



## City of Cupertino

# **DRAFT Code of Ethics and Conduct For Elected and Appointed Officials**

Adopted \_\_\_\_\_ by Resolution No. 18-\_\_\_\_\_

## PURPOSE

The Cupertino City Council adopts this Code of Ethics and Conduct to assure that all elected and appointed officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of Cupertino's City government.

## ETHICS

The citizens and businesses of Cupertino are entitled to have fair, ethical, and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government;
- Are independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, City Manager, City Attorney, and all Commissions shall conduct themselves in accordance with the following ethical standards:

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Cupertino and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before them.
2. **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of California and the City of Cupertino in the performance of their public duties.
3. **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Commissions, the staff, or public.
4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.
5. **Conduct at Public Meetings.** Members shall prepare themselves for public issues;

listen courteously and attentively to all public discussions before the body; and focus on the business at hand.

6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts peculiar to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.
7. **Communication.** For adjudicative matters pending before the body, members shall rely upon agenda materials and information received at the public meeting for information to support their decision, and shall refrain from receiving information outside of an open public meeting, except on advice of the City Attorney. Members shall publicly disclose substantive information that is relevant to a matter under consideration by the body which they may have received from sources outside of the public decision-making process.
8. **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good and compliance with conflict of interest laws, members shall use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Members shall not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or (c) a strong personal bias.

A member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the City Attorney and reasonably cooperate with the City Attorney to analyze the potential conflict. If advised by the City Attorney to seek advice from the Fair Political Practices Commission (FPPC) or other appropriate State agency, a member shall not participate in a decision unless and until he or she has requested and received advice allowing the member to participate. A member shall diligently pursue obtaining such advice. The member shall provide the City Attorney a copy of any written request or advice, and conform his or her participation to the advice given. In providing assistance to members, the City Attorney represents the City and not individual members.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including

other members unless otherwise permitted by law.

9. **Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
10. **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
11. **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City staff time, equipment, supplies, or facilities) for private gain or for personal purposes not otherwise authorized by law.
12. **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Commission or proceeding of the City, nor shall members of Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. **Advocacy.** Members shall represent the official policies or positions of the City Council or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Cupertino, nor will they allow the inference that they do. Councilmembers and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, Commission meetings, or other official City meetings.
14. **Policy Role of Members.** Members shall respect and adhere to the Council-Manager structure of Cupertino City government as outlined in the Cupertino Municipal Code. In this structure, the City Council determines the policies of the City with the advice, information, and analysis provided by City staff and Commissions, and the public. Except as provided by the City Code, members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

15. **Independence of Commissions.** Because of the value of the independent advice of Commissions to the public decision-making process, members of the City Council shall refrain from using their position to unduly influence the deliberations or outcomes of Commission proceedings.
16. **Positive Work Place Environment.** Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

## **CONDUCT GUIDELINES**

The Conduct Guidelines are designed to describe the manner in which elected and appointed officials should treat one another, City staff, constituents, and others they come into contact with while representing the City of Cupertino.

### **1. Elected and Appointed Officials' Conduct with Each Other in Public Meetings and Private Encounters**

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

#### ***(a) Honor the role of the Chair in maintaining order***

It is the responsibility of the Chair to keep the comments of members on track during public meetings. Members should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

#### ***(b) Practice civility and decorum in discussions and debate***

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.

#### ***(c) Avoid personal comments that could offend other members***

If a member is personally offended by the remarks of another member, the

offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The Chair will maintain control of this discussion.

(d) *Demonstrate effective problem-solving approaches*

Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(e) *Continue respectful behavior in private*

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

## 2. **Elected and Appointed Officials' Conduct with the Public in Public Meetings**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice, or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

(a) *Be welcoming to speakers and treat them with care and gentleness*

While questions of clarification may be asked, the official's primary role during public testimony is to listen.

(b) *Be fair and equitable in allocating public hearing time to individual speakers*

The Chair will determine and announce limits on speakers at the start of the public hearing process.

(c) *Practice active listening*

It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room gives the appearance of disinterest. Members shall try to be conscious of facial expressions, and avoid those that could be interpreted as "smirking," disbelief, anger, or boredom.

(d) *Maintain an open mind*

Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.

(e) *Ask for clarification, but avoid debate and argument with the public*

Only the Chair – not individual members – can interrupt a speaker during a

presentation. However, a member can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

3. **Elected and Appointed Officials' Conduct with the Public in Unofficial Settings**

(a) *Make no promises on behalf of the Council, Commission, or City*

Members will frequently be asked to explain a Council or Commission action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or Commission action, or to promise City staff will do something specific.

(b) *Make no personal comments about other members*

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions, or actions.

4. **Elected and Appointed Officials' Conduct with City Staff**

Governance of a City relies on the cooperative efforts of elected officials who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

(a) *Treat all staff as professionals*

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

(b) *Do not disrupt City staff from their jobs*

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.

(c) *Never publicly criticize an individual employee*

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the

employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager.

(d) *Do not get involved in administrative functions*

Elected and appointed officials acting in their individual capacity must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

(e) *Do not solicit political support from staff*

Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

(f) *No Attorney-Client Relationship*

Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

5. **Council Conduct with Commissions**

The City has established several Commissions as a means of gathering more community input. Citizens who serve on Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

(a) *If attending a Commission meeting, be careful to only express personal opinions*

Councilmembers may attend any Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

(b) *Limit contact with Commission members to questions of clarification*

It is inappropriate for a Councilmember to contact a Commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is



acceptable for Councilmembers to contact Commission members in order to clarify a position taken by the Commission.

(c) *Respect that Commissions serve the community, not individual Councilmembers*

The City Council appoints individuals to serve on Commissions, and it is the responsibility of Commissions to follow policy established by the Council. But Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Commission appointment should not be used as a political "reward."

(d) *Be respectful of diverse opinions*

A primary role of Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Commissions, but must be fair and respectful of all citizens serving on Commissions.

(e) *Keep political support away from public forums*

Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

6. **Conduct with the Media**

Commission members are not authorized to represent the City to media outlets (including broadcast, print, and social media sites) outside of official Commission meetings unless specifically authorized to do so.

(a) *The Mayor is the official spokesperson for the City Council on City positions*

The Mayor is the designated representative of the City Council to present and speak on the official City position. If an individual Councilmember is contacted by the media, the Councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

(b) *Choose words carefully and cautiously*

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

## COMPLIANCE

### 1. *Acknowledgement of Code of Ethics and Conduct*

Members shall sign an acknowledgement that they have read and understand the Code of Ethics and Conduct.

### 2. *Ethics Training for Local Officials*

Councilmembers, City Manager, City Attorney, and Commission Members who are out of compliance with State or City mandated requirements for ethics training shall not represent the City on intergovernmental assignments or Council subcommittees.

### 3. *Behavior and Conduct*

The Cupertino Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the Cupertino City Council and Commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The Chairs of Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

#### (a) City Council:

Individual Councilmembers should point out to the offending Councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Vice Mayor. It is the responsibility of the Mayor (or Vice Mayor) to initiate action if a Councilmember's behavior is not in compliance with the Code of Ethics and Conduct. If no action is taken by the Mayor (or Vice Mayor), then the alleged violation(s) can be brought up with the full Council.

#### (b) Commission Members:

Counseling, verbal reprimands, and written warnings may be administered by the Mayor to Commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the Chair of the respective Commission, the Commission Staff Liaison, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Commission members whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a majority vote of at least a quorum of the Council at a noticed public meeting and

such action shall be preceded by a Report to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Commission member conduct. Also, should the City Manager or City Attorney believe an investigation into a member's conduct is warranted, they may refer the matter to the Mayor or Council. The Mayor or Council shall ask the City Manager or the City Attorney to investigate the allegation and report the findings.

These sanctions are alternatives to any other remedy that might otherwise be available to remedy conduct that violates this code or State or Federal law. In order to protect and preserve good government, any individual including the City Manager and the City Attorney after complying with Rule 3-600(B) of the State Bar Rules of Professional Conduct, who knows or reasonably believes a member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

## **IMPLEMENTATION**

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, City Manager, City Attorney, applicants to Commissions, and newly elected and appointed officials. Members entering office shall sign a statement (example below) acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council and updated it as necessary.

*I affirm that I have read and understand the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date