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CITY COUNCIL STAFF REPORT

Meeting: February 7, 2023

Subject

Consider approval of response to the 2022 Civil Grand Jury of Santa Clara County Report entitled "A House Divided: Cupertino City Council and City Staff"

Recommended Action

Approve the response to the 2022 Civil Grand Jury of Santa Clara County Report entitled "A House Divided: Cupertino City Council and City Staff"

Discussion

On December 19, 2022, the 2022 Civil Grand Jury of Santa Clara County released a report on various aspects of governance in the City of Cupertino ([Attachment A](#)). Topics discussed in the Grand Jury Report include:

- Councilmanic interference and mutual distrust between Council and staff
- Failure to provide monthly treasury reports in compliance with Government Code section 41004
- Fiscal and risk management issues
- City staff turnover
- The City's Ethics Policy

The preparation of monthly treasurer reports was addressed in a separate Grand Jury Report released on December 14, 2022 and in the City's response to that report dated January 18, 2023.

The December 19 Grand Jury Report includes the following findings and recommendations:

Finding 1

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

Recommendation 1

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

Finding 2

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

Recommendation 2

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

Finding 3

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

Recommendation 3a

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

Recommendation 3b

The City should employ the use of continuing annual internal audits to assess progress in the development and implementation of new or modified policies and procedures to comply with internal audit risk reduction and mitigation recommendations. Recommendation 3b should be implemented by July 31, 2023.

Finding 4

A comprehensive Code of Ethics not only provides guidance and baseline standards for ethical behavior, it includes sanctions and consequences for

deviations from the standard. The City's Ethics Policy is generic and lacks enforcement provisions and therefore fails to provide a framework to address ramifications for policy violations.

Recommendation 4a

The City should establish an independent Public Ethics Commission with guidance from experts in applied ethics, such as the Markkula Center for Applied Ethics at Santa Clara University, to: (i) develop and implement a robust government ethics training program for all councilmembers; and (ii) evaluate a best practices enforceable Code of Ethics and Conduct Policy that governs all councilmembers and appointed officials for consideration by the City Council. This recommendation should be implemented by March 31, 2023.

Recommendation 4b

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

Recommendation 4c

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

Recommendation 4d

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

Pursuant to California Penal Code section 933(c), the City must respond to the Grand Jury Report's findings and recommendations by March 20, 2023. A draft response for the City Council's consideration is included as Attachment B. The proposed response focuses on the findings and recommendations made by the Grand Jury and does not evaluate the accuracy of other factual conclusions in the Grand Jury Report. Staff seeks Council input into the draft response and regarding implementation of the Grand Jury's recommendations. With the exception of recommended revisions to the Ethics Policy, much of the content of the recommendations is consistent with policy direction that Council has previously provided or operational actions that have been or will be undertaken by the City Manager. If approved by the City Council, the response to the Grand Jury Report will be submitted to the Presiding Judge of the Santa Clara County Superior Court before the response deadline.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

Prepared by: Christopher D. Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A - Civil Grand Jury of Santa Clara County Report

B – Draft Response to Civil Grand Jury of Santa Clara County