

RESOLUTION NO. 23-122

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADOPTING THE CITY OF CUPERTINO CODE OF ETHICS AND CONDUCT FOR ELECTED AND APPOINTED OFFICIALS

WHEREAS, the City Council of the City of Cupertino has determined that a Code of Ethics and Conduct benefits the public by increasing public confidence in the integrity of local government and its effective and fair operations; and

WHEREAS, the Cupertino Code of Ethics and Conduct will guide the conduct of City Officials and support their independent, impartial, and fair decision-making and execution of policy; and

WHEREAS, City Council wishes to maintain an atmosphere of respect and civility in the performance of City affairs and public business.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council of the City of Cupertino hereby adopts the attached "City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials;" and
2. Resolution No. 20-011 is hereby repealed and rescinded.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 7th day of November, 2023, by the following vote:

Members of the City Council

AYES:	Wei, Mohan, Fruen
NOES:	Chao, Moore
ABSENT:	None
ABSTAIN:	None

SIGNED:  Hung Wei, Mayor City of Cupertino	<u>11/14/23</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>11/14/23</u> Date



City of Cupertino

CODE OF ETHICS AND CONDUCT FOR

FOR

ELECTED AND APPOINTED OFFICIALS

November 7, 2023

PURPOSE

The Cupertino City Council adopts this Code of Ethics and Conduct as guidelines for elected and appointed officials to exercise their office and conduct themselves in a manner that instills public confidence and trust in the fair operation and integrity of Cupertino's city government.¹

In accordance with state law and Title 2 of the Cupertino Municipal Code, Cupertino's elected and appointed officials include the members of the City Council, the Mayor, and appointed officers of City boards, committees, and commissions (collectively, "Members"), and the City Manager, the City Attorney, the City Clerk, and the City Treasurer. For purposes of this Ethics Code, City Officials shall also include Department Heads of any department identified in Chapter 2.48 of the Municipal Code.

ETHICS

The citizens and businesses of Cupertino and the general public are entitled to have fair, ethical, and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the law and policies affecting the operations of government and their respective roles and responsibilities; and
- Are independent, impartial, and fair in their judgment and actions; and
- Use their public office for the public good and not for personal gain; and
- Conduct their deliberations and make their decisions in an atmosphere of respect and civility, and during public meetings in accordance with Open Meeting laws, except for confidential proceedings allowed by law.

Therefore, members of the City Council, City Boards and Commissions, the City Clerk, the City Treasurer, the City Manager and the City Attorney, and Department Heads (hereinafter, "City Officials") shall conduct themselves in accordance with the following ethical standards:

¹ These guidelines are intended to memorialize the values of the City of Cupertino relative to the conduct of its elected and appointed officials and do not supersede other rules and laws that govern City officials.

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, City Officials should work for the common good of the people of Cupertino and not for any private or personal interest, and should assure fair and equal treatment of all persons, claims, and transactions coming before them.
2. **Comply with both the spirit and the letter of the law and City Policy.** City Officials shall comply with applicable federal, state, and local laws in the performance of their public duties. These include the United States and California constitutions; the Cupertino Municipal Code; laws concerning financial disclosures, sources of income, and gifts; conflicts of interest laws; elections; campaign contributions, incompatible offices, and employer responsibilities; and open government rules.
3. **Conduct of City Officials.** The professional and personal conduct of City Officials while exercising their office should be above reproach and avoid situations that create the appearance of impropriety. Officials shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other City Officials, City staff, or the public.
4. **Respect for Process.** City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, including but not limited to the City Council Procedures Manual and the Commissioner's Handbook.
5. **Conduct at Public Meetings.** City Officials should come prepared to address items and issues at public meetings; listen courteously and attentively to all public discussions before the body; and focus on the business at hand.
6. **Decisions Based on Merit.** City Officials shall base their decisions on the merits and substance of the matter at hand and the best interests of the City of Cupertino. When making adjudicative decisions that require determination of the facts of a particular case and application of the law and rules, decision-makers should maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.

7. **Quasi-Adjudicative Matters.** For adjudicative matters pending before the body, City Officials shall rely on the agenda materials and information received or presented at the public meeting to support their decision. To the extent substantive or material information regarding an adjudicative matter is received outside of a public meeting, decision-makers shall publicly disclose the circumstances and the outside source of information. Consultation with the City Attorney is strongly advised to ensure the integrity and legality of decisions made on adjudicative matters.
8. **Conflicts of Interest.** City Officials should exercise caution and use their best efforts to avoid the appearance of impropriety in their actions and decisions. City Officials shall not participate in any governmental decision regarding a matter in which they have (a) a material financial interest, or (b) any other interest that materially interferes with the City Official's ability to make an impartial decision in the best interest of the City. In addition, no City Official shall participate in making any quasi-adjudicatory decision if the City Official has made statements outside of the quasi-adjudicatory hearing that demonstrate an unacceptable probability of bias against a participant in the hearing. Nothing in this Code shall be interpreted to limit a City Officials' ability to express their views regarding a matter of public interest, except as necessary to protect due process rights or otherwise ensure fair adjudicative decision-making. City Officials shall comply with all applicable California Fair Political Practices Commission (FPPC) regulations requiring the reporting and disclosure of economic interests.

Potential conflicts of interest should be discussed with the City Attorney at the earliest opportunity prior to a public meeting or hearing in order to ensure time to research and analyze the facts. City Officials are referred to the Cupertino Municipal Code, Section 2.18.030, which provides, among other things, that the City Attorney may render informal advice to individual Councilmembers regarding potential conflicts of interest, as appropriate. However, Councilmembers are protected from potential liability for a conflict of interest only upon taking action that complies with a written opinion issued by the FPPC.

If informed to seek formal advice from the FPPC, a Member shall not participate in a decision until the FPPC has issued a written opinion that concludes there is no conflict. The Member shall provide the City Attorney a copy of the written request to the FPPC and the opinion, and will conform

their participation to the advice given.

If a conflict of interest exists regarding a particular matter or decision, a City Official shall not participate in the decision or discuss the matter with other decision-makers, unless otherwise permitted by law. In addition, even if an affiliation or relationship with an organization, entity, or individual does not create a conflict of interest with respect to the decision of a legislative body, a Member's affiliation or relationship with any organization, entity, or individual that would be materially affected by a decision regarding a matter before the legislative body should be disclosed before the Member participates in deliberations regarding the matter. A violation of this Code shall not invalidate a decision of the legislative body, except as otherwise provided by state or federal law.

9. **Gifts and Favors.** City Officials shall not take advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the general public. City Officials shall refrain from accepting gifts, favors, or promises of future benefits that might compromise their independence of judgment or action or give the appearance of impropriety.
10. **Confidential/Privileged Information.** Public Officials have a duty to maintain the confidentiality of privileged documents and communications and the legal advice provided to or by them, in accordance with the law. This includes information gathered during a closed session and advice rendered by the City Attorney. City Officials shall not disclose confidential or privileged information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.
11. **Use of Public Resources.** City Officials shall not use public resources that are not available to the public in general (e.g., City staff time, equipment, supplies, or facilities) for private gain or for personal purposes not authorized by law.
12. **Representation of Private Interests.** In keeping with their role as independent representatives of the City and stewards of the public interest, City Officials shall not appear on behalf of the private interests of third parties before the Council or any Commission or proceeding of the City, nor should members of Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of

service of their bodies. This section shall not limit a City Official's ability to represent themselves in any City proceeding to the extent permitted by law, nor shall this section limit a City Official's rights of speech or petition under the United States or California Constitutions.

13. **Advocacy.** Members should represent the official policies and positions of the City Council or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Members should explicitly state they are speaking in their personal capacity and not in their official capacity as members of their respective bodies. When speaking in their personal capacities, Members should state their views do not represent their bodies' official positions. Members have the right to endorse candidates for Council seats and other elected offices; however, Members should not mention or display endorsements during Council meetings, Commission meetings, or other official City meetings and shall not use public resources for electioneering purposes.
14. **Policy Role of Members.** Members shall respect and adhere to the Council-Manager structure of Cupertino City government as outlined in the Cupertino Municipal Code. In this structure, the City Council determines the budget priorities and policies of the City with input provided by City staff and Commissions and the general public. Members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions. Neither Commissioners nor other advisory body Members, nor advisory bodies as a whole, shall direct the activities City staff or interfere with the implementation of Council-adopted policies.
15. **Independence of Commissions.** Because of the value of the independent advice of Commissions to the public decision-making process, members of the City Council shall refrain from using their position to unduly influence the deliberations or outcomes of Commission proceedings and shall comply with Section 4.6 of the Cupertino City Council Procedures Manual.
16. **Positive Workplace Environment.** City Officials should support a positive and constructive workplace environment for City employees and for citizens and businesses dealing with the City. Members should recognize their special role with City employees and in no way create the perception of inappropriate direction to staff.

CONDUCT GUIDELINES

The Conduct Guidelines are designed to describe the manner in which City Officials should treat one another, City staff, constituents, and others they come into contact with while representing the City of Cupertino.

17. City Officials' Conduct with Each Other in Public Meetings and Private Encounters

City Officials are individuals with different backgrounds, personalities, values, opinions, and goals who have chosen to serve in public office to protect the City's interests and the wellbeing of the community they serve. In all cases, this common goal should guide City Officials' conduct with each other and with the public, particularly when individuals may not agree on every issue.

- (a) *Respect and facilitate the role of the Chair in maintaining order.*
It is the responsibility of the Chair of a Council or Commission meeting to keep the discussion germane to the matter before the legislative body, to rule out irrelevant discussion, and to ensure civil discussion among Councilmembers. City Officials should recognize and assist the Chair to focus discussion on noticed agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, and where appropriate, acted upon by the legislative body following procedures outlined in Rosenberg's Rules of Order and the Cupertino City Council Procedures Manual.
- (b) *Practice civility and decorum in discussions and debate.*
Difficult questions, challenges, and disagreements with a particular point of view, and criticism of ideas and information are legitimate elements of debate and public discourse of a free democracy in action. Robust discussion and free debate, however, do not justify making belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.
- (c) *Work through the Chair to address offensive personal comments.*
If a Member is personally offended by the remarks of another Member, the offended Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member

to justify or apologize for the language used. The Chair shall maintain control of this discussion.

- (d) *Demonstrate effective problem-solving approaches.*

City Officials have a public stage and have the responsibility to show how individuals with different points of view can find common ground and seek a compromise that benefits the community as a whole.

- (e) *Continue respectful behavior in private.*

The same level of respect and consideration of differing points of view that is appropriate for public discussions should be maintained in private conversations.

18. **City Officials' Conduct with the Public in Public Meetings**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice, or disrespect should be evident on the part of individual City Officials toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- (a) *Be welcoming to speakers and treat them with respect.*

Members' primary responsibility during public testimony is to listen. Welcome all public speakers and encourage their active participation in public meetings by listening to their comments. Avoid engaging public speakers in debate, and call on the Chair whenever a point of order or clarification is required.

- (b) *Be fair and equitable in allocating public hearing time to individual speakers.*

Consistent with legal requirements, the Chair should determine and announce limits on speakers at the start of a public meeting or hearing process. Time limits for speakers at City Council meetings shall be consistent with the City Council Procedures Manual.

- (c) *Practice active listening.*

It is disconcerting to some speakers to have Members not looking at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room may give the appearance of disinterest. Members should try to be

conscious of facial expressions, and avoid those that could be interpreted as "smirking," disbelief, anger, or boredom.

(d) *Maintain an open mind.*

Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.

(e) *Ask for clarification, but avoid debate and argument with the public.*

Only the Chair—not individual Members—can interrupt a speaker during a presentation. However, a Member can ask the Chair for a point of order if the speaker is off topic, exceeds the time allotted for public comment, or engages in behavior or discussion/language that is disruptive or violates the law.

(f) *Avoid personal comments that could offend members of the public.*

Whether addressing an individual member of the public or the public at large, it is never appropriate to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.

19. **City Officials' Conduct with the Public in Unofficial Settings**

(a) *Make no promises on behalf of the Council, Commission, or City.*

Members will frequently be asked to explain a Council or Commission action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. Members should not overtly or implicitly promise Council or Commission action or promise that City staff will do something specific for the constituent.

(b) *Make no personal comments about other City Officials.*

It is acceptable to publicly disagree about an issue, but it is not acceptable to make derogatory personal comments about other City Officials.

20. **City Officials' Conduct with City Staff**

Governance of a city relies on the cooperative efforts of Councilmembers who set policy, appointed officials who advise elected officials, and City staff who implement and administer the Council's policies. Every effort should be made

to be cooperative and show mutual respect for the roles and contributions made by each individual for the good of the community.

The City of Cupertino operates under a Council/Manager form of government as established in Cupertino Municipal Code Chapter 2.28 whereby the City Council, acting through a majority of its members, sets policy, and provides oversight over the administrative services of the City only through the City Manager. The Council/Manager form of government is intended to provide the best of unencumbered professional/technical staff input balanced with the collective oversight of elected officials. Under the Council/Manager form of government neither the City Council, nor individual Councilmembers, can give orders to any subordinate of the City Manager. The City Manager takes their orders and instructions from the City Council only when given at a duly held meeting of the City Council. No individual Councilmember can give any orders or instructions to the City Manager.

(a) *Treat all staff as professionals.*

Clear, honest communication that respects the abilities, experience, and dignity of individual staff members is expected. Poor behavior towards staff is not acceptable.

(b) *Do not direct or attempt to influence City Manager or staff priorities outside of a noticed meeting.*

Individual Councilmembers and other City Officials shall not direct the City Manager or other City staff or attempt to influence policy or administrative actions or priorities. Policy direction and oversight of administrative activities shall be conducted by a majority of the Council at a duly noticed City Council meeting.

(c) *Do not disrupt City staff from their jobs.*

City Officials should not disrupt City staff while they are in meetings, on the phone, or otherwise performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff—even if the elected or appointed official does not say anything, their presence may imply support of a position, show partiality, or intimidate staff, and may hamper staff's ability to perform their job impartially.

(d) *Never publicly criticize an individual employee.*

City Officials should not criticize the performance of City employees in public, to the employee directly, or to the employee's manager (other than the City Manager or City Attorney). Comments about staff performance should only be made to the City Manager or City Attorney through private correspondence or conversation. The City Manager is solely responsible for the appointment, discipline, and dismissal of City employees, except for the City Attorney and City Attorney's Office staff.

- (e) *Do not get involved in administrative functions.*

City Officials acting in their individual capacity shall not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

- (f) *Do not solicit political support from staff.*

City Officials should not solicit any type of political support (e.g., financial contributions, display of posters or lawn signs, name on support list) from City staff. City staff may, as private citizens with constitutional rights, support political candidates, but all such activities must be done away from the workplace and outside of work hours.

- (g) *Attorney-Client Relationship.*

In representing the City, the City Attorney provides advice to City staff and City Officials. However, in accordance with law and the Rules of Professional Conduct, the City Attorney represents the City as a municipal organization, and any attorney-client relationship established belongs to the City, acting by and through a majority vote of the City Council. To the extent permitted by law, only the City Council as a body and not individual Councilmembers can waive the attorney-client privilege.

21. **Council Conduct with Commissions**

The City has established several Commissions as a means of gathering more community input. Citizens who serve on Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- (a) *Avoid unduly influencing Commission meetings.*
Councilmembers may attend any Commission meeting, which are always open to any member of the public. However, it is important for Commissions to be able to make objective recommendations to the City Council on items before them. To avoid undue influence on Commissioners, Councilmembers shall refrain from commenting during Commission meetings or becoming involved in Commission deliberations.
- (b) *Limit contact with Commission Members to clarifying questions.*
Councilmembers should not attempt to influence or publicly criticize Commission recommendations or to influence or lobby individual Commission Members on any item under their consideration. It is acceptable for Councilmembers to contact Commission Members in order to clarify a position taken by the Commission.
- (c) *Respect that Commissions serve the community, not individual Councilmembers.*
The City Council appoints individuals to serve on Commissions, and it is the responsibility of Commissions to follow policy established by the Council. Commission Members do not report to individual Councilmembers. Appointment and reappointment to a Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties.
- (d) *Be respectful of diverse opinions.*
A primary role of Commissions is to represent diverse points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Commissions, but must be fair and respectful of all Commissioners.
- (e) *Keep political support away from public forums.*
Commission Members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Commission Members who are running for office, but not in a public forum while conducting official duties.

22. Conduct with the Media

- (a) *The Mayor is the official spokesperson for the City Council on City positions.*
The Mayor is the designated representative of the City Council to present and speak on the official City position. If the Mayor is not available, the Mayor may designate the Vice Mayor as the City's designated representative. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.
- (b) *Choose words carefully and cautiously.*
Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.
- (c) *Media conduct of Commission Members.*
Commission Members are not authorized to represent the City to media outlets (including broadcast, print, and social media sites) outside of official Commission meetings unless specifically authorized to do so. If an individual Commissioner or non-Council Committee Member is contacted by the media, the Member should be clear about whether their comments represent the official City position or a personal viewpoint.

COMPLIANCE

- 23. *Acknowledgement of Code of Ethics and Conduct.*
City Officials should sign an acknowledgement that they have read and understand the guidelines contained in the Code of Ethics and Conduct.
- 24. *Ethics Training for City Officials.*
City Officials must comply with state or City mandated requirements for ethics training, as set forth in Section 5.6 of the City Council Procedures Manual. Ethics training must be completed prior to representing the City on intergovernmental assignments or Council subcommittees. Commissioners who fail to complete required ethics training shall be subject to removal from office by the City Council.

25. *Behavior and Conduct.*

The Cupertino Code of Ethics and Conduct sets forth guidelines and standards of ethical conduct desired and expected for members of the Cupertino City Council and Commissions and other City Officials. City Officials themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of City government. The sanctions authorized by this Code are alternatives to any other remedy allowed by law to remedy conduct that violates this Code or state or federal law. Nothing in this Code shall be construed to give rise to a cause of action against the City or any City Official.

(a) *City Council.*

Individual Councilmembers should point out to the offending Councilmember alleged violations of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred confidentially to the City Attorney. Also, should the City Manager or City Attorney believe an investigation into a Councilmember's conduct is warranted, they may refer the matter to the City Council. The City Attorney, in consultation with the City Manager, shall determine if the alleged violation(s) are supported by credible evidence and, if so, present the alleged violation(s) to the full City Council.

(b) *Commissioners and Other Members.*

Commission or Committee Chairs should report apparent violations of this Ethics Code to the Mayor, the City Manager, and/or the City Attorney. Counseling, verbal reprimands, and written warnings may be administered by the Mayor to Commission and other Members failing to comply with this Code or with City policy. These lower levels of sanctions should be kept private to the extent allowed by law.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Member conduct. Also, should the City Manager or City Attorney believe an investigation into a Member's conduct is warranted, they may refer the matter to the Mayor or Council. The Mayor or Council should ask the City Manager or the City Attorney to investigate the allegation and report the findings.

(c) *Admonishment, Reprimand, and Censure.*

The City Council may admonish, reprimand, or censure any

Councilmember or other Member for a violation of the Municipal Code, this Ethics Code, or state or federal law. In addition, the City Council may impose additional sanctions on Commissioners or non-Council Committee Members whose conduct does not comply with the City's policies, up to and including removal from office.

Prior to the imposition of a penalty of reprimand, censure, or removal from office, the Member shall be provided advanced notice of the allegations against them and an opportunity to respond to the allegations. Any form of discipline imposed by Council should be determined by a majority vote of at least a quorum of the Council at a noticed public meeting, and such action should be preceded by a report to Council.

IMPLEMENTATION

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for City Officials expected by the City. It therefore becomes most effective when City Officials are thoroughly familiar with it and embrace its provisions.

For this reason, this document should be included in the regular orientations for candidates for City Council, City Manager, City Attorney, applicants to Commissions, and other newly elected and appointed City Officials. City Officials entering office should sign a statement (example below) acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct should be periodically reviewed by the City Council and updated as necessary.

I affirm that I have read and understand the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials.

Signature

Date