



DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, May 2, 2023

At 6:02 p.m., Mayor Hung Wei called the Regular City Council Meeting to order in the City Hall Conference Room C, 10300 Torre Avenue.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

In open session before Council convened in closed session, the Mayor called for any members of the public who were present to provide comment regarding any item on the agenda. No members of the public requested to speak. Mayor Wei then closed the session.

CLOSED SESSION

1. Subject: Conference with legal counsel - existing litigation pursuant to Government Code § 54956.9(a): Harshit Shrama & Poonam Salekar v. City of Cupertino et al., Santa Clara County Superior Court Case No. 22CV392971

Council met with legal counsel on the existing litigation.

2. Subject: Conference with legal counsel - initiation of litigation pursuant to Government Code § 54956.9(c) (one case)

Council met with legal counsel on the initiation of litigation.

Council recessed from 6:14 p.m. to 6:45 p.m.

OPEN SESSION

At 6:45 p.m. Mayor Wei reconvened the Regular City Council Meeting in open session and led the Pledge of Allegiance in the Cupertino Community Hall Council Chamber, 10350 Torre Avenue and via teleconference.

ROLL CALL

Present: Mayor Hung Wei, Vice Mayor Sheila Mohan, and Councilmembers Liang Chao, J.R. Fruen and Kitty Moore. Absent: none.

CLOSED SESSION REPORT

City Attorney Chris Jensen conducted the open session report regarding the Closed Session held at 6:02 p.m. City Attorney Jensen reported that Council heard two items in closed session and took action to authorize the City Attorney to file a cross complaint in the action Shrama v. City of Cupertino.

CEREMONIAL ITEMS

3. Subject: Proclamation declaring May as Affordable Housing Month
Recommended Action: Present proclamation declaring May as Affordable Housing Month

Emily Ann Ramos, Preservation and Protection Associate with Silicon Valley at Home (SV@Home) received the proclamation.

Mayor Wei presented the proclamation declaring May as Affordable Housing Month.

As part of Ceremonial Items, Mayor Wei acknowledged two proclamations that were issued but were not being presented. Mayor Wei recognized the month of May as Asian American and Pacific Islander (AAPI) Heritage Month and National Public Works Week from May 21 to 27.

POSTPONEMENTS AND ORDERS OF THE DAY

Wei moved and Fruen seconded to postpone Item 11 to consider approval of a Semi-Rural Designation for Carmen Road to a date uncertain. Council did not vote on this motion.

Moore moved and Chao seconded a substitute motion to pull Item 11 to consider approval of a Semi-Rural Designation for Carmen Road from the Consent Calendar and to hear the item. The substitute motion carried with Fruen voting no.

ORAL COMMUNICATIONS

Sandy James acknowledged the service of the Public Works Department and praised the work of staff, including the Veteran's Memorial project.

Brook Ezzat was concerned about Council behavior, working towards solutions for housing, transit, and the unhoused, accepting money from developers, and new Council procedures.

Jennifer Griffin was concerned about the Housing Element certification process and loss of local control and opposed SB 423 to extend SB 35.

Rhoda Fry was concerned about per capita income for sales tax and supported long-term savings and transparency and opposed selling water rights and Blackberry Farm (shared written comments).

San R supported the Sister Cities program, reviving the program to include other sister cities, and ensuring funding for expanded trips.

Peggy Griffin opposed posting the budget survey results after the City presentation on May 17 and supported closing the survey beforehand and was concerned about the survey questions.

Call-in-User-1 opposed the civil assessments charged for a litigation matter involving their property and the City Building Department.

CONSENT CALENDAR (Items 4-11)

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

Peggy Griffin was concerned about the award amount for the 2023 Concrete Reconstruction Project and supported spending reductions (Item 10).

Jennifer Griffin supported the City of Santa Clara paying a greater portion of the cost-sharing agreement for the Via on-demand shuttle expansion (Item 7).

San R opposed the approval of the Countywide Household Hazardous Waste Collection Program agreement if the costs were being passed-on to residents (Item 6).

Mayor Wei closed the public comment period.

Mohan moved and Fruen seconded to approve the items on the Consent Calendar, except for Items 8 and 11 which were pulled for discussion. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

Items 8 and 11 were placed after the Action Calendar for consideration.

4. Subject: Consider approval of the April 13 City Council minutes
Recommended Action: Approve the April 13 City Council minutes

Written communications for this item included an Amended Attachment A – Draft minutes.

5. Subject: Fiscal Year (FY) 2023-24 recommended funding allocations for the Community Development Block Grant (CDBG) Program, the Below Market Rate (BMR) Affordable Housing Fund (AHF), and the General Fund Human Services Grant (HSG)
Recommended Action: Authorize the City Manager to execute FY 2023-24 CDBG, BMR AHF, and General Fund HSG funding agreements

Written communications for this item included a supplemental report with staff responses to councilmember questions, Attachment D - Updated Staff Report-Redlined, Attachment E - Staff Report Consolidation Plan 2020.

6. Subject: Consider approval of the second amendment to the Countywide Household Hazardous Waste (HHW) Collection Program agreement between the City of Cupertino and the County of Santa Clara (County) to augment funding up to an additional \$90,705 to the Countywide HHW Program during Fiscal Year (FY) 2023/24 using earmarked funds within the Resource Recovery Fund 520.
Recommended Action: Authorize the City Manager to execute the second amendment to the Countywide HHW Collection Program agreement between the City of Cupertino and the County of Santa Clara to augment funding up to an additional \$90,705 to the Countywide HHW Program during FY 2023/24 for the purpose of attaining or increasing household participation, raising the not to exceed amount of the three-year 2022-2024 agreement to \$198,885.
7. Subject: Consider a cost-sharing agreement between the City of Santa Clara and the City of Cupertino for the Via on-demand shuttle expansion.
Recommended Action: Authorize the City Manager to enter into a cost-sharing agreement between City of Santa Clara and the City of Cupertino for the Via on-demand shuttle expansion.
9. Subject: Consider award of a construction contract for the Service Center Security Gate Project (Project No. 2023-103) for the construction of a new motorized security gate, including associated improvements.
Recommended Action: 1. Award a construction contract for the Service Center Security Gate Project and authorize the City Manager to execute a contract in the amount of \$365,750 with VNH Builders;
a. Authorize the Director of Public Works to execute any necessary change orders up to

a construction contingency amount of \$36,575 (10%) for a total authorized contract amount of \$402,325; and

b. Adopt Resolution No. 23-051 approving budget modification #2223-266 increasing appropriations in the General Fund Service Center Facilities Maintenance Fund (budget unit 100-87-829) by \$249,001.

10. Subject: Consider award of a construction contract for the 2023 Concrete Reconstruction Project (Project No. 2023-104) for the reconstruction of curbs, gutters, sidewalks and Americans with Disabilities Act (ADA) ramps at various locations throughout the City of Cupertino.

Recommended Action: 1. Award a construction contract for the 2023 Concrete Reconstruction Project and authorize the City Manager to execute a contract amount of \$1,378,793.40 with R&S Construction Management, Inc.; and

a. Authorize the Director of Public Works to execute any necessary change orders up to a construction contingency amount of \$137,879 (10%) for a total authorized contract amount of \$1,516,672.40.

PUBLIC HEARINGS – None

ACTION CALENDAR

12. Subject: Consider a Request for Proposals (RFP) for garbage and construction and demolition (C&D) debris disposition services, including solicitation of options to process garbage for recovery of organic and other recyclables.

Recommended Action: Approve the staff recommendation regarding the forthcoming Request for Proposals for garbage and construction and demolition debris disposition services, by incorporating the solicitation of options to process garbage for recovery of organic and other recyclable materials.

Presenter: Ursula Syrova, Environmental Programs Manager

Written communications for this item included a staff presentation.

Environmental Programs Manager Ursula Syrova gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin asked about the billing structure to customers.

Rhoda Fry supported adding a quality of service element.

Darcy Paul supported awareness of plastic contaminants.

Peggy Griffin opposed the increase and supported outreach and education.

San R was concerned about risings costs, layoffs, lower income residents, and housing.

Mayor Wei closed the public comment period.

Moore moved and Fruen seconded to approve the staff recommendation regarding the forthcoming Request for Proposals for garbage and construction and demolition debris disposition services, by incorporating the solicitation of options to process garbage for recovery of organic and other recyclable materials. The motion carried unanimously.

Council recessed from 8:15 p.m. to 8:21 p.m.

13. Subject: Consider a report regarding the review of potential violations of the City of Cupertino Municipal Code and City policies regarding Council- and commissioner-staff relations.

Staff and Commissioner-Staff Relations ("Report").

Recommended Action: Receive confidential Report; consider waiving attorney-client privilege to allow for the public release of the Report; and consider further responses to Report.

Presenter: Christopher Jensen, City Attorney

Written communications for this item included an email to Council.

Councilmember Moore read a statement and recused herself from this item and left the dais.

City Attorney Christopher Jensen reviewed the staff report.

Councilmembers asked questions and made comments.

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

Jennifer Griffin opposed the Report.

A majority of Council consented to suspend the Council Procedure's rules for public comment to allow additional time for Darcy Paul (Fruen, Wei, Mohan).

Darcy Paul opposed the investigation process and the Report.

Brooke Ezzat ceded their time to Darcy Paul.

Lisa Warren requested definitions of “undue influence” and “due diligence” and supported working together and serving the community.

Rhoda Fry supported Councilmembers working together and opposed divisiveness.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported public release of the Report.

San R opposed public release of the Report.

Peggy Griffin opposed public release of the Report.

Louise Saadati supported public release of the Report.

Housing Commissioner Tessa Parish (representing self) was concerned about staff bias in the Report.

Mayor Wei closed the public comment period.

Wei moved and Fruen seconded to waive attorney-client privilege and to authorize the public release of the confidential investigation Report prepared by Linda Daube, dated May 1, 2023, provided that such Waiver would not extend to the subject matter of the Report, or to underlying materials considered in the course of the investigation; and to continue this item to a special meeting to allow opportunities for the public to review the Report before any further discussions by the City Council. The motion carried with Chao voting no and Moore absent (recused).

Councilmember Moore returned to the dais.

ITEMS REMOVED FROM THE CONSENT CALENDAR

The following items were pulled from the Consent Calendar and placed after the Action Calendar for discussion.

8. Subject: Consider approving the use of funds from the Art In-Lieu Fees for the Jollyman All-Inclusive Playground (AIPG) Capital Improvement Programs (CIP) project.
Recommended Action: 1. Approve the use of appropriations of \$338,146.86 from the

Art In-Lieu Fee in the General Fund, for artwork within the Jollyman AIPG CIP project;

2. Adopt Resolution No. 23-050 (Attachment A) approving budget modification no. 2223-274 increasing appropriations and revenue by \$338,146.86 in the Capital Improvement Program Capital Projects Fund and increasing appropriations in the General Fund to transfer out restricted funds for the Jollyman All-Inclusive Playground Project (420-99-051, PVAR 007); and
3. Authorize the City Manager to execute any necessary contract amendments for a contingency of \$100,489 for a total contract amount of \$490,000 on the professional design services agreement between the City of Cupertino and MIG, Inc. for the Jollyman AIPG Project (Project 2019-15).

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included a desk item Attachment C - Redlined Staff Report which included a modification to the recommended action, a supplemental report and desk item with staff responses to councilmember questions, and emails to Council.

Acting Director of Public Works Chad Mosley and CIP Manager Susan Michael reviewed the staff report.

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

Jennifer Griffin was concerned about the funds being used on a single project.

Lisa Warren supported implementing a procedure, evaluating other sites, and requesting a recommendation from the Arts and Culture Commission.

Rhoda Fry opposed approving additional funds and was concerned about artwork definitions. (Submitted written comments).

Peggy Griffin opposed approving additional funds and was concerned about artwork definitions.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported approving the use of funds.

Liana Crabtree supported referral to the Arts and Culture Commission for a recommendation and opposed approving the additional use of funds at this location.

Louis Saadati supported approving the use of funds.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Wei moved and Chao seconded to:

1. Approve the use of appropriations of \$338,146.86 from the Art In-Lieu Fee in the General Fund, for artwork within the Jollyman AIPG CIP project; and
2. Adopt Resolution No. 23-050 (Attachment A) approving budget modification no. 2223-274 increasing appropriations and revenue by \$338,146.86 in the Capital Improvement Program Capital Projects Fund and increasing appropriations in the General Fund to transfer out restricted funds for the Jollyman All-Inclusive Playground Project (420-99-051, PVAR 007).

The motion carried unanimously.

11. Subject: Consider approval of a Semi-Rural Designation, eliminating the requirement for sidewalks on the east side of Carmen Road, between Scenic Boulevard and Stevens Creek Boulevard, pursuant to Ordinance No. 1925.

Recommended Action: Adopt Resolution No. 23-052 designating the east side of Carmen Road, between Scenic Boulevard and Stevens Creek Boulevard, as semi-rural.

As noted under Postponements and Orders of the Day, this item was pulled from the Consent Calendar for discussion.

Councilmembers asked questions and made comments.

Acting Director of Public Works Chad Mosley answered questions.

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

Patrick Kwok (Petitioner) supported the proposed Semi-Rural Designation.

Rhoda Fry supported the petition and proposed Semi-Rural Designation.

Jennifer Griffin supported having continuity in the area.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported postponement until Council consideration of the Carmen Road Bridge project.

San R supported postponement and assessing the site visibility and was concerned about future costs to the City.

Peggy Griffin supported the petition for Semi-Rural Designation.

Mayor Wei closed the public comment period.

Chao moved and Moore seconded to adopt Resolution No. 23-052 designating the east side of Carmen Road, between Scenic Boulevard and Stevens Creek Boulevard, as semi-rural. The motion carried unanimously.

ADJOURNMENT

At 10:53 p.m., Mayor Wei adjourned the Regular City Council Meeting per Council rule.

COUNCIL REPORTS AND COMMENTS

14. Subject: Councilmember Reports

Written communications for this item included a Council Report from Councilmember Moore.

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

CITY MANAGER REPORT

Council did not hear this item.

ORAL COMMUNICATIONS - CONTINUED – None

INFORMATIONAL ITEMS - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

Minutes prepared by:

Kirsten Squarcia, City Clerk