



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, November 21, 2023

At 6:45 p.m., Mayor Wei 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 Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

CLOSED SESSION REPORT

City Attorney Chris Jensen reported out on the November 20, 2023 closed session regarding one item:

Subject: Conference with legal counsel - existing litigation pursuant to Government Code § 54956.9 (City of Cupertino v. California Department of Tax & Fee Administration)

City Attorney Jensen reported that there was no reportable action.

CEREMONIAL ITEMS

1. Subject: Recognition of November 25, 2023 as Small Business Saturday
Recommended Action: Recognize November 25, 2023 as Small Business Saturday

Mayor Wei recognized November 25, 2023 as Small Business Saturday.

POSTPONEMENTS AND ORDERS OF THE DAY - None

ORAL COMMUNICATIONS

Written communications for this item included emails to Council.

Rhoda Fry discussed City finances, the Cupertino Public Facilities Corporation, and the Annual

Comprehensive Financial Report (submitted written comments).

Lisa Warren discussed the recent Council Governance Workshop, Council committee assignments, and the public comment process.

Jane Huang discussed a Code Enforcement matter.

CONSENT CALENDAR (Items 2-10)

Mayor Wei opened the public comment period and, seeing no one, closed the public comment period.

MOTION: Fruen moved and Mohan seconded to approve the items on the Consent Calendar except for Item 2 which was pulled for discussion. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

MOTION: Wei moved and Fruen seconded to reorder the agenda to hear Item 2 Mitigation Fee Act before the Action Calendar. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, and Fruen. Noes: Moore. Abstain: None. Absent: None.

3. Subject: First Amendment to Employment Agreement for the City Manager
 Recommended Action: Adopt Resolution No. 23-120 approving the First Amendment to Employment Agreement with the City Manager for the City of Cupertino and authorize the Mayor to execute the Agreement.
4. Subject: Approval of the November 7 City Council minutes
 Recommended Action: Approve the November 7 City Council minutes
5. Subject: Second reading of an ordinance to make minor amendments to Cupertino Municipal Code Chapter 1.18 (Claims Against the City), Chapter 9.15 (Prohibition of Expanded Polystyrene (EPS) Foam Food Service Ware), 9.18 (Stormwater Pollution Prevention and Watershed Protection), Chapter 15.04 (Waterworks System-Rates and Charges), and Chapter 16.72 (Recycling and Diversion of Construction and Demolition Waste)
 Recommended Action: Conduct the second reading and enact Ordinance No. 23-2252 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTERS 1.18, 9.15, 9.18, 15.04, AND 16.72".
6. Subject: Adopt a resolution increasing the employer's contribution for medical and hospitalization insurance consistent with the Public Employees' Medical and Hospital Care Act ("PEMHCA" or the "Act") for retired annuitants hired with the City of Cupertino prior to August 2004.

Recommended Action: Adopt Resolution No. 23-123 increasing the employer's contribution for medical and hospitalization insurance for retired annuitants hired with the City of Cupertino prior to August 2004.

7. Subject: Ratifying Accounts Payable for the periods ending October 6, 2023; October 13, 2023; October 20, 2023; and October 27, 2023

Recommended Action: A. Adopt Resolution No. 23-124 ratifying Accounts Payable for the Period ending October 6, 2023;

B. Adopt Resolution No. 23-125 ratifying Accounts Payable for the Period ending October 13, 2023;

C. Adopt Resolution No. 23-126 ratifying Accounts Payable for the Period ending October 20, 2023; and

D. Adopt Resolution No. 23-127 ratifying Accounts Payable for the Period ending October 27, 2023

8. Subject: Approve a Second Amendment with Acuity Brands, LLC, for continued use of the BuildingOS Energy Management Platform.

Recommended Action: Authorize the City Manager to execute a Second Amendment with Acuity Brands, LLC, for continued use of the BuildingOS Energy Management Platform, increasing the contract amount by \$45,500 for a new total not-to-exceed contract amount of \$227,500 and extending the term of the agreement to December 9, 2024.

9. Subject: Microsoft Enterprise Software Licensing Agreement with SoftwareONE, Inc., for licensing of Microsoft programs, systems, and databases.

Recommended Action: 1. Authorize the City Manager to execute a Microsoft Enterprise Software Licensing Agreement with SoftwareONE, Inc., utilizing Riverside County's statewide competitively awarded Microsoft Enterprise Agreement for licensing of Microsoft programs, systems, and databases for a total amount not to exceed \$342,729.23, including a 10% contingency in the amount \$31,157.20.

2. Find under Municipal Code section 3.22.070(C) that this procurement from Riverside County is exempt from formal competitive bidding procedures.

10. Subject: Approve master agreements with CSG Consultants, Inc. and 4Leaf, Inc., to provide construction management services on various Capital Improvement Program (CIP) projects.

Recommended Action: 1. Authorize the City Manager to execute a master agreement with CSG Consultants, Inc. (CSG) in the amount not to exceed \$500,000 for contract period of two years.

2. Authorize the City Manager to execute a master agreement with 4Leaf, Inc. (4Leaf) in the amount not to exceed \$500,000 for a contract period of two years.

Written communications for this item included a supplemental report with corrected staff report and staff responses to councilmember questions, New Attachment C - Service Order Example, and a councilmember email.

PUBLIC HEARINGS – None

ITEMS REMOVED FROM THE CONSENT CALENDAR

2. Subject: Mitigation Fee Act - the Annual & Five-Year Report for Fiscal Year (FY) 2022-2023. (Continued from November 7, 2023)

Recommended Action: Adopt Resolution No. 23-121 entitled "A Resolution of the City of Cupertino City Council approving the Annual & Five -Year Mitigation Fee Report for Fiscal Year ending June 30, 2023, and making required findings" to:

1. Make the required findings; and
2. Approve the Annual & Five-Year Mitigation Fee Report for the Fiscal Year ending June 30, 2023, as required by Government Code Section 66000 et seq.

Written communications for this item included a supplemental report with staff responses to councilmember questions and a councilmember email.

This item was pulled from the Consent Calendar for discussion.

Director or Public Works Chad Mosley reviewed the item.

Councilmembers made comments and asked questions.

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

Rhoda Fry
Lisa Warren

Mayor Wei closed the public comment period.

SUBSTITUTE MOTION: Moore moved and Chao seconded a substitute motion to approve the Recommended Action with the addition that the Parkland 14.05 funds are broken out from the 13.08 funds into a separate reporting item in the AB 1600 report. The substitute motion failed with the following vote: Ayes: Chao and Moore. Noes: Wei, Mohan, and Fruen. Abstain: None. Absent: None.

MOTION: Fruen moved and Mohan seconded to adopt Resolution No. 23-121 entitled "A Resolution of the City of Cupertino City Council approving the Annual & Five -Year Mitigation Fee Report for Fiscal Year ending June 30, 2023, and making required

findings" to:

1. Make the required findings; and
2. Approve the Annual & Five-Year Mitigation Fee Report for the Fiscal Year ending June 30, 2023, as required by Government Code Section 66000 et seq.
3. Modify the report to further breakdown the funding and expenditures for Lawrence-Mitty Park within the Park Dedication In-Lieu Fee reporting section.

The motion carried with the following vote: Ayes: Wei, Mohan, Chao, and Fruen. Noes: Moore. Abstain: None. Absent: None.

At 7:50 p.m., Mayor Wei recessed the meeting. The meeting reconvened at 7:55 p.m. with all Councilmembers present.

ACTION CALENDAR

11. Subject: Accept the City Manager's First Quarter Financial Report for Fiscal Year 2023-24
- Recommended Action:
1. Accept the City Manager's First Quarter Financial Report for Fiscal Year 2023-24
 2. Adopt Resolution No. 23-128 approving Budget Modification No. 2324-314, increasing appropriations by \$464,384 and revenues by \$540,141
 3. Adopt Resolution No. 23-129 amending Cupertino City Employees' Association /IFPTE Local 21 Classification Plan and Salary Schedule
 4. Adopt Resolution No. 23-130 amending the Unrepresented Employees' Compensation Program
 5. Approve new Senior Housing Coordinator and Communications and Marketing Coordinator classifications
 6. Receive FY 2023-24 First Quarter City Work Program Dashboard Update
 7. Provide direction on potential service level reductions for FY 2024-25
 - a. Defunding the 4th of July Event in FY 2024-25
 - b. Defunding Community Grant Funding Program in FY 2024-25
 - c. Defunding Weed Abatement subsidy of \$8,600 annually.
- Presenters: Kristina Alfaro, Director of Administrative Services and Thomas Leung, Budget Manager

Written communications for this item included a staff presentation, a supplemental report with staff responses to councilmember questions, and a councilmember email.

Director of Administrative Services Kristina Alfaro and Budget Manager Thomas Leung gave a presentation.

Councilmembers made comments and asked questions.

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

Rhoda Fry (submitted written comments)

Jane Huang

Lisa Warren

Mayor Wei closed the public comment period.

MOTION: Moore moved and Fruen seconded as amended to:

1. Accept the City Manager's First Quarter Financial Report for Fiscal Year 2023-24
2. Adopt Resolution No. 23-128 approving Budget Modification No. 2324-314, increasing appropriations by \$464,384 and revenues by \$540,141
3. Adopt Resolution No. 23-129 amending Cupertino City Employees' Association/IFPTE Local 21 Classification Plan and Salary Schedule
4. Adopt Resolution No. 23-130 amending the Unrepresented Employees' Compensation Program
5. Approve new Senior Housing Coordinator and Communications and Marketing Coordinator classifications
6. Receive FY 2023-24 First Quarter City Work Program Dashboard Update
7. Approve potential service level reductions for FY 2024-25 as amended:
 - a. Defunding the 4th of July Event in FY 2024-25 with an amendment to direct staff to explore options on what could continue to be funded and return to Council with funding suggestions;
 - b. Defunding Community Grant Funding Program in FY 2024-25; and
 - c. Defunding Weed Abatement subsidy of \$8,600 annually.

FRIENDLY AMENDMENT: Fruen made a friendly amendment to cap the amount for 7b at \$32,500. (Moore accepted the friendly amendment).

Council did not vote on this motion.

SUBSTITUTE MOTION: Wei moved and Chao seconded a substitute motion as amended to:

1. Accept the City Manager's First Quarter Financial Report for Fiscal Year 2023-24
2. Adopt Resolution No. 23-128 approving Budget Modification No. 2324-314, increasing appropriations by \$464,384 and revenues by \$540,141
3. Adopt Resolution No. 23-129 amending Cupertino City Employees' Association/IFPTE Local 21 Classification Plan and Salary Schedule
4. Adopt Resolution No. 23-130 amending the Unrepresented Employees' Compensation Program
5. Approve new Senior Housing Coordinator and Communications and Marketing Coordinator classifications
6. Receive FY 2023-24 First Quarter City Work Program Dashboard Update

7. Approve potential service level reductions for FY 2024-25 as amended:

- a. Defunding the 4th of July Event in FY 2024-25 with amendments to direct staff to explore options on what could continue to be funded and return to Council with funding suggestions; and retain funding of \$7,000 to continue morning events;
- b. Defunding Community Grant Funding Program in FY 2024-25 with an amendment to cap the amount at \$32,500; and
- c. Defunding Weed Abatement subsidy of \$8,600 annually.

FRIENDLY AMENDMENT: Chao made a friendly amendment to refer 7a to the Parks and Recreation Department to explore creative solutions on whether to continue to defund for the following year. (Wei accepted the friendly amendment).

The amended substitute motion carried with the following vote: Ayes: Wei, Mohan, Chao, and Fruen. Noes: Moore. Abstain: None. Absent: None.

COUNCIL REPORTS AND COMMENTS

12. Subject: Councilmember Reports

Councilmembers reported on their various committees and activities as provided in the published agenda and written communications.

CITY MANAGER REPORT

City Manager Wu shared a video commemorating the Cupertino-Toyokawa Sister Cities Association 45th anniversary of the Sister Cities relationship.

ORAL COMMUNICATIONS – CONTINUED - None

INFORMATIONAL ITEMS

13. Subject: Receive the Treasurer's Investment Report for the Quarter Ending September 30, 2023

Recommended Action: Receive the Treasurer's Investment Report for the Quarter Ending September 30, 2023

The information regarding the Treasurer's Investment Report for the Quarter Ending September 30, 2023 was provided as part of the published agenda.

14. Subject: Receive the Monthly Treasurer's Investment Report for October 2023

Recommended Action: Receive the Monthly Treasurer's Investment Report for October 2023

The information regarding the Monthly Treasurer's Investment Report for October

2023 was provided as part of the published agenda.

15. Subject: Receive the Monthly Treasurer's Report for October 2023
Recommended Action: Receive the Monthly Treasurer's Report for October 2023

The information regarding the Monthly Treasurer's Report for October 2023 was provided as part of the published agenda.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmembers made comments and discussed requests for future agenda items.

ADJOURNMENT

At 8:57 p.m., Mayor Wei adjourned the Regular City Council Meeting.

Minutes prepared by:

Kirsten Squarcia, City Clerk