

RESOLUTION NO. 18-115

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 Elected and Public 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 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"


PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 20th day of November, 2018, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	Paul, Sinks, Chang, Scharf, Vaidhyanathan
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

APPROVED:


Grace Schmidt, City Clerk


Darcy Paul, Mayor,
City of Cupertino

* with reservations and
a recommendation that the
item be re-visited w/ an
adequate process.



City of Cupertino

Code of Ethics and Conduct For Elected and Appointed Officials

Adopted November 20th, 2018 by Resolution No. 18-115

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, appointed officers of City boards and commissions, the City Manager, the City Attorney, the City Clerk and the City Treasurer.

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 (hereinafter, "City Officials") should conduct themselves in accordance with the following ethical standards:

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, City Officials will work for the common good of the people of Cupertino and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before them.

¹ These guidelines are intended to codify the values of the City of Cupertino relative to the conduct of its elected and appointed officials and in no way distract from or supersede the many other rules and laws that govern city officials. By their very nature, some guidelines apply only to legislative bodies and decision-makers as noted in the Code.

2. **Comply with both the spirit and the letter of the Law and City Policy.** City Officials must 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; employer responsibilities; and open government rules.
3. **Conduct of City Officials.** The professional and personal conduct of City Officials while exercising their office must be above reproach and avoid situations that create the appearance of impropriety. Officials must 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 will perform their duties in accordance with the processes and rules of order established by the City Council.
5. **Conduct at Public Meetings.** City Officials will come prepared to address items and issues at public meetings; will listen courteously and attentively to all public discussions before the body; and will focus on the business at hand.
6. **Decisions Based on Merit.** City Officials will base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions that require determination of the facts of a particular case and application of the law and rules, decision-makers will maintain an open mind until the conclusion of the hearing on the matter and will base their decisions on the facts presented at the hearing and the law.
7. **Communication.** For adjudicative matters pending before the body, City Officials will rely on the agenda materials and information received at the public meeting to support their decision. To the extent substantive or material information is received outside of a public meeting, decision-makers must, at a minimum, 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. **Conflict of Interest.** To maintain independence and impartiality for the common good and comply with the extensive set of conflict of interest

laws, City Officials will use caution and their best efforts to avoid the appearance of impropriety in their actions and decisions. Consistent with the law, decision-makers will not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility to or personal commitment to others that creates a conflict of interest or the appearance of one, or (c) a strong personal bias as to one party or position.

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. Decision-makers 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, it is understood that Councilmembers are protected from potential liability for a conflict of interest only upon taking action that complies with a written opinion issued by the California Fair Political Practices Commission (FPPC).

If informed to seek formal advice from the FPPC or other State agency, a member will not participate in a decision until the FPPC has issued a written opinion that concludes there is no conflict. The member will provide the City Attorney a copy of the written request to the FPPC and the opinion, and will conform his or her participation to the advice given.

If a conflict of interest exists regarding a particular matter or decision, the member will not participate in the decision or discuss the matter with other decision-makers or other persons, unless otherwise permitted by law.

9. **Gifts and Favors.** Public Officials will not take advantage of services or opportunities for personal gain, by virtue of their public office, which is not available to the general public. They should refrain from accepting gifts, favors or promises of future benefits, which 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. Members will 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.** Public Officials should not use public resources which 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 otherwise 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, Councilmembers should 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.
13. **Advocacy.** Members should represent the official policies and positions of the City Council and 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. Councilmembers and Commissioners have the right to endorse candidates for Council seats and other elected offices; however, it is inappropriate to mention or display endorsements during Council meetings, Commission meetings, or other official City meetings, unless otherwise allowed by law.
14. **Policy Role of Members.** Members should 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 should not interfere with the administrative functions of the City or the professional duties of City staff; nor should they impair the ability of staff to implement Council policy decisions.
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 should refrain from using their position to unduly influence the deliberations or outcomes of Commission proceedings.

16. **Positive Work Place Environment.** Public Officials should support a positive and constructive work place 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.

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

Elected and appointed 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 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 to keep comments of City Officials on track during public meetings. 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, following procedures outlined in parliamentary procedure.

- (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 will 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.

2. **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) *Chair's responsibility to establish proper decorum at meetings*
The Chair will be responsible for informing the public of proper decorum during meetings to facilitate a welcoming environment for speakers. The Chair should establish an expectation of mutual respect among City officials, the public, and speakers.
- (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 will determine and

announce limits on speakers at the start of a public meeting or hearing process.

(c) *Practice active listening*

It is disconcerting to some speakers to have members not look 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.

3. **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. It is not appropriate to overtly or implicitly promise Council or Commission action, or to 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 comments about other City Officials, their opinions, or actions.

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

Governance of a city relies on the cooperative efforts of elected officials who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, 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 controls 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 Council members, can give orders to any subordinate of the City Manager. The City Manager takes his or her 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. Interactions between City Council and City staff are governed by Chapter 2.17 in the Cupertino Municipal Code.

(a) *Treat all staff as professionals*

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

(b) *Do not disrupt City staff from their jobs*

City Officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in 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, his or her presence implies support of a position, shows partiality, may intimidate staff, and may hampers staff's ability to do their job objectively.

(c) *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. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager.

(d) *Do not get involved in administrative functions*

City Officials acting in their individual capacity must 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.

(e) *Do not solicit political support from staff*

City Officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) 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.

(f) *Attorney-Client Relationship*

The City Attorney provides advice to City staff, to Public Officials, and to Councilmembers individually and collectively. In accordance with law and Rules of Professional Conduct, the City Attorney represents the full City Council and the City as a municipal organization, and any attorney-client relationship established belongs to the City, acting by and through the full 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.

5. **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) *If attending a Commission meeting, be careful to only express personal opinions*

Councilmembers may attend any Commission meeting, which are

always open to any member of the public. However, they should be sensitive to the way their participation could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

(b) *Limit contact with Commission members to questions of clarification*

It is inappropriate for a Councilmember to contact a Commission member to lobby on behalf of an individual, business, or developer, and vice versa. 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. But Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Commission members with removal if they disagree about an issue. Appointment and re-appointment 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. A Commission appointment should not be used as a political "reward."

(d) *Be respectful of diverse opinions*

A primary role of Commissions is to represent many 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 citizens serving on Commissions.

(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 an official forum in their capacity as a Councilmember.

6. Conduct with the Media

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.

(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 an individual Councilmember is contacted by the media (including broadcast, print, and social media sites), 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 (including broadcast, print, and social media sites).

COMPLIANCE

1. *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.

2. *Ethics Training for Local Officials*

City Officials must comply with State or City mandated requirements for ethics training. Ethics training must be completed prior to representing the City on intergovernmental assignments or Council subcommittees.

3. *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. Members 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 Chairs of Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

(a) City Council:

Individual Councilmembers should point out to the offending Councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Vice Mayor. It is the responsibility of the Mayor (or Vice Mayor) to initiate action if a Councilmember's behavior is not in compliance with the Code of Ethics and Conduct. If no action is taken by the Mayor (or Vice Mayor), then the alleged violation(s) can be brought up with the full Council.

(b) Commission Members:

Counseling, verbal reprimands, and written warnings may be administered by the Mayor to Commission members failing to comply with City policy. These lower levels of sanctions should be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor should be distributed in memo format to the Chair of the respective Commission, the Commission Staff Liaison, the City Clerk, the City Attorney, the City Manager, and the City Council.

In accordance with law, the City Council may impose sanctions on Commission members whose conduct does not comply with the City's policies, up to and including removal from office. 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 with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Commission 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.

These sanctions are alternatives to any other remedy allowed by law to remedy conduct that violates this code or State or Federal law. In order to protect and preserve good government, all members of the

City organization should be cognizant of their responsibilities and duties to meet the requirements of the law and uphold the guidelines contained in this Code.

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 newly elected and appointed City Officials. Members 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 it 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