



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 21, 2023

Agenda Item #3

Subject:

Consider staff reports and the attachments provided at the June 21, 2022 and March 7, 2023 City Council meetings regarding the Chamber of Commerce

Recommended Action:

Receive the report on previously presented Chamber of Commerce related information.

Background:

Staff's responses to questions received from councilmembers are shown in italics.

Q1: Do Chamber of Commerce members such as Apple, Recology, San Jose Water, and Rotary have contracts/agreements with the City? (**Councilmember Moore**)

Although this subject is not on the agenda for the March 21 meeting, a number of the entities mentioned have or have had agreements with the City.

Q2: The Chamber of Commerce is a 501(c)6, what is the difference between a 501(c)3 and a 501(c)6? In terms of serving the public vs. serving their members, a member of the public brought this up and it should be clarified. (**Councilmember Moore**)

A 501(c)(3) organization is an organization organized for charitable, religious, educational, scientific, or literary purposes, or for purposes of testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.

501(c)(6) organizations include business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Both types of organization are tax-exempt under the Internal Revenue Code. The distinctions between 501(c)(3) and 501(c)(6) organizations are not on the agenda for the March 21 meeting.

Q3: There are many payments in the attachments, are there contracts for them?
(**Councilmember Moore**)

The City's Purchasing Policy, in place since 2013, allows for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. These expenditures are within the City Manager's authority under the Purchasing Policy. Staff is preparing a revised Purchasing Policy for Council review. To the extent this question relates to questions other than the Purchasing Policy, it involves purely administrative matters. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q4: Are Councilmembers allowed to ask about contracts and payments the City makes or has made when it is for goods and/or services? Is this part of the Duty of Accountability (see <https://www.scu.edu/government-ethics/resources/public-officials-as-fiduciaries/>)?
(**Councilmember Moore**)

Individual Councilmembers are entitled to receive information consistent with the requirements and limitations of Municipal Code Chapter 2.17. (CMC § 2.17.043.) Individual councilmembers may not direct or unduly influence staff execution of Council policy or City administration. (CMC §§ 2.17.032, 2.17.033, 2.17.042.) The City Manager is responsible for the implementation of Council policies, including the administration of contracts and payments. Questions about individual contracts and payments are administrative matters; Council should address purchasing issues at the policy level. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q5: Have Chamber members lobbied for legislation, development projects, or agreements which come before the City Council? (**Councilmember Moore**)

Although this subject is not on the agenda for the March 21 meeting, membership in the Chamber would not preclude a member from participating in the government process.

Q6: The previous Staff report provided a comparison of various other cities' Chamber agreements included Santa Clara. Is the City of Cupertino now aware that the City of Santa Clara had a legal dispute with their chamber? See <https://sanjosespotlight.com/santa-clara-initiates-litigation-against-business-group-accused-of-overbilling/> and <https://sanjosespotlight.com/santa-clara-quietly-settles-lawsuit-with-silicon-valley-chamber-of-commerce/> (**Councilmember Moore**)

Staff is now aware of the legal dispute with the Chamber.

Q7: The City paid the Chamber \$65,000 for a website. There is what looks like a proposal for a website in the attachments, where is the signed contract? Does the City own the website? If not, why? (**Councilmember Moore**)

The "I Love Cupertino" website design project was part of the City Work Program item in FY 20-21 under Targeted Marketing Programs to Assist Small Businesses. The current Purchasing Policy allows

for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

The City's intellectual property rights with respect to the website are not on the March 21 City Council agenda.

Q8: Do contracts need to be signed by a City Staff member for them to be in force? If we see a contract with no signature what does that mean? **(Councilmember Moore)**

A signature is not generally a legal requirement for an enforceable contract in California and other common law jurisdictions. The current Purchasing Policy allows for a number of means for procurement of goods and service, including direct payment, purchase order, and contract. The Purchasing Policy is not on the agenda for the March 21 meeting but will be considered by Council at a future date.

Q9: Does the city allow campaign booths at City Festivals? Does it matter if the fees are waived for the festival or not? What types of campaigning are allowed at City Festivals?
(Councilmember Moore)

This has the potential to be an involved response and discussion and is unrelated to the Chamber subject matter.