

CC 07-06-2023

Oral  
Communications

Written  
Communications

**From:** [Rhoda Fry](#)  
**To:** [City Clerk](#); [City Council](#)  
**Subject:** For July 6 City Council Meeting ORAL COMMUNICATIONS  
**Date:** Thursday, July 6, 2023 2:37:32 PM  
**Attachments:** [Daube Contract Signed February 14.pdf](#)

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

## For July 6 City Council Meeting ORAL COMMUNICATIONS

Summary for Minutes: Rhoda Fry asked why did the City Attorney contract for services prior to being authorized to do so.

Dear City Clerk – please include the attachment inline with the comments below as attachments are very hard to find.

Dear City Council,

Can you please explain why the City Attorney entered into a contract for services prior to being authorized by the City Council to do so? Can you also please explain how the direction of an agenda item changed completely from its inception to completion so that the public had no opportunity to comment?

February 7, Agenda #17 was described as follows:

Consider approval of response to 2022 Civil Grand Jury of Santa Clara County Report entitled, “A House Divided.” There was public comment but no deliberation. The meeting was continued to February 21.

There was nothing in this agenda about hiring an investigator, but the City Attorney hired an investigator (and did he make contact with her prior to February 7?)

On February 14, without council direction, City Attorney Jensen entered into a contract with an investigator (see attached).

On February 15, the City’s accounts payable demonstrate that the investigator started working.

February 21, Agenda #10 continues February 7 item #17. There is no mention of hiring an investigator in the agenda. The direction of the meeting suddenly changed and the public had no opportunity to comment on that new direction, which included the possibility of hiring an investigator. But that person had already been hired and started working. This seems completely wrong to me.

Please Explain.

Thanks,  
Rhoda Fry

CC 07-06-2023

Item No. 2  
Public Employee  
Performance Evaluation:  
City Attorney

Written  
Communications

**From:** [Peggy Griffin](#)  
**To:** [City Council](#)  
**Cc:** [City Clerk](#)  
**Subject:** 2023-07-06 City Council Meeting Agenda ITEM2-City Attorney Jensen Evaluation Comments  
**Date:** Wednesday, July 5, 2023 11:56:27 PM  
**Attachments:** [Cupertino Muni Code 2.18 City Attorney.pdf](#)

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

PLEASE INCLUDE THE FOLLOWING EMAIL AND ATTACHMENTS AS PART OF WRITTEN COMMUNICATIONS FOR THE ABOVE CITY COUNCIL MEETING AGENDA ITEM.

Dear City Council Members,

Attached is the Cupertino Municipal Code Chapter 2.18 City Attorney for your reference. In particular, please note these 2 sections below:

#### **218.010 Office of the City Attorney Established**

C. The City Attorney shall administer the office, be responsible for the successful performance of its functions, and shall serve under the direct supervision and control of the Council as its legal advisor.

#### **2.18.020 Function and Duties**

E. Subject to the general direction of the Council, prosecute and defend the City, and all boards, officers and employees in their official capacities, all civil proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against the City without permission of the City Council. Nor shall the City Attorney commence any civil action without the permission of the Council.

During the last several months, please note that City Attorney Jensen has “overstepped” his bounds with regard to the following item:

1. **Hiring investigator without City Council direction:** Hiring Investigator Linda Daube was done WITHOUT City Council direction violating the above municipal code.
  - a. **The contract with Investigator Linda Daube was signed by BOTH City Attorney Jensen and Linda Daube on February 14, 2023 prior to any City Council direction regarding an investigation!**
    - i. **Feb. 7, 2023**, City Council Agenda Item 17 “tabled the discussion” after public comment was received and closed, until the next City Council meeting. **NO mention of an investigation was discussed!**
    - ii. **Feb. 14, 2023**, City Attorney Jensen signs contract with Investigator Linda Daube.
    - iii. **Feb. 15, 2023**, Investigator Linda Daube spends 2.80 hours on the contract which was not sanctioned by the City Council!
    - iv. **Feb. 21, 2023**, Investigator Linda Daube spends 3.50 hours on the contract which was not sanctioned by the City Council!
    - v. **Feb. 21, 2023**, City Council Agenda Item 10, Council Member Fruen adds language #4 “And that the City Attorney will investigate and report back on other violations of the Municipal Code with respect to council-staff and commissioner-staff relations so that the City Council may establish policy to correct or prevent such violations in the future.

From the recently passed “City of Cupertino City Council Procedures Manual”, Section 6 “Relationship with City Staff”, Section 6.5 Decorum. “All Council members and City staff shall treat each other with dignity, courtesy, and respect.” This applies to the City Attorney-City Council relationships, too. The City needs a calm, unbiased approach when dealing with legal and procedural matters but recently this has not occurred.

City Attorney Jensen has had outbursts making snide derogatory remarks and several times making it appear as if he is biased against the minority council members. Since December 2022, the City has been out of compliance providing it’s financial statements (Accounts Payables, Monthly Treasurer’s Report, Monthly Treasurer’s Investment Reports) to

Council. It's been brought up frequently by the public that the city has been in violation of state and municipal code yet this continued for months! (Please refer to the exact violations listed at the end of this email for details.)

Instead of making sure these violations were corrected by staff, he went after Council members for municipal code violations when the City itself and its staff were in violation of codes! This is biased, continues today and needs to stop immediately!

City Attorney Jensen hired Investigator Linda Daube without Council direction and before Council approval. He has also exhibited biased attitudes towards the minority elected council members who represent a large portion of Cupertino! This needs to be stopped and corrected.

CA Jensen has helped the city in many ways but these particular missteps need to be corrected and not be repeated! Please address this matter in his evaluation. Thank you.

Sincerely,  
Peggy Griffin

**ATTACHMENTS:**

-Cupertino Muni Code 2.18 City Attorney.pdf

**SPECIFIC CODE VIOLATIONS REFERENCED**

-

**I-Violation of Municipal Code Section 2.24.030 Monthly Reports and California Government Code Section 41004.**

The City's Municipal Code Section 2.24.030 Monthly Reports states:

The Treasurer shall make monthly reports which conform to the requirements of Government Code Section 41004. Said reports shall be delivered to the City Council, the City Manager and made available for review by such other persons who may so request.

California Government Code Section 41004 states:

Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.

In the May 16, 2023 Cupertino City Council Agenda, it includes the March 2023 Monthly Treasurer's Report (Agenda Item #18) which is late and violates both Cupertino municipal code and California state law. This is not the first time since December 2022. They are continually late.

Link to May 16, 2023 Cupertino City Council Agenda

<https://cupertino.legistar.com/View.ashx?M=A&ID=1053215&GUID=154456CA-6159-4A41-8BAE-5C85CDECF07E&G=74359C04-A5F0-4CB2-A97A-0032996BB90E>

**II-Violation of California Government Code Section 53607, Cupertino Municipal Code 2.24.050 and the Cupertino Investment Policy**

This is an excerpt from the top of the December 2022 Monthly Treasurer's Investment Report. This is included in every Monthly Treasurer's Investment Report as background information.

## CITY COUNCIL STAFF REPORT

Meeting: February 7, 2023

### Subject

Consider the Monthly Treasurer's Investment Report for December 2022

### Recommended Action

Receive the Monthly Treasurer's Investment Report for December 2022

### Discussion

#### **Background**

On May 19, 2022, the City Council approved the City's Investment Policy. Per the City's Investment Policy, the Treasurer shall submit monthly transaction reports to the City Council within 30 days of the end of the reporting period per California Government Code Section 53607. In addition to the monthly transaction reports, quarterly investment reports are submitted to the City Council approximately 45 days following the end of the quarter. The quarterly investment report offers a more extensive discussion of the City's economy, cash flow, and investments.

The City's Municipal Code Section 2.24.050 Investment Authority states that the Treasurer shall make a monthly report of all investment transactions to the City Council. Lastly, the City's Municipal Code Section 2.88.100 Duties–Powers–Responsibilities lists one of the powers and functions of the Audit Committee is "to review the monthly Treasurer's report."

The May 16, 2023 Cupertino City Council Agenda Item #17 "Receive the Monthly Treasurer's Investment Report for March and April 2023", the March 2023 Monthly Treasurer's Investment Report was late.

## CHAPTER 2.18: CITY ATTORNEY

### Section

- 2.18.010 Office of the City Attorney established.
- 2.18.020 Function and duties.
- 2.18.030 Council–Attorney relations.
- 2.18.040 Attorney-staff relations.
- 2.18.050 Relations between Attorney and individual members of the public.
- 2.18.060 Bond.
- 2.18.070 Acting City Attorney.
- 2.18.080 Agreements on employment.
- 2.18.090 Assistants and employees.
- 2.18.100 Eligibility.
- 2.18.110 Suspension–Removal–Resignation.

#### **2.18.010 Office of the City Attorney Established.**

A. The office of the City Attorney, as set forth in Government Code Section 36505, is established. The City Attorney shall be appointed by the City Council wholly on the basis of his or her qualifications. The City Attorney shall hold office for and during the pleasure of the City Council.

B. The office of the City Attorney shall consist of the City Attorney and such assistants as may be authorized by the Council.

C. The City Attorney shall administer the office, be responsible for the successful performance of its functions, and shall serve under the direct supervision and control of the Council as its legal advisor.

D. The Council may retain or employ other attorneys, assistants, or special counsel as may be needed to take charge of any litigation or legal matters or to assist the City Attorney therein.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.020 Function and Duties.**

The functions of the office of the City Attorney shall be to:

- A. Advise the Council and all City officers in all matters pertaining to their offices;
- B. Furnish legal services at all meetings of the Council, except when excused or disabled, and give advice or opinions on the legality of all matters under consideration by the Council or by any of the boards, commissions, committees or officers;
- C. Prepare and/or approve all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City;
- D. Provide the necessary legal services required in connection with the acquisition of land or easements on behalf of the City;
- E. Subject to the general direction of the Council, prosecute and defend the City, and all boards, officers and employees in their official capacities, all civil proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against the City without permission of the City Council. Nor shall the City Attorney commence any civil action without the permission of the Council.
- F. Prosecute all violations of City ordinance; provided, however, that the City Attorney is not required to prosecute any misdemeanor or infraction within the City arising out of a violation of State law.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.030 Council-Attorney Relations.**

Individual Councilmembers may seek and obtain legal advice from the City Attorney on any matter or matters pertaining to the legal position of the City. Any such advice given to individual Councilmembers, however, may be repeated to the entire Council at any regular or special Council meeting. With respect to advice to individual Councilmembers regarding potential conflicts of interest, the City Attorney may render informal advice; provided, however, that it is understood that a Councilmember is automatically protected from potential liability for conflict of interest only upon taking action which conforms to a written opinion issued by the California Fair Political Practices Commission.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.040 Attorney-Staff Relations.**

Periodically, but not less than once per year, the City Attorney and the City Manager will meet and confer in good faith regarding the allocation of the City Attorney's time among City departments. (Ord. 2033, § 1, 2008; Ord. 1673, § 1 (part), 1994)

#### **2.18.050 Relations Between Attorney and Individual Members of the Public.**

Consistent with the functions and duties of the City Attorney's office described in Section 2.18.020 of this chapter, the City Attorney or the Assistant City Attorney may, but is not required, to meet or discuss any matter with individual members of the public, legal counsel, or the media.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.060 Bond.**

The City Attorney shall furnish a corporate surety bond to be determined and approved by the City Council, and shall be conditioned upon the faithful performance of the duties imposed upon the City Attorney as prescribed in this chapter. Any premium for such bond shall be a proper charge against the City.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.070 Acting City Attorney.**

A. The Assistant City Attorney shall serve as City Attorney pro tempore during any temporary absence or disability of the City Attorney.

B. In the event there is no Assistant City Attorney, the Council shall appoint a qualified attorney to act as City Attorney pro tempore.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.080 Agreements on Employment.**

The terms and conditions of employment of the City Attorney shall be established by ordinance or resolution. If the City Attorney is a full time employee, any employment agreement between the City and the City Attorney shall contain a provision for performance evaluations of the City Attorney to be conducted by the City Council at least once per calendar year. If the City Attorney is an independent contractor, the City Council shall endeavor to provide periodic feedback regarding the performance of the independent contractor. (Ord. 2040 § 1, 2009; Ord. 2033 § 2, 2008; Ord. 1673, § 1 (part), 1994)

#### **2.18.090 Assistants and Employees.**

Notwithstanding the provision of Section 2.52.100 of the Municipal Code, but subject to the other applicable provisions of Chapter 2.52, the City Attorney shall appoint, discipline and remove all assistants, deputies, and employees under his or her authority.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.100 Eligibility.**

No person elected or appointed as a Council-person of the City shall, subsequent to taking office as Councilperson, be eligible for appointment as City Attorney until one year has elapsed after the Councilmember has ceased to be a member of the City Council.

(Ord. 1673, § 1 (part), 1994)

#### **2.18.110 Suspension–Removal–Resignation.**

A. The removal of the City Attorney shall be only on a majority vote of the entire City Council.

B. The City Attorney may resign from his or her position upon at least four weeks' written notice to the City Council.

(Ord. 2096, 2012; Ord. 1673, § 1 (part), 1994)



**From:** [Rhoda Fry](#)  
**To:** [City Clerk](#); [City Council](#); [City Attorney's Office](#); [Cupertino City Manager's Office](#)  
**Subject:** July 6, 2023 City Council Agenda #2 City Attorney Performance Evaluation  
**Date:** Thursday, July 6, 2023 12:36:26 PM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

Please read below input regarding July 6, 2023 City Council Agenda #2 City Attorney Performance Evaluation.

Dear City Attorney Jensen,

When you first joined the City Council, I was impressed by how well-prepared you were for City Council meetings in anticipating questions that councilmembers or community members might have. The previously contracted attorney was less prepared and would tell councilmembers that she could look into items and get back to council. With you on the dais, I felt that the legal affairs of the City were in steady capable hands. I enjoyed coming to City Council and often learned something new from you. Following the appointment of new Mayor Wei, I no longer feel this way.

Now it looks like you hate your job. I feel bad for you. And I feel bad for our City. I want our old Chris Jensen back. The one who I hoped would become an exemplar for City attorneys and would guide our City until he retired. Please review meeting videos past and present and you might understand by constructive comments.

I am deeply troubled by what I've seen in 2023. Your actions and demeanor have changed and are inconsistent with my expectations for a City attorney. I expect the City attorney to have a steady hand – to be the adult in the room, so to speak.

Personally, I was taken aback when you interrupted me multiple times during public comment. I had my 3 minutes. Unless I was putting the City in legal jeopardy by my words it was wrong of you to interrupt me. For some people who speak at City Council, speaking does not come easily and putting our thoughts together can be a struggle. For many of us, English is not our native tongue. I felt not heard and I felt disrespected. The summary of my comments in the City Council meeting minutes, although correct, gave an incorrect impression because the context changed from the time the meeting started to the time that the meeting ended. The minutes said that I agreed with the recommendation on February 7. That is true. But on February 21, the recommendation had changed. So saying that I agreed with the recommendation in the context of the February 21 meeting that concluded the action item, was incorrect. It would not have taken much to correct the minutes to something that was an accurate representation of what happened. You shut me down and that's not right.

And it seems that your office is not taking direction from council. Councilmember Fruen had recommended making POLICY changes. I think that's a good idea. Suddenly, the staff report

suggested PUNITIVE measures, counter to the direction proposed by Council. This seems wrong to me. All City staff should promote a positive work environment. Worse, I was disheartened to see that you had signed a contract and engaged the services of an investigator before the City Council provided any direction to do so.

As you know, I was disappointed by your response to Grand Jury report. The report had given an example where a councilmember had allegedly not followed the rules and directly asked a City employee for information instead of asking the City manager. This allegation was proven to be untrue. The councilmember properly sought information from the City manager and the City manager willingly provided that information. But you stated that the commentary was substantially true. It was not. And now these defamatory comments toward a councilmember remain. And I think that this puts our City at risk. Part of your job should be to keep the peace – and is definitely not to stir things up.

One thing that I'd really like to see you do is to make sure that our City is in compliance. Our financial reports need to be filed timely. We need to make sure that we have written contracts. Recently, it became apparent that yet another contract had not been updated and the City continued to pay on Quartec. Our previous direct-hire Randolph Hom was very concerned about not having proper contracts among other issues. I would encourage you to read his attorney's report for his wrongful termination. Many of his concerns exist today.

When residents expressed concern about the City Manager taking a City-funded trip to Taiwan on City-time and not her vacation time, you stated that you found the discussion to be embarrassing. I think it was not your place to do so. We were concerned. The City is in a financial crisis. The out-of-pocket expense was not significant, but through the lens of an employee, it could easily represent 5% of their annual pay. And we might be freezing salaries and taking other measures. So talking about the money is, in my opinion, being tone-deaf to your fellow colleagues. The bigger issue is the time away from work that was not vacation. We also have yet to hear what the City Manager did during her non-vacation time. I was embarrassed that you were making these judgements against the public's legitimate concerns.

I am equally concerned that you have made judgmental comments in public about our elected City Officials and have repeatedly interrupted them. Please hold your commentary behind closed doors. If you must make comments, please be respectful and only do so if a councilmember is putting the City at legal risk. Your image has become that of a frustrated referee. It is a bad look. And sometimes you've been the wrong. In the past, the Chamber of Commerce financed DIRECTLY from their organization and through their PAC political campaign contributions. This is relevant information and you shut the discussion down. So if you must interrupt our elected councilmembers, I would urge you to make sure you're right.

I'm also disappointed by how the League of Women Voters lawsuit has been handled. Why negotiate when the City has clearly won its case? Any revisions should be made independently of any court actions.

We need you to fight for our City and our community values.

Sincerely,  
Rhoda Fry

**From:** [Anne Ezzat](#)  
**To:** [City Clerk](#)  
**Subject:** Fwd: City Attorney Evaluation  
**Date:** Thursday, July 6, 2023 3:36:04 PM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mayor Wei, Vice Mayor Mohan, Council Member Moore, Council Member Chao, and Council Member Fruen,

To say that I am disappointed with the City Attorney's recent performance would be an understatement. While I do not expect to become Mr. Jensen's pen pal, I do not recall him ever responding to inquiries that I have made. A simple, "I cannot provide you information because it is privileged," would suffice.

Secondly, a resident asked Mr. Jensen to correct the Grand Jury Report regarding Kitty Moore that suggested she asked for credit card information from an employee, when the Council Member had followed procedure and asked the City Manager. Mr. Jensen replied to the resident to effect that the claim was substantially correct so that it would not be changed. Surely, as an attorney, Mr. Jensen must be aware of the power of words and what they convey. By not acting to amend the Grand Jury Report, I do not believe that Mr. Jensen acted in the City's best interest.

Thank you for your time and attention to this matter.

Best regards,

Brooke Ezzat

CC 07-06-2023

Item No. 3  
Public Employee  
Evaluation: City  
Manager

Written  
Communications

**From:** [Peggy Griffin](#)  
**To:** [City Council](#)  
**Cc:** [City Clerk](#)  
**Subject:** 2023-07-06 City Council Meeting Agenda Item3 - City Manager Performance Evaluation  
**Date:** Thursday, July 6, 2023 1:37:45 AM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

With regard to City Manager Wu's evaluation, please consider addressing the following issues:

**ISSUE #1: CUTTING PEOPLE OFF**

Often during City Council meetings, City Manager Wu cuts people off, not allowing them to finish their statement or answer questions that were asked of them, not the City Manager. This has happened to her staff, the City Attorney, and to the minority City Council Members. It does not happen to the 3 majority City Council members.

From the recently passed "City of Cupertino City Council Procedures Manual", Section 6 "Relationship with City Staff", Section 6.5 Decorum. "All Council members and City staff shall treat each other with dignity, courtesy, and respect." This applies to the City Manager-City Council relationships and City Manager-Staff relationships.

**ISSUE #2: NOT ANSWERING QUESTIONS IN COUNCIL MEETINGS**

VERY OFTEN, when a City Council Member asks a question she refuses to answer it and responds that it will be taken offline and answered in a memo. Sometimes, questions are brought up during public comment on an item and Council Members note them and repeat the question during their comment time. These questions need to be addressed in public and often the answers can impact the vote.

This comes across as arrogant and condescending, as if the information is not important enough to be addressed in public. There is no follow up. The public never hears the answers to these questions and the vote is forced without an answer. When a Council Member asks a question, the City Manager should answer the question or find someone who can!

**ISSUE #3: KNOWINGLY ALLOWING MUNICIPAL CODE VIOLATIONS BY STAFF TO CONTINUE**

Since December 2022, the City has been in violation of California state and Cupertino municipal code regarding the timely reporting of monthly financial information. During the February 21, 2023 City Council meeting, Agenda Item #5 Accounts Payable for Nov. 22, 2022 the frequency of the Accounts Payable reports coming to council was brought up. City Manager Wu insisted that these reports would adhere to the requirements specified in Resolution 5939, Section D Number 3. She repeatedly said this on February 21, 2023!

Below is a summary of City Council Resolution 5939:

**CC Resolution 5939 amends Resolution #3721, dated Sept. 7, 1982**

Treasury Functions

1) Office of the Treasurer

a) The City Council reserves the right to appoint the Treasurer who serves at the pleasure of the City Council. (Page 1 of 3, A)

2) Investment Funds

a) CDs only deposited in financial institutions located within CA. (Page 2 of 3, B.1)

b) "A summary of investment types and depository balances **shall be reported by the Treasurer not less often than once a month.**" (Page 3 of 3, end of B)

3) Issuance of Checks

a) Checks are issued "in payment of obligations under contract previously approved by the City Council." (Page 3 of 3, end of C)

Even in June, these reports were presented late. The City Manager has been aware of this the whole time yet it was not corrected for over 6 months!

Please address these 3 issues when discussing City Manager Wu's review. Hopefully, by identifying and discussing these issues they can be resolved which would help improve communication and relationships.

Sincerely,  
Peggy Griffin

**From:** [Rhoda Fry](#)  
**To:** [City Clerk](#); [City Council](#); [City Attorney's Office](#); [Cupertino City Manager's Office](#)  
**Subject:** July 6, 2023 City Council Agenda #3 City Manager Performance Evaluation  
**Date:** Thursday, July 6, 2023 1:44:51 PM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

Please read below input regarding July 6, 2023 City Council Agenda #3 City Manager Performance Evaluation.

Dear City Manager Wu,

I felt really badly for you the day you first came to City Council. Jean Bedord had made some scathing mean comments. I felt compelled to write you a friendly welcome note. At the beginning of your job, I was impressed by your checking in to clarify direction provided by council. However, things changed with the change in the new mayor. I'd really like to see the old you back.

It bothers me to see you interrupting your own staff during public meetings. It makes it look as though you do not trust them to do their job. I'd like the City Manager to provide a platform for the staff to show their own best work. It would be best to address any differences behind closed doors. The public should not see that you have no confidence in your own staff. Likewise, it troubles me when you interrupt council members. You were so mean to one of our constituents that she was left crying buckets in our community hall. This is not the behavior that is to be expected of a City Manager.

You have also made erroneous statements during public meetings that are bad for the city's governance. You abused your power by telling council members that Public Storage would sue the City and win if they were not allowed to install a new sign on the basis of public speech. This was incorrect (I spoke with no fewer than 4 expert attorneys on this issue). Legal advice should have come from the City Attorney. The fact is that the City incorrectly permitted the first sign, which allowed the second sign to be considered. You should have protected the public interest, not that of the storage company. And, by not working in a collaborative manner with Public Storage, the city residents will be dealing with a public nuisance – and that in itself puts the City at risk of litigation. I had hoped that your City Planning experience would have been of use here and it seems that is one of your biggest assets in coming into this job.

More recently, residents asked that the City comment upon State bills. The City has commented on state bills in the recent past, such as Evan Low's gay marriage amendment. The request to comment on state bills was handled very poorly. First was to tell the public that the City would look at the bills in December. During the council meeting, it became apparent that you full well knew that the fate of the bills would have been decided before December. Why not just state that you didn't want to look at them? Or ask the City Attorney as to whether it would be prudent to issue an opinion. Instead, the agenda made it look like the City would consider it - - - but in fact it would not. It felt disingenuous. I



felt a lack of trust and transparency with the City. And you made matters worse, you said that the City staff would not have time to look at it and it would take too much attorney time. And then the City Attorney corrected you and told you it would not take him much time at all. So why did you make up an answer instead of asking the City Attorney as to whether he had time? It was a very bad look for the City.

Councilmember Fruen had suggested that we take another look at the sign ordinance and you shut down the discussion and said that it would be a huge project like doing a heart-of-the-city plan. That doesn't seem right to me and now I doubt it given that you have made incorrect assumptions about staff time in the past.

With respect to your city-paid trip to Taiwan, I truly think that you should have taken it as vacation time. And if you didn't have vacation time, you could have borrowed the vacation or taken time off without pay. The optics were really bad about leaving at a time when we're "all hands on deck" with the housing element and the budget. You need to set an example for the City staff. Now City staff will feel entitled to taking a vacation when they're really needed at City Hall. Separately, residents would like to see a full report of the economic development you achieved while in Taiwan.

I was shocked that you spared no time in getting rid of commissions and committees. Commentary on the new bills could have been discussed during a legislative committee, but that committee is gone. I served on the environmental review committee and I think that it provided great value to the city. I wish that you had spent some more time as city manager to make these decisions. We also have a paid lobbyist and it is unclear to me that we are making use of that contract. We need to receive updates from this lobbyist.

I'd like you to make sure that the council and public receive timely financial updates, particularly now. Our municipal codes continue to be disregarded. Additionally, we need to clean up our contracts – we must have contracts for expenditures and this is not happening. The "buck stops here" with the City Manager and it behooves you to make sure that the City's reports are correct – otherwise you put our City at risk.

City Manager Wu, you have shown yourself to be capable in the past and I hope that you can do so moving forward. Right now, it doesn't look like you care about our City, our Staff, our Council Members, or the public. Please consider leading from the heart.

Regards,  
Rhoda Fry

CC 07-06-2023

Item No. 4  
Presentation from  
Midpeninsula Open  
Space Regional  
District

Written  
Communications

**From:** [Rhoda Fry](#)  
**To:** [City Clerk](#); [City Council](#)  
**Subject:** July 6 Agenda Item #4 Open Space District Presentation  
**Date:** Thursday, July 6, 2023 10:52:22 AM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

Pertaining to: July 6 Agenda Item #4 Open Space District Presentation

SUMMARY FOR MINUTES: Rhoda Fry requested that the City post all information pertaining to the former “Parkside Trails” development proposal because it appears that the project is being revived.

Why is the Open Space district announcing/endorsing a residential development that is NOT in the housing element?

Additionally, there is no mention of any housing development proposed on the City of Cupertino website.

Has the “Parkside Trails” development been revived?

If so, the City should post the original development documents and public comment on this project to promote transparency.

Please see the attached screen capture.

We should be hearing about proposed development in our community from our City first, not other agencies.

Regards,  
Rhoda Fry

# Middle Stevens Creek Trail



CC 07-06-2023

Item No. 13  
Ordinance 23-2249  
amending Regulation  
of Lobbying Activities

Written  
Communications

**From:** [Jean Bedord](#)  
**To:** [City Attorney's Office](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#)  
**Subject:** Agenda Item #13 Regulation of Lobbying Activities, July 6, City Council meeting  
**Date:** Thursday, July 6, 2023 9:08:58 AM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honorable Mayor Wei, Vice-Mayor Mohan and Councilmembers Chao, Fruen, and Moore, and staff,

I support modification of the current lobbying ordinance or even better, deleting it completely. It over regulates a non-existent problem, and perpetuates Cupertino's reputation as a "lost cause". There are only six registered lobbyists and some are no longer active. It chills community organizations, particularly multi jurisdiction efforts.

Should this council continue the ordinance, I urge you to make the recommended changes recommended by both the League of Women Voters and the city attorney:

- \* Increase the threshold to \$5000 - travel expenses can easily exceed \$1000,
- \* Conform to state laws, not idiosyncratic Cupertino ordinances.
- \*. Remove trickle over into campaign funding, which is different from lobbying, and regulated separately.

Too much council and staff time, plus legal resources have been spent on this poorly conceived ordinance. It's time to expend those resources on productive matters, not restrictions.

Thank you for your consideration.  
Jean Bedord  
Cupertino VOTER

--

Warm regards,  
Jean Bedord  
Cell: 408-966-6174 / Land line: 408-252-5220

**From:** [Tracey Edwards](#)  
**To:** [Tracey Edwards](#); [City Clerk](#); [City Council](#); [Hung Wei](#); [Sheila Mohan](#); [Liang Chao](#); [J.R. Fruen](#); [Kitty Moore](#); [City Attorney's Office](#)  
**Subject:** Comments from the League of Women Voters Cupertino-Sunnyvale regarding: Proposed Ordinance No. 23-2249, amending Municipal Code Chapter 2.100  
**Date:** Thursday, July 6, 2023 11:34:56 AM  
**Attachments:** [White Paper on Lobbying Ordinance .DOCX](#)

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Cupertino City Council,

First we want to thank the City Attorney for his work on redrafting the Lobbying ordinance you will be considering today, July 6<sup>th</sup>.

Attached please find a white paper which addresses the two choice provided you in the staff report and two additional areas we feel must be modified.

Respectfully

Tracey Edwards  
Co-President LWV Cupertino-Sunnyvale

**Tracey Edwards**

H: +1 408 733 5570

M: +1 408 888 9411

[tracey@edwards123.com](mailto:tracey@edwards123.com)

*Respect science, respect nature, respect each other.*

**Submitted July 6<sup>th</sup>, 2023**

**Comments from The League of Women Voters Cupertino-Sunnyvale  
on Proposed Ordinance No. 23-2249, amending Municipal Code Chapter  
2.100**

**Regulating Lobbyists**

**Section 2.100.030:** The Threshold Compensation for Being Treated as a Lobbyist. Staff has presented two alternatives as the threshold for being treated as a Lobbyist and being compelled to register under the proposed Ordinance. The question is whether the threshold compensation for registration as a Lobbyist should be \$1,000 or \$5,000.

The League endorses option B, a \$5,000 threshold paid for engaging in Lobbying during any consecutive three-month period during the preceding twenty-four months (staff accepted the League's other proposed revisions to this provision so the only question is the threshold). Historically, volunteers who have information to provide to a City Council or Committee are reimbursed for their travel expenses to attend meetings.

Under the Ordinance's definition of "Compensation" being reimbursed for travel expenses, but otherwise volunteering, could make one a paid Lobbyist. Neighborhood organizations that are entirely volunteer-based would fall within the definition of Organization Lobbyists if the organization reimbursed travel expenses alone to an expert from outside the area to travel to Cupertino, and today's travel costs quickly exceed \$1,000. By setting the threshold at \$5,000, at which point payments are likely to exceed expenses alone, the Council avoids the inadvertent characterization of unpaid volunteers and the organizations that consult them as Lobbyists.

The State uses a \$5,000 threshold, largely for this reason, and the League recommends that the City follow the same approach.

**2.100.080.** The Proposed Registration Fee Should Only Be Charged to Paid Lobbyists.

The City proposes to charge every Lobbyist, regardless whether that person is a paid Lobbyist or a volunteer neighborhood activist, to register with the City. The League proposes that only paid Lobbyists be charged an annual registration fee.

The League understands why the City seeks not only to have Lobbyists register but also to levy a fee upon those being paid to Lobby the City. The current draft, however, requires *each* Lobbyist, whether a Contract Lobbyist, an Organization Lobbyist, or an Individual, to pay an unspecified registration fee. If the Lobbyist fails to pay the fee on time, they are subject to a daily fine of \$25, up to \$500 in total.



The League questions the imposition of a fee on those who are not being compensated for their Lobbying efforts, especially when the Council has not specified the fee that will be charged. On the other hand, since all Contract Lobbyists, i.e., those being paid to Lobby, are assessed an *additional* fee each year, currently set at \$500, the League believes that the City's overhead costs can be offset fairly by assessing paid Lobbyists. A fee for someone who is not being paid to Lobby discourages people like neighborhood activists – surely not paid – from regularly speaking up at Council meetings. It also discriminates against small organizations without staff to track annual registrations, come to City Hall to make annual filings, etc., and fines them for failing to pay the fee. The burden imposed by the base fee seems disproportionate to the benefit already received from requiring universal registration, and the League questions whether there is any governmental purpose served by requiring a fee from Lobbyists who are not paid and are not Contract Lobbyists.

The League suggests that only Contract Lobbyists be required to pay a fee each year to register as Lobbyists.

### **2.100.090. Regulation of Campaign Contributions Should Be left to the State.**

The City proposes to regulate campaign contributions but only for Lobbyists. The regulation of campaign finance is a matter within both State statute and comprehensive enforcement by the State of California. The League questions why the City would seek to add this obligation. If, however, the City is intent on adding campaign finance regulations to the City Code, the regulation of campaign contributions should reach all those who deal with the City. Therefore, if the City does propose restrictions they should be placed elsewhere in CMC to do the most good for the City.

This section of the proposed revision describes the information that each Lobbyist must provide with their annual registration. It includes the name, business address, telephone, email addresses and, if applicable, business license of all Persons required to register, including the names of all owners of sole proprietorships and partnerships of fewer than ten Persons. For corporate registrants, it also includes the names of the president, secretary, chief financial officer, and agent for service of process, as well as information on the. There is separate additional information required for Contract Lobbyists and Organizational Lobbyists, and the amount of fees collected by paid Lobbyists, in subparagraphs (a) – (c). Subparagraphs (g) – (h) require the reporting of fundraising and donations, and subparagraphs (i) – (j) require the Lobbyist to log contacts with City officials and activity expenses.

But the proposed Ordinance also includes three subparagraphs addressing campaign contributions, which are out of place here. The League does not question the importance of subparagraphs (d) through (f), and indeed believes comprehensive disclosures of campaign contributions is an important part of civic regulation. For this reason and others, campaign finance regulation does not belong in a Lobbying Ordinance. That is particularly true in light of the way the Municipal Code is drafted, where (i) the campaign contribution provisions largely replicate

State law, and (ii) the reporting of campaign contributions and expenditures applies more broadly than just to Lobbying alone.

These reporting obligations should apply to all contributors who do business with the City, not just to Lobbyists. For example, the same campaign finance prohibitions also should apply to chapter 3.23, governing public works contractors and bidding procedures. Similarly, the regulations should reach all dealings with the City, not just Lobbying.

The League suggests that campaign finance regulation be left to the State but, if the City does want to add its own campaign finance regulations to the CMC, the proper placement for these provisions is either in 2.06, a reserved section in the chapter on administration and personnel, or 10.27, a reserved section in the chapter on public morals. This would make the same prohibitions broadly applicable to all campaign contributions.

**2.100.130. Violations of the Lobbying Ordinance Should Be Policed by the District Attorney, Not the City Attorney.**

Option A expressly repeats state law prohibitions on Lobbying into the Municipal ordinance, making this conduct a violation of the Municipal Code as well as of California State law. The League offers the following observations to the Council in its consideration of the proposed ordinance.

The League believes that every item covered in subparagraphs (b) – (g) of this section, are adequately and properly policed by the State. Since these prohibitions are wholly duplicative of prohibitions in California State Statutes, adding them to the Municipal Code would impose an unnecessary burden on the City at a time when the City lacks the resources to police these actions themselves.

In light of the current obligations facing the City, the League questions why the City would want to take on this burden when it currently resides with the District Attorney, whose job it is to enforce these very provisions under existing California laws. Worse, by making these unlawful activities the subject of a municipal ordinance, the City opens the door to the District Attorney declining to prosecute these actions because they are also a City obligation. With the proposed provisions in place in the Municipal Code, the District Attorney could decline to prosecute violators and send violations back to the City to enforce.

The League supports Option B in order to place the enforcement obligation where it is best administered: the District Attorney and not the City Attorney.

**From:** [Rhoda Fry](#)  
**To:** [City Clerk](#); [City Council](#)  
**Subject:** City Council Meeting July 6 2023 Agenda Item #13 Lobbying Ordinance  
**Date:** Thursday, July 6, 2023 3:33:37 PM  
**Attachments:** [Court 1 dismiss on June 2 unless amended.pdf](#)  
[Court 2 extension request.pdf](#)  
[Court 3 time extended.pdf](#)

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

## City Council Meeting July 6 2023 Agenda Item #13 Lobbying Ordinance

Summary for Minutes: Rhoda Fry requested that the lobbying ordinance remain unchanged and questioned the City's decision to extend the plaintiff's response time.

Dear City Clerk – please include the attachments inline in the comments so that they can be more easily read

Dear City Council,

One of the things that I've been hearing this Council talk about is "good governance." With respect to the frivolous lawsuit by the League of Women Voters against the City of Cupertino, I don't think that the City has exercised "good governance." The court granted dismissal. And now the City is giving more time to the League to amend their complaint. That's just plain wrong.

I have to say that I am furious at the League for not discussing their concerns about the Lobbying ordinance when it was being discussed during multiple City Council meetings. A lawsuit is a course of last result. Their lawsuit has cost the City tens of thousands of dollars – more than several of our favorite community events that are on the chopping block due to our City's financial complaints.

I urge the City Council to leave the ordinance as is and allow the case to be completely closed before making any amendments. By amending now, you are inviting more lawsuits. Additionally, given that our Mayor has held a leadership position in the League, I respectfully request that she recuse herself from deliberations on this matter.

If you do go ahead and make changes – and I had to say it, but I expect that you will, I request the following:

1. **Leave the \$1000 limit as is.** The ordinance's objective is to PROMOTE TRANSPARENCY. Increasing the threshold would decrease transparency. Filling out paperwork for a lobbyist is similar to filling out a business license. If you want to lobby in the City, then fill out the paperwork and pay a fee. Likewise, if you want to do business in the City, then fill out the paperwork and pay a fee. Keep the threshold the same.
2. **Leave the reporting timeframe of quarterly as is.** The ordinance's objective is to PROMOTE TRANSPARENCY. Decreasing the reporting timeframe to twice yearly would decrease transparency. What the staff report fails to mention is that many

jurisdiction do require quarterly reporting. By stating that one other jurisdiction allows for twice-annual reporting and not mentioning others within our county that require quarterly reporting is misleading. Right there, I'm feeling a lack of transparency in City affairs and it is eroding my trust in City staff. : ( : ( : ( Yes . . . these are sad faces.

3. **Removing gender-specific language is okay.**

4. I am against making other changes to the ordinance as these erode Transparency.

I would also like to ask a hypothetical question as to how the current and revised ordinance would come into play. Let's say that a person or organization is against building a huge development in the City and they give a large amount of money to the Committee to Green Foothills to oppose it. The Committee then goes ahead and testifies at Council meetings and launches various initiatives like email campaigns to encourage community engagement. If this were to happen, I would want to know that Committee for Green Foothills had earmarked funds for this activity and I would think that they should be subject to disclosure. The person doing the work would not have had this activity as a full-time job. This is a completely hypothetical scenario but it demonstrates how people working on a very part-time basis could be instrumental in lobbying activities that should be disclosed.

**Again, I ask that you make not changes.** Why? Because looking at this now conflates the lawsuit and that is just plain wrong. Many hours were invested on this ordinance in public meetings. Making changes now makes it appear as though council is seeking to fulfill a political agenda. The optics are really bad.

If you do feel compelled to discuss this, please do so in an in-depth line-by-line manner and explain all of the ramifications of proposed changes.

Sincerely,  
Rhoda Fry

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEAGUE OF WOMEN VOTERS OF  
CUPERTINO-SUNNYVALE,

Plaintiff,

v.

CITY OF CUPERTINO, et al.,

Defendants.

Case No. [22-cv-04189-JSW](#)

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 31

Now before the Court is motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendant City of Cupertino (“Cupertino”). Court has considered the parties’ briefs and relevant legal authority, and the Court **HEREBY GRANTS** the motion to dismiss.

**BACKGROUND**

Plaintiff, the League of Women Voters of Cupertino-Sunnyvale (“Plaintiff”), brings a facial challenge to the Cupertino Ordinance 21-2222, codified as Cupertino Municipal Code chapter 2.100 (the “Ordinance”). Cupertino Municipal Code (“CMC”) § 2.100.010 *et seq.* Plaintiff, a nonprofit public benefit corporation registered under 26 U.S.C. section 501(c)(4), is a local chapter of the nonpartisan League of Women Voters of the United States. One of its primary goals is to ensure opportunities for effective and inclusive voter participation in government decision-making, often through advocacy for or against particular laws or policies. (Complaint at ¶¶ 29, 31.)

1 The Ordinance, operative as of July 1, 2021, is a lobbying registration and disclosure law.  
 2 The Ordinance provides information to city officials and to the public about lobbying activity in  
 3 connection with changes in the law or the award of city contracts, permits, or positions. The  
 4 stated purpose of disclosure of lobbyists' identities and activities is to "foster[] public confidence  
 5 in government officials by making government decision-making more transparent to the public."  
 6 CMC § 2.100.010. The stated purpose of the Ordinance is to "impose registration and disclosure  
 7 requirements on those engaged in lobby efforts to influence decisions of City policy maker for  
 8 Compensation." *Id.*

9 The Ordinance defines lobbying as influencing or attempting to influence a Legislative  
 10 Action or Administrative Action. §2.100.030(n). The Ordinance defines "influencing" as any  
 11 "purposeful communication" that promotes, supports, modifies, opposes, causes the delay or  
 12 abandonment of conduct, or intentionally affects the behavior of a city official through persuasion,  
 13 information, incentives, statistics, studies, or analyses. *Id.* A Legislative Action refers to  
 14 ordinances, resolutions, City contracts, or other official action of the Mayor, City Council, or City  
 15 boards. § 2.100.030(m). An Administrative Action refers to rules, regulations, contracts, permits,  
 16 licensing, or hiring by the City. § 2.100.030(b). The Ordinance defines three types of lobbyists:  
 17 (1) contract lobbyists who are paid to lobby for a client; (2) business or organizational lobbyists  
 18 that direct their paid employees or officers to lobby in an aggregate amount of ten or more hours  
 19 within a year; and (3) expenditure lobbyists who pay \$5,000 or more in a year to carry out  
 20 advertising or public relations campaigns to convince others to directly lobby the government.  
 21 §§ 2.100.030(o)(1), (2), (3).

22 The Ordinance requires all lobbyists, as defined, to register with the City Clerk, pay annual  
 23 registration fees, and disclose a list of detailed information to the City. (Complaint at ¶¶ 49-52.)  
 24 The Ordinance also imposes fines and lobbying debarment for violating the terms of the  
 25 Ordinance. CMC §§ 2.100.080(c); 2.100.150, 2.100.170.<sup>1</sup>

26  
 27 \_\_\_\_\_  
 28 <sup>1</sup> The Court notes that the Ordinance at issue here is materially identical to similar lobbying  
 registration ordinances in Santa Clara County, and the cities of Long Beach, Sacramento, Santa  
 Clara, San Jose, and San Diego.

1 Plaintiff claims that the Ordinance violates the free speech and petition clauses of the  
 2 federal and California constitutions.<sup>2</sup> Plaintiff alleges that the Ordinance is an overbroad, speaker-  
 3 based, content-based regulation that chills protected First Amendment expression, which subjects  
 4 the law to strict scrutiny. Plaintiff contends that Cupertino must show that the Ordinance is  
 5 narrowly tailored to further a compelling government interest justifying its burdensome  
 6 registration and reporting requirements. Plaintiff argues that the facially overbroad Ordinance has  
 7 a chilling effect on political speech and that it has had that effect on Plaintiff and its members,  
 8 deterring them from exercising their protected rights to assemble, to engage in free speech, and to  
 9 petition the government.

10 Cupertino moves to dismiss the complaint on the basis that Plaintiff has failed to state a  
 11 facial overbreadth challenge to the Ordinance.<sup>3</sup> The Court shall address other relevant facts in the  
 12 remainder of its order.

### 13 ANALYSIS

#### 14 A. Legal Standard on Motion to Dismiss.

15 Cupertino moves to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and  
 16 12(b)(6). Under Rule 12(b)(1), a district court must dismiss a complaint if it lacks subject matter  
 17 jurisdiction to hear the claims alleged in the complaint. Fed. R. Civ. P. 12(b)(1). In order for a  
 18 district court to have subject matter jurisdiction over a plaintiff's claims, a plaintiff must present a  
 19 live case or controversy, as required by Article III of the U.S. Constitution. *See* U.S. Const. art. III  
 20 section 2, cl. 1. In order for there to be a case or controversy within the meaning of Article III, a

21 \_\_\_\_\_  
 22 <sup>2</sup> Generally, when courts interpret a provision of the California constitution that is similar to the  
 23 federal Constitution, they will not depart from United States Supreme Court jurisprudence  
 24 regarding the construction of the similar federal provision unless given a cogent reason to do so.  
 25 *See Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164, 179 (2002) (citing *People v.*  
 26 *Monge*, 16 Cal. 4th 826, 844 (1997)). Plaintiff contends that because the Ordinance fails to pass  
 27 federal Constitutional muster, it also fails for the same reasons under Article 1 of the California  
 28 Constitution. *See Glendale Assocs., Ltd. v. NLRB*, 347 F.3d 1145, 1154 (9th Cir. 2003).

<sup>3</sup> Cupertino also moves to dismiss Plaintiff's official capacity claims as duplicative as official  
 capacity claims are claims against the City itself. *See, e.g., Larez v. Los Angeles*, 946 F.2d 630,  
 646 (9th Cir. 1991) ("A suit against a governmental officer in his official capacity is equivalent to  
 a suit against the government entity itself.") Plaintiff does not oppose dismissal of the official  
 capacity claims. The motion is GRANTED as to those claims.

1 plaintiff must have standing to pursue their claims.

2 A motion to dismiss is proper under Rule 12(b)(6) where the pleadings fail to state a claim  
3 upon which relief can be granted. A court’s “inquiry is limited to the allegations in the complaint,  
4 which are accepted as true and construed in the light most favorable to the plaintiff.” *Lazy Y  
5 Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the liberal pleading  
6 standard of Rule 8(a)(2), “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to  
7 relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a  
8 cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing  
9 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

10 Pursuant to *Twombly*, a plaintiff cannot merely allege conduct that is conceivable but must  
11 instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. “A  
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
13 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,  
14 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not  
15 akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant  
16 has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

17 If the allegations are insufficient to state a claim, a court should grant leave to amend,  
18 unless amendment would be futile. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir.  
19 1990).

20 **B. Standing.**

21 In order to establish standing to sue, a plaintiff must show injury, a causal connection to  
22 the conduct complained of, and redressability through a favorable decision. *See Lujan v. Defs. of  
23 Wildlife*, 594 U.S. 555, 560-61 (1992). The Court finds that Plaintiff has standing to challenge the  
24 provisions of the Ordinance pertaining to Business or Organizational Lobbyists and Expenditure  
25 Lobbyists. At this procedural posture and taking the allegations as true, Plaintiff has satisfactorily  
26 alleged that it has suffered an injury-in-fact, that is “a realistic danger of sustaining a direct injury  
27 as a result of the statute’s operation or enforcement,” to both its organizational interests and its  
28 members. *See Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979).



1 Plaintiff brings a facial challenge to the Ordinance. A facial challenge of overbreadth may  
2 be made only if “a substantial number of its applications are unconstitutional, judged in relation to  
3 the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010). The  
4 “overbreadth doctrine operates as a narrow exception permitting the lawsuit to proceed on the  
5 basis of ‘a judicial prediction or assumption that the statute’s very existence may cause others not  
6 before the court to refrain from constitutionally protected speech or expression.’” *Get Outdoors*  
7 *II, Ltd. Liab. Co. v. City of San Diego*, 506 F.3d 886, 891 (9th Cir. 2007) (citation omitted) *see*  
8 *also Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973) (holding that the “First Amendment needs  
9 breathing space” if it is to have any effect and third-parties may bring First Amendment challenges  
10 to protect the rights of others who may refrain from constitutionally protected activity due to the  
11 overly broad sweep of the statute at issue). Overbreadth should be used “sparingly and only as a  
12 last resort” when a limiting condition cannot be placed on the challenged law. *Broadrick*, 413  
13 U.S. at 613. “[O]verbreadth is ‘strong medicine’ that is not to be ‘casually employed.’” *Marquez-*  
14 *Reyes v. Garland*, 36 F.4th 1195, 1201 (9th Cir. 2022) (citation omitted). “A statute is not  
15 overbroad just because ‘one can conceive of some impermissible applications.’ ... There must ...  
16 be a ‘realistic danger that the statute itself will significantly compromise recognized First  
17 Amendment protections of parties not before the Court.’” *Id.* (citations omitted).

### 18 **C. Level of Scrutiny and Application.**

19 Not all restrictions on speech are subject to the strict scrutiny standard. Strict scrutiny will  
20 be applied if there is a significant interference or “appreciable impact” on the exercise of an  
21 individual’s fundamental right. *Fair Political Practices Com. v. Superior Court*, 25 Cal.3d 33, 47  
22 (1979). Strict scrutiny is not applied when the challenged regulation “merely has an incidental  
23 effect on exercise of protected rights.” *Id.*

24 In *Fair Political Practices*, the California Supreme Court addressed the constitutionality of  
25 regulations governing lobbyists codified in the Political Reform Act of 1974. *Id.* at 37, citing Cal.  
26 Gov. Code § 81000 *et seq.* Similar to the Ordinance at issue here, under the Policial Reform Act,  
27 lobbyists were required to register and report all payments for lobbying activities. Similar to  
28 plaintiff here, advocates against these regulations argued that because free speech and petition

1 rights were implicated, the court must apply strict scrutiny. However, with respect to the  
2 registration and reporting requirements, the Supreme Court found that these provisions were not  
3 “direct limitations on the right to petition for redress of grievances.” *Id.* at 47. The Court  
4 reasoned that the burden created by the registration and reporting requirements did not  
5 substantially interfere with the lobbyist’s ability to “raise his voice,” and the “[w]hile the burden  
6 of disclosure might be substantial for those engaging in extensive lobbying activities, the burden is  
7 not as great when viewed in the context of the total activities engaged in.” *Id.* The Court further  
8 held that “the burden placed on employers of lobbyists to disclose their expenditures for lobbying  
9 purposes, and the action thereby sought to be influenced, does not constitute a substantial  
10 interference with the exercise of petition and speech rights.” *Id.* at 48.

11 The application of the less stringent exacting scrutiny review has also been applied by the  
12 United States Supreme Court in *Citizens United* with regard to disclaimer and disclosure  
13 requirements. *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 366 (2010). This  
14 “exacting scrutiny” requires a substantial relationship between the disclosure requirements and a  
15 “sufficiently important” governmental interest. *Id.* at 366-67. The Court finds that the disclosure  
16 and reporting requirements imposed by the Ordinance on business or organizational lobbyists and  
17 expenditure lobbyists does not directly regulate who can speak or what they can say. Although the  
18 Ordinance creates a burden, this burden does not act as a prohibition. And, further, the disclosure  
19 and reporting requirements bear a substantial relationship to a sufficiently important government  
20 interest.

21 In *United States v. Hariss*, the Supreme Court found that Congress possesses a valid  
22 interest in determining who seeks to influence legislation. 346 U.S. 612, 625-26 (1954). The  
23 California Supreme Court also has recognized the existence of the public interest “in determining  
24 the source of voices seeking to influence legislation” and has enforced regulations which  
25 “reasonably require the professional lobbyist to identify himself and disclose his lobbying  
26 activities.” *Fair Political Practices*, 25 Cal.3d at 47. The stated purpose of the Cupertino  
27 Ordinance is to “foster[] confidence in government officials by making government decision-  
28 making more transparent to the public” and to “ensure that City Officials are made aware of the

1 interests that Lobbyists represent when the officials are lobbied.” CMC § 2.100.010. In  
2 accordance with these principals, this Court finds that there is a vital government interest in  
3 providing disclosure to the public of individuals who seek to influence legislation through the  
4 expenditure of money. *See e.g., Smith v. City of San Jose*, 2013 WL 6665712, at \*7 (Cal. Ct. App.  
5 Dec. 17, 2013). “Transparency in the electoral process, and the dissemination of information to  
6 decisionmakers has long been recognized and acknowledged by both the United States Supreme  
7 Court and the California Supreme Court as important governmental interests.” *Id.* This Court  
8 similarly finds that “there is a vital government interest in providing information to the public  
9 about those who seek to influence local government action through lobbying activity.” *Id.* There  
10 is no distinction between providing such transparency with respect to federal or state officials and  
11 the same government interest in providing transparency to city officials and local lawmakers. *See*  
12 *id.*

13 Having found that there exists a sufficiently important governmental interest, the Court  
14 must address whether the lobbying regulations are sufficiently related to this interest. In this  
15 analysis, the Court must consider the extent of the burden placed on First Amendment rights.  
16 *Buckley v. Valeo*, 424 U.S. 1, 68 (2003). Here, the Court finds that the Ordinance does not restrict  
17 the amount of lobbying a lobbyist may engage in or how much any particular lobbyist may spend.  
18 The Ordinance does not differentiate among or restrict speech according to speaker or content.  
19 Nothing in the Ordinance reflects a “preference for the substance of what the favored speakers  
20 have to say (or aversion to what the disfavored speakers have to say).” *Turner Board. Sys. v.*  
21 *FCC*, 512 U.S. 622, 657-58 (1994). The reporting and disclosure requirements do not  
22 “substantially interfere with the ability of the lobbyist to raise his voice. While the burden of  
23 disclosure may be substantial for those engaged in extensive lobbying activities, the burden is not  
24 great when viewed in the context of the total activities engaged in.” *Fair Political Practices*, 25  
25 Cal.3d at 47. It is well settled that lobbyist registration laws like the Ordinance are supported by  
26 an important governmental interest in transparency. *See, e.g., Citizens United*, 558 U.S. at 369;  
27 *Hariss*, 347 U.S. at 626.

28 Further, the extensive list of exemptions provides exceptions to the regulatory scheme for

1 some. For example, there is an exemption for those who are purely engaged in media, meaning  
 2 newspapers or other regularly published periodicals, when limited to “the ordinary course of news  
 3 gathering or editorial activity, as carried out by members of the press.” CMC 2.100.030(p)(2).  
 4 This exemption clearly covers the one cited instance of purported self-censorship by Plaintiff of its  
 5 newsletter, Cupertino Matters. Further exempted from the requirements of the Ordinance are  
 6 those “whose communications regarding any Legislative Action or Administrative Action are  
 7 solely limited to appearing at or submitting testimony for any public meeting held by the City or  
 8 any of its agencies ... as long as the communications thereto are public records available for  
 9 public review.” CMC 2.100.030(p)(4).

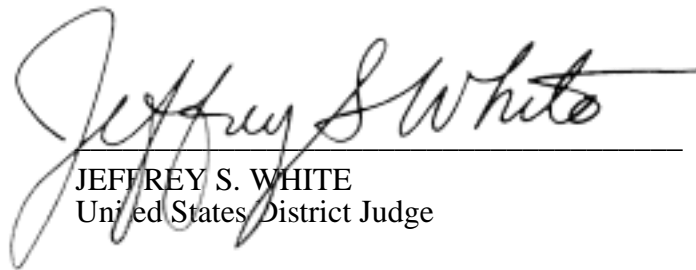
10 The Court finds that the challenged provisions of the Ordinance satisfy the appropriate  
 11 exacting scrutiny and are not facially overbroad. Accordingly, Plaintiff has failed to state a facial  
 12 challenge to the Ordinance. Although these are questions of law and it is unlikely that Plaintiffs  
 13 will be able to plead additional facts that alter the Court’s analysis, in the interests of justice, the  
 14 Court GRANTS Cupertino’s motion to dismiss with leave to amend.

### 15 CONCLUSION

16 For the foregoing reasons, the Court GRANTS Cupertino’s motion to dismiss with leave to  
 17 amend. If it so elects, Plaintiff may file an amended complaint, in compliance with this Order, by  
 18 no later than June 2, 2023. In the absence of such a filing, the Court shall dismiss this matter with  
 19 prejudice.

20  
 21 **IT IS SO ORDERED.**

22 Dated: May 1, 2023

23  
 24   
 25 JEFFREY S. WHITE  
 26 United States District Judge  
 27  
 28

W | V | B | R

1 Jamie L. Lucia (SBN 246163)  
jlucia@steptoe.com  
2 Amanda C. Schwartz (SBN 307522)  
aschwartz@steptoe.com  
3 **STEPTOE & JOHNSON LLP**  
1 Market Plaza  
4 Steuart Tower, Suite 1070  
San Francisco, CA 94105  
5 Telephone: (415) 365-6700  
Facsimile: (415) 365-6678  
6

7 Michael Dockterman (pro hac vice to be filed)  
mdockterman@steptoe.com  
8 **STEPTOE & JOHNSON LLP**  
227 West Monroe Street, Suite 4700  
Chicago, IL 60606  
9 Telephone: (312) 577-1300

10 Attorneys for Plaintiffs  
LEAGUE OF WOMEN VOTERS OF CUPERTINO-SUNNYVALE

11 James M. Wagstaffe (95535)  
12 Michael von Loewenfeldt (178665)  
mvl@wvbrlaw.com  
13 **WAGSTAFFE, VON LOEWENFELDT,**  
**BUSCH & RADWICK LLP**  
14 100 Pine Street, Suite 2250  
San Francisco, CA 94111  
15 Telephone: (415) 357-8900; Fax: (415) 357-8910

16 Attorneys for Defendants  
17 CITY OF CUPERTINO, DARCY PAUL, DIANE  
THOMPSON, KIRSTEN SQUARCIA, CHRIS  
18 JENSEN, LIANG CHAO, KITTY MOORE,  
HUNG WEI, and JOHN WILLEY  
19

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN JOSE DIVISION

23 LEAGUE OF WOMEN VOTERS OF  
CUPERTINO-SUNNYVALE,

24 Plaintiff,

25 v.

26 CITY OF CUPERTINO, et al.

27 Defendants.  
28

Case No. 22-cv-04189

**STIPULATION AND [PROPOSED]  
ORDER RE EXTENSION OF TIME TO  
AMEND COMPLAINT**

**STIPULATED REQUEST FOR EXTENSION OF TIME**

WHEREAS on May 1, 2023 the Court granted defendants motion to dismiss;

WHEREAS the Court’s May 1, 2023 Order grants Plaintiff League of Women Voters of Cupertino-Sunnyvale (“LWVCS”) until June 2, 2023 to file an amended complaint in compliance with the Order;

WHEREAS the parties have begun discussing means by which to avoid the necessity of further proceedings in this Court or the Court of Appeals;

WHEREAS the City’s fiscal year, legislative calendar, and the summer schedules of relevant clients and attorneys will cause those discussions to proceed more slowly than they might at other times in the year; and

WHEREAS the parties desire to fully explore their ongoing discussions without the cost or pressure of litigation or appellate deadlines’

THEREFORE, LWVCS and Defendants City of Cupertino, Darcy Paul, Diane Thompson, Kirsten Squarcia, Chris Jensen, Liang Chao, Kitty Moore, Hung Wei, and John Willey (“Defendants”) stipulate that the Court should grant Plaintiff until September 29, 2023 to file (i) an amended complaint, or (ii) a motion to reconsider the May 1, 2023 Order, in this action.

Plaintiff and Defendants further stipulate that neither party shall engage in any discovery prior to the filing, if any, of an amended complaint.

IT IS SO STIPULATED.

DATED: May 16, 2023

**STEPTOE & JOHNSON LLP**

By: /s/ Jamie L. Lucia  
Jamie L. Lucia (SBN 246163)  
jlucia@step toe.com  
Michael Dockterman (pro hac vice)  
mdockterman@step toe.com

Attorneys for Plaintiff  
LEAGUE OF WOMEN VOTERS OF  
CUPERTINO-SUNNYVALE

1  
2 DATED: May 16, 2023

**WAGSTAFFE, VON LOEWENFELDT,  
BUSCH & RADWICK LLP**

3  
4 By /s/ Michael von Loewenfeldt  
Michael von Loewenfeldt

5  
6 Attorneys for Defendants  
CITY OF CUPERTINO, DARCY PAUL, DIANE  
7 THOMPSON, KIRSTEN SQUARCIA, CHRIS  
8 JENSEN, LIANG CHAO, KITTY MOORE,  
HUNG WEI, and JOHN WILLEY

9  
10  
11 **ATTESTATION**

12 I, Jamie L. Lucia, am the ECF User whose ID and password is being used to file this  
13 Stipulation for Extension of Time to Respond to Complaint. I attest that, pursuant to Civil L.R.  
14 5-4.3.4, concurrence in the filing of this document has been obtained from all counsel. I declare  
15 under penalty of perjury that the foregoing is true and correct.

16 /s/ Jamie L. Lucia  
17 Jamie L. Lucia

W | V | B | R

[PROPOSED] ORDER

Pursuant to Stipulation, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT the deadline set in this Court's May 1, 2023 order for Plaintiff to file an amended complaint is extended to September 29, 2023.

IT IS SO ORDERED.

Dated: May \_\_, 2023

\_\_\_\_\_  
JEFFREY S. WHITE

United States District Judge

W | V | B | R

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



W | V | B | R

1 Jamie L. Lucia (SBN 246163)  
jlucia@steptoe.com  
2 Amanda C. Schwartz (SBN 307522)  
aschwartz@steptoe.com  
3 **STEPTOE & JOHNSON LLP**  
1 Market Plaza  
4 Steuart Tower, Suite 1070  
San Francisco, CA 94105  
5 Telephone: (415) 365-6700  
Facsimile: (415) 365-6678  
6

7 Michael Dockterman (pro hac vice to be filed)  
mdockterman@steptoe.com  
8 **STEPTOE & JOHNSON LLP**  
227 West Monroe Street, Suite 4700  
Chicago, IL 60606  
9 Telephone: (312) 577-1300

10 Attorneys for Plaintiffs  
LEAGUE OF WOMEN VOTERS OF CUPERTINO-SUNNYVALE

11 James M. Wagstaffe (95535)  
12 Michael von Loewenfeldt (178665)  
mvl@wvbrlaw.com  
13 **WAGSTAFFE, VON LOEWENFELDT,**  
**BUSCH & RADWICK LLP**  
14 100 Pine Street, Suite 2250  
San Francisco, CA 94111  
15 Telephone: (415) 357-8900; Fax: (415) 357-8910

16 Attorneys for Defendants  
CITY OF CUPERTINO, DARCY PAUL, DIANE  
17 THOMPSON, KIRSTEN SQUARCIA, CHRIS  
18 JENSEN, LIANG CHAO, KITTY MOORE,  
HUNG WEI, and JOHN WILLEY

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN JOSE DIVISION

23 LEAGUE OF WOMEN VOTERS OF  
CUPERTINO-SUNNYVALE,

24 Plaintiff,

25 v.

26 CITY OF CUPERTINO, et al.

27 Defendants.

Case No. 22-cv-04189

**STIPULATION AND ~~PROPOSED~~  
ORDER RE EXTENSION OF TIME TO  
AMEND COMPLAINT**

W | V | B | R

**STIPULATED REQUEST FOR EXTENSION OF TIME**

WHEREAS on May 1, 2023 the Court granted defendants motion to dismiss;

WHEREAS the Court’s May 1, 2023 Order grants Plaintiff League of Women Voters of Cupertino-Sunnyvale (“LWVCS”) until June 2, 2023 to file an amended complaint in compliance with the Order;

WHEREAS the parties have begun discussing means by which to avoid the necessity of further proceedings in this Court or the Court of Appeals;

WHEREAS the City’s fiscal year, legislative calendar, and the summer schedules of relevant clients and attorneys will cause those discussions to proceed more slowly than they might at other times in the year; and

WHEREAS the parties desire to fully explore their ongoing discussions without the cost or pressure of litigation or appellate deadlines’

THEREFORE, LWVCS and Defendants City of Cupertino, Darcy Paul, Diane Thompson, Kirsten Squarcia, Chris Jensen, Liang Chao, Kitty Moore, Hung Wei, and John Willey (“Defendants”) stipulate that the Court should grant Plaintiff until September 29, 2023 to file (i) an amended complaint, or (ii) a motion to reconsider the May 1, 2023 Order, in this action.

Plaintiff and Defendants further stipulate that neither party shall engage in any discovery prior to the filing, if any, of an amended complaint.

IT IS SO STIPULATED.

DATED: May 16, 2023

**STEPTOE & JOHNSON LLP**

By: /s/ Jamie L. Lucia  
Jamie L. Lucia (SBN 246163)  
jlucia@step toe.com  
Michael Dockterman (pro hac vice)  
mdockterman@step toe.com

Attorneys for Plaintiff  
LEAGUE OF WOMEN VOTERS OF  
CUPERTINO-SUNNYVALE

1  
2 DATED: May 16, 2023

**WAGSTAFFE, VON LOEWENFELDT,  
BUSCH & RADWICK LLP**

3  
4 By /s/ Michael von Loewenfeldt  
Michael von Loewenfeldt

5  
6 Attorneys for Defendants  
CITY OF CUPERTINO, DARCY PAUL, DIANE  
7 THOMPSON, KIRSTEN SQUARCIA, CHRIS  
8 JENSEN, LIANG CHAO, KITTY MOORE,  
HUNG WEI, and JOHN WILLEY

9  
10  
11 **ATTESTATION**

12 I, Jamie L. Lucia, am the ECF User whose ID and password is being used to file this  
13 Stipulation for Extension of Time to Respond to Complaint. I attest that, pursuant to Civil L.R.  
14 5-4.3.4, concurrence in the filing of this document has been obtained from all counsel. I declare  
15 under penalty of perjury that the foregoing is true and correct.

16 /s/ Jamie L. Lucia  
17 Jamie L. Lucia

1 [PROPOSED] ORDER

2 Pursuant to Stipulation, and good cause appearing therefore,

3 IT IS HEREBY ORDERED THAT the deadline set in this Court's May 1, 2023 order for  
4 Plaintiff to file an amended complaint is extended to September 29, 2023.

5 IT IS SO ORDERED.

6 Dated: May 25, 2023



7 JEFFREY S. WHITE

8 United States District Judge

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
W | V | B | R