



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, December 6, 2022**

At 6:45 p.m., Mayor Paul called the Regular City Council Meeting to order and led the Pledge of Allegiance in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue and via teleconference.

ROLL CALL

Present: Mayor Darcy Paul, Vice Mayor Liang Chao, and Councilmembers Kitty Moore, Hung Wei, and Jon Robert Willey.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Consider a certificate of appreciation to Captain Rich Urena for his years of service to the Cupertino community as West Valley Patrol Captain
Recommended Action: Present certificate of appreciation to Captain Rich Urena for his years of service to the Cupertino community as West Valley Patrol Captain

Captain Rich Urena received the certificate of appreciation.

Mayor Paul presented the certificate of appreciation to Captain Rich Urena for his years of service to the Cupertino community as West Valley Patrol Captain.

2. Subject: Consider certificates of appreciation recognizing Rudy Lomas and Kane Wolfe for their years of service to the City of Cupertino upon their retirement
Recommended Action: Present certificates of appreciation recognizing Rudy Lomas and Kane Wolfe for their years of service to the City of Cupertino upon their retirement

Written communications for this item included and updated Attachment B – Corrected Certificate of Appreciation.

Rudy Lomas and Kane Wolfe received the certificates of appreciation.

Mayor Paul presented the certificates of appreciation recognizing Rudy Lomas and Kane Wolfe for their years of service to the City of Cupertino upon their retirement.

Council recessed from 6:55 p.m. to 7:13 p.m.

Vice Mayor Chao and Councilmember Wei left the dais and attended the remainder of the meeting via teleconference.

POSTPONEMENTS AND ORDERS OF THE DAY

Moore moved and Willey seconded to postpone Item 11 considering the annual and five -year Development Impact Fee report for FY ending June 30, 2022 to the December 20, 2022 City Council meeting. The motion carried unanimously.

ORAL COMMUNICATIONS

Call-In-User_1 was concerned about a case with the City requiring demolition of an illegal structure on their property.

Dennis Cunningham supported continuing to hold City Council meetings by teleconference and policies allowing staff to work from home.

Peggy Griffin thanked Mayor Paul and Councilmember Willey for their service and opposed allowing restaurants to exceed a certain percentage of the total square footage at Main Street.

San R thanked Mayor Paul and Councilmember Willey for their service and supported the new Council considering resident needs and prioritizing crime issues. (Submitted written comments).

Felix, Stephanie, Annie, Aspen, and Bruno of First Level League Team Tornado shared their micro hydropower system innovation project to save energy. (Submitted written comments).

Jennifer Griffin thanked Mayor Paul and Councilmember Willey for their service and was concerned about a fire at the Historic Graves House and preserving the Stocklmeir House.

John Kehoe supported Golf Course Feasibility Study Option B to restore nature at Blackberry Farm Golf Course and the associated water savings plan.

Housing Commissioner Connie Cunningham (representing self) supported protecting biodiversity and Option B to restore nature at Blackberry Farm. (Submitted written comments).

Rhoda Fry was concerned about Lehigh plant and quarry cement distribution and

manufacturing, off-site air pollution from dust and traffic, and rock plant land-use authority.

Lisa Warren was concerned about changing the square footage limitations in the former Target building at Main Street to allow for restaurant use.

REPORTS BY COUNCIL AND STAFF

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: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

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

Councilmembers reported on Subcommittee assignments.

6. Subject: City Manager update
Recommended Action: Receive City Manager update on City business

Council received the City Manager update on City business.

7. Subject: Department Update - Community Development
Recommended Action: Receive update regarding the Community Development Department

Written communications for this item included a staff presentation.

Acting Community Development Director Luke Connelly gave a presentation.

Council received the update regarding the Community Development Department.

CONSENT CALENDAR (Items 8-12)

Willey moved and Wei seconded to approve the items on the Consent Calendar, except Item 11

which was continued, and Item 12 which was pulled for discussion. Ayes: Paul, Chao, Moore, Wei, and Willey. Noes: None. Abstain: None. Absent: None.

8. Subject: Consider approval of the November 15 City Council minutes
Recommended Action: Approve the November 15 City Council minutes
9. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period December 6, 2022 through January 5, 2023 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 22-142 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the December 6, 2022 through January 5, 2023 pursuant to the Brown Act, as amended by AB 361

Written communications for this item included an updated Attachment B – Adopted Resolution No. 22-133.

10. Subject: Consider the OPEB and Pension Trust Investment Policies
Recommended Action: Adopt Resolution No. 22-143 accepting the OPEB Policy and adopt Resolution No. 22-144 accepting the Pension Trust Investment Policies
11. Subject: Consider the Mitigation Fee Act - an annual and five-year report for Fiscal Year (FY) 2021-2022
Recommended Action: Adopt Resolution No. 22-145 entitled "A Resolution of the City of Cupertino City Council approving the annual and five -year Development Impact Fee report for FY ending June 30, 2022" to:
1. Make the required findings as identified in the Resolution; and
 2. Approve the annual and five-year Development Impact Fee report for the FY ending June 30, 2022, as required by Government Code Section 66000 et seq

As noted under Postponements and Orders of the Day, this item was continued to December 20.

12. Subject: Consider authorizing the City Manager to award a construction contract with contingency budget for the Blackberry Farm Pool Improvements Capital Improvement Program (CIP) Project
Recommended Action: 1. Authorize the City Manager to award a construction contract in an amount not to exceed 90% of the appropriated project budget limits to the lowest responsive bidder if there are no unresolved bid protests; and
2. Authorize the Director of Public Works to allow a construction contingency budget of 20% of the construction contract amount to address unforeseen conditions

discovered during construction

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included emails to Council.

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

Rhoda Fry was concerned about the project scope and supported public engagement and creating an enterprise fund to monitor spending.

Councilmembers asked questions and made comments.

Wei moved and Willey seconded to:

1. Authorize the City Manager to award a construction contract in an amount not to exceed 90% of the appropriated project budget limits to the lowest responsive bidder if there are no unresolved bid protests; and
2. Authorize the Director of Public Works to allow a construction contingency budget of 20% of the construction contract amount to address unforeseen conditions discovered during construction.

Council did not vote on this motion.

Moore moved and Chao seconded a substitute motion to:

1. Authorize the City Manager to award a construction contract in an amount not to exceed 90% of the appropriated project budget limits to the lowest responsive bidder if there are no unresolved bid protests; and
2. Authorize the Director of Public Works to allow a construction contingency budget of 15% of the construction contract amount to address unforeseen conditions discovered during construction.

The substitute motion carried with Wei voting no.

Council recessed from 9:17 p.m. to 9:23 p.m.

SECOND READING OF ORDINANCES – None

STUDY SESSION

13. Subject: Consider directing staff to prepare a City Ordinance to govern the permitting of small cellular facilities within the public right of way

Recommended Action: Consider directing staff to prepare a City Ordinance for Council approval to govern permitting of small cellular facilities within the public right

of way and provide input on the list of recommended modifications to the regulations listed in the staff report

Presenter: Chad Mosley, Assistant Director of Public Works

Written communications for this item included a staff presentation.

Assistant Director of Public Works Chad Mosley gave a presentation.

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

Venkat Ranganathan supported the proposed draft ordinance with modifications to the number of towers, setback requirements, and locations.

San R supported providing adequate facilities to address increased consumption from people working from home and lack of signal availability.

Nori supported the maximum notification radius and longest 21-day comment period, providing an activation report, and more locations on the West side of town.

Jennifer Griffin was concerned about a difficult transition from 3G to 5G and the deployment of small cell facilities on poles being disruptive to the public.

Mayor Paul closed the public comment period.

Councilmembers asked questions and made comments.

Councilmember comments:

Wiley: Provide the basis for what kinds of data can be required for these types of applications.

Wei: Review the Mackenzie & Albritton LLP letter, dated 12/5/2022, evaluate their recommendations and incorporate appropriate modifications.

Moore: Provide guidelines/design standards for facilities on wooden utility poles and strand mounted equipment.

Paul: Provide a Preference Tier for standalone poles.

Chao: Keep the 21-day noticing period; modify the letters from providers so that they don't look like advertisements; consider having letter look like a City notice; make pole

signs more visible; look into process to appeal for removal of street lights due to brightness.

Moore moved and Chao seconded to direct staff to make modifications to the proposed Draft Ordinance; and to address the concerns based on the comments heard and that were raised in the Verizon attorney letter from Mackenzie & Albritton LLP letter, dated 12/5/2022.

Moore's modifications:

- Strike "Main Streets" from Tier 1 Preference, reference General Plan information.
- Split Major and Minor Collectors into two separate tiers, reference General Plan information.
- Reference the General Plan Figure M-2 Circulation Network for street types and include the map on the Small Cell webpage and provide this map as an attachment to the staff report when the ordinance returns to City Council.
- Increase setback distance to occupied structures from 20' to 25'.

Chao made a friendly amendment to:

- Consider a larger sign for pole notification – Two 8.5"x11" (11"x17") and add large text at the top to provide clarity.
- Provide a sample image of the envelopes that will be used for the mailed notifications.
- Look for opportunities to increase the notification radius from 300' to 500'.

(Moore accepted Chao's friendly amendment).

Willey made a friendly amendment to consider expanding the separation distances from 500' between facilities from the same provider to a minimum of 1000' and require carriers to provide data justifying any facility closer than 1000'. (Moore and Chao accepted Willey's friendly amendment).

The amended motion carried unanimously.

Motion Summary:

Moore moved and Chao seconded to direct staff to make modifications to the proposed Draft Ordinance; and to address the concerns based on the comments heard and that were raised in the Verizon attorney letter from Mackenzie & Albritton LLP letter, dated 12/5/2022.

Moore's modifications:

- Strike "Main Streets" from Tier 1 Preference, reference General Plan information.
- Split Major and Minor Collectors into two separate tiers, reference General Plan information.
- Reference the General Plan Figure M-2 Circulation Network for street types and

include the map on the Small Cell webpage and provide this map as an attachment to the staff report when the ordinance returns to City Council.

- Increase setback distance to occupied structures from 20' to 25'.

Council also directed staff to:

- Consider a larger sign for pole notification – Two 8.5"x11" (11"x17") and add large text at the top to provide clarity.
- Provide a sample image of the envelopes that will be used for the mailed notifications.
- Look for opportunities to increase the notification radius from 300' to 500'.
- Consider expanding the separation distances from 500' between facilities from the same provider to a minimum of 1000' and require carriers to provide data justifying any facility closer than 1000'.

The amended motion carried unanimously.

Council recessed from 10:58 p.m. to 11:03 p.m.

PUBLIC HEARINGS

14. Subject: Consider approval of a proposed development that will include approximately 41,268 sq. ft. of commercial space and 206 residential condominium units. (Application No(s): DP-2022-001, ASA-2022-002, TR-2022-026, TM-2022-003; Applicant(s): Larry Wang (Tectonic Builders Corp.); Location: 10145 N. De Anza Blvd, 10118 Bandlely Dr., APN(s): 326-34-066, 326-34-043.)

Recommended Action: Staff recommends that the City Council:

1. Adopt Resolution No. 22-146 adopting an addendum to a previously adopted Mitigated Negative Declaration and approving the Development Permit (DP-2022-001) (Attachment A);
2. Adopt Resolution No. 22-147 approving the Architectural and Site Approval Permit (ASA-2022-002) (Attachment B);
3. Adopt Resolution No. 22-148 approving the Vesting Tentative Map (TM-2022-003) (Attachment C); and
4. Adopt Resolution No. 22-149 approving the Tree Removal Permit (TR-2022-026) (Attachment D)

Presenter: Gian Martire, Senior Planner

Written communications for this item included staff and applicant presentations and a letter from the applicant.

Senior Planner Gian Martire gave a presentation.

Project Manager Greg Endom of Bay Pacific Properties gave a presentation.

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

Lisa Warren supported the project and owner-occupied units.

Peggy Griffin supported the project and business-ownership units and owner-occupied units.

Jean Bedord supported approval of the application, including the senior housing and other elements.

Housing Commissioner Connie Cunningham (representing self) supported the project, including the senior housing and other elements.

Ben Shyy supported the project, including the retail and affordable housing component.

Jennifer Griffin was concerned about losing the large retail grocery store and the designation of school districts and supported public input and limiting heights.

Mayor Paul closed the public hearing.

Applicant representatives responded to public comments.

Councilmembers asked questions and made comments.

Chao moved and Willey seconded to:

1. Adopt Resolution No. 22-146 adopting an addendum to a previously adopted Mitigated Negative Declaration and approving the Development Permit (DP-2022-001);
2. Adopt Resolution No. 22-147 approving the Architectural and Site Approval Permit (ASA-2022-002);
3. Adopt Resolution No. 22-148 approving the Vesting Tentative Map (TM-2022-003); and
4. Adopt Resolution No. 22-149 approving the Tree Removal Permit (TR-2022-026).

The motion carried unanimously.

ORAL COMMUNICATIONS - CONTINUED (As necessary) – None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Written communications for this item included a future agenda item request from Mayor

Paul.

Councilmembers requested the following future agenda items:

- Study session on recommendations regarding shelter solutions for the unhoused (Paul and Moore)
- Consideration of an Ordinance amendment regarding the Economic Development Committee composition (Chao and Wei)
- Informational memo regarding the retail square footage analysis for Main Street (Chao and Moore)

ADJOURNMENT

At 12:41 a.m., on Wednesday, December 7, Mayor Paul adjourned the Regular City Council Meeting.



Kirsten Squarcia, City Clerk