public, he noted that he is no longer a party to the litigation.

With respect to items a and b, Mayor Scharf reported that legal counsel provided an update on the litigation and no reportable action was taken at this time in closed session.

With respect to item c, for which he recused himself, Mayor Scharf reported that the City Attorney informed him that legal counsel provided an update on the litigation and that no reportable action was taken at this time in closed session.

2. Subject: Conference with Legal Counsel - Anticipated Litigation; (Government Code Section 54956.9(d)):
 - a. Significant Exposure to Litigation (Government Code Section 54956.9(d)(2)) (1 matter)
 - b. Possible Initiation of Litigation (Government Code Section 54956.9(d)(4)) (1 matter)

Mayor Scharf reported that with respect to these items, Vice Mayor Chao did not attend the discussions out of an abundance of caution, pending advice from the FPPC regarding a potential financial conflict stemming from the location of the Vice Mayor's residence.

Mayor Scharf reported that the Council discussed with legal counsel the letter of complaint received from the Nielsen law firm, attorneys for Vallco Property Owners, challenging the validity of the referendum petition challenging the General Plan Amendment resolution for the Vallco Specific Plan. No final reportable action was taken.

Mayor Scharf reported that the Council discussed the possible initiation of litigation in one matter related to the referendum petition challenging the General Plan Amendment resolution for the Vallco Specific Plan. No reportable action was taken. This item is also on tonight's open session agenda item as item 12.

In open session, Mayor Scharf also reported out from the February 15 closed session held at 5:30 p.m.:

Subject: Conference with Legal Counsel - Anticipated Litigation; Initiation of litigation pursuant to Government Code Section 54956.9(d)(4): One potential case:

The following individual spoke in open session before Council went into closed session:

Barry Chang (Cupertino resident)

Mayor Scharf reported that the Council discussed possible initiation of litigation in one matter. No reportable action was taken.

In open session, Mayor Scharf also reported out from the February 19 closed session held at 12:00 p.m.:

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

Mayor Scharf reported that the Council discussed the recruitment of a City Manager. No reportable action was taken.

ADJOURNMENT

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Steven Scharf called the Regular City Council meeting in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS - None

POSTPONEMENTS - None

ORAL COMMUNICATIONS

Gary Sepulveda (Cupertino resident) talked about Regnart Creek Trail.

Heather Dean (Cupertino resident) talked about traffic issues on highway 85, Council protocol regarding mayoral rotation, and affordable housing.

Ian Greensides (Cupertino resident) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Muni Madhhipatla (Cupertino resident) talked about Lehigh and the referendum.

Connie Cunningham (Cupertino resident) thanked Council and staff for using bird safe design and materials on the Vallco design process and encouraged use for all future projects.

Ilango Ganga (Cupertino resident) talked about Regnart Creek Trail and the referendum.

Sudha Kasamsetty (Cupertino resident and Cupertino Fine Arts Commissioner) talked about improving the ambiance and signage at City Hall to reflect Cupertino's multi-culturalism and gave some examples.

Krithika (Cupertino resident) talked about the referendum.

Marie Liu (Cupertino resident) on behalf of Cupertino for All talked about affordable housing.

Jean Bedord (Cupertino resident) talked about the recent Council appointments to City commissions.

Ra Hopkins (Sunnyvale resident) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Richard Mehlinger (Sunnyvale resident) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Benaifer Dastoor talked about the Regnart Creek Trail (distributed written comments).

Linda Wyckoff gave her time to Benaifer Dastoor.

Phyllis Dickstein talked about the referendum.

Pete Heller (Cupertino resident) talked about transparency regarding closed session vs. open session Council meetings.

John Schmidt (Sunnyvale resident) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Ben Vo (San Jose resident and De Anza College student) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Martin Pyre (Sunnyvale resident) talked about the Mayor's comment regarding building a wall around Cupertino and affordable housing.

Jim Moore (Cupertino resident) talked about the positive notes in the State of the City address and recent commission interviews.

Kitty Moore (Cupertino resident) talked about study sessions needed regarding employee/housing balance and legislative actions.

Danessa Techmanski (Cupertino resident) talked about the referendum.

Rick Ghallman (Cupertino resident) talked about Vallco and SB35.

Jane Wang (Cupertino resident) talked about an abatement letter she received regarding a shed in her backyard.

CONSENT CALENDAR

Sinks moved and Scharf seconded to approve the items on the Consent Calendar with an amendment to item number 4, and with the exception of item number 6 which was pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

1. Subject: Approve the January 28 City Council minutes (commission interviews)
Recommended Action: Approve the January 28 City Council minutes (commission interviews)
2. Subject: Approve the January 29 City Council minutes (commission interviews)
Recommended Action: Approve the January 28 (Clerk note: should read January 29) City Council minutes (commission interviews)
3. Subject: Approve the February 2 (Council Priority Setting Session) City Council Minutes
Recommended Action: Approve the February 2 (Council Priority Setting Session) City Council Minutes
4. Subject: Approve the February 5 City Council minutes
Recommended Action: Approve the February 5 City Council minutes

Written communications for this item included amended minutes.

5. Subject: Coffee Society Lease Agreement, 10800 Torre Avenue, Cupertino, CA 95014
Recommended Action: Authorize the City Manager to execute a five-year lease agreement with the Coffee Society, 10800 Torre Avenue, Cupertino, CA 95014
6. Subject: Renewal of Friendship City Relationships
Recommended Action: Approve renewal of five Friendship City relationships, including Jiangmen, China; Taichung, Taiwan; Taipei, Taiwan; Yilan, Taiwan; and Zhaoqing, China

Vice Mayor Chao asked for more information regarding renewing cities.

Interim City Manager Timm Borden answered questions from Council.

Mayor Scharf opened public comment and the following individuals spoke:

Gilbert Wong
Barry Chang

Mayor Scharf closed public comment.

Willey moved and Sinks seconded to continue this item and directed staff to bring back more information. The motion carried unanimously.

7. Subject: Application for Alcohol Beverage License for Pacific Catch, Inc. (dba Pacific Catch), 19399 Stevens Creek Boulevard
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Pacific Catch, Inc. (dba Pacific Catch), 19399 Stevens Creek Boulevard
8. Subject: Application for Alcohol Beverage License for Stout Cupertino, LLC (dba Stout Burgers & Beers Cupertino), 10088 N. Wolfe Road
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Stout Cupertino, LLC (dba Stout Burgers & Beers Cupertino), 10088 N. Wolfe Road

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS – None

Council recessed from 8:25 p.m. to 8:32 p.m.

STUDY SESSION

9. Subject: Study Session on new budget process

Recommended Action: Conduct study session on new budget process and provide any input to staff

Written communications for this item included a staff presentation.

Director of Administrative Services Kristina Alfaro reviewed the staff report and presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident)

Kitty Moore (Cupertino resident)

Mayor Scharf closed public comment.

Council received the presentation on the new budget process.

ORDINANCES AND ACTION ITEMS

10. Subject: Provide direction for the use of increased County staffing budget for the Santa Clara County Library for FY 19/20 of \$428,596

Recommended Action: Provide staff direction whether to:

1. Use the additional staffing budget from the County of \$428,596/year to reduce the City's existing \$468,023/year contribution for 12 additional Library hours per week and redirect \$428,596 of City funding toward a new program room attached to the Library (Option 3 as provided by the Santa Clara County Library District); or

2. Use the additional staffing budget from the County of \$428,596/year (including consideration to add additional City funds over and above the \$468,023/year) to implement one or more of the options provided by the Santa Clara County Library District (Options 1A, 1B, 2A, 2B, 2C, 4 or any combination thereof).

Written communications for this item included a staff presentation.

Acting Assistant Director of Public Works Chad Mosley reviewed the staff report and presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident)

Henry Sang, Jr. (Cupertino resident) on behalf of Cupertino Library Foundation (distributed written comments)

Liana Crabtree (Cupertino resident)

Kitty Moore (Cupertino resident)

Rahul Vasanth (Cupertino resident)

Mayor Scharf closed public comment.

Paul moved and Scharf seconded to use the additional staffing budget from the County of \$428,596/year to implement Santa Clara County Library District (SCCLD) option 2B to fund 30 monthly Go Go Biblio school, preschool and community visits for \$116,974 per year for two years with the balance of \$311,622 to go toward a new program room attached to the Library (as noted in SCCLD Option 3).

Sinks added a friendly amendment to round up the amount in option 2B to spend no more than \$117,000 per year for two years to fund 30 monthly Go Go Biblio school, preschool and community visits with the balance to go toward a new program room attached to the Library (as noted in SCCLD Option 3). Paul and Scharf accepted the friendly amendment and the motion carried unanimously.

- 11.** Subject: 2018 Pavement Maintenance Project, Project No. 2019-103 contract award
Recommended Action: Authorize the city Manager to award a contract to G. Bortolotto & Co. in the amount of \$2,584,568 and approve a construction contingency of \$258,000 for a total of \$2,842,568.

Written communications for this item included an amended staff report noting that the item was for the 2019 Pavement Maintenance Project.

Paul moved and Sinks seconded to authorize the city Manager to award a contract to G. Bortolotto & Co. in the amount of \$2,584,568 and approve a construction contingency of \$258,000 for a total of \$2,842,568. The motion carried unanimously.

- 12.** Subject: Initiation of declaratory relief or other appropriate action to determine validity of referendum petition against Resolution No. 18-085 and receipt of City Attorney memorandum regarding this and three other referendum petitions protesting Vallco Town Center Specific Plan Project.

Recommended Action: That the City Council authorize the City Attorney, on behalf of the City Clerk, to initiate a declaratory relief action or other appropriate action to determine whether a referendum petition against Resolution No. 18-085 (approving a General Plan amendment for the Vallco Town Center Specific Plan Project) substantially complies with Elections Code requirements. The City Council will also receive a memorandum from the City Attorney regarding the status of this and the three other referendum petitions protesting Vallco Town Center Specific Plan Project.

Vice Mayor Chao recused herself on this item and left the dais.

Written communications for this item included emails to Council.

Outside Counsel Perl Perlmutter from Shute, Mihaly & Weinberger LLP reviewed the City Attorney memo.

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident)

Marie Liu (Cupertino resident) on behalf of Cupertino for All

Govind (Cupertino resident)

Jennifer Griffin

James Moore (Cupertino resident)

Sinks moved and Paul seconded to authorize the City Attorney, on behalf of the City Clerk, to initiate a declaratory relief action or other appropriate action to determine whether a referendum petition against Resolution No. 18-085 (approving a General Plan amendment for the Vallco Town Center Specific Plan Project) substantially complies with Elections Code requirements. The City Council received a memorandum from the City Attorney regarding the status of this and the three other referendum petitions protesting Vallco Town Center Specific Plan Project. The motion carried with Chao recusing.

Vice Mayor Chao returned to the dais.

REPORTS BY COUNCIL AND STAFF

13. Subject: Report on Committee assignments and general comments

Recommended Action: Report on Committee assignments and general comments

Councilmembers highlighted the activities of their committees and various community events.

Mayor Scharf opened public comment and the following individual spoke:

Kitty Moore

Mayor Scharf closed public comment.

Councilmembers asked staff to follow-up on these items:

- City Attorney presentation explaining the Brown Act (Scharf)
- CIP prioritization (Chao/Scharf)
- City Manager report at Council meetings (Chao/Scharf)
- Revisit summary or verbatim meeting minutes especially for commissions (Chao/Scharf)
- Revisit composition of Housing Commission regarding Financial and Business rep (Chao/Scharf)
- Reaffirm Housing Commission duties/powers/responsibilities (Chao/Scharf)
- Look into issue with Regnart Creek Trail Feasibility Study and what is posted online (Chao/Willey)
- Revisit role of Economic Development Committee and Strategic Plan (Chao/Scharf)
- Hold a workshop open to the public regarding budget overview (Paul/Scharf)
- Study session on office/housing balance (Paul/Chao)
- Study session on State bill process (Paul/Chao)
- Agendize City Manager group draft statement on housing policy (Sinks/Paul)
- Do another Community survey on General Plan process (Willey/Scharf)
- Form Resident Advisory Group (Willey/Scharf)

ADJOURNMENT

At 11:30 p.m., Mayor Scharf adjourned the meeting.

/s/ Grace Schmidt

Grace Schmidt, City Clerk