APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, March 3, 2020

SPECIAL CITY COUNCIL MEETING

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

ROLL CALL

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

CLOSED SESSION

1. Subject: Public Employee Performance Evaluation (Gov't Code Section 54957). Title: City Attorney.

In open session, Mayor Scharf announced that Council met in closed session and conducted the annual evaluation of the City Attorney. No reportable action was taken.

2. Subject: Conference with Labor Negotiators (Gov't Code section 54957.6). Agency designated representatives: Mayor Steven Scharf and Vice Mayor Darcy Paul. Unrepresented employee: City Attorney.

In open session, Mayor Scharf announced that Council met in closed session and gave direction to the labor negotiators regarding compensation for the City Attorney. 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 to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

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

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Recognition of Fine Arts Commission Young Artists Award winners.
Recommended Action: Present awards to Fine Arts Commission Young Artist Award winners.

Fine Arts Commission Chair Rajeswari Mahalingam and Vice Chair Sudha Kasamsetty introduced the item.

Mayor Scharf presented the awards to the Fine Arts Commission Young Artist Award winners.

2. Subject: Proclamation to Santa Clara County Librarian Nancy Howe upon her retirement and recognizing her dedicated service to the community.
Recommended Action: Present proclamation to Santa Clara County Librarian Nancy Howe upon her retirement and recognizing her dedicated service to the community.

Deputy County Librarian Jennifer Weeks and Community Librarian Clare Varesio accepted the proclamation on behalf of Nancy Howe.

Mayor Scharf presented the proclamation honoring Santa Clara County Librarian Nancy Howe upon her retirement and recognizing her dedicated service to the community.

3. Subject: Proclamation recognizing March as "Red Cross Month."
Recommended Action: Present proclamation recognizing March as "Red Cross Month."

Stuart Chessen and Judy Halchin accepted the proclamation on behalf of the Red Cross.

Mayor Scharf presented the proclamation recognizing March as "Red Cross Month."

4. Subject: Proclamation to Carl Valdez for being awarded Superintendent of the Year by the Maintenance Superintendents Association (MSA) of the San Francisco Bay Area. Recommended Action: Present proclamation to Carl Valdez for being awarded Superintendent of the Year by the Maintenance Superintendents Association (MSA) of the San Francisco Bay Area.

Director of Public Works Roger Lee introduced the item.

Mayor Scharf presented the proclamation to Carl Valdez for being awarded Superintendent of the Year by the Maintenance Superintendents Association (MSA) of the San Francisco Bay Area.

POSTPONEMENTS – None

ORAL COMMUNICATIONS

Larry Dean, on behalf of Walk-Bike Cupertino, talked about Byrne Avenue and McClellan Road infrastructure improvements, and auto/pedestrian/bicycle crash data.

Jennifer Griffin talked about her voting choices based on recent housing bills, democracy in California, Oregon, and Washington, and local control.

Connie Cunningham (Cupertino resident, representing self), talked about the Regional Housing Needs Assessment (RHNA)/Housing Element progress report, no new homes or permits, multifamily housing needs, and friendly rules.

Yuwen Su (Cupertino resident), talked about negotiations with Sandhill, working with residents for a new Vallco plan, and an outreach process designed for community concerns.

Minna (Cupertino resident, representing self), talked about a new plan for Vallco, flaws in prior survey and outreach, a new community outreach plan, and listening to residents.

Charlene Lee (Cupertino resident), talked about the police report for her arrest at Monta Vista High School and requested an independent police report audit.

Qin Pan (Cupertino resident, representing self), talked about Corona virus preventatives, a Vallco outreach program, and surveying residents on options for development.

City Manager Deborah Feng gave an update on the outreach plan for a Vallco Specific Plan or an alternate plan which would occur within the next couple of months and which would come

back to Council for direction before going to the public.

Rhoda Fry (Cupertino resident), talked about Lehigh Quarry's expansion plan and application for a rock plant, traffic concerns, and a land swap with Mid-Pen Regional Open Space. (She provided written comments).

REPORTS BY COUNCIL AND STAFF (10 minutes)

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

Councilmembers highlighted the activities of their various committees.

CONSENT CALENDAR

Paul moved and Scharf seconded to approve items on the Consent Calendar as presented. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

6. Subject: Approve the February 10 City Council minutes
Recommended Action: Approve the February 10 City Council minutes

7. Subject: Approve the February 18 City Council minutes
Recommended Action: Approve the February 18 City Council minutes

Written communications for this item included amended minutes pages 6 – 7.

8. Subject: Treasurer's Investment Report for period ending December 31, 2019
Recommended Action: Accept staff report and provide recommendations.

9. Subject: Application for Alcohol Beverage License for Pizza My Heart, Inc (dba Pizza My Heart), 19409 Stevens Creek Boulevard, Suite 140
Recommended Action: Recommend approval to the California Department of Alcoholic Beverage Control of the application for Alcohol Beverage License for Pizza My Heart, Inc (dba Pizza My Heart), 19409 Stevens Creek Boulevard, Suite 140

SECOND READING OF ORDINANCES

10. Subject: Second reading for Municipal Code Amendments to Chapter 19.112 - Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones; and Chapter 19.08 - Definitions; for Clarifications, and Consistency with recently adopted State Bills (Application No. MCA-2018-04; Applicant: City of Cupertino; Location: City-wide).
Recommended Action: Conduct the second reading and enact Ordinance No. 20-2199: "An Ordinance of the City Council of the City of Cupertino amending Chapter 19.112, Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones; and Chapter 19.08 Definitions."

Written communications for this item included emails to Council.

Mayor Scharf opened public comment and the following people spoke.

Jennifer Griffin spoke about housing bills, Accessory Dwelling Units (ADU), 4-foot setbacks, challenging local authority, property taxes on ADUs, school impact fees.

Mayor Scharf closed public comment.

Council made comments and asked questions.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2199: "An Ordinance of the City Council of the City of Cupertino amending Chapter 19.112, Accessory Dwelling Units; Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones; and Chapter 19.08 Definitions."

Sinks moved and Willey seconded to read Ordinance No. 20-2199 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

Sinks moved and Willey seconded to enact Ordinance No. 20-2199 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Paul, Chao, Sinks, and Willey. Noes: None. Abstain: None. Absent: None. Recuse: None.

PUBLIC HEARINGS

11. Subject: Consider approving a new 155-room seven-story hotel (24-hour operations) with underground parking, event meeting rooms, a ground floor restaurant with separate bar, and a rooftop lounge with separate bar by demolishing a commercial building with an area of 8,323 sq. ft. City Actions would include General Plan Amendments to consider amending Table LU-1 by increasing the development allocation of hotel rooms to 155 hotel rooms in the Homestead Special Area and Figure LU-2 and Policy LU-23.2 adding Figure LU-5 to allow increased heights and reduced building plane within the North De Anza Gateway specific to this development. City permits would include: Development, Architectural and Site Approval, and Use Permits. A Development Agreement is also proposed; (Application No(s): GPA-2018-01, DP-2018-01, ASA-2018-02, DA-2018-01, U-2018-02, EA-2018-03; Applicant(s): Sherly Kwok (De Anza Properties); Location: 10931 N De Anza Blvd.; APN #326-10-061 (Continued from January 21, 2020)

Recommended Action: Conduct the public hearing and find:

That the City Council conduct a public hearing, consider the Planning Commission's recommendation, and:

1. Adopt Resolution No. 20-005 adopting a Mitigated Negative Declaration, mitigation measures, and a Mitigation Monitoring and Reporting Program (Attachment A).
2. Adopt Resolution No. 20-006 approving a General Plan Amendment (Attachment B).
3. Adopt Resolution No. 20-007 approving a Development Permit (Attachment C).
4. Adopt Resolution No. 20-008 approving an Architectural and Site Approval Permit (Attachment D).
5. Adopt Resolution No. 20-009 approving a Use Permit (Attachment E).

Introduce and waive the first reading of Ordinance No. 20-2195: "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a New 7-Story, 155 Room Hotel With Associated Site and Landscaping Improvements Located at 10931 N. De Anza Blvd. (APN #326-10-061)" (Attachment F).

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

Director of Community Development Ben Fu introduced the item and Senior Planner Gian Martire gave a presentation.

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

Paige Fennie, on behalf of Laborers' International Union of North America, Local Union 270, said the mitigated negative declaration is inadequate and requires an environmental impact report. (She submitted written comments).

Lisa Warren said there are community survey concerns which included increased height, reduced the building plane, proximity to street and no trees, respecting bird safety, and community benefit inequities.

Jennifer Griffin said the project needs street trees are needed along North/South De Anza Blvd., and a 35-foot setback on Stevens Creek Blvd. is needed, and heights should be kept down.

Council asked questions and made comments.

Project applicant John Vidovich answered questions and architect Bill Winkleman gave a presentation.

Paul moved and Sinks seconded to:
1. Adopt Resolution No. 20-005 adopting a Mitigated Negative Declaration, mitigation measures, and a Mitigation Monitoring and Reporting Program.
2. Adopt Resolution No. 20-006 approving a General Plan Amendment.
3. Adopt Resolution No. 20-007 approving a Development Permit.
4. Adopt Resolution No. 20-008 approving an Architectural and Site Approval Permit.
5. Adopt Resolution No. 20-009 approving a Use Permit.

Sinks made a friendly amendment to the Development Permit to add conditions of approval for dark sky and bird safe design guidelines, and the resins used for interior finish systems are no-added formaldehyde (NAF) or ultra-low-emitting formaldehyde (ULEF) and meet California Air Resource Board's (CARB) Regulation 11 Rule 18 standards (Paul accepted the friendly amendment).

Chao made a friendly amendment to the General Plan Amendment to specify in each location where the General Plan amendments are made that the City will reconsider hotel allocation, height limit, or slope/building plane if building permits are not pulled by March 3, 2025 (Paul accepted the friendly amendment).

Chao made a second friendly amendment to the Development Agreement to request the $10,000 per room but $1 million for the project benefits (Paul did not accept the friendly amendment).

The motion carried as amended with Willey voting no.

City Clerk Kirsten Squarcia read the title of Ordinance No. 20-2195: "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a New 7-Story, 155 Room Hotel with Associated Site and Landscaping Improvements Located at 10931 N. De Anza Blvd. (APN #326-10-061)"

Paul moved and Scharf seconded to read Ordinance No. 20-2195 by title only and that the City Clerk's reading would constitute the first reading thereof with the change to the community users of the shuttle system as discussed, with the clarification that he did not accept Chao's request for $1 million dollars for the payment.

No vote was taken.

Council recessed from 9:46 p.m. to 9:52 p.m.

Sinks moved and Chao seconded a substitute motion to direct the Community Development Director to renegotiate the development agreement for the amount of money offered to the City's community benefits to $1 million, and clarification that the shuttle transportation price for residents will be at 50% of the cost for guests. The motion carried with Scharf and Paul voting no.

Council did not conduct the first reading of Ordinance No. 20-2195.

The City Attorney said the item will come back to Council to determine whether to approve the development agreement as proposed.

ORDINANCES AND ACTION ITEMS

12. Subject: Approve the Mid-Year Financial Report and budget adjustments for Fiscal Year 2019-20.
Recommended Action: 1. Accept the City Manager's Mid-Year Financial Report for FY 2019-20.
2. Approve Budget Modification 1920-076 for Mid-Year adjustments as described in the Mid-Year Financial Report.
3. Adopt Resolution No. 20-026 approving Mid-Year budget adjustments.

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

Director of Administrative Services Kristina Alfaro and Finance Manager Zach Korach gave a presentation.

Council asked questions and made comments.

Mayor Scharf opened public comment and the following people spoke.

Jennifer Griffin spoke about the current transit occupancy tax (TOT) percentage as an additional source of revenue.

Mayor Scharf closed public comment.

Paul moved and Chao seconded to:
1. Accept the City Manager's Mid-Year Financial Report for FY 2019-20 except for the $1.4 million allocated for the Sports Center.
2. Approve Budget Modification 1920-076 for Mid-Year adjustments as described in the Mid-Year Financial Report.
3. Adopt Resolution No. 20-026 approving Mid-Year budget adjustments except for the $1.4 million allocated for the Sports Center.
The motion carried with Sinks voting no.

13. Subject: General Plan Annual Report, and suggestions to further clarify General Plan Policies and Strategies
Recommended Action: That the City Council:
1. Receive the General Plan Annual Review Report (Attachment A).
2. Authorize the City Manager to incorporate the list of General Plan amendment suggestions made by individual Planning Commissioners (Attachment B) into the previous list of suggested General Plan amendments with the General Plan and Objective Standards 2019/2020 Work Program Item.

Written communications for this item included a presentation.

Community Development Director Ben Fu introduced the item and Planning Manager Piu Ghosh gave a presentation.

Mayor Scharf opened public comment and the following individuals spoke.

Jennifer Griffin asked Council to protect Heart of the City, keep current zoning, preserve local control and look at funding to protect the City.

Mayor Scharf closed public comment.

Sinks moved and Scharf seconded to:

1. Receive the General Plan Annual Review Report.
2. Authorize the City Manager to incorporate the list of General Plan amendment suggestions made by individual Planning Commissioners into the previous list of suggested General Plan amendments with the General Plan and Objective Standards 2019/2020 Work Program Item, with the stipulation that the City Manager incorporates the list of suggestions into the Objective Standards Work Program process.

Sinks moved and Scharf seconded to call the question. The motion to call the question failed for lack of a two-thirds majority.

Councilmember Sinks left the meeting at 11:31 p.m.

The motion to receive the General Plan Annual Review Report and authorize the City Manager to incorporate the list as stipulated carried with Sinks absent.

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Mayor Scharf added the following future agenda items:

- Proposed De Anza Hotel development agreement
- Transient occupancy tax (TOT) increase
- Amend municipal code regarding City Attorney time and controlling costs

ADJOURNMENT

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

Kirsten Squarcia, City Clerk