



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Tuesday, June 6, 2023**

At 6:45 p.m. Mayor Hung 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.

CLOSED SESSION REPORT – None

CEREMONIAL ITEMS

As part of Ceremonial Items, Mayor Wei acknowledged that the City proclaimed June as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) Pride and hosted a flag raising ceremony to honor the achievements of the LGBTQ+ community and to celebrate diversity.

POSTPONEMENTS AND ORDERS OF THE DAY

Wei moved and Fruen seconded to reorder the agenda to hear Item 4 Cupertino Chamber of Commerce agreement after Item 11 Storm Drain Fee and Clean Water and Storm Protection Fee. The motion carried with Moore voting no.

ORAL COMMUNICATIONS

Jennifer Griffin supported restoring the Stocklmeir property for educational uses and exploring grants for funding and preserving retail at Homestead Shopping Center.

Rhoda Fry supported amendments to the response to the Grand Jury Report and restoring Councilmembers Moore and Chao to their Council Committee assignments.

Long Jiao supported focusing on Cupertino issues and opposed Councilmembers campaigning on the dais and politically based accusations.

Parks and Recreation Commissioner Jennifer Shearin (representing self) was concerned about untruths regarding the Grand Jury Report, Investigation Report, and DA referral and letter, and supported accountability.

Yvonne supported specifying the whole truth in discourse and when considering the District Attorney's response to the City Attorney's referral for analysis.

Juan Ochoa supported updates to the City's Noise Ordinance and Building Code and improvements to the commercial noise complaints process. (Submitted written comments).

Emily M. ceded time to Juan Ochoa.

Anita L. ceded time to Juan Ochoa.

Norby A. ceded time to Juan Ochoa.

Louis Saadati ceded time to Juan Ochoa.

San R supported purchasing Montebello School to develop into a park, discussion to reopen the Teen Center, and restoring Councilmembers Moore and Chao to their Committee assignments.

Planning Commissioner Muni Madhhipatla (representing self) supported protections for Indian American rights and the City taking an official position objecting to Senate Bill SB-403.

Lisa Warren supported amendments to Item 1 approval of May 9 minutes and addressing balcony and privacy screening in the Municipal Code (Submitted written comments).

CONSENT CALENDAR (Items 1-10)

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

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported the approval of Item 7 to add Class IV buffered bike lanes to De Anza Boulevard.

Louis Saadati supported the approval of Item 7 and funding to increase the use of bicycles and safety.

San R opposed Item 7 approval of buffered bike lanes on De Anza Boulevard and supported studying buffered bike lane usage and equity in pedestrian and bicycle safety projects.

Mayor Wei closed the public comment period.

Fruen moved Mohan seconded to approve the items on the Consent Calendar, except for Items 2, 5, 10 which were pulled for discussion and Item 4 which was moved after Item 11 under

Postponements and Orders of the Day. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

As noted under Postponements and Orders of the Day, Item 4 was placed after Item 11.

Items 2, 5, and 10 were placed after the Action Calendar for consideration.

1. Subject: Consider approval of the May 9 City Council minutes
Recommended Action: Approve the May 9 City Council minutes

Written communications for this item included an email to Council.

3. Subject: Consider approval of the May 17 City Council minutes
Recommended Action: Approve the May 17 City Council minutes
6. Subject: Consider a second reading and act on Ordinance No. 23-2248: "An Ordinance of the City Council of the City of Cupertino amending City Code 9.18 relating to Stormwater Pollution Prevention and Watershed Protection."
Recommended Action: Conduct a second reading and enact Ordinance No. 23-2248: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE 9.18 RELATING TO STORMWATER POLLUTION PREVENTION AND WATERSHED PROTECTION".
7. Subject: Consider adoption of a Resolution to request the Metropolitan Transportation Commission (MTC) allocate Fiscal Year (FY) 2023/2024 Transportation Development Act Article 3 (TDA 3) Pedestrian/Bicycle Project funding for the De Anza Boulevard Buffered Bike Lanes Project
Recommended Action: Adopt Resolution No. 23-064 (Attachment A) requesting the MTC allocate \$166,259 from FY 2023/2024 TDA 3 Pedestrian/Bicycle Project funding to the City of Cupertino's De Anza Boulevard Buffered Bike Lanes Capital Improvement Programs (CIP) Project
8. Subject: Consider Fiscal Year (FY) 2023/2024 projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA) created by Senate Bill (SB) 1
Recommended Action: Adopt Resolution No. 2023-065 (Attachment A) establishing a list of projects proposed to be funded by \$1,496,963 of SB 1 revenues, estimated to be received in FY 2023/2024
9. Subject: Consider award of a construction contract for the 2023 Pavement Maintenance Phase 2 Project to Doolittle Construction, LLC. for asphalt slurry seal on identified

roadways throughout the City of Cupertino

Recommended Action: 1. Award a construction contract for the 2023 Pavement Maintenance Phase 2 Project (Project No. 2023-102) in the amount of \$579,479 to Doolittle Construction, LLC.;

- a. Authorize the City Manager to execute the construction contract when all conditions have been met; and
- b. Authorize the Director of Public Works to execute any necessary change orders up to a construction contingency amount of \$57,947.90 (10%) for a total contract amount of \$637,426.90

PUBLIC HEARINGS

11. Subject: Consider approval of the renewal (with no increase) of the 1992 Storm Drain Fee and renewal of the 2019 Clean Water and Storm Protection Fee with a 3% increase

Recommended Action: Adopt and approve:

1. Resolution No. 23-066 (Attachment A) approving the renewal and collection of the 1992 Storm Drain Fee with no increase in rates for Fiscal Year (FY) 2023-24;
2. Resolution No. 23-067 (Attachment B) approving the renewal and collection of the 2019 Clean Water and Storm Protection Fee with a 3% increase in rates for FY 2023-24;
3. Adjust the annual budget allocation for the cost-share program from \$14,000 to \$2,000 to better fit the realistic need for new applicants receiving 20% refunds in a single year;
4. Adjust the re-certification period to be four years for all approved participants with an attestation protocol to affirm continued cost-share eligibility; and
5. Discontinue the \$12,500 per year previous pavement rebate program for lack of participation and use the funds for support of required activities

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

Environmental Programs Manager Ursula Syrova gave a presentation.

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

Councilmembers asked questions and made comments.

Moore moved and Fruen seconded the staff recommendation to adopt and approve:

1. Resolution No. 23-066 (Attachment A) approving the renewal and collection of the 1992 Storm Drain Fee with no increase in rates for Fiscal Year (FY) 2023-24;
2. Resolution No. 23-067 (Attachment B) approving the renewal and collection of the 2019 Clean Water and Storm Protection Fee with a 3% increase in rates for FY 2023-24;

3. Adjust the annual budget allocation for the cost-share program from \$14,000 to \$2,000 to better fit the realistic need for new applicants receiving 20% refunds in a single year;
4. Adjust the re-certification period to be four years for all approved participants with an attestation protocol to affirm continued cost-share eligibility; and
5. Discontinue the \$12,500 per year previous pavement rebate program for lack of participation and use the funds for support of required activities.

The motion carried unanimously.

4. Subject: Consider executing an Agreement between the City of Cupertino (City) and the Cupertino Chamber of Commerce (Chamber)

Recommended Action: Authorize the City Manager to execute an Agreement between the City of Cupertino and the Cupertino Chamber of Commerce for up to five years, at an annual amount not-to-exceed \$52,000

As reordered under Postponements and Orders of the Day, Item 4 was heard before Item 12.

Written communications for this item included a staff presentation, supplemental report with staff responses to councilmember questions, Attachment C - Chamber of Commerce Personnel Info, desk item Attachment D - Screenshot of Economic Development Division budget actuals from FY 08-09 – present, a statement by Councilmember Chao, and emails to Council.

Deputy City Manager Tina Kapoor gave a presentation.

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

Gilbert Wong supported authorizing the Agreement.

Shyam “Sean” Panchal (on behalf of the Chamber) supported authorizing the Agreement.

Dolly Sandoval supported authorizing the Agreement.

John Tang supported authorizing the Agreement.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported authorizing the Agreement.

Louise Saadati supported authorizing the Agreement.

Rhoda Fry had many concerns about supporting the Agreement and requested safeguards.

Jennifer Griffin supported the Chamber as an advocate for the business community and a separation between the Chamber and the City.

Rick Sheperd opposed authorizing the Agreement until questions are answered.

Claudio Bono supported authorizing the Agreement.

San R supported sending out the scope of work for bids from independent non-Chamber affiliated organizations.

Rick Kitson (on behalf of the Chamber) supported authorizing the Agreement.

Glenn Fishler supported authorizing the Agreement.

Housing Commissioner Tessa Parish (representing self) supported the work of the Chamber and was concerned about bias and accountability.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Mohan moved and Fruen seconded to authorize the City Manager to execute an Agreement between the City of Cupertino and the Cupertino Chamber of Commerce for up to five years, at an annual amount not-to-exceed \$52,000.

Chao made a friendly amendment to authorize a contract for one year only and require it to be brought back to Council for renewal. (Mohan and Fruen declined Chao's friendly amendment and it was not included in Mohan's motion).

Chao made a substitute motion to authorize a contract for one year only and require it to be brought back to Council for renewal and to evaluate whether to go out to bid. Moore seconded Chao's substitute motion but with a friendly amendment for all reporting requirements to reflect the number of non-Chamber businesses that are serviced per the Scope of Work. (Chao accepted Moore's friendly amendment). Chao's amended substitute motion failed with Chao and Moore voting yes.

Final Motion:

Mohan moved and Fruen seconded to authorize the City Manager to execute an Agreement between the City of Cupertino and the Cupertino Chamber of Commerce for up to five years, at an annual amount not-to-exceed \$52,000. The motion carried with Moore and Chao voting no.

Council recessed from 9:24 p.m. to 9:29 p.m.

ACTION CALENDAR

12. Subject: Consider the Recommended Operating and Capital Improvement Program Budgets for Fiscal Year (FY) 2023-24, adoption of the Operating and Capital Improvement Program Budgets for FY 2023-24, establishment of the Appropriation Limit, and related actions.

Recommended Action: 1. Adopt Resolution No. 23-068 establishing an Operating Budget of \$117,645,365 for FY 2023-24, which includes the following changes to the FY 2023-24 Proposed Budget, published on May 5, 2023:

- a. Approve the operating budget of \$117,762,980 outlined in the FY 2023-24 Proposed Budget.
- b. Approve additional appropriations of \$8,000 for the Community Funding Grant Program as included in Attachment D.
- c. Approve additional appropriations of \$8,380 for Movies in the Park as included in Attachment D.
- d. Approve additional appropriations of \$28,784 for the reclassification of the Emergency Services Coordinator as included in Attachment D.
- e. Approve additional appropriations of \$4,720 and additional revenue of \$175 for County of Santa Clara Environmental Health Permit Fees as included in Attachment D.
- f. Approve additional appropriations of \$146,650 for Golf Course Turf Management as included in Attachment D.
- g. Approve a reduction of \$154,149 in appropriations resulting from the prepayment of the CalPERS pension plan's Unfunded Accrued Liability as included in Attachment D.
- h. Approve a reduction of \$160,000 in appropriations resulting from the elimination of library extra hours funding as included in Attachment D.
- i. Approve additional estimated revenue of \$84,218 resulting from the elimination of festival fee waivers as included in Attachment D.
- j. Approve additional revenue of \$313,218 resulting from an updated SB 1 (Gas Tax) revenue estimate as included in Attachment D.
- k. Approve Community Funding Grants for the following organizations, allocating a total of \$32,500:
 - i. Cupertino Symphonic Band: \$4,000
 - ii. No Time to Waste: \$5,000

- iii. West Valley Community Services: \$10,000
- iv. STEMBoost Corporation: \$4,000
- v. AINAK: \$2,500
- vi. Omniware Networks: \$4,000
- vii. Asian American Parents Association: \$3,000

2. Adopt Resolution No. 23-069 establishing a Capital Improvement Program Budget of \$4,054,000 for FY 2023-24

- a. Approve appropriations of \$420,000 in the Capital Improvement Program Capital Projects Fund for the Stevens Creek Blvd./Calabazas Creek Storm Drain Repair (infrastructure)
- b. Approve appropriations of \$172,000 in the Capital Improvement Program Capital Projects Fund for the Stevens Creek Bridge Repair (infrastructure)
- c. Approve appropriations of \$35,000 in the Capital Improvement Program Capital Projects Fund for the Street Light Installation - Annual Infill (infrastructure)
- d. Approve appropriations of \$300,000 in the Capital Improvement Program Capital Projects Fund for the Annual Playground Replacement (parks)
- e. Approve appropriations of \$100,000 in the Capital Improvement Program Capital Projects Fund for the ADA Improvements (facilities)
- f. Approve appropriations of \$1,000,000 in the Capital Improvement Program Capital Projects Fund for the Citywide Building Condition Assessment Implementation (facilities)
- g. Approve \$2,027,000 of transfers from the Capital Reserve Capital Projects Fund to fund the Capital Improvement Program

3. Adopt Resolution No. 23-070 establishing an Appropriation Limit of \$127,886,394 for FY 2023-24

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

Administrative Services Director Kristina Alfaro and Budget Manager Thomas Leung gave a presentation.

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

Alysa Sakkas (representing Cupertino-Toyokawa Sister Cities) supported funding for festival fee waivers and removing item 1i from the recommended action.

Gary McCue ceded time to Alysa Sakkas.

Jean Gasparini ceded time to Alysa Sakkas.

Fran Ellis ceded time to Alysa Sakkas.

Gilbert Wong ceded time to Alysa Sakkas.

Orrin Mahoney (representing Rotary Club of Cupertino) supported funding for festival fee waivers.

Jennifer Griffin supported further inquiry into the California Department of Tax and Fee Administration (CDTFA) tax audit and opposed selling parkland.

Rhoda Fry opposed voting for the proposed budget and supported other budget estimation methods, allocations, and reduction strategies.

San R supported funding for janitorial services, law enforcement support at events, kids and teen events, and the Teen Center.

Mayor Wei closed the public comment period.

Councilmembers asked questions and made comments.

Wei moved and Mohan seconded the staff recommendation with the following amendments to the Operating Budget for FY 2023-24:

- Add additional funding of \$30,000 for Shakespeare in the Park.
- Add back funding of \$36,492 for Sheriff's services at festivals.
- Delete Item 1i for elimination of festival fee waivers.

Moore made a friendly amendment to correctly describe the \$1M+ Miscellaneous line item in the Budget for two sheriff's deputies as a donation from Apple. (Wei and Mohan declined the friendly amendment and it was not added to Wei's motion).

Chao moved a substitute motion:

- Add \$30,000 to support commitment to 2024 Shakespeare in the Park, provided there is a commitment for fundraising for next year, so the funding level is expected to be lower.
- \$5,000 for teen mental health program - to be referred to Teen Commission to come up with a replacement of Bobateeno.
- Continue facility fee waivers for festivals but separate the "cost" for the city (Sheriff, part time staffing) and cap the total amount for each organization to be more equitable and inclusive. Set the cap to be 2x the current average "cost", not including facility fee waivers per organization.
- Keep the reduction of \$34,492 sheriff fee for all festivals + keep the reduction in item i (for staffing) to hold on to it. Make adjustments in Q1 if necessary.

- Bring back a proposal for consideration, consider removing fee waiver & cost for two Chamber events.
- Consider reducing the funding for Cupertino Historic Society to the previous level of \$20,000.

Moore seconded Chao's substitute motion but with friendly amendments to:

- Look into renegotiating the CUSD field use agreements.
- Add \$30,000 to support commitment to 2024 Shakespeare in the Park, provided there is a commitment for fundraising for next year so the funding level is expected to be lower.
- \$5000 for teen mental health program - to be referred to Teen Commission to come up with a replacement of Bobateeno.
- ~~Continue facility fee waivers for festivals but separate the "cost" for the city (Sheriff, part time staffing) and cap the total amount for each organization to be more equitable and inclusive. Set the cap to be 2x the current average "cost", not including facility fee waivers per organization.~~
- ~~Keep the reduction of \$34,492 sheriff fee for all festivals + keep the reduction in item i (for staffing) to hold on to it. Make adjustments in Q1 if necessary.~~
- ~~Bring back a proposal for consideration, consider removing fee waiver & cost for two Chamber events.~~
- Remove fee waivers & sheriffs support for Holi and Diwali festivals (which are fundraisers), hosted by Chamber, but continue to support all other festivals, since the Chamber already receives \$52,000/year grant. To be equitable to all organizations.
- ~~Consider reducing the funding for Cupertino Historic Society to the previous level of \$20,000.~~

(Chao accepted Moore's friendly amendments). Chao's amended substitute motion failed with Moore and Chao voting yes.

Final Motion:

Wei moved and Mohan seconded as amended to:

1. Adopt Resolution No. 23-068 establishing an Operating Budget of \$117,645,365 for FY 2023-24, which includes the following changes to the FY 2023-24 Proposed Budget, published on May 5, 2023:
 - a. Approve the operating budget of \$117,762,980 outlined in the FY 2023-24 Proposed Budget.
 - b. Approve additional appropriations of \$8,000 for the Community Funding Grant Program as included in Attachment D.
 - c. Approve additional appropriations of \$8,380 for Movies in the Park as included in Attachment D.
 - d. Approve additional appropriations of \$28,784 for the reclassification of the Emergency Services Coordinator as included in Attachment D.

- e. Approve additional appropriations of \$4,720 and additional revenue of \$175 for County of Santa Clara Environmental Health Permit Fees as included in Attachment D.
- f. Approve additional appropriations of \$146,650 for Golf Course Turf Management as included in Attachment D.
- g. Approve a reduction of \$154,149 in appropriations resulting from the prepayment of the CalPERS pension plan's Unfunded Accrued Liability as included in Attachment D.
- h. Approve a reduction of \$160,000 in appropriations resulting from the elimination of library extra hours funding as included in Attachment D.
- ~~i. Approve additional estimated revenue of \$84,218 resulting from the elimination of festival fee waivers as included in Attachment D.~~
- j. Approve additional revenue of \$313,218 resulting from an updated SB 1 (Gas Tax) revenue estimate as included in Attachment D.
- k. Approve Community Funding Grants for the following organizations, allocating a total of \$32,500:
 - i. Cupertino Symphonic Band: \$4,000
 - ii. No Time to Waste: \$5,000
 - iii. West Valley Community Services: \$10,000
 - iv. STEMBoost Corporation: \$4,000
 - v. AINAK: \$2,500
 - vi. Omniware Networks: \$4,000
 - vii. Asian American Parents Association: \$3,000
- l. Approve additional funding of \$30,000 for Shakespeare in the Park.**
- m. Approve additional funding of \$36,492 for Sheriff's services at festivals; and**
- 2. Adopt Resolution No. 23-069 establishing a Capital Improvement Program Budget of \$4,054,000 for FY 2023-24
 - a. Approve appropriations of \$420,000 in the Capital Improvement Program Capital Projects Fund for the Stevens Creek Blvd./Calabazas Creek Storm Drain Repair (infrastructure)
 - b. Approve appropriations of \$172,000 in the Capital Improvement Program Capital Projects Fund for the Stevens Creek Bridge Repair (infrastructure)
 - c. Approve appropriations of \$35,000 in the Capital Improvement Program Capital Projects Fund for the Street Light Installation - Annual Infill (infrastructure)
 - d. Approve appropriations of \$300,000 in the Capital Improvement Program Capital Projects Fund for the Annual Playground Replacement (parks)
 - e. Approve appropriations of \$100,000 in the Capital Improvement Program Capital Projects Fund for the ADA Improvements (facilities)
 - f. Approve appropriations of \$1,000,000 in the Capital Improvement Program Capital Projects Fund for the Citywide Building Condition Assessment Implementation (facilities)

- g. Approve \$2,027,000 of transfers from the Capital Reserve Capital Projects Fund to fund the Capital Improvement Program; and
- 3. Adopt Resolution No. 23-070 establishing an Appropriation Limit of \$127,886,394 for FY 2023-24.

Wei's amended motion carried with Moore and Chao voting no.

Wei moved and Fruen seconded to extend the meeting another 30 minutes to hear Item 5 Quartic Solutions agreement. The motion carried unanimously.

Council recessed from 11:00 p.m. to 11:05 p.m.

ITEMS REMOVED FROM THE CONSENT CALENDAR

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

- 5. Subject: Consider authorizing the City Manager to execute a Third Amendment to Professional Services agreement with Quartic Solutions, LLC., for software updates and technical support services, increasing the current contract amount by \$184,800 over the next three years, for a total contract amount of \$354,800
Recommended Action: Authorize the City Manager to execute a Third Amendment to Professional Services agreement with Quartic Solutions, LLC., for software updates and technical support services, increasing the current contract amount by \$184,800 over the next three years, for a total contract amount of \$354,800

Written communications for this item included an email to Council.

This item was pulled from the Consent Calendar for discussion.

Mayor Wei opened the public comment period and, seeing no one, closed the public comment period.

Councilmembers asked questions and made comments.

Wei moved and Mohan seconded to authorize the City Manager to execute a Third Amendment to Professional Services agreement with Quartic Solutions, LLC., for software updates and technical support services, increasing the current contract amount by \$184,800 over the next three years, for a total contract amount of \$354,800. The motion carried with Moore voting no.

City Manager Pamela Wu shared a video showing photos of the recent events for Medical

Reserve Corps Emergency Medical Exercise, Public Works Week Touch a Truck, National River Cleanup Day, and Pride Flag Raising.

ADJOURNMENT

At 11:18 p.m., Mayor Wei adjourned the Regular City Council Meeting per rule. There was no Council discussion on the remaining agenda items.

ITEMS REMOVED FROM THE CONSENT CALENDAR – CONTINUED

2. Subject: Consider approval of the May 16 City Council minutes
Recommended Action: Approve the May 16 City Council minutes

Written communications for this item included emails to Council.

This item was pulled from the Consent Calendar for discussion and then continued to the June 21 City Council meeting per rule.

10. Subject: Receive the FY 2021-22 Annual Comprehensive Financial Report (ACFR) and related supplemental reports
Recommended Action: Receive the FY 2021-22 Annual Comprehensive Financial Report (ACFR) and related supplemental reports

Written communications for this item included supplemental report with staff responses to councilmember questions and an email to Council.

This item was pulled from the Consent Calendar for discussion and then continued to the June 21 City Council meeting per rule.

COUNCIL REPORTS AND COMMENTS

13. Subject: Councilmember Reports

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

CITY MANAGER REPORT

Prior to Adjournment, City Manager Pamela Wu shared a video showing photos of recent City events.

ORAL COMMUNICATIONS - CONTINUED – None**INFORMATIONAL ITEMS**

14. Subject: Informational Memorandum update on drought conditions

Recommended Action: Receive informational memorandum update on drought conditions

Written communications for this item included an email to Council.

The informational memorandum update on drought conditions was provided as part of the published agenda.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

Minutes prepared by:



Kirsten Squarcia, City Clerk