



**DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, May 9, 2023**

SPECIAL MEETING

At 6:00 p.m. Mayor Hung Wei called the Special 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 Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao (6:40 p.m.), J.R. Fruen and Kitty Moore. Absent: None.

ACTION CALENDAR

1. Subject: Consider a report regarding the review of potential violations of the City of Cupertino Municipal Code and City policies regarding Council- and commissioner-staff relations ("Report").

Recommended Action: Consider the recommendations in the Report.

Written communications for this item included a staff presentation, written statements from Councilmembers Chao and Moore, and emails to Council.

Councilmember Moore read a statement and stated that she was recusing herself and left the meeting. (Submitted written comments).

City Attorney Christopher Jensen gave a presentation.

Attorney Linda Daube, with the Law Office of Linda L. Daube, answered questions.

Councilmembers asked questions and made comments.

Mayor Wei reduced the public comment time allowance to two minutes.

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

Darcy Paul opposed the Report findings and supported working together. (Submitted written comments).

Housing Commissioner Tessa Parish (representing self) ceded their time to Darcy Paul

Eric Schaefer ceded their time to Darcy Paul

Lisa Warren ceded their time to Darcy Paul

Martin Won ceded their time to Darcy Paul

Cathy Helgerson opposed the Report findings.

Councilmember Chao joined the meeting.

Donna Austin supported the Report findings.

Brooke Ezzat opposed the Report findings.

Jennifer Griffin opposed the Report findings.

Hema Kundargi supported the Report findings.

San R was concerned about flaws in the Report findings.

Tracy Edwards, representing League of Women Voters Cupertino-Sunnyvale, supported the Report recommendations.

Glenn Fishler supported the Report recommendations.

Xinpei supported the Report recommendations.

Sonali supported working together.

Long Jiao opposed the Report recommendations.

Kathy Stakey asked about the facts and proceedings under the Grand Jury Report and Ms. Daube's investigation and supported the City Manager's performance.

Siva supported working together.

Venkat R was concerned about the Report and supported working together.

Rhoda Fry opposed some Report findings and supported most recommendations and working together. (Submitted written comments).

Ravi Kiran Singh ceded their time to Rhoda Fry.

Carrie O'Leary ceded their time to Rhoda Fry.

William Hershey ceded their time to Rhoda Fry.

Liana Crabtree ceded their time to Rhoda Fry.

Planning Commissioner Muni Madhhipatla (representing self) opposed the Report findings.

Jean Bedord supported the Report findings and implementing an action plan.

Govind Tatachari supported working together.

Bicycle Pedestrian Commissioner Jennifer Shearin (representing self) supported the Report recommendations.

Bern Steves opposed the Report.

Vinod opposed the Report.

Claudio Bono supported the Report recommendations.

Pamela Hershey opposed the Report findings.

Housing Commissioner Connie Cunningham (representing self) supported the Report recommendations.

Parks and Recreation Commission Seema Lindskog (representing self) supported the Report recommendations.

Debra Timmers supported the Report recommendations.

Rod Sinks supported the Report recommendations.

Louis Saadati supported the Report recommendations.

R Wang opposed the Report findings and supported working together.

Peggy Griffin opposed the Report findings and supported training on policies and procedures.

Ava Chiao (representing self) supported the Report recommendations.

John Geis supported the Report recommendations.

Gauri Chawla supported the Report recommendations.

Mayor Wei closed the public comment period.

Council recessed from 7:58 p.m. to 8:05 p.m.

Council considered the recommendations in the Report.

At 8:17 p.m., Councilmember Chao read a statement and left the meeting. (Submitted written comments).

Council continued deliberations.

Fruen moved and Wei seconded to adopt the seven staff recommendations in addition to the following:

1. To aid the desire of councilmembers for information, that councilmembers receive training from the City Clerk's office on the use of the city's digital archive system;
2. For the sake of transparency and accountability, that all privileges and protections from disclosure except for the attorney-client privilege and the attorney work-product doctrine be waived as to communications between the City Manager and councilmembers--current or former--constituting any part of the subject-matter of the Fact Finding Report or otherwise relevant thereto, and that such documents be disclosed and posted in a publicly accessible location on the city's website; provided, however, that no confidential personnel information otherwise protected from disclosure shall be released;
3. That the City Attorney's office continue to monitor compliance of councilmembers with the Municipal Code with respect to the Council-staff relationship and to report back to the Council in four to five months with a progress report;

4. In the event that such progress report includes substantial evidence of continued violations of the Municipal Code with respect to the Council-staff relationship through the end of such reporting period, that staff return to Council at the same meeting with a relevant censure resolution containing appropriate findings of fact, up to and including referral to the District Attorney's office;
5. That Councilmembers Moore and Chao be removed immediately from their respective committee assignments;
6. That the City Attorney's office be directed to make a limited scope referral to the District Attorney's office with respect to the Fact Finding Report's evidence of any current or former councilmember's interference in the hiring and firing decisions that are the province of the City Manager.

Wei made the following friendly amendment:

5. That Councilmembers Moore and Chao be removed immediately from their respective committee assignments; **and in the event that progress has been made in five months time, then Council will restore the committee assignments.** (Fruen accepted the friendly amendment).

Final Motion:

Fruen moved and Wei seconded to adopt the seven Report recommendations, with additions (as amended):

Report recommendations:

1. Councilmembers should avoid "governance by email" and should rely on their 1:1 meetings with the City Manager to avoid adverse impacts to City operations and to facilitate communication and trust between the Councilmembers and the City Manager and City staff.
2. Councilmembers should attempt to improve the contentious relationship that certain members have had with City staff and should communicate any concerns about staff to the City Manager, who is accountable to the City Council for her staff's performance.
3. Councilmembers should rely on the advice of and give weight to the recommendations of executive management staff and other professionals in considering items that come before the City Council.
4. The City Council should continue to use the City Work Program as a way to implement Council's goals, and the City should rely on the Work Program to focus resources and determine staffing needs.
5. The 2018 Ethics Code should be used as a basis for developing revisions to a new Ethics Policy.
6. The City Attorney and City Clerk should consider providing Councilmember training on Rosenberg's Rules of Order.
7. The City Manager should explore ways to resolve Councilmember needs for information, given limited staff resources (e.g., 1:1 meetings); and

Fruen's additions:

1. To aid the desire of councilmembers for information, that councilmembers receive training from the City Clerk's office on the use of the city's digital archive system;
2. For the sake of transparency and accountability, that all privileges and protections from disclosure except for the attorney-client privilege and the attorney work-product doctrine be waived as to communications between the City Manager and councilmembers--current or former--constituting any part of the subject-matter of the Fact Finding Report or otherwise relevant thereto, and that such documents be disclosed and posted in a publicly accessible location on the city's website; provided, however, that no confidential personnel information otherwise protected from disclosure shall be released;
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5. That Councilmembers Moore and Chao be removed immediately from their respective committee assignments; and in the event that progress has been made in five months time, then Council will restore the committee assignments;
6. That the City Attorney's office be directed to make a limited scope referral to the District Attorney's office with respect to the Fact Finding Report's evidence of any current or former councilmember's interference in the hiring and firing decisions that are the province of the City Manager.

The amended motion carried with Chao absent and Moore absent (recused).

ADJOURNMENT

At 8:58 p.m., Mayor Wei adjourned the Special City Council Meeting.

Minutes prepared by:

Kirsten Squarcia, City Clerk