



## CITY ATTORNEY'S OFFICE

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## CITY COUNCIL STAFF REPORT

Meeting: September 19, 2023

### **Subject**

Revisions to City of Cupertino Ethics Policy

### **Recommended Action**

Direct the City Attorney to revise the City of Cupertino Ethics Policy to incorporate the provisions of the 2018 City's Ethics Code, as amended to ensure consistency with the City Council Procedures Manual and to address recommendations of the City's internal auditor, and provide direction on any additional Ethics Policy revisions.

### **Reasons for Recommendation**

#### *Background*

The City Council adopted the current City of Cupertino Ethics Policy (Resolution No. 20-011, Attachment A) on January 21, 2020. The January 2020 Ethics Policy replaced the policy adopted by Council in November 2018 (Resolution No. 18-115, Attachment B), which the City Council voted to rescind on January 15, 2019.

The rescission and replacement of the City's Ethics Policy was identified as an area of concern by the Santa Clara County Civil Grand Jury's December 2022 Report, "A House Divided: Cupertino City Council and Staff" (Attachment C). The Grand Jury Report, which addressed various governance issues in the City of Cupertino, noted that the January 2020 Ethics Policy "is less comprehensive [than the November 2018 Code] and ignores the subject of councilmanic interference found in the rescinded version" and found that "the rationale for creating a policy with generic ethics goals and no enforcement provisions was to avoid accountability." Based on these findings, the Grand Jury recommended that the City should (i) develop and implement a robust government ethics training program for all councilmembers; and (ii) evaluate a best practices enforceable Code of Ethics and Conduct Policy that governs all councilmembers and appointed officials for consideration by the City Council.

As part of the City's response to the Grand Jury Report, the City Attorney's Office retained Linda Daube, Esq. to investigate the basis for the Grand Jury's findings. With respect to the Ethics Policy, Ms. Daube concluded that the City Council's adoption of the

City Council Procedures Manual in February 2023 effectively addressed many of the concerns cited in the Grand Jury Report, including the absence of standards regarding councilmanic interference in the January 2020 Ethics Policy. (See Fact-Finding Report, Attachment D.) Ms. Daube concluded that the Council Procedures Manual “more than adequately addresses the Report's concerns regarding the City's Ethics Policy and serves as an effective oversight tool until such time as a final policy for both Councilmembers and appointed Commissioners can be developed and approved.” That being said, Ms. Daube recommended a revision of the current Ethics Policy using the November 2018 Ethics Code as “the recommended starting point.” On May 9, 2023, the City Council considered Ms. Daube’s report and directed staff to return to Council with an agenda item to consider revisions to the current Ethics Policy, consistent with Ms. Daube’s recommendation.

In addition to Ms. Daube’s report, the July 2023 Enterprise Leadership Assessment prepared by the City’s internal auditor, Moss Adams LLP, addressed the need to refine the City’s current ethics policies (Attachment E). The Enterprise Leadership Assessment notes the Grand Jury’s finding regarding deficiencies in the City’s current Ethics Policy, but notes enforcement provisions in the recently adopted City Council Procedures Manual that partially address the Grand Jury’s concerns. The Assessment recommends that the City continue reviewing its Ethics Policy to ensure that it aligns with best practices and includes a specific recommendation to address an identified gap in Political Reform Act compliance among City commissioners, stating that the City should “strengthen internal processes for tracking and holding elected and appointed individuals accountable to timely completion of Form 700 Disclosures and any other required documentation. If governance group members have not completed this form in a timely manner, they should face disciplinary action up to and including removal from their position.”

#### *Discussion*

Council has directed staff to consider the 2018 Ethics Code as the “starting point” for revisions to the current Ethics Policy. Readoption of the 2018 Code with limited revisions would align with best practices and would strengthen the City’s ethics compliance regime. However, Council may consider additional revisions based on consideration of its policy goals and the results of public outreach. Each of these considerations is discussed below.

#### Goals and Content of Ethics Policies

The goals of municipal ethics policies include (1) encouraging high standards of behavior by public officials; (2) increasing public confidence in the institutions that serve the public; and (3) assisting public officials with decision-making.

Ethics policies may either be rules- or values-based. Rules-based municipal ethics policies often overlap significantly with state ethics laws. Values-based policies emphasize values and encouraging behavior that supports those values. Values-based

policies represent a commitment to uphold a standard of integrity and competence beyond what is required by law. Both the 2018 and 2020 Cupertino Ethics Policies include both rules- and values-based components.

The adoption of an ethics policy requires consideration of a number of questions:

1. Should the policy apply to elected officials only; to elected and appointed officials; or to elected and appointed officials and City staff?
2. What values should be reflected in the policy?
3. Should any rules beyond the requirements of state ethics law be included in the policy?
4. How should the policy be enforced?
5. Should the policy include provisions for training and periodic review?

While the 2018 Ethics Code aligns with best practices and could be adopted with limited revisions, Council may wish to consider these questions in providing direction to staff regarding revisions to the Ethics Policy.

### Public Outreach

On August 24, 2023, staff released a survey developed based on Institute for Local Government principles to solicit community input on revisions to the Ethics Policy (Attachment F). The results of the survey are provided in Attachment G.

The survey asked participants to identify four values that are most important for local officials to uphold, listing the following options:

- Integrity and honesty
- Responsibility and community service
- Fairness
- Respect for fellow officials, staff and the public
- Compassion
- Proper efficient use of public resources
- Loyalty to the agency
- Vision
- Other

The survey then asked follow up questions about each of the values. The four highest ranked values were integrity and honesty, proper efficient use of public resources, responsibility and community service, and fairness. Full results of the survey can be found in Attachment G.

### Recommendations

The 2018 Ethics Code aligns with best practices and is consistent with the recommendations in the Grand Jury Report and Enterprise Leadership Assessment. Staff

believes that re-adopting the Code with limited changes to ensure consistency with the recently adopted City Council Procedures Manual would be responsive to the concerns of the Grand Jury and City's internal auditor and would complement the City's broader efforts to strengthen governance-related policies. In addition, staff recommends that any revision or re-adoption of the Ethics Policy address the internal auditor's concern regarding lack of accountability for completing required Form 700 disclosures.

Council may consider additional revisions based on the results of public outreach presented in Attachment G and its own review of the questions presented above and in the Ethics Code Menu/Worksheet (Attachment F). If Council provides direction to move forward with revisions to the Ethics Policy, staff will return to Council with a final Policy and a resolution adopting the Policy.

**California Environmental Quality Act**

Not applicable.

**Sustainability Impact**

No sustainability impact.

**Fiscal Impact**

No fiscal impact.

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Prepared by:

Christopher D. Jensen, City Attorney

Approved for Submission by:

Pamela Wu, City Manager

**Attachments:**

A – Resolution No. 20-011 (Adopting the City of Cupertino Ethics Policy)

B – Resolution No. 18-115 (Adopting the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials)

C – Civil Grand Jury Report, "A House Divided: Cupertino City Council and Staff"

D – Fact-Finding Report

E – Enterprise Leadership Assessment

F – Ethics Code Menu/Worksheet

G – Survey Results