



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, February 7, 2023**

REGULAR MEETING

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

ROLL CALL

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

Vice Mayor Mohan expressed sympathies to those affected by the earthquakes in Syria and Turkey and Mayor Wei held a moment of silence in their honor.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Consider a certificate of appreciation to West Valley Community Services Executive Director Josh Selo recognizing his years of service to the community
Recommended Action: Present certificate to West Valley Community Services Executive Director Josh Selo recognizing his years of service to the community

Josh Selo received the certificate of appreciation.

Mayor Wei presented the certificate to West Valley Community Services Executive Director Josh Selo recognizing his years of service to the community.

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

Housing Commissioner Connie Cunningham (representing self) expressed appreciation to Josh Selo for his years of service to the community.

Mayor Wei closed the public comment period.

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

Housing Commissioner Connie Cunningham (representing self) supported increasing biodiversity and conserving water and restoring nature at Blackberry Farm Golf Course.

Jennifer Griffin supported preserving the Stocklmeir property.

Don Halsey, representing Friends of Blackberry Farm Golf, supported the beneficial role of golf courses in biodiversity and as providing a habitat for bird species. (Submitted written comments).

Chris Noone requested information regarding the Vallco development be made available on the City website.

Lisa Warren presented a book gift to each Councilmember and supported Blackberry Farm Golf Course also providing a natural habitat and biodiversity, and an improved City website.

Brooke Ezzat supported reconsideration of the Memorial Park Plan and increased funding for inclusive playgrounds and opposed some discussion in the February 3 Council Workshop.

Rani Fischer, representing Santa Clara Valley Audubon Society, supported returning Blackberry Farm Golf Course to a natural habitat and preserving biodiversity.

Parks and Recreation Commissioner Jennifer Shearin (representing self) was concerned about emails from Councilmembers stating their position on items not yet voted on by Council.

Planning Commissioner Seema Lindskog (representing self) was concerned about emails from Councilmembers stating their position on items not yet voted on by Council.

Louise Saadati commended members of City staff for their work and supported City Council meetings proceeding in an orderly way.

Eugene Lin supported restoring the Blackberry Farm Golf Course land to a natural habitat and the resulting benefits for families and the environment.

Arjun Krishna opposed the use of herbicides and pesticides at Blackberry Farm Golf Course and supported restoring the land to a natural habitat.

Rhoda Fry supported adding nature to Blackberry Farm Golf Course and providing cost statements for City amenities and opposed Council action at study sessions.

Peggy Griffin supported keeping Blackberry Farm Golf Course open as a biodiversity activity and was concerned about the draft Housing Element being submitted past January 31.

REPORTS BY COUNCIL AND STAFF

2. Subject: Brief reports on councilmember activities and brief announcements
Recommended Action: Receive brief reports on councilmember activities and brief announcements

Council received brief reports on councilmember activities and brief announcements.

3. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their various committees.

4. Subject: Report on Subcommittee assignments
Recommended Action: Report on Subcommittee assignments

There were no reports on Subcommittee assignments.

5. Subject: City Manager update
Recommended Action: Receive City Manager update on City business

Council received the City Manager update on City business.

CONSENT CALENDAR (Items 6-15)

Fruen moved and Mohan seconded to approve the items on the Consent Calendar, except for Items 7, 9, 10, 13, 14, 15 which were pulled for discussion. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

Wei moved and Mohan seconded to reorder the agenda for those items removed from the Consent Calendar; and move Item 15 after Item 16 and move Items 7, 9, 10, 13, and 14 to the end of the agenda.. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

6. Subject: Consider approval of the January 17 City Council minutes

Recommended Action: Approve the January 17 City Council minutes

Written Communications for this item included an amended Attachment A - Draft Minutes.

8. Subject: Consider adopting a resolution authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period February 7, 2023 through February 28, 2023 pursuant to the Brown Act, as amended by AB 361
Recommended Action: Adopt Resolution No. 23-022 authorizing continued remote teleconference meetings of the legislative bodies of the City of Cupertino for the period February 7, 2023 through February 28, 2023 pursuant to the Brown Act, as amended by AB 361
11. Subject: Consider the Monthly Treasurer's Investment Report for December 2022
Recommended Action: Receive the Monthly Treasurer's Investment Report for December 2022
12. Subject: Consider the Treasurer's Investment Report for Quarter Ending December 31, 2022
Recommended Action: Receive the Treasurer's Investment Report for Quarter Ending December 31, 2022

SECOND READING OF ORDINANCES – None

PUBLIC HEARINGS

16. Subject: Consider an appeal of the Planning Commission's decision to deny Sign Exception to allow three (3) wall signs where two (2) are permitted and to further allow two (2) of the three (3) wall signs to be oriented towards the freeway on two separate storage facility buildings. (Application No(s): EXC-2022-003; Applicant(s): David Ford, All Sign Services; Location: 20565 Valley Green Dr.; APN: 326-10-044)
Recommended Action: Conduct a public hearing and adopt Resolution No. 23-025 (Attachment A) upholding the appeal in part, approve one of the two-requested freeway-oriented signs, and deny the requested Sign Exception

Written communications for this item included a staff presentation and an applicant/appellant presentation.

Senior Planner Gian Martire gave a presentation.

Applicants David Ford, Permit Expeditor on behalf of Image National Signs, and Brian

Ulrich, VP Acquisitions & Development for Public Storage, gave a presentation.

Councilmembers asked questions and made comments.

Mayor Wei opened the public hearing and the following people spoke.

Housing Commissioner Connie Cunningham (representing self) supported denying the appeal and amending the sign ordinance to clarify light pollution and light trespassing.

Jennifer Griffin supported planting more trees on Highway 280 and denying the appeal.

Lisa Warren supported denying the appeal.

Donna Austin supported approving the signs.

Planning Commissioner Muni Madhhipatla (representing self) supported denying the appeal.

Rani Fischer, representing Santa Clara Valley Audubon Society, supported denying the appeal and opposed allowing illuminated signs on Highway 280.

San R supported denying the appeal and upholding the Planning Commission decision.

Peggy Griffin supported denying the appeal and seeking a scenic highway permit and landscape freeway classification.

Rhoda Fry supported denying the appeal.

Mayor Wei closed the public hearing.

Council recessed from 9:01 p.m. to 9:08 p.m.

Mohan moved and Fruen seconded to adopt Resolution No. 23-025 upholding the appeal in part, approve one of the two-requested freeway-oriented signs, and deny the requested Sign Exception. The motion carried with Moore voting no.

ITEMS REMOVED FROM THE CONSENT CALENDAR

As reordered under Consent Calendar, Item 15 was heard after Item 16.

15. Subject: Consider adopting Cupertino City Council Procedures Manual

Recommended Action: Approve Resolution No. 23-021, adopting Cupertino City Council Procedures Manual

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included a Supplemental Staff Report and emails to Council.

City Attorney Chris Jensen reviewed the staff report.

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

Housing Commissioner Connie Cunningham (representing self) supported adoption of the Council Procedures Manual.

Jennifer Griffin opposed adoption of the Council Procedures Manual.

Bill Wilson supported adoption of the Council Procedures Manual.

Hema Kundargi supported adoption of the Council Procedures Manual.

Lisa Warren supported waiting and further collaboration with the public, Councilmembers, and staff.

Rhoda Fry supported further collaboration and changes to the Council Procedures Manual.

Leslie Crowell supported the process for removing items on the consent calendar by councilmembers.

Louise Saadati supported adoption of the Council Procedures Manual.

Donna Austin supported approval of the Council Procedures Manual.

Dolly Sandoval supported adoption of the Council Procedures Manual.

Rod Sinks supported adoption of the Council Procedures Manual.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported adoption of the Council Procedures Manual.

Jean Bedord supported adoption of the Council Procedures Manual.

Planning Commissioner Seema Lindskog (representing self) supported adoption of the Council Procedures Manual.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Mohan moved and Fruen seconded to Approve Resolution No. 23-021, adopting Cupertino City Council Procedures Manual.

Chao moved and Moore seconded a substitute motion:

Edit 1: Mayor makes recommendation on committee assignments and then approved by the Council. - Long-standing practice in Cupertino and most cities.

Edit 2: Clarify that the City Manager has no authority to dictate what information a Council member is allowed access to through CPRA. - No city anywhere allows the City Manager such authority. - This is the long-standing practice in Cupertino and most cities.

Edit 3: Two Council members can add an agenda item, which should not be removed by the majority. - This is the long-standing practice in Cupertino and most cities.

Edit 4: Allow any member of the public to pull an item off the Consent Calendar in order to make public comments - This is a long-standing practice in Cupertino and most cities,

Edit 5: Follow common parliamentary procedures to only allow "Call the Question" to shut down deliberation only with supermajority vote, rather than allowing the Mayor to do so. - This is a long-standing practice in Cupertino and most cities,

Edit 6: Do not take action in a study session. - This is a long-standing practice in Cupertino and most cities,

Edit 1: 3.1 Appointment. The Mayor ~~shall appoint~~ may make recommendations of Councilmembers to standing and ad hoc committees and subcommittees established by the City Council, subject to approval ~~ratification~~ by the Council ~~at its next regular meeting~~. It will be the responsibility of the committees and subcommittees to inform and submit recommendations to the Council.

Edit 2: 6.6 Councilmember Access to Information. City Councilmembers have free access to the flow of any information related to the operation of the City. The City Manager shall ensure that such information is communicated by staff in full and with candor to the Council. City staff will make every effort to respond in a timely and professional manner to all requests made by individual council members for information or assistance, provided that, in the judgment of the City Manager, the request is not of a magnitude either in terms of workload or policy, which would require that it more appropriately be assigned to staff through the collective direction of the City Council,

based on the guidelines set forth in Cupertino Municipal Code section 2.17.043. The City Manager shall place requests that impose a significant workload on staff on the Council agenda for review by the full Council, along with a statement from that Councilmember as to why the information is needed. ~~No Councilmember shall circumvent the City Manager's direction regarding a request for information by seeking information through a Public Records Act request.~~

Edit 3: 7.1 Future Agenda Items. The City Manager, the City Attorney, the Mayor, or any two Councilmembers may request that an item be added to a future agenda for Council action. The City Manager shall provide a quarterly report to Council regarding the status of future agenda items, which may include a request to remove items from the list of future agenda items. ~~Any item may be removed for the future agenda items list by a majority vote of the City Council.~~

Edit 4: ~~8.4.2 Removing Item from Consent Calendar. Items may be removed the consent calendar only by a member of the City Council.~~ Any member of the City Council who would like to remove any item from the consent calendar shall notify the City Manager and the City Clerk prior to the meeting; provided, however, each Councilmember may remove one item from the consent calendar without providing notice before the Council meeting begins. Although members of the City Council are encouraged to ask questions and share concerns about the agenda item with staff before the meeting, they are not required to do so. Items removed from the consent calendar shall be placed at the end of the agenda for consideration.

Edit 5: 8.8.3 Council Questions and Deliberations. Councilmembers may obtain the floor by seeking recognition from the Mayor. Following presentations to Council on an agenda item, Councilmembers shall each be given five minutes to ask questions of any presenter. The Mayor may allow additional time for questions where appropriate. Following public comment, the Mayor may request that a motion be made and seconded. After the motion has been stated to the Council and seconded, any member of the Council has a right to discuss the motion after obtaining the floor. A member who has been recognized shall limit their time to five minutes. ~~The Mayor may allow additional time for questions where appropriate. This rule shall displace any conflicting rule in the City's adopted rules of procedure.~~ Rosenberg's Rule, as adopted in Resolution No. 2018-114 shall be followed, where only a supermajority vote would approve "Call for Question" to shut down deliberation.

Edit 6: (Add Item 8.8.7) Study Sessions are meetings during which the Council receives information about City business in an informal setting. The informal study session setting is intended to encourage in-depth discussion and detailed questioning and brainstorming by Council on issues of significant interest, including City policy matters, zoning applications, and major public works projects. The Council may discuss the material freely without following formal rules of parliamentary procedure. Staff may be directed to bring matters back for future Council consideration as no action can be taken at a study session.

Chao's substitute motion failed with Chao and Moore voting yes.

Moore moved and Chao seconded a substitute motion:

6.6 Councilmember Access to Information. Last sentence: ~~No Councilmember shall circumvent the City Manager's direction regarding a request for information by seeking information through a Public Records Act request.~~

7.5 Agenda Publication. Agenda packets for a regular meeting should be published and delivered to Councilmembers no later than ~~the Wednesday~~ ten days prior to a Tuesday Council meeting.

8.4.2 Removing Item from Consent Calendar. ~~Items may be removed from the consent calendar only by a member of the City Council...., however, each Councilmember may remove one item from the consent calendar without providing notice before the Council meeting begins.~~

Moore's substitute motion failed with Chao and Moore voting yes.

Chao moved and Moore seconded a substitute motion:

Edit 2: 6.6 Councilmember Access to Information. City Councilmembers have free access to the flow of any information related to the operation of the City. The City Manager shall ensure that such information is communicated by staff in full and with candor to the Council. City staff will make every effort to respond in a timely and professional manner to all requests made by individual council members for information or assistance, provided that, in the judgment of the City Manager, the request is not of a magnitude either in terms of workload or policy, which would require that it more appropriately be assigned to staff through the collective direction of the City Council, based on the guidelines set forth in Cupertino Municipal Code section 2.17.043. The City Manager shall place requests that impose a significant workload on staff on the Council agenda for review by the full Council, along with a statement from that Councilmember as to why the information is needed. ~~No Councilmember shall circumvent the City Manager's direction regarding a request for information by seeking information through a Public Records Act request.~~

Edit 5: 8.8.3 Council Questions and Deliberations. Councilmembers may obtain the floor by seeking recognition from the Mayor. Following presentations to Council on an agenda item, Councilmembers shall each be given five minutes to ask questions of any presenter. The Mayor may allow additional time for questions where appropriate. Following public comment, the Mayor may request that a motion be made and seconded. After the motion has been stated to the Council and seconded, any member of the Council has a right to discuss the motion after obtaining the floor. A member who has been recognized shall limit their time to five minutes. ~~The Mayor may allow additional time for questions where appropriate. This rule shall displace any conflicting rule in the City's adopted rules of procedure. Rosenberg's Rule, as adopted in~~

Resolution No. 2018-114 shall be followed, where only a supermajority vote would approve "Call for Question" to shut down deliberation.

Chao's second substitute motion failed with Chao and Moore voting yes.

Moore made a friendly amendment to Mohan's main motion for Council to revisit the item in six months. (Mohan and Fruen accepted Moore's friendly amendment).

Mohan's main motion carried as amended with Chao and Moore voting no.

Final Motion:

Mohan moved and Fruen seconded to approve Resolution No. 23-021, adopting Cupertino City Council Procedures Manual with an amendment for Council to revisit the item in six months. The amended motion carried with Chao and Moore voting no.

Council recessed from to 9:49 p.m. to 10:54 p.m.

ORDINANCES AND ACTION ITEMS

17. Subject: Consider approval of response to 2022 Civil Grand Jury of Santa Clara County Report entitled, "A House Divided"
Recommended Action: Approve response to 2022 Civil Grand Jury of Santa Clara County Report entitled, "A House Divided"

Written communications for this item included a staff presentation and emails to Council.

City Attorney Chris Jensen gave a presentation.

Councilmembers asked questions and made comments.

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

Connie Cunningham supported the draft response and staff's recommendations.

Jennifer Griffin opposed some of the Grand Jury report findings.

Louise Saadati supported following the Grand Jury recommendations and staff recommendation.

Peggy Griffin supported staff's clarifications and responding to the report, opposed some report findings, and was concerned about some of the responses.

Donna Austin supported responding to the report and addressing the findings and recommendations.

Rod Sinks supported the Grand Jury report and modifications to the draft response to the findings.

Housing Commissioner Tessa Parish (representing self) opposed some of the report findings.

Sean Hughes supported Council action towards reform as a partial response to the report and considering the report findings and recommendations.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported consideration of the report findings and modifications to the report responses.

Mayor Wei closed the public comment period.

Fruen moved and Wei seconded to table the discussion for this item and discuss the continuation of the remaining items that were removed from the Consent Calendar. The motion carried with Moore voting no.

Fruen moved to reorder the agenda to consider the Consent Calendar items that were pulled for discussion. There was no second and Council did not consider the motion.

18. Subject: Consider scheduling a study session to refine research scope regarding placing a potential vacancy tax ballot measure in the upcoming election
Recommended Action: Direct staff to 1) proceed or 2) not proceed with necessary research regarding preparing a study session on vacancy tax

Director of Administrative Services Kristina Alfaro reviewed the staff report.

Councilmembers asked questions and made comments.

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

Moore moved and Chao seconded to direct staff to provide data for the cost of adding a vacancy tax ballot measure for the 2024 General Election and the vacancy rate within the City.

Jennifer Griffin supported taxing vacant homes and proceeding with the necessary

research.

Lisa Warren supported proceeding with the necessary research, including red-tagged homes and a housing inventory.

Housing Commissioner Connie Cunningham (representing self) supported State actions on Housing and consideration of an appropriate tax.

Council paused public comment to decide whether to extend the meeting and allow additional speakers. Fruen moved and Mohan seconded to extend the meeting and finish consideration of the item. The motion carried unanimously.

Peggy Griffin supported preparing study session on a vacancy tax in Cupertino.

Donna Austin was concerned about citizen reporting and privacy and supported alternative taxes.

Sean Hughes was concerned about citizen reporting and the cost benefit and supported stronger policies and alternatives.

Housing Commissioner Tessa Parish (representing self) supported preparing a study session on vacancy tax.

Mayor Wei closed the public comment period.

Chao moved and Moore seconded a substitute motion to direct staff to schedule a study session on a vacant property registration and rental unit registration. Chao's substitute motion failed with Chao and Moore voting yes.

Final Motion:

Wei moved and Mohan seconded a substitute motion to direct staff to not proceed with preparing a study session on a vacancy tax. Wei's substitute motion carried with Chao and Moore voting no.

ITEMS REMOVED FROM THE CONSENT CALENDAR

As reordered under Consent Calendar, Items 7, 9, 10, 13, and 14 were moved to the end of the agenda.

7. Subject: Consider approval of the January 25 City Council minutes
Recommended Action: Approve the January 25 City Council minutes

This item was pulled from the Consent Calendar for discussion.

Written Communications for this item included an amended Attachment A - Draft Minutes.

This item was continued to the February 21 City Council meeting.

9. Subject: Consider ratifying Accounts Payable for the period ending November 13, 2022
Recommended Action: Adopt Resolution No. 23-023 ratifying Accounts Payable for the period ending November 13, 2022

This item was pulled from the Consent Calendar for discussion.

Written Communications for this item included an email to Council.

This item was continued to the February 21 City Council meeting.

10. Subject: Consider the Monthly Treasurer's Report for December 2022
Recommended Action: Receive the Monthly Treasurer's Report for December 2022

This item was pulled from the Consent Calendar for discussion.

Written Communications for this item included an email to Council.

This item was continued to the February 21 City Council meeting.

13. Subject: Consider adoption of a resolution establishing the Commemorative Bench Dedication Policy and waiving the commemorative fee for Marilyn Francesco
Recommended Action: Adopt Resolution No. 23-024 (Attachment A) establishing the Commemorative Bench Dedication Policy and allow a one-time waiver of the policy for Marilyn Francesco

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included two Supplemental Memos with answers to Councilmember questions, including Attachments 1-8 examples from other cities, 9. Memorial Bench Policies Summary, 10. Policy for Accepting Donations, 11. Amended Naming of City Facilities Policy, 12. Council Resolution No. 03-162, 13. 6-2-15 Council agenda packet item for Mrs. Virginia Logan, and 14. 09-06-16 Council agenda packet item for Erik Chen.

This item was continued to the February 21 City Council meeting.

14. Subject: Informational memorandum regarding retail square footage analysis of Main Street

Recommended Action: Receive the informational memorandum on the retail square footage analysis and the provisions for restaurant use at the Main Street Cupertino project

This item was pulled from the Consent Calendar for discussion.

Written communications for this item included emails to Council.

This item was continued to the February 21 City Council meeting.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

ADJOURNMENT

At 12:21 a.m., on Wednesday, February 8, Mayor Wei adjourned the Regular City Council Meeting.



Kirsten Squarcia, City Clerk