

CC 05-09-2023

1

Fact Finding Report

Written Communications

From: [Eric Schaefer](#)
To: [City Council](#); [Pamela Wu](#); [City Clerk](#)
Subject: Cupertino City Council meeting May 9, 2023 agenda item 1: Barry Chang set the standard
Date: Monday, May 8, 2023 1:04:01 PM

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Council members ,

In 2018, then City Council member Barry Chang engaged in "councilmanic" behavior that was more egregious than any of the allegations against current council members Liang Chiao and Kitty Moore:

The former City Attorney of Cupertino, Randolph Hom, filed a claim with the City for wrongful termination, which cited that he was silenced by the City over his objection to the approval of the Vallco project due to numerous violations of state law SB35. Hom's suit included complaints of explicit statements by Councilman Barry Chang, who threatened adverse action against Mr. Hom unless Hom allowed the Vallco Development proposal to be pushed through. The City settled the suit by paying a significant compensation to Hom. Barry Chang represented the council majority opinion regarding Vallco (which included Chang, Vaidhyanathan, and Sinks), and the council took no disciplinary action against Chang.

If the egregious and costly behavior of Barry Chang is a standard for council disciplinary action of its own members for "councilmanic" oversight, then clearly Moore and Chiao merit no disciplinary action.

City Clerk:

Please include this letter as part of the written communication for the City Council meeting agenda item 1 on May 9, 2023.

Thank you for your consideration.

--

Eric Schaefer
Cupertino resident

From: [Tracey Edwards](#)
To: [Cupertino City Manager's Office](#); [City Clerk](#); [City Council](#); [Hung Wei](#); [Sheila Mohan](#); [Liang Chao](#); [J.R. Fruen](#); [Kitty Moore](#); [Tracey Edwards](#)
Subject: Public comment on violations of the City of Cupertino Municipal Code and City policies, Council, May 9, Special Meeting
Date: Saturday, May 6, 2023 8:47:58 AM

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Dear Honorable Mayor Hung Wei, Vice-mayor Sheila Mohan, Councilmembers, et al,

Immediately below are the remarks the League plans to make at the Council's special session on Tuesday, May 9th.
These remarks will be made on behalf of the League of Women Voters Cupertino-Sunnyvale.

Sincerely
Tracey Edwards

Remarks

My name is Tracey Edwards and I am the co-president of the League of Women Voters Cupertino-Sunnyvale.

It is important to remember why we are here today:

- The Santa Clara County Civil Grand Jury received multiple complaints concerning the behavior of the City of Cupertino councilmembers toward City staff.
- The complaints were serious enough that the Grand Jury undertook an investigation resulting in the report entitled "A House Divided".
- Some of the Council members raised concerns about the Grand Jury investigative process and accuracy of remarks made in the Grand Jury report.
- In response the Council hired an outside attorney to investigate and review the conclusions in the Civil Grand Jury report. Attorney Daube, through her work, confirmed the findings of the Grand Jury.

We should also remember that the Civil Grand Jury is an important County watchdog organization. As an investigative body, the Grand Jury examines complaints about the actions or performance of city, county agencies, or public officials. The Grand Jury exists to ensure that the best interests of Santa Clara county residents are being served.

The City of Cupertino had the right to challenge the findings of the Grand Jury and did through their own independent investigation.

The process has concluded and it is now time to take the appropriate actions to remedy the findings of the Grand Jury as confirmed by the independent investigation.

Rather than complain let's applaud good governance in action. This was a process that demonstrated the most fundamental and critical tenets of good governance; accountability, leadership, integrity, stewardship, and transparency.

We encourage the Council to embrace the recommendations made in the reports and turn their full attention to improving the workings of our city.

These remarks are respectfully submitted by the League of Women Voters of Cupertino-Sunnyvale.

Tracey Edwards

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M: +1 408 888 9411

tracey@edwards123.com

Respect science, respect nature, respect each other.

From: [Pamela Hershey](#)
To: [Kitty Moore](#); [Liang Chao](#); [City Clerk](#)
Subject: Fwd: Support for Chao and Moore
Date: Monday, May 8, 2023 8:33:14 PM

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----- Forwarded message -----

From: **Pam Hershey** <pamelakhershey@aol.com>
Date: Mon, May 8, 2023 at 8:30 PM
Subject: Re: Support for Chao and Moore
To: Pamela Hershey <pamkayher@gmail.com>

On Monday, May 8, 2023 at 08:15:27 PM PDT, Pam Hershey <pamelakhershey@aol.com> wrote:

On Monday, May 8, 2023 at 07:58:12 PM PDT, Pamela Hershey <pamkayher@gmail.com> wrote:

My name is Pamela Hershey and i have been following the city council and staff for many years. the city council meetings as well. It is a fact that Kitty Moore and Liang Chao have brought a positive change to Cupertino by asking hard questions and by doing intensive research that they shared with the public help our community be safer and healthier.

Cupertino voters elected Council Members Moore and Chao because they study the issues, ask the questions, and consider the options that residents care about most. By asking questions it ensures that all options and views are on the table. To me that what I would want my representative to do in order to make an informative opinion.

For example, the site at Vallco has been listed as a hazardous waste site by the EIR but the city staff chose to ignore it. Actually, I live in very close proximity to Vallco I am so thankful for Kitty Moore's persistence and research to take action for the safety of the residents. Since the public was misled into believing that Vallco had a clean bill of health yet behind the scenes, the staff was doing a Pier Review exploring the contamination. It was kept a secret for two years. I am not sure why the staff allowed the developer to demolish and move contaminated soil before final results

were received, Therefore, it the removal of this contaminated soil put myself my and family in harms way as we had to breathe it for many months.

Also, hoping we do not have any health issues because we were not warned about this toxic site before they demolished or ever.

I truly have to commend and thank Kitty Moore and Liang Chao for being resident -focused council members.

A concerned resident since 1967
Pamela Hershey

From: [Rhoda Fry](#)
To: [City Clerk](#); [City Council](#)
Subject: NEW!!!: For City Council 5/9/2023 Agenda Item 1
Date: Tuesday, May 9, 2023 1:00:54 PM
Attachments: [Revised Presentation Rhoda Fry 2023-05--09.pdf](#)

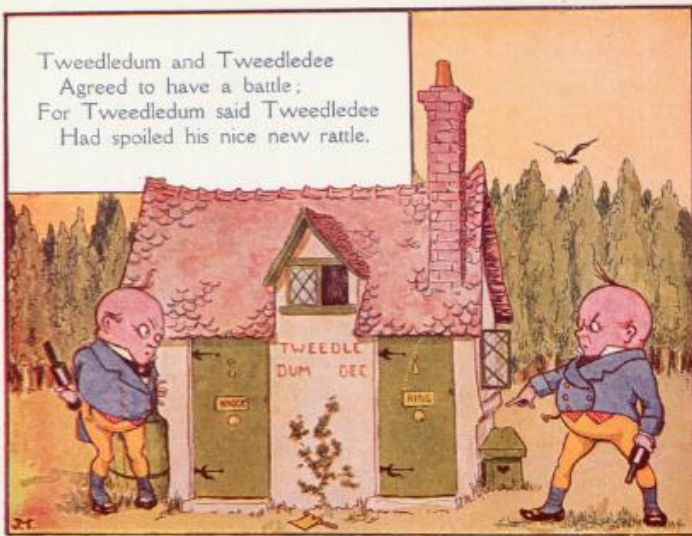
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Hi City Clerk –
This is my new and improved version for tonight.
Please discard the previous one, if possible.
Looking forward to your helping display my slides.
Thank You,
Rhoda Fry

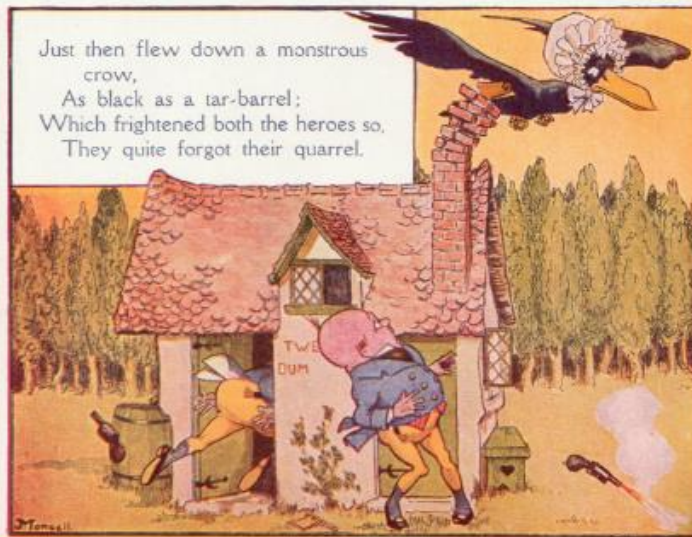
From: Rhoda Fry <fryhouse@earthlink.net>
Sent: Tuesday, May 9, 2023 8:46 AM
To: 'City Clerk' <CityClerk@cupertino.org>; 'citycouncil@cupertino.org' <citycouncil@cupertino.org>
Subject: For City Council 5/9/2023 Agenda Item 1

Dear City Clerk,
Please include the contents of the attached for public comment on City Council 5/9/2023 Agenda Item 1.
Please also show these slides this evening when it is my turn to speak (I might split the deck with another speaker as well) – you are a good page turner!
Maybe tonight you can tell me how I can do this on my own in the future.
Grateful,
Rhoda Fry

Tweedledum and Tweedledee
Agreed to have a battle;
For Tweedledum said Tweedledee
Had spoiled his nice new rattle.



Just then flew down a monstrous
crow,
As black as a tar-barrel;
Which frightened both the heroes so,
They quite forgot their quarrel.



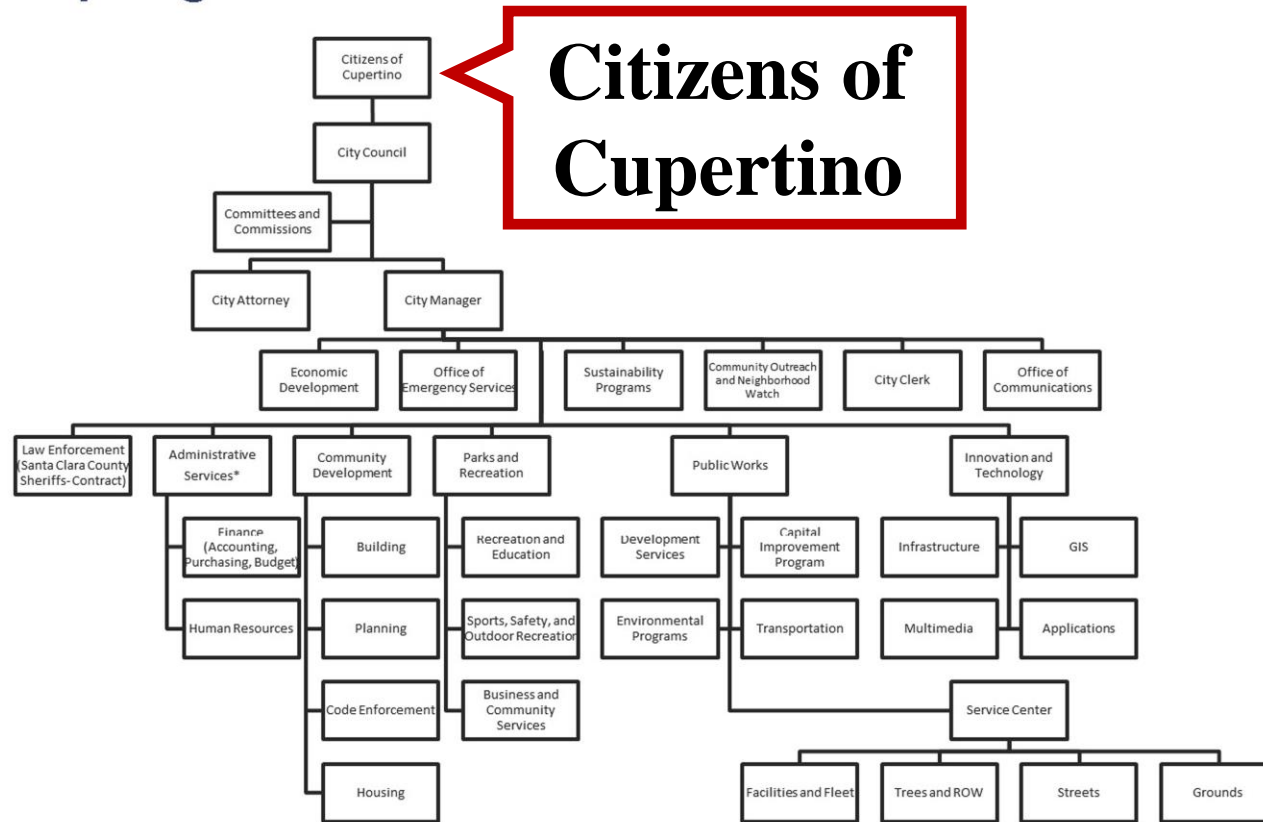
TWEEDLEDUM AND TWEEDLEDEE

**Instead of squabbling,
Set your differences aside
and **Work on the Budget****

Tweedledum and Tweedledee
Agreed to have a battle;
For Tweedledum said Tweedledee
Had spoiled his nice new rattle.
Just then flew down a monstrous crow,
As black as a tar-barrel;
Which frightened both the heroes so,
They quite forgot their quarrel

Remember Who You Work for - The Citizens of Cupertino

City Organizational Chart



**After 4 years of Stellar Service
to our Community,
all of a sudden, Councilmembers
Chao and Moore are being vilified
WHY?**

We Elected Them to:

- **Think Independently**
- **Ask Tough Questions,**
- **and Get Results**

They Have Succeeded

Image from Page 9 of the Budget



As chair of our Planning Commission, I have advocated for residents' interests. Applying my civil engineering background to complex planning issues, I have brought accountability through training, policy changes and thorough evaluations of statutory requirements.

- Residents Before Special Interests
- Integrity First
- Residents are the Drivers
- Family and Schools are the Center
- Healthy Environment



QUALIFIED, EXPERIENCED, EFFECTIVE COUNCIL MEMBERS

Civil Engineer (PE, Licensed in California)
Paralegal and Environmental Studies (145 hours)
Appointed Cupertino Planning Commission Chair

- Santa Clara Valley Transportation Authority Policy Advisory Committee (**elected by peers to leadership positions**)
- League of California Cities - Peninsula Division
- Silicon Valley Regional Interoperability Authority
- Santa Clara County Cities Association
- Cupertino: Audit Committee, Environmental Review Committee, Legislative Review Committee

Computer Science Ph.D. Princeton University
Computer Engineering MS National Chiao Tung University
Elected Cupertino Union School District Board Member

- League of California Cities - Peninsula Division
- School Partnership and School Liaison (CUSD, FUHSD, De Anza)
- Santa Clara County Cities Association
- Santa Clara/Santa Cruz Airport/Community Aircraft Noise
- Cupertino: Audit Committee, Legislative Review Committee, Disaster Council, Economic Development Committee, Environmental Review Committee

The LAST THING a Board Needs is YES MEN

The House Divided Report Reiterated Finance Troubles in Moss-Adams Report

- The City has weak or non-existent internal financial controls
- Deficiencies have existed for several years and pose potentially serious operating and financial risks to the City
- The Audit Committee Plan needs to be “vetted” by the Council

Report Recommends Vetting of City Staff Work!!!

- **Vetted = Critically Review and Evaluate for Official Approval**
- Different viewpoints and double-checking by Councilmembers and Residents creates a better outcome

Our City is Better Because Chao and Moore Asked Questions “gray area between information requests”

- Pressed for compliant City financial reporting
- Discovered payments for services that had not been rendered
- Prevented construction on sites that are not suitable for habitation

We Need to Strike a Balance . . .



How Did We Get Here?

Failure to Communicate Effectively and Resolve Differences in a Timely Manner

“City staff’s disregard of this City ordinance [for mandatory financial disclosures] in the past added to the perception of City Council that staff was not competently fulfilling their job responsibilities”

Why Didn’t Human Resources or City Manager Address Alleged Communications Issues Timely?

- Reports miss the fact that COVID created a challenging work environment for all
- Reports miss the fact that Staff knew in December 2021 that City was facing financial difficulty, signaling that it could be a good time to find other work
- Report mentions that only one person who left took a lesser job; this implies others who left fared better

February 21, 2023, **Councilmember Fruen motioned for a new work item:**

“The City Attorney will investigate and report back on other violations of the Municipal Code with respect to council-staff and commissioner-staff relations

so that the City Council may establish policy

to correct or prevent such violations in future

Establish Policy or Punitive Measures?

- Until Kitty Moore repeatedly raised concerns, financial reports were not posted timely
- Violation of Cupertino Municipal Code 2.24.030 and California Government Law 41004
- Did the City Attorney refer the City Treasurer to the District Attorney?
Of course not, that would be counterproductive
- We get along; we fix things

Civil Grand Jury: “Few, if any, Recommendations Implemented”

“Few, if any, of those recommendations [by the Moss Adams Financial Audit] have been implemented”

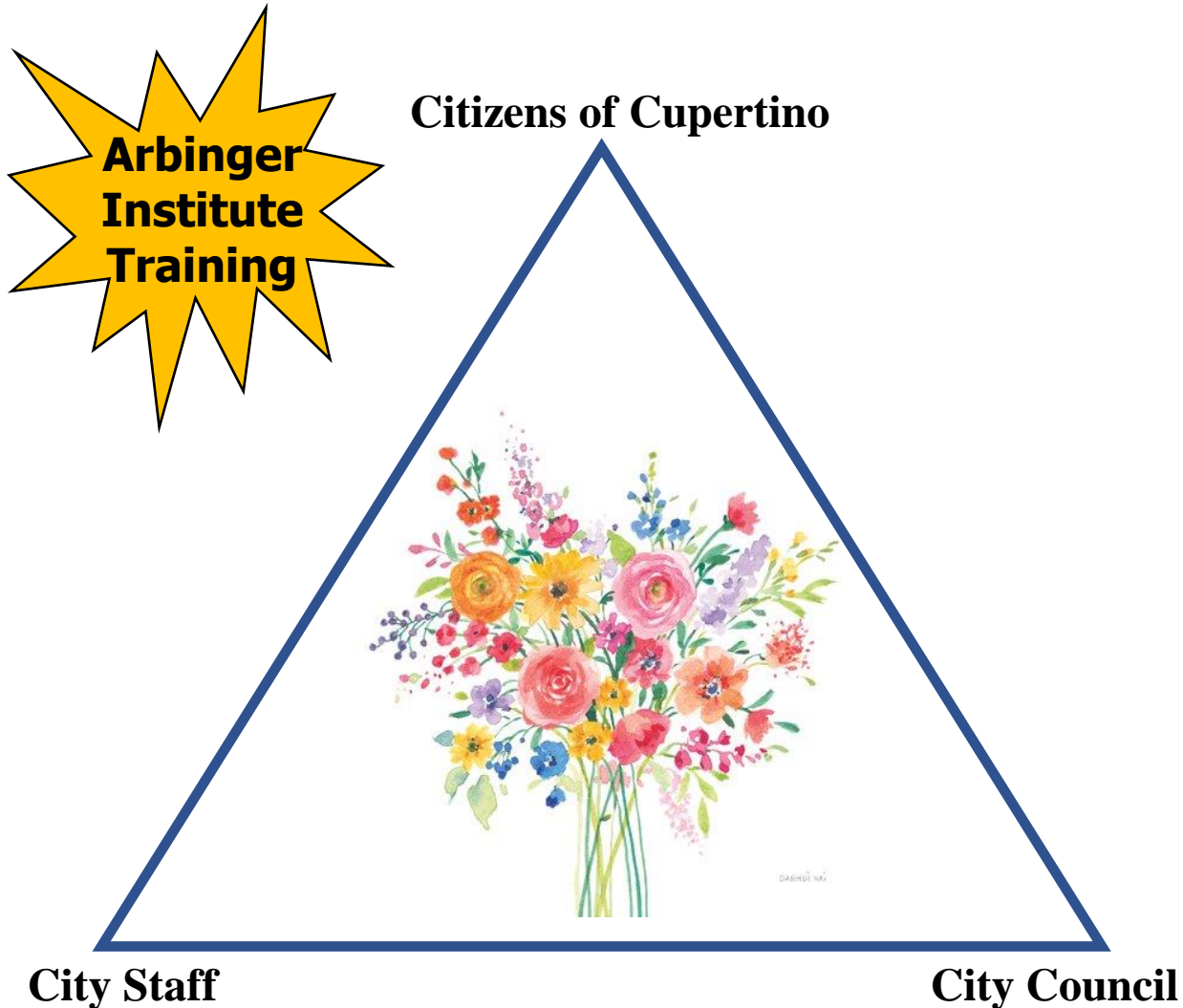
“Fiscal and financial risk management oversight is a key area of responsibility of every city council. Good governance requires that city councils routinely review the financial operations of the city, identify areas of weakness and/or risk, and oversee effective policies and procedures for implementation by city managers.”

Fruen Motion: “City Council May Establish Policy”

Mostly Agree with Recommendations

1. **Avoid “governance by email.”** This requires bilateral cooperation and response with candor. Q&A reports with packets are helpful. Written record helps to clarify.
2. **Improve Relations** Highly recommend Arbinger Training
3. **Rely on Staff** Decisions made in a vacuum are doomed for failure. It is okay to double-check and communicate findings appropriately. **'Yes Men' Hinder Success.** Relying on staff got us the Public Storage building that fails to comply with the N. De Anza Special Area of the General Plan and got us hideous signage that fails to comply with the Municipal Code. And no oversight of hazmat at Vallco.
4. **Use City Work Program** Note, Councilmember Fruen motioned for new work program item. OK?
5. **Develop Ethics Code**
6. **Rosenberg’s Training**
7. **Explore Ways for Councilmembers to obtain the information they need to make informed decisions**

Beautiful Things Can Happen when People Work Together



We need all 5 Councilmembers to work together. Each brings a unique set of skills. Chao and Moore were elected for their attentiveness to Cupertino Resident needs and commitment to understanding the issues thoroughly before recommending policy.

- FOCUS ON STRENGTHS
- RESOLVE WEAKNESSES
- BUILD TRUST CIRCLE BETWEEN CITIZENS, COUNCIL & STAFF

Fix City Hall “City staff voiced concern that their workplace, City Hall, had not been renovated and seismically improved”
2020-2022 Council set City Hall renovation plans in motion, only to have them stalled by the 2022-2024 Council.

From: [Rhoda Fry](#)
To: [City Clerk](#); [City Council](#)
Subject: Another item for 5/9/2023 agenda item #1
Date: Tuesday, May 9, 2023 2:07:42 PM
Attachments: [Show Me the Money - Financial Transparency Needed Grand Jury Report.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Clerk,

Please included the text of the attached for public comment for agenda item #1 5/9/2023

This report demonstrates Councilmember Moore's contributions to the betterment of our City by asking questions

Sincerely,

Rhoda Fry

SHOW ME THE MONEY: FINANCIAL TRANSPARENCY NEEDED



**2022 Santa Clara County
Civil Grand Jury**

December 14, 2022

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GLOSSARY AND ABBREVIATIONS

Government Code, Section 41004 California Government Code section 41004 states: “Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.”

Treasurer’s Reports The reports required by Government Code section 41004 may have various styles and titles. For purposes of this report, the Civil Grand Jury will refer to these reports throughout as "treasurer's reports."

Charter City Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides that the charter has the force and effect of state law. Article XI, section 5(a), the "home rule" provision, grants to charter cities the ability to govern over "municipal affairs."

There are six charter cities in Santa Clara County: San José, Palo Alto, Santa Clara, Sunnyvale, Gilroy, and Mountain View.

General Law City A general law city may only have a form of government authorized by state general law. A city that has not adopted a charter is bound by the state’s general laws even with respect to municipal affairs.

There are nine general law cities and towns in Santa Clara County: Los Altos, Los Altos Hills, Los Gatos, Milpitas, Campbell, Monte Sereno, Cupertino, Saratoga and Morgan Hill. The scope of this investigation is limited to general law cities.

GAAP Generally Accepted Accounting Principles: a set of accounting rules and standards established by the accounting industry.

SUMMARY

General law cities in California are required to comply with California Government Code section 41004 (Section 41004), which states, “at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.” The benefit of the law is to ensure financial accountability and public transparency as well as to foster better fiscal affairs. Treasurer's reports provide city councils with timely and accurate financial information necessary to make reliable and sound decisions.

The 2022 Santa Clara County Civil Grand Jury (Civil Grand Jury) found that there is widespread noncompliance with this state requirement throughout Santa Clara County (County) by the general law cities. As of the date of this report, six of the nine general law cities¹ in the County are noncompliant with this state law: Los Altos, Los Altos Hills, Los Gatos, Milpitas, Campbell, and Monte Sereno. Additionally, the City of Cupertino was initially noncompliant until the city took corrective action during the Civil Grand Jury's investigation. The City of Saratoga and City of Morgan Hill were the only two cities compliant prior to the investigation.

Based on responses from city officials, the Civil Grand Jury determined that there is a widespread misunderstanding among these general law cities in the County regarding Section 41004 reporting requirements. The Civil Grand Jury recommends that the noncompliant cities – Los Altos, Los Altos Hills, Los Gatos, Milpitas, Campbell, and Monte Sereno – comply with Section 41004.

¹ The Town of Los Altos Hills and the Town of Los Gatos are general law cities.

BACKGROUND

The State Legislature established the office of city treasurer by enactment of California Government Code, Title 4 - Government of Cities, Division 3 - Other Officers, Chapter 3 - City Treasurer. The statutory duties for city treasurers may generally be found in the following sections:

Section 41001: The city treasurer shall receive and safely keep all money the treasurer receives.

Section 41002: (a) The city treasurer shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in their possession; and (b) if the city has issued bonds, the city treasurer shall use a system of accounting and auditing that adheres to generally accepted accounting principles.

Section 41003: The city treasurer shall pay out money only on warrants signed by legally designated persons.

Section 41004: Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.

Pursuant to California Government Code section 36502, the city treasurer is an elective office. California Government Code section 36508 and California Elections Code section 9222 permit cities to submit to the electors the question of whether the city treasurer position should be an appointive office. In that instance, the financial duties assigned by the state statutes to the city treasurer are transferred from an elected treasurer to an appointed officer if approved by the electorate. Only one general law city in the County, Morgan Hill, continues to have an elected city treasurer, who serves for four years. All other cities in the County have opted to assign city treasurer duties to senior administrative staff.

METHODOLOGY

Upon receiving a complaint regarding Government Code section 41004 noncompliance in Cupertino, the Civil Grand Jury decided to expand the investigation to review all nine general law cities in the County: Los Altos, Los Altos Hills, Los Gatos, Milpitas, Campbell, Monte Sereno, Cupertino, Saratoga, and Morgan Hill. From March to August 2022, the Civil Grand Jury began the process by polling these Cities to determine if they produced treasurer's reports.

The Civil Grand Jury took the following steps:

- Contacted a total of 22 officials across nine cities who were responsible for tasks relevant to the topic of this report.
- Reviewed relevant sections of the California Government Code, California Elections Code, and examined the ordinances, policies, and memos of each city relevant to their city treasurer duties.
- Reviewed published city council and city committee agendas relevant to Section 41004.
- Reviewed other relevant city documents, including but not limited to financial audits, city organizational charts, and relevant job descriptions.
- Verified the six most recent treasurer's reports of each city, if submitted.

The Civil Grand Jury inspected the contents of each report to verify the inclusion of the required elements: monthly disbursements, receipts, and fund balances. The Civil Grand Jury also determined whether the reports were published at least once each month to be compliant with Section 41004.

It should be noted that most cities do not call their report "Treasurer's Report." [Appendix A](#) provides links to examples of compliant Section 41004 reports, showcasing variations in terms of report name, style, layout, and appearance.

The Civil Grand Jury used the 2011-2012 Solano County Civil Grand Jury report entitled "City Treasurer Functional Review" as a reference for this report.

INVESTIGATION

All interviews and email correspondence were designed to determine if general law cities complied with Section 41004. To be deemed compliant, a city must produce a financial document at least once each month that details all of the following: monthly disbursements, receipts, and fund balances – and must be filed with the legislative body. Six months of reports were requested to verify an existing track record. Data collection and verification took place from March to July 2022.

The results of this investigation are depicted in Table 1 below.

Table 1. Section 41004 Compliance Among Nine General Law Cities

City/Town	Compliant	Noncompliant
Los Altos		X
Los Altos Hills		X
Los Gatos		X
Milpitas		X
Campbell		X
Monte Sereno		X
Cupertino		X*
Saratoga	X	
Morgan Hill	X	

*During the investigation, Cupertino started complying with Section 41004.

There are a number of reasons for cities' noncompliance:

- Some cities were under the impression that the Section 41004 mandate was a discretionary guideline.
- Others adopted the practice of other cities that did not produce the requisite monthly reports.

However, the primary error among the cities was that they produced abbreviated reports that omitted required information such as receipts, disbursements, and fund balances. Some of the deficient reports lacked substance, with abbreviated information presented without context or details.

The Civil Grand Jury believes there is no fiscal impact involved in complying with Section 41004. Outside resources should not be required since existing staff already make some financial reports, collect this type of data, and should be able to produce treasurer's reports. Therefore, each of the deficient cities can be compliant with minimal effort or burden.

Noncompliant Cities and Towns

Los Altos

The City of Los Altos does not have an elected city treasurer. Further, the Los Altos Municipal Code does not specifically state which official performs the duties of a city treasurer. Los Altos Municipal Code Section 2.01.060, however, provides that the city manager is the administrative head of the city and is specifically empowered “keep the council at all times fully advised as to the financial condition and needs of the city.” In the City of Los Altos, monthly treasurer’s reports are not prepared and submitted to the city clerk in accordance with Section 41004.

At the time of the Civil Grand Jury inquiry in June 2022, the City of Los Altos did not submit any treasurer’s reports. According to the City of Los Altos, Government Code section 37208 indemnified them from the Section 41004 mandate. However, the language of Government Code Section 37208 refers to payroll warrants or checks and makes no mention of the reporting required by Section 41004, which requires a report of “receipts, disbursements and general fund balances.” Moreover, the language of Government Code Section 37208 neither excuses a city from complying with Section 41004 nor makes any reference to Section 41004.

Further, the city erroneously noted that its Generally Accepted Accounting Principles (GAAP) policy on financial reporting excused noncompliance with Section 41004 reporting requirements. In 2015, the city adopted a “Financial Policy” that reads in part, “The city’s accounting and financial reports are to be maintained in accordance with GAAP.” GAAP accounting does not address the Section 41004 mandated requirements.

SHOW ME THE MONEY: FINANCIAL TRANSPARENCY NEEDED

The Civil Grand Jury determined that the City of Los Altos does not produce treasurer's reports and thus is noncompliant.

Los Altos Hills

The Town of Los Altos Hills does not have an elected city treasurer. The town's Municipal Code is silent on who performs the duties of the treasurer; however, the Civil Grand Jury learned that the treasurer responsibilities fall to the director of administrative services.

The Civil Grand Jury received monthly treasurer's reports in June 2022. Upon inspection, however, they contained only disbursements and lacked receipts as well as fund balances; thus the reports are incomplete and noncompliant.

Los Gatos

The Town of Los Gatos does not have an elected city treasurer. The town's Municipal Code Section 2.30.035 delegates the responsibility of the treasurer and the ability to assign those duties to the town manager. The director of finance is responsible for the town's financial matters. The Town of Los Gatos produces quarterly reports, not monthly reports as required by Section 41004. While the disbursements, receipts, and fund balances are in the reports, they must be published at least once each month to comply with Section 41004. Because the production intervals are quarterly, the Town of Los Gatos is not in compliance.

Milpitas

The City of Milpitas does not have an elected city treasurer. Milpitas Municipal Code section VI-1-3.02 vests the duties of a city treasurer with the city manager, who is empowered to appoint a city treasurer pursuant to Section VI-1-3.04. In the City of Milpitas, the finance director produces weekly disbursement reports, quarterly receipt and investment reports for the general and special districts' funds, and annual reports for all other reporting.

At the time of inquiry in June 2022, the Civil Grand Jury noted well-prepared reports. However, the frequency of report submission does not meet Section 41004 criteria, which requires monthly reports. Reports showing all receipts, disbursements, and fund balances must be filed with the city clerk at least once each month. Due to submission infrequency, the City of Milpitas is not in compliance.

Campbell

In November of 2010, voters in the City of Campbell approved Measure O, which changed the office of the city treasurer (and city clerk) from an elected to an appointed office. The City of

Campbell's Municipal Code is silent on who has officially assumed those duties.² The Civil Grand Jury learned that the city's finance director has the responsibilities of a treasurer and oversees the preparation of financial reports. The reports are prepared by the accounting clerk, reviewed by the finance manager and the finance director, and approved by the city manager for inclusion in the council packet.

At the time of inquiry in June 2022, 21 reports were submitted. The submitted documents had no payroll records and accounts payable balances with paid or disbursed funds. Additionally, the required information was not published at least once each month.

The City of Campbell's submitted reports do not comply with Section 41004 because disbursements, receipts, and balances are not filed at least once each month.

Monte Sereno

The City of Monte Sereno does not have an elected city treasurer. The Monte Sereno Municipal Code section 2.04.010 designates the city manager as the director of finance and tasks the city manager with "performing all duties of City treasurer as set forth in Government Code sections 41000 et seq." At the time of inquiry in June 2022, six treasurer's reports were received by the Civil Grand Jury. While the reports did contain the required fund balances, the receipts and disbursements were not compliant with the Section 41004 requirement.

Compliant Cities

Cupertino

The City of Cupertino does not have an elected city treasurer. The City of Cupertino's Municipal Code section 2.24.030 states:

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

Until 2022, no staff member for the City of Cupertino had been preparing and delivering a monthly treasurer's report to the Cupertino City council. However, during the Civil Grand Jury's

² The City of Campbell's Municipal Code does not appear to have been updated. The City of Campbell's Municipal Code section 2.08.010 still states that the elected officers shall be those designated by general laws, which includes a city treasurer. Further, the code has other references to an elected city treasurer. (See Sections 2.16.040 [city treasurer compensation] and 2.16.010 [establishment of salaries].)

SHOW ME THE MONEY: FINANCIAL TRANSPARENCY NEEDED

investigation, the belated monthly treasurer's reports for January and February 2022 were published and placed on the Cupertino Audit Committee agenda.

The Civil Grand Jury recognizes the action taken by the City of Cupertino as soon as it was brought to their attention. The City of Cupertino is now compliant with Section 41004 as of March 2022, despite the stated history of not submitting the required reports.

Saratoga

The City of Saratoga does not have an elected city treasurer. The City of Saratoga Municipal Code section 2-20.035 states that the city manager shall serve as the city treasurer and be responsible for "other duties and responsibilities as required by law to be performed by the City Treasurer." Thus, the city manager is responsible for the preparation and submission of monthly treasurer's reports.

The Civil Grand Jury verified in June 2022 that regular monthly treasurer's reports are filed with the City of Saratoga and are fully compliant with Section 41004. These reports can also be found by the public on the city's website. An example is shown in [Appendix A](#).

Morgan Hill

The City of Morgan Hill has an elected city treasurer. The treasurer, in conjunction with the finance director, prepares the treasurer's reports.

The Civil Grand Jury verified in June 2022 that regular monthly treasurer's reports are produced. The reports contain all the required components of disbursements, receipts, and fund balances. Thus, the City of Morgan Hill is compliant with Section 41004. A compliant Morgan Hill treasurer's report is shown in [Appendix A](#).

CONCLUSION

Within the County, there is widespread noncompliance with California Government Code section 41004 by the general law cities. The Civil Grand Jury commends the cities of Saratoga and Morgan Hill for being in full compliance and notes the City of Cupertino's quick action to become compliant. The Civil Grand Jury recommends that the noncompliant cities of Los Altos, Los Altos Hills, Los Gatos, Milpitas, Campbell, and Monte Sereno comply with Section 41004. This is to be done by producing treasurer's reports at least once each month containing the required disbursements, receipts, and fund balance information. The benefit of implementing this recommendation overshadows any limited cost impact since existing staff could compile the report. In short, there is great benefit in producing these reports, as they improve financial transparency to the residents of the cities.

FINDINGS AND RECOMMENDATIONS

It is recommended that noncompliant cities start producing treasurer's reports as required by law. Some cities produce abbreviated information that does not include requisite financial information as defined in state Government Code section 41004. Some cities produce requisite reports, but not on a monthly basis.

Finding 1

The City of Los Altos is not submitting monthly treasurer's reports in compliance with California Government Code section 41004.

Recommendation 1

The City of Los Altos should comply with Government Code section 41004 by submitting monthly treasurer's reports that include monthly disbursements, receipts, and fund balances and by filing those reports with the city. This recommendation should be implemented by March 15, 2023.

Finding 2

The City of Los Altos does not produce treasurer's reports in compliance with California Government Code section 41004. The reason provided for non-compliance was that the City of Los Altos' financial policy does not require the preparation and submission of treasurer's reports. It is an erroneous belief that internal policies excuse compliance with Government Code section 41004.

Recommendation 2

The City of Los Altos should amend its financial policy to require that monthly treasurer's reports be prepared and submitted in accordance with California Government Code section 41004 by March 15, 2023.

Finding 3

The Town of Los Altos Hills produces monthly treasurer's reports but the content of those reports lacks monthly disbursements, receipts, and fund balances required by California Government Code section 41004.

Recommendation 3

The Town of Los Altos Hills should update their existing monthly reports to include monthly disbursements, receipts, and fund balances by March 15, 2023.

Finding 4

The Town of Los Gatos produced reports that contain the required content but does not produce the treasurer's reports on a monthly basis as required by California Government Code section 41004.

Recommendation 4

The Town of Los Gatos should produce its reports on a monthly basis to comply with California Government Code section 41004 by March 15, 2023.

Finding 5

The City of Milpitas does not produce monthly treasurer's reports as required by California Government Code section 41004.

Recommendation 5

The Civil Grand Jury recommends that the City of Milpitas comply with California Government Code section 41004 by producing monthly treasurer's reports that include monthly disbursements, receipts, and fund balances by March 15, 2023.

Finding 6

The City of Campbell does not produce monthly treasurer's reports as required by California Government Code section 41004.

Recommendation 6

The City of Campbell should comply with California Government Code section 41004 by producing monthly treasurer's reports that include monthly disbursements, receipts, and fund balances by March 15, 2023.

Finding 7

The City of Monte Sereno does not produce monthly treasurer's reports as required by California Government Code section 41004.

Recommendation 7

The City of Monte Sereno should comply with California Government Code section 41004 by producing monthly treasurer's reports that include monthly disbursements, receipts, and fund balances by March 15, 2023.

Finding 8

When the Civil Grand Jury began this investigation, the City of Cupertino was not in compliance with California Government Code section 41004. However, starting in March 2022, the City of Cupertino began producing treasurer's reports compliant with Section 41004.

Recommendation 8

The City of Cupertino should maintain compliance with California Government Code section 41004. Continued compliance is recommended.

Finding 9

The Civil Grand Jury commends the City of Saratoga for producing monthly treasurer's reports that include disbursements, receipts, and fund balances. The City of Saratoga is in full compliance with California Government Code section 41004.

Recommendation 9

No recommendation.

Finding 10

The Civil Grand Jury commends the elected city treasurer for producing monthly treasurer's reports that include monthly disbursements, receipts, and fund balances. The City of Morgan Hill is in full compliance with California Government Code section 41004.

Recommendation 10

No recommendation.

REQUIRED RESPONSES

Pursuant to California Penal Code section 933(b) et seq. and California Penal Code section 933.05, the Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
City of Los Altos	1, 2	1, 2

Responding Agency	Findings	Recommendations
Town of Los Altos Hills	3	3

Responding Agency	Findings	Recommendations
Town of Los Gatos	4	4

Responding Agency	Findings	Recommendations
City of Milpitas	5	5

Responding Agency	Findings	Recommendations
City of Campbell	6	6

Responding Agency	Findings	Recommendations
City of Monte Sereno	7	7

Responding Agency	Findings	Recommendations
City of Cupertino	8	8

Responding Agency	Findings	Recommendations
City of Saratoga	9	

Responding Agency	Findings	Recommendations
City Treasurer of Morgan Hill	10	

APPENDIX A: EXAMPLES OF COMPLIANT TREASURER'S REPORTS

On the following pages are two examples of monthly treasurer's reports that contain the required disbursements, receipts, and starting and ending fund balances and are therefore compliant with California Government Code section 41004. They are included to show that there are various names and formats that the reports may take. Following the examples are links to the full reports for ease of access.

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Example 1. Page 3 of 7 from Saratoga August 2022 Treasurer's Report

TABLE 1: CHANGES IN TOTAL FUND BALANCE

Fund Description	Prior Year Carryforward 7/1/2022	Increase/ (Decrease) July	Current Revenue	Current Expenditure	Transfer In	Transfer Out	Fund Balance 8/31/2022*
General Fund							
Restricted Fund Balances:							
Environmental Services Reserve	63,182	-	-	-	-	-	63,182
Committed Fund Balances:							
Hillside Stability Reserve	1,000,000	-	-	-	-	-	1,000,000
Assigned Fund Balances:							
Future Capital Replacement & Efficiency Project Reserve	2,796,663	-	-	-	-	-	2,796,663
Carryforwards Reserve	20,850	-	-	-	-	-	20,850
Facility Reserve	3,700,000	-	-	-	-	-	3,700,000
Unassigned Fund Balances:							
Working Capital Reserve	1,000,000	-	-	-	-	-	1,000,000
Fiscal Stabilization Reserve	3,150,000	-	-	-	-	-	3,150,000
Compensated Absences Reserve	331,481	-	-	-	-	-	331,481
Other Unassigned Fund Balance Reserve (Pre YE distribution)	3,348,282	(602,197)	682,632	(1,063,288)	-	-	2,365,429
General Fund Total	15,410,458	(602,197)	682,632	(1,063,288)	-	-	14,427,605
Special Revenue							
Landscape/Lighting Districts	977,231	-	44	(15,943)	-	-	961,331
ARPA Federal Grants	7,127,589	-	-	-	-	-	7,127,589
Special Revenue Fund Total	8,104,820	-	44	(15,943)	-	-	8,088,920
Debt Service							
Library Bond	805,311	(714,893)	3,312	-	-	-	93,730
Arrowhead Bond	481,242	(774)	-	(68,767)	-	-	411,701
Debt Service Fund Total	1,286,554	(715,667)	3,312	(68,767)	-	-	505,431
Internal Service Fund							
Liability/Risk Management	641,403	(759,998)	517	(6,948)	-	-	(125,027)
Workers Compensation	232,829	(2,185)	-	(54,431)	-	-	176,212
Office Support Fund	155,443	149	890	(2,027)	-	-	154,456
Information Technology Services	661,159	(30,693)	-	(98,942)	-	-	531,525
Vehicle & Equipment Maintenance	278,317	(5,541)	-	(20,466)	-	-	252,310
Building Maintenance	764,302	(22,267)	-	(60,637)	-	-	681,398
Vehicle & Equipment Replacement	1,201,979	-	-	-	-	-	1,201,979
Technology Replacement	798,337	-	-	-	-	-	798,337
Facility FFE Replacement	1,012,136	-	-	-	-	-	1,012,136
Internal Service Fund Total	5,745,905	(820,535)	1,407	(243,452)	-	-	4,683,326
Trust/Agency							
WVCWP Agency Fund	558,655	(29,955)	-	(41,044)	-	-	487,656
Trust/Agency Fund Total	558,655	(29,955)	-	(41,044)	-	-	487,656
Capital Project							
Street Projects	3,381,066	(34,069)	50,747	(355,438)	-	-	3,042,306
Park and Trail Projects	849,562	-	-	(4,143)	-	-	845,419
Facility Projects	623,475	4,458	-	(53,643)	-	-	574,289
Administrative Projects	1,429,921	7,042	8,205	(290)	-	-	1,444,879
Tree Fund Projects	52,541	-	-	-	-	-	52,541
Park In-Lieu Projects	1,172,555	-	-	-	-	-	1,172,555
CIP Grant Street Projects	(46,912)	-	-	-	-	-	(46,912)
CIP Grant Park & Trail Projects	-	-	100,000	-	-	-	100,000
CIP Grant Administrative Projects	(164,574)	-	-	-	-	-	(164,574)
CIP Grant ARPR/SLFRF Projects	-	-	-	(142,725)	-	-	(142,725)
Gas Tax Fund Projects	247,731	-	126,140	-	-	-	373,871
CIP Fund Total	7,545,366	(22,570)	285,092	(556,240)	-	-	7,251,649
Total City	38,651,757	(2,190,923)	972,487	(1,988,733)	-	-	35,444,587


*Fund balances are unaudited, and may not include all necessary adjustments. These figures will be updated in future reports once the FY 2021/22 independent audit is completed.

**Negative fund balance due to authorized spending of anticipated revenues

https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1578630/Treasurer_Report_for_August_2022.pdf

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Example 2. Page 12 of 21 from Morgan Hill March 2022 Financial and Investment Report

 CITY OF MORGAN HILL CASH AND INVESTMENT REPORT FOR THE MONTH OF MARCH 31, 2022 FOR THE FISCAL YEAR OF 2021-22					
	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	0.37%	\$ 45,441,165	25.03%	\$ 45,324,795
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	0.37%	16,505,883	9.09%	16,463,614
Federal Issues	All Funds Pooled	0.94%	98,042,404	54.01%	94,770,480
US Treasury Notes	All Funds Pooled	1.73%	6,437,395	3.55%	4,489,470
Certificate of Deposits	All Funds Pooled	0.45%	500,000	0.28%	499,998
Dreyfus Treas Cash Management Acct	All Funds Pooled	0.16%	85,113	0.05%	85,113
	SUBTOTAL		\$ 167,011,960	92.00%	\$ 161,633,469
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	0.01%	3	0.00%	3
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	0.01%	4	0.00%	4
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	0.01%	6,262,932	3.45%	6,262,932
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	0.01%	614,302	0.34%	614,302
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	0.01%	596,450	0.33%	596,450
	SUBTOTAL		7,473,690	4.12%	7,473,690
Other Cash/Deposits					
General Checking	All Funds		1,825,901	1.01%	1,825,901
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
CALPERS CERBT - OPEB Trust			3,487,404	1.92%	4,194,950
PARS - PENSION Trust			1,700,000	0.94%	1,987,827
	SUBTOTAL		7,050,417	3.88%	8,045,789
Total Cash and Investments			\$ 181,536,067	100.00%	\$ 177,152,949

** As of 02/28/2022

CASH ACTIVITY SUMMARY FY 2021-22			
Fund Type	07/1/21 Balance	Change in Cash Balance	3/31/2022 Balance
General Fund	\$ 19,007,873	\$ 1,673,604	\$ 20,681,477
Community Development	1,077,499	74,934	1,152,433
RDA Successor Agency (except Housing)	508,427	5,755,321	6,263,749
Housing Successor Agency/ CDBG	4,307,419	334,589	4,642,008
Water - Operations	2,573,349	431,704	3,005,052
Water Other	15,405,786	3,097,753	18,503,539
Sewer - Operations	1,593,140	1,632,205	3,225,345
Sewer Other	57,221,072	(3,033,264)	54,187,808
Other Special Revenue	7,425,644	1,105,689	8,531,334
Streets and Capital Projects (except RDA)	37,931,830	(173,075)	37,758,756
Debt Service	337,123	(32,855)	304,268
Internal Service	19,378,242	1,128,766	20,507,008
Agency Funds (assessment dists./refundable deposits)	3,356,940	(583,651)	2,773,290
Total	\$ 170,124,346	\$ 11,411,721	\$ 181,536,067

<https://www.morgan-hill.ca.gov/DocumentCenter/View/40944/March-2022-Financial-and-Investment-Report-PDF>

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Los Gatos Municipal Code 2.30.035.

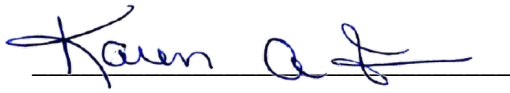
Milpitas Municipal Code VI-1-3.04.

Interviews

Interviews were conducted with 16 individuals between April 25, 2022, and June 16, 2022.

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This report was **ADOPTED** by the 2022 Santa Clara County Civil Grand Jury on this 14th day of December, 2022.



Karen Enzensperger
Foreperson

From: [Sean Hughes](#)
To: [City Clerk](#)
Subject: Written Comment for Special Session on May 9th 2023 - Support Staff Recommendations
Date: Tuesday, May 9, 2023 2:31:32 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I would like to submit the below for written comment on today's session:

I am emailing in support of Council's adoption of the seven recommendations given in the staff report for the Special Session on May 9th, 2023. If deemed necessary by Council during the special session I also support further measures such as censure or referral to the district attorney's office in order to prevent further violations of the municipal code, especially in light of recent interactions witnessed following the report.

Effective organization relies on trust and delegation. Thanks to the publication of this report, the public can confirm what many have witnessed in the past few years: a lack of trust and breakdown in the efficiency of Cupertino's governance. Even in light of the information in this report, there still is a disturbing lack of acknowledgement and personal accountability by former Mayor Darcy Paul (indicated in Public Comment on May 2, 2023), and Councilmembers Chao and Moore (indicated in comment on the Item debating waiving of attorney-client privilege to make the report public, and again during following items such as the park in-lieu fees discussion).

The first step in addressing a problem is recognizing the problem exists. The reluctance of these individuals to accept these findings, and to recognize the problems they continue to create, reinforce the need for further action. I support any actions this Council finds suitable to prevent further violations of the municipal code. At the very least, for the staff's sake, we should do all we can to improve the City's working environment and governance functions. Moreover, we have too many important issues at hand to be hampered by Councilmember Chao and Moore's misunderstanding of their job role, governance by email, and disrespect of city staff. As recommended in the report, I hope that Council can focus on actions and solutions for preventing further violations, and moving forward with trust in the City staff.

Finally, as a side note I would like to point to the subsection 5 of Finding 1, where the report concludes that "The abusive and controlling behavior of former Mayor, Darcy Paul, and former Planning Commissioner Wang, is substantiated in email communications between [them] and staff". (pg 15). As a concerned member of the public I am vindicated that our prior protestations were not without merit, and I hope it is clear the record reflects that this Council made a justified decision in the removal of former Commissioner Wang from his appointment.

Regards,
Sean

From: Jean Bedord <Jean@bedord.com>

Sent: Tuesday, May 9, 2023 2:28 PM

To: Cupertino City Manager's Office <citymanager@cupertino.org>; City Clerk <CityClerk@cupertino.org>; City Council <CityCouncil@cupertino.org>; Hung Wei <HWei@cupertino.org>; Sheila Mohan <SMohan@cupertino.org>; Liang Chao <LiangChao@cupertino.org>; J.R. Fruen <JRFruen@cupertino.org>; Kitty Moore <Kmoore@cupertino.org>; City Attorney's Office <CityAttorney@cupertino.org>

Subject: #1 Public Comment Fact Finding Report, Council, May 9, 2023: Fractured Communication

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honorable Mayor Hung Wei, Vice-mayor Sheila Mohan, Councilmembers, et al ,

Thank you for this commendable Fact Finding Report. Independent verification of the Civil Grand Jury findings is important in addressing the dysfunction between the council and city staff. However, **scope of the "governance by email" was greatly understated.** The investigator only reviewed about 1,500 email documents. It did not address the excessive use of councilmember PRA requests to obtain information, mostly irrelevant to their job role, requiring hours and hours of staff time to attempt to fulfill such requests.

PRA requests are handled in two ways: (1) the city's Online Public Records Portal <https://cityofcupertinoca.nextrequest.com/> (identified by PRA yy-ynn) and (2) Via email (identified by PRyynn). I submitted a request PRA 23-12 <https://cityofcupertinoca.nextrequest.com/requests/23-12> using the online portal with the following request:

Please provide copies of all Public Records Requests and the results by the following council members.

1. Councilmember Kitty Moore
2. Councilmember Liang Chao

The time period is July 1, 2022 to present.

One of the email threads retrieved (see attachment) was from PR22109 submitted by Councilmember Liang Chao regarding the Block Leader program.. The city clerk was faced with the task of **reviewing 7,300 emails in addition to other documents.** This was the PRA request itself.

From: Liang Chao <LiangChao@cupertino.org>
Sent: Friday, November 18, 2022 11:59 PM
To: City Clerk
Subject: PRA: Block Leader Programs

Hi,

I have been trying to understand the Block Leader Program since 2019. But it's been hard to find information. And antidotes from residents tend to vary and fragmented. So, I thought it's easier for me to just do a PRA to find the information I need.

I hope to get the following information from Jan. 1, 2014 to the present:

1. All outgoing communications to the current Block Leaders/Neighborhood Watch programs.
2. All communications to the public (not just block leaders) about the Block Leader/Neighborhood Watch leaders.
3. All meeting agenda materials at any council, commission or public meetings about the Block Leader/Neighborhood Watch programs.
4. All surveys and survey results on the Block Leader/Neighborhood Watch programs.
5. All communications from residents or block leaders about the Block Leader/Neighborhood Watch programs.

Thanks much.

Liang

Followed by an extension of the request:

From: Liang Chao <LiangChao@cupertino.org>
Sent: Monday, November 21, 2022 2:00 PM
To: City Clerk <CityClerk@cupertino.org>
Subject: Re: PRA: Block Leader Programs

Please also include all versions of maps for block leader/neighbor watch programs.

And any spreadsheet of the program, such as the date each block is created, the number of members in each block, etc.

Thanks.

Liang

As an information professional, I question the value of the majority of this information:

* Why back to 2014? That's 9 years ago, and the person who managed it retired. As of summer 2022, the program has been restructured, so this information is irrelevant.

Councilmember Chao's request was dated Nov. 18, 2022.

* Requests for communications for non-specific members of the public will retrieve many, many irrelevant documents which have to be reviewed by the city clerk and legal.

* Block leaders come and go, so only block maps and lists are relevant, not historical ones, which may have been ephemeral.

* Does some of the information requested even exist? Searching for non-existent data is time-consuming.

* Councilmember Chao claims that she doesn't have time to read council communications, so does she have time to go through the voluminous information provided by the PRA and make sense of it?

This is a project, not a PRA, and should be treated as such. A face-to-face meeting between staff and Councilmember Chao was needed to determine the "question behind the question" to clarify and narrow the scope of work to actual relevant documents that would satisfy her question instead of the proverbial "fishing expedition". **In my experience, email is NOT effective in defining information needs. The end result of such poorly constructed queries is a huge amount of work by staff but no relevant answers.**

On June 21, 2022, I submitted PRA 22-71 to the city through the PRA portal for PRAs submitted for the first months of 2022; <https://cityofcupertinoca.nextrequest.com/requests/22-71>. See the attachment which shows that the city provided 525 documents for 17 separate PRA requests (15 from Councilmember Kitty Moore and 2 from Councilmember Liang Chao) for the first 6 months of 2022.

This was PRA2044. Why? Isn't this a "fishing expedition"?

March 2022 account statements for each account the City has, such as the Chandler account (which is primarily bonds), USBank accounts (OPEB, Section 115 Trust, checking accounts, credit card accounts), Home Depot account, Office Depot account, the p-card account, and any other accounts the city may have for savings, various brokerage (like Chandler and USBank), checking, or credit cards (whether with USbank, Home Depot, Office Depot, or others).

This was PRA 22050— these invoices have been paid — why are they being dredged up in 2023?: Each of these documents had to be reviewed and redacted by the city clerk. Significant support from finance was required.

City Council Budget invoices for each of the 2021 Actual amounts for Charges for Services, Miscellaneous Revenue, Employee Compensation, Employee Benefits, Materials, Contract Services, and Special Projects; City Manager Budget invoices for each of the 2021 Actual amounts for Intergovernmental Revenue, Charges for Services, Employee Compensation, Employee Benefits, Materials, Contract Services and show each contract being charged, and Special Projects.

Councilmember Moore is a council member, not an auditor, nor does she have any municipal finance expertise – why isn't she talking directly with the finance manager? More importantly, what questions will these documents answer? Are the hours of scarce staff time justified by the end result? As noted on Pg. 16 of the Fact Finding Report:

“ However, Councilmembers Moore and Chao’s duties as councilpersons are, in accordance with the Municipal Code, separate and distinct from the performing of independent work as a City auditor, planner, housing specialist, or financial consultant, especially without approval by the entire City Council. ”

These requests are a significant drain on city resources, and **should be filtered for approval of the council**. More importantly, information requests need more vetting. As a library professional, I'm quite familiar with the skill of a reference librarian who can determine "the question behind the question" with a reference interview. It's almost never the original request! As a business analyst, I found that an in-depth interview often reduced a request from a 2-3 month project to less than a week. It's too hard for staff members to figure out the actual information that Councilmembers Liang Chao and Kitty Moore are asking for. Other than simple queries, finding the right information is an iterative process.

Councilmembers Liang Chao and Kitty Moore should commit to actually talk with city staff regarding their information needs, instead of “throwing it over the wall” and expecting the city clerk to read their minds on documents which could actually provide answers instead of a data dump.

For **public transparency** and the council, I **recommend that the city manager provide a report of all information requests (person requesting the formation and the subject), including PRAs and face-to-face by council members, in the City Manager Report for each meeting so the public knows how its dollars are being spent.**

Warm regards,
Jean Bedord
Cupertino resident

From: mmalik1@comcast.net
To: [Cupertino City Manager's Office](#); [City Clerk](#)
Cc: [City Council](#)
Subject: Probe takes Cupertino leaders to task
Date: Tuesday, May 9, 2023 3:05:33 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello all,

I read this article in the SJMN today:

[The Mercury News](#)

None of this comes as a surprise to me.

Watching the 3 members of Better Cupertino on the previous and current council, both live and on replays, this captures their not so hidden agenda and modus operandi.

They claimed the Civil Grand Jury report was flawed.

Today, I expect to hear similar comments from them regarding Linda Daube's independent investigative report.

I don't know how to resolve this lingering issue

Maybe some disciplinary action ?

Maybe forgiveness if some remorse is shown ?

Definitely hope they do not run for reelection.

We need to correct the bad rep our City has garnered in the local press.
Clearly all of it cannot be deemed "false" !

And one more thing as Steve Jobs used to say

If the Vallco development had been approved back in 2014, we would have soon be benefitting from the sales/use/property tax generated, and it would have offset the shortfall we are currently facing with the

SBOE reshuffling the sales tax revenue paid by Apple.

Mike Malik

mmalik1@comcast.net

Cell: 408.464.1039

From: [Liang Chao](#)
To: [City Clerk](#)
Cc: [Pamela Wu](#)
Subject: Statement to be read as soon as the meeting starts
Date: Tuesday, May 9, 2023 3:58:05 PM

I'd like to request the following statement be read in the beginning of the meeting as soon as the roll call is done.

And please enter this into the written communication.

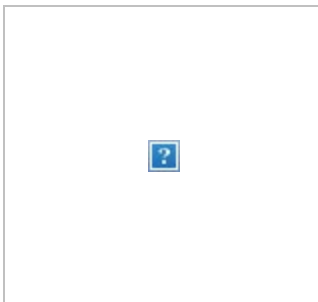
Thank you.

+=====

My company has an important internal event today, which requires all hands on deck. As the Mayor and the City Manager are aware, before the legal deadline to post the agenda, I had requested a start time of 6:45pm as any regular council meeting, but this request was denied.

I will join tonight's meeting as soon as I am able, which will likely be at 6:45pm. I respectfully request that no substantive action be taken until I am present.

=====



Liang Chao

Council Member

City Council

LiangChao@cupertino.org

408-777-3192



From: [Liang Chao](#)
To: [City Clerk](#)
Subject: Liang Chao's statement
Date: Tuesday, May 9, 2023 9:09:27 PM

Please enter this into the May 9 meeting record.

\This is the statement I read tonight.

=====

Citizens of Cupertino, City Council, City Staff

Under the Constitution, which I have sworn to protect and support, it is my responsibility as an elected City Councilmember to lead the city. Cupertino voters have elected me to lead and supervise the running of the City. My constitutional duties necessarily include obtaining information about all actions of the City as appropriate in my judgment as elected representative. The highest duty of every Councilmember is to serve the best interests of the residents, not the best interests of power brokers.

The highest duty of all City staff is to serve the interests of Cupertino residents represented by the elected City Council members, including providing information as and when requested by a member of the City Council. I very much appreciate the hard and dedicated work provided by City staff day-in, day out. And I trust that they are fully capable in answering questions to support their findings. And I trust that they appreciate public and council inputs and questions in order to arrive at the best policies for our constituents.

I will continue to ask questions, analyze the information, and vote on policies based on thorough research, critical to making informed decisions. I have always directed my questions to the City Manager and will continue to do so. The political power brokers have tried to influence and muzzle the city council and staff through anonymous undisclosed interviews. The expectation that council members are here solely to rubber stamp is precisely what is wrong with the government, and that is precisely why I stepped up to serve on Cupertino City Council. I will continue to speak up and serve Cupertino residents.

As an immigrant who has seen first-hand how democracy can be hollowed out behind the scenes, I will protect and defend the Constitution - of the People, by the People and For the People - to the best of my abilities. Democracy is a privilege that I have sworn an oath as an elected official to stand up for and to protect.

THANK YOU.

Liang Chao
Council Member
City Council
LiangChao@cupertino.org



408-777-3192

?	?	?	?	?	?	?
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From: [Kirsten Squarcia](#)
To: [Christopher Jensen](#); [City Clerk](#); [Pamela Wu](#)
Subject: FW: Written Communications Item 1 Today
Date: Tuesday, May 9, 2023 5:25:45 PM
Attachments: [Written Communications for City Council Special Meeting of May 9.pdf](#)
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[image031.png](#)
[image032.png](#)



Kirsten Squarcia

City Clerk
City Manager's Office
KirstenS@cupertino.org
[\(408\) 777-3225](tel:(408)777-3225)



From: Kitty Moore <Kmoore@cupertino.org>
Sent: Tuesday, May 9, 2023 4:03 PM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Subject: Written Communications Item 1 Today

Dear City Clerk,

Please provide the attachment to Written Communications for tonight's meeting.

Thank you,

Kitty Moore

Representing myself only



Kitty Moore

Councilmember
City Council
Kmoore@cupertino.org
[\(408\) 777-1389](tel:(408)777-1389)



Written Communications for City Council Special Meeting of May 9, 2023
Agenda Item 1

Comments:

1. The Fact-Finding Report appears to blame Staff turnover on Councilmembers and does not consider employees who may have been concerned about the December 2021 revelation of the CDTFA Audit which is resulting in massive cuts and staffing reductions, or Staff departure for other opportunities for career advancement, but tries to blame Councilmembers who have been serving during a pandemic and working from home.
2. The Fact-Finding Report provides an incomplete accounting regarding concerns I have had over the nearly 4.5 years which I have served and points only to the 14-year embezzlement which was discovered 4 years after it ended and had multiple internal controls suggestions for improvement which have become addressed through the assistance of the Council approved Moss Adams assessments and recommendations to the City. Other areas of concern have included failure to provide financial reports per Municipal Code and State Law, certain approvals, contracts, payments, enforcement of conditions, appropriations, and various purchases.
 - a. I will mention the most recent concern since I brought it up last week, which is the \$600k appropriated to Library Services in the current FY 23 Budget. In doing my Budget prep I found that the City has not had to pay for extra Library hours since FY 2018-19 yet was still appropriating these funds. The current Proposed Budget has now been corrected.
 - b. Everyone is familiar with my work noticing the hazardous waste problems at Valco. That developer finally agreed 3 years after they obtained approval from the City to bypass CEQA in 2018 with an SB 35 project, and 2 years after stating the project had a 'clean bill of health' in Spring of 2019, to SCCDEH regulatory oversight to protect the workers and residents when they begin cleanup. What they may not know is that the City Staff did not inform the Council or Public for the same two years that they were conducting peer reviews.
3. There appears to have been a shift from the original motion to have a secondary investigation regarding "House Divided" which was made February 21, 2023 by Councilmember Fruen, seconded by Mayor Wei and received a majority vote by Fruen, Wei, and Mohan with Chao abstaining and Moore voting no is as follows:

"...that the City Attorney will investigate and report back on other violations of the Municipal Code with respect to council-staff and commissioner-staff relations so that the City Council may establish policy to correct or prevent such violations in future."

On May 2, 2023 the same Council Majority voted to waive the important Attorney-Client privilege which damages the confidence in speaking to the City Attorney.

The Staff Report for today's meeting on the topic states something which holds a different meaning from the February 21, 2023 Council majority direction:

“If the City Council determines that the recommendations above and/or similar measures it may consider do not address the Councilmember conduct at issue, including violations of Municipal Code Chapter 2.17, Council may consider other remedies, including procedural changes to avoid future violations of the Municipal Code, censure, and/or referral to the District Attorney.”

The new version of Council direction includes remedies including referral to the District Attorney.

Thank you,

Kitty Moore
Representing myself only

From: [Liang Chao](#)
To: [City Clerk](#)
Subject: Fw: Statement to be read as soon as the meeting starts
Date: Tuesday, May 9, 2023 9:14:41 PM

Please enter this into the written communication for the May 9 meeting. This is a written record of what I said in the meeting:

After all of the public comment, during the break, a member of the public told me that the statement I sent in about the reason I have to arrive late was not read by either the City Manager or the City Clerk.

So, after the break, I made the following statement:

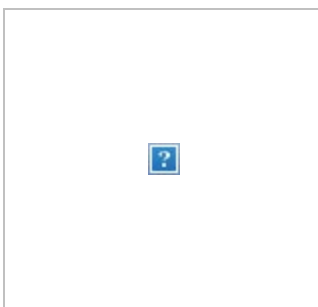
I just learned that the statement I sent to the City Manager and the City Clerk to be read right after the roll call was not read.

I am going to read that statement now.

"My company has an important internal event today, which requires all hands on deck. As the Mayor and the City Manager are aware, before the legal deadline to post the agenda, I had requested a start time of 6:45pm as any regular council meeting, but this request was denied.

I will join tonight's meeting as soon as I am able, which will likely be at 6:45pm. I respectfully request that no substantive action be taken until I am present."

Thank you.



Liang Chao
Council Member
City Council
LiangChao@cupertino.org
408-777-3192



From: Pamela Wu <PamelaW@cupertino.org>
Sent: Tuesday, May 9, 2023 4:20 PM
To: Liang Chao <LiangChao@cupertino.org>; City Clerk <CityClerk@cupertino.org>
Subject: RE: Statement to be read as soon as the meeting starts
Councilmember Chao,
We are in receipt of your request.
Pamela

**Pamela Wu**

City Manager
City Manager's Office
PamelaW@cupertino.org
[\(408\)777-1322](tel:(408)777-1322)



From: Liang Chao <LiangChao@cupertino.org>

Sent: Tuesday, May 9, 2023 3:58 PM

To: City Clerk <CityClerk@cupertino.org>

Cc: Pamela Wu <PamelaW@cupertino.org>

Subject: Statement to be read as soon as the meeting starts

I'd like to request the following statement be read in the beginning of the meeting as soon as the roll call is done.

And please enter this into the written communication.

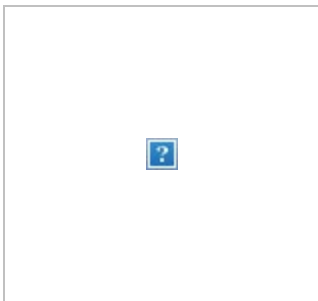
Thank you.

+=====

My company has an important internal event today, which requires all hands on deck. As the Mayor and the City Manager are aware, before the legal deadline to post the agenda, I had requested a start time of 6:45pm as any regular council meeting, but this request was denied.

I will join tonight's meeting as soon as I am able, which will likely be at 6:45pm. I respectfully request that no substantive action be taken until I am present.

=====


**Liang Chao**

Council Member
City Council
LiangChao@cupertino.org
[408-777-3192](tel:408-777-3192)




From: [Kirsten Squarcia](#)
To: [City Clerk](#)
Subject: CC 5-9 #1 written communications
Date: Wednesday, May 10, 2023 7:57:52 AM
Attachments: [Scan May 10, 2023 at 7.52 AM.pdf](#)

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Kirsten Squarcia
City Clerk
City Manager's Office
KirstenS@cupertino.org
(408) 777-3225










From: [Kirsten Squarcia](#)
To: [City Clerk](#)
Subject: CC 5-9 #1 written communications
Date: Wednesday, May 10, 2023 8:00:34 AM
Attachments: [Scan May 10, 2023 at 7.57 AM.pdf](#)

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Kirsten Squarcia
City Clerk
City Manager's Office
KirstenS@cupertino.org
(408) 777-3225



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111 SECTION B

'ABUSIVE AND CONTROLLING BEHAVIOR'

Probe takes Cupertino leaders to task

Investigation comes after a Santa Clara County Civil Grand Jury report issued similar findings

By Grace Hase

ghase@bayareanewsgroup.com

An independent investigation into the conduct of Cupertino councilmembers revealing "abusive and controlling behavior" from former Mayor Darcy Paul and a culture of distrust in city staff from two current councilmembers has significantly inter-

fered with city operations.

The city commissioned the investigation following the release of a Santa Clara County Civil Grand Jury report last December titled, "A House Divided," which looked into complaints about a potential adversarial relationship between the council and city officials. The civil grand jury found

distrust from councilmembers has led to an exodus of staff with 60% of senior management leaving since January 2022, and difficulty recruiting and hiring. The city has also had four different city managers since 2019.

In February, the council asked the attorney's office to investigate the claims to determine whether there were any violations of the municipal code.

The city hired Santa Rosa-based employment attorney



Former Cupertino Mayor Darcy Paul is among current and former city leaders who have been cited in reports for fostering a culture of distrust among city staff members.

ANDA CHU
STAFF PHOTOGRAPHER

POP CULTURE

SAN JOSE

Organizers warily pull plus on this

WORKERS HANDLE A PRESIDENTIAL SITUATION

Report

FROM PAGE 1

Linda Daube to conduct the investigation, which included the review of more than 1,500 emails and interviews with 16 former and current executive and management staff. Mayor Hung Wei and Councilmembers Liang Chao and Kitty Moore also were interviewed. Paul was asked to participate but couldn't due to scheduling conflicts.

In the fact-finding report, which the council voted 3 to 1 last week to publicly release — Chao voted no and Moore recused herself — Daube said that Chao and Moore sent "voluminous email requests for additional and duplicative information" about staff recommendations on council actions. In interviews with Daube, both councilmem-

bers acknowledged they have trust issues with the city staff.

According to four interviewees, the tone of the councilmembers' emails were "threatening, accusatory, and somewhat coercive, leading staff to believe if they don't appropriately respond, they will continue to be 'badgered.'"

Other current and former staff blamed the council's dysfunction on Moore and Chao, who they described as "not understanding their roles in carrying out their council duties."

Emails reviewed by the investigator found that Moore repeatedly failed to show up for one on one meetings with the city manager and opted to send "voluminous emails" instead. She told Daube that she believes her role as a councilmember is to double-check staff's work.

Similarly, the investiga-

In an email, Chao criticized the investigation, say-

tor found that Chao also conducts her own independent research and that she has frequently believed that "staff has made errors in their analysis and has relied upon incorrect information."

Current and former staff said they felt "devalued, demeaned and frustrated" by the two councilmembers and perceived their requests for information as "subtle attempts" to influence staff priorities and recommendations.

Both Moore and Chao told the Mercury News that they would continue to ask questions despite the reports findings.

"I can't control how people with a political agenda interpret my emails," Moore said. "However, what I can say is that the sole reason I put these things in writing is to ensure clarity, respect and accountability."

In an email, Chao criticized the investigation, say-

ing that the "political power brokers have tried to influence the city council and staff through anonymous undisclosed interviews."

"The expectation that council members are here solely to rubber stamp is precisely what is wrong with the government, and that is precisely why I stepped up to serve on Cupertino City Council," she said. "As an immigrant who has seen the suppression of democ-

racy first-hand, I will always serve to the best of my abilities, because democracy is a privilege that I have sworn an oath as an elected official to stand for and protect."

The investigation also found "abusive and controlling behavior" from Paul and former planning commissioner Ray Wang, who was removed from his role in March following accusations of harassment.

Daube said that "emails communications reflect that Paul berated staff, dictated procedures, directed hiring and firing decisions, and

intermittently made commitments in front of staff, such as 'remember who you work for.'"

Cupertino has a council-manager form of government where the city manager — not the mayor — is in charge of hiring and firing decisions.

Paul's conduct significantly contributed to creating a dysfunctional work environment, according to many of the staff members interviewed.

The former mayor told the Mercury News in an email that he is "proud" of his eight years in office and how he conducted himself.

"To me, the bigger issue is that Cupertino is staring into the abyss of a fiscal crisis," he said. "It would make much more sense to me for the Cupertino City Council to spend its time, energy and resources on how it will preserve the needs of the residents and the quality of life now that hard decisions are looming, rather than what seems to be an extension of an exercise in political

gamesmanship." Councilmember J.R. Fruen, who was elected in November, said he wants "to think that people can change and do better" based on the findings of the report. However, since Paul is no longer on the council, he said it may be more difficult to come to a resolve.

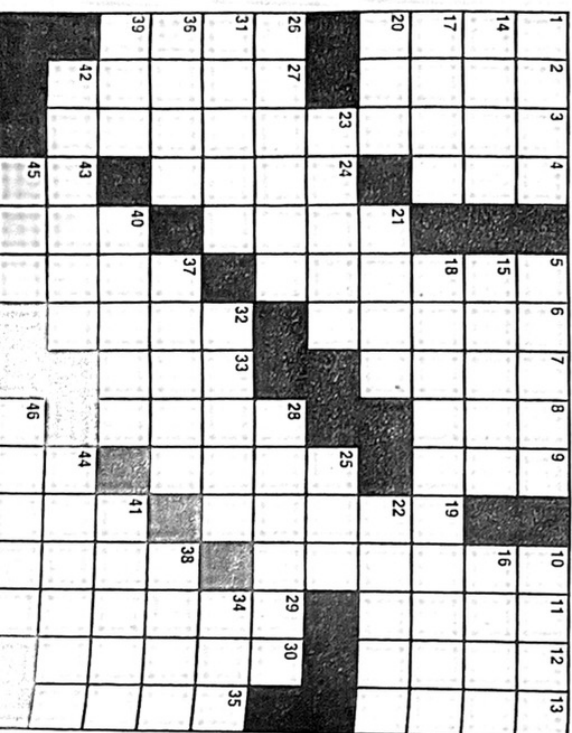
"There is no change he can make in his behavior," he said. "We're dealing with completed actions in the past, in particular the issue of directing the hiring and firing of staff, which is something that is not appropriate. How do we ensure there is an appropriate consequence there so we don't see a recurrence of that activity?"

The council is set to discuss the investigative report and its recommendations Tuesday evening and whether it will take further action, such as procedural changes, censure or referral of violations to the district attorney for further investigation.

The Daily Commuter

ACROSS

- 1 Shirts & blouses
- 5 Units of length
- 10 Foot part
- 14 " want for Christmas is my...
- 15 Worship
- 16 Bridges
- 17 Source of protein
- 18 Lessening
- 20 sauce; leniyaki marinade
- 21 Shipbuilding wood
- 22 Stupid
- 23 Ghost
- 25 Moral transgression



Bill

FROM PAGE 1

harm or eating disorders, and of the content we remove or take action on, we identify over 99% of it before it's reported to us."

Rachel Holland, a Meta spokesperson, offered information on a variety of features teens and par-

ents can use to shape what young people see, like a setting that makes new teen users less likely to encounter sensitive content, and a

If the California bill became law, would it be able to dodge and weave its way through legal challenges? Tech industry lobby-

ists, as well as some digital rights advocates and internet law experts, say that the bill would immediately bump up against the First Amendment of the U.S. Constitution and federal law.

The bill runs afoul of the Constitution because the Supreme Court has generally interpreted the First Amendment as protect-

ing the editorial decision

for the California bill. Section 230 of the Communications Decency Act protects tech companies from legal responsibility for content posted by users on their platforms. If, for example, someone posts a defamatory review of a restaurant on Yelp, the restaurant owner could sue the poster, but Yelp itself would be protected, Cope said.

Skinner, an Oakland Democrat who authored the bill, argues that the bill holds companies liable for their own

SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

TEN MINUTES FOR TEN YEARS

Good evening. I am Darcy Paul, the immediate past Mayor of Cupertino, and a member of the Cupertino City Council from the end of 2014 until the end of 2022, last year. I am here this evening to address the agenda item for this special meeting. Several people are contributing their time to me tonight for these ten minutes, and I would like to acknowledge them here now. Tessa Parish, Eric Schaefer, Lisa Warren and Martin Won, thank you for kindly allocating your speaking time.

Physicist Neil deGrasse Tyson recommended, when asked which books everyone should read, that people read eight books in order to "glean profound insight into most of what has driven the history of the western world." The Age of Reason by Thomas Paine is recommended by Dr. Tyson "to learn how the power of rational thought is the primary source of freedom in the world."

Rational thought tells me that we need to be working on actual problems and the major issues that we addressed while I was in office. By way of just a few significant examples, we need to get the environment right. Transit is deeply important infrastructure that we haven't completed and which we have the opportunity to improve significantly. But now we are staring down a fiscal crisis locally.

I believe that our community produces exemplary practices and nurtures excellent people, and although if you don't understand my position there, what you see in effect might not be understood, but what you're looking at is a source of deep optimism. Why is it optimistic when I stand here and remind people, just like I was reminded countless times when I was in office, "Remember who you work for."? That is not a threat. That is a statement of the core value of our system of governance. You work for the public.

And, using rational thought in the absence of fear and favor tells us this. Despite the fact that we do an exemplary job, that is no excuse for stagnation. That is no reason not to keep constantly improving or constantly asking questions. And it is not only

precisely the reason why we must work together, it also points a clear direction as to how we can work together. We cannot fear the process. We cannot demonize questions. But, yes, of course, we should not demonize each other either. And so, my ask as a resident and voter of Cupertino to our City Council, to Mayor Hung Wei, to Vice Mayor Sheila Mohan, to Councilmember Liang Chao, to Councilmember JR Fruen, and to Councilmember Kitty Moore, is that you work with each other and that you work with staff. Understand that the dynamics and conceptions of that work are a matter of perspective. It will be challenging at times to respond to challenging questions. If you are doing the responding, please know that your provision of information and materials sits at the very core of what comprises the aspirations of our society towards openness, thoughtfulness and the arrival at a coherent result and while not utopian, it is the closest we can possibly get to the more perfect union that is in the fabric of our social charter. If you are doing the asking, please do so in a manner designed specifically to relieve the interpersonal and systemic concerns.

These are concerns which, from what I experienced, can and should be addressed through the human interactive dynamic. We did a lot in my eight years in office. One thing that I noticed is that when people get together for coffee or a meal, they are far less likely to attack each other. That's why I think that in your upcoming budget, even though we have constraints, you should allocate an amount to let you meet with at least one other Councilmember that you don't regularly communicate with outside of the meetings at least once a month. And work with staff to figure out ground rules of interaction, and maybe even the same types of interfacing opportunities.

The current path is not the way to get things done. It's not the way to improve anything, including the project that has challenged our City over the years, and that division really has to end with us talking to each other as people. Although I consistently challenged us to question how the project would help alleviate the housing crisis, I was also constantly working on addressing and improving not just the project as it was then proceeding, but our interactions regarding it.

Mayor Wei, you know this to be true. I knew that we had to start communicating with the property owner, and that's why each

of us met on site last year, separately, with clear and explicit guidelines not to communicate serially, with the property owner and staff. The work was happening. But they have to build on a cleaned up site. That kind of requirement is not negotiable. That's a matter of public safety and the health of people. Process and doing the work, and asking questions, allowed us to ensure that contaminants would be cleaned up properly and that the project would succeed, and this despite the policy-based concerns raised, which, I must emphasize, is not a reason to persecute.

As for the systemic, there are two issues that are really at play. First, entitlement. Who gets to have the voice? Who gets to be listened to? Whose decisions control? Second, backchanneling. This report accuses two people of backchanneling. It accuses me of directing hiring and firing decisions. Let me tell you. The real issue is this. In a community where the decisions are made by certain people, how do we arrive at a point where the sense of entitlement does not inappropriately affect the decisions? I will give you one major example of this. Lobbying. In Cupertino, as in many jurisdictions, if you receive money to affect our public process and the decisions made by the elected officials, then you have to report yourself as a lobbyist. Prior to this last election cycle, a non-profit organization in our community sued the City over this lobbyist reporting law. In the absence of this requirement, undisclosed backchanneling occurs. Backchanneling is what it sounds like. It's finding a channel in the back in order to arrive at your destination. But in the public process, you have policymakers and people who are elected openly to make the decisions that you make, openly, and part of that ultimate decision-making process by the voters is to know who is getting paid money to try to influence the decisions of the people whom they voted into office and the processes of the people who are paid and benefitted to carry out the work of the public. That is why we are not in reality at the intersection of a law that is being cited because people ask questions, and where statements are distorted in order to make them fit anonymous interpretations where the accused are neither investigated nor accused by disinterested peers and are also not provided the ability to confront their accusers. That is not the intersection we are at. We are at a four-way intersection of entitlement and backchanneling, as well as openness and efficacy. I hope that we navigate this

SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

intersection with the understanding of how each of these factors are best approached in order to optimize our journey.

My other request to you, the City Council that represents me, personally, in our local government takes me to the title of these remarks. "Ten Minutes for Ten Years." Yes, I am proud of my service in office. But it was more than enough to last a lifetime. If there are people to help, and a reason to serve again, I plan to consider the question no earlier than in ten years, but it's not something that is an endpoint or an aspiration, and it was most definitely not something that I remotely believed would drag me back into these chambers nine and a half years ahead of that time for something like this. It's a matter of helping people and that must start with relationships, and I hope that you take that sentiment to heart in your service as well. In the meantime, family and professional work are the priorities.

Let's complete the circle here and return to Dr. Neil deGrasse Tyson. I leave you now with this thought as to one of the other eight books he recommends that everyone read, and why:

The Prince (Machiavelli) [to learn that people not in power will do all they can to acquire it, and people in power will do all they can to keep it]

The purpose of my service, I realize now, was a response as a hopeful solution to the tendencies associated with power. I stand before you now to ask that you think about whether, perhaps, our problems, as now couched, might be better addressed and solved by talking to each other rather than by the use of public resources in the current manner in the midst of a severe fiscal crisis the resolution of which is going to take cooperation and collegiality.

Those are the hopes I leave you with. And while I say to you "Ten Minutes for Ten Years," I'm around. Let's get coffee or lunch sometime.