

A HOUSE DIVIDED: CUPERTINO CITY COUNCIL AND CITY STAFF



2022 Santa Clara County
Civil Grand Jury

December 19, 2022

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GLOSSARY AND ABBREVIATIONS

General Law City

A city whose government structure and powers are defined by the general law of the state. This is in contrast with a charter city whose government structure and powers are defined by a city charter.

California Public Records Act

The California Public Records Act (Government Code section 6250 et seq.) allows the public to request access to government records, unless such records are exempt by law from disclosure.

Councilmanic Interference

Councilmanic Interference refers to a councilmember's attempts to thwart the principles of the council-manager form of government management.

SUMMARY

The 2022 Santa Clara County Civil Grand Jury (Civil Grand Jury) received multiple complaints concerning the behavior of the City of Cupertino (City) councilmembers toward City staff. The essence of these complaints focused on an adversarial relationship existing between the Cupertino City Council (City Council) on the one hand and City management and staff on the other. Complainants alleged: (1) councilmembers interfered in the day-to-day operations of the City; (2) councilmembers routinely berated and belittled presentations made by City staff during City Council meetings; and (3) certain councilmembers gave direct work assignments to City employees, thwarting the requirements of the Council-Manager form of government.

Throughout its investigation, the Civil Grand Jury learned of the existence of distrust and fear among City staff of councilmembers. Generally, each side took issue with the other, laying blame back and forth over multiple complaints. The Civil Grand Jury was provided with repeated examples of councilmembers behaving inappropriately toward the City Manager and staff including, but not limited to, routine disrespect and the inclination to doubt the accuracy of the City staff's work. The Civil Grand Jury found that the behavior by certain councilmembers towards City staff directly violated the City's ordinances relating to the council-manager form of government under which the City operates.

Furthermore, high turnover in key management and leadership positions within City government has caused the City to lose employees with significant capabilities and experience and, in some cases, leave key positions unfilled. These issues adversely impact the City's ability to best serve the community and effectively operate the City. Additionally, the City's designated Internal Auditor, Moss Adams LLP, identified numerous areas where the City had critical deficiencies, including that the City has weak or nonexistent internal financial controls and inadequacies in existing operating policies and procedures. Many of these deficiencies have existed for several years and pose potentially serious future operating and financial risks to the City as it pursues significant growth projects. The City Council's Audit Committee has implemented a work plan designed to address identified areas of fiscal risk and weak or absent internal controls, but there is no evidence in City Council meeting minutes that the plan has been vetted by the City Council.

BACKGROUND

Governance

The City is a general law city whose form of government is governed by California Government Code sections 36501 to 36525. General law cities, while complying with state mandates, may adopt ordinances that provide specific requirements related to the operation of the city. To this end, the City of Cupertino Municipal Code (“Cupertino Municipal Code”) includes the following provisions:

- (1) Chapter 2.48 – Departmental Organization
- (2) Chapter 2.17 – City Council/City Staff Relationships

The City has chosen to operate under the Council-Manager form of government, which separates the operational responsibilities assigned to the City Manager from the governance and oversight responsibilities assigned to the Mayor and Councilmembers. Cupertino Municipal Code chapters 2.17 and 2.48 explicitly establish the roles of the City Manager, certain key staff, and the councilmembers.

Pursuant to Cupertino Municipal Code section 2.17.010, councilmembers (including the mayor) are prohibited from attempting to influence City staff’s administrative responsibilities. :

Under the Council/Manager form of government neither the City Council, nor individual Council members, can give orders to any subordinates 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 council member can give any orders or instructions to the City Manager.* [Emphasis added]

Cupertino Municipal Code section 2.17.032 expressly states that “Individual Council members shall not attempt to influence staff decisions, recommendations, workloads, and schedules, and department priorities without prior knowledge and approval of the City Council.” As Cupertino Municipal Code section 2.17.020 provides, the intent and purpose of this requirement are to ensure that control and direction of the City are maintained by the City Council as a whole as opposed to individual councilmembers; and to protect City staff from “undue influence” from individual councilmembers so that City staff can execute priorities given by management and the City Council as opposed to individual councilmembers. Further, the City Council – as opposed to individual City councilmembers – retains “the full power to accept, reject, amend, or otherwise guide and direct staff actions, decisions, recommendations, workloads and schedules, department priorities, and the conduct of city business” through the City Manager. (Section 2.17.031)

Councilmanic Interference

Councilmembers engaging in the type of conduct outlined above are committing “councilmanic interference.” Councilmanic interference is a violation of the Council-Manager form of government, as established by Cupertino Municipal Code section 2.28.50:

The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager. The City Manager shall take his or her instructions from the City Council only when given at a duly held meeting of the City Council, and no individual councilperson shall give any instructions to the City Manager.

While councilmembers are prohibited from giving orders to subordinates of the City Manager, Cupertino Municipal Code section 2.17.034 expressly allows councilmembers to get information from City staff, which does not qualify as councilmanic interference:

Individual Council members as well as the City Council as a whole, have complete freedom of access to any information requested of staff (except information which is otherwise protected by law from disclosure) and will receive the full cooperation and candor of City staff in being provided with any requested information. Information sought by an individual council member may, at the discretion of the City Manager, be automatically provided to the City Council as a whole. In exercising this discretion, the City Manager will consider whether the information is significant or new or otherwise not available to the Council or is of interest to the Council.

Further, Cupertino Municipal Code section 1.12.010 makes it unlawful for any person to violate a mandatory provision of the code, which can be a misdemeanor. Section 1.12.010 states:

It is unlawful for any person to perform any act that is prohibited, made or declared to be unlawful or an offense by the code, or to violate any provision or fail to comply with any of the requirements of this code. A violation of any provision or failing to comply with any of the mandatory requirements of the code shall constitute a misdemeanor, except where the violation is specifically declared to be an infraction.

METHODOLOGY

The investigation process undertaken by the Civil Grand Jury included interviews with councilmembers, past and present City officials, and the Audit Committee of the City Council. Additionally, the Civil Grand Jury watched recordings of several City Council meetings; researched and reviewed the state statutes governing the structure and operation of general law cities; researched and reviewed relevant provisions of the Cupertino Municipal Codes that describe City operations and City Council structure and responsibilities; and engaged in research that produced numerous documents supporting the findings and recommendations in this report.

The investigation focused on four critically important areas: (1) councilmanic interference by councilmembers with City management and staff; (2) operational and fiscal risk management concerns; (3) behavior dysfunction leading to failures in governance; and (4) the lack of an Ethics and Code of Conduct Policy with enforcement provisions. As a result of this investigation, the Civil Grand Jury developed several findings and recommendations to address the identified areas of dysfunction.

INVESTIGATION

Councilmanic Interference and Mutual Distrust

The Civil Grand Jury learned that City staff are routinely criticized, ridiculed, and embarrassed during public meetings, leading City staff not to trust councilmembers. A careful review of several recorded City Council meetings confirmed the existence of adversarial and dysfunctional behavior toward City staff exhibited by some City councilmembers. At the same time, it was also noted that some councilmembers have been concerned about the difficulty in obtaining accurate and timely information on City operations considered important in performing City Council governance and oversight responsibilities. The dysfunctional relationship between City management and some councilmembers has created an environment of distrust.

As described above, there is a difference between ordering or directing City staff – which qualifies as councilmanic behavior – and requesting information, which is expressly permitted by the Cupertino Municipal Code. The Civil Grand Jury heard multiple complaints and various examples of conduct that councilmembers viewed as permissible information requests, but City staff believed were councilmanic interference. Councilmembers do communicate directly with City staff seeking information. This is permissible; however, individual councilmembers cannot, in this context, influence staff decisions, workloads, schedules, or department priorities without prior knowledge and approval of the City Council because that kind of conduct qualifies as councilmanic interference. It is easy to see how a direct request for information from a councilmember might have the impact of influencing workloads, requiring staff to work overtime, or readjusting staff priorities, which is the concern of City staff. It is also possible that the councilmember might not know or appreciate the impact of the information request.

Thus, there is a lot of gray area between information requests and information requests that have a more councilmanic spirit. As the Civil Grand Jury learned, some of the councilmembers' requests have been voluminous or come on the heels of the councilmembers' specific dissatisfaction with a staff report on a certain subject and, thus, appear punitive as opposed to a genuine information request. Some councilmembers, not getting the information they need, have resorted to submitting Public Records Act requests to the City Clerk to obtain specific information from City staff. This is unusual because Public Records Act requests are commonly made by the public, not by councilmembers. It is easy to see how City staff view this practice as an aggressive tactic by the councilmembers. On the other hand, some City staff have resisted individual councilmembers' direct requests for detailed information or reports that they believe should have come through the City Manager and represent councilmanic interference. This is also frustrating for the councilmember who is charged with governing and must be informed to make important decisions about the direction of the City. Parsing out who is right or wrong in this landscape does not solve the core problem of distrust and resulting dysfunction.

The Civil Grand Jury learned of a few instances of more blatant councilmanic conduct. Councilmember Kitty Moore questioned a subordinate of the City Manager about charges the staff member incurred on a City credit card. The staff member presented an explanation of the charges. Councilmember Moore did not accept the explanation and requested copies of the documentation to pursue her own investigation. Any irregularities or policy violations related to City credit use are squarely within the purview of the City Manager. Direct councilmember involvement violates the City Municipal Code prohibiting councilmembers from involving themselves in the day-to-day operations that are clearly the responsibility of the City Manager.

The Civil Grand Jury also learned through different sources that Mayor Darcy Paul directed a City staff member to assist with an event. The Mayor asserted that the City staff member had “volunteered” to help during a ribbon-cutting ceremony and therefore, such assistance did not amount to a directive as prohibited by City ordinance. The Mayor failed to recognize the powers at play--the inherent difference in stature--when a councilmember asks staff to attend functions outside their normal work responsibilities. On two separate occasions, Mayor Paul asked other City staff to work at events that were not part of official City business and occurred after working hours. For one such event, the Mayor made the request by personally calling the staff members. Such requests by councilmembers should be made through the City Manager.

Another source of distrust between the City Council and City staff involves renovations to City Hall. Further, City staff voiced concern that their workplace, City Hall, had not been renovated and seismically improved. Although the 2015 City Council allocated funds for the renovation, the monies were subsequently redirected to expand the City Library. Certain staff regard the present City Council’s unwillingness to fund the renovation as confirmation that their health and safety concerns are not a priority.

Trust between the City Council and the City Manager and staff is essential to the effective operation of the City. The Civil Grand Jury investigation and interviews revealed that little trust exists between the City’s staff and councilmembers. In many instances the distrust is mutual. The combination of poor relationships and strained communication between these two groups has created several critical problem areas in the functioning of City government and the ability of the City Council to provide the leadership and meaningful oversight that is the core of good governance.

Failure to Produce Treasurer’s Report

Earlier this year, the Civil Grand Jury investigated the lack of financial reporting as mandated by state law. In a separate report entitled “Show Me the Money: Financial Transparency Needed,” the Civil Grand Jury responded to a complaint that the City was in breach of its ordinance to produce monthly treasurer’s reports. During the investigation of the missing treasurer’s reports, the City Manager resigned unexpectedly in June of 2022.

Cupertino Municipal Code section 2.24.030 (“Monthly Reports”) states:

The Treasurer shall make monthly reports which conform to the requirements of [California] Government Code Section 41004. Said reports shall be delivered to the City Council, the City Manager and made available for review by such other persons who may so request.

Despite the legal requirement to comply with Government Code section 41004, no City staff member was preparing and delivering a monthly treasurer’s report. When this issue was raised during an Audit Committee meeting, the rationale provided by City staff was that many of the surrounding cities do not comply with this requirement. Absence of the monthly treasurer’s report impaired the councilmembers’ ability to fully exercise fiscal oversight.

It took a few months for City staff to comply with the law. The Civil Grand Jury investigation into this issue revealed that the City finance department is now producing the treasurer’s report required under California Government Code section 41004 and Cupertino Municipal Code section 2.24.030. Nonetheless, the City staff’s disregard of this City ordinance in the past added to the perception of City Council that staff was not competently fulfilling their job responsibilities.

Fiscal and Risk Management Issues

Fiscal and financial risk management oversight is a key area of responsibility of every city council. Good governance requires that city councils routinely review the financial operations of the city, identify areas of weakness and/or risk, and oversee effective policies and procedures for implementation by city managers. Addressing financial issues in a timely manner is an essential component of a city council’s exercise of its oversight responsibilities.

Operationally, the scheduled and repetitive use of internal audits is an effective tool for the discovery of financial management and internal control issues. Audits provide the best means of measuring consistent progress in mitigating weaknesses and identifying gaps through implementation of council-directed and -approved policies and procedures designed to address any identified issues.

The Civil Grand Jury learned of the existence of a 14-year embezzlement scheme by a former City staff member of almost \$800,000 that purportedly occurred between 2000 and 2014. Further investigation revealed that after the discovery of the embezzlement scheme in 2014, no financial policy or procedural changes were developed and implemented by the City.

The City contracts with Moss Adams LLP (Auditor) to serve as the City’s Internal Auditor. Leading up to December of 2020, the Auditor undertook a comprehensive risk assessment evaluation of all departments and their respective functions across the entirety of the City’s organization. Although their audit report identified several areas of concern, including internal financial controls, the Civil Grand Jury learned that the City did not take any appreciable steps to

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remedy these concerns. The City Council did, however, call for a more detailed audit of financial operations and risk. That led to another audit in Spring 2022, which resulted in a report entitled “City of Cupertino: Fiscal Policy Inventory and Gap Analysis,” dated May 5, 2022. That report was presented by the City staff to the Council on July 19, 2022. The audit report included in its findings a policy and procedure work plan covering areas of identified financial risk. Also included in the Auditor’s findings was a detailed “Summary of Recommendations” referencing high-risk areas that require immediate City Council attention and remediation. The following chart, prepared by the Auditor, sums up the deficiencies by area, including eight areas that the Auditor described as high risk:

Policy Area	Type of Gap	Associated Risk	Recommended Priority Level
Accounting and Financial Reporting	Major Gaps	High	1
Accounts Payable	Full Gap	High	1
Budgeting	Major Gaps	High	1
Capital Assets	Major Gaps	High	1
Cash Management	Major Gaps	High	1
Payroll and Timekeeping	Full Gap	High	1
Procurement	Major Gaps	High	1
Revenue and Accounts Receivable	Full Gap	High	1
Debt Management/Tax Bond Compliance	Major Gaps	Medium	2
Gifts and Donations	Major Gaps	Medium	2
Grant Management	Full Gap	Medium	2
Investment Management	Minor Gaps	Medium	2
Credit Cards	Minor Gaps	Low	3
Inventory	Full Gap	Low	3
Travel and Expense Reimbursement	Minor Gaps	Low	3

Figure 1. Prioritized Policies and Procedures Work Plan

The full report is attached as [Appendix A](#).

In sum, two separate audit reports dated December 2020 and May 2022, both commissioned by the City, included sets of recommendations to strengthen operating policies, procedures, and

internal controls. The Civil Grand Jury learned that few, if any, of those recommendations have been implemented for reasons that remain unclear. Past and present key staff offered no clarity on how the City addressed or intends to address the well-developed Moss Adams internal audit recommendations.

The Civil Grand Jury learned that the City Council's Audit Committee has been meeting and discussing the audit reports. The Civil Grand Jury investigated the functions and responsibilities assigned to the Audit Committee, which exists as a subcommittee of the City Council. These functions and responsibilities are identified on the City of Cupertino website as follows (also refer to Cupertino Municipal Code section 2.88.100):

- To review the annual audit report and management letter
- To recommend appointment of internal/external auditors
- To review the monthly Treasurer's Report
- To recommend a budget format
- To review City investment policies and internal controls of such policies
- To review internal audit reports
- To review quarterly Fraud, Waste, and Abuse Program reports

Audit committee operating procedures require members, among other responsibilities, to assess the internal audit findings and recommendations and submit their analysis and recommendations to the City Council for discussion and action. The Auditors attend and participate in the City Council Audit Committee meeting, and their reports, findings, and recommendations are provided directly to the Audit Committee for discussion and development of recommended actions.

However, it remains unclear to the Civil Grand Jury whether the City is addressing the fiscal risks identified in the May 5, 2022, Auditor report. The Audit Committee meets regularly and the minutes reflect that there is a workplan. In May 2022, the status of the Audit Committee's work was on the City Council agenda, but that meeting was later canceled. The Civil Grand Jury could find no evidence in the City Council minutes that the City Council had discussed the risk reduction work plan or had authorized the City Manager to proceed with its implementation. This is concerning because the financial control issues have long been known to the City and yet questions directed to councilmembers, Audit Committee members, and relevant City staff failed to provide assurance that the City Council has prioritized the efforts of the Audit Committee or evaluated and approved a work plan to address the audit deficiencies.

City Staff Turnover

The Civil Grand Jury learned of an abnormally high turnover rate among City staff, including key top staff positions. For example, half of the Planning Division and 60 percent of senior management staff have left the City since January 2022. The City has had four city managers from

June 2019 to the present. The most recent City Manager appointment took place on August 29, 2022. The high turnover in key management positions increases the risk of operational errors and oversights. It also reduces the level of institutional memory and process knowledge that facilitates the efficient and timely flow of work throughout the City's several departments.

High turnover also brings in new employees, some of whom are unlikely to be familiar with the City's specific operational policies and procedures and therefore require higher levels of training and closer supervision to become proficient in their work assignments. Several of the interviews undertaken by the Civil Grand Jury confirmed that high staff and management turnover reduced the operating efficiency of City government. Further, the Civil Grand Jury learned that this high turnover rate has negatively impacted the City's reputation and in turn, has led to its inability to attract qualified people for some key staff and management positions. Interviewees cited turnover as a continuing operational problem.

Some councilmembers indicated that the high turnover was more a function of individual retirements and people seeking better, higher-paying positions. Documents researched and reviewed by the Civil Grand Jury provided information that did not fully support these conclusions. For example, the City of Cupertino salary structure for staff and management is competitive with equivalent positions in other nearby cities. And witnesses confirmed that much of the turnover was due to some councilmembers' contentious behavior and direct interference in City operations and staff assignments.

Interviews with current and former City managers confirmed that some City councilmembers inserted themselves in the process of recruiting and hiring for open positions within the City. The belief by City staff that their work is unappreciated and devalued by councilmembers perpetuates the open and public conflict between the City Council and City staff. Such behavior makes it highly likely that management turnover will continue.

Effective local government depends upon hiring and retaining qualified staff and management and electing councilmembers dedicated to functioning in a manner that best serves their constituents. The City, according to several interview statements, has developed a reputation of having a difficult work environment, making recruiting of highly qualified applicants difficult.

Ethics Policy

In a City Council vote on January 15, 2019, the City Council rescinded its Code of Ethics and Conduct that had just been voted on and passed the prior November. A year later, in January 2020, the City Council adopted a new Ethics Policy. The Civil Grand Jury has many concerns about the new Ethics Policy.

First, unlike the rescinded version, the current Ethics Policy is less comprehensive and ignores the subject of councilmanic interference found in the rescinded version. Thus, there are significantly fewer ethical requirements and standards for councilmembers.

Second, the current version of the Ethics Policy contains no enforcement provisions that would allow action(s) to be taken against councilmembers or City officials who violate behavioral or performance requirements. The Civil Grand Jury reviewed the City's current Ethics Policy against those of comparable cities. Noticeably missing were enforcement provisions that enabled the public, councilmembers, and staff to report policy violations or other misconduct.

Enforcement provisions are needed to:

- Provide guidelines to address misconduct and inappropriate behavior
- Implement appropriate disciplinary action when necessary, including warnings, sanctions, censure, and termination
- Define steps to take depending upon the nature of the violation, prior violations by the same individual, and other factors that could bear upon the seriousness of the violation

In the absence of enforcement provisions, the City's barebones Ethics Policy is ineffective in remediating problematic staff and councilmember actions and behaviors. Adopting a more comprehensive ethics policy is important to enable the City Council to execute its assigned responsibilities for effective governance, operational oversight, and risk mitigation.

Third, the Ethics Policy is not available to the public online. This lack of transparency is unusual for City government. Further, the lack of a publicly available Ethics Policy reduces the likelihood that councilmembers will be held accountable by the public for violations of the policy. The 2018 and 2020 versions of the City's Ethics Policy are attached as [Appendix B](#) and [Appendix C](#), respectively.

Fourth, the year-long gap during which the City had no ethics policy is a concern.

Last, it seems that the rationale for creating a policy with generic ethics goals and no enforcement provisions was to avoid accountability. One councilmember interviewed expressed the opinion that the old policy did not provide enough flexibility. Another councilmember suggested that the old Ethics Policy was too restrictive. No City councilmembers could explain why the replacement Ethics Policy does not contain any enforcement provisions. The City Council's decision to rescind a detailed Code of Ethics and Conduct with meaningful enforcement provisions, and to replace it with a barebones unenforceable policy that is not publicly available, and, in the meantime, to operate without any policy at all for 12 months, is very concerning to the Civil Grand Jury and evidences a lack of willingness on the part of the current City Council to hold itself accountable.

CONCLUSION

Voters of the City of Cupertino elect five councilmembers. Councilmembers in turn hire the City Manager and the City Attorney. The public has the right to hold the governing body responsible for its leadership and guidance and to pursue policies that lead to sound governance. City voters do not elect City staff. If the environment created by the governing board is toxic, the City will not be able to hire and retain competent talent to serve the residents of Cupertino. The governing council must create a respectful environment for staff. The behavior of councilmembers may need to be reviewed and good government practices implemented to remediate the dysfunction that currently exists.

The absence of a comprehensive Ethics and Code of Conduct policy with enforcement provisions is a significant concern for the Civil Grand Jury. Ethics and Code of Conduct policies set baseline parameters of acceptable organizational operating practices and required behavior of staff, management and councilmembers. The absence of enforcement provisions in the new Ethics Policy provides the City and its residents no remedy for unacceptable actions or behavior.

The Civil Grand Jury is aware that this report will be published after the November 2022 elections and hopes that any newly elected councilmembers will take the opportunity to develop better working relationships with the City staff.

FINDINGS AND RECOMMENDATIONS

Finding 1

The City has a culture of distrust between the councilmembers and City staff that is creating dysfunction.

Recommendation 1

The City should develop or acquire a good governance training and development program for both existing and newly elected councilmembers and existing and new staff members to address: (i) their role, responsibilities, and the relevant laws that specify and/or limit their function; (ii) the division of responsibilities between councilmembers and staff as directed by the Cupertino Municipal Code; and (iii) the necessity of morale building to create a stronger, more effective, and respectful relationship between City staff and councilmembers. Recommendation 1 should be implemented by March 31, 2023.

Finding 2

The dysfunction prevalent between the City Council and City staff has negatively impacted City operations, including the continuing loss of skilled and experienced personnel. The City has a reputation of having a difficult work environment, making recruiting of highly qualified applicants difficult.

Recommendation 2

The City should hire a consultant to study staff morale and make recommendations to improve retention of employees and quality of the working environment. To the extent legally permissible, the study and recommendations should be published for public review. Recommendation 2 should be implemented by July 31, 2023.

Finding 3

The City has not taken sufficient steps to improve the City's financial risk profile as recommended by its retained Internal Auditor.

Recommendation 3a

The City should implement the work plan identified in the May 2022 Fiscal Policy Inventory and Gap Analysis Report developed by the City's internal audit firm, Moss Adams LLP, to address policy and procedural gaps and weaknesses. Recommendation 3a should be implemented by July 31, 2023.

Recommendation 3b

The City should employ the use of continuing annual internal audits to assess progress in the development and implementation of new or modified policies and procedures to comply with

internal audit risk reduction and mitigation recommendations. Recommendation 3b should be implemented by July 31, 2023.

Finding 4

A comprehensive Code of Ethics not only provides guidance and baseline standards for ethical behavior, it includes sanctions and consequences for deviations from the standard. The City's Ethics Policy is generic and lacks enforcement provisions and therefore fails to provide a framework to address ramifications for policy violations.

Recommendation 4a

The City should establish an independent Public Ethics Commission with guidance from experts in applied ethics, such as the Markkula Center for Applied Ethics at Santa Clara University, to: (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. This recommendation should be implemented by March 31, 2023.

Recommendation 4b

The City should reinstate enforcement procedures to enable the City Council and the public to file complaints and testify at public hearings to help remediate ethics violations. This revision should include a procedure for public admonishment, revocation of special privileges, or censure. This recommendation should be implemented by March 31, 2023.

Recommendation 4c

The City Council should engage a conflict resolution professional to help enhance mutual understanding and respect amongst all stakeholders. This recommendation should be implemented by January 31, 2023, and should be repeated at least once per year.

Recommendation 4d

The City should publish its current Ethics Policy on the City website by January 31, 2023.

REQUIRED RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the County of Santa Clara 2022 Civil Grand Jury requests responses from the following governing body:

Responding Agency	Findings	Recommendations
The City of Cupertino	1, 2, 3, 4	1, 2, 3a, 3b, 4a, 4b, 4c, 4d

APPENDIX A

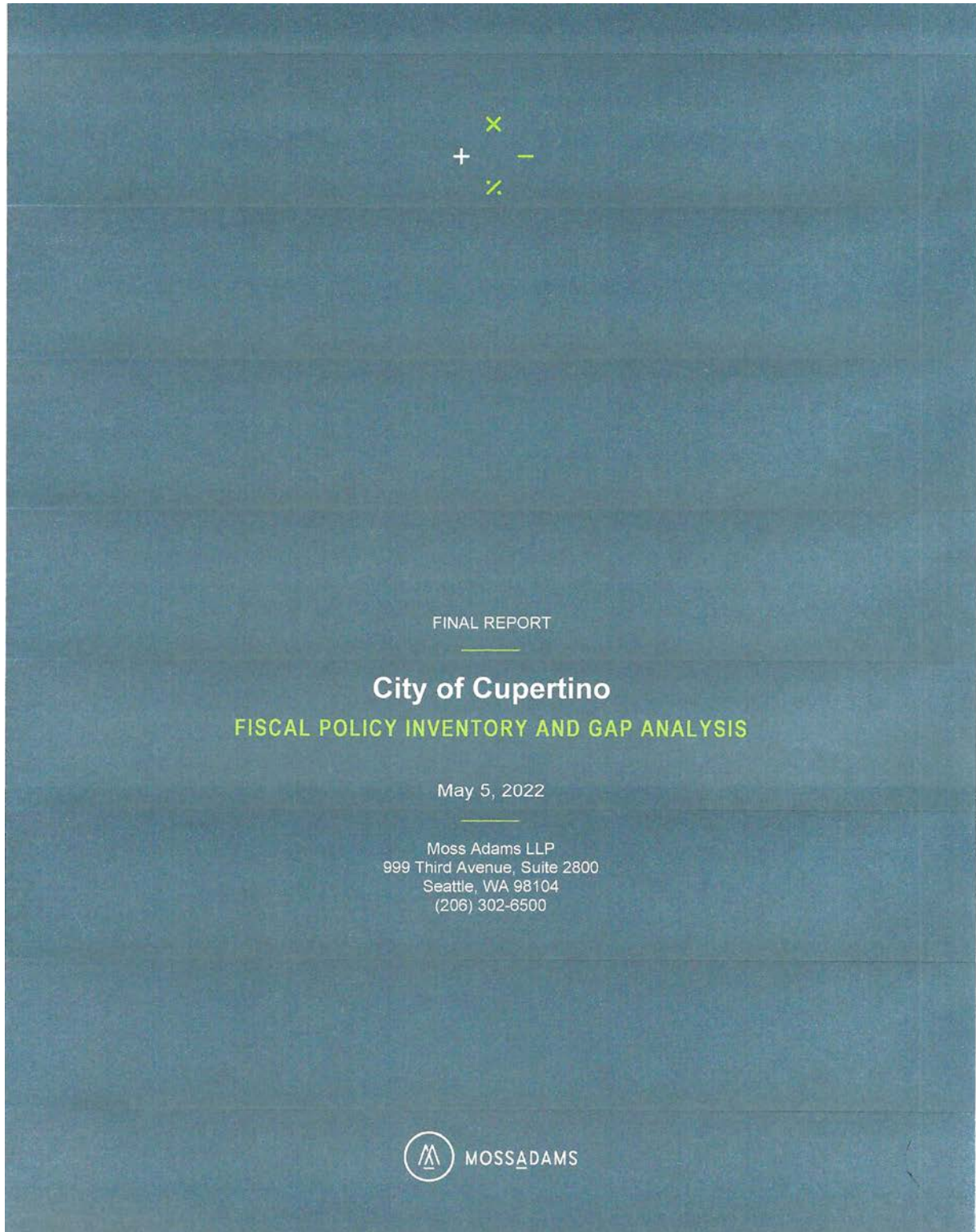


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I. BACKGROUND, SCOPE, AND METHODOLOGY

A. BACKGROUND

The City of Cupertino (the City) requested that Moss Adams LLP (Moss Adams), as the City's internal auditor, perform an inventory of all City fiscal policies and procedures (P&Ps) and a gap analysis to determine what gaps in coverage exist, and develop a prioritized P&P work plan to support the City in addressing identified gaps. The objectives of this project were to:

- Determine which fiscal areas are adequately covered by comprehensive current P&Ps.
- Identify policy gaps, including areas where no policies to support fiscal functions are documented, existing policies are outdated or in need of minor updates or additions, and current internal control or gap coverage are missing key components.
- Prioritize policy gaps based on overall risk, and develop an implementation plan to provide the City with recommendations for prioritizing and addressing the identified policy gaps.

This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants. Accordingly, we provide no opinion, attestation, or other form of assurance with respect to our work or the information upon which our work is based. This report was developed based on our assessment of the City's fiscal P&Ps as of October 2021. The procedures we performed do not constitute an examination in accordance with generally accepted auditing standards or attestation standards.

B. SCOPE AND METHODOLOGY

This project was limited in scope to the City's finance and accounting (fiscal) functional areas. All fiscal P&Ps available as of October 2021 were provided to Moss Adams to assess as part of this project. Other P&P documents, informal process documentation, or guideline documents that are not approved formal P&Ps at the City level may exist; however, they were not included in this analysis and are therefore not included in the results presented in this report.

The procedures performed included:

- **Fiscal P&P Inventory** – We worked with City management to develop a full listing of finance and accounting policy areas that were applicable to the City and that would be included in the scope of this project. For each area, we performed the following:
 - Obtained all supporting/related P&P documents available
 - Documented a full inventory of the current existing P&P documents, including a summary of the coverage areas of each.
 - Discussed the full inventory of results with management to ensure that all P&P documents were provided and included in the inventory.
- **P&P Gap Analysis** – We assessed the inventory results and performed a full gap analysis, including:
 - Assessed the current content of each area to identify potential gaps in coverage.



- Assessed existing P&P documents for opportunities to improve the overall content and flow/structure, incorporate best practices, and improve internal controls, where possible, to provide for effective resources for employees.
- Summarized the gaps identified for each P&P area.
- Categorized the significance and extent of the identified gaps as follows: full gaps, major gaps, or minor gaps. We also noted areas only in need of an update.
- **Prioritized P&P Work Plan Development** – Based on the results of the P&P inventory and gap analysis performed, we developed detailed recommendations, by area, for the City to use as a road map for developing, amending, or updating P&Ps. We assigned a risk level (high, medium, or low), as described in the table below, and a recommended priority order by phase based on the risk level. We discussed the prioritized P&P work plan with management, gathered input on the work plan, and made updates, as appropriate.

Gaps identified during the analysis were categorized as follows:

- **Full Gap** – Documented policies and procedures do not exist for the area.
- **Major Gap** – Some P&P documentation exists; however, there are major gaps in overall coverage.
- **Minor Gap** – P&Ps cover most of the key areas but require some updating or additional coverage.
- **Update Needed** – The P&P needs to be reviewed for potential updates.

The assessed risk level, category descriptions, and recommended phases/timing for addressing the gaps and related recommendations are described in the table below. The risk levels were assigned based on our understanding of the City, insights gained from management, the inherent risk in each area, and the level and significance of gaps identified.

Assessed Risk Level	Category Description	Recommended Phase/Timing
High Risk	● Area is inherently high risk ● Gaps identified were either full gaps (i.e., no P&P coverage) or major gaps ● Area is a high priority for the City's operations and structure	Phase One (within 12 months)
Medium Risk	● Area is inherently high or medium risk; however, a lack of documented P&Ps may only represent a medium risk to the City ● Gaps identified were either full gaps or major gaps ● Area is a high priority for the City's operations and structure	Phase Two (within 18 months)
Low Risk	● Area is inherently low risk ● Gaps identified were either minor in significance or magnitude, or the area only needed review or updating ● Area is a low priority for the City's operations and structure	Phase Three (within 24 months)



II. OVERALL RESULTS

Throughout the P&P inventory and gap analysis, we found that the City has a variety of P&P documents; however, they are not consistently utilized, structured, or based on standard templates. Although the City appears to have consistent practices established and has approvals/process flows setup within the enterprise resource planning (ERP) system, the City does not have a defined P&P framework and as a result, in many cases it was unclear what level of policy a document fell under.

Some of the City's documents identified as "policies" included administrative procedures. In some areas, the City uses the notes included in their financial statements as "policies", as well as Council Resolutions, memos, or email to communicate requirements. The City does not have a standard template/format and there does not appear to be a structure for ensuring all policies are supported by underlying procedures. Additionally, there is no consistent means of identifying when policies are approved and effective. The effective date on most policies is not complete.

Utilizing a defined P&P framework with standard templates will help streamline the City's P&P resources. This framework can be used to define responsibilities at both the City Council and management level.

The City can utilize the Prioritized P&P Work Plan presented on the following page to carry out their efforts to develop and update their fiscal P&Ps. In addition to following summary table, we have provided management with a detailed Prioritized P&P Work Plan, which includes all results from the inventory and gap analysis performed and detailed recommendations by area.



III. PRIORITIZED P&P WORK PLAN

Policy Area	Type of Gap	Associated Risk	Recommended Priority Level
Accounting and Financial Reporting	Major Gaps	High	1
Accounts Payable	Full Gap	High	1
Budgeting	Major Gaps	High	1
Capital Assets	Major Gaps	High	1
Cash Management	Major Gaps	High	1
Payroll and Timekeeping	Full Gap	High	1
Procurement	Major Gaps	High	1
Revenue and Accounts Receivable	Full Gap	High	1
Debt Management/Tax Bond Compliance	Major Gaps	Medium	2
Gifts and Donations	Major Gaps	Medium	2
Grant Management	Full Gap	Medium	2
Investment Management	Minor Gaps	Medium	2
Credit Cards	Minor Gaps	Low	3
Inventory	Full Gap	Low	3
Travel and Expense Reimbursement	Minor Gaps	Low	3



IV. SUMMARY OF RECOMMENDATIONS

The following table summarizes the recommendations related to high-risk policy areas. A detailed listing of full recommendations was provided separately to management.

Policy Area	Summary of Recommendations
Accounting and Financial Reporting	Expand and develop full Accounting and Financial Reporting P&Ps that address, at a minimum, the following key areas: • Chart of account maintenance, setup, and structure. • Fund structures, including the definition and use of each City fund, and required fund reconciliations. Information on this topic that is currently presented in the Financial Policies can be used as a starting point and expanded upon. • Journal entry preparation, approval, and posting. • Month-end and year-end close procedures, including timing, responsibilities for performing each procedure, review/approval responsibilities, and monitoring. • Financial Reporting: which reports will be prepared and on what basis (monthly, quarterly, etc.), who will be responsible for their review and approval, which reports will be presented to the City Council and/or Committees, and how frequently. • Audit requirements and auditor selection. • Significant Accounting Policies and Procedures: The City can utilize notes to audited financial statements as a starting point to accumulate significant accounting policies, then expand to address detailed procedures that will be applied to ensure compliance. • Account Reconciliations: Which balance sheet accounts are reviewed monthly; responsibility for preparation, review and approval; and procedures on performing reconciliations and addressing variances. • Monitoring controls including financial trend analysis (year to year, budget to actual, monthly fluctuations) and key performance indicators. • Unclaimed property handling, including any rules on forfeiture of property to the State Controller's Office.
Accounts Payable	Develop full, comprehensive AP P&Ps that include all significant areas within the AP function including, but not limited to, the following: • Vendor Management: New vendor setup and vendor changes, including required supporting documentation, approvals, and segregation of duties, vendor master list controls and annual reviews, and dormant vendors. In general, vendor management should be controlled by individuals independent of the AP process. • Invoice receipt, approval, and routing (manual or electronically) to AP for payment processing. • Reconciliation between invoice and purchase requisition (PR)/purchase order (PO), receiving documentation, etc. and documentation required to support this three-way match process. • Invoice coding and system entry. • A/P processing including required reviews/approvals, invoice tie-out, and pre- and post-check register reviews/approvals. • Check printing, signature, and check stock maintenance controls. • ACH payment processing and related controls. • Check mailing and support filing.



Policy Area	Summary of Recommendations
	- Monitoring controls over the disbursement function, such as vendor file changes/addition reviews and trend analysis (i.e., total payments by vendor). - Record retention requirements to support the AP process/function. - Other key controls and internal procedures over the disbursement function.
Budgeting	Expand and develop full, comprehensive Budget Management P&Ps that include all significant areas within the budget function including, but not limited to, the following key areas: - Budget Preparation Process: How individual departments/programs should prepare their budgets, what data/historical and upcoming information should be used, and resources available to employees responsible for aspects of the budget process - Budget Calendar: Including a snapshot of all key dates in the process (initial budget notifications from Finance, department/program due dates, original draft budget submission, internal reviews/approvals, Council presentation and budget adoption/approval, budget finalization, system entry, etc.) - How to address budgeting for new funding identified during the year (resources greater than budget estimates, new appropriations or new grants/donations, etc.), including timeline requirements, reviews/approvals, and system entry - Budget monitoring, including budget-to-actual reporting, use and responsibilities, required reviews, justification for budget overages, and anticipating changes throughout the year - City-mandated budget requirements and how each will be considered and applied to ensure compliance - Budget amendment and transfer processing, including the documentation and approvals required and responsibilities for each - Overall roles and responsibilities within the budget function, including budget establishment, monitoring, etc. - Required budget-to-actual reporting to leadership and/or City Council, including what information is to be reported and at what frequency
Capital Assets	Expand and develop a full, comprehensive Capital Asset P&P that includes all significant areas within the Capital Asset function including, but not limited to, the following: - Capital budgeting (incorporate the existing Capital Improvement Policy located within Financial Policies) - Depreciation: Methods used, determination of useful lives, entering during asset setup, depreciation expense entry preparation, review, approval and posting, etc. - Capital asset receiving process, including physical receipt and documentation of receipt - Reporting new fixed assets to Accounting and issuing asset tags (including who issues tags, tracking tags, placement on assets, and recording tag numbers in ERP system) - New asset setup in the City ERP system (including required information, supporting documentation submitted/maintained, etc.) - Reconciliation between G/L and capital asset data in the ERP system, and reviews to ensure all capital assets are captured - Policies regarding capital asset reviews, their purpose, who is responsible for performing reconciliations, identifying variances, repairs/maintenance expense review and documentation, etc. - Capital Asset Custodians: Assignment and accountability of those responsible for capital assets in each department/division/site



Policy Area	Summary of Recommendations
	- Capital Asset Transfer and Disposal Procedures: Reporting disposals/transfers to Accounting, updating in the ERP system, changes in accountability, methods of disposal including documentation requirements and approvals, lost/stolen asset handling/reporting, etc. - Annual Inventory Count: Procedures, condition assessment, and segregation of duties (including having an independent person perform count, identify assets damaged or not tagged, add assets, verify asset details, reconcile information, and make updates in the ERP). - Record retention for capital assets
Cash Management	Incorporate the existing Cash Receipts/Handling Policy into a full Cash Management P&P. A comprehensive set of Cash Management P&Ps should be developed and should cover, at a minimum, the following: - Bank account setup, cancelling, access monitoring, etc. - Bank reconciliations, including responsibility for preparation, supporting documentation required, outstanding items monitoring, variance handling, review, and approvals - Bank account signature authority - Change fund policy (for sites that handle cash payments) - Payment acceptance, including types of payments accepted (cash, checks, credit cards, ACH, etc.) and requirements for processing/accepting each type - Cash reconciliations, deposits, and variance reporting (reporting overages/shortages) - Counterfeit detection requirements - Required frequency for remitting cash to Cashiering for deposit - Segregation of duties - Monitoring of locations' deposit frequency - Consequences for non-compliance - Minimum security requirements for transporting deposits - Petty cash handling The City should also consider developing site/location-specific P&Ps that apply to all City locations that accept or handle monies. Each site that handles payments should be required to develop internal Cash Handling P&Ps to show how they will ensure compliance with City-wide policies. Detailed Cash Handling P&Ps, by site, would include areas such as the following: - How receipts are issued and reconciled - Where payments are recorded (manual log, system, etc.) upon receipt - Responsibilities for cash handling and daily reconciliations - Daily reconciliation procedures (i.e., base funds, system/log totals for receipts, payments being deposited, etc.) - Detailed procedures for storing payments, closing credit card machines, etc.
Payroll and Timekeeping	Develop comprehensive Payroll & Timekeeping P&Ps to help ensure that time worked is properly accounted for, reviewed, and approved; that pay rates are properly controlled and applied; and that employees are ultimately paid appropriately and accurately. Payroll and Timekeeping P&Ps should cover, at a minimum, the following: New employee setup and pay rate adjustments (in general, this duty should be performed by someone independent of the payroll processing function to ensure that duties are adequately segregated)



Policy Area	Summary of Recommendations
	- Time recording for exempt and non-exempt employees - Time reviews and approvals - Timecard edits or corrections before/after payroll processing - Transfer of time detail to process payroll - Payroll processing (including required reviews/approvals pre and post processing, reconciliations, general ledger posting, reporting, etc.) - Direct deposit setup and processing - Check printing, signature, and distribution - Payroll tax reporting and tracking and accrual account reconciliations - PTO accruals, use and recording, monitoring of PTO balances, etc. - Payroll monitoring and oversight (including pay rate change report reviews; timecard edit reviews; systems access monitoring; payroll trend analysis by employee, position, department, etc.; and other reviews/reporting performed to ensure the payroll function is well-controlled)
Procurement	Expand and develop a full comprehensive set of Procurement P&Ps and include, at minimum, the following key areas: - Due diligence thresholds, including online/verbal quotes, format written quotes, Requests for Proposal (RFPs), and a dollar threshold for each level of due diligence. The existing chart defines thresholds but does not provide details on how a user should complete the various methods. The attachments to the current policy, address some specific procedures (e.g., Formal Bid Procedures) but they need to be updated and organized. - Approval thresholds and a clear definition of the workflow process for obtaining all required approvals. In addition, definition of approvals that may be required for certain types of purchases, based on G/L code (i.e., IT, fixed assets, and/or grant-related). - Sole-source and emergency purchase procedures (justifications and documentation requirements, approvals, etc.) that define their appropriate use(criteria, etc.). - Initiating Purchase Requisitions (PRs), and a clear definition of the process for PRs and POs. - Receiving procedures and related documentation requirements (on packing slips/receiving reports and in the system, if applicable). - Segregation of duties between Purchasing and Receiving. - Documentation requirements and methods of storing information. - Suspension and Debarment Checks: The threshold for when to perform checks and responsibility for performing them, when they must occur in the procurement process, documentation required to support they were performed, how/where documentation will be maintained to support new vendor setup, and the reverification process to confirm that vendors used for longer than a specified period (e.g., one year) are reconfirmed and the results of the review are documented. - Specific requirements for certain high-risk purchases. - Specific restrictions and unallowable purchases (alcohol or other).
Revenue and Accounts Receivable	Develop a comprehensive set of Revenue and A/R P&Ps at a City-wide level to address, at a minimum, the following: - Defining the specific types of revenue throughout the City, referencing Department and Division-specific P&Ps where appropriate - Revenue recognition and accounting for revenue



Policy Area	Summary of Recommendations
	- Customer account setup and requirements - Overall monitoring of revenue activity - Defining the City's requirements for billing and collection activities (including defining roles and responsibilities, documentation requirements, frequency, etc.) - Accounts receivable management, including tracking and reporting A/R, requiring aging analysis, reporting on delinquent accounts, etc. - Systems access related to A/R management systems, to ensure proper segregation of duties - Allowance for doubtful accounts establishment, recording of bad debt expense, criteria for estimate development, etc. - Handling refunds and account credits, including required documentation, approvals, etc. - Guidance to Departments/Divisions for developing their specific billing policies/procedures, and for ensuring consistency and enhancing revenue capture - Establishing criteria to determine when past due/delinquent accounts are sent to collection agencies and how revenue collection service providers are engaged and monitored - Defining when account write-offs can occur, what approvals are required, and how write-offs/account adjustments must be documented and controlled - Unclaimed Refunds: Procedures to follow when customers don't cash refund checks or checks are returned to the City Utility Bills, when to waive late fees, when to credit overcharged customers, when to invoice undercharged customers - General Bills and Taxes: When to waive late fees and allow for payment plans Given the various types of revenue across the City, it may be appropriate for individual revenue-generating Departments/Divisions to develop their own specific P&Ps. These should cover how the Departments/Divisions will implement specific P&Ps and monitor for compliance with City-wide P&Ps, including the use of account management systems, reconciliations to the City's ERP system, specific billing/collection activities, etc.



Appendix A – Management Responses to Fiscal Policy Inventory and Gap Analysis:

1. Accounting and Financial Reporting

Management Response:

Management agrees that formalized policy and procedures are needed in Accounting and Financial Reporting. Currently, staff utilizes non-formalized procedures for the processes listed above. Staff created policies in these areas the review process and expected to be approved by the Director of Administrative Services and the City Manager.

2. Accounts Payable

Management Response:

Management agrees that formalized policy and procedures are needed in Accounts Payables. Currently, staff utilizes system set up and security and non-formalized procedures for the processes listed above. Staff created policies in these areas the review process and expected to be approved by the Director of Administrative Services and the City Manager.

3. Budgeting

Management Response:

Management agrees that formalized policy and procedures are needed in Budgeting. Currently, staff utilizes system security and non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager.

4. Capital Assets

Management Response:

Management agrees that formalized policy and procedures are needed in Capital Assets. Currently, staff utilizes non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager.

5. Cash Management

Management Response:

Management agrees that formalized policy and procedures are needed in Cash Management. Currently, staff utilizes non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager.

6. Payroll and Timekeeping

Management Response:

Management agrees that formalized policy and procedures are needed in Payroll and Timekeeping. Currently, staff utilizes system security and non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager.

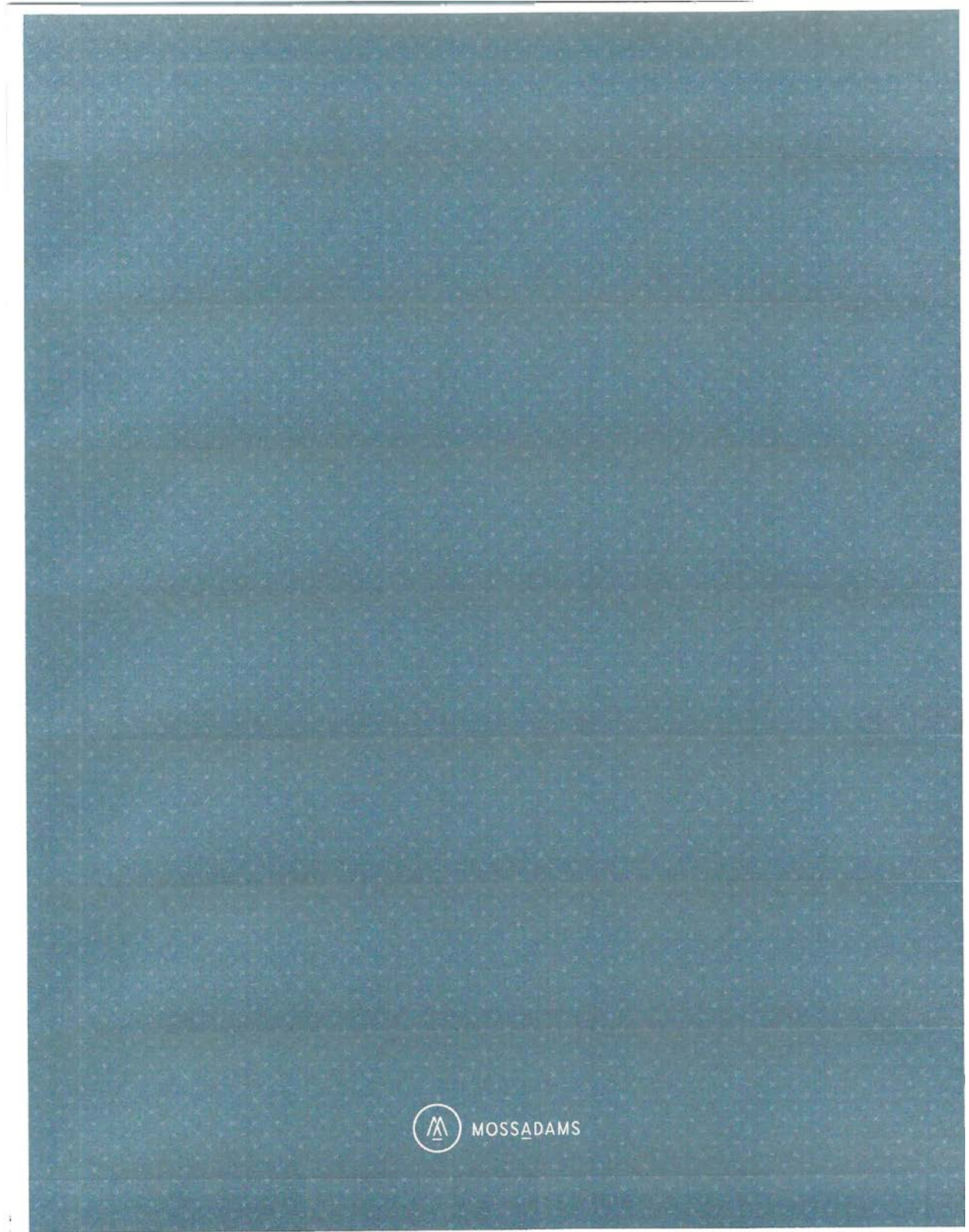
7. Procurement

**Management Response:**

Management agrees that formalized policy and procedures are needed in Procurement. Currently, staff utilizes system security and non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager. These changes will be delayed as the City prioritizes findings from the procurement audit and has requested a Purchasing Manager as part of the Proposed Budget. To minimize changes and potential confusion all changes to procurement will occur at one time and after the review of the new Purchasing Manager should the position be approved.

8. Revenue and Accounts Receivable**Management Response:**

Management agrees that formalized policy and procedures are needed in Revenue and Account Receivable. Currently, staff utilizes system security and non-formalized procedures for the processes listed above. Staff created policies in these areas are in the review process and expected to be approved by the Director of Administrative Services and the City Manager.



APPENDIX B

ATTACHMENT D

RESOLUTION NO. 18-

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 ____ day of _____, ____ by the following vote:

Vote Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor
City of Cupertino

ATTACHMENT D



City of Cupertino

DRAFT Code of Ethics and Conduct
For
Elected and Appointed Officials

Adopted _____ by Resolution No. 18-____

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) *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.

(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, 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.

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

APPENDIX C

RESOLUTION NO. 20-011

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ADOPTING THE CITY OF CUPERTINO ETHICS POLICY

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

WHEREAS, the Cupertino Ethics Policy will guide the conduct of the City Council, officials appointed by the Council, and City staff (collectively "public officials") and support their independent, impartial, and fair decision-making and execution of policy; and

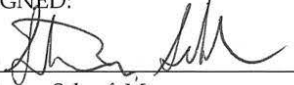
WHEREAS, City Council wishes to maintain an atmosphere of respect and civility in the performance of City affairs and public business.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby adopt the attached "City of Cupertino Ethics Policy"

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of January, 2020, by the following vote:

Vote Members of the City Council

AYES: Scharf, Paul, Chao, Sinks
NOES: None
ABSENT: Willey
ABSTAIN: None

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>2/5/20</u> Date
ATTEST:  Kirsten Squarcia, City Clerk	<u>2/5/20</u> Date

CITY OF CUPERTINO ETHICS POLICY

The citizens, businesses, and organizations of the City are entitled fair, ethical, and accountable local government that has earned the public's full confidence for integrity.

To this end, the City Council has adopted this Ethics Policy for City Council, appointed officials, and staff of the City of Cupertino to promote public confidence in the integrity of local government and its effective and fair operation.

A. Comply with Law

City elected/appointed officials and staff comply with the laws of the nation, the State of California and the City in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions, the Cupertino Municipal Code, City ordinances and policies, and laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of governments. The City ensures its elected/appointed officials and staff receive regular training on ethics as required by state law.

B. Conduct of Members

The professional and personal conduct of City elected/appointed officials and staff should be respectful of others, recognizing that individuals can respectfully disagree with each other. City elected/appointed officials and staff should refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of others, including members of the Council, boards and commissions, the staff, or the public.

C. Respect for Process

City elected/appointed officials and staff perform their duties in accordance with various processes and rules of order established from time to time by the City Council governing the deliberation of public policy issues, conduct of quasi-judicial proceedings, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

D. Decisions Based on Merit

City elected/appointed officials and staff make their decisions in the best interest of the City, which might include relevant policy considerations, rather than on unrelated considerations.

E. Conflict of Interest

The City's ethics policy regarding conflicts of interest is to comply with all applicable ethics rules in the State of California. This Policy is not intended to go beyond or expand upon those rules. In general, in order to assure their independence and impartiality on behalf of the common good, City elected/appointed officials and staff do not use their official positions to participate in or influence decisions in which they have a material financial interest, an organizational responsibility, or a close familial or embroiled personal relationship.

F. Gifts and Favors

City elected/appointed officials and staff limit and report gifts as required by state law, and follow advice provided by the City Attorney.

G. Confidential Information

City elected/appointed officials and staff respect the confidentiality of information concerning the property, personnel, and affairs of the City. They neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

H. Use of Public Resources

City elected/appointed officials and staff do not use public resources, such as City staff time, equipment, supplies or facilities, for private gain or personal/political purposes (except to the extent those resources are available to the public generally).

I. Representing the City & Advocacy

When formally authorized to represent and/or advocate for the official policies or positions of the City, elected/appointed officials and staff must do so accurately and in a limited fashion that does not go beyond the scope of their authority. By contrast, when City elected/appointed officials and staff are presenting their individual opinions and positions on issues potentially relevant to the City, they must explicitly state they do not represent their body or the City and must not allow any inference that they do.

J. Positive Work Place Environment

City elected/appointed officials and staff support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. City elected/appointed officials recognize their special role in dealings with City staff, taking care not to create any perception of inappropriate direction to staff.

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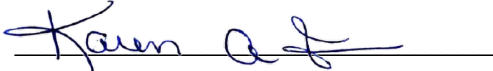
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This report was **ADOPTED** by the County of Santa Clara 2022 Civil Grand Jury on this 19th day of December, 2022.

A handwritten signature in blue ink, appearing to read "Karen Enzensperger", is written over a horizontal line.

Ms. Karen Enzensperger
Foreperson