



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, June 18, 2024

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

CLOSED SESSION REPORT

City Attorney Jensen conducted the closed session report regarding two matters:

Special Meeting Closed Session held at 5:30 p.m. on May 14, 2024:

Subject: Conference with legal counsel - existing litigation pursuant to Government Code § 54956.9 (Pacific Autism Center for Education v. City of Cupertino, Santa Clara Superior Court Case No. 23CV423995)

City Attorney Jensen reported that the City executed a settlement agreement in which the City will receive a payment of \$50,000 in exchange for the reconveyance of a deed of trust (Agenda Item 10). The settlement was authorized by a 5-0 vote of Council.

Special Meeting Closed Session held at 6:00 p.m. on June 4, 2024:

Subject: Conference with legal counsel - existing litigation pursuant to Government Code § 54956.9 (Harshit Sharma et al. v. City of Cupertino, Santa Clara County Superior Court Case No. 22CV39297)

City Attorney Jensen reported that the City entered into a settlement agreement with both plaintiffs for a total amount of \$375,000, \$325,000 of which will be paid by the City. The settlement was authorized by a 4-0 vote of Council (Wei absent).

CEREMONIAL ITEMS

As part of Ceremonial Items, Mayor Mohan recognized the Juneteenth Holiday, observed annually on June 19, and acknowledged the passing of Major League Baseball player Willie Mays.

POSTPONEMENTS AND ORDERS OF THE DAY - None**ORAL COMMUNICATIONS**

Written communications for this item included emails to Council.

The following members of the public spoke:

Jennifer Griffin discussed pro-housing organizations and housing laws.

R. Jerry Lami representing, West Coast Farmers Market Association, discussed the Cupertino Farmers' Market.

Peggy Griffin discussed the Farmers' Market and City Commission meeting schedules.

Lisa Warren discussed the Farmers' Market and City Commission meeting schedules.

Parks and Recreation Commissioner Claudio Bono (representing self) discussed City Commission meeting schedules and the Farmers' Market.

Jean Bedord discussed the Farmers' Market.

Rhoda Fry discussed the West Coast Farmers Market Association and Farmers' Market.

Louise Saadati discussed Housing Element implementation and rezoning.

Caller 1820 discussed the Farmers' Market and a code enforcement matter.

Yvonne Thorstenson discussed Housing Element implementation and rezoning.

Kamyab Mashian discussed Housing Element implementation and rezoning.

Sean Hughes discussed Housing Element implementation and rezoning.

Sandhana Siva discussed Housing Element implementation and rezoning.

Parks and Recreation Commissioner Jennifer Shearin (representing self) discussed Housing Element implementation and rezoning.

San R discussed the Housing Element and remote commission meetings under the Brown Act.

Fruen and Moore requested the City Manager to bring back an informational memo or another action to find space for the Cupertino Farmers' Market for an interim period before June 30.

CONSENT CALENDAR (Items 1-12)

Item 11 was removed from the Consent Calendar by Councilmember Chao and Item 12 was removed by Vice Mayor Fruen.

MOTION: Mohan moved and Wei seconded to reorder the agenda to move Items 11 and 12 before Public Hearings and hear Item 12 before Item 11. The motion carried with the following vote: Ayes: Mohan, Fruen, Chao, Moore, and Wei. Noes: None. Abstain: None. Absent: None.

Mayor Mohan opened the public comment period and the following members of the public spoke.

Jennifer Griffin (Items 2 and 4)

Mayor Mohan closed the public comment period.

MOTION: Fruen moved and Wei seconded to approve the items on the Consent Calendar except as indicated. The motion carried with the following vote: Ayes: Mohan, Fruen, Chao, Moore, and Wei. Noes: None. Abstain: None. Absent: None.

Items 11 and 12 were placed after the Consent Calendar for consideration.

1. Subject: Approval of the June 4, 2024 City Council minutes
Recommended Action: Approve the June 4, 2024 City Council minutes
2. Subject: A resolution calling for a consolidated General Municipal Election on November 5, 2024 to fill two City Council seats and requesting election services from the Santa Clara County Registrar of Voters
Recommended Action: Adopt Resolution No. 24-057 calling for a consolidated General Municipal Election on November 5, 2024 to fill two City Council seats and requesting performance of services from the Registrar of Voters of the County of Santa Clara
3. Subject: Ratifying Accounts Payable for the periods ending May 3, 2024; May 10, 2024;

May 17, 2024; May 24, 2024; and May 31, 2024

Recommended Action: A. Adopt Resolution No. 24-058 ratifying Accounts Payable for the Period ending May 3, 2024;

B. Adopt Resolution No. 24-059 ratifying Accounts Payable for the Period ending May 10, 2024;

C. Adopt Resolution No. 24-060 ratifying Accounts Payable for the Period ending May 17, 2024;

D. Adopt Resolution No. 24-061 ratifying Accounts Payable for the Period ending May 24, 2024; and

E. Adopt Resolution No. 24-062 ratifying Accounts Payable for the Period ending May 31, 2024

4. Subject: Adopt a Resolution to request the Metropolitan Transportation Commission (MTC) allocate Fiscal Year (FY) 2024/2025 Transportation Development Act Article 3 (TDA 3) Pedestrian/Bicycle Project Funding in the amount of \$330,000 for the development of a Citywide Active Transportation Plan.

Recommended Action: Adopt Resolution No. 24-063 (Attachment A), to request the Metropolitan Transportation Commission allocation of FY 2024-2025 Transportation Development Act Article 3 Pedestrian/Bicycle Project funding for the development of an Active Transportation Plan.

Written communications for this item included an email to Council.

5. Subject: Award a construction contract for 2024 Pavement Maintenance Phase 1 Project to G. Bortolotto & Co. for asphalt mill & fill and patching on identified roadways throughout the City of Cupertino in the amount of \$2,662,786.

Recommended Action: 1. Award a construction contract for the 2024 Pavement Maintenance Phase 1 project (project number 2024-101) in the amount of \$2,662,786 to G. Bortolotto & Co.

2. Authorize the City Manager to execute the construction contract when all conditions have been met; and

3. Authorize the Director of Public Works to execute any necessary change orders up to a construction contingency amount of \$266,279 (10%) for a total contract amount of \$2,929,065.

Written communications for this item included an email to Council.

6. Subject: Approve a first amendment with All City Management Services, Inc. (ACMS) to provide crossing guard services for a total not-to-exceed amount of \$1,688,800 extending the agreement date to June 30, 2026, and approve a budget modification in the amount of \$78,707.

Recommended Action: 1. Authorize the City Manager to execute a First Amendment

with All City Management Services, Inc. (ACMS) to continue to provide Crossing Guard Services, increasing the contract amount by \$785,000 for a total not to exceed amount of \$1,688,800 and extending the agreement date to June 30, 2026.

2. Adopt Resolution No. 24-064 approving budget modification #2324-304 and a budget adjustment in the amount of \$78,707 in the General Fund for Fiscal Year 2024-2025 crossing guard services (100-88-846 700-709).

Written communications for this item included a desk item report Attachment C – Draft Amendment 1 Revised and an email to Council.

7. Subject: Approve a First Amendment with Dan Gertmenian to provide educational classes and educational events for a total not-to-exceed amount of \$879,348 and extending the contract date to August 31, 2025.

Recommended Action: Authorize the City Manager to execute a First Amendment with Dan Gertmenian, increasing the amount by \$106,305 for a total contract amount not to exceed \$879,348 and extending the term of the agreement to August 31, 2025.

Written communications for this item included an email to Council.

8. Subject: Award an agreement to Cascadia Consulting Group, Inc. for waste characterization services in an amount not to exceed \$223,466.

Recommended Action: Authorize the City Manager to execute an agreement with Cascadia Consulting Group, Inc. for waste characterization services in an amount not to exceed \$223,466.

9. Subject: Minor correction to amendment to MIG, Inc. Design Professional Agreement approved at the June 4 City Council meeting to increase not-to-exceed amount of contract by \$45,000, to amount of \$512,411.

Recommended Action: Approve the corrected not-to-exceed total agreement amount as outlined in the draft amendment to the MIG, Inc. Design Professional Agreement.

10. Subject: Termination of loan agreement between the City of Cupertino and the Pacific Autism Center for Education

Recommended Action: Authorize the City Manager to terminate a loan agreement between the City of Cupertino and the Pacific Autism Center for Education pursuant to a settlement agreement between the parties, in consideration for a payment of \$50,000 into the City's BMR fund

ITEMS REMOVED FROM THE CONSENT CALENDAR

12. Subject: Consider acquisition of property located at 19400 Stevens Creek Blvd, and appointment of real property negotiator for acquisition of property

Recommended Action: Appoint City Manager Pamela Wu as real property negotiator for acquisition of property located at 19400 Stevens Creek Blvd

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

This item was pulled from the Consent Calendar for discussion.

City Manager Pamela Wu gave a presentation.

Councilmembers asked questions and made comments.

Mayor Mohan opened the public comment period and the following members of the public spoke.

Jennifer Griffin

Peggy Griffin

Lisa Warren

Parks and Recreation Commissioner Claudio Bono (representing self)

Jean Bedord

Rhoda Fry

San R

Mayor Mohan closed the public comment period.

MOTION: Fruen moved and Wei seconded to appoint City Manager Pamela Wu as real property negotiator for acquisition of the property located at 19400 Stevens Creek Blvd. The motion carried with the following vote: Ayes: Mohan, Fruen, Chao, and Wei. Noes: Moore. Abstain: None. Absent: None.

At 8:43 p.m., Mayor Mohan recessed the meeting. The meeting reconvened at 8:50 p.m. with all Councilmembers present.

11. Subject: Sale of city-owned property at 10301 Byrne Avenue

Recommended Action: 1. Adopt Resolution No. 24-065 authorizing the sale of surplus real property located at 10301 Byrne Avenue, Cupertino, California. (Attachment A)
2. Approve a deed restriction substantially similar to Attachment B in compliance with the State Surplus Land Act for the property, to be completed prior to the close of escrow.
3. Authorize the City Manager to execute sales agreements (Attachment C) and related documents for the property at 10301 Byrne Avenue with Zhao Han.

Written communications for this item included an email to Council.

This item was pulled from the Consent Calendar for discussion.

Councilmembers asked questions and made comments.

Mayor Mohan opened the public comment period and the following members of the public spoke.

Peggy Griffin

Lisa Warren

Parks and Recreation Commissioner Claudio Bono (representing self)

Mayor Mohan closed the public comment period.

MOTION: Wei moved and Mohan seconded to:

1. Adopt Resolution No. 24-065 authorizing the sale of surplus real property located at 10301 Byrne Avenue, Cupertino, California;
2. Approve a deed restriction substantially similar to Attachment B in compliance with the State Surplus Land Act for the property, to be completed prior to the close of escrow; and
3. Authorize the City Manager to execute sales agreements and related documents for the property at 10301 Byrne Avenue with Zhao Han.

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

PUBLIC HEARINGS

13. Subject: Proposed Municipal Code Amendments to Chapter 19.48 (Fences), Chapter 19.12 (Administration), and Chapter 19.08 (Definitions) and related CEQA exemption. (Application No.: MCA-2024-001; Applicant: City of Cupertino; Location: Citywide)
- Recommended Action: Conduct the first reading of Ordinance No. 24-2260: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTER 19.08, CHAPTER 19.12, AND CHAPTER 19.48 REGARDING FENCES, which includes a finding to find the actions exempt from CEQA
- Presenter: Emi Sugiyama, Associate Planner

Written communications for this item included a staff presentation.

Associate Planner Emi Sugiyama gave a presentation.

Councilmembers asked questions and made comments.

Mayor Mohan opened the public hearing and, seeing no one, closed the public hearing.

MOTION: Chao moved and Fruen seconded the recommended action to conduct the first reading of Ordinance No. 24-2260: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO AMEND MUNICIPAL CODE CHAPTER 19.08, CHAPTER 19.12, AND CHAPTER 19.48 REGARDING FENCES, which includes a finding to find the actions exempt from CEQA. The motion carried with the following vote: Ayes: Mohan, Fruen, Chao, Moore, and Wei. Noes: None. Abstain: None. Absent: None.

ACTION CALENDAR

14. Subject: Future agenda items requested by City Councilmembers ("TBD List")
Recommended Action: Review the TBD list and modify the list as recommended below
Presenter: Pamela Wu, City Manager

City Manager Pamela Wu introduced the item.

Councilmembers asked questions and made comments.

Mayor Mohan opened the public comment period and the following members of the public spoke.

Jennifer Griffin
Peggy Griffin
San R

Mayor Mohan closed the public comment period.

MOTION: Moore moved and Fruen seconded to modify the TBD list Items 1, 3, 6, and 8 as recommended. The motion carried with the following vote: Ayes: Mohan, Fruen, Chao, Moore, and Wei. Noes: None. Abstain: None. Absent: None.

#	Subject	Recommendation
1	Review of City Treasurer Resolution including appointment, function, and process for ratifying accounts payable	Staff recommends adding this item as a potential City Work Program item for FY 25. <u>Recommendation Approved</u>

3	Housing Element Study Session	No further action required. Housing Element adopted. <u>Recommendation approved.</u>
6	Nexus study for traffic impact fee	Staff recommends adding this item and potentially other impact fees nexus studies as a potential City Work Program item for FY 25. <u>Recommendation approved.</u>
8	Revisit the Greenbiz Cupertino standards.	No further action required. An informational memorandum was provided and posted online in April 2024. <u>Recommendation approved.</u>

Council conducted straw poll votes for Items 2, 4, 5, 7, and 9. The final recommendation is underlined for each item.

2	Public Facilities Corporation's (PFC) tax-exempt status	No further action required. At the 3/5 Council meeting, Council voted to agendize the annual meeting of the PFC. This meeting has been agendized for 11/18/24. An informational memorandum was provided to Council in December 2023 and in April 2024. Staff recommends removing this item. <u>Recommendation modified to have all supporting materials included with the agenda for discussion at the meeting in November (Ayes: Mohan, Fruen, Chao, Wei. Noes: Moore.)</u>
4	Review the budgeted "headcount" for City employees	Staff recommends removing this item as this was discussed during the proposed budget study session at the 5/21 City Council meeting. <u>Recommendation approved (Ayes: Mohan, Fruen, Wei. Noes: Chao and Moore.)</u>
5	Review of City Organization Chart and City Treasurer and City Attorney positions	Staff recommends removing this item as this was addressed at the 5/21 and the 6/4 City Council meetings during the budget item. Citizens of Cupertino will be added back to the final budget organization chart. <u>Consolidated with Item #1 (unanimous consent).</u>

7	Review the City's financial policy and best practices	No further action required. Staff will provide an informational memorandum or Council report depending the recommended changes on the investment policy and best practices in the Fall. Staff will review adding more restrictive language on minimum cash balances. <u>Recommendation modified to stay on the list until the informational memo has been received (unanimous consent).</u>
9	Study session on banning artificial turf given the environmental concerns.	Staff will provide an informational memorandum to Council on artificial turf. <u>Recommendation modified to stay on the list until the City Manager brings back an informational memo in the Fall (unanimous consent).</u>

CITY MANAGER REPORT

City Manager Pamela Wu shared a video of the Pride Month Flag Raising Ceremony.

ORAL COMMUNICATIONS - CONTINUED - None

COUNCILMEMBER REPORTS

15. Subject: Councilmember Reports

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

ADJOURNMENT

At 10:40 p.m., Mayor Mohan adjourned the Regular City Council Meeting per rule. There was no Council discussion on the remaining agenda item.

FUTURE AGENDA ITEMS

Council did not hear this item.

Minutes prepared by:

Kirsten Squarcia, City Clerk