



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, November 7, 2023

SPECIAL MEETING

At 5:30 p.m., Mayor Wei called the Special City Council Meeting to order 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 (5:36 p.m.), J.R. Fruen, and Kitty Moore. Absent: none.

ACTION CALENDAR

1. Subject: Approve the Tentative Agreement revising the salary and benefits terms of the Memorandum of Understanding (MOU) for the Cupertino City Employees' Association (CEA)/IFPTE Local 21 for the term of July 1, 2022 through June 30, 2025.

Recommended Action: 1. Adopt the Resolution 23-114 approving the Tentative Agreement between the City of Cupertino and Cupertino City Employees' Association (CEA)/IFPTE Local 21; and

2. Approve the corresponding Salary Schedule for CEA employees effective July 1, 2023.

Presenter: Kristina Alfaro, Director of Administrative Services

Written communications for this item included Attachment A - Signed CEA Tentative Agreement (Exhibit A) Supplemental Report and an email to Council.

This item was combined with Item 2 for consideration.

2. Subject: Approve the Tentative Agreement revising salary and benefits terms of the Memorandum of Understanding (MOU) for the Operating Engineers Local No. 3 Union, AFL-CIO (OE3) for the term of July 1, 2022 through June 30, 2025.

Recommended Action: 1. Adopt Resolution 23-115 approving the Tentative

Agreement between the Operating Engineers Local No. 3 Union, AFL-CIO (OE3); and
2. Approve the corresponding Salary Schedule for OE3 employees effective July 1, 2023.

Presenter: Kristina Alfaro, Director of Administrative Services

Written communications for this item included an email to Council.

This item was combined with Item 1 for consideration.

Director of Administrative Services Kristina Alfaro reviewed the staff report for Items 1 and 2.

Mayor Wei opened the public comment period for Items 1 and 2 and the following people spoke.

Gian Martire, representing Cupertino City Employees' Association (CEA)
Stanley Young, representing IFPTE Local 21 and speaking on behalf of Local 21 members who are CEA

Mayor Wei closed the public comment period.

Councilmember Chao joined meeting at 5:36 p.m.

Councilmembers made comments and asked questions for Items 1 and 2.

MOTION: Moore moved and Fruen seconded the recommended actions for Items 1 and 2 to:

1. Adopt Resolution No. 23-114 approving the Tentative Agreement between the City of Cupertino and Cupertino City Employees' Association (CEA)/IFPTE Local 21;
2. Approve the corresponding Salary Schedule for CEA employees effective July 1, 2023;
3. Adopt Resolution No. 23-115 approving the Tentative Agreement between the Operating Engineers Local No. 3 Union, AFL-CIO (OE3); and
4. Approve the corresponding Salary Schedule for OE3 employees effective July 1, 2023.

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

3. Subject: Approve and update the health benefits for Elected Officials' Compensation Program

Recommended Action: Adopt Resolution No. 23-116 revising the health benefits for the Elected Officials' Compensation Program effective July 1, 2023

Presenter: Kristina Alfaro, Director of Administrative Services

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

MOTION: Mohan moved and Wei seconded to adopt Resolution No. 23-116 revising the health benefits for the Elected Officials' Compensation Program effective July 1, 2023. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

ADJOURNMENT

At 5:48 p.m., Mayor Wei adjourned the Special City Council Meeting.

REGULAR MEETING

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 October 25, 2023 closed session regarding two items:

The following individuals spoke in open session before Council went into closed session:

Jenny Huang

1. Subject: Conference with Labor Negotiators pursuant to Government Code § 54957.6 (Kristina Alfaro and Christopher Boucher)

City Attorney Jensen reported that there was no reportable action.

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

City Attorney Jensen reported that there was no reportable action.

City Attorney Chris Jensen also reported out on the October 30, 2023 closed session regarding two items:

The following individuals spoke in open session before Council went into closed session:

Lisa Warren

1. Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Attorney

City Attorney Jensen reported that there was no reportable action.

2. Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Manager

City Attorney Jensen reported that there was no reportable action.

CEREMONIAL ITEMS

Council heard Item 1 United Against Hate Week Proclamation after Oral Communications.

2. Subject: Recognition of November as National Native American Heritage Month
Recommended Action: Recognize November as National Native American Heritage Month

Mayor Wei recognized November as National Native American Heritage Month.

POSTPONEMENTS AND ORDERS OF THE DAY

MOTION: Fruen moved and Mohan seconded that Item 11 Mitigation Fee Act be postponed until a later date. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

ORAL COMMUNICATIONS

Written communications for this item included emails to Council.

Advait Ghosh discussed the Hsinchu Sister City student exchange program.

San R discussed Parks and Recreation events and the Hsinchu Sister City program.

Saanj Rao discussed the Hsinchu Sister City student exchange program.

Susanna Khubchani discussed the Hsinchu Sister City student exchange program.

Peggy Griffin discussed hybrid commission meetings (Item 19) and Brown Act rules (submitted written comments).

Rhoda Fry discussed proposed City projects, labor contracts, budget, and recorded commission meetings.

Daniel Gutierrez, representing Bill Wilson Center, discussed November as National Homeless and Runway Prevention Month and an upcoming event (submitted written comments).

Call-inUser_2 discussed a Code Enforcement matter.

Mayor Wei provided remarks for Item 16 Stevens Creek Boulevard/Calabazas Creek Storm Drain Repair Emergency Work status report.

CEREMONIAL ITEMS – CONTINUED

1. Subject: Proclamation recognizing November 12-18, 2023 as United Against Hate Week
Recommended Action: Present proclamation recognizing November 12-18, 2023 as United Against Hate Week

Mayor Wei presented the proclamation recognizing November 12-18, 2023 as United Against Hate Week.

CONSENT CALENDAR (Items 3-11)

Mayor Wei provided an oral report for Items 6 Unrepresented and Appointed Employees and 7 Employment Agreement for the City Manager.

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

Councilmembers made comments.

MOTION: Mohan moved and Moore seconded to approve the items on the Consent Calendar

except for Items 6, 8, and 10 which were pulled for discussion and Item 11 which was tabled. 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 move Item 6 before the Action Calendar for consideration. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

Items 8 and 10 were placed after the Action Calendar for consideration.

2. Subject: Approval of the October 10 City Council minutes
Recommended Action: Approve the October 10 City Council minutes
3. Subject: Approval of the October 17 City Council minutes
Recommended Action: Approve the October 17 City Council minutes

Written communications for this item included a councilmember email.

4. Subject: Setting a hearing date on January 17, 2024 to declare a public nuisance (from weeds) and to consider objections for proposed removal; declaring properties as having potential fire hazards from weeds or other potential nuisances for the Cupertino Weed Abatement Program
Recommended Action: Adopt Resolution No. 23-117 declaring properties as having potential fire hazards from weeds or other potential nuisances and set hearing on January 17, 2024 to declare a public nuisance and to consider objections for proposed removal

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

7. Subject: 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

Mayor Wei provided an oral report for this item.

9. Subject: Approve a Fourth Amendment to the recreation agreement with Snapology of Los Gatos dba SV Kids Corp for Enrichment STEAM Programs.
Recommended Action: Authorize the City Manager to execute a Fourth Amendment to the recreation agreement with Snapology of Los Gatos dba SV Kids Corp

(Snapology), increasing the amount by \$190,105 for a total contract amount not to exceed \$341,105 and extending the term of the agreement to August 31, 2026.

11. Subject: Mitigation Fee Act - an Annual & Five-Year Report for Fiscal Year (FY) 2022-2023.

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 councilmember emails.

As noted under Postponements and Orders of the Day, this item was tabled until a later date.

PUBLIC HEARINGS – None

ITEMS REMOVED FROM THE CONSENT CALENDAR

6. Subject: Approve and update the salary and benefits for the Unrepresented (Management and Confidential) Employees and Appointed Employees.
- Recommended Action: 1. Adopt Resolution No. 23-118 revising the Compensation Program and salary schedules for the Unrepresented (Management and Confidential) Employees effective July 1, 2023;
- Adopt Resolution No. 23-119 revising the Compensation Program for the Appointed Employees effective July 1, 2023; and
- Approve salary realignment for the classification of Environmental Program Manager to Transportation Manager and Capital Improvement Programs Manager

Written communications for this item included a supplemental report with staff responses to councilmember questions, staff report desk item, and emails to Council.

This item was pulled from the Consent Calendar for discussion.

Mayor Wei provided an oral report for this item.

Director of Administrative Services Kristina Alfaro reviewed the staff report.

Councilmembers asked questions and made comments.

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

MOTION: Chao moved and Fruen seconded to:

1. Adopt Resolution No. 23-118 revising the Compensation Program and salary schedules for the Unrepresented (Management and Confidential) Employees effective July 1, 2023;
 2. Adopt Resolution No. 23-119 revising the Compensation Program for the Appointed Employees effective July 1, 2023; and
 3. Approve salary realignment for the classification of Environmental Program Manager to Transportation Manager and Capital Improvement Programs Manager
- The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

ACTION CALENDAR

- 12.** Subject: 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 first reading of 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."

Presenter: Christopher Jensen, City Attorney

Written communications for this item included a staff presentation.

City Attorney Christopher Jensen gave a presentation.

Councilmembers asked questions and made comments.

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

City Clerk Kirsten Squarcia read the title of 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."

MOTION: Chao moved and Mohan seconded for the City Clerk to read the title of Ordinance No. 23-2252 as amended to include a date correction for 9.15.120C, that further reading of the Ordinance be waived, and that the City Council conduct the first reading of the Ordinance by title only. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

13. Subject: Adoption of Code of Ethics and Conduct for Elected and Appointed Officials
Recommended Action: Adopt Resolution No. 23-122 adopting the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Official and rescinding the current Ethics Policy
Presenter: Christopher Jensen, City Attorney

Written communications for this item included a staff presentation and a councilmember email.

City Attorney Christopher Jensen gave a presentation.

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

Donna Austin

Parks and Recreation Commissioner Jennifer Shearin (representing self) (submitted written comments)

Jean Bedord

Louise Saadati

Glenn Fishler

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

MOTION: Mohan moved and Chao seconded to adopt Resolution No. 23-122 adopting the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Official and rescinding the current Ethics Policy.

FRIENDLY AMENDMENT: Fruen made a friendly amendment for adding the following additional direction:

1. That the following language be added Section 22(c): "If an individual Commissioner or non-Council Committee member is contacted by the media, such Commissioner or member should be clear about whether their comments represent the official City position or a personal viewpoint."
2. That the Code of Ethics and Conduct of Elected and Appointed Officials be brought back for review contemporaneous with Council review of the Council

Procedures Manual.

3. That the City Attorney be authorized to make non-substantive grammatical corrections to said Code.

(Mohan and Chao accepted Fruen's friendly amendment)

FRIENDLY AMENDMENT: Chao made a friendly amendment for the following:

- Item 8 Conflict of Interest - add "or for"
"if the City Official has made statements outside of the quasi-adjudicatory hearing that demonstrates an unacceptable probability of bias against or for a participant in the hearing."
- Item 8 "any other interest that material interferes with the City Official's ability to make an impartial decision in the best interest of the City. This does not prevent the City Officials holding strong opinions or from participating in policy decisions."
- Amendment from Fruen Section 22.C and Commissioner's Handbook

(Mohan declined Chao's friendly amendment and it was not included in the motion)

FRIENDLY AMENDMENT: Chao made a second friendly amendment for the following:

- Item 8 Conflict of Interest - add "or for"
"if the City Official has made statements outside of the quasi-adjudicatory hearing that demonstrates an unacceptable probability of bias against or for a participant in the hearing."

Council did not vote on this motion.

SECOND SUBSTITUTE MOTION: Moore moved and Chao seconded to accept Councilmember Fruen's motion with the alteration of the language in Item 8 Conflict of Interest to, "~~bias against~~regarding a participant..."; and when it returns to Council, provide comparisons from surrounding cities on the processes for censorship, admonishment, and reprimand.

FRIENDLY AMENDMENT: Chao made a friendly amendment for the following:

In addition, the City Council may impose additional sanctions on Commissioners or Other Appointed Members whose conduct does not comply with the City's policies, up to and including removal from office. (Moore accepted Chao's friendly amendment).

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

MOTION: Wei moved and Fruen seconded to reconsider the second substitute motion.

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

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

SUBSTITUTE MOTION: Fruen moved and Wei seconded to adopt Resolution No. 23-122 adopting the City of Cupertino Code of Ethics and Conduct for Elected and

Appointed Official and rescinding the current Ethics Policy and for adding the following additional direction:

1. That the following language be added Section 22(c): "If an individual Commissioner or non-Council Committee member is contacted by the media, such Commissioner or member should be clear about whether their comments represent the official City position or a personal viewpoint."
2. That the Code of Ethics and Conduct of Elected and Appointed Officials be brought back for review contemporaneous with Council review of the Council Procedures Manual
3. That the City Attorney be authorized to make non-substantive grammatical corrections to said Code.

FRIENDLY AMENDMENT: Moore made a friendly amendment to change: bias ~~against~~ regarding. (Fruen declined Moore's friendly amendment and it was not included in the substitute motion).

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

At 8:54 p.m., Mayor Wei recessed the meeting. The meeting reconvened at 9:00 p.m. with all Councilmembers present.

14. Subject: To Be Determined list ("TBD List") of agenda items requested by City Councilmembers

Recommended Action: Review the TBD List and modify the list as recommended below

Presenter: Pamela Wu, City Manager

City Manager Pamela Wu reviewed the staff report.

Councilmembers asked questions and made comments.

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

San R

Mayor Wei closed the public comment period.

MOTION: Moore moved and Chao seconded to approve the TBD List as recommended with the following three additions:

1. Sign Ordinance review;
2. Hybrid meetings study;
3. Nexus study to include all AB 1600 fees.

FRIENDLY AMENDMENT: Fruen made a friendly amendment to strike the Nexus Study. (Moore declined Fruen's friendly amendment and it was not included in the motion).

AMENDED MOTION: Moore amended the motion to only include the transportation impact fee and storm drain AB 1600 fee. (Chao accepted Moore's amended motion). Council did not vote on this motion.

SUBSTITUTE MOTION: Fruen moved and Mohan seconded the staff recommendation to modify the list as recommended with the addition of a hybrid meetings study. The substitute motion carried with the following vote: Ayes: Wei, Mohan, and Fruen. Noes: Chao and Moore. Abstain: None. Absent: None.

ITEMS REMOVED FROM THE CONSENT CALENDAR – CONTINUED

8. Subject: Law Enforcement Contract Extension with the County of Santa Clara Sheriff's Office
Recommended Action: Authorize the City Manager to extend the existing law enforcement contract with the County of Santa Clara Sheriff's Office for five years, from July 1, 2024, through July 1, 2029, and amend the terms of the agreement as needed during the extension

Written communications for this item included a councilmember email.

This item was pulled from the Consent Calendar for discussion.

Councilmembers asked questions and made comments.

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

Rhoda Fry (shared written comments)
San R (virtual)

Mayor Wei closed the public comment period.

MOTION: Wei moved and Fruen seconded to authorize the City Manager to extend the existing law enforcement contract with the County of Santa Clara Sheriff's Office for five years, from July 1, 2024, through July 1, 2029, and amend the terms of the agreement as needed during the extension. The motion carried with the following vote: Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

10. Subject: Hungry Jacks Corporation (Blue Pheasant) lease agreement, 22100 Stevens

Creek Boulevard, Cupertino, CA 95014

Recommended Action: Authorize the City Manager to execute a two-year lease agreement with three optional one-year options to extend with Hungry Jacks Corporation for 22100 Stevens Creek Boulevard, Cupertino, CA 95014 (Blue Pheasant)

Written communications for this item included a councilmember email.

This item was pulled from the Consent Calendar for discussion.

Councilmembers asked questions and made comments.

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

SUBSTITUTE MOTION: Moore moved and Chao seconded a substitute motion to direct the City Manager to explore an alternative economic structure for the lease, with a fixed base rent and no percentage rent, and explore the possibility of an escalating rent over the term of the lease. The substitute motion failed with the following vote: Ayes: Chao and Moore. Noes: Wei, Mohan, and Fruen. None. Abstain: None. Absent: None.

MOTION: Fruen moved and Mohan seconded to Authorize the City Manager to execute a two-year lease agreement with three optional one-year options to extend with Hungry Jacks Corporation for 22100 Stevens Creek Boulevard, Cupertino, CA 95014 (Blue Pheasant).

FRIENDLY AMENDMENT: Chao made a friendly amendment for staff to bring back a potential more market rate rent in two years. (Fruen declined Chao's friendly amendment and it was not included in the motion).

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

COUNCIL REPORTS AND COMMENTS

15. 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 showing photos of the Fall BikeFest.

ADJOURNMENT

At 10:31 p.m., Mayor Wei adjourned the Regular City Council Meeting per rule. There was no Council discussion on the remaining agenda items.

ORAL COMMUNICATIONS - CONTINUED - None**INFORMATIONAL ITEMS**

16. Subject: Stevens Creek Boulevard/Calabazas Creek Storm Drain Repair Emergency Work status report
Recommended Action: Receive the Stevens Creek Boulevard/Calabazas Creek Storm Drain Repair Emergency Work status report

The Stevens Creek Boulevard/Calabazas Creek Storm Drain Repair Emergency Work status report was provided as part of the published agenda.

As noted under Oral Communications, Mayor Wei provided comments on this item.

17. Subject: Update on activities of the Cupertino Sanitary District
Recommended Action: Receive the update on activities of the Cupertino Sanitary District

The update on activities of the Cupertino Sanitary District was provided as part of the published agenda.

18. Subject: Update and Status regarding Lehigh Cement Plant and Quarry
Recommended Action: Receive the update and status regarding Lehigh Cement Plant and Quarry

The update and status regarding Lehigh Cement Plant and Quarry was provided as part of the published agenda.

19. Subject: Information regarding hybrid options for commission meetings
Recommended Action: Receive the information regarding hybrid options for commission meetings

Written communications for this item included emails to Council.

The information regarding hybrid options for commission meetings was provided

as part of the published agenda.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

ADJOURNMENT

Minutes prepared by:

Kirsten Squarcia, City Clerk