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PUBLIC WORKS DEPARTMENT

Summary

AGENDA ITEM 26

AGENDA DATE January 16, 2007

SUBJECT AND ISSUE

Conduct the first reading of Ordinance No. 07-1992: "An Ordinance of the City of Cupertino Adding Chapter 9.19 to the Cupertino Municipal Code: Water Resource Protection for Properties Adjacent to a Stream."

BACKGROUND

In mid 2002 the Santa Clara Valley Water District (SCVWD) proposed amending their Water Resource protection Ordinance to extend their jurisdiction for activities on properties adjacent to a stream from the existing 50 feet from the top of the stream or creek bank to 150 feet from the top of the bank. Santa Clara County and all fifteen cities in the County appeared at the Water District Board meeting in November of 2002 objecting to this amendment and some cities also raised the prospect of litigation in the belief that the District did not have jurisdiction over land use regulation on any property adjacent to a stream.

The cities argued that land use regulation is under the jurisdiction of local governments, not special districts. The situation was quickly becoming a serious jurisdictional confrontation with uncertain outcomes. Fortunately, in all the excitement, cooler heads quickly prevailed.

Water Resource Protection Collaborative

A proposal by some city staff members to set aside the controversy by establishing a formal "collaborative" venture to reach consensus on a solution was strongly supported by the Water District staff. As a result the District Board of Directors agreed to withhold the adoption of the new ordinance to pursue that venture. There was precedent for this proposal as the Water District and the City of San Jose, among others, had successfully formed a collaborative venture to solve some serious environmental issues related to construction of flood protection measures around and within the Guadalupe River through downtown San Jose in the mid 1990's.

Therefore, the Collaborative was initiated in December 2002 in order to address land use issues near streams in response to the proposal by the Water District to expand its jurisdiction over streamside permits. The Collaborative's mission as specifically stated was to review and assess the current state of water resources protection measures in Santa Clara County and to propose appropriate management strategies and institutional arrangements to implement these strategies.

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The District Board agreed that the Collaborative was to include all fifteen cities, the County and the District along with other stakeholders in the region. This eventually included a number of business groups such as the Chamber of Commerce, the Homebuilders Association, Silicon Valley Leadership Group of major corporations, and the League of Women Voters, along with environmental and conservation groups including the Audubon Society, the Guadalupe Coyote Conservation District and Clean South Bay. The final group included twenty-seven different entities and was formally named the Water Resources Protection Collaborative.

Management and Outcomes of the Collaborative

Due to the nature of the controversy along with issues of trust, objectivity and so much uncertainty among the many players, it was deemed essential to have this venture managed and facilitated by an outside neutral party with experience in these types of issues. The facilitation firm, CONCUR Inc. from Berkeley, California was selected because of its unique experience in similar activities and because of their earlier success as the facilitator for the Guadalupe River project.

It is important to note that the District Board had generously agreed to cover the cost of the facilitation contract for the duration of the Collaborative's work. In return, the Collaborative members committed to stay with the venture all the way through to completion and also to commit a high level staff person who could commit to recommending courses of action to their principals.

For cities this meant the continued presence of either the public works director or the planning director who could recommend actions as appropriate through the city manager to the city council. Further, the Collaborative members met these commitments by formally meeting together every single month for a full day over what would become a period of three and a half years to ensure the continuity, momentum and consensus of this effort.

The work of this next phase proceeded in late 2003, and by August 2005 the Collaborative had completed and ratified its second set of agreements and work products. These included several foundational elements of the proposed guidelines and standards, including designation of the streamside review area, definition of a stream, criteria to identify or verify a watercourse as a stream and definition of the top of bank (of a stream). It also included agreements and work products related to early consultation, adaptive management, and the water district's comprehensive plan.

Of key importance was an outcome eliminates one step in the permitting process. Historically any work on a property adjacent to a stream would require two permits: a building permit from the City and an encroachment permit from the Water District. This requires the developer/builder to interact separately with two different jurisdictions operating under different rules and to deal with the time consuming (and potentially expensive) uncertainty that this represents. Eliminating one of the steps in this process goes a long way toward responding to this concern.

The outcome of this three and half year cooperative venture is that a consensus has been reached to ensure an orderly, expeditious, and successful process that meets the common goal of water resource protection and benefits all stakeholders.

New SCVWD Water Resources Protection Ordinance

On October 24, 2006 the Santa Clara Valley Water District Board of Directors adopted Ordinance 06-1, entitled the Water Resources Protection Ordinance, which will be effective on February 28, 2007. As of this date, permits for activities within 50 feet of a stream will no longer be issued by the District. In so doing, the new ordinance acknowledges that it will be the cities that will issue permits on properties adjacent to streams. The District would only issue encroachment permits for work done within its own property or easements, not on private or public property within the jurisdiction of the cities.

For the cities part, each Collaborative representative committed to recommend to their City Councils appropriate steps toward implementation of this outcome. In accordance with that commitment staff has drafted an amendment to the Cupertino Municipal Code adding chapter 9.19 regarding water resource protection for properties adjacent to a stream.

NEW CITY ORDINANCE REGARDING WATER RESOURCE PROTECTION

The recommended amendment establishes the requirement to obtain a Stream Modification Permit under certain conditions for modifications to streamside properties within the City of Cupertino and establishes procedures for the administration and issuance of such Permits.

In addition it provides for a Resolution that the Council may approve and may from time to time amend that would adopt a comprehensive set of Guidelines and Standards which shall form the basis for the evaluation of land use on streamside properties and the issuance as appropriate of Streamside Modification Permits. These Guidelines and Standards are defined in the ordinance as a set of model guidelines, standards, procedures, and recommendations developed for land use activities near streams, for streamside properties, and for the protection of streams and streamside resources.

In order to provide for some flexibility in the application of the Guidelines and Standards to address any particular situation that may be present in a proposed development, the ordinance provides that, notwithstanding the criteria provided in the Guidelines and Standards, the Director of Public Works is authorized to make adjustments in the criteria and provisions of the Guidelines and Standards, if in his or her professional opinion, such adjustments are necessary to fit the specific conditions of the property for which the Streamside Modification Permit is to be issued.

The ordinance, if approved by the Council on January 16, 2007 would have its second reading on February 6, 2007 and would be effective 30 days later to generally coincide with the effective date of the Districts ordinance. A resolution adopting the guidelines and standards will be recommended to the Council concurrently with the enactment of the ordinance should that occur on February 6, 2007.

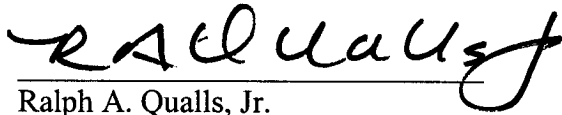
FISCAL IMPACT

With respect to City costs, enforcement of the proposed ordinance will require some minor additional effort by Public Works and Planning staffs during permit review and inspection. The need for additional staff is not anticipated at this time, but will be evaluated as part of the overall workload as may be necessary in the future.

RECOMMENDATION

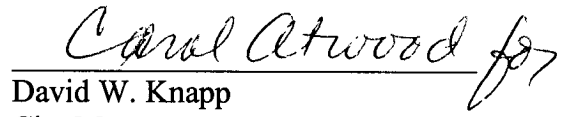
It is recommended that the Council conduct the first reading of Ordinance No. 07-1992: "An Ordinance of the City of Cupertino Adding Chapter 9.19 to the Cupertino Municipal Code: Water Resource Protection for Properties Adjacent to a Stream."

Submitted by:



Ralph A. Qualls, Jr.
Director of Public Works

Approved for submission:



David W. Knapp
City Manager

ORDINANCE NO. 07-1992

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADDING CHAPTER 9.19 TO THE CUPERTINO MUNICIPAL CODE REGARDING WATER RESOURCE PROTECTION FOR PROPERTIES ADJACENT TO A STREAM

THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY ORDAIN that Chapter 9.19 of the Cupertino Municipal Code shall be added to read as follows:

9.19.010 Purpose of Chapter

This Chapter establishes the requirement to obtain a Stream Modification Permit under certain conditions for modifications to streamside properties within the City of Cupertino and establishes procedures for the administration and issuance of such Permits.

9.19.020 Definitions

For the purposes of this chapter, the definitions contained in Section 9.18.020 shall apply to this chapter in addition to those definitions contained in this section. The following words and phrases shall have meanings ascribed to them by this section, unless the context or provision clearly requires otherwise.

1. "Bank". The portion of the stream cross section that restricts lateral movement of water.
2. "Development". A land development or land development project.
3. "Director of Public Works". The Director of Public Works and his or her duly authorized agents and representatives.
4. "Guidelines and Standards". A set of model guidelines, standards, procedures, and recommendations developed for land use activities near streams, for streamside properties, and for the protection of streams and streamside resources.
5. "Modification". Any alteration to streamside properties or structures therein, including but not limited to activities that are part of a development.
6. "Person". Any person, firm, association, organization, partnership, business trust, joint venture, corporation or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

7. "Riparian Vegetation". Vegetation growing on or near the banks of a stream or other body of water on soils that exhibit some wetness characteristics during some portion of the growing season.

8. "Stream". A body of water that flows at least periodically or intermittently through a bed or channel having banks. The body of water may include a surface or subsurface flow that supports or has supported riparian vegetation, fish and/or aquatic life.

9. "Streamside Modification Permit". The permit issued by the City of Cupertino to the applicant required for undertaking any modifications on streamside properties.

10. "Streamside properties". All properties containing or abutting a stream.

9.19.030 Streamside Modification Permit

A. Permit Required. No person shall do or cause to be done any modification located on properties adjacent to a stream unless a Streamside Modification Permit for the modification has been issued and is in effect. A Streamside Modification Permit applies to the property for which it was issued and therefore transfers when the property ownership is transferred, unless its specific conditions provide otherwise.

B. Exceptions. The following modifications are exempt from the requirement of obtaining a Streamside Modification Permit, if the modification is not within a stream including up to the top of bank.

1. Less than 3 cubic yards of earthwork provided it does not damage, weaken, erode or reduce the effectiveness of the stream to withhold storm and flood waters.
2. A fence that is six feet or less in height or is otherwise permitted by the City.
3. An accessory structure 120 square feet or less in size.
4. Interior or exterior additions or alterations to structures within the existing footprint.
5. Landscaping on existing single-family lots.

C. Applications. All requests for a Stream Modification Permit must be filed with the City on an application form established and maintained by the City. The person proposing the modification for which the permit is required must sign the application. In the case of an application filed by a public agency, the person duly authorized to make such application must sign the application.

D. Conditions of Approval. A Stream Modification Permit will be issued subject to the conditions required by the City and the conditions will be commensurate with the nature and magnitude of the request and may include a time limit on the life of the permit.

19.19.040 Streamside Modification Permit – Guidelines and Standards

A. Adoption. The Council shall adopt by Resolution and may from time to time amend by Resolution a comprehensive set of Guidelines and Standards as defined in Section 9.19.020.4 which shall form the basis for the evaluation of land use on streamside properties and the issuance as appropriate of Streamside Modification Permits.

B. The application of the Guidelines and Standards shall be administered by the Director of Public Works in accordance with the purpose of this chapter.

C. Notwithstanding the criteria provided in the Guidelines and Standards, the Director of Public Works is authorized to make adjustments in the criteria and provisions of the Guidelines and Standards, if in his or her professional opinion, such adjustments are necessary to fit the specific conditions of the property for which the Streamside Modification Permit is to be issued.

19.19.050 Time Limit for Commencing Use of Permit

Unless specific language in Stream Modification Permit provides otherwise, the permit shall expire 730 days after its effective date unless the permittee has preformed substantial work in compliance with the conditions of the permit.

This ordinance shall take effect and be in force thirty (30) days after its passage.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 16th day of January, 2007 and ENACTED at a regular meeting of the City Council of the City of Cupertino the _____ day of _____, 2007, by the following vote:

Vote Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

City Clerk

Mayor, City of Cupertino