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CITY COUNCIL STAFF REPORT

Meeting: December 3, 2024

Subject

Resolution amending the City of Cupertino Conflict of Interest Code for officials and designated employees; Amended 2024 Local Agency Biennial Notice

Recommended Action

- 1.) Adopt Resolution No. 24-___ rescinding Resolution No. 24-083 and amending the City of Cupertino Conflict of Interest Code for officials and designated employees; and
- 2.) Authorize the City Manager to sign the amended 2024 Local Agency Biennial Notice

Reasons for Recommendation

The Political Reform Act, Government Code Section 81000 *et seq.*, requires that local government agencies adopt and maintain a conflict of interest code. The code establishes the categories of public officials and designated employees who must disclose certain personal assets and income which might materially affect their governmental decisions. The public officials and designated employees must file a Statement of Economic Interest (Form 700) to make disclosure of their financial interests. The amount of disclosure depends upon the scope of the official's or employee's duties. Positions that involve voting on matters, negotiating contracts, or making recommendations on purchases without substantive review must be included in the code. Persons holding positions listed in Government Code section 87200 (87200 filers) include City Councilmembers, the City Attorney, the City Manager, Planning Commissioners, and persons who manage public investments. These officials and employees are required by state law to file a full disclosure Form 700.

Agencies must review their codes biennially and amend their codes when necessary.

Background

On September 4, 2024, the City Council conducted a biennial review and adopted Resolution No. 24-083 approving amendments to the City's Conflict of Interest Code (Attachment A). The Council also directed staff to revisit the item at the second Regular Council meeting in November to consider streamlining the current code disclosure categories. Accordingly, the draft resolution (Attachment B) proposes amending the City of Cupertino Conflict of Interest Code to update the disclosure categories and list of designated positions.

Cupertino, like most cities has adopted the standard model Conflict of Interest Code prepared by the Fair Political Practices Commission and codified in California Code of Regulations Title 2, Section 18730. The model code establishes substantive requirements for the disclosure of financial interests and disqualification of public officials and City employees from participating in decisions in which they might have a private financial interest. Cities adopting the model code need only adopt an appendix containing a list of designated employees subject to the disclosure requirements and specifying the scope of interest those designated employees must disclose. Cities may further tailor their reporting requirements based on the specific structure of the organization.

Designated Positions

The conflict of interest code must specifically list positions that make or participate in making governmental decisions. The list typically includes positions involved in voting on matters, negotiating contracts, or making recommendations on purchases, policies, or budget decisions, or advising or making recommendations to decision-makers on such matters. Designated positions can only be required to disclose interests that they may affect in the course of performing the positions duties. If the designated position does not participate in decisions affecting real property, then the disclosure of interest in real property is not required. The only proposed change to the list of designated employees is to reflect the newly revised disclosure categories. The City's Conflict of Interest Code accurately reflects positions that may make or participate in making governmental decisions for the City.

Disclosure Categories

A primary purpose of a code is to require designated positions to disclose those types of investments, interests in real property, sources of income and business positions that may be affected in their decision-making. The local agency cannot require over-disclosure by a designated employee. Many officials and employees are assigned to the broadest disclosure category because they have the broadest duties and authority. Many other filers are assigned to the lower disclosure category. In the lower disclosure category, the financial interests required to be reported are more tailored to the designated filer's position and excludes disclosure of interest in real property.

The current code includes six disclosure categories. For simplification and consistency with practices in peer jurisdictions, the proposed draft code has been updated to include only three categories. To that end, categories 5 and 6 in the current code, which require disclosure of only department-related interests, have been deleted from the proposed draft code. Categories 3 and 4, which track interests related to city related income have been replaced by a single vendor related category (category 3). Designated employees in this category are required to disclose investments, business positions and sources of income from sources that provide goods and services utilized by the City. This change is consistent with state law and modeled after similar approaches used by the cities of Sunnyvale and Mountain View. Categories 1 and 2 remain unchanged, and cover employees who must make full disclosure under all Form 700 schedules

(category 1) or who are exempt from real property disclosure requirements because they do not make decisions affecting real property interests (category 2).

Staff recommends that the City Council adopt Resolution No. 24-___, which incorporates the revisions outlined above into an updated Conflict of Interest Code. If approved, the amended 2024 Local Agency Biennial Notice (Attachment D) would be filed with the adopted resolution verifying the changes.

Disclosure Categories in Other Jurisdictions

For reference, the disclosure categories established by other jurisdictions are below:

City of Mountain View

Category 1. All investments and sources of income, including personal and business entity income, all interests in real property, and all business positions.

Category 2. All investments and business entities, sources of business entity income, and business positions of the type which, within the past two years, have contracted with the City or which may reasonably be expected to contract with the City, or which may reasonably be expected to contract with the City within one year from the date of the latest Statement Of Economic Interest to provide services, supplies, materials, machinery or equipment.

Category 3. All investments and business entities, sources of business entity income, and business positions of the type which, within the past two years, have contracted with the City or which may reasonably be expected to contract with the City, or which may reasonably be expected to contract with the City within one year from the date of the latest Statement Of Economic Interest to provide services, supplies, materials, machinery, or equipment to the designated employee's department.

City of Sunnyvale

Category 1. A designated employee in this category must report all investments, interests in real property owned in the City of Sunnyvale, sources of income including gifts, loans and travel payments, and business entities in which he or she is a director, officer, partner, trustee, employee or holds any position of management.

Category 2. A designated employee in this category must report sources of income including gifts, loans and travel payments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management, if the business entity or source of income is of the type which has done business with the City of Sunnyvale within the previous two years.

Category 3. A designated employee in this category must report sources of income including gifts, loans and travel payments, and business entities in which he or she has an investment or is a director, officer, partner, trustee, employee or holds any position of management, if the business entity or source of income is of the type which within the previous two years has provided services, equipment, lease space, materials or supplies to the City.

Next Steps

Should Council move forward with the proposed amendments, the City of Cupertino's Conflict of Interest Code would be updated with the revised disclosure categories and list of designated positions (Attachment C). The City Manager would also be authorized to sign the amended 2024 Local Agency Biennial Notice (Attachment D). If the Council does not move forward with the proposed amendments, the City's current Conflict of Interest Code will remain in effect. The City Council conducted a biennial review and approved the current Conflict of Interest Code on September 4, 2024 (Attachment A). The current code is in conformance with State law. The next biennial review must be conducted no later than October 1, 2026.

Sustainability Impact

The implementation of electronic filing of all Form 700s has reduced paper consumption.

Fiscal Impact

There is no fiscal impact.

California Environmental Quality Act

Not applicable.

City Work Program (CWP) Item: No

CWP Item Description: N/A

Council Goal: N/A

Prepared by: Kirsten Squarcia, City Clerk

Reviewed by: Christopher Jensen, City Attorney

Approved for Submission by: Tina Kapoor, Acting City Manager

Attachments:

A – Adopted Resolution No. 24-083 and 2024 Local Agency Biennial Notice

B - Draft Resolution and Conflict of Interest Code (redline)

C – Draft Resolution and Conflict of Interest Code (clean)

D – Amended 2024 Local Agency Biennial Notice