GRAND JURY
SANTA CLARA COUNTY

June 12, 2024

City of Santa Clara
c/o Mr. Hosam Haggag, City Clerk
1500 Warburton Avenue
Santa Clara, California 95050

Sent via email: Clerk@santaclaraca.gov

Dear Mr. Haggag:

The 2023-24 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, ***Irreconcilable Differences: Santa Clara City Council.***

California Penal Code section 933(c) requires that a governing body of the particular public agency or department that has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code section 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this transmission.

Please note:

1. As stated in Penal Code section 933.05(a), attached, you are required to "Agree" or "Disagree" with each applicable Finding: 1a, 1b, 1c, 2, 3, 4, 6, 7. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.

2. As stated in Penal Code section 933.05(b), attached, you are required to respond with one of four possible actions to each applicable Recommendation: 1a, 1b, 2, 3, 4a, 4b, 4c, 6, and 7.

Your comments are due to the office of the Honorable Beth McGowen, 2023-24 Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, CA 95113, no later than **September 10, 2024.** You may transmit these via email to CGJ@scscourt.org. Copies of all responses shall be placed on file with the Clerk of the Court.

If you have any questions, please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at (408) 882-2721 or CGJ@scscourt.org.

Sincerely,

Karen Enzensperger
Foreperson
2023-24 Civil Grand Jury

Enclosures
cc: Nora Pimentel, Assistant City Clerk, City of Santa Clara

California Statutes Annotated - 2018

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 4. Grand Jury Proceedings (Refs & Annos)
Chapter 3. Powers and Duties of Grand Jury (Refs & Annos)
Article 2. Investigation of County, City, and District Affairs (Refs & Annos)

West's Ann.Cal.Penal Code § 933.05

§ 933.05. Responses to findings

Currentness

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall

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respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

Credits
(Added by Stats.1996, c. 1170 (S.B.1457), § 1. Amended by Stats.1997, c. 443 (A.B.829), § 5.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume
Stats.1997, c. 443 (A.B.829), in subds. (a) and (b), in the introductory paragraphs, substituted "(b)" for "(c)"; in subd. (b)(3), substituted "head" for "director"; in subd. (c), inserted "agency or" throughout; inserted subd. (e), relating to investigations and meetings with the grand jury; and, in subd. (f), substituted "presiding" for "supervising".

CROSS REFERENCES
Grand jury defined, see Penal Code § 888.
Words and phrases, "county", see Penal Code § 691.

RESEARCH REFERENCES

Encyclopedias
Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 716, Recommendations and Reporting.
Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 717, Responses to Findings.

Treatises and Practice Aids
Witkin, California Criminal Law 4th Introduction to Criminal Procedure § 43, Reports.

West's Ann. Cal. Penal Code § 933.05, CA PENAL § 933.05

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IRRECONCILABLE DIFFERENCES:

Santa Clara City Council

2023-2024 Santa Clara County

Civil Grand Jury

June 12, 2024

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CONFLICTS

Members of the Civil Grand Jury are conflicted from a Civil Grand Jury investigation if, as a result of prior or current employment or associations, investment in public or private enterprise, financial interest, bias, or personal relationship, they are subject to recusal from participating in a matter before the Civil Grand Jury. Two jurors recused themselves from this matter.

GLOSSARY AND ABBREVIATIONS

AB 1234	Enabling legislation enacting California Government Code section 53235 requiring that if a local agency gives any type of compensation, salary, or stipend to, or reimburses the expenses of a member of its "legislative body" (as defined in California Government Code section 54952), that local agency's officials must receive two hours of training in ethics every two years.
At-Large Election	A type of election where a public official is chosen from a larger election district (city) instead of a smaller subdistrict within that city.
Brown Act	The Ralph M. Brown Act (California Government Code section 54950, et seq.) governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils, and school boards.
California Fair Political Practices Commission (FPPC)	The state commission responsible for the impartial administration and enforcement of the Political Reform Act, as well as informing and assisting public officials, employees, and candidates to comply with its provisions.
City Charter	In cities where the citizens have elected to have a charter (known as charter cities), including the City of Santa Clara, the legal document that establishes the government structure of the city and defines boundaries, specific powers, functions, essential procedures, and legal control.

Commissions	Bodies made up of appointed members who are usually qualified electors in the City of Santa Clara, but do not hold any paid office or employment in City government, unless otherwise noted in the City Charter. They act in an advisory capacity to the City Council, providing a conduit for community input on a variety of issues and matters affecting City residents.
Committees	Bodies typically comprised of appointed Councilmembers, City staff, and partners that serve as an advisory body to the Santa Clara City Council.
Institute for Local Government (ILG)	A nonprofit organization that promotes cooperation among local cities and counties, and provides education and support for local government leaders.
Joint Powers Agreement	A contract between two or more public agencies, such as a city, county, school district, or special district (e.g., a municipal utility authority), which allows the agencies to cooperatively provide services or exercise shared powers outside each agency's normal jurisdiction. In the case of the Santa Clara Stadium Authority this agreement created a separate governmental entity.
League of California Cities (League of Cities)	An advocacy group for local government that offers education and training programs designed to provide California city officials with the information, training, and resources necessary to effectively run a municipality.
ManCo	Forty Niners Stadium Management Company LLC, an affiliate of the Forty Niners Santa Clara Stadium Company LLC; manages Stadium operations and books non-NFL events.

Measure J	Santa Clara Stadium Taxpayer Protection and Economic Progress Act, passed by the voters of the City of Santa Clara in June 2010. The measure altered the City of Santa Clara charter and created the Santa Clara Stadium Authority.
Performance Rent	The City's portion of the revenue-share arrangement that is derived from non-NFL events held at the Stadium after expenses are accounted for.
Political Action Committee (PAC)	A body organized for the purpose of raising and spending money to elect or defeat candidates, or support or oppose ballot initiatives or measures. Most PACs represent business, labor, or ideological interests.
Political Reform Act	California Government Code section 81000, et seq. governs the disclosure of political campaign contributions, spending by candidates, and ballot measure committees. It also sets ethics rules for state and local government officials that impose strict limits on decisions or votes that affect the official's financial interests. The Political Reform Act of 1974 also regulates lobbyists' financial disclosure and lobbying practices.

SUMMARY

The 2023-24 Santa Clara County Civil Grand Jury (Civil Grand Jury) received multiple complaints concerning the unprofessional and antagonistic behavior of specific members of the Santa Clara City Council (Council) during public meetings.

The Civil Grand Jury found that councilmembers' behaviors reflect deep divisions, rivalry, and routine disrespect among the Mayor and Councilmembers and towards other City of Santa Clara (City) elected officials. In addition, several Councilmembers have turned public meetings into spectacles by displaying abusive and belittling behavior from the dais towards members of the public; by political grandstanding, pontificating, and digressing from City business; by exhibiting a serious misunderstanding of parliamentary procedures; and by performing outlandish antics, such as reading from a satirical cartoon book. All of these behaviors contribute to lengthy public meetings, waste staff time, hurt morale, and discourage volunteerism and public engagement.

The broken relationships among the members of the Council and the inability of Councilmembers to work together as a cohesive group have undermined the effective governance of the City. In this atmosphere, Councilmembers cannot effectively lead the community they were elected to serve. With $600 million in unfunded infrastructure needs and fiscal year 2024-2025 projected deficits ranging from $6 million to $19.3 million annually, it is imperative that the Council collaborate to solve the City's problems (City of Santa Clara, April 29, 2024).

BACKGROUND

City of Santa Clara

The City is a diverse community of more than 129,000 residents and has its own municipal electric utility, a 70,000-seat-capacity National Football League (NFL) stadium, a world-famous swim center, a convention center, a university, a community college, and an array of high-tech and Fortune 500 companies. The City is relatively small and yet has the benefit, as well as the associated costs and responsibilities, of these amenities that many larger cities do not have. It is a charter city, meaning it abides by the laws of its City Charter, a document adopted by voters, which outlines how it is governed. Any changes to the City Charter also require voter approval. This form of government allows a city to tailor its organization and elective offices by taking into account the unique local conditions and needs of the community.

Council Manager Form of Governance

The City Charter provides for a "Council Manager" form of government, meaning that the operational responsibilities assigned to the City Manager are separated from the governance and oversight responsibilities assigned to the Mayor and Councilmembers (City Charter, Section 500). The government structure consists of an elected at-large Mayor, six elected Councilmembers who represent six distinct geographical districts, and an appointed City Manager (City Charter, Sections 600; 700.1; 800). The Mayor is recognized as the presiding officer of all council meetings and is the ceremonial head of the City (City Charter, Section 704.3). The vice mayorship rotates among the Councilmembers on an annual basis. In addition, the City has an elected City Clerk, and it is the last in California to have an elected Police Chief. Oversight of the Mayor, Councilmembers, City Clerk, and Police Chief comes from the voters. The Council Manager form of governance is depicted in Figure 1.

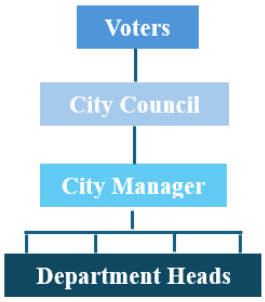


Figure 1: Council Manager Form of Governance

A current list of City Councilmembers, their districts, and their terms, is depicted in Figure 2.

Councilmember	District	First Elected	Term Expires
Kathy Watanabe	1	November, 2016	2024
Raj Chahal	2	November, 2018	2026
Karen Hardy	3	November, 2018	2026
Kevin Park	4	November, 2020	2024
Sudhanshu "Suds" Jain	5	November, 2020	2024
Anthony Becker	6	November, 2020	2024
Lisa Gillmor	Mayor	November, 2018	2026

Figure 2: Current Councilmember Terms

The City Manager serves as "the chief administrative officer and the head of the administrative branch of the City government" (Santa Clara City Code § 2.15.020). The City Manager prepares and administers the annual budget, and prepares and submits an end-of-fiscal-year report on the finances and administrative activities of the City. The City Manager's powers and duties include having executive direction over the heads of all departments and the power to appoint and remove department heads. Additionally, the City Manager has the power to initiate investigations into the affairs of the City. The City Manager does not have oversight over elected officeholders or Council appointees, although they may hire a third party to investigate alleged illegal behaviors (Santa Clara City Code § 2.15.020).

The City Attorney is appointed by the Council and their duties and powers are to "represent and advise the City Council and all City officers in all matters of law pertaining to their offices" (City Charter, Section 908). As appointees, both the City Manager and the City Attorney serve at the pleasure of the Council, meaning they may be dismissed by a majority vote without cause.

Santa Clara Stadium Authority and Measure J

The Santa Clara Stadium Authority (Stadium Authority) came into existence when the City created a Joint Powers Authority pursuant to voter approval of Measure J in 2010. According to its website, the Stadium Authority "exists as a public body, separate and distinct from the City, and was established to provide for the development and operation of Levi's Stadium" and it "is structured so that the City is not liable for the debts or obligations of the Stadium Authority" (City of Santa Clara, January 29, 2024). The Mayor and Councilmembers serve as the governing board of the Stadium Authority, with the Mayor serving as chair. Officers of the Stadium Authority include the

City Manager, who serves as its executive director; the City Attorney, who serves as general counsel; and the City's Finance Director, who serves as treasurer. The Stadium Authority owns Levi's Stadium (Stadium) and the Stadium Authority Board (Board) and officers oversee and are responsible for its management, operations, and fiscal administration.

The Stadium and the promise of Measure J were alluring to residents and City leaders, due to the perceived benefits the Stadium would bring. The measure passed with 58% of the vote, and the San Francisco 49ers Football Company LLC (the 49ers) spent close to $4 million to support the measure. Measure J's stated intent was to "safeguard the City's general and enterprise funds and protect City taxpayers" (County of Santa Clara, 2010). In addition, City leaders anticipated that new revenue would be generated for the City's General Fund, new jobs would be created, and there would be dedicated community funding. Whether or not the promise has been fulfilled has come up repeatedly in heated debate at City Council meetings and many attribute the root cause of the dysfunction on the dais to these disagreements and the 49ers' involvement in local politics. According to Fair Political Practices Commission (FPPC) Campaign Disclosure Statements Forms, DeBartolo Corporation & Affiliated Entities, including the Forty Niners Football Company LLC, spent over $4.5 million on the 2022 Santa Clara election. According to the City's Public Portal for Campaign Finance Disclosure and Lobbyist Filings, contributions to independent Political Action Committees (PAC) as of January 31, 2023, were as follows:

- For Councilmember Anthony Becker, mayoral campaign: Over $1.5 million.
- For Councilmember Raj Chahal: Over $620,000 and over $375,000 against Chahal's opponent.
- For Councilmember Karen Hardy: Over $610,000 and over $420,000 against her opponent.
- Against Mayor Lisa Gillmor: Over $1 million. (City of Santa Clara, 2024)

Three 49er-sponsored PACs which supported Anthony Becker, Raj Chahal, and Karen Hardy were established on September 1, 2022. Two days after a contentious August 30, 2022, closed session vote that approved a 49er-initiated settlement agreement with the Stadium Authority, over $804,000 was deposited immediately into those accounts. Three more 49ers-sponsored PACs were established within the following two weeks of the settlement vote. The latter three PACs opposed the candidates running against Anthony Becker, Raj Chahal, and Karen Hardy. PAC information and figures can be found on the City of Santa Clara Public Portal for Campaign Finance Disclosure and Lobbyist Filings. The website is clickable and searchable.

Unsportsmanlike Conduct: Santa Clara City Council

In the 2022 Santa Clara County Civil Grand Jury (2022 Civil Grand Jury) Final Report "Unsportsmanlike Conduct: Santa Clara City Council" (see *2022 Final Report*), the 2022 Civil Grand Jury found the appearance of a lack of transparency, unethical behavior, and a lack of fiduciary responsibility regarding the Stadium by five Councilmembers (City Council Voting

Bloc). The Report found that Council meetings had "repeated instances of councilmembers behaving acrimoniously and disrespectfully toward each other, City staff, and the public." Furthermore, it stated, "the actions and inaction of certain councilmembers are not consistent with the duties owed to the constituents they were elected to serve, causing severe dysfunction in the City governance" (Civil Grand Jury, 2022).

The 2022 Civil Grand Jury also found that even though the City had a Government and Ethics Committee made up of Councilmembers, the committee had not met for an entire year and no enforcement mechanism of the City's ethics guidelines existed other than self-policing. Additionally, the Report stated that Councilmembers had voted in a closed session to end a third-party investigation into themselves. The Report recommended that the City create a procedure that would enable public participation in remediating ethics violations by the Council, and also recommended the creation of an independent Public Ethics Commission.

The Council's official response to the Report, dated January 4, 2023, agreed "that it must confront its political turmoil, including mending strained relationships among Council/Board Members" (see *Response from the City of Santa Clara*). The response went on to state that the City did not need an independent ethics commission because a Council Governance and Ethics Committee already existed.

In April 2023, Councilmember Anthony Becker was indicted by a Santa Clara County Criminal Grand Jury for allegedly leaking the 2022 Civil Grand Jury Report to the 49ers before its official release and for allegedly lying about it to the 2022 Civil Grand Jury. Count 1 of the indictment alleges that Councilmember Becker committed perjury and willfully failed "to maintain the confidentiality of the draft grand jury report provided to him on or about October 5, 2022, by disclosing the contents of the confidential draft civil grand jury report 'Unsportsmanlike Conduct: Santa Clara City Council' to Rahul Chandhok and reporter(s) and/or editor(s) of the Silicon Valley Voice prior to the grand jury report's scheduled public release on October 10, 2022" (People v. Becker, 2023). Criminal Grand Jury transcripts show that Councilmember Jain and a member of the 49ers organization testified that Councilmember Becker leaked the report. As of this writing, Councilmember Becker is still awaiting trial.

Ethics, Public Trust, and Good Governance

City of Santa Clara Ethics and Values Program

"Ethics laws are designed to preserve the public's trust in its public institutions and those who serve in them by setting a framework to guide conduct and behavior" (Institute for Local Government, 2016).

Beginning in 2000, and after working closely with the Santa Clara University Markkula Center for Applied Ethics, the City created a City Ethics and Values Program which included an Ethics and

Values code and a list of Behavioral Standards for City Councilmembers. This award-winning value-based code was used as a model for many agencies throughout the State of California. Its goals were twofold:

1. To make Santa Clara a better community, built on mutual respect and trust.
2. To promote and maintain the highest standards of personal and professional conduct among all involved in City government elected officials, City staff, volunteers, and members of the City's boards, commissions, and committees. (City of Santa Clara, March 22, 2019)

As part of the Ethics and Values Program, every Council meeting begins with a reading of its Statement of Behavioral Standards (see Appendix 1) by the Assistant City Clerk, which reads as follows:

> The City of Santa Clara has adopted a Code of Ethics and Values, and Behavioral Standards for Public Meetings to promote and maintain the highest levels of conduct. This includes mutual respect, robust discussion, and allowing City business to be done in an efficient and consistent manner. Please note that, as the presiding officer, the Mayor's direction in matters of process and decorum should be followed, and that use of the gavel indicates all conversations must conclude and everyone in attendance should come to order and attention. Welcome, and thank you for your participation.

The City's use of values as guidelines for public service has, in the past, received national attention and become a model for other communities wanting to codify ethics into municipal government.

Good Governance

In addition to the detailed Ethics and Values code, Councilmembers have a Council Policy Manual (Policy Manual) and the Santa Clara City Code (City Code) to guide their behavior and define their roles and duties.

Other well-known guides for best practices and professional behavior include the League of California Cities (League of Cities) and the Institute for Local Government (ILG). The League of Cities and the ILG work with municipalities to train government leaders in effective and successful governance. Nearly every city in California, including Santa Clara, belongs to the League of Cities. Among the League of Cities' core beliefs is that "ethical and well-informed city officials are essential for responsive, visionary leadership and effective and efficient city operations, and that conducting the business of government must be done with transparency, openness, respect, and civility" (League of California Cities, n.d.). The ILG states that "[c]ollaboration among elected bodies and between individual members takes effort. Finding common ground and cultivating respectful relationships early on can make for a more civil and effective governing body" (Institute for Local Government, 2015).

Both the League of Cities and the ILG provide information, training, and resources for elected officials and their staff to ensure public trust through effective and ethical collaboration. The

resources from the League of Cities are even included in the orientation packets of incoming Santa Clara City Councilmembers.

Brown Act and Robert's Rules of Order

In addition to those described above, two other important resources direct behavior and governance, and specifically guide public meetings: The Ralph M. Brown Act and Robert's Rules of Order. The Ralph M. Brown Act (Cal. Gov. Code section 54950 et seq.) governs all public meetings and ensures the public's right to attend and participate in them. Robert's Rules of Order is a manual of parliamentary procedures used by jurisdictions throughout the United States as an agreed-upon guide for conducting public meetings. All Santa Clara City Council, commission, and committee meetings are conducted and facilitated by using Robert's Rules of Order, which uses an established set of codes and rules of ethics that help organized bodies hold orderly and efficient meetings (Santa Clara City Code § 2.10.020). It allows the majority to rule while giving the minority a voice. It is the standard for facilitating discussions and group decision-making. Every incoming City Councilmember receives information about Robert's Rules of Order as part of their onboarding.

California Public Records Act

The California Public Records Act (Cal. Gov. Code section 7920.000 et seq.) defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov. Code § 7920.530(a).) It further defines "writing" as meaning "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code § 7920.545.) The public can inspect or receive a copy of any of these records unless the record is exempt from disclosure. (Gov. Code § 7922.000.) Documents sought under the California Public Records Act are commonly referred to as PRA requests.

California Fair Political Practices Commission

The FPPC is an independent five-member body whose primary responsibility is for the administration of the Political Reform Act. The Act, passed in 1974 by California voters, "regulates campaign financing, conflicts of interest, lobbying, and governmental ethics" (California Fair Political Practices Commission, 2022). The FPPC website goes on to acknowledge that "enforcement matters now frequently take several years to come to resolution, oftentimes not until after a respondent has been reelected to the office they held at the time a complaint was filed or out of office entirely." Anyone who suspects a violation of the Political Reform Act can file a complaint with the FPPC.

METHODOLOGY

The Civil Grand Jury conducted more than 40 interviews and watched over 400 hours of Council, committee, and commission meetings from January 2020 to May 2024, via video and in person.

Additionally, the Civil Grand Jury read and reviewed:

- The City Charter and Ordinance Code.
- The City's Ethics and Values Program.
- The Council Policy Manual.
- Measure J.
- Testimony from the Criminal Grand Jury proceedings conducted in 2023.
- City Council meeting agenda packets.
- Audit reports.
- City and Stadium Authority budgets.
- Stadium contracts.
- Litigation documents.
- City emails.
- City staff reports.
- Various documents supplied by the City.

The Civil Grand Jury used these sources of information to analyze facts, and develop findings and recommendations for this report.

INVESTIGATION

In April 2024, the City commissioned a survey of 400 likely voters to determine residents' appetite for a future bond ballot measure. One of the questions asked was whether the City was moving in the right or wrong direction. Figure 3 shows the results of that survey and the results of a similar survey that asked the identical question in June 2018. Both surveys had the same methodology. In 2018, 63% of individuals surveyed believed the City was moving in the right direction. A few years later, in 2024, only 40% of those surveyed indicated satisfaction with the direction that the City has taken, representing a 23% drop.

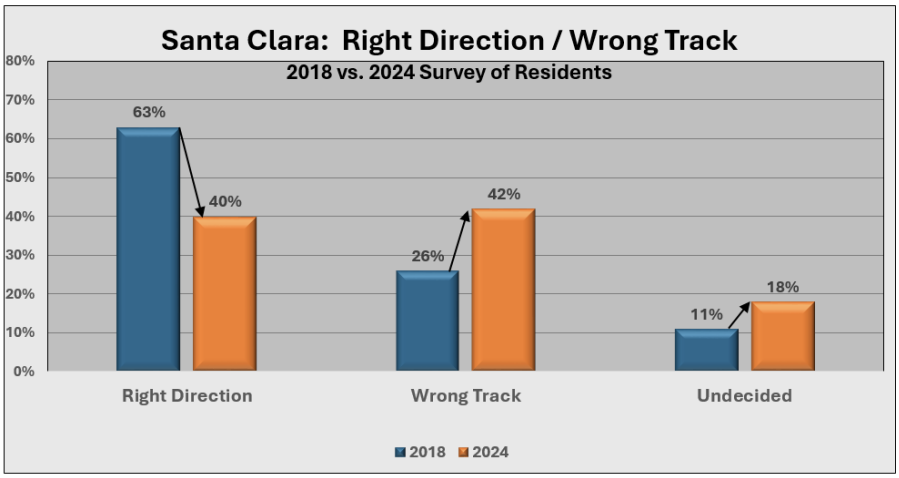


Figure 3: June 2018 and April 2024 Survey Responses of Likely Voters in the City As Reported by the City of Santa Clara

Much has occurred between those years, including a worldwide pandemic and political upheaval on the national level. Civil discourse has deteriorated on all levels, and it is demoralizing. Therefore, it is more important than ever that local elected officials set a positive example and comport themselves with dignity, professionalism, and mutual respect. Since the first survey was conducted in June 2018, the makeup of the Council also changed with the addition of five new members. The investigation portion of this report details the behavior of Councilmembers as witnessed on the dais.

Behavior on the Dais

Meetings

Council meetings occur on Tuesdays at least two times per month. They are streamed live, video recorded, and available for viewing on multiple platforms (City of Santa Clara, April 27, 2023). Council meetings are called City Council and Stadium Authority meetings because both City business and Stadium Authority business are agendized for these meetings. Managing a City, a City-owned utility and a City-owned stadium is similar to managing three large corporations, which means lengthy and highly complex meeting agendas. In order to complete all necessary business, Council meetings must proceed in an efficient, professional, and cordial manner. Among the Mayor's responsibilities as the chair is ensuring that Councilmembers have a chance to voice their opinions, facilitate pertinent discussion, maintain order, and, if necessary, restore order.

> "This is my first time to a city council meeting. I don't see any communication amongst councilmembers here, I just see griping and bickering."
>
> - City Council Meeting Public Comment, 6/6/23

As noted previously, specific parliamentary rules apply to every part of a public meeting, including how and when items are to be discussed, by whom, and in what order. Rules apply to how to deliberate, when to stop a discussion, and how to take a vote. Under the Brown Act, Councilmembers may discuss and deliberate only about items that are already on the meeting agenda. There are two different mechanisms for the public to speak at Council meetings. Members of the public may speak about any topic for an allotted time during public presentations and they may also speak for an allotted time about items that are specifically on the agenda. Councilmembers should not discuss or deliberate about topics that the public brings up during public presentations because they are not on the agenda. Councilmembers may acknowledge the comments briefly and direct staff to address or agendize the topics for a later date. (Gov. Code §54954.2(a)(3).) The Brown Act and variants of parliamentary procedures, such as Robert's Rules of Order, are followed by every public body in California and are necessary to ensure fairness, equity, and order.

In watching more than three years of online and in-person meetings, the Civil Grand Jury witnessed various Councilmembers consistently displaying unprofessional behavior towards each other and the Mayor while on the dais. Councilmembers have used the dais for political grandstanding, long off-topic monologues, and personal insults, such as accusations of lying. Councilmembers violate rules of order at almost every Council meeting. Additionally, there are smaller inappropriate actions that also serve to undermine the seriousness of meetings, such as eye-rolling when the Mayor or members of the public speak, and Councilmembers laughing at the antics and rude behavior of some of their colleagues. The totality of these observed behaviors in addition to a

general lack of collegiality visible on the dais inhibits good governance. (See Summary of Council Behaviors, Appendix 2, Items 2, 10, 14.)

> "Some of the councilmembers need to get over themselves and start focusing on what's really important. Letterhead is not important. This project is really important, as Santa Clara residents are really looking forward it."
>
> - City Council Meeting Public Comment, 7/11/23

The Mayor serves as the ceremonial head of the City and the presiding officer of Council meetings. At the October 4, 2022, meeting, Councilmembers spent almost two hours deliberating the authority of the Mayor to send a letter on City letterhead without their prior knowledge and consent (see Appendix 2, Item 4). The Charter makes clear that the Mayor has broad powers to communicate the City's position on various matters (City Charter, Section 704.3). The interim City Attorney, the acting City Manager, and the Assistant City Manager confirmed at the beginning of the discussion that the content of the letter was consistent with Council policy, that the City Attorney had no legal concerns, and that the Mayor was within her authority to issue the letter. Councilmembers continued complaining, ignoring the explanations of the City's professional staff, and continued going off-topic. The discussion finally ended after members of the public started calling in to protest that Councilmembers were wasting time.

In addition to disrespecting the position of the Mayor, Councilmembers consistently challenge her authority as chair of City Council meetings (see Appendix 2, Item 15). The Civil Grand Jury learned that, although Councilmembers understand the meaning and function of the gavel, Councilmember Becker and Councilmember Park repeatedly ignore the gavel when they have determined they want to speak more frequently or for a longer period. At one Council meeting, Councilmember Becker was gaveled multiple times and stopped speaking only after the Mayor stopped the proceedings and instructed the Assistant City Clerk to read aloud the City's adopted procedure regarding the use of the gavel (see Appendix 2, Item 8).

Councilmembers also disregard rules on when it is appropriate to speak (see Appendix 2, Item 7, Item 13). Specifically, Councilmember Park regularly insists on speaking at length after public presentations about items that are not on the agenda. Furthermore, he frequently tries to interrupt votes in progress by speaking after the discussion has been closed, a breach of established parliamentary procedure. Councilmember Becker consistently makes motions before agenda items have been discussed or deliberated. When this occurs, other Councilmembers are forced to discuss the specific motion or amendment, as opposed to having a thorough discussion and deliberation about the agendized item, and then crafting policy and voting on it. This gives control of the discussion to the motion maker.

Frequently, Councilmembers grandstand and talk about personal issues that have nothing to do with City or Stadium business. Sometimes the topics concern political grievances or events that

happened years before. For example, when disagreements about the Stadium come up for discussion, Councilmembers frequently mention who supported or opposed the Stadium before it was built over 10 years ago, instead of concentrating on the Stadium item of business that is before them at the moment. This behavior on the dais diverts focus from real City business and unnecessarily prolongs meetings, which often end between 11 p.m. and 12:30 a.m. Needlessly long meetings greatly impact staff who must attend Council meetings and discourage public participation because the meetings go into the night when most people are asleep.

Personal Attacks

The Civil Grand Jury viewed many instances of personal attacks by Councilmembers against each other, against the two other elected City officials—the City Clerk and the Police Chief—and even against volunteers and members of the public (see Appendix 2, Item 1). One of the most egregious examples of a personal attack against a member of the public occurred at the February 7, 2023, Council meeting. The attack was directed towards a local City of Santa Clara business owner, who has worked with the Mayor on promoting worker cooperatives in the City. Additionally, the business owner frequently attends Council meetings and has been an outspoken critic of the behavior of Councilmembers Park and Becker. At the Council meeting, Councilmember Park, who was chairing the meeting due to the Mayor's absence, noted that the local business owner was in the audience and then proceeded to read aloud from the cartoon book *All My Friends Are Dead* (see Appendix 2, Item 5). He had modified the title to *All My Friends Are Termed Out*, and he continued to repeat that phrase multiple times. The comments referenced the fact that the Mayor will be terming out in 2026 and cannot seek re-election as mayor. The display was an attempt to ridicule and intimidate the business owner. Furthermore, during the reading, both Councilmember Becker and Councilmember Hardy can be seen snickering at Councilmember Park's behavior. This was not the first time that Councilmember Park had singled out and ridiculed this individual. It had even occurred earlier that evening after the business owner had spoken regarding an agendized business item. In fact, there are numerous instances at City Council meetings during which both Councilmembers Becker and Park participate in such behavior.

> "If we can't work together, we can't make anything work."
>
> - City Council Meeting Public Comment, 12/12/23

Another example occurred at the June 6, 2023, Council meeting. While commenting on whether the position of Chief of Police should be elected or appointed, Councilmember Park accused the Police Chief, his wife, and their children of profiting from their involvement in a nonprofit organization. He implied and alleged improprieties and illegal acts (see Appendix 2, Item 11). As a result, the Chief's wife and the president of the non-profit organization attended a subsequent meeting to defend their reputations and to explain the transparency rules and requirements of the organization. The dais is not the appropriate venue for making allegations of illegal behavior. It is

never appropriate, civil, or principled to make personal attacks against family members of any elected officials.

At numerous meetings throughout 2023, Councilmember Becker made angry and derogatory attacks from the dais against a City Commissioner who had criticized the Councilmember on a local news blog (see Appendix 2, Item 9). Dozens of residents, including fellow Commissioners and colleagues, came to Council meetings to speak publicly to defend the Commissioner, who had been an active City volunteer for decades and who had positively impacted and mentored many children in the community. At the June 6, 2023, Council meeting, a fellow Commissioner summed up the problem with Councilmember Becker's actions as follows:

> [the commissioner]...is now being persecuted in this manner. It makes me think that my volunteer work can be scrutinized at a level like this when you have better work to do. So, I would very much like to discourage the removal of a commission member because you don't like what they say. That's schoolyard play, Ok, and I want to be better than that and I want to believe Santa Clara is better than that honestly. It would make me rethink my position on the council [as a commissioner] if our words were used to take us out of volunteer positions.

The Mayor recognized the public speakers and spoke up to defend the Commissioner's reappointment, but Councilmember Becker and others blocked the reappointment multiple times; Councilmembers Becker, Hardy, and Park voted "no," and Councilmember Chahal abstained. Councilmember Chahal did not explain the abstention; it was used as a "no" vote. When asked by the Mayor to state the reason for rejecting the reappointment, none of the Councilmembers who voted against or abstained from the reappointment specified any criteria that the Commissioner had failed to meet in his position that would warrant his not being reappointed. Councilmember Becker, in a deliberate disregard for professional behavior, refused to look at the Mayor or respond in a civil manner, leaving the audience visibly frustrated and angry.

Councilmember Chahal's abstention appears to be a deliberately orchestrated pattern of using abstentions without giving a reason. Abstentions are different from recusals, which require a legal basis and are determined prior to discussion beginning on an agendized item in consultation with the City Attorney. An announcement is made before discussion begins and the recused councilmember must leave the chamber. For an abstention, a councilmember may participate in a discussion and then can choose to abstain only from the actual vote. When an official recuses, because the recusal has a legal basis, the official does not count toward quorum for the item. But when the official abstains, they still count toward quorum, and this disrupts the voting tally and record-keeping. Councilmember Chahal has stated publicly that abstaining without giving the public a reason is legal; the Civil Grand Jury recognizes that this is correct, but frequent abstentions are not an ethical or recommended best practice for elected officials. As stated by ILG:

> Responsibility is a key component of ethical behavior. Attending and being prepared for meetings is a major element of an elected official's responsibilities and, hence, ethical behavior. So is voting in general. It may be tempting to abstain because of concerns about making an unpopular decision or simply not knowing which decision is best. As hard as some decisions are, making decisions is what you were elected to do. It is manifestly unfair – and unethical – to abstain or otherwise put your colleagues in the position of taking the heat for a necessary but unpopular decision. (Institute for Local Government, 2002)

Training materials given to Councilmembers explicitly state that removal of Commissioners should be based on professional criteria and not due to personal grudges (see Appendix 3):

> But City Commission members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten City Commission members with removal if they disagree about an issue. Appointment and re-appointment to a City Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A City Commission appointment should not be used as a political 'reward.' Concerns about an individual City Commission member should be discussed with the Mayor. (Hamilton, 2024)

The Civil Grand Jury recognizes that commissioners serve at will and that the City Charter allows the Council to remove commissioners without cause. However, Policy 032 of the Policy Manual, "Review of Concerns Complaints Regarding City Board/Commissions," outlines a process and guidelines that are consistent with the City's Code of Ethics and Values, which provide optional courses of action, and ensure fairness and respect (see Appendix 4). Although the incident in question was a refusal to reappoint and not a removal, best practices dictate that Council Policy Manual procedures and the Code of Ethics should have been followed.

> "I wish you folks could get along."
>
> - City Council Meeting Public Comment, 7/11/23

Councilmembers are in a position of authority and the dais they sit on is literally raised above the rest of the chamber. They have the power to affect people's daily lives in impactful and consequential ways, including staff, residents, and business owners. Personal attacks from the dais by councilmembers contradict every ethics and government resource and training document available to City officials (see Appendix 2, Item 6). Such behavior goes against best practices for good governance. Furthermore, open and transparent government depends on volunteer and constituent engagement. The actions described above can have a chilling effect on a City's ability to attract volunteers, employees, and businesses.

Lack of Preparedness

Councilmembers receive the agenda packet for upcoming Council meetings the Friday preceding the Tuesday Council meeting; similar to the timeline followed by other public agencies. The City Manager makes themself available to meet with each Councilmember before each meeting to review the agenda and materials included in the agenda packet, and to answer questions so that Councilmembers can prepare and be ready to discuss, deliberate, and make decisions regarding the City's business. Additionally, Councilmembers may reach out to the City Manager via email or meet with the City Attorney.

As noted before, the City is complex and requires a good working knowledge of all of the intricacies of City operations and functions. Therefore, it is critical that Councilmembers read and thoroughly comprehend Council agendas in order to make logical and informed decisions that significantly impact residents and local businesses. The Civil Grand Jury learned that not all of the Councilmembers read their agenda packets, nor do they meet regularly with the City Manager. This lack of preparedness can be observed at meetings.

At the August 30, 2022, meeting, during which the Mayor was recused, and Councilmember Chahal was absent, Councilmembers, with the exception of Councilmember Watanabe, showed such confusion during their deliberations about what they were voting for, and about the process, that they were unable to decide on any of the four financial options presented by City staff and residents. The discussion was regarding the replacement of a collapsed concrete wall that had been damaged by City trees. Homeowners asked the Council to take partial financial responsibility for the project, but Councilmembers were reluctant to assist the residents (see Appendix 2, Item 3). Public documents show that staff had worked with residents for over a year to develop and research options that could be presented to the Councilmembers. After hours of discussion and debate, the acting City Manager and interim City Attorney instructed the residents to file a claim with the City. The lack of preparation and inability of Councilmembers to collaborate and make a decision squandered staff time, wasted residents' time, and ultimately cost the City more money since the settlement sum was higher than some of the original options Councilmembers had to choose from.

At the August 22, 2023, meeting, the Council considered a General Plan amendment during a public hearing. After lengthy public comments, Council deliberation resulted in Councilmember Becker trying to negotiate from the dais with the applicant. He insisted the applicant change the scope of the project on the spot; giving the applicant only five minutes to decide. The applicant explained that they had worked on the development plans for over two years and that they could not decide on significant changes in such a short amount of time. Councilmember Park, who was chairing the meeting, displayed general confusion about the proposed motions and required detailed guidance from staff. The item was finally voted on at nearly 2:00 a.m. Once a development project is in front of the Council, significant time and money has been spent by both City staff and the applicant. Fundamental changes to the scope of a development project should have occurred earlier in the process and not during the public hearing. This behavior reflects a lack of

preparedness and a serious lack of understanding of the Council's role in the legislative process (see Appendix 2, Item 12).

Staff Morale

In addition to managing, overseeing, and implementing City and Stadium business, City staff at all levels spend hours, days, and months researching, evaluating, and preparing information to support the Council in making informed decisions. City staff members are knowledgeable, are experts in their fields, and have displayed the utmost professionalism at Council meetings. However, some Councilmembers behave as if they are more knowledgeable on certain topics than the highly experienced City staff. Additionally, there are many instances of Councilmembers struggling to make decisions or to come to a consensus regarding motions about more complex items that staff bring before them. They show confusion and frequently go back and forth about how to move forward requiring staff to lead them step by step. They struggle to define what they want and give clear direction, especially when attempting to change the scope of items that come before them (see Appendix 2, Item 16). This behavior undermines staff morale.

> "If you want people to be treated equally, then you have to do the same thing."
>
> - City Council Meeting Public Comment, 6/6/23

The Civil Grand Jury has learned that although staff members try to ignore the animosity and public displays of bad behavior, they find watching Council meetings to be demoralizing, shocking, and embarrassing. Some staff members have indicated they are surprised at the collegiality and decorum they witness when watching council meetings in other local municipalities. The most recent City employee satisfaction survey dates back to the summer of 2019, before the makeup of the current Council. At that time, 77% of respondents stated they were satisfied overall with the City as an employer (City of Santa Clara, October 7, 2019). Because employee morale is key to staff retention, it should be concerning to the City that it has no current measurable data about staff morale. The Civil Grand Jury has learned from several sources that the City has developed a far-reaching reputation for having a dysfunctional Council, and that recruiting has been an issue because candidates have watched the contentious City Council meetings. Effective city government depends upon a city's ability to retain institutional knowledge and recruit highly qualified staff. The climate created by some of the Councilmembers jeopardizes the quality of City staff recruitment and retention.

Council Training

All Councilmembers have been trained in ethics, governance and parliamentary procedures for Council meetings as part of their Councilmember orientations. In addition, the City Manager and City Attorney are available during and outside of meetings for questions and guidance, and Robert's Rules of Order is available online. But, other than state-mandated Assembly Bill 1234

(Salinas) ethics training that must occur every two years, councilmembers only received governance training during onboarding (AB 1234, Stats. 2005, ch. 700; see also Appendix 5). Although many resources are available to Councilmembers to do their professional development—including but not limited to registering and attending the numerous classes and webinars offered by the League of Cities and ILG—it is concerning that the City is not conducting formal, regular, and frequent training, especially given the unprofessional behavior that has become standard on the City of Santa Clara dais (see Appendix 6).

March 2024 Primary Election

On March 5, 2024, Measures A and B–ballot measures to change the City Police Chief and City Clerk from elected to appointed–were voted down by the City electorate. Placing the measures on the March 2024 Primary Election (Primary) ballot cost the City $432,000, not including ancillary costs. The defeat of Measures A and B on the Primary ballot was the culmination of questionable behavior on the part of Councilmembers who forced the issue, without determining if the charter change was of interest to voters. The Civil Grand Jury does not take a position on the ballot measures, but rather that the Councilmembers have a duty to work on behalf of their constituents. The process is another example of personal animus controlling Council direction and wasting City resources.

> "If this is how you guys function, I guess we take a really good look at the next election cycle..."
>
> - City Council Meeting Public Comment, 12/12/23

Placing Measures A and B on the Primary ballot was injudicious and had its roots in existing contentious relationships that certain councilmembers have had with the elected Police Chief. There have been accusations on both sides. The Police Chief has called on the County of Santa Clara District Attorney to investigate Councilmembers and their relationships with 49ers lobbyists. Councilmembers have been vocal on the dais about their personal desires to change the Police Chief's position to an appointed position, which would mean that the Police Chief reports to the City Manager or the Council, as opposed to voters. Councilmembers' stated reasons have vacillated between personal animosity and political motives; concern that there is a limited pool of candidates to choose from due to a residency requirement and that the current qualifications are not stringent enough. Without question, however, an appointed Police Chief as opposed to an elected Police Chief would be less likely to publicly criticize a councilmember, for fear of losing their job.

In June 2023, the Council voted to create a Charter Review Committee (Committee) whose primary function was to:

> … determine if the positions of Chief of Police and City Clerk should be appointed positions by either the City Council/City Manager or continue to be elected; look into the

> specifications and qualifications of each role comparable to other cities; and recommend additional qualifications as it relates to the positions. (see Appendix 7)

The Committee member's nomination form stated that the "[t]he Council may accept, amend, or reject the Committee's recommendations and for those recommendations that are approved, determine the best method to structure the ballot measure(s)" (see Appendix 8). If a charter change were adopted, the Council would also decide whether to put it on the Primary ballot. The following direction was on the Committee application (see Appendix 8):

> The Committee must be impartial, unbiased and free of any perceived political gain. The Committee must adhere to public meeting requirements and strive to include and educate the community about the process and purpose of a Charter Review, the importance of a City Charter and to solicit community input on proposed changes prior to making a recommendation to the City Council.

Each Councilmember appointed a member from their district, and the Mayor's appointee was at-large. The Committee conducted five evening public meetings from August to October 2023. City staff organized the meetings and provided dinners, support, resources, direction, speaker presentations, and opportunities for public engagement.

It was not until after the creation of the Committee that the City conducted an online survey to gauge residents' desire for a charter change. However, the survey was compromised, as there were almost 6,000 responses by suspected bots, overwhelmingly in favor of changing the Police Chief and City Clerk positions from elected to appointed. There were only 243 responses from registered users. The Civil Grand Jury learned that the survey results were not considered by the majority of the Committee members. Ultimately, the Committee voted 5 to 2 in favor of putting two measures, Measures A and B on the ballot. Measure A proposed a charter change for the City Clerk from elected to appointed and Measure B proposed a charter change for the Police Chief from elected to appointed. At the December 5, 2023, Council meeting, the City Council voted 5-2 to accept this recommendation; the Mayor and Councilmember Watanabe dissented. The Council also voted to allocate $432,000 to put the two measures on the Primary ballot, a sum which was in addition to all of the ancillary costs that went towards the support of the Committee.

The process to put Measures A and B on the ballot raised serious issues, including:

- There was no public drive to make the change from elected to appointed.
- The City survey, which only occurred after the Committee had been formed, allowed unregistered users and was attacked by bots, causing most of the Committee members to disregard all of the survey results, including the ones that were completed by registered users. The survey results from registered users mirrored the results of the Primary election: 72% of registered survey respondents chose "no" to changing the Police Chief from elected

to appointed and 72% voted against Measure B; in the survey for City Clerk, 66% of registered users responded "no" and 67% of voters rejected Measure A.

- The Chair of the Committee was aware that public sentiment was in favor of changing the residency qualifications for the Police Chief, as opposed to changing the position from elected to appointed, and consequently sought guidance from the City Attorney as to the scope of the Committee. Staff confirmed at the Committee meeting on September 21, 2023, that "the City is able to establish its own eligibility and qualification criteria for its local elected positions." But instead of pursuing the question of changing residency requirements, the Committee continued to focus on placing Measure B on the ballot.
- At least two Committee members had made up their minds before the first Committee meeting. One expressed to Committee members that they were going to vote the way their Councilmember wanted, and another member had been campaigning to make this change for over 20 years. This contradicts members' promises in their application to be impartial and unbiased on the issue.
- Councilmember Jain consulted frequently throughout the process with one of the Committee members and seemed to be strategizing with them. This conflicts with Committee member's promise to be impartial and unbiased.

It is important to note that the Council can, by a majority vote, put an item on a ballot and send it to the voters, without engaging a committee. This is significant because the Civil Grand Jury learned that one Councilmember understood that based on the Committee's composition, the recommendations would be predetermined, meaning Committee members would vote like the Councilmembers that nominated them. If this is accurate, there was no legitimate need for a committee.

An additional concern with the way the Council handled the entire process was with the wording of the question on the ballot. The Council adopted the following ballot language:

> Shall an amendment to the City Charter providing that the Chief of Police position be appointed by the City Manager be adopted? (County of Santa Clara, 2010)

At the final Committee meeting on October 17, 2023, a Committee member voiced concern that the existing wording made it "harder for people to understand the statement." During the December 5, 2023, City Council meeting, the Mayor and Councilmember Watanabe advocated for clarification; specifically, they wanted to add the following six words to the ballot question: "instead of elected by the voters." They did not prevail. Subsequently, residents, including two Committee members, filed a lawsuit to force the City to change the language, but the lawsuit failed as the language was found to be legal (Satish Chandra et al vs Shannon Bushey et al, 2023).

The 2022 Civil Grand Jury issued a report titled “If You Only Read the Ballot You’re Being Duped,” which cited the reasons that the standard of ballot language should rise above simply being legal:

> Many voters cannot comprehend the complicated language or the implications of that "yes” or "no” vote. In a perfect world, voters would have the luxury of time to research these issues. In reality, however, voters almost always rely on the language of the ballot measure question itself. . . . Poorly worded ballot questions may not be illegal, but if they withhold information to shield what is really at issue, they are unethical.

Ultimately, the “no” vote on March 5, 2024, was remarkably lopsided. If this had been a close race, then one could argue that there was a substantial desire for a charter change by City residents. However, given the unusually uneven results, it is apparent that Councilmembers who promoted placing Measures A and B on the ballot were either out of touch with their constituents, or were uninterested in public sentiment.

Furthermore, the Councilmembers who supported Measures A and B failed to show a clear understanding that ballot measures require an aggressive campaign to mobilize and educate voters. Councilmembers voted to spend public funds on putting a charter change on the ballot without planning for and anticipating how to win voter approval. This demonstrates carelessness with the City’s general funds.

Fiduciary Responsibilities

The Council has a fiduciary responsibility to constituents. Councilmembers need to collaborate and have mature discussions to successfully advocate for the City’s financial interest and well-being. If Councilmembers do not cooperate and model professional behavior, constituents are less likely to trust the Council. Figure 4 shows survey results from an April 2024 voter survey and compares them with the same survey question from June 2018. Each survey asked likely voters to rate the job that the City is doing using tax dollars responsibly. The total positive response in 2018 was 49%; the total positive response in 2024 is 37% reflecting a 12% drop in voters’ perception that the City is acting in a fiscally responsible manner.

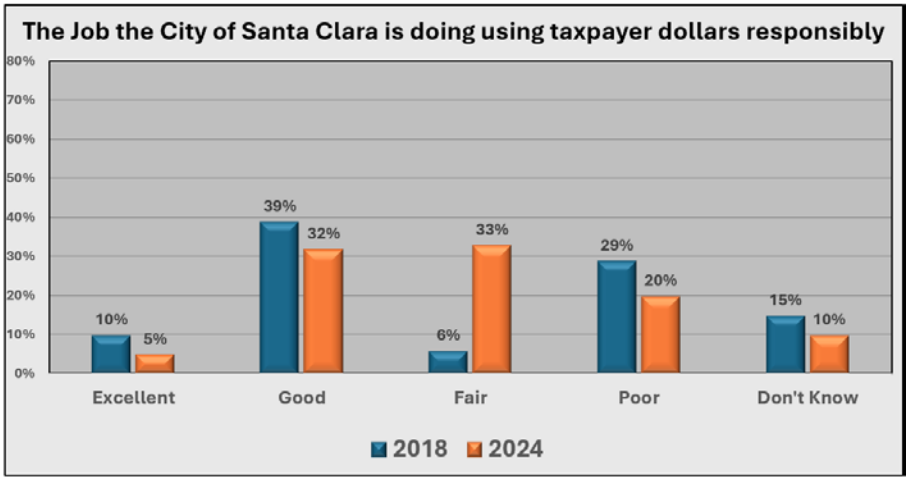


Figure 4: 2018 and 2024 City Survey of Likely Voters in the City

Two presentations to the Council in its capacity as the Board regarding the financial reporting for the Stadium clearly illustrate how several councilmembers prioritize their preoccupation with political grandstanding rather than focusing on their fiscal duties regarding Stadium business.

Stadium Authority Audit

Part of the promise of Measure J was that non-NFL events (concerts, sports, and non-ticketed events) would provide revenue to the City's General Fund. This has not come to fruition. The purpose of an audit is to provide information so decision-makers can make responsible financial decisions. There are yearly audits that are limited to the Stadium Authority's financial position and there have been more extensive, intermittent audits, that have included the Stadium's management company (ManCo). Throughout the years, these more extensive audits have questioned the availability, accuracy, validity, and transparency of financial information coming from ManCo.

On September 26, 2023, during a special Stadium Authority meeting, the forensic accounting firm J.S. Held presented the results of an audit of non-NFL events for the fiscal years ending March 2018 to March 2020. J.S. Held had been engaged by the Stadium Authority to analyze annual financial statements for ticketed and special non-NFL events to ascertain if the statements were accurate, properly supported, and documented.

J.S. Held reported that the "documentation provided by ManCo for individual Ticketed and Special Events is inadequate for determining whether the financial results for each event were reported accurately" (City of Santa Clara, September 26, 2023). In that same meeting, J.S. Held stated that it "could not determine from the provided documents if the reported results are accurate or inaccurate, and additional documentation and information is needed to make that determination."

The reason ManCo gave for withholding the public Stadium's financial documents from the auditor was that it had concerns about the continuing litigation between ManCo and the Stadium Authority. The Council questioned the audit and lack of documentation; however, the majority of Councilmembers were unwilling to direct staff to pursue the missing financial documents. The Mayor pointed out that the issue of transparency lies with ManCo, and since the Stadium is a publicly owned facility, ManCo should be cooperative in providing source documentation for a transparent audit. Councilmember Hardy said, "[the] report looks simple; I could have done it very quickly." Councilmember Jain suggested that once ManCo hears that there is a concern regarding the documentation, ManCo will "hopefully" make changes. Councilmember Becker blamed the issues on previous councilmembers and stated that he was being "gaslit" again. Councilmember Park said that he knows that ManCo will not cooperate. It bears repeating that ManCo works for the Stadium Authority.

The Council could have voted to reject the incomplete report, but acceptance of the audit passed on a 4-3 vote, with Mayor Gillmor and Councilmembers Watanabe and Park refusing to accept an incomplete audit without documentation. A second vote was required to continue with future audits. The Mayor requested a stipulation that the scope of work for any new audits would require that ManCo provide source documents, which were missing for previous audits for the years 2015, 2016, 2017, 2018, 2019, and 2020. After much debate, the motion did not include her request that ManCo be required to give the auditors appropriate financial documents. The vote was 5-2, with Mayor Gillmor and Councilmember Watanabe voting no.

Stadium Authority Financial Status Report

On February 6, 2024, the Council received the Santa Clara Stadium Authority Financial Status Report for the quarter ending September 30, 2023. The presentation of the Status Report indicated an absence of performance rent flowing into the City coffers in 2023, a lackluster outcome for Measure J (see Figure 5).

City of Santa Clara

Net General Fund Impact

For Stadium Authority

Period Ending September 30, 2023

Ground Rent	$	495,000
Performance Rent		-
Senior and Youth Fee		69,313
Sales Tax		306,234
Total Net General Fund Impact	**$**	**870,547**

Figure 5: Net General Fund Impact, Santa Clara Stadium Authority Financial Status Report, Quarter Ending September 30, 2023 (City of Santa Clara, February 6, 2024)

> "Differences of opinion don't diminish our communities, they strengthen them."
>
> - City Council Meeting Public Comment, 6/6/23

Mayor Gillmor questioned the accuracy of the revenue numbers and the way the revenues are documented. She asked how the financial information in the reports is verified. Three Councilmembers attacked Mayor Gillmor for questioning the financial information presented. From the dais, Councilmember Park attempted to controvert the Mayor's concerns by performing a real-time web search that literally said, "where does the [concert] money go," and using the search results as support for his contention that the Mayor's statements were baseless. Councilmember Park has a pattern of doing real-time web searches for information during discussion and deliberations as opposed to preparing in advance. At the same meeting, Councilmember Becker, then serving in his capacity as Vice Mayor, was highly critical of the Mayor, calling her a "gaslighter" and charging that because she had originally supported Measure J over a decade ago, her suspicions regarding the veracity of the revenue numbers are hypocrisy. Councilmember Hardy accused the Mayor of sounding like a "three-year-old throwing a tantrum." The City Attorney finally stepped in to calm things down and the vote to accept the financial status report was 4-2, with Mayor Gillmor and Councilmember Watanabe voting no. Councilmember Park was absent from the dais at the time of the vote.

Councilmembers have a responsibility to know how revenue is collected and distributed, and to ask critical questions about reports and audits. During meetings described above, some Councilmembers resorted to argumentative rhetoric instead of critically reviewing and analyzing the information and working together to advocate for better transparency and accountability.

Bond Measure for Ballots

The Council is currently exploring placing a bond measure on the November 2024 General Election ballot to address the City's $600 million infrastructure needs. The City has not adequately maintained or planned for anticipated capital improvements for decades. "Many of its facilities – parks, community centers, fire stations and swimming pools - reached the end of their expected lifespan years ago" (Hase, 2024). The City's world-class George F. Haines International Swim Center has been closed due to safety concerns. Additionally, although it's been greatly reduced, the City has a small General Fund shortfall of $900,000 projected for fiscal year 2024-25, followed by deficits ranging from $6 million to $19.3 million annually (City of Santa Clara, April 29, 2024). Traditionally, revenue enhancement measures to address significant deficits go to voters for approval. In California, bond measures require a two-thirds vote to pass. To meet such a high threshold requires political will, cooperation among the Council, and the public's trust.

Public Records Act Requests

A clear indicator of the lack of public trust in the Council and hostility between Councilmembers and the Mayor is the sheer number of PRA requests that the City receives. PRA requests help

ensure the public's right to a transparent, accountable government; cities cannot charge for the service. The City receives an inordinate number of requests in contrast to other local cities, as shown in Figure 6.

City	Population**	2022*	2023*	Cost Per Person (22/23)***
Sunnyvale	**156,000**	**471**	**604**	**Unavailable**
Milpitas	**80,300**	**316**	**375**	**$ 2.50**
Santa Clara	**128,000**	**1,392**	**1,321**	**$ 16.41**

* Counts are approximate based on data publicly available.
** Population according to the 2020 US Census.
*** As reported by City Administration.

Figure 6: PRA requests comparison for 2022-2023 for local agencies

"I am concerned that the council will block [the Independent Ethics Commission] again rather than do what is best for the city. I really wish you would work together."

- City Council Meeting Public Comment, 7/11/23

The large volume of PRA requests is a direct result of the conflict between the opposing sides of the Council. Councilmembers and individuals (including a Councilmember's spouse) who support them, frequently make PRA requests for the conversations of other Councilmembers and of the Mayor. The City has received as many as 90 requests in one day, only to have another similarly voluminous request issued as a response from the other "side."

Under the California Public Records Act (Cal. Gov. Code section 7920.000 et seq.), elected officials of any local or state agency are "entitled to access to public records of that agency on the same basis as any other person." The Civil Grand Jury learned that although it is legal, it is extremely unusual for councilmembers to make PRA requests involving fellow councilmembers for political reasons and that in other cities, it is not a recommended best practice.

This battle of PRA requests causes stress for City staff members, increases their workload, and takes time away from their regular duties. It is difficult to track the amount of staff time spent on fulfillment and the production costs because requests often have to be routed through multiple departments. In addition to Councilmembers, one PRA request can touch a dozen staff members and sometimes a City employee will have to go through hundreds of thousands of pages. Because of the complexity, tracking the yearly cost of PRA requests is a difficult task. The Civil Grand Jury learned the estimated costs for the City to fulfill PRA requests are as follows:

- Fiscal Year 2021/2022: Approximately $2.2 million.
- Fiscal Year 2022/2023: Approximately $1.8 million.

- Fiscal Year 2023/2024 (through March 15, 2024): Approximately $1.3 million.

In addition, the City uses external third-party firms for assistance with the processing and production of certain PRAs. Those figures are summarized as follows:

- Fiscal Year 2021/2022: $86,172.
- Fiscal Year 2022/2023: $308,689.
- Fiscal Year 2023/2024 (through March 6, 2024): $58,185.

The City of Sunnyvale did not have available figures, but the City of Milpitas estimated an annual cost to fulfill PRA requests for 2022 and 2023 of approximately $312,000 each year, significantly less than what Santa Clara has spent.

The PRA is a positive tool intended to increase transparency for the public, but in Santa Clara, it has been weaponized by Councilmembers and their supporters. The Civil Grand Jury has found that it is actually City staff and residents who are paying the price.

Ineffective Governance and Ethics Committee

As noted earlier, a 2022 Civil Grand Jury Report recommended that the Council establish a Public Ethics Commission to ensure public trust, and the Council rejected this recommendation on the basis that a Governance and Ethics Committee already existed. But the Governance and Ethics Committee members are Councilmembers, and therefore not an independent body nor a body that can self-regulate.

At the July 11, 2023, Council meeting, the Mayor proposed creating an Independent Ethics Commission, positing that the Council cannot police itself. Councilmembers Hardy and Becker strongly objected to creating such a commission, and a motion made by Councilmember Becker and seconded by Councilmember Hardy “to not to move forward with an ethics commission” and “direct staff to hire an independent consultant … to review the current behavioral standards,” passed on a 5-2 vote with Mayor Gillmor and Councilmember Watanabe issuing dissenting votes. As of the release of this report, no independent consultant review has occurred.

The Civil Grand Jury found that the Government and Ethics Committee began regular quarterly meetings after the 2022 Civil Grand Jury Report was published, which is commendable. The meetings have produced constructive discussions. Most recently, at the December 4, 2023, meeting, staff presented a list of guidelines and a suggested work plan with new Governance standards, which would tie meeting procedures to the City’s Code of Ethics and Values, and Behavioral Standards (see Appendix 9).

The new work plan may be a step forward, but it is only one of numerous work plans suggested by the Governance and Ethics Committee since 2021. Few of the work plans have been agreed

upon or adopted by the Council, including the most recent one. Behavior at Council meetings shows that the Governance and Ethics Committee has no influence and no oversight powers; the committee cannot even get agreement from fellow Councilmembers on a work plan.

Additionally, the Governance and Ethics Committee has no mechanism in place to hear the concerns of residents regarding the behavior of elected officials. The only immediate recourse the public has is to speak during public presentations at City Council meetings or to request to put a discussion item on a later agenda, also known as submitting a "030" and as outlined in the Policy Manual under "Adding an Item to the Agenda." For an 030 to be accepted, a majority of the Council needs to vote in favor of it. The Policy Manual also has an "Admonition and Censure Policy" under Policy and Procedure 047 for improper conduct, which applies to the Mayor and Councilmembers. Again, a formal censure action requires a majority vote by Councilmembers to place it on the agenda. However, censuring colleagues risks further inflaming tensions. At the March 12, 2023, Council meeting, Councilmember Jain stated that after the councilmembers censured the Mayor and Councilmember Watanabe, nothing changed. He stated that "censure votes are a waste of time; there are no consequences," and their relationships did not get better.

The Civil Grand Jury watched numerous Council meetings during which residents have called in, spoken in person, and emailed the Council to express their dismay and to request that the topic of Councilmember behavior be placed on the agenda for discussion and censure. Additionally, members of the public have appeared before the Council to speak in defense of targeted people. Other residents have stated that after viewing such behavior, they were apprehensive of being targeted and ridiculed for speaking up. Five Councilmembers have consistently refused to address the repeated requests made by the public. They have not allowed discussions about the lack of public trust, or the complaints from residents about their behavior on the dais. Under current rules, Councilmembers have the sole authority to examine and police their behavior, a task they have proven themselves unwilling to do.

Municipalities can employ various types of independent ethics entities to ensure good governance and adherence to ethical behavioral standards by elected officials. Local municipalities, including the City and County of San Francisco, the City of Oakland, and the City of San José have Ethics Commissions with varying responsibilities and degrees of oversight (see Appendix 10). Other nearby cities, including Los Gatos, have created successful models for fair and transparent ways to concretely address behavior by their elected officials. One argument the Civil Grand Jury heard against an independent ethics commission was that councilmembers would appoint people loyal to them and that such a committee would be weaponized. There have been, however, committees formed by the City whose appointees were vetted and selected by staff and then brought to Council for a vote and a process like that would mitigate these issues.

Another argument the Civil Grand Jury has heard against an independent ethics commission is the existence of the FPPC. Although the FPPC is an independent oversight body, its primary focus is election law and laws surrounding lobbying and gift-giving. The FPPC has no jurisdiction to address compliance with the Brown Act or rules of parliamentary procedure. Following the law is the minimum standard by which electeds should conduct themselves. Additionally, as noted earlier, the FPPC, by its own admission, can take many years to conclude an investigation, and should not be the only entity that the City relies upon for transparent governance. As of the release of this report, there are two open FPPC investigations filed against Councilmember Park dating back to 2021. FPPC investigation information can be found on the FPPC Complaint and Case Information Portal. The website is clickable and searchable.

CONCLUSION

City residents expect that their elected leadership will exercise their responsibility to work together to achieve consensus when administering City business. The role of leaders is to create an environment that promotes collaboration, an essential component for building an effective Council. The inability of the City Council to communicate respectfully and work together has undermined the effective governance and morale of the City. Councilmembers have shown that they cannot get along, they will not get along, and that their differences are irreconcilable.

Responsive and visionary leadership requires an ethical and well-informed City Council that will conduct the City's business with transparency, openness, respect, and civility. The City Council has not achieved these standards. Instead, some Councilmembers have participated in personal attacks from the dais against fellow elected officials, residents, and volunteers.

Additionally, Councilmembers have failed to listen to and understand public sentiment, which has led to the loss of public trust. Such behavior is detrimental to the functioning of City government and divisive within the community, dampening public engagement with local government. Egregious breaches of decorum by elected officials have a chilling effect on the willingness of residents to express their opinions or serve as community volunteers. Councilmembers should understand that compliance with the law is a low bar and should be the minimum goal in their roles as stewards of the City.

Councilmembers must prioritize the public's interests and the City's financial stability ahead of their own petty squabbles and quarrels. Currently, the City is facing a General Fund deficit and an infrastructure shortfall. The Council is exploring a variety of revenue-enhancing measures for the November 2024 General Election to address the budget deficiency. Whatever action the Council chooses to implement in addressing the fiscal integrity of the City will take a concerted and united effort on the part of the entire Council. It is critical that Councilmembers change their behavior, move beyond unprofessional conduct, and commit to adhering to the principles defined in the City's Ethics and Values Code.

FINDINGS AND RECOMMENDATIONS

This report points to serious concerns about members of the City Council. The Civil Grand Jury recognizes that the "City" currently has a governing body that consists of a majority of the same Councilmembers that the Civil Grand Jury has criticized in this report. These Councilmembers will be asked to vote to determine if they agree or disagree with the Civil Grand Jury's findings and whether they will accept or reject the recommendations. (Penal Code § 933.05.) It is the Civil Grand Jury's charge to investigate government operations, and this report seeks to do that despite the obvious limitation.

Finding 1a

The working relationships among Councilmembers and the Mayor are broken.

Finding 1b

Some Councilmembers do not adhere to the City's adopted ethical and behavioral standards while conducting City business on the dais.

Finding 1c

Councilmembers Becker and Park air petty grievances and engage in squabbles with other elected officials and constituents from the dais.

Recommendation 1a

The City should hire a conflict resolution professional and adopt robust conflict resolution training strategies. This recommendation should be implemented by October 1, 2024.

Recommendation 1b

Councilmember Park should attend one-on-one conflict resolution training so he can learn to behave in a manner reflective of an elected official. This recommendation should be implemented by October 1, 2024.

Recommendation 1c

Councilmember Becker should attend one-on-one conflict resolution training so he can learn to behave in a manner reflective of an elected official. This recommendation should be implemented by October 1, 2024.

Recommendation 1d

Councilmember Jain should attend one-on-one conflict resolution training to learn to work more effectively for the good of the City. This recommendation should be implemented by October 1, 2024.

Recommendation 1e

Councilmember Hardy should attend one-on-one conflict resolution training to learn to work more effectively for the good of the City. This recommendation should be implemented by October 1, 2024.

Recommendation 1f

Councilmember Chahal should attend one-on-one conflict resolution training to learn to work more effectively for the good of the City. This recommendation should be implemented by October 1, 2024.

Recommendation 1g

Even though Councilmember Watanabe has shown appropriate meeting decorum, the Councilmember should attend one-on-one conflict resolution training to learn how to work effectively in the current challenging Council meeting environment. This recommendation should be implemented by October 1, 2024.

Recommendation 1h

Even though Mayor Gillmor has shown appropriate meeting decorum, the Mayor should attend one-on-one conflict resolution training to learn how to work effectively in the current challenging Council meeting environment. Additionally, as the meeting chair, the Mayor should receive training to facilitate effective meeting flow. This recommendation should be implemented by October 1, 2024.

Finding 2

Councilmembers Becker, Park, and Chahal do not understand and/or do not follow established parliamentary and meeting procedures.

Recommendation 2a

Councilmember Becker should pledge to attend trainings in parliamentary procedures so that his behavior is more reflective of an elected who is dedicated to the electorate. This recommendation should be implemented by October 1, 2024.

Recommendation 2b

Councilmember Park should pledge to attend trainings in parliamentary procedures so that his behavior is more reflective of an elected who is dedicated to the electorate. This recommendation should be implemented by October 1, 2024.

Recommendation 2c

Councilmember Chahal should pledge to attend trainings in parliamentary procedures, so he can demonstrate a better working knowledge of the parliamentary process. This recommendation should be implemented by October 1, 2024.

Finding 3

Some Councilmembers do not uphold their responsibility to conduct the City's business professionally and efficiently.

Recommendation 3

The City should adopt the formal resolution for Meeting Management Procedures developed and presented by staff to the Governance and Ethics Committee meeting on December 4, 2023. This resolution would tie meeting procedures to the City Code of Ethics and Values, and Behavioral Standards for Public Meetings, codify rules regarding respectful and professional language on the dais, and initiate more productive meetings to keep the Council and public focused on City business. This recommendation should be implemented by October 1, 2024.

Finding 4

Some Councilmembers have become preoccupied by personal and political vendettas resulting in verbal attacks, mocking, and disparaging members of the public and community volunteers from the dais without consequence. Councilmembers have ignored the public's request to address their behaviors.

Recommendation 4a

The City should establish an Independent Ethics Commission to oversee the behavior of Councilmembers and to ensure they model positive engagement with the public and reclaim the public's trust. This recommendation should be implemented by October 1, 2024, and should be ongoing.

Recommendation 4b

The City should hire an Independent Ethics professional and adopt robust ethics training strategies supported by policy. This recommendation should be implemented by October 1, 2024.

Recommendation 4c

All Councilmembers should participate in regular training and counseling with an established outside entity that specializes in government ethics to implement training seminars and workshops for Councilmembers to learn how to maintain collegiality on the dais by using proven techniques

and best practices to avoid tense exchanges, bad behavior, misconduct, and incivility, and how the rest of the Council can positively influence the behaviors effectively. This recommendation should be implemented by October 1, 2024, and should be ongoing.

Finding 5

Councilmembers Becker and Park have engaged in unethical behavior on the dais by insulting, humiliating, and intimidating constituents and volunteers. Councilmembers Becker and Hardy explicitly encourage this behavior by laughing, snickering, or eye-rolling. Councilmembers Becker, Park, Hardy, Jain, and Chahal implicitly encourage these behaviors by failing to call out inappropriate conduct.

Recommendation 5a

Councilmember Park should pledge to train with an ethics expert from an established outside entity that specializes in government ethics. This recommendation should be implemented by October 1, 2024, and should occur annually.

Recommendation 5b

Councilmember Becker should pledge to train with an ethics expert from an established outside entity that specializes in government ethics. This recommendation should be implemented by October 1, 2024, and should occur annually.

Recommendation 5c

Councilmember Hardy should pledge to train with an ethics expert from an established outside entity that specializes in government ethics. This recommendation should be implemented by October 1, 2024, and should occur annually.

Recommendation 5d

Councilmember Chahal should pledge to train with an ethics expert from an established outside entity that specializes in government ethics. This recommendation should be implemented by October 1, 2024, and should occur annually.

Recommendation 5e

Councilmember Jain should pledge to train with an ethics expert from an established outside entity that specializes in government ethics. This recommendation should be implemented by October 1, 2024, and should occur annually.

Finding 6

There has not been an employee satisfaction survey since 2019.

Recommendation 6

The City should conduct an annual employee satisfaction survey, administered by a third party, which can be answered anonymously. This recommendation should be implemented by October 1, 2024, and should occur annually.

Finding 7

City staff is exceptionally professional, well prepared, and consistently maintains their composure regardless of behaviors exhibited by the Council. Staff's behavior is a model for the Council.

Recommendation 7

The City should commend City staff for their exemplary work ethic and professionalism. This recommendation should be implemented by August 1, 2024.

REQUIRED RESPONSES

Pursuant to California Penal Code section 933(b) et seq. and California Penal Code section 933.05, the 2023-24 Santa Clara County Civil Grand Jury requests responses from the following governing body:

Responding Agency	Findings	Recommendations
The City of Santa Clara	1a, 1b, 1c, 2, 3, 4, 6, 7	1a, 1b, 2, 3, 4a, 4b, 4c, 6, 7

Pursuant to California Penal Code section 933(b) et seq. and California Penal Code section 933.05, the 2023-24 Santa Clara County Civil Grand Jury requests responses from the following individuals:

Responding Individual	Findings	Recommendations
Mayor Lisa Gillmor	1a, 1b, 1c	1h
Councilmember Anthony Becker	1a, 1b, 1c, 2, 5	1c, 2a, 5b
Councilmember Raj Chahal	1a, 1b, 1c, 2, 5	1f, 2c, 5d
Councilmember Karen Hardy	1a, 1b, 1c, 5	1e, 5c
Councilmember Sudhanshu Jain	1a, 1b, 1c, 5	1d, 5e
Councilmember Kevin Park	1a, 1b, 1c, 2, 5	1b, 2b, 5a
Councilmember Kathy Wantanabe	1a, 1b, 1c	1g

APPENDIX 1: Statement Of Behavioral Standards

AB23 ANNOUNCEMENT:

"Members of the Santa Clara Stadium Authority, Sports and Open Space Authority and Housing Authority are entitled to receive $30 for each attended meeting."

STATEMENT OF BEHAVIORAL STANDARDS

The City of Santa Clara has adopted a Code of Ethics and Values, and Behavioral Standards for Public Meetings to promote and maintain the highest levels of conduct. This includes mutual respect, robust discussion, and allowing City business to be done in an efficient and consistent manner. Please note that, as the presiding officer, the Mayor's direction in matters of process and decorum should be followed, and that use of the gavel indicates all conversations must conclude and everyone in attendance should come to order and attention. Welcome, and thank you for your participation.

APPENDIX 2: Councilmembers' Inappropriate Behavior

Item #	Behavioral Observation	Meeting Date	City of Santa Clara Legislative Meeting Site Link	Timestamp
1	Councilmember Park is encouraged to apologize; he attempts to apologize for insulting the public at a July Council Meeting comparing homeowners to "Toddlers."	8/24/2021	https://santaclara.granicus.com/player/clip/1580	2:30:49
2	Councilmember Park accuses Mayor Gillmor and Councilmember Watanabe of lying in support of a staff recommendation to provide additional funds for ManCo staffing changes.	8/24/2021	https://santaclara.granicus.com/player/clip/1580	4:34:36
3	The Council is unable to decide on any of the four financial options presented by staff and residents.	8/30/2022	https://santaclara.granicus.com/player/clip/1789view_157532	2:37:40
4	Councilmembers spend almost two hours deliberating the authority of Mayor Gillmor to send a letter on City letterhead.	10/4/2022	https://santaclara.granicus.com/player/clip/1804_id158946&	0:45:46
5	Councilmember Park, leading the meeting, reads aloud from a satirical cartoon book and dedicates it to the Special Advisor to the Mayor.	2/7/2023	https://santaclara.granicus.com/player/clip/1864?meta_id=165428	4:43:35
6	Public presentations receive ridicule from the dais.	2/21/2023	https://santaclara.granicus.com/player/clip/1873	33:27:00
7	Councilmember Park begins an extended discussion during public presentation and Mayor Gillmor stops the commentary.	3/7/2023	https://santaclara.granicus.com/player/clip/1879?meta_id=166542	4:48:10
8	Councilmember Becker verbally attacks Commissioner Field. Mayor Gillmor uses the gavel to stop the diatribe and is ignored.	3/7/2023	https://santaclara.granicus.com/player/clip/1879?meta_id=166542	4:50:33

Item #	Behavioral Observation	Meeting Date	City of Santa Clara Legislative Meeting Site Link	Timestamp
9	Commissioner Field is not reappointed. Councilmember Becker refuses to explain why he wishes to single out the Commissioner. This includes public comment, three motions, two votes, and Councilmember Chahal's abstention.	5/23/2023	https://santaclara.granicus.com/player/clip/1917?meta_id=171445	1:33:16
10	Mayor Gillmor and Councilmember Park disagree about the Special Assistant to the Mayor, Worker-Owned Cooperative Initiatives.	5/23/2023	https://santaclara.granicus.com/player/clip/1917?meta_id=171445	4:20:26
11	Councilmember Park accuses Police Chief Nikolai and his family members of misappropriating funds and abusing their position on the Sister Cities Committee.	6/6/2023	https://santaclara.granicus.com/player/clip/1922?meta_id=172071	3:28:33
12	Inappropriate Council-developer negotiation from the dais.	8/22/2023	https://santaclara.granicus.com/player/clip/1965viewtru	7:01:16
13	Councilmember Park attacks the public; Mayor Gillmor asks him to stop, but he continues for over three minutes.	11/7/2023	https://santaclara.granicus.com/player/clip/2015?meta_id=179751	5:02:54
14	Multiple members of the public come to the podium imploring the Council to work together, act professional, and work together as a team.	12/12/2023	https://santaclara.granicus.com/playerf/clip/2048	4:31:21
15	Councilmember Chahal and Mayor Gillmor have a heated discussion. Councilmember Becker is seen mimicking the Mayor.	12/12/2023	https://santaclara.granicus.com/player/clip/2048	5:41:45

Item #	Behavioral Observation	Meeting Date	City of Santa Clara Legislative Meeting Site Link	Timestamp
16	Councilmembers struggle to make motions and understand what they are voting on.	04/23/2024	https://santaclara.granicus.com/player/clip/2107?view_id=1&meta_id=187126&redirect=true	4:56:04

APPENDIX 3: League Of California Cities: Your Role As An Elected Official [excerpt from Randy Hamilton article]

Council Conduct with Boards, Commissions and Committees

"We rarely find that people have good sense unless they agree with us."
--**Francois, Duc de La Rochefoucauld**

The City has established several Boards, Commissions and Committees (collectively referred to as City Commissions) as a means of gathering more community input. Citizens who serve on City 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.

If attending a City Commission meeting, express personal opinions only.
Council Members may attend any City Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is advocating a certain position – could be viewed as unfairly affecting the process. Any public comments by a Council Member at a City Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council, unless the Council has taken a position on the topic. Council Members should not appear before a commission on behalf of an individual, business or developer.

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

· **Be respectful of diverse opinions.**
A primary role of City 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. Council Members may have a closer working relationship with some individuals serving on the City Commissions, but must be fair and respectful of all citizens serving on City Commissions.

Keep political support away from public forums.
City Commission members may offer political support to a Council Members, but not in a public forum while conducting official duties. Conversely, Council Members may support board and commission members who are running for office, but not in an official forum in their capacity as a Council Member.

APPENDIX 4: Review Of Concerns/Complaints Regarding City Board/Commissions

City of Santa Clara
Policy and Procedure Manual

REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS

POLICY

The City of Santa Clara believes that "decision-makers must be independent, impartial, and accountable to the people they serve."[1] The City's Code of Ethics and Values lists the ethics and values-based standards the City has agreed will guide the decisions and conduct of everyone who participates in the City's government. Because we seek public confidence in the City's services and public trust of its decision-makers, we hold ourselves accountable to "meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this code."

Although the City Charter allows the Council to remove a Commissioner with no cause, the Council has created the following process, which provides guidelines the Council may choose to use to resolve a problem/complaint. The policy is based on a recommendation from the Ethics Ordinance Committee. It is consistent with the Code of Ethics and Values, in terms of fairness and respect towards the individual. It preserves the Council-granted Charter authority of removal, but also provides optional courses of action.

PROCEDURE

The Charter of the City of Santa Clara provides for the removal of a City Commissioner by a vote of four City Council members. No cause has to be given. The action to remove a Commissioner would be an agendized City Council action item.

When a concern/complaint is received regarding a City Board Member/Commissioner, it is referred to the City Manager for review and follow-up. If possible, it is preferable to resolve a concern through open communication channels at the staff level. Complainants are encouraged to solve the problem informally prior to registering a formal complaint.

The City Manager has several options for handling a concern/complaint:

1. The first step is to verify the information. If not verified, the complainant is informed and no further action taken. If initially verified, the City Manager conducts an investigation/review of situation in consultation with the City Attorney, where appropriate. The individual who is the subject of the complaint will be notified unless criminal or legal nature precludes notification. Issues that relate to the jurisdiction of the Fair

[1] From the Preamble of *The Code of Ethics and Values*, City of Santa Clara, 2001

REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS (cont.)

Political Practices Commission (FPPC) are not covered by this policy. City Attorney has existing procedures to handle FPPC and Election Code issues.

2. The following options are available for resolving complaints:
   - The City Manager can choose to handle concern/complaint directly, or consult with the Mayor.
   - The City Manager can choose to conduct further research; provide information and discussion of alternatives with Mayor.
   - Consult with Santa Clara University Markkula Center for Applied Ethics, or outside ethics experts.
   - Refer the issue/complaint to the Mayor and/or City Council.
   - Refer the concern/complaint to the Chairperson of the specific Board/Commission with the Chair reporting back to the City Manager.
   - Refer the issue/complaint to the City Council Commission Review Committee.
   - If legal issues are involved, the concern/complaint is referred to City Attorney.
3. Depending on nature of concern/complaint, and factual information, range of actions/options are available including any one (or combination of) these actions:
   - No action based on unsubstantiated/Unfounded complaint;
   - Discussion between Mayor and Commissioner; City Manager and Commissioner or discussion between Commission Chair and Commissioner;
   - Verbal counseling by Mayor with Commissioner;
   - Letter to Commissioner from Mayor;
   - Refer issue to Commission Review Committee; Committee meets and reviews facts; may make advisory recommendation to Council, or refer to City Manager and City Attorney for follow-up; and

REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS (cont.)

- Refer to Mayor and/or City Council.
- City Council may take action ranging from note and file to removal from Commission. (See attached memorandum to the Commission Review Committee from the City Attorney dated December 15, 1999.)

4. Follow-up response to complainant indicating City has taken appropriate action.

Reference:

1) Memo dated December 15, 1999 from City Attorney, "Levels of Expressions of Disapproval of a Public Official's Actions" (attached)
2) Council-approved policy July 16, 2002

APPENDIX 5: Councilmember Training List As Of June 29, 2023

List of Council Trainings Relating to the
Procedures of Orderly Conduct of Public Meetings and Ethical Behavior

Agency	Training	Attendee(s) and Date(s)
City of Santa Clara	Governance	• Lisa Gillmor: o December 13, 2018 • Kathy Watanabe: o December 13, 2018 • Raj Chahal: o December 13, 2018 • Karen Hardy o December 13, 2018
City of Santa Clara	New Councilmember Orientation	• Anthony Becker: o December 11, 2020 • Suds Jain: o December 11, 2020 • Kevin Park: o December 11, 2020
Fair Political Practices Commission	AB 1234 Ethics Training	• Lisa Gillmor: o September 11, 2014 as Councilmember o September 27, 2016 o August 24, 2018 o March 22, 2021 • Kathy Watanabe: o October 31, 2016 o November 23, 2018 o March 15, 2021 • Raj Chahal: o January 23, 2017 as Planning Commissioner o January 18, 2019 o February 28, 2021 • Karen Hardy: o November 9, 2019 o January 5, 2022 • Kevin Park: o January 3, 2021 • Suds Jain: o January 6, 2021 • Anthony Becker: o September 13, 2019 as Planning Commissioner o September 7, 2021

List of Council Trainings Relating to the
Procedures of Orderly Conduct of Public Meetings and Ethical Behavior

Agency	Training	Attendee(s) and Date(s)
League of California Cities	New Mayors & Council Members Academy	• Karen Hardy: o January 16-18, 2019 • Raj Chahal: o January 16-18, 2019 • Kevin Park: o January 22, 28, and 29, 2021

APPENDIX 6: Councilmembers' Orientation Packet – Section 2 (excerpt)

Procedures

	Section - Page
Roles and Responsibilities	2-1
Council Vision, Priority, Strategic Plan and Objectives	2-3
Meeting Agendas	2-4
Minutes	2-8
Other Policies and Protocol for Council Members	2-9
Council Conduct	2-11
Financial Matters	2-19
Parliamentary Procedure	2-21
Policy Conference and Business Travel Expense Reimbursement	2-23

Roles and Responsibilities

"Leadership is an action, not a word."
-- Richard Cooley

Other resources that are helpful in defining the roles and responsibilities of elected officials can be found in the Santa Clara City Charter and in the Leadership Guide for Mayors and Council Members published by the League of California Cities. Newly-elected Council Members are encouraged to attend the League of California Cities "New Mayors and Council Members Academy Leadership Academy" held each year in January in Sacramento.

Mayor

The Mayor is directly elected by voters in the City of Santa Clara for a four-year term. Briefly, the responsibilities and roles of the Mayor include:

- Acts as the official head of the City for all ceremonial purposes
- Chairs City Council, Santa Clara Stadium Authority, Sports & Open Space Authority and Housing Authority meetings
- Calls for special meetings
- Recognized as spokesperson for the City
- Has the authority to preserve order at all City Council meetings
- Makes recommendations to the Council on matters of policy and programs which require Council decisions
- Leads the Council to be an effective, cohesive working team
- Serves as official delegate of the City at events and conferences

Vice Mayor

As specified in the City Charter, the Vice Mayor is selected by the City Council each year in December and serves at the pleasure of the Council. Per Council policy, first priority for Vice Mayor will be the City Council Member with the highest seniority in consecutive years on the Council who has not previously served as Vice Mayor. If two or more Council Members have an equal number of years, then the Vice Mayor is the individual with seniority who received the most votes in the most recent Council election. No Council Member may serve more than once as Vice Mayor unless all Council Members have served in that position. If a Council Member would like to exchange places in the rotation to allow another Council Member to serve as Vice Mayor in his or her place, a majority vote of the Council is required to make the change.

Briefly, the responsibilities and roles of the Vice Mayor include:

- Performs the duties of the Mayor if the Mayor is absent or unable to attend
- Chairs Council meetings at the request of the Mayor
- Represents the City at ceremonial functions in the absence of the Mayor

All Council Members

All members of the City Council, including those serving as Mayor and Vice Mayor, have equal votes. No one has more power than another, and all should be treated with equal respect.

- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others
- Serve as a model of leadership and civility to the community
- Inspire public confidence in Santa Clara government
- Observe the City's Code of Ethics & Values and demonstrate ethics, honesty and integrity in every action and statement
- Be respectful of other people's time. Stay focused and act efficiently during public meetings
- Prepare in advance of Council meetings and be familiar with issues on the agenda
- Attend ceremonial functions
- Provide contact information to the City Manager or City Clerk in case an emergency or urgent situation arises while the Council Member is out of town.

Meeting Chair

The Mayor will chair official meetings of the City Council, the Santa Clara Stadium Authority, the Sports & Open Space Authority or the Housing Authority unless the Vice Mayor or another Council Member is designated as Chair of a specific meeting.

- Maintains order, decorum, and the fair and equitable treatment of all speakers
- Keeps discussion and questions focused on specific agenda item under consideration
- Makes parliamentary rulings with advice, if requested, from the City Attorney who acts as an advisory parliamentarian.

Chaplain

A Chaplain is selected in December of each year by a majority vote of the Council. By Council policy, the Chaplain is the most recent outgoing Vice Mayor. The role of the Chaplain is to read the established invocation prayer at the beginning of each Council meeting.

Council Vision, Priority, Strategic Plan and Objectives

Vision
Superb, affordable services in a caring community that values our rich history and nurtures technologies that build the future.

Strategic Plan and Objectives 2015-2017 *(Adopted April 7, 2015)*
Listed below are the City Council Goals for 2015-2017. Regular, timely monitoring of progress on the goals and objectives includes new objectives every six months.

When completed, monthly status reports on the accomplishment of these objectives may be reviewed at the City Clerk's Office. In addition to these 2015-2017 adopted goals, there are many other projects and programs that continue to be pursued by the City.

The City Council priority is to focus on successful completion of existing City projects, and operate within Council adopted budget principles and priorities, with the goal of placing the City strategically to take advantage of the improving economic climate.

TWO-YEAR GOALS 2015-2017
• Balance the emerging economic opportunities with the needs of our community • Promote and enhance economic and housing development • Ensure fiscal responsibility • Enhance community sports and recreational assets • Deliver and enhance high quality efficient services and infrastructure

Meeting Agendas

The Council agenda packet is generally prepared on Friday in the City Clerk's Office for the meeting on the following Tuesday. The exception would be when a holiday falls on a Friday in which case the agenda packet is prepared on Thursday. Agenda packets are on iPads. If requested, agenda packets are available in hard copy form.

Agenda packets are available for public viewing in the City Clerk's Office and in all three libraries. The entire agenda packet is scanned and the Council reports are made available through the City's website. Agendas for regular meetings must be posted at least 72 hours prior to the meeting in order to comply with the Brown Act. [See legal section for more details.]

Public Submittal of Written and Audiovisual Materials for City Council Meetings (Policy and Procedure 041)
Items from Council Members and the public related to an agenda item must be submitted to the City Clerk's Office by 12 noon on the Wednesday prior to the City Council meeting for inclusion in the agenda packets. After Wednesday at 12 noon and until 5:00 p.m. on the day of the Council meeting, members of the public may still bring materials related to a specific Agenda item to the City Clerk's Office. Those materials will be copied and distributed to the City Council and City Staff for the Council meeting.

Public members who wish to utilize audiovisual materials as part of their public comment on an Agenda item, must present the material to the City Clerk's Office no later than 10:00 a.m. on the day of the meeting, along with a contact telephone number where they may be reached.

Written Petition to Address the City Council
Written petitions from the public are accepted by the City Clerk's Office and forwarded to the City Manager's Office for review and placement on the agenda, typically two weeks after submittal to allow time for staff to prepare a report responding to the petition. The staff report is included in the agenda packet.

Agenda Items

Each agenda item is handled with a ten-step procedure.

1. Mayor introduces agenda item
2. Report by City Manager or staff. No questions, comments or editorials allowed by Council until staff report is complete.
3. Questions of staff report by Council Members are asked through the Mayor. No comments or editorials by Council Members allowed at this time.
4. Applicant/appellant presentation when Public Hearing (typically limited to 10 minutes). Not all agenda items will have applicant presentations. Council Members may ask questions of the applicant/appellant through the Mayor. No comments or editorials by Council Members at this time.
5. Public testimony (typically limited to 2 minutes for each person who wishes to speak). Council Members may ask questions at the end of the presentation. No comments or editorials by Council Members at this time.
6. Applicant/Appellant – Closing Statement in Public Hearing and Appeal Proceeding.
7. Motion to close the public hearing/public input.
8. Council motion for action.
9. Council deliberation.
10. Council action: A vote on the motion, following Robert's Rules of Order.

Gavel means stop and listen.

The use of the gavel means all conversations cease and everyone in attendance comes to order and attention. Only the Mayor or meeting Chair can use the gavel.

Minutes

Minutes of each meeting of the City Council are kept by the City Clerk. The minutes serve as a permanent record of the group's actions.

Corrections to minutes
It is important for Council Members to closely review minutes and make corrections if needed so that the approved minutes accurately reflect the work of the group. Corrections to minutes may be requested prior to the meeting but must be made prior to or at the meeting when they are brought forward for Council approval. Corrections require a motion, second and a majority vote, and, if approved, are noted and filed in the minutes of the current meeting.

Summary of Actions
A Summary of Actions is prepared by the City Clerk's Office following each Council meeting. This Summary is usually posted online by Friday, following the meeting. The Summary is also available in the City Clerk's Office and all three City libraries.

Other Policies and Protocol for Council Members

Ceremonial Events
Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will serve as the designated City representative. If the Mayor is unavailable, then City staff will determine if event organizers would like another representative from the Council. If yes, then the Vice Mayor will be asked to serve as a substitute. If the Vice Mayor is not available, then Council Members by seniority are asked to represent the City. If Council is not available, the City Manager represents the City or designates an appropriate staff member. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council Members at their homes are presumed to be for personal consideration. The Executive Assistant to the Mayor and City Council is available to take care of RSVPs for official City representation.

Correspondence Signatures
Council Members do not need to acknowledge the receipt of correspondence, or copies of correspondence, during Council meetings. City staff will prepare official letters in response to public inquiries and concerns. These letters will carry the signature of the Mayor and City Manager.

Endorsement of Candidates
As individuals, Council Members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention endorsements during Council meetings, other official City meetings, or while conducting City business.

Non-agenda Items
Under Public Presentations on the agenda, citizens may bring forth issues or questions that are not on the meeting's agenda. Topics may be legislative items requiring action by the Council, study issues for future consideration, and requests for information assigned to the City Manager. Each speaker will be limited to three minutes.

Public Hearing Protocol
The Council has established a public hearing protocol and follows Robert's Rules of Order (Newly Revised 10th edition, 2000). The Mayor opens the public hearing and requests a staff report. The applicant or appellant shall have the right to speak first. Ten minutes is the length of time allowed for this presentation. Speakers representing either pro or con points of view will be allowed to follow. Three minutes is the standard time limit for each speaker. When there are more than 10 speakers on an item, the Mayor will ask the speakers to fill out a Speakers Card prior to the discussion of an agenda item. The time allowed for each speaker may be reduced at the discretion of the Mayor. The applicant or appellant will be allowed to make closing comments. The Chair has the responsibility to run an efficient public meeting and has the discretion to modify the public hearing process in order to make the meeting run smoothly.

Council Members will not speak during the public hearing portion of the meeting except to ask pertinent questions of the speaker or staff. "I think" and "I feel" comments by Council Members are not appropriate until after the close of the public hearing. Council Members should refrain from arguing or debating with the public during a public hearing and shall always show respect for different points of view.

Main motions may be followed by amendments, followed by substitute motions. Any Council Member can call for a point of order or a motion to reconsider at any time, per Robert's Rules of Order.

Council Conduct with One Another

"In life, courtesy and self-possession, and in the arts, style, are the sensible impressions of the free mind, for both arise out of a deliberate shaping of all things and from never being swept away, whatever the emotion, into confusion or dullness."

William Butler Yeats

Councils are composed of 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 as Council may "agree to disagree" on contentious issues. The City's Code of Ethics & Values should be referred to for positive statements of ethical behavior.

In Public Meetings

Use formal titles
It is preferred that Council refer to one another formally during public meetings as Mayor, Vice Mayor or Council Member followed by the individual's last name.

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 a free democracy in action. However, making personal, slanderous, threatening, abusive, or disparaging comments is not appropriate. No shouting or physical actions that could be construed as threatening will be permitted.

Honor the role of the Chair in maintaining order
It is the responsibility of the Chair to keep the comments of all participants on track during public meetings. Council 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 Robert's Rules of Order.

Demonstrate effective problem-solving approaches
Council Members have a public stage to show how individuals with disparate points of view can find common ground and understanding, negotiating solutions that benefit the community as a whole.

In Private Encounters

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.

Be aware of the insecurity of written notes, voicemail messages, and e-mail
Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speaker phone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

Even private conversations can have a public presence
Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may or may not know. Lunch table conversations can be eavesdropped upon, parking lot debates may be watched, and casual comments between individuals before and after public meetings noted.

Council Conduct with City Staff

"Wherever there is a human being, there is an opportunity for kindness."
Seneca

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and the City Manager and 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.

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.

Direct staff issues and assignments to the City Manager
Assignments for City staff and/or requests for additional background information should be directed only to the City Manager.

Requests for follow-up or directions to staff should only be made through the City Manager or the City Attorney when appropriate. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.

Never publicly criticize an individual employee
Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney should be made directly to the City Attorney.

Allow staff to handle administrative functions
Council Members 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.

Check with the City Manager on correspondence before taking action
Before sending correspondence, Council Members should check with the City Manager or Executive Assistant to the Mayor and City Council to see if an official City response has already been sent or is in progress.

Limit requests for staff support
Routine secretarial support will be provided to all Council Members. All mail for Council Members is opened by the Executive Assistant to the Mayor and City Council, unless other arrangements are requested by a Council Member. Mail marked personal or confidential is not opened.

Requests for additional staff support – even in high priority or emergency situations -- should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

Do not solicit political support from staff
Council Members 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. City employees are prohibited from using City resources, City time or appearing in uniform in relation to political activities.

Council Conduct with the Public

"If a man be gracious and courteous to strangers, it shows he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them."

Francis Bacon

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 Council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

Be welcoming to speakers and treat them with care and gentleness
Most residents do not speak before the City Council very often and they may be nervous, uncomfortable, and emotional. Putting speakers at ease will allow them to express their viewpoints more effectively, make Council meetings run more efficiently, and help the democratic process be fulfilled.

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, per Council policy. Generally, each speaker will be allocated three minutes with applicants and appellants or their designated representatives allowed 10 minutes. If many speakers are anticipated, the Chair may ask for speaker cards to be filled out and may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

Give the appearance of active listening
It is disconcerting to speakers to have Council 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, gazing around the room, or entering into prolonged dialogue with adjacent Council Members or staff gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

Ask for clarification, but avoid debate and argument with the public
Only the Chair – not individual Council Members -- can interrupt a speaker during a presentation. However, a Council Member can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council Members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

Undertake no personal attacks of any kind, under any circumstance
Council Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

Follow parliamentary procedure in conducting public meetings
The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to Roberts Rules of Order. Final rulings on parliamentary procedure are made by the Chair, subject to the appeal of the full Council.

In Unofficial Settings

Make no promises on behalf of the Council
Council Members will frequently be asked to explain a Council 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 or appropriate action. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

Make no personal comments about other Council Members
It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions.

Remember that Council Members are always on display
Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Santa Clara. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council Members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

Council Conduct with Other Public Agencies

Be clear about representing the City or personal interests
If a Council Member appears before another governmental agency or organization to give a statement on an issue, the Council Member must clearly state if his or her statement reflects personal opinion or is the official stance of the City.

If the Council Member is representing the City, the Council Member must support and advocate the official City position on an issue, not a personal viewpoint.

If the Council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

Correspondence should also be equally clear about representation
City letterhead may be used when the Council Member is representing the City and the City's official position. A copy of official correspondence should be given to the Executive Assistant to the Mayor and City Council to be filed in the Council Office as part of the public record.

Correspondence of Council Members representing a personal point of view on a City issue, or a dissenting point of view from an official Council position, should make it clear that the views expressed represent only the individual Council Member.

Council Conduct with Board, Commissions and Committee

"We rarely find that people have good sense unless they agree with us."
Francois, Duc de La Rochefoucauld

The City has established several Boards, Commissions and Committee (collectively referred to as City Commissions) as a means of gathering more community input. Citizens who serve on City 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.

If attending a City Commission meeting, express personal opinions only
Council Members may attend any City Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is advocating a certain position -- could be viewed as unfairly affecting the process. Any public comments by a Council Member at a City Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council, unless the Council has taken a position on the topic. If the City Council will later be considering an item that the Commission is discussing, the Council Member should not address the Commission on that item, and reserve his or her comments for the Council Meeting on the item. Council Members should not appear before a commission on behalf of an individual, business or developer.

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

Be respectful of diverse opinions
A primary role of City 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. Council Members may have a closer working relationship with some individuals serving on City Commissions, but must be fair and respectful of all citizens serving on City Commissions.

Keep political support away from public forums
City Commission members may offer political support to a Council Member, but not in a public forum while conducting official duties. Conversely, Council Members may support board and commission members who are running for office, but not in an official forum in their capacity as a Council Member.

Parliamentary Procedure

"The object of Rules of Order is to assist an assembly to accomplish the work for which it was designed, in the best possible manner. To do this it is necessary to restrain the individual somewhat, as the right of the individual in any community, to do what he pleases, is incompatible with the interests of the whole."

Henry Martin Robert

Public meetings in the City of Santa Clara – including the City Council, Council subcommittees, and all City boards, commissions and committees – follow Robert's Rules of Order in order to ensure that business is conducted in an orderly and democratic manner. Robert's Rules of Order are accepted throughout the U.S. as the standard authority on parliamentary law and procedure. Copies of the complete text of Robert's Rules of Order are available at the City Library and may be purchased at bookstores. Summaries can be found online.

The use of parliamentary procedure:

- promotes cooperation and harmony so that people can work together more effectively to accomplish their goals;
- guarantees each individual an equal right to propose motions, speak, ask questions and vote;
- protects the rights of minority points of view and gives the minority the same consideration and respect as those in the majority;
- encourages the full and free discussion of every motion presented;
- ensures that the meeting is fair and conducted in good faith.

Who was Robert and why is he making the rules?

Robert's Rules of Order are based on parliamentary procedure originally used in the British Parliament. Early colonists followed the British model in the first New England town meetings. When he was President, Thomas Jefferson published the first American book on parliamentary procedure in 1801 which served as the rules for Congress. In 1876, an engineer and general in the U.S. Army, Henry Martin Robert, modified these procedures to meet the needs of "ordinary society." His version, Robert's Rules of Order, has become the authoritative guide for governments, organizations, clubs and schools throughout the U.S.

Quorum
A quorum is the minimum number of members that must be present for a group to conduct business. For the Santa Clara City Council, this means that a minimum of four Council Members or three Council Members and the Mayor be present for the Council meeting to take action.

Motions
A motion is the way that business is conducted by a group under parliamentary procedure. It is a proposal that an individual would like the group to consider and act upon.

Steps in making, discussing and voting on a motion:

1. The maker of the motion asks for recognition by the Chair.
2. After the individual is recognized, he or she will say "I move that we …"
3. The Chair will ask if there is a second. Another member of the group must second the motion in order for it to discussed. A second is made by saying "I second the motion."
4. The Chair then restates the motion "It has been moved and seconded that …" and opens the floor to discussion.
5. The Chair will recognize members who wish to comment on the motion. Only one motion may be discussed at a time. It is important that all members of the group are clear on what the motion is and what its effect will be. Spirited discussion helps to answer questions and explore different interpretations and/or impacts of the motion.
6. At the end of the discussion period, the Chair will "call for the question" and ask how many members are in support of the motion, how many are opposed and if there are any abstentions. A majority vote is needed for the motion to pass. The motion may be noted as passing or failing by verbal "ayes" and "nays" of members, by counting a show of hands, or by using the electronic vote board for meetings held in Council Chambers.

Other common motions:

Amending a motion	"I move to amend the motion by . . ."
Delaying consideration	"I move to table the motion until …"
Closing debate	"I move the previous question …"
Requesting more study	"I move to refer this to ____ (staff or subcommittee) for further study…"
Objecting to procedure	"Point of order."

APPENDIX 7: July 18, 2023, City Council Meeting Minutes Item 5

City of Santa Clara

Minutes

Call and Notice of Special Council Meeting &

Council and Authorities Concurrent Meeting

07/18/2023 | 6:00 PM | Hybrid Meeting
City Hall Council Chambers/Virtual
1500 Warburton Avenue
Santa Clara, CA 95050

The City of Santa Clara is conducting City Council meetings in a hybrid manner (in-person and continues to have methods for the public to participate remotely).

• Via Zoom:
o https://santaclaraca.zoom.us/j/99706759306

Meeting ID: 997-0675-9306

o Phone 1(669) 900-6833

How to Submit Written Public Comment Before City Council Meeting:

1. Use the eComment tab located on the City Council Agenda page https://santaclara.legistar.com/Calendar.aspx. eComments are directly sent to the iLegislate application used by City Council and staff, and become part of the public record. eComment closes 15 minutes before the start of a meeting.
2. By email to clerk@santaclaraca.gov by 12 p.m. the day of the meeting. Those emails will be forwarded to the Council and will be uploaded to the City Council Agenda as supplemental meeting material. Emails received after the 12 p.m. cutoff time up through the end of the meeting will form part of the meeting record. Please identify the Agenda Item Number in the subject line of your email.

NOTE: Please note eComments and Emails received as public comment will not be read aloud during the meeting.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at https://santaclara.legistar.com/Calendar.aspx

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, CA 95050 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. For the final document, you many contact the Office of the City Clerk at (408) 615-2220 or Clerk@santaclaraca.gov.

City of Santa Clara | *Page 1* | *Printed on 08/08/2023*

5. 23-824 Action on Appointments Related to a Charter Review Committee and Direction to Study Charter Amendment Alternatives Related to the Positions of Police Chief and City Clerk for Possible Placement on a March 2024 ballot.

Recommendation: Alternative : Staff makes no recommendation

City Manager Grogan introduced the item and turned it over to **Assistant City Manager Bojorquez** who gave a Powerpoint presentation on appointments related to a Charter Review Committee and direction to study Charter amendment alternatives related to the positions of Chief of Police and City Clerk.

Council comments and questions followed.

A motion was made by Councilmember Jain, seconded by Councilmember Hardy, to appoint the seven nominees to the Charter Review Committee.

Aye: 7 - Councilmember Watanabe, Councilmember Chahal, Councilmember Hardy, Vice Mayor Park, Councilmember Jain, Councilmember Becker, and Mayor Gillmor

A motion was made by Vice Mayor Park, seconded by Councilmember Becker, to direct that the Charter Review Committee, in the their scope of work, determine if the positions of Chief of Police and City Clerk should be appointed positions by either the City Council/City Manager or continue to be elected; look into the specifications and qualifications of each role comparable to other cities; and recommend additional qualifications as it relates to the positions.

Aye: 5 - Councilmember Chahal, Councilmember Hardy, Vice Mayor Park, Councilmember Jain, and Councilmember Becker

Nay: 2 - Councilmember Watanabe, and Mayor Gillmor

APPENDIX 8: Purpose And Overview Of The 2023 Charter Review Committee

City of Santa Clara
The Center of What's Possible

CHARTER REVIEW COMMITTEE NOMINATION FORM
City of Sant Clara
City Clerk's Office 1500 Warburton Avenue
Santa Clara, California 95050
Phone: 408-615-2220 E-mail: Clerk@santaclaraca.gov

PURPOSE AND OVERVIEW OF THE 2023 CHARTER REVIEW COMMITTEE

At the June 6, 2023 City Council meeting, the City Council directed the creation of a 2023 Charter Review Committee (Committee). The primary function of the Committee is to review and recommend to the City Council whether the provisions in the City Charter that provide for an elected Police Chief and/or City Clerk shall remain the same or whether an amendment to change the positions from elected to appointed positions and/or other changes to the currently stated qualifications for those positions should be placed on the March 2024 ballot. This scope of work is subject to final approval at the July 18, 2023 City Council meeting. The Council may accept, amend, or reject the Committee's recommendations and for those recommendations that are approved, determine the best method to structure the ballot measure(s). Discussions related to other portions of the City of Santa Clara Charter are not part of the scope of this Committee.

The Committee must be impartial, unbiased and free of any perceived political gain. The Committee must adhere to public meeting requirements and strive to include and educate the community about the process and purpose of a Charter Review, the importance of a City Charter and to solicit community input on proposed changes prior to making a recommendation to the City Council.

Membership

The Charter Review Committee will consist of seven (7) voting members that are appointed by the City Council, including one member from each Council District and a member nominated at large by the Mayor. City staff will be provided to support the Committee in an advisory role.

Meetings

Meeting dates will be set as determined by the majority of the Committee in consultation with City staff. All meetings shall be open to the public. The Committee shall hold at least two publicly advertised public hearings and will consider written and oral testimony offered during the review process, best practices as well as any other information the Committee shall solicit regarding how other cities approach the selection and/or qualifications for these positions. At the first meeting, the Committee shall elect a Chair and a vice-chair who will serve as Chair in the absence of the Chair. A quorum must be present to conduct business and is necessary to adopt a motion.

Duration

The Committee shall terminate at the time its recommendations are presented to the City Council. The Committee's recommendations, together with the related staff report, must be presented to the City Council no later than November 14, 2023.

The City Council wishes to sincerely thank the nominees for their interest in serving and outstanding commitment to the City of Santa Clara.

THE DEADLINE TO SUBMIT NOMINATIONS IS 12:00 PM, JULY 12, 2023

I, _____, hereby nominate the following individual to serve on the 2023 Charter Review Committee:
Mayor/Councilmember

Nominee Information:

Name: _____

Address: _____

City: _____

State: _____ Zip Code: _____

E-mail Address: _____

Primary Phone Number: _____

Secondary Phone Number: _____

Are you a resident of the City of Santa Clara? ☐ Yes ☐ No
(Must be a resident at time of application – Provide 2 proofs of residency: i.e. License/ID, Utility Bill or passport)

Are you a registered voter of the City of Santa Clara? ☐ Yes ☐ No
(Must be a registered voter at time of application)

City policy directs all advisory body members not to vote on matters where there exists a potential conflict of interest.

Are you aware of any potential conflict that would prevent you from voting on matters to be considered by the Charter Review Committee? ☐ Yes ☐ No

Would you be willing to abstain from voting if such a conflict arises? ☐ Yes ☐ No

By signing below, you are affirming that if appointed, you have sufficient time to devote to this responsibility and attend meetings. Please note that the information provided on this form is a public record that may be subject to disclosure upon request.

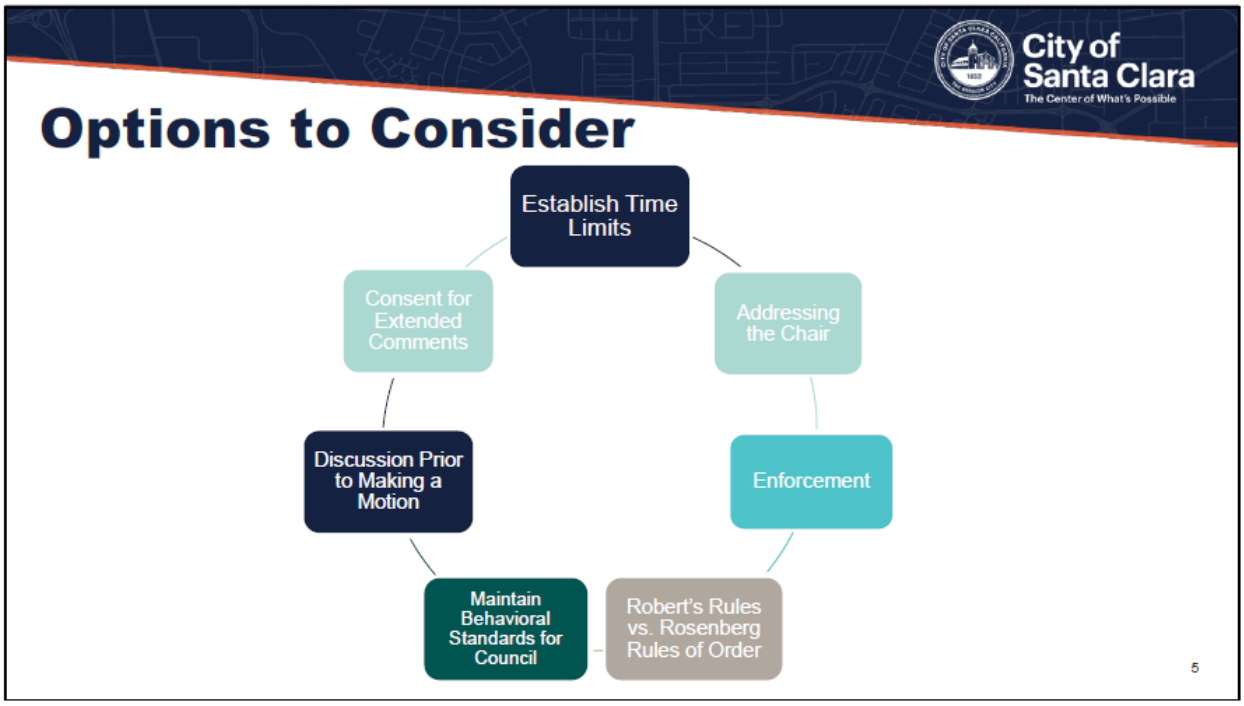
Signature:

Date Signed:

You may submit the completed nomination form in person at: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California 95050 or email completed form to: clerk@santaclaraca.gov

THE DEADLINE TO SUBMIT NOMINATION IS 12:00 PM, JULY 12, 2023

APPENDIX 9: Ethics Committee Presentation, December 4, 2023



APPENDIX 10: Understanding The Role Of Ethics Commissions

INSTITUTE FOR LOCAL GOVERNMENT

PUBLIC SERVICE ETHICS

Everyday Ethics for Local Officials

Understanding the Role of Ethics Commissions

December 2007

QUESTION

We have a citizens' group in our community considering whether to propose establishing an ethics commission. We have looked for information about ethics commissions but have not really found much. Can you help?

ANSWER

There are a number of questions to ask in evaluating whether an ethics commission represents a useful tool for your community, including:

1. What is your overall goal?
2. What do you want an ethics commission to do?
3. How would commission members be selected?
4. What powers would the commission have?
5. What resources are available to support the commission?
6. What decision-making process should you use to determine whether a commission is right for the community?

Let's look at each issue.

What Is Your Overall Goal?

The interest in creating an entity with some kind of responsibility for public service ethics can be inspired by any number of goals. One goal may be symbolic: to convey the message that ethics is important to a jurisdiction -- so important that the jurisdiction has a body responsible for it. Unfortunately, symbolic gestures rarely accomplish much in terms of ethics.

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Other goals may relate to the type of role the entity will play. An ethics task force can determine whether additional ethics measures and activities would be helpful in a jurisdiction. The City of Long Beach used this approach in 2001 when it created an ethics task force that came back a year later with a series of recommendations on how to enhance the ethical climate in the city. This kind of entity is an information-gathering and advisory body. However, the city council made the ultimate decision on whether to adopt the measures recommended by the task force.

One advantage of having an ethics task force is that it brings the community's voice to the table about ethics in public service. Depending on the composition of the task force, the respect that task force members enjoy in the community can translate into community respect for the task force's proposals.

Types of Ethics Entities

The following nomenclature may be helpful to underscore the differing roles that ethics-related positions or bodies can play in an organization, although different organizations may use different terminology.

Ethics Task Force
A body convened by a local agency to accomplish a specific task relating to ethics, typically making policy recommendations on ways to enhance the culture of ethics in an agency. The task force is usually disbanded after it has made its recommendations or accomplished its task.

Ethics Committee
A standing body designed to be a source of advice on policy implementation and support for ethics within the agency. An ethics committee can also play an educational role within the agency and out in the community.

Ethics Hotline/Ombudsperson
A sounding board for public officials on public service ethics dilemmas. In the private sector, many large companies provide such a source of advice for their people. This kind of position can also play an educational and training role.

Ethics Commission
A standing body with delegated authority to interpret and enforce the jurisdiction's ethics regulations. An ethics commission can also play a role in training and education.

Other communities have an ethics committee. The committee is a group of individuals that provides advice and feedback on how to promote and enhance the city's ethics program. It can comprise members of the public, local officials or a combination of both. The City of Santa Clara's ethics committee, for example, is composed of the mayor and two council members, the city manager, city attorney, city clerk, chief of police and the city's ethics advisor. Other staff regularly attend. The meetings are open to the public, and the city posts meeting notices and mails them to those who wish to be notified.

An ethics commission is usually an in-dependent body that provides external oversight and enforcement of ethics laws.[1]

In California, the state's Fair Political Practices Commission (FPPC) performs this role for state and local officials subject to the Political Reform Act. The FPPC regulates:

- Campaign financing and spending at the state and local levels;
- Financial conflicts of interest at the state and local levels;
- Lobbyist registration and reporting at the state level;
- Post-governmental employment at the state and local levels;
- Mass mailings at public expense at the state and local levels; and
- Gifts and honoraria given to public officials and candidates at the state and local levels.

A key goal of an ethics commission is to enhance public trust in the ethics enforcement process by assigning it to a quasi-independent entity.

Local agencies can have ethics commissions that are charged with enforcing and taking other actions with respect to local ethics laws. Such commissions may also provide advice regarding local ethics laws as well as offer training on such laws.

One question to ponder is whether your city or county needs additional ethics regulations (see "There Ought to Be a Law" at the bottom of this article). California already has a fairly complex array of ethics laws. For an overview of existing state and federal ethics laws, see A Local Official's Ethics Law Reference at www.ca-ilg.org/ethicslaws.

Common local ethics laws include laws that go beyond the minimum standards established in various state laws. These include laws that relate to campaign finance (contribution limits and public financing of campaigns), laws regulating lobbyists, open government or "sunshine" ordinances and more stringent gift rules.

Table 1. Ethics Commission Duties and Responsibilities

San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Upon a four-fifths vote of its members, commission may submit directly to voters any ordinance relating to conflict of interest, campaign finance, lobbying, campaign consultants or governmental ethics Commission serves as filing officer for state campaign statements Commission may adopt administrative regulations; regulations become effective within 60 days unless vetoed by a two-thirds vote of the board of supervisors Ethics commission authorized to hold hearings to determine whether an elective or appointed city officer warrants suspension or removal for acts of official misconduct	Administers and implements laws concerning campaign finance, lobbying, conflict of interest and governmental ethics Commission also serves as filing officer for campaign statements and is required to conduct audits of those statements Commission may investigate alleged violations of local and state law pertaining to campaign finance, lobbying, ethics and conflict of interest and report to appropriate authorities Commission must maintain a whistleblower hotline Commission authorized to adopt administrative regulations subject to council approval without modification Commission may issue written opinions and advice, the good faith reliance on which can provide immunity from or a defense to subsequent enforcement proceedings	Administers, monitors and enforces city-enacted laws concerning campaign finance, statements of economic interests, conflict of interest and gifts, lobbyist registration and other matters proposed by the commission and adopted by the city council Commission may investigate allegations of violations of city campaign and ethics laws	Monitors compliance with all city campaign and ethics laws Investigates allegations of violations of city campaign and ethics laws Makes recommendations to the city council on city campaign and ethics laws	Administers and enforces the Berkeley Election Reform Act Prescribes forms, publishes manuals and assists other city agencies in connection with the Berkeley Election Reform Act Commission may issue opinions, the good faith reliance on which can provide immunity from subsequent enforcement proceedings	Oversees compliance with all city campaign and ethics laws, including local "sunshine" ordinance, lobbyist registration act, public financing of campaigns, campaign finance act, etc. Makes recommendations to the city council on city campaign and ethics laws Imposes penalties and fines as provided for by ordinance Prescribes forms for reports, statements, notices and other documents related to campaign financing, conflict of interest, lobbying and ethics Sets compensation for the office of city council member, which is reviewed and adjusted annually Conducts investigations, audits and public hearings

Tables provided courtesy of Oakland Ethics Commission

What Do You Want an Ethics Commission to Do?

If creating an independent, regulatory entity would meet your community's goal, the specific duties assigned to ethics commissions tend to fall into one or more of three categories:

1. Overseeing and enforcing local ethics laws and/or codes;
2. Providing advice to local officials on ethics and ethics laws; and
3. Training local officials on ethics and ethics laws.

Most ethics commissions tend to focus on ethics laws as opposed to ethics (values-based conduct that goes above and beyond the minimum requirements of the law). See Table 1 for a list of responsibilities of various ethics commissions in California.

However, one California community experimented with having an ethics com mission that enforced its values-based ethics code. The code had examples of what conduct reflecting certain values -- such as fairness, trustworthiness, responsibility and respect -- did and did not look like. The task assigned to the ethics commission in that situation was to assess whether a given conduct fell into the "does not look like" category.

How Should Members Be Selected?

For an ethics commission to achieve the goal of promoting public confidence in its decision-making processes, it needs fair-minded and diligent members who are concerned with equitably enforcing its adopted ethics laws and requirements. This leads to the question of who appoints the members of the ethics com mission. Table 2 illustrates how a number of jurisdictions have tried to achieve the goal of appointing fair decision-makers.

Public confidence in the commission's decisions is also enhanced if the commissioners are not participants in the political process that they are charged with regulating. For that reason, a number of jurisdictions impose restrictions on com missioners' participation in elections (see Table 2).

Table 2. Ethics Commission Composition and Restrictions on Commissioner Activities

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Commission Composition	Five members, each serving one six-year term Terms staggered annually	Five members, each serving a five-year term Terms staggered annually	Seven members, each serving up to two four-year terms Terms staggered	Five members, each serving up to two four-year terms Terms staggered	Nine members; each serving a single four-year term Terms staggered	Seven members, each serving a three-year term Terms staggered
Appointment	Appointed by mayor, board of supervisors, city attorney, district attorney and assessor	Appointed by mayor, city attorney, controller, president of council, and president pro tem of council	Appointed by mayor from a pool of candidates Each council member and city attorney nominates seven candidates Mayor's appointments subject to confirmation by city council	Appointed by two-thirds vote of city council	The mayor and each city council member appoint a commissioner Commission terms run concurrently with the elected official's term	Three members appointed by mayor Four members appointed by the entire commission
Qualifications	Mayor's appointee must have background in public records/public meetings; city attorney's appointee must have background in public ethics law; assessor's appointee must have background in campaign finance law; remaining two appointees must represent general public	Must be a registered voter	At least one member must have held elective public office; two must be lawyers; no more than three can be from the same political party Must be a registered voter	Must be a registered voter with some familiarity with campaign laws; one member must be a California attorney	Must be a registered voter	Must be an Oakland resident and registered to vote

Table 2 continued

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Restrictions	Can't hold public office or be an officer of a political party Can't be a city employee, registered lobbyist or campaign consultant Can't participate in a campaign for city office, a ballot measure or publicly endorse a candidate or ballot measure	Can't hold public office or participate in an election campaign Can't run for public office within two years of a commission decision concerning that office	Can't make a financial contribution to, or publicly support or oppose, a candidate for public office Must agree not to run for elective office for 12 months after serving as a commissioner	Can't have a direct and substantial financial interest in any business, work or action by the city May not hold public office while a commissioner May not run for elective office for one year before or after serving on the commission May not endorse or work on behalf of any candidate while serving on the commission	Can't hold or seek election to public office or serve as an officer of any political party Can't participate in or contribute to a Berkeley election campaign	Can't be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city Can't seek election to any other public office or participate in or contribute to an Oakland municipal campaign Can't endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election
Vacancies	Vacancies filled by the appointing authority for the remainder of the term If less than three years remaining on the term, the appointee may serve a new six-year term	Appointments made within 30 days by the appointing authority to fill the unexpired term	Vacancies filled by the mayor from a pool of candidates submitted by each city council member and the city attorney	Appointments must be made within 60 days by the city council to fill the unexpired term	Appointments must be made within 30 days by the appointing authority to fill the unexpired term	A vacancy must be filled no sooner than 30 days and no later than 60 days from the date that the vacancy occurs

What Powers Should the Ethics Commission Have?

Other key decisions that will have to be made in the process of creating an ethics commission are:

- What kind of power should the commission have?
- Will the commission have the power to investigate claims of violations? And
- Can it subpoena records and compel people to testify before the commission?

If the commission's primary function is to enforce ethics requirements, the commission will typically be given the power to impose penalties (usually fines) for violations of laws within its jurisdiction. It may also be given the power to issue orders compelling compliance with ethics laws or enjoining violations. Table 3 explains how various jurisdictions answer these questions.

Table 3. Ethics Commission Powers

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Enforcement Procedures	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential Commission can request appointment of a special prosecutor for criminal enforcement if the city attorney is conflicted	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential	City council adopts by resolution the commission's complaint procedures	The commission may investigate and hold hearings to determine violations of the Berkeley Election Reform Act Hearings are open to all interested persons	A comprehensive set of complaint procedures exists Changes to commission rules and procedures become effective within 60 days unless vetoed by two-thirds vote of the city council
Conflict With Other Laws		Ethics charter provisions prevail against conflicting local laws				
Subpoena	Yes	Yes	Yes	Yes	Yes	Yes
Laws Over Which the Commission Has Jurisdiction	Campaign Finance Reform Ordinance (includes public matching funds); Campaign and Government Conduct Code; Prohibition of False Endorsement in Campaign Literature Ordinance; Lobbyist Registration Ordinance; Sunshine Ordinance (partial)	Campaign Finance Ordinance (includes public matching funds); Governmental Ethics Ordinance; Municipal Lobbying Ordinance; Post-Employment Ordinance	Election Campaign Control Ordinance; Citywide Ethics Ordinance; Municipal Lobbying Ordinance	Citywide Ethics Code (includes campaign finance, lobbying, revolving door and gift limitations)	Berkeley Election Reform Act	Campaign Finance Act (OCRA); Ethics Code (for city council); Lobbyist Registration Act; Conflict of Interest Code; Sunshine Ordinance; Limited Public Financing Act; False Endorsement in Campaign Literature Act

What Resources Are Available To Support an Ethics Commission?

The commission will typically need staff to assist with its work. The Los Angeles Ethics Commission employs 31 people, but staffing levels vary. Table 4 shows how various ethics commissions are staffed and their associated budgets.

It's also important to understand that indirect costs will be associated with supporting an ethics commission. Ethics commission staff will likely work closely with the agency counsel's office and possibly with the agency auditor. For example, in Berkeley, the city clerk's office also provides administrative support to the ethics commission.

Table 4. Ethics Commission Staffing and Resources

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Number of Staff (full-time equivalents)	12	31	6	No staff (city clerk's office provides administrative assistance as needed)	No staff (city clerk's office provides administrative assistance as needed)	20
Annual Budget	$1,382,441	$2,600,000	$1,021,106	No separate budget	No separate budget	$279,644
Commission & Staff Relations	Commission appoints and may remove the executive director at will Executive director has power to appoint and remove other commission employees City attorney is the commission's legal advisor	Commission appoints and may remove the executive director at will Executive director has power to appoint and remove other commission employees City attorney is the commission's legal advisor; however, commission may employ or contract staff counsel on matters involving the conduct of the city attorney, his or her office, or his or her election campaign	Commission appoints the executive director, subject to confirmation by the city council Executive director serves at the pleasure of the commission	Committee meetings staffed by the office of the city clerk City council has authority to retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints filed with the commission. The city council must appropriate funds for this purpose City attorney provides legal advice but does not participate in investigations or review of complaints	City provides the commission with staff who act in accordance with commission policies and regulations	City manager, or his or her designee(s), provides the commission with staff assistance as necessary to permit the commission to fulfill its functions and duties

Is an Ethics Commission Right For Your Jurisdiction?

A variety of decision-making processes are used to decide whether a community needs an ethics commission. Some jurisdictions assign the task of making recommendations on these issues to an ethics committee or task force. The task force's recommendations are presented to the city council or board of supervisors, who then evaluate whether these recommendations should be adopted, adopted with modifications or subjected to further study and analysis. In charter cities and counties, the proposal may be put before the

voters as a charter amendment. Voters can also use the initiative process to propose a matter for the ballot.

Another option is for community groups to collaborate with a local agency on a ballot measure. This hybrid approach helps create a proposal that reflects community concerns as well as the technical expertise of the public agency about how to craft a measure that addresses such concerns.

Conclusion

Local agencies have a number of tools available to them to promote a culture of ethics and compliance with ethics laws in their jurisdictions. An ethics commission is one such tool. Like all tools, there are tasks that ethics commissions can perform well, while other ethics-related functions may be better achieved by other measures. For more information about the range of tools available to local agencies to promote ethics in public service, visit the Institute for Local Government's Ethics Resource Center at www.ca-ilg.org/erc.

There Ought to Be a Law -- Wait, There Is One!

Sometimes a jurisdiction will find itself evaluating whether to form an ethics commission or other ethics-related entity when it is experiencing a scandal. Leaders may feel under pressure to "do something" to prevent future scandals. To respond effectively, it can be helpful to identify exactly what caused the scandal to occur and tailor the response accordingly.

Sometimes the scandal will be that someone is charged with violating an ethics law. Under such circumstances, the solution may not be more laws or even more law enforcement. The solution may be stepped-up training. Such training may be helpful if the prevailing sense is that someone made an ignorant mistake (either not knowing something was against the law or not realizing the consequences of getting caught). Greater attention to creating a culture of ethics within the jurisdiction and sensitizing the voters to the need for considering ethics as a criteria in elections may also be solutions (see "Santa Clara infuses Ethics Into Campaigns" regarding the city's "Vote Ethics" efforts).

In other cases, there may not have been a perceived violation of the law but a perceived lack of enforcement. If this is the situation, keep in mind that there may be multiple enforcement mechanisms. For example, the Political Reform Act allows for private enforcement if the Fair Political Practices Commission does not take action on a complaint. Moreover, under the federal law that protects the public's right to "honest services" from its public officials, many violations of state ethics laws can also be prosecuted by the U.S. Attorney's Office as a form of mail or wire fraud (or if money was involved, even income tax evasion).

Alternatively, the scandal may be that someone did not engage in conduct that should necessarily send them to jail or cause them to pay a fine; they just exercised very poor judgment. Or it could be a form of conduct that is very difficult to regulate (for example, issues related to free speech). This is where an aspirational, value-based code of ethics can help, particularly if it is accompanied by a well-defined, consistently implemented program to highlight the importance of the code as a guide for everyday conduct by public officials that reflects the community's expectations. Visit www.ca-ilg.org/ethicscodes for more information on this approach.

In short, it's important when facing demands that one "do something" about an ethics issue to choose a course of action reasonably tailored to fixing the problem that gave rise to the issue. Otherwise, one faces the specter of further erosions of the public's trust and confidence if a remedy, while well-intended, proves ineffective in preventing a repeat occurrence.

This piece originally ran in *Western City* Magazine and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

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Endnote:

[1] National Conference of State Legislatures, Ethics Committees and Ethics Commissions: What's the Difference? Available at http://www.ncsl.org/programs/ethics/whats_the_difference.htm.

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This report was **ADOPTED** by the 2023-24 Santa Clara County Civil Grand Jury on this 12th day of June, 2024.

Karen Enzensperger
Foreperson