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July 2, 2026

Honorable Julie A. Emede
Presiding Judge (2026)
Superior Court of California
County of Santa Clara
191 North First Street
San José, CA 95113

RE: Civil Grand Jury Report

Dear Judge Emede:

Pursuant to California Penal Code section 933 et seq., please find enclosed the City of Cupertino's response to the 2026 Santa Clara County Civil Grand Jury Report entitled "Convenience vs. Compliance: Brown Act Risks in Cupertino's Meeting Practices." The enclosed response was approved by the City Council for your review. Thank you for your consideration.

Sincerely,

Tina Kapoor
City Manager

Enclosure

RESPONSE OF THE CITY OF CUPERTINO
TO THE FINDINGS AND RECOMMENDATIONS OF
THE 2026 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT
“CONVENIENCE VS. COMPLIANCE: BROWN ACT RISKS IN
CUPERTINO’S MEETING PRACTICES”

Finding 1

Cupertino’s practice of ending a meeting if a teleconference participant disconnects disrupts meetings, creates needless delays, and prioritizes the convenience of council members over the public’s right to access.

Response: *Partially agree/partially disagree.* Please see responses to Recommendations 1a and 1b.

Recommendation 1a

Cupertino should continue its meetings when a teleconferencing member leaves the meeting, and a quorum remains in its jurisdiction. Cupertino should adopt and incorporate this into the City Council Procedures Manual. This recommendation should be implemented by December 15, 2026.

Response: *Partially agree/partially disagree.* We agree that Cupertino should no longer discontinue its meetings when a teleconferencing member leaves the meeting. This change was implemented in January 2026, when the City updated its standard agenda language. The City also asserts that whether or not a quorum of the City Council is present in person at the main meeting location is not the issue at hand, as explained below. The issue is ensuring the City’s compliance with the public participation requirements of the Brown Act.¹

The traditional teleconferencing rule at play here was enacted 40 years ago, in 1988 via Assembly Bill 3191 (Cal. Gov. code § 54953(b) (“Traditional Rule”).) It was proposed by Assemblymember Frazee from San Diego County where, at the time, residents from geographically distant parts of the county had difficulty attending County Board of Supervisors meetings and hearings. The Traditional Rule responded to these concerns by authorizing local agencies to use video conferencing “for the benefit of the public and the legislative body.”² A foundational tenet was that public comment opportunities be available from any remote location.

Thus, the Traditional Rule requires that remote meeting locations provide for public participation. If such access is disrupted, public participation from that remote location is prevented. The statute does not expressly answer what should occur if such access is disrupted. Out of concern that allowing the meeting to continue would impair the public’s

¹ See *Berkeley People’s Alliance v. City of Berkeley* (2025) 114 Cal.App.5th 984 (emphasizing the importance of complying with Brown Act provisions protecting the public’s right to participate).

² See Assembly Committee on Local Government, AB 361, May 5, 2021 Hearing at p3.

statutory right to participate from the noticed teleconference location, the City interpreted these provisions to require pausing or terminating a meeting when a teleconference location could no longer provide public access. If the connection could not be reestablished, the meeting would be adjourned. Of course, adjourning the meeting also prevents members of the public at any meeting location from participating, including those attending in person at the main meeting location.

The City acknowledges the difficulty in navigating the competing interests of various groups of participants, including (1) those participating from the main meeting location, (2) those joining via a remote link published in the agenda, and (3) those joining in person from a remote meeting location. To manage this difficulty, in January 2026 the City implemented a procedure that allows the City to know, prior to a meeting, whether members of the public plan to attend the meeting from an agendaized remote location. If not, it would be reasonable to continue a meeting even when a remote meeting connection is disrupted.

Today, with the implementation of Senate Bill 707, cities the size of Cupertino must provide interactive meeting connections so that individuals may participate via their personal devices from wherever internet or telephone service is available. These provisions substantially reduce the concern that prompted the City's prior practice because Cupertino must provide members of the public alternate methods of participating remotely. The City will also incorporate a procedure requiring the City Council to make affirmative findings on the record that the public interest in continuing a meeting when a remote location's connection fails outweighs the public interest in ensuring public participation from the remote is available, similar to the finding required by Senate Bill 707 to continue a meeting after connection to the main location fails and the connection could not be reinstated within one hour.

This recommendation will be implemented prior to December 15, 2026.

Recommendation 1b

Because teleconferencing is optional and Cupertino interprets the requirements in a manner that promotes council members' self-interest, Cupertino should determine whether the optional use of teleconferencing under these circumstances is consistent with its responsibilities to its constituents. This recommendation should be implemented by December 15, 2026.

Response: *Generally disagree.* Although the Traditional Rule does not require a city council to allow remote meeting locations, it does offer cities the option to allow for remote teleconference meeting locations, which allows elected officials to continue serving their constituents while balancing professional or family obligations. The City's objective has been to facilitate public service while complying with the Brown Act.

Nonetheless, the Cupertino City Council will consider again whether offering optional use of teleconferencing is consistent with the City Council's responsibilities to its constituents. This recommendation will be implemented prior to December 15, 2026.

Recommendation 1c

Whenever teleconferencing is utilized, Cupertino should ensure that access at the teleconference location is maintained for the duration of the meeting, regardless of council members' attendance. Cupertino should adopt and incorporate this into the City Council Procedures Manual.

This recommendation should be implemented by December 15, 2026.

Response: *Agree, with reservations.* Because the teleconference location is controlled by the participating council member rather than the City, the City cannot monitor or independently verify continuous public access throughout the meeting. The City Council can and will incorporate into the City Council Procedures Manual the procedures that a remote council member should undertake to ensure that access to the council meeting from the teleconference location is maintained for the duration of the meeting. Additionally, as noted earlier, pursuant to Senate Bill 707, all open City Council meetings will also be available via Zoom and telephone.

This recommendation will be implemented prior to December 15, 2026.

Finding 2

Cupertino's process for ensuring that all policies, staff, and council members comply with the requirements for teleconferencing does not promote accountability with the Brown Act.

Response: *Generally disagree.* The City is not aware of any court finding or determination that its teleconferencing procedures violate the Brown Act.

Recommendation 2

Cupertino should adopt formal, written teleconferencing procedures and verification processes to ensure compliance with all Brown Act requirements, including:

- Standard agenda language identifying a precise teleconference location and its accessibility to the public;
- On-the-record confirmation of compliance at the start of all meetings subject to the Brown Act;
- Documented verification confirming that teleconference locations meet public access and that the agenda was posted in a timely and appropriate manner. This recommendation should be implemented by December 15, 2026.

Response: *Agree.* The City of Cupertino's staff has implemented procedures for ensuring the City remains compliant with the Brown Act. Nonetheless, the City will formalize existing procedures through written protocols and additional documentation, including confirmation that:

- Cupertino will continue to use standard agenda language identifying the precise teleconference location;
- Cupertino will continue to require that the location meet public access requirements;
- Cupertino will continue to require that the agenda be posted at the location in a timely and appropriate manner, and

- Cupertino will continue to require on-the-record confirmation of compliance with the above when a remote location is activated.

This recommendation will be implemented prior to December 15, 2026.

Finding 3

Cupertino's practice of permitting teleconferencing from locations that are not meaningfully accessible to the public, including private or restricted spaces, is inconsistent with the purpose and intent of the Brown Act.

Response: *Disagree.* That is not Cupertino's practice. Please also see response to Recommendation 3.

Recommendation 3

Cupertino should provide written guidance to council members and any relevant staff about appropriate teleconferencing locations that are genuinely and meaningfully accessible to the public for the duration of the meeting. The guidance should also list prohibited locations such as private or restricted spaces, including private hotel rooms, airport lounges beyond security checkpoints, vehicles, or other locations requiring special access. This recommendation should be implemented by December 15, 2026.

Response: *Agree.* The City will provide guidance identifying appropriate and inappropriate teleconference locations and describing a council member's responsibilities for ensuring meaningful public access throughout a meeting.

This recommendation will be implemented prior to December 15, 2026.

Finding 4

Cupertino's practice of automatically terminating City Council meetings when a teleconferencing council member disconnects fundamentally prioritizes the convenience of the councilmember above the public and provides a mechanism to weaponize the practice for strategic gain, as was the case on December 2, 2025.

Response: *Disagree.* The practice has protected the public's right to participate in compliance with the Brown Act, which protects public participation. The circumstances surrounding the December 2, 2025 meeting were unusual and should not be viewed as representative of normal meeting practices.

Recommendation 4

Cupertino should amend its City Council Procedures Manual to clarify that:

- Quorum requirements are governed by applicable law and are independent of teleconferencing participation;
- Teleconferencing is a discretionary accommodation subject to conditions that protect public rights. This recommendation should be implemented by December 15, 2026.

Response: *Partially disagree/partially agree.* The City disagrees with the characterization underlying this recommendation, but agrees that clarifying the City Council Procedures Manual will provide greater certainty regarding future meetings.

This recommendation will be implemented prior to December 15, 2026.

DRAFT FOR COUNCIL REVIEW