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CITY COUNCIL STAFF REPORT

Meeting: May 9, 2023

Subject

Consider a report regarding the review of potential violations of the City of Cupertino Municipal Code and City policies regarding Council- and commissioner-staff relations ("Report").

Recommended Action

Consider the recommendations in the Report.

Reasons for Recommendation

On December 19, 2022, the Santa Clara County Civil Grand Jury issued a report entitled, "A House Divided: Cupertino City Council and City Staff" (Attachment A). The Grand Jury report resulted from multiple complaints concerning the conduct of the City Councilmembers toward City management and staff. According to the Grand Jury report, the Civil Grand Jury reviewed allegations that (1) Councilmembers interfered in the day-to-day operations of the City; (2) Councilmembers routinely berated and belittled presentations made by the City staff during the City Council meetings; and (3) certain Councilmembers gave direct work assignments to City employees, contrary to the requirements of the Council-Manager form of government as set forth under the Cupertino Municipal Code.

Following its deliberations, the Grand Jury released a report that included four findings, three of which are relevant to the item pending before Council.

Finding 1: The City has a culture of distrust between the Councilmembers and City staff that is creating dysfunction.

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.

Finding 4: A comprehensive Code of Ethics not only provides guidance and baseline standards for ethical behavior, if includes sanctions and consequences for deviations from the stand. The

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

On February 21, 2023, the City Council considered the Grand Jury report and approved the City's response to the report pursuant to Penal Code section 933 (Attachment B). As part of the City's response, the City Council directed the City Attorney's Office to investigate and report back on violations of the Municipal Code with respect to Council-staff and commissioner-staff relations. The City Attorney's Office retained Linda Daube, Esq. to conduct an independent investigation of potential violations of the Municipal Code and related violations of City policies.

The City Council was initially provided a confidential, attorney-client privileged Report regarding the investigation. On May 2, 2023, the City Council voted to waive privilege and release the report to the public, and to continue further discussion of the Report until the public has had the opportunity to review it.

The Report (Attachment C) includes seven recommendations directed at facilitating more effective Council-staff relations and enhancing the City Council's ability to accomplish its goals, which are summarized below and discussed in more detail in the Report.

1. Councilmembers should avoid "governance by email" and should rely on their 1:1 meetings with the City Manager to avoid adverse impacts to City operations and to facilitate communication and trust between the Councilmembers and the City Manager and City staff.
2. Councilmembers should attempt to improve the contentious relationship that certain members have had with City staff and should communicate any concerns about staff to the City Manager, who is accountable to the City Council for her staff's performance.
3. Councilmembers should rely on the advice of and give weight to the recommendations of executive management staff and other professionals in considering items that come before the City Council.
4. The City Council should continue to use the City Work Program as a way to implement Council's goals, and the City should rely on the Work Program to focus resources and determine staffing needs.
5. The 2018 Ethics Code should be used as a basis for developing revisions to a new Ethics Policy.
6. The City Attorney and City Clerk should consider providing Councilmember training on Rosenberg's Rules of Order.
7. The City Manager should explore ways to resolve Councilmember needs for information, given limited staff resources (*e.g.*, 1:1 meetings).

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.

Sustainability Impact

Not applicable.

Fiscal Impact

No fiscal impact.

California Environmental Quality Act

Not applicable.

Prepared by: Christopher D. Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Grand Jury Report – "A House Divided: Cupertino City Council and City Staff"

B – City of Cupertino Response to Grand Jury Report

C – Fact Finding Report