



CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

(ENDORSED)
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Clerk of the Court
County of Santa Clara
by Patricia Huel

February 22, 2023

Honorable Beth McGowen
Presiding Judge (2023)
Superior Court of California
County of Santa Clara
191 North First Street
San José, CA 95113

RE: Civil Grand Jury Report

Dear Judge McGowen:

— Pursuant to California Penal Code section 933 *et seq.*, please find enclosed the City of Cupertino's response to the 2022 Santa Clara County Civil Grand Jury Report, "A House Divided: Cupertino City Council and City Staff." The City Council approved the City's response to the Grand Jury Report on February 21, 2023. The approved City response is enclosed for your review. Thank you for your consideration.

Sincerely,

Pamela Wu
City Manager

Enclosure

**CITY OF CUPERTINO RESPONSE TO THE FINDINGS AND RECOMMENDATIONS OF THE
2022 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT, “A HOUSE DIVIDED: CUPERTINO
CITY COUNCIL AND CITY STAFF”**

Finding 1

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

Response: *Partially agree/partially disagree.* The Grand Jury Report identifies examples of conflict and distrust that the City should strive to overcome. The City agrees that the Grand Jury has identified a genuine problem in the City, although descriptions of specific instances may be inaccurate or incomplete. The Report may also overstate the level of “dysfunction” that is present in the City. The City continues to deliver a high level of services to its residents. In addition, the City continues to make policy progress in many areas—for example, the City Council recently approved two much-needed major housing projects and several smaller developments, and the City continues to innovate in policy areas such as its response to climate change and the reduction of single-use plastics.

Despite some areas of disagreement with the Grand Jury’s conclusions, the City agrees that distrust between staff and councilmembers has been pervasive and mutual. The Grand Jury Report correctly calls attention to the need for trust and civility in interactions between Council and staff.

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 will be implemented by March 31, 2023.

Response: The City has begun implementing Recommendation 1 and will complete implementation of the recommendation by the end of Fiscal Year 2022-2023. The City executive leadership team and City Council will continue to strive for a more respectful relationship between staff members and councilmembers. Councilmembers and staff are consistently advised on their roles and responsibilities under the Council-Manager form of government, including responsibilities that are codified in the Cupertino Municipal Code. The City management team has provided Council training on these issues during recent Council orientation and retreat sessions and will continue to reinforce the message delivered at those training sessions. In addition, on September 6, 2022, the City Council

approved the Fiscal Year 2022-2023 Internal Audit Workplan. That workplan included an Enterprise Leadership Study that will assess the effectiveness of the City's management and governance collaboration framework and provide recommendations to strengthen and streamline procedures to align with best practices for municipal leadership. The study began in January and is expected to be completed by June 2023. In addition, the City continues to make policy progress in many areas—for example, the City Council recently approved two significant large development projects and a number of smaller developments in a timely fashion, and the City continues to innovate in policy areas such as its response to climate change and the reduction of single-use plastics.

The City also acknowledges the need for improved staff training on the role of City staff within the Council-Manager form of government and will seek to develop recommendations for improving staff training and morale in connection with the implementation of Recommendation 2, below.

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.

Response: ~~Partially agree/partially disagree.~~ While it is difficult to disentangle Cupertino-specific factors from larger economic trends that have made recruitment and retention challenging for government agencies throughout the region, the City is aware of instances where poor Council-staff relations have contributed to the decisions of staff to leave the City. At the same time, the City has recently had successful recruitments to fill key positions with qualified external and internal candidates. Despite these successes, the City acknowledges that reputational issues have created challenges for the recruitment and retention of key personnel that the City must strive to overcome.

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.

Response: The City agrees with Recommendation 2 and will implement the recommendation through an update to the citywide risk assessment first conducted in December 2020 by the City's internal auditor. The City anticipates including the update in the Fiscal Year 2023-2024 Internal Audit Workplan.

Finding 3

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

Response: *Disagree.* While the City agrees that the internal auditor's recommendations should be implemented, the Grand Jury Report provides an inaccurate view of the City's "financial risk profile." The City has implemented financial controls to protect against fraud, waste and abuse, including the following:

- In December 2014, the City implemented a new enterprise resources planning ("ERP") software, New World. The transition to New World improved internal controls on procurement by establishing multi-layered approvals to prevent fraud, waste, and abuse.
- In conjunction with the upgrade of the City's ERP software in 2014, the City incorporated a decentralized accounting structure to enhance segregation of purchasing and financial duties.
- Since 2014, the City has hired 4.5 additional full-time equivalent staff to improve segregation of duties and internal controls.
- The City implemented a Council-approved Fraud, Waste and Abuse Program in Fall 2022.
- The City submitted eight of the nine financial policies listed in the high-risk category for review by the internal auditor as reported to the Audit Committee on November 28, 2022. The City presented the ninth policy to the internal auditor for review by January 2023. The City expects all nine policies will be finalized for approval by June 30, 2023.

In addition, the December 14, 2022 Grand Jury Report, "Show Me the Money", confirmed that the City is in compliance with its financial reporting requirements.

The City disagrees with the Grand Jury Report's characterization of these measures as not "sufficient." Nevertheless, the City agrees that implementation of City's Internal Audit Workplan should be prioritized, as reflected in the above response and the City's responses to the recommendations below.

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.

Response: The City agrees with this recommendation and intends to implement the work plan identified in the May 2022 Fiscal Policy Inventory and Gap Analysis Report by June 30, 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.

Response: This City has implemented Recommendation 3b.

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.

Response: *Partially agree/partially disagree.* The Grand Jury Report correctly emphasizes the importance of baseline standards for ethical behavior, including sanctions for noncompliance. As in most cities, the responsibility for holding elected officials and staff accountable for any ethics code violations falls on the City Council and City Manager, respectively. With respect to the level of detail in the Ethics Policy, ethics policies vary widely among jurisdictions in level of detail and prescriptiveness. Regardless of the form of the ethics policy, the policy should serve the purposes of increasing public confidence in the integrity of local government and its effective and fair operations, and support independent, impartial, and fair decision-making and execution of policy by City officials, as reflected in City of Cupertino Resolution 20-011, adopting the current Ethics Policy.

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.

Response: The City provides required ethics training for elected officials and supplements that required training with opportunities for additional ethics education at League of Cities conferences and Council retreats. The City will review its current ethics training for

opportunities to improve training for councilmembers and other City officials.

The City Council will also consider revisions to the current Ethics Policy using the Ethics Policy adopted by the City Council in 2018 as a starting point. However, based on the City's understanding of ethics policies in peer jurisdictions, the City Council is typically responsible for considering ethics violation and enforcing sanctions against councilmembers, commissioners, and committee members where appropriate; few, if any, peer jurisdictions delegate this authority to an independent ethics commission. The Grand Jury's recommendation fails to take into account the administrative burden and expense of establishing an independent ethics commission in smaller jurisdictions such as Cupertino.

In addition, on February 7, 2023, the City Council adopted a Procedures Manual that establishes policies for the conduct of Council meetings and other Council business. The Procedures Manual includes standards for conduct and decorum that are consistent with the Grand Jury's recommendations. Similarly, on February 21, 2023, the City Council directed staff to review the Commissioners Handbook to bring policies and procedures governing City commissions into alignment with the Council Procedures Manual and to address other concerns raised in the Grand Jury Report.

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.

Response: It is unclear what prior enforcement provisions the Grand Jury report references in this recommendation. The City's 2018 Ethics Policy, like its current Ethics Policy, is explicitly self-enforcing. (Grand Jury Report, Appendix B at p. 46.) Consistent with the practice in an overwhelming majority of Cupertino's peer jurisdictions, the City Council is, and at all recent times has been, responsible for enforcing standards for the behavior and conduct of its own members. To that end, the City Council has directed the City Attorney to investigate and report back to Council regarding other potential violations of the Municipal Code arising out of Council-staff or commissioner-staff relations. The intent of the Report is to allow Council opportunities to correct past Municipal Code violations and prevent future violations.

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.

Response: It is unclear how Recommendation 4c relates to Finding 4. However, the City will identify opportunities for implementing this recommendation where appropriate.

Recommendation 4d

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

Response: The current Ethics Policy continues to be available on the City's website and has now been posted on the City Council page. The response to this recommendation has been completed.