



**APPROVED MINUTES
CUPERTINO CITY COUNCIL**

Thursday, July 6, 2023

SPECIAL MEETING

At 5:00 p.m. Mayor Hung Wei called the Special City Council Meeting to order in Cupertino 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 prior to closed session, Mayor Wei opened the public comment period regarding any item on the agenda. No members of the public requested to speak, and Mayor Wei closed the public comment period.

CLOSED SESSION

1. Subject: Conference with Labor Negotiators pursuant to Government Code § 54957.6 (Kristina Alfaro and Christopher Boucher)

Written communications for this item included an email to Council.

Council met with labor negotiators.

2. Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Attorney

Written communications for this item included emails to Council.

The City Attorney performance evaluation was postponed.

3. Subject: Public Employee Performance Evaluation (Gov. Code § 54957(b)(1)); Title: City Manager

Written communications for this item included emails to Council.

The City Manager performance evaluation was postponed.

Council recessed from 6:29 p.m. to 8:00 p.m.

OPEN SESSION

At 8:00 p.m. Mayor Hung Wei reconvened the Special 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 5:00 p.m. City Attorney Jensen reported that there was nothing to report.

CEREMONIAL ITEMS

As part of ceremonial matters, Mayor Wei acknowledged July as Parks and Recreation Month, recognizing that parks and recreation build stronger, healthier, and more resilient communities.

4. Subject: Presentation from Midpeninsula Open Space Regional District ("Midpen")
Recommended Action: Receive presentation from Midpen Board member Craig Gleason on district activities update

Written communications for this item included an updated presentation and an email to Council.

Midpen President and Director Yoriko Kishimoto and Director Craig Gleason gave a presentation.

Council received the Midpen district activities update.

POSTPONEMENTS AND ORDERS OF THE DAY

5. Subject: Brush abatement for public nuisance and potential fire hazard pursuant to Cupertino Municipal Code (Section 16.40.200) regarding defensible space (brush) and Resolution No. 23-053
Recommended Action: Remove this item from the agenda since there are no properties reported as being non-compliant in removing brush

Fruen moved and Mohan seconded to remove this item from the agenda and to table it indefinitely. The motion carried unanimously.

ORAL COMMUNICATIONS

Richard Lowenthal supported MidPen's report, Parks and Recreation Month, and more City initiatives for trails and recreational facilities and diversity in recreation activities.

San R supported efforts for more trails and acquiring land, including partnering with the County; and more activities for kids and outreach encouraging raised flags on the Fourth of July.

CONSENT CALENDAR (Items 6-12)

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

Mohan moved and Fruen seconded to approve the items on the Consent Calendar as presented. Ayes: Wei, Mohan, Chao, Fruen, and Moore. Noes: None. Abstain: None. Absent: None.

6. Subject: Consider approval of the June 12 City Council minutes
Recommended Action: Approve the June 12 City Council minutes
7. Subject: Consider approval of the June 21 City Council minutes
Recommended Action: Approve the June 21 City Council minutes
8. Subject: Consider the adoption of City Council Grant Policy
Recommended Action: Adopt Resolution No. 23-081 approving the City Council Grant Policy
9. Subject: Consider awarding a contract to Grassroots Ecology for the maintenance of McClellan Ranch Preserve and Stevens Creek Corridor.
Recommended Action: 1. Award a contract to Grassroots Ecology for work related to maintenance of McClellan Ranch Preserve and Stevens Creek Corridor in the amount not to exceed \$104,240 per year for three years, totaling \$312,720; and

2. Authorize the City Manager to execute the contract with Grassroots Ecology when all contractual obligations have been met; and
 3. Authorize the City Manager to extend the contract for up to two additional years, totaling \$208,480, for a five-year total of \$521,200, provided pricing and services remain acceptable.
10. Subject: Consider rejection of all bids received for the Bridge Preventative Maintenance Program.
Recommended Action: Authorize the Director of Public Works to reject all bids received for the Bridge Preventative Maintenance Program.
11. Subject: Award a construction contract for the Regnart Road Improvements Phase 1 Project to Brannon Corporation for road reconstruction to mitigate roadway embankment failure.
Recommended Action: 1. Award a construction contract for the Regnart Road Improvements Phase 1 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon Corporation;
2. Authorize the City Manager to execute the contract;
3. Authorize the Director of Public Works to execute any necessary construction change orders up to a construction contingency amount of \$129,012 (10%) for a total authorized contract amount of \$1,419,132; and
4. Adopt Resolution No. 23-082 approving budget modification #2324-285, increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-068) and the Capital Reserve (429-90-001) by \$876,765.99, and transferring said funds from the Capital Reserve to Capital Improvement Program Capital Projects Fund (420-99-068).

Written communications for this item included an amended staff report and Attachment A - Draft Resolution.

12. Subject: Award a contract for the Creekside Park School Age Play Area to Ross Recreation Equipment, Inc. for the purchase and installation of themed playground equipment.
Recommended Action: 1. Award an equipment procurement and installation contract for the Creekside Park School Age Play Area (Budget Unit 420-99-085) in the amount of \$283,873.50 to Ross Recreation Equipment, Inc. using pricing established through the National Purchasing Partners;
2. Authorize the City Manager to execute an equipment procurement and installation contract when all conditions have been met; and
3. Authorize the Director of Public Works to execute any necessary change orders up to a contingency amount of \$28,388 (10%) for a total contract amount of \$312,261.50.

PUBLIC HEARINGS - None**ACTION CALENDAR**

13. Subject: Introduction of Ordinance No. 23-2249, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities)

Recommended Action: Conduct a first reading of Ordinance No. 23-2249; "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100," (Regulation of Lobbying Activities)

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

Tracy Edwards, representing the League of Women Voters (LWV) Cupertino-Sunnyvale, supported a \$5,000 Lobbying threshold, only requiring fees for Contract Lobbyists, State campaign finance regulation, and District Attorney enforcement. (Submitted written comments).

Yvonne supported the LWV's analysis of the Ordinance and their four proposed suggestions, including Option B.

Louis Saadati supported the LWV's four points of revision, including Option B.

Jahnavi supported all points of revision presented by the LWV.

Neil Park-McClintick (representing Cupertino For All) supported the LWV's suggested revisions to the Ordinance.

Parks and Recreation Commissioner Jennifer Shearin (representing self) supported the staff recommended changes and the LWV's additional suggested changes.

Danessa Techmanski was concerned about revisiting the Ordinance, potential councilmember conflicts of interest, and supported revisions to the proposed Options.

Rick Kitson (representing the Cupertino Chamber of Commerce) supported the staff recommended changes and the four changes recommended by the LWV.

Bicycle Pedestrian Commissioner Seema Lindskog (representing self and Walk-Bike Cupertino) supported all points of revision suggested by the LWV.

Gauri Chawla supported all four points of revision suggested by the LWV.

San R was concerned about how this agenda item was added, potential Councilmember conflicts of interest, and opposed changes to the Ordinance.

Rhoda Fry was concerned about potential Councilmember conflicts of interest, good governance, and supported tabling the item and waiting until the lawsuit terminates.

Mayor Wei closed the public comment period.

Mohan moved for the City Clerk to read the title of Ordinance No. 23-2249, that further reading of the Ordinance be waived, and that the City Council conduct the first reading of the Ordinance by title only. Fruen seconded the motion with a friendly amendment to:

1. Modify Section 2.100.030 in accordance with Option B, as presented in Staff Report Attachment A;
2. Modify Section 2.100.130 be modified in accordance with Option B, as presented in Staff Report Attachment A;
3. Modify Section 2.100.090 to delete proposed subdivisions D through H, inclusive, and renumber the remaining subdivisions accordingly.

(Mohan accepted Fruen's friendly amendment).

Moore moved a substitute motion to approve Option A (Sections 2.100.30 and 2.100.130) and for the City Clerk to read the title of Ordinance No. 23-2249, that further reading of the Ordinance be waived, and that the City Council conduct the first reading of the Ordinance by title only. Chao seconded the substitute motion with a friendly amendment to modify Section 2.100.031(13) to add 501(c)(3) nonprofit organizations. (Moore accepted Chao's friendly amendment). Moore's substitute motion failed with Chao and Moore voting yes.

City Clerk Kirsten Squarcia read the title of Ordinance No. 23-2249; "An Ordinance of the City Council of the City of Cupertino Amending City Code Chapter 2.100," (Regulation of Lobbying Activities).

Chao made a substitute motion to rescind the Lobbying Ordinance. There was no second and Chao's substitute motion died.

Wei made a modification request to Mohan's motion to revise Section 2.100.030 to define

monetary thresholds for lobbyist registration on a quarterly basis, rather than based on any consecutive three-month period. (Mohan and Fruen accepted Wei's modification).

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

Final Motion:

Mohan moved and Fruen seconded as amended and modified for the City Clerk to read the title of Ordinance No. 23-2249, that further reading of the Ordinance be waived, and that the City Council conduct the first reading of the Ordinance by title only.

Amendments and modifications:

1. Modify Section 2.100.030 in accordance with Option B, as presented in Staff Report Attachment A;
2. Modify Section 2.100.130 be modified in accordance with Option B, as presented in Staff Report Attachment A;
3. Modify Section 2.100.090 to delete proposed subdivisions D through H inclusive and renumber the remaining subdivisions accordingly; and
4. Revise Section 2.100.030 to define monetary thresholds for lobbyist registration on a quarterly basis, rather than based on any consecutive three-month period.

Ayes: Wei, Mohan, and Fruen. Noes: Chao and Moore. None. Abstain: None. Absent: None.

14. Subject: Consider actions for the surplus determination and disposal of 10301 Byrne Avenue, Assessor Parcel Number (APN) 357-11-020
- Recommended Action: 1. Authorize the City Manager to record a Roadway Dedication (Attachment A) for a portion of 10301 Byrne Avenue, APN 357-11-020 (Property); and
2. Adopt Resolution No. 23-083 (Attachment B) declaring the remaining property at 10301 Byrne Ave, APN 357-11-020 surplus to the needs of the City and direct the City Manager to proceed with outreach as required by the Surplus Land Act; and
 3. Authorize the City Manager to offer the Property for sale subsequent to completion of the requirements of the Surplus Land Act

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

Assistant City Manager Matt Morley gave a presentation.

Councilmembers asked questions and made comments.

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

Jennifer Griffin was concerned about disposing of the property and requested an accounting of the reasons for the proposed determination.

Rhoda Fry supported listing the property immediately and selling it for the highest price.

R Wang supported selling the property to the public and not as surplus land.

Mayor Wei closed the public comment period.

Moore moved and Fruen seconded to:

1. Authorize the City Manager to record a Roadway Dedication for a portion of 10301 Byrne Avenue, APN 357-11-020 (Property); and
2. Adopt Resolution No. 23-083 declaring the remaining property at 10301 Byrne Ave, APN 357-11-020 surplus to the needs of the City and direct the City Manager to proceed with outreach as required by the Surplus Land Act; and
3. Authorize the City Manager to offer the Property for sale subsequent to completion of the requirements of the Surplus Land Act.

The motion carried unanimously.

15. Subject: Consideration of a resolution amending the established City Council meeting calendar through January 2, 2024
Recommended Action: Adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024

City Clerk Kirsten Squarcia 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 moving the meeting and was concerned about cancelled commission meetings.

Louis Saadati supported the schedule change request.

Danessa Techmanski was concerned about public comments that are unrelated to items on the agenda.

Rhoda Fry was neutral about the schedule change request and was concerned about moving and changing meetings.

Moore moved and Chao seconded to deny the request to adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024. Moore's motion failed with Chao and Moore yes.

Fruen moved and Mohan seconded to adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024.

Wei made a modification request for the special meeting agenda to follow the same order of business used for regular Council meetings. (Fruen and Mohan accepted the modification).

The modified motion carried with Chao and Moore voting no.

Final Motion:

Fruen moved and Mohan seconded to adopt Resolution 23-084 amending the established City Council meeting calendar through January 2, 2024, as modified for the special meeting agenda to follow the same order of business used for regular Council meetings. The modified motion carried with Chao and Moore voting no.

COUNCIL REPORTS AND COMMENTS

16. Subject: Councilmember Reports

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

CITY MANAGER REPORT

City Manager Pamela Wu shared a video showing photos of the recent Fourth of July Celebration.

ORAL COMMUNICATIONS – CONTINUED – None

INFORMATIONAL ITEMS – None

ADJOURNMENT

At 10:57 p.m., Mayor Wei adjourned the Special City Council Meeting, per Council rule.

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Council did not hear this item.

Minutes prepared by:

Kirsten Squarcia

Kirsten Squarcia, City Clerk