

SANTA CLARA COUNTY

C A L I F O R N I A

July 29, 2015

Honorable Rise Jones Pichon
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, California 95113



Michael J. Sellers
Chief of Police

FILED

AUG - 5 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY BRITNEY HUELBIG DEPUTY

Dear Judge Pichon:

Per California Penal Code sections 933(c) and 933.05, please find below the City of Santa Clara's response to the findings and recommendations found in the 2014-2015 Santa Clara County Civil Grand Jury Report, "Protecting Our Most Vulnerable Residents".

FINDING 6:

"The Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement, dated July 2010, has not been revised in five years, is over 100 pages long, and should be revised and shortened."

RESPONSE:

The respondent AGREES with the finding per 933.05(a) of the California Penal Code.

RECOMMENDATION 6J:

"The City of Santa Clara Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement".

RESPONSE:

The respondent AGREES with the finding per 933.05(b) of the California Penal Code. The Police Chiefs' Association of Santa Clara County is currently working on revising the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

Sincerely,

Michael J. Sellers
Chief of Police



**City of
Santa Clara**
The Center of What's Possible

FILED

SEP 22 2016

City Manager's Office

The Honorable Rise Jones Pinchon
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Janice Jones DEPUTY

August 24, 2016

Re: Santa Clara County Grand Jury Report – *The City of Santa Clara, The Santa Clara Stadium Authority, Levi's Stadium, and Measure J*

Dear Judge Pinchon:

The City of Santa Clara received the 2015-2016 Santa Clara County Civil Grand Jury report entitled "*The City of Santa Clara, The Santa Clara Stadium Authority, Levi's Stadium, and Measure J*". Per California Penal Code Section 933 (c) and 933.05, please find below the City of Santa Clara's responses to the findings and recommendations.

Finding 1:

Since the passage of the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J), there has been no compliance audit. During the course of the Grand Jury's investigation, the Santa Clara Stadium Authority board approved a Measure J compliance audit to be performed by a third party, to be selected.

Recommendation 1a

The Santa Clara Stadium Authority should specify that the compliance audit cover the time period beginning with the passage of Measure J through March 31, 2016, the end of the Stadium Authority fiscal year.

Response 1a

The Measure J Compliance Audit Request for Proposals was issued on May 13, 2016. The scope of the audit was based on specific audit requirements provided to staff by the Stadium Authority Board. The scope includes a comprehensive Measure J compliance audit of Stadium Authority finances dating back to April 1, 2014 (i.e., the period of the fiscal year of the first year of operations) through March 31, 2016. The Board has already selected an auditor based on this scope, and a contract with Harvey M. Rose, the selected auditor, has been executed.

The Respondent is reviewing options to expand the auditing scope as suggested by the Civil Grand Jury. It should be noted that the activities undertaken related to the Stadium during the time period between the passage of Measure J and March 31, 2014 were primarily construction related. A separate cost allocation review of construction expenditures was completed by KPMG on November 17, 2015.

Recommendation 1b

The Santa Clara Stadium Authority should specify that the scope of the compliance audit include whether City of Santa Clara general funds have been used for the operation or maintenance of Levi's Stadium in violation of Measure J.

Response 1b

The Respondent agrees with this recommendation and this was included in the scope of services for the Measure J Audit discussed above. .

Recommendation 1c

The Santa Clara Stadium Authority should specify that a Measure J compliance audit include a review of the billing and tracking procedures used when City employees perform Stadium business and how and when the City is reimbursed.

Response 1c

The Respondent agrees with this recommendation and it was included in the scope of services for the Measure J audit.

Recommendation 1d

Once the audit is complete, the Santa Clara Stadium Authority should release the results to the public.

Response 1d

The Respondent agrees with this recommendation. All Stadium Authority and City audits are publicly posted as part of meeting agenda packets. In addition, audits are also posted on the City of Santa Clara Finance Department web page. The completed audit will also be posted on the Santa Clara Stadium Authority web page.

Finding 2

The public safety costs incurred during the first two NFL football seasons at Levi's Stadium have exceeded the monetary threshold stated in the Santa Clara Stadium Taxpayer Protection and Economic Progress Act (Measure J).

Recommendation 2

If the public safety cost overage continues through the 2016 NFL season, the City of Santa Clara should seek an adjustment of the public safety cost threshold in accordance with clause 7.5.4(b) of the *Amended and Restated Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty Niners Santa Clara Stadium Company LLC dated March 28, 2012, As Amended and Restated as of June 19, 2013.*

Response 2

The Respondent agrees with this recommendation. It should be noted that the Respondent initiated discussions with the Forty Niners SC Stadium Company LLC (StadCo) on public safety costs in 2015 and requested the commencement of negotiations following the end of the second NFL season (February 2016) – one full year in advance of the lease provision. While the parties previously agreed to enter into early negotiations, these discussions are currently on hold pending resolution of the arbitration process.

Finding 3

The Santa Clara Stadium Authority's Finance Director, Treasurer, and Auditor positions are currently held by the same individual.

Recommendation 3

The Santa Clara Stadium Authority should adopt the same structure as the City of Santa Clara, where the auditor position is separate and independent from that of the finance director.

Response 3

The Respondent agrees with this recommendation. While there is no evidence that an actual conflict exists and there are already established internal controls within the Finance Department (e.g., multiple signatures are required to initiate transactions) and the Stadium Authority is audited annually by an independent third party, the Respondent agrees that having these functions all under one position could create the appearance of a conflict of interest.

The Joint Powers Agreement that created the Santa Clara Stadium Authority defined Board and staff positions and assigned the title of Finance Director/Treasurer/Auditor for Stadium Authority to the City's Director of Finance. The Respondent will bring forward a recommendation to the Joint Powers Authority (JPA) partners to change the JPA Agreement to reassign the Auditor title.

If there are any questions in regard to the City's response to the Grand Jury's findings and recommendations, please contact me at (408) 615-2210. Thank you for the opportunity to comment on the report.

Sincerely,



Rajeev Batra
Acting City Manager

cc: Mayor and City Council



**City of
Santa Clara**
The Center of What's Possible

(ENDORSED)
FILED
SEP 05 2018

Clerk of the Court
Superior Court of CA County of Santa Clara
BY Janice Jones DEPUTY

Mayor

Lisa M. Gillmor

Council Members

Debi Davis
Patrick Kolstad
Patricia M. Mahan
Teresa O'Neill
Kathy Watanabe

August 31, 2018

Honorable Patricia Lucas
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Presiding Judge Lucas,

Please see the attached Report to Council. This report was unanimously approved at the July 10, 2018, meeting of the City Council of the City of Santa Clara.

Per California Penal Code sections 933(c) and 933.05, this report is the City of Santa Clara's response to the findings and recommendations found in the 2017-2018 Santa Clara County Civil Grand Jury Report, "**Police and the Mentally Ill: Improving Outcomes**".

Thank you for your time and consideration.

Sincerely,

Lisa M. Gillmor
Mayor
City of Santa Clara

Enclosure

cc: Chief of Police
City Manager
City Attorney



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

18-810

Agenda Date: 7/10/2018

REPORT TO COUNCIL

SUBJECT

Action on Response to the 2017-2018 Civil Grand Jury Report entitled, "Police and the Mentally Ill: Improving Outcomes"

BACKGROUND

On May 9, 2018, the 2017-2018 Santa Clara County Civil Grand Jury published a report entitled, "Police and Mentally Ill: Improving Outcomes" (see Attachment 1)

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which 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 § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

As stated in Penal Code § 933.05(a) public agencies are required to "Agree" or "Disagree" with each applicable finding. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara is required to respond to each applicable recommendation with one of four possible 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; or,
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

The City's responses to the Civil Grand Jury's findings are due to the office of the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, no later than Tuesday, August 7, 2018.

DISCUSSION

One of the issues examined by the 2017-2018 Civil Grand Jury was, "the circumstances around law enforcement officers using deadly force against citizens who were in a mental health crisis, whether or not they were committing a crime." The key focus of the resulting report is law enforcement mental health training policies. The Grand Jury interviewed, surveyed and researched law

enforcement and dispatcher personnel, District Attorney's Office staff and County Behavioral Health staff, and the various training courses they receive. Information from and regarding the County of Santa Clara and the 11 law enforcement agencies operating within the County was reviewed. The Grand Jury's work culminated in a report entitled, "Police and Mentally Ill: Improving Outcomes." The report contained five findings and nine recommendations that are applicable to differing combinations of agencies, depending on the levels of record-keeping, crisis response units, and officer training that the agencies provide.

Currently, the City of Santa Clara provides four (4) hours of mandatory crisis intervention training to 100% of its officers and dispatchers. According to the report, SCPD is the only department in the County that requires this level of training for *all* of its officers and dispatchers. Only two findings/recommendations are listed as applicable to the City of Santa Clara and those are identified in the report as Recommendation (1) and Recommendation (2D).

FINDING 1:

The first finding requiring a response is Finding (1) which states, "The County's AB 71-required criminal justice reporting surpasses that of many jurisdictions nationwide. However, the presence of mental illness in a given incident report is not mandated by AB 71. Reporting this data would assist law enforcement agencies in understanding the relationship between mental illness and officer involved shootings, and help in revising their training programs."

RESPONSE:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code.

The presence of mental illness in officer involved shootings could be a significant factor and having this knowledge could help revise police training programs.

RECOMMENDATION 1:

As a result of Finding (1), the Civil Grand Jury issued Recommendation (1), which states, "Law enforcement agencies submitting AB 71-required data should report, to the extent possible, whether mental illness was involved in their use of force data, starting in 2019. This applies to all the agencies reviewed by the Grand Jury, which are the Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara."

RESPONSE:

The City of Santa Clara will implement the recommendation per 933.05(b)(2) of the California Penal Code with the AB 71 reporting due by February 28, 2019.

FINDING 2:

The second finding requiring a response is Finding (2) which states, "The Grand Jury found that training in crisis intervention and de-escalation techniques beyond what is included in the POST Basic Police Academy helps improve the outcome of law enforcement contacts with the mentally ill."

RESPONSE:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code.

Crisis Intervention Training has been found to be a useful tool in defusing situations involving police and the mentally ill.

RECOMMENDATION (2D)

As a result of Finding (2), the Civil Grand Jury issued Recommendation (2D), which applies to the City of Santa Clara and it states, "The following law enforcement agencies should include Crisis Intervention Training and De-Escalation technique training in their Continuing Professional Perishable Skills and Communications training: Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara."

RESPONSE:

The City of Santa Clara will implement the recommendation per 933.05(b)(2) of the California Penal Code.

The Santa Clara Police Department provides 80-hours of Advanced Officer Training (AOT) to each police officer over a two-year cycle. The department will add Crisis Intervention Training and De-Escalation technique training into this two-year cycle, with the first class being scheduled in the fourth quarter of 2019.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to sending the response other than administrative staff time and expense. However, implementing the additional record-keeping and training may result in increased expense, which will be addressed by budget action if necessary.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Authorize Mayor Gillmor to send the City's response to the Civil Grand Jury Report to the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than Tuesday, August 7, 2018.

Reviewed by: Michael J. Sellers, Chief of Police
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Grand Jury Report 1718-06 Final REVISED (05.08.18)



**City of
Santa Clara**
The Center of What's Possible

Housing and Community
Services Division

(ENDORSED)
FILED
SEP 18 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
Janice Jones

September 6, 2018

Honorable Patricia Lucas
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Presiding Judge Lucas,

Please see the attached Report to Council. This report was unanimously approved at the August 28, 2018, meeting of the City Council of the City of Santa Clara.

Per California Penal Code sections 933(c) and 933.05, this report is the City of Santa Clara's response to the findings and recommendations found in the 2017-2018 Santa Clara County Civil Grand Jury Report, "**Affordable Housing Crisis: Density is Our Destiny**".

Thank you for your time and consideration.

Sincerely,

Lisa M. Gillmor
Mayor
City of Santa Clara

Enclosure

cc: City Manager
City Attorney



Agenda Report

18-916

Agenda Date: 8/28/2018

REPORT TO COUNCIL

SUBJECT

Action on City's Response to the 2017-2018 Santa Clara County Civil Grand Jury Report: "Affordable Housing Crisis: Density is Our Destiny"

BACKGROUND

On June 21, 2018, the Santa Clara County Civil Grand Jury published a report entitled, "Affordable Housing Crisis: Density is Our Destiny" (see Attachment 1)

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which 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 § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

As stated in Penal Code § 933.05(a) public agencies are required to "Agree" or "Disagree" with each applicable finding. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara is required to respond to each applicable recommendation with one of four possible 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; or,
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

The City's responses to the Civil Grand Jury's findings are due to the office of the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, no later than Thursday, September 20, 2018.

DISCUSSION

Below, please find the findings and recommendations from the attached report and staff's recommended responses including references to policies set forth in the City's General Plan Land Use and Housing elements directly responsive to the issues raised in the Report.

Finding 1a:

Lack of housing near employment centers worsens traffic congestion in the County and increases the urgency to add such housing.

Response:

The City of Santa Clara agrees with the finding. The City's General Plan, updated in 2010, provides capacity for over 16,000 new attached residential units in Santa Clara (General Plan Table 5.2-1 Summary of General Plan Development Potential 2010-2035) primarily to be located in nine Focus Areas (Figure 5.4-1) located in proximity to employment areas and transit facilities. In 2016, the City adopted the Lawrence Station Area Specific Plan, located adjacent to the Caltrain Lawrence Station in northern Santa Clara and anticipates adoption later this year of the Tasman East Specific Plan, located adjacent to the VTA Tasman Light Rail station. Both of these Specific Plans convert existing industrial lands to high-density residential use, together adding capacity for 8,000 new residential units in close proximity to existing employment centers. Furthermore, the City has recently initiated new Specific Plan efforts (e.g., Freedom Circle Specific Plan, Patrick Henry Specific Plan) that would add several thousand units of additional residential capacity through conversion of existing employment lands within north Santa Clara.

These efforts are also reflected in General Plan policies specific to each Focus Area:

Policy 5.4.1 P12 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the El Camino Real Focus Area.

Policy 5.4.2 P14 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Downtown Focus Area.

Policy 5.4.3 P20 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Santa Clara Station Focus Area.

Policy 5.4.5 P13 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Lawrence Station Focus Area.

Policy 5.4.6 P16 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Tasman East Focus Area.

Finding 1b:

Mass transit stations (Caltrain, VTA, BART) create opportunities for BMR units.

Response:

The City of Santa Clara agrees with the finding. The City's General Plan promotes the development of affordable housing throughout the City, and also promotes higher density residential development and a proportional increase in BMR units in proximity to transit facilities, as stated in the following General Plan goals and policies:

Goal 5.3.2 G3 Affordable housing units dispersed throughout the City to avoid a concentration in any one neighborhood.

General Plan Policy 5.2.3 identifies Priority Development Areas for new housing that are “in a pedestrian friendly environment served by transit.”

Policy 5.3.2 P2 Encourage higher density residential development in transit and mixed use areas and in other locations throughout the City where appropriate

Policy 5.3.2 P6 Provide adequate choices for housing tenure, type and location, including higher density, and affordability for low and moderate income and special needs households.

Policy 5.3.2 P7 Construct and preserve affordable housing for low and moderate income households through the use of public subsidies, regulatory incentives and flexible development standards.

Policy 5.3.2 P8 Require new residential development to comply with applicable regulations for the provision of affordable housing.

Policy 5.3.2 P9 Encourage senior and group residential facilities, and affordable housing developments near neighborhood retail, support services and transit facilities.

Finding 1c:

Density bonus programs are not being used aggressively enough to produce the needed BMR units within one-half mile of transit hubs.

Response:

The City of Santa Clara agrees with the finding. As referenced above, the City in many cases requires that new residential development within proximity of transit facilities be at higher than traditional densities, with the goal of achieving high yields of new residential units while also addressing neighborhood compatibility. The City's General Plan currently designates lands in proximity of transit with density ranges that vary from a minimum of 37 DU/AC to a maximum of 100 DU/AC, and is considering a range of 85-350 DU/AC for the Tasman East Specific Plan scheduled for adoption later this year. The City has seen some use of density bonuses for affordable housing projects, but has also observed that as development costs increase significantly for housing types (e.g., Type I construction) that would achieve even higher density, there is not sufficient demand to achieve those higher densities or fully utilize density bonus programs. The City's General Plan fully supports the use of density bonus programs:

Policy 5.5.1 P3 For residential development providing more affordable units than required based on the City's Inclusionary Housing Policy, allow a density bonus, consistent with California State density bonus law, provided that the increased density is compatible with planned uses on neighboring properties and consistent with other applicable regulations and General Plan policies.

Recommendation 1a:

To improve jobs-to-housing imbalances, the cities of Palo Alto, Santa Clara, Milpitas, Mountain View and Sunnyvale should identify, by June 30, 2019, parcels where housing densities will be increased. The identification should include when projects are expected to be permitted and the number of BMR units anticipated for each parcel.

Response:

The City has already identified and designated parcels as Focus Areas within the City for higher density residential development. The City has completed the preparation of a Specific Plan for the Lawrence Station Specific Plan area and is currently in the process of preparing Specific Plans for the Tasman East, El Camino Real, Patrick Henry Drive and Freedom Circle Specific Plan areas, with expected completion of the Specific Plan process for each in 2018, 2019 or 2020 depending upon the Plan area. Collectively these Plans will provide for over 20,000 new housing units, of which at least 2,000 would be BMR units as the City transitions to a 15% inclusionary requirement. Some of the market rate and BMR units are already permitted and under construction. A majority of units are expected to be permitted within the next five years, but implementation in some cases could take longer and will depend upon market conditions.

Recommendation 1b:

Cities should identify parcels within one-half mile of a transit hub that will help them meet their low-income and moderate-income BMR objectives in the current RHNA cycle, by the end of 2019. Cities to respond are Campbell, Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City agrees with this recommendation. The City is working on a comprehensive strategy to meet its RHNA targets to implement its General Plan Policy 5.3.2 P1 "Encourage the annual construction of the housing units necessary to meet the City's regional housing needs assessment by reducing constraints to housing finance and development". The Lawrence Station, Tasman East, El Camino Real, and Patrick Henry Specific Plan areas, as well as a recently filed application for a 6,000 residential unit mixed-use development adjacent to the VTA Old Ironsides light rail station, are located within one-half mile of transit rail facilities as well as bus service and each will require an inclusionary BMR component that in aggregate will generate at build-out of each approximately 2,000 BMR units within close proximity to transit. The City is also processing 100% affordable housing projects within the Lawrence Station, Tasman East and El Camino Real transit oriented areas. A significant number of BMR units will thus be distributed throughout these transit-oriented areas as part of the City's strategy to meet its RHNA allocations.

Recommendation 1c:

Cities should revise their density bonus ordinances to provide bonuses for LI and moderate income BMR units that exceed the minimum bonuses required by State law for parcels within one-half mile of a transit hub, by the end of 2020. Cities to respond are Campbell, Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City is in the process of a comprehensive Zoning Code update expected to be completed by the end of 2019. The City will evaluate how to implement this requirement as part of the update.

Finding 2a:

Employers in the County have created a vibrant economy resulting in an inflated housing market displacing many residents.

Response:

The City of Santa Clara agrees with the finding in that it is evident that there has been sustained job growth in the past few years which further contributes to demand for housing and increased housing costs. Most new development in Santa Clara is being implemented on existing commercial lands and not directly resulting in a displacement of existing residents. The City also provides services through its Housing program, such as financial assistance for residential rehabilitation, to enable low income residents to remain in their properties.

Finding 2b:

Contributions to BMR housing from employers in the County are not mandated nor evenly shared.

Response:

The City of Santa Clara agrees with the finding. The City of Santa Clara along with a small number of other cities in the County, has taken a leadership position by adopting an Affordable Housing Impact fee that became effective August 1, 2018, to require commercial developers to financially contribute toward the City's production of BMR units.

Recommendation 2a:

The County should form a task force with the cities to establish housing impact fees for employers to subsidize BMR housing, by June 30, 2019. Agencies to respond are all 15 cities and the County.

Response:

The City of Santa Clara agrees with the recommendation and will defer to the County on a timeframe for implementation. While the City has already adopted impact fees for nonresidential projects, the City is open to working with the County and other cities to discuss impact fees on a County-wide basis.

Recommendation 2b:

Every city in the County should enact housing impact fees for employers to create a fund that subsidizes BMR housing, by June 30, 2020. Agencies to respond are the County and all 15 cities.

Response:

The City agrees with the recommendation. On February 22, 2018 the City of Santa Clara adopted an Affordable Housing Ordinance that includes housing impact fees for nonresidential projects, such as retail, hotel, office, and light industrial projects, beginning on August 1, 2018. The full Ordinance <<http://santaclaraca.gov/home/showdocument?id=56670>>, Resolution and Fee Schedule <<http://santaclaraca.gov/home/showdocument?id=56672>> are provided for reference.

Finding 3a:

RHNA sub-regions formed by several San Francisco Bay Area counties enable their cities to develop promising means to meet their collective BMR requirements. Such sub-regions can serve as instructive examples for cities in the County.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3a requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-

based housing impact fees.

Finding 3c:

More BMR units could be developed if cities with lower housing costs form RHNA sub-regions with adjacent cities with higher housing costs.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3c requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-based housing impact fees.

Finding 3e:

High-cost/low-cost city RHNA sub-regions could be attractive to high-cost cities because they could meet their BMR requirements without providing units in their cities.

Response:

The City of Santa Clara agrees in part with the finding; however, Finding 3e requires further analysis. This issue would best be considered by the same County task force taking up the issue of employer-based housing impact fees.

Recommendation 3a:

Every city in the County should identify at least one potential RHNA sub-region they would be willing to help form and join, and report how the sub-region(s) will increase BMR housing, by the end of 2019. Agencies to respond are all 15 cities.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time as the recommendation warrants further analysis from both the County and State. The cost of land is a significant barrier to affordable housing creation, but there are other significant barriers such as community resistance, availability of infrastructure and services, and neighborhood compatibility concerns. While Santa Clara has been identified as a high-cost City within the Report with the implication that Santa Clara should transfer some or all of its RHNA obligation to a lower cost city, Santa Clara remains committed to the production of BMR units within Santa Clara and considers this desirable given its proximity to employment centers. It is thus unclear for Santa Clara as to how participation in a RHNA sub-region would provide regional benefit. While RHNA sub-regions may also provide an outlet for cities that lack the political will to create affordable housing, Santa Clara is committed to the production of affordable housing through its General Plan and other policies and ordinances. The concentration of BMR units in low cost areas, such as Gilroy, may exacerbate some of the environmental impact of the housing crisis - namely traffic. Housing is especially needed in cities like Santa Clara where the Jobs-Housing ratio is unbalanced.

While the City acknowledges that since losing the Redevelopment Agency in 2012, creating new affordable housing has been challenging for Santa Clara and all cities across the Bay Area, several initiatives are now coming into effect that will enable the City to resume its BMR production. Over the past year, the issuance of Measure A funds and the implementation of inclusionary housing and impact fees have provided the resources to once again create a healthy affordable housing pipeline. Although it is always cheaper to build affordable housing in lower cost areas, that is not always the

appropriate solution.

Recommendation 3b:

A RHNA sub-region should be formed including one or more low-cost cities with one or more high-cost cities, by the end of 2021. Agencies to respond are all 15 cities.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time as the recommendation warrants further analysis from both the County and State and it is unclear that it will provide a benefit in terms of BMR production within Santa Clara. The City is however prepared to participate in the formation of a RHNA sub-region should such an effort move forward on a County-wide basis.

Recommendation 3c:

High-cost cities and the County should provide compensation to low-cost cities for increased public services required for taking on more BMR units in any high-rent/low-rent RHNA sub-region, by the end of 2021. Agencies to respond are Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Mountain View, Palo Alto, Santa Clara, Saratoga, Sunnyvale and the County.

Response:

As discussed in Responses 3a and 3b, the City is committed to the production of BMR units within Santa Clara and based on current policies in place, anticipates the ability to perform well going forward in terms of meeting the City's RHNA allocation.

Finding 5a:

Uneven BMR achievements among cities is caused in part by varying inclusionary BMR unit percentage requirements.

Response:

The City of Santa Clara agrees in part with the finding per 933.05(a)(1) of the California Penal Code. Uneven BMR achievements are also caused by varying policies and priorities among cities. The City could be supportive of a consistent approach across the County, but would be concerned about any lessening of the City's current requirements in order to conform with other cities.

Finding 6:

In-lieu fees, when offered as an option, are too low to produce the needed number of BMR units, and delay their creation.

Response:

The City of Santa Clara generally agrees with the finding per 933.05(a)(1) of the California Penal Code. The City's adopted ordinances prioritize inclusionary units for new residential development. The production of BMR units would be further supplemented through commercial linkage fees and access to Measure A funds and other outside funding sources.

Recommendation 6:

Cities with an in-lieu option should raise the fee to at least 30% higher than the inclusionary BMR equivalent where supported by fee studies, by the end of 2019. Cities to respond are Campbell,

Cupertino, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale.

Response:

The City of Santa Clara does not see a need to implement the recommendation at this time. The City's Affordable Housing Ordinance was structured with a preference toward mandatory inclusionary housing. The only projects that can voluntarily pay an in-lieu fee are those projects with fewer than ten (10 units). For all other projects, any alternative means of compliance, including payment of in-lieu fees, requires the execution of a Development Agreement, which would be negotiated on a project-by-project basis.

Finding 7 :

NIMBY (Not in My Backyard) opposition adversely affects the supply of BMR housing units.

Response:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code. The City is committed to robust community engagement in the land use planning process to help address community concerns. This commitment is reflected in the City's General Plan (e.g., Goal 5.3.1 P2 Encourage advance notification and neighborhood meetings to provide an opportunity for early community review of new development proposals) and the City's Land Use Outreach Policy - (attached) adopted in 2017.

Recommendation 7:

A task force to communicate the value and importance of each city meeting its RHNA objectives for BMR housing should be created and funded by the County and all 15 cities, by June 30, 2019.

Response:

The City of Santa Clara agrees with the Recommendation and is ready to participate in such an effort.

Finding 8:

It is unnecessarily difficult to confirm how many BMR units are constructed in a particular year or RHNA cycle because cities and the County only report permitted units.

Response:

The City of Santa Clara agrees with the finding per 933.05(a)(1) of the California Penal Code on a limited basis. The City of Santa Clara has data available on BMR units produced within Santa Clara and includes this information in its annual reporting to the State.

Recommendation 8:

All 15 cities and the County should annually publish the number of constructed BMR units, starting in April 2019.

Response:

The City of Santa Clara has data available on BMR units produced within Santa Clara and includes this information in its annual reporting to the State. The State provides online a summary of data submitted by all jurisdictions.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no fiscal impact to sending the response other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Authorize Mayor Gillmor to submit the City's response to the Civil Grand Jury Report to the Honorable Patricia Lucas, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than Thursday, September 20, 2018.

Reviewed by: Andrew Crabtree, Director of Community Development

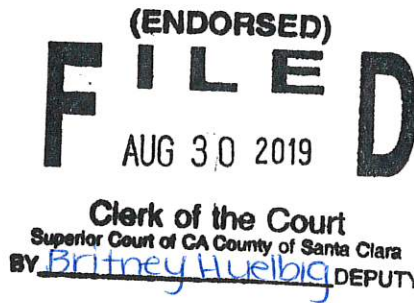
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Grand Jury Report
2. Land Use Community Outreach Policy
3. Affordable Housing Ordinance and Resolution



**City of
Santa Clara**
The Center of What's Possible



Mayor

Lisa M. Gillmor

Councilmembers

Raj Chahal
Debi Davis
Karen Hardy
Patricia M. Mahan
Teresa O'Neill
Kathy Watanabe

August 27, 2019

The Honorable Deborah A. Ryan
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Judge Ryan,

Please see the attached Report to Council. This report was unanimously approved at the August 20, 2019 meeting of the City Council of the City of Santa Clara.

Per California Penal Code sections 933(c) and 933.05, this report is the City of Santa Clara's response to the findings and recommendations found in the 2018-2019 Santa Clara County Civil Grand Jury Final Report, **Inquiry into the Governance of the Valley Transportation Authority**.

In addition to the attached report I would also like to emphasize some serious concerns the City Council conveyed at the August 20, 2019 City Council meeting regarding the governance structure of the Valley Transportation Authority (VTA). Specifically, it was emphasized that:

1. The VTA Board Chair should serve a two-year term;
2. Clarity must be given on how appointments to the VTA Board are made. Some cities, like Santa Clara, rotate appointments while others take a more political process approach;
3. The governance structure should be reviewed to increase equity, thereby ensuring the needs of all communities, regardless of size, are met.

Thank you for your time and consideration.

Sincerely,

Lisa M. Gillmor
City of Santa Clara

Enclosure

Cc: City Manager
City Attorney



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

19-834

Agenda Date: 8/20/2019

REPORT TO COUNCIL

SUBJECT

Action on the City's Response to the June 2019 Santa Clara County Civil Grand Jury Report: "Inquiry into Governance of the Valley Transportation Authority"

BACKGROUND

The Santa Clara County Grand Jury ("Grand Jury") initiated an investigation of the governance of the Valley Transportation Authority ("VTA") and on June 13, 2019, the Grand Jury transmitted a letter to the City along with a report (Report) entitled "Inquiry Into Governance of the Valley Transportation Authority" (Attachment 1).

California Penal Code § 933(c) requires that a governing body of a particular public agency or department, which has been the subject of a Grand Jury final report 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 § 933.05 contains guidelines for responses to Grand Jury findings and recommendations.

As stated in Penal Code § 933.05(a), the City of Santa Clara's governing body is required to "Agree" or "Disagree," in whole or in part, with each applicable Finding. To be clear, the options for the response to Findings are:

1. Agree in Whole
2. Partially Agree
3. Disagree in Whole
4. Partially Disagree

As stated in Penal Code § 933.05(b), the City of Santa Clara's governing body is required to respond to each applicable Recommendation with one of four possible actions:

1. **The recommendation has been implemented**, with a summary of the possible 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; or,
4. **The recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

The City's responses to the Civil Grand Jury's Findings and Recommendations are due to the Office of the Presiding Judge, Santa Clara County Superior Court, no later than September 16, 2019. Approval of this report satisfies the requirements of Penal Code § 933(c), which requires the City Council to respond to the Civil Grand Jury report no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court.

DISCUSSION

This section provides additional information included within the Report, as well as a proposed response to the Grand Jury's Findings and Recommendations based on the July 15, 2019 Governance and Ethics Committee Meeting discussion and input.

The VTA is an independent special district created by the California legislature in 1972. Initially, the County Board of Supervisors provided direct oversight of the VTA; however, effective January 1, 1995, the VTA began operating under a Board of Directors composed of elected officials from throughout the County. City staff has enjoyed a positive working relationship with VTA staff for many years and regularly coordinates with them on items such as projects, grants, operations and Measure B funding.

The Report mentions that, according to the Civil Grand Jury, the VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses despite significant population growth and employment levels throughout much of Silicon Valley. The Report also references past County Civil Grand Jury reports from 2003-2004 and 2008-2009, that in summary concluded the operating performance of the VTA compared unfavorably to peer organizations; the VTA Board had not effectively managed VTA finances, resulting in substantial structural financial deficits; and, that a root cause of this performance was the governance structure of the VTA Board.

The 2018-2019 Civil Grand Jury initiated the most recent VTA investigation on August 15, 2018, and concluded it on May 29, 2019. The investigation primarily focuses on issues stemming from the past reports, such as the VTA Board of Directors structure; the oversight of VTA's operating and financial performance; the handling of VTA's structural deficit; and VTA's ability to address complex challenges as it confronts the future of transportation in Silicon Valley. The Civil Grand Jury carried out its investigation through the following methods:

- Conducting site visits to VTA offices and other facilities;
- Utilizing the transit system including light rail and buses;
- Interviewing numerous individuals, including past Board members, committee members, personnel, stakeholders, and city and County government officials;
- Reviewing governing documents from the California Public Utilities Code, VTA Administrative Code, and VTA Board and committee meeting documents;
- Reviewing past Civil Grand Jury reports, as well as reports from the California State Auditor and several others;
- Conducting comparisons of operating and financial performance to other transit organizations; and
- Attending or reviewing regularly scheduled meetings of the VTA Board and committees.

The Report concluded with a list of five findings which included Recommendations under each Finding (Attachment 2). On June 18, 2019, the Civil Grand Jury transmitted a letter (Attachment 3) to the City Clerk referencing California Penal Code section 933 (c), which requires that a responsible governing body of a public agency subject to the reviewing authority of the Civil Grand Jury respond to the presiding judge within 90 days regarding applicable findings and recommendations in a final Report. The Civil Grand Jury has requested responses from 17 agencies, including the City of Santa Clara. Per page 47 of the Report, the Grand Jury specifically requests response from the City of Santa Clara regarding Finding 1 and Recommendations 1c, 1d, and 1e.

As the report focuses on effective governance, City staff added the report to the July 15, 2019 agenda for the Governance and Ethics Committee. Councilmember Teresa O'Neill serves as both the City's Governance and Ethics Committee Chair and the VTA Board Chair. The draft minutes for this meeting are included as Attachment 4 and the input that was received from the City's Governance and Ethics Committee is included in the proposed response that, if approved, must be forwarded to Presiding Judge Deborah A. Ryan by September 16, 2019.

SECTION 1: Response to Findings and Recommendations [Penal Code § 933(c)]

Finding 1

The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisor, the City of San Jose and other smaller cities in the County, suffers from:

- *A lack of experience, continuity and leadership;*
- *Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;*
- *A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;*
- *Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara Board of Supervisors and the City of San Jose; and*
- *Frequent tension between the director's fiduciary duties to the VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other*

Response to Finding 1: Per the discussion and input of the Governance and Ethics Committee, the City of Santa Clara City Council **"AGREES"** with Finding 1.

Recommendation 1c

As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Response to Recommendation 1c: Per the discussion and input of the Governance and Ethics Committee, the City Council concludes that, **"The recommendation requires further analysis."** The City of Santa Clara Governance and Ethics Committee discussed the concept of City Council establishing an Ad Hoc Committee to convene with the purpose of reviewing this issue in more detail

and preparing a written report in regard to improved VTA governance. This report could include various topics such as reviewing the governance structures of other transportation agencies, board size, terms of service, selection methods, qualification requirements and methods to ensure proportional demographic representation. This report should be completed and submitted to Presiding Judge Deborah A. Ryan by December 31, 2019.

Recommendation 1d

Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the director's term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Response to Recommendation 1d: Per the discussion and input of the Governance and Ethics Committee, the City Council concludes that **"The recommendation requires further analysis."** The City of Santa Clara Governance and Ethics Committee discussed this recommendation on July 15, 2019, and questions were raised as to whether or not these types of modifications would improve the current situation with the VTA. The committee also mentioned the possibility of seeking the assistance of Assemblymember Kansen Chu to lead any future efforts associated with proposing enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code to improve the governance structure of VTA. This recommendation could also be discussed further amongst the proposed Ad Hoc Committee members and included in the report identified under the Response to Recommendation 1c.

Recommendation 1e

In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendation 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 1000061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Response to Recommendation 1e: Per the discussion and input of the Governance and Ethics Committee, the City Council concludes that **"The recommendation requires further analysis."** The City of Santa Clara Governance and Ethics Committee discussed this recommendation; however, questions were raised as to whether or not these types of modifications would improve the current situation with the VTA. The Committee also mentioned the possibility of seeking the assistance of Assemblymember Kansen Chu to lead any future efforts associated with proposing enabling legislation amending Section 1000061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one. This recommendation could be discussed further amongst the proposed Ad Hoc Committee members and included in the report identified under the Response to Recommendation 1c.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15778(b)(5) in that is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no additional cost to the City other than staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office and City Clerk's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

It is recommended the City Council approve this response and authorize Mayor Gillmor to submit the City's Response to the Civil Grand Jury Report to the Honorable Deborah A. Ryan, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than September 16, 2019.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Civil Grand Jury June 13, 2019 Letter and Report
2. Civil Grand Jury Findings and Recommendations
3. Civil Grand Jury June 18, 2019 Letter
4. July 15, 2019 Governance and Ethics Committee Meeting Minutes (Draft)



**City of
Santa Clara**
The Center of What's Possible

Mayor

Lisa M. Gillmor

Councilmembers

Raj Chahal
Debi Davis
Karen Hardy
Patricia M. Mahan
Teresa O'Neill
Kathy Watanabe

September 10, 2019

The Honorable Deborah A. Ryan
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

(ENDORSED)
FILED
SEP 16 2019
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Britney Huebner DEPUTY

Dear Judge Ryan,

Please see the attached Report to Council. This report was unanimously approved at the September 4, 2019 meeting of the City Council of the City of Santa Clara.

Per California Penal Code sections 933(c) and 933.05, this report is the City of Santa Clara's response to the findings and recommendations found in the 2018-2019 Santa Clara County Civil Grand Jury Report, "City of Santa Clara Public Records Access: The Paper Chase."

In addition to the attached report I would also like to emphasize some serious concerns the City Council conveyed at the September 4, 2019 City Council meeting. Specifically, it was emphasized that:

- The lack of benchmarking that should have taken place during the investigation;
- Why has the City of Santa Clara been targeted?

Thank you for your time and consideration.

Sincerely,

Lisa M. Gillmor
City of Santa Clara

Enclosure

Cc: City Manager
City Attorney



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

19-981

Agenda Date: 9/4/2019

REPORT TO COUNCIL

SUBJECT

Action on the City's Response to the 2018-2019 Santa Clara County Civil Grand Jury Report: "City of Santa Clara Public Records Access: The Paper Chase"

BACKGROUND

Based on a resident complaint, the Santa Clara County Civil Grand Jury ("Grand Jury") initiated an investigation of the City's and Santa Clara Stadium Authority's contracting procedures (Attachment 1). It is important to note that the Complainant Form asks the complainant to *"Please describe any previous attempts to resolve this complaint, including the agencies you contacted, and the action taken by the agencies. You may attach additional pages as necessary"* (Attachment 2). Unfortunately, the Complainant made no attempt to resolve the serious allegations against the City of Santa Clara, nor did he seek any information about public sector procurement requirements from professional staff, which are complex in nature. City staff learned about the complaint from the media articles.

Although the Grand Jury did not find any wrong doing with the contracts that were the subject of the complaint, the investigating Grand Jurors began a review of the City's procurement processes in general. The Grand Jury stated that in the course of its investigation, they changed the focus of the investigation to the City's handling of requests for records under the California Public Records Act (CPRA). Given the Complainant's inflammatory communications with media about the City's handling of public records, this report will contain a full discussion of the City's practices and how they comply with the law.

On June 18, 2019, the Grand Jury published a report entitled "City of Santa Clara Public Records Access: The Paper Chase" (Attachment 3). The report contained four Findings and six Recommendations that require City response by September 16, 2019. Specifically, California Penal Code § 933(c) requires that a governing body of the public agency, or department which has been the subject of a Grand Jury final report, 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 § 933.05 contains guidelines for responses to Grand Jury findings and recommendations. As stated in Penal Code § 933.05(a), public agencies are required to "Agree" or "Disagree," in whole or in part, with each applicable Finding. To be clear, the options for response to Findings are: 1. Agree in Whole; 2. Partially Agree; 3. Disagree in Whole; and, 4. Partially Disagree. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara is required to respond to each applicable Recommendation with one of four possible actions:

1. **Recommendation has been implemented**, with a summary regarding the implemented action;

2. **Recommendation has not yet been implemented**, but will be implemented in the future, with a timeframe for implementation;
3. **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; or,
4. **Recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

Approval of this report satisfies the requirements of Penal Code 933(c), which requires the City Council to respond to the Civil Grand Jury report no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court.

DISCUSSION

This section of the report provides discussion of two key categories: (1) response to the Grand Jury's Findings and Recommendations as required by Penal Code § 933(c) and (2) pertinent facts omitted from the Grand Jury report that would have resulted in a more balanced and factual report and clarification or commentary about the Grand Jury's approach to investigate the City's records management.

Section 1: Response to Findings and Recommendations [Penal Code § 933(c)]

Finding 1

The City does not properly respond to CPRA requests because it: (a) does not indicate if it will respond; (b) does not respond within 10 days; (c) overutilizes the 14-day extension; (d) invokes the need for a 14-day extension for reasons beyond those permitted in the statute; and (e) fails to provide all documentation responsive to the request.

Response to Finding 1:

The City of Santa Clara **"Disagrees in Whole"** with Finding #1. Below are responses to the Findings sub-parts:

Response to Finding 1(a):

Guideline/Law -- The CPRA does not require that a public agency "indicate if it will respond," Government Code 6253 (c) requires that the public agency **determine whether there is responsive records to the request and to notify if there will be records to produce**. Specifically, the CPRA only requires written response to extend beyond the ten-day period, it must do so in writing stating the reason or reasons for the extension and the anticipated date of the response within the 14-day extension period.

Pursuant to the California Government Code 6253 (c) "... *In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date*

on which a determination is expected to be dispatched." The agency does not need the consent of the requester to extend time for response.

City Practice - Consistent with the law, and as an enhanced practice, the City recently began to use a standard response when acknowledging a public records request, which is a best practice and serves as an indication that the City will respond to the requestor within the 10-day period. This standard response to the requestor is not a requirement of the CPRA; however, the City provides it as a courtesy to a requestor to immediately let them know that we are in receipt of their request for records. Specifically, the standard response states:

"Thank you for your public records request received on [insert receipt date]. The City of Santa Clara acknowledges receipt and pursuant to the California Public Records Act provides this response to your request.

The City will provide a further response to your request on or before [insert 10 day date].

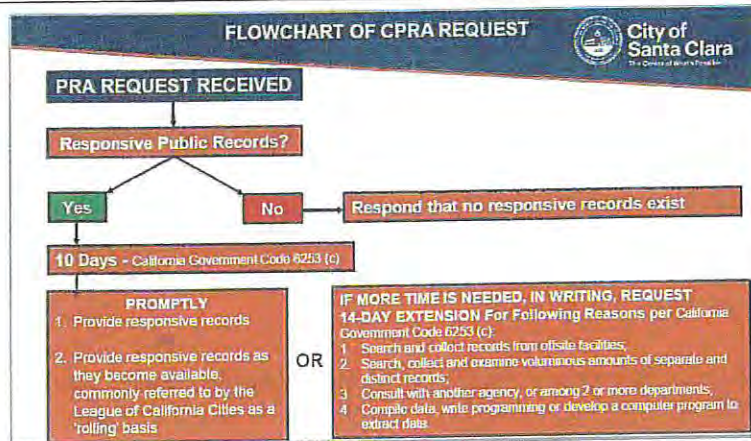
Should you have any questions or concerns, during this process, please do not hesitate to contact me at Publicrecords@santaclaraca.gov"

Response to Finding 1(b):

Guideline/Law -- The City responds to public record requests within the 10-day period in compliance with Government Code 6253 (c): "Each Agency, upon a request for a copy of records shall, with 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor."

City Practice -- In cases where responsive records are readily available within the 10-day period, the City provides those responsive records. In voluminous and/or more complex requests, the City provides responses on a "rolling basis." *The League of California's Cities: California Public Records Act publication entitled The People's Business, A Guide to the California Public Records Act [Revised April 2017] states (Attachment 4):*

When faced with a voluminous public records request, a local agency has numerous options - for example, asking the requestor to narrow the request, asking the requestor to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. [Page 22]



As stated above, if records are available within 10 days they are released; however, if there is the need to determine if more records exist, in those specific responses the City provides an estimated date of when additional records may be available. California Government Code 6253 (b), (c) states "...each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available..."; "...within 10-days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency..."

The League of California's Cities: California Public Records Act publication entitled *The People's Business, A Guide to the California Public Records Act* [Revised April 2017] also states:

The right to access public records is not without limits. A local agency is not required to perform a "needle in the haystack" search to locate the record or records to the request... Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure. [Page 23]

PRA Request -- Ms. Georgine Scott-Codiga submitted a CPRA on December 3, 2018. At the time of submission of the request, it was easily determined that the records request was broad and voluminous (Attachment 5) and the Assistant City Clerk sought the interest of Ms. Georgine Scott-Codiga to narrow down the request during several telephone conversations between December 6 - 14, 2018. The Assistant City Clerk reported to the City Manager's Office that Ms. Scott-Codiga declined to narrow down the below request. Thus, on December 14, 2018, when it was clear that the requestor would not be narrowing the result, staff invoked the 14-day extension to compile the high volume of records. Within days the records were available for inspection, on December 19, 2019. The requestor made an appointment at her convenience to inspect the records on December 24, 2018. Responsive to the request and in compliance with the law, albeit it appears to have been "a needle in the haystack" request, the City appropriately presented the responsive records to inspect by presenting all boxes of responsive documents.

1. All "General Services" Bids, RFPs, RFQs, for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of \$40,000.00 or more.
2. All "General Services" contracts (excluding utility contracts) for the city of Santa Clara and Santa Clara Stadium Authority awarded within the last five years.

3. All invoices for "General Services" contracts (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

It is worth noting that *The People's Business, A Guide to the California Public Records Act* states, "Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in the defining the deadline for disclosing the records. Because the CPRA does not state how soon a requestor seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records." Govt Code Section 6253(b) states, "each state or local agency, upon request for a copy of records that reasonably describes an identifiable record or records, shall make them promptly available." In this case, given the voluminous amount of records requested, making them available within six business days is prompt and reasonable. While the Requestor states that she reviewed the boxes for over two hours and finally gave up, it is important to keep in mind that the City's response was completely compliant with the law and that we did seek to narrow down the request. The customer experience is not an element of complying with the law, the standard is producing the requested records as required.

Lastly, during the course of this Grand Jury review, there were three distinct public records requests. Table 2 below, shows the dates that the records requests were submitted to the City and the timely dates of our response:

Table 2: Summary of Grand Jury PRA Requests and City's Date of Response

Public Records Request	City Date of Response	Notes
CPRA #1 by the Civil Grand Jury December 3, 2018 (Attachment 5a) Note: A standard 10 response that the City uses was not issued because the Requestor was in constant communication, within two days of submitting the request, and therefore there was no need to acknowledge it since that was already happening.	December 19, 2018	Staff was in communication within 10 days with the Grand Jury between December 6 - 14, 2018 to clarify and narrow request, with no success. As a result, the City appropriately invoked a 14-day extension to compile and gather all responsive records and had them available by December 19, 2018. An appointment was scheduled for the Grand Jury to review the documents on December 24, 2018, at a time appropriate for the Requestor. This request was very voluminous and could have fallen under "the needle in the haystack" reference.
CPRA #2 by the Civil Grand Jury February 6, 2019 (Attachment 5b)	February 19, 2019 (This was a 10-day Courtesy response-the 10 th day fell on a weekend and the next working day following a recognized holiday was Tuesday, February 19)	The Grand Jury visited City Hall a few days after submitting their 2 nd CPRA to check on the status. On February 19, staff provided a response that records would be released on February 20, 2019. On February 21, 2019 staff responded by "producing 10 out of 15 unique requests to the Grand Jury and continued to produce records thereafter. Staff informed the Grand Jury that additional records were identified and would anticipate releasing the last five requests on March 1, 2019.

CPRA #3 by the Civil Grand Jury April 3, 2019 (Attachment 5c)	April 10, 2019 and April 22, 2019	The Grand Jury submitted a third CPRA. Staff acknowledged receipt on April 10, 2019 and communicated that responsive records would be available on April 22, 2019. Staff appropriately provided the CPRA citation for a 14-day extension with the reason that the timeframe needed to be extended.
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Response to Finding 1(c-d):

Guideline/Law -- The Government Code 6253 (c), which states:

In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) *The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.*
- (2) *The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.*
- (3) *The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.*
- (4) *The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.*

City Practice -- The City utilizes the 14-day extension only as allowed by the California Public Records Act (CPRA) and responses explicitly state the reason for the extension for each request. The City's process in invoking the 14-day extension is in compliance with the Government Code 6253 (c).

PRA Request -- The Grand Jury's use of the word "overutilizes" the 14-day extension is subjective. As noted in Table 2, the City used the 14-day extension, with the proper citation, for CPRA #1 and #3 was used. The Grand Jury Report contains no analysis of the City's overall responses to records requests and draws conclusions based on their limited three requests, ignoring the hundreds of other requests that are administered. The 14-day extension is relative to the statutory requirement to respond to the request. The legal standard for actually providing records is "promptness". How promptly the City provides records depends on many factors including: the broadness and complexity of the request itself, how the City keeps and indexes the records being sought, the physical nature of

the records and their location, and the human resources that the City has available when the request is received relative to the other public records requests that are being made at the same time. The City can only do what it can do with the resources that it has available to perform the request/tasks. In instances where there are a large number of requests seeking a large number of records under circumstances where the records are not easily located or retrievable, the City will respond with "rolling" batches of records (which is compliant with the law and referred to as an acceptable practice by the League of California Cities: The People's Business, A Guide to the California Public Records Act). In other words, the City provides responsive records when they become available. Other jurisdictions also take this approach when faced with similar situations and believe it to be in compliance with the CPRA. As a reference, staff is providing another example of when the 14-day extension was invoked and how the City documents the CPRA exemption (Attachment 6).

Response to Finding 1(e): The City complies with its legal duty to provide all records responsive to the requests that are made, as noted in the City's responses to Findings 1(a-d). Although the current process is manually driven and is staff resource intensive, the City does in fact go through an extensive, coordinated and often cross-departmental search process for responsive records and releases records as they become available and deemed responsive. It is not unusual for the City to release records in multiple batches and the City advises a requestor if more records may be available and whether more time is needed. This is an action permissible within the CPRA and legally compliant. The CPRA does not require a public agency to produce all records at once or within 10 days. In those cases where the City does not possess responsive records, it is communicated with the requestor promptly that the City has no responsive records, per Government Code Section 6253 (c).

Note: Over the past weeks, the City has been inundated with hundreds of new unique records requests. During this time, both the Public Records Manager and the primary legal staff person have departed City employment and two voluminous records requests were addressed outside of the 10-day requirement, albeit we responded to both.

Recommendation 1

The City should train staff responsible for responding to CPRA requests to timely indicate if the City will respond to the request and, further, only invoke the 14-day extension where permissible.

Response to Recommendation 1: The **Recommendation has been implemented.** Well before the Grand Jury report was issued, the City had established a set of actions to achieve a modern and less decentralized service model, detailed later in this report. For example, on March 8, 2019, a joint workshop was held for Agenda Coordinators and Public Records Liaisons from each department to review the agenda management process and public records process. In addition, there were trainings offered on August 5 and 7, 2019 to review the public records process prior to the August 13, 2019 user training for the new NextRequest software, which is anticipated to launch in mid to late October 2019. At these trainings, the California Public Records Act was reviewed in detail, including the 10-day requirements, as well as the 14-day permissible extension parameters.

Finding 2

The City lacks a written policy to guide staff in responding to CPRA requests in a manner that complies with the law.

In Response to Finding 2: The City of Santa Clara **"Disagrees in Whole."** The City has had a

written policy for staff to respond to CPRA requests, compliant with the law, since June 1999. The City of Santa Clara's practices are supported by key actions taken at the policy, administrative/operational, and legal level:

- (1) **City Council Policy Manual** - This document has been updated significantly over the past 18 months, and frequently reviewed by the Governance Committee for full City Council action. In fact, in 2017 the City Council approved a *City Council Policy #046 titled "MAYOR AND COUNCIL PUBLIC RECORDS POLICY"* (Attachment 7) to manage its compliance with recent court actions and best practices with public records management.
- (2) **City Manager Directives** - The administrative policies for the City of Santa Clara are managed through the City Manager Directive-Procedures (CMD) process which provide instructions to the organization to direct procedures, practices and policies. The Grand Jury report fails to acknowledge *CMD #13, dated July 23, 2003, and titled "PUBLIC RECORDS REQUESTS,"* (Attachment 8) which specifically provides instructions to the organization on how to respond to public records act requests.
- (3) **City Attorney Advice** - Following court rulings relative to public records, the City Attorney regularly provides advice with respect to developments and changes in responding to public records requests.

As mentioned above, former Administrations failed to keep current the CMD administrative policies. CMD #13 will be updated to reflect new practices and procedures once NextRequest is implemented and observed for six months and further updates will be done or as needed based on other changes. *Note: For FY 2019/20, as part of its reforms, the Council approved funds for the City Manager to hire a consultant to review the CMD policies and advise on which CMDs required updating. With focus on updating the Council Policy Manual, staff decided to outsource this work to accelerate modernizing CMDs that require amendment.*

Recommendation 2

The City should create and implement a written policy, by October 31, 2019, to guide City staff in complying with the CPRA.

In Response to Recommendation 2: The Recommendation has been implemented and the City has been compliance since June 1999. As noted above, the City of Santa Clara has two policies related to public records:

1. CMD-Procedure #13 entitled "Public Records Requests", which has been in place since June 1999. This policy is being updated to reflect new practices and procedures; and
2. City Council Policy #046 entitled "Mayor and Council Public Records Policy", effective since 2017.

Finding 3

The City's disorganized recordkeeping and lack of a functional records management system hinders its ability to timely and accurately comply with CPRA requests. Although the City purchased records and CPRA management systems 18 months ago, it has yet to implement those systems.

Response to Finding 3: The City of Santa Clara "Disagrees in Whole." Again, the Grand Jury

uses a subjective term to characterize the City's records management.

In fact, this characterization was the source of a lengthy discussion during the "Exit Interview" when staff expressed several times that the records management is more accurately characterized as manual (with some records digitized), decentralized, and, as a result, inefficient. The Grand Jury emphasized, during that conversation, that unilaterally focusing on Santa Clara's practices would serve as an example to encourage other cities to change because they would not want a similar Grand Jury report issued about them.

A simple benchmarking exercise would have yielded important contextual information about how other cities manage their records. The City requested that the Grand Jury benchmark to better inform how the City of Santa Clara compares to other regional cities. They declined to add that information to their investigation. City staff completed said benchmarking and, in Section 2, Figure 1: Volume Benchmarking of Public Records Requests, illustrates that the City of Santa Clara is like other regional local governments with both a combination of manual and digitized records maintenance, such as: Cupertino, Fremont, Milpitas, Mountain View, and Sunnyvale. Unfortunately, the Grand Jury did not think that it was important to benchmark our records management practices to understand whether they are common or not, which would have informed a more accurate Finding because each is similar to Santa Clara (except for volume of requests).

It is important to note that the manual method of records management does not mean that the City cannot locate records or is disorganized; however, it does mean that it takes longer and requires much more staff resources. However, new technologies offer and allow for more efficient uses to better the public, which the City is fully engaged in implementing but, as it is well known, new software systems cannot be implemented without first preparing an organization for the change.

City staff's work has been very focused on modernizing systems that better serve the public, promote transparency, and advance modern administrative practices. Within the context of much change in these areas, the City has been able to timely and accurately respond to CPRA requests and has been working on various process improvements over the course of the last 18 months that directly prepare for the NextRequest implementation. It is a well-known practice in information technology software implementation, that organizational readiness and business processes need to be stabilized to accept new technology. Below is a summary of some of the major efforts taken over the past 18-months to advance the organization in a more efficient public records management process and prepare it for greater use of digitized records systems (Attachment 9):

- 1) **Resolved Financial Deficit** -- Achieving financial stability for the City enabled the addition of a Procurement Manager, Contracts Manager, and Public Records Manager which are all core to improved records management. In January 2018, when the City Manager first surfaced this matter before the Council, **had the budget deficit not been resolved, there would have been no opportunity to add resources needed to resolve service areas.** In fact, faced with a \$46 million deficit, the City would have been facing the preservation of other core services, beyond records process improvements. (Timeframe = October 2017 - June 2018 for FY 2018/19 and July 2018 - July 2019 for FY 2019/21)
- 2) **Implemented a Council Agenda Management System (Granicus)** -- Within the City Manager's first 90 days, action was taken to prepare the organization for the implementation of Granicus because it was deemed the software system that would achieve the most significant

impact of advancing the City's records management (i.e., establish a workplan, communicate workplan, establish and schedule user training for many departmental report writers, establishing new report writing formats and requirements, Council approval of a new agenda format, Council approval of action minutes, implementation of software, testing of software while concurrently maintaining both agenda production systems, and resolving glitches that naturally surface during this process). Granicus is a system that supports City Council (and Boards and Commissions) agenda management, from agenda development phase to minute production. With the implementation of this software system, the City made a significant leap with archiving reports, resolutions, ordinances, minutes, agendas, and attachments to reports for transparency and quick public access to these records. (Timeframe = October 2017 - March/April 2018)

- 3) **Implemented a Log to Track CPRA Requests-** Given the high volume of records requests, to support the Council and organization with informed decision making and workload management, the City began collecting data of CPRA requests and has observed the upward trend of more frequent and complex records requests. This data helps with understanding the CPRA request activity. Data analytics in this area of public service was not previously performed in prior years/decades, January 2019 was the first time that CPRA data was reported. (Timeline = ongoing)
- 4) **Council Policy Manual** - At the Governance Committee meeting of April 10, 2017, the Committee unanimously recommended the approval of a Mayor and City Council Public Records Policy, particularly with the recent court case *Smith v. San Jose* relating to public records on both private and public accounts pertaining to the conduct of public business. The Council adopted a resolution to approve the Mayor and City Council Public Records Policy #046 on May 16, 2017. (Timeframe = April - May 2017)
- 5) **Relocate Significant Amount of Public Records for Proper Storage** - The Council acknowledges that we are short on workspace for employees. With the addition of the above referenced staff, space was needed for them to work. Additionally, the former City Clerk stored the City's archives in a room in City Hall that did not support the proper storage requirements for City archives, and they were at risk of water, or other forms of, damage. This put the City's records at risk of rotting and destruction. Recognizing that this was not a best practice, the Administration acted to properly store the records at a facility that provides the proper storage conditions for our valuable City archives. This action opened space for the new employees and this action alone was a tremendous effort and advancement for records management. (Timeframe = September - October 2018)
- 6) **Establish Funding, Job Description, Recruit, and Hire a Public Records Manager** - Public sector employment requires that a new job description/classification be coordinated with the relevant bargaining unit and approved by the City Council. The City Council approved the Public Records Manager job description on June 26, 2018. Through resolving the financial deficit, the City was able to fund this position in July 2018. Upon approval of the classification, the City posted the position on September 6, 2018, after completing "meet and confer" labor requirements for the proposed job descriptions, and a job offer was made upon finalizing the interviews in early November 2018. The Public Records Manager began work on January 14, 2019. It should be noted that it can take six to nine months to recruit and place employees. (Timeframe = February 2018 - January 2019)
- 7) **State Law Change re Police Records (AB1421 and AB748)** - Assembly Bill 1421 went into effect in January 2019, which requires Police Departments to release certain records and videos. Assembly Bill 748 went into effect on July 1, 2019, which will now require the Police Department to release body camera video of shootings within 45 days.

Police Departments from throughout California received CPRA requests shortly after the law went into effect. The process to respond to these requests is very staff intensive and requires a coordinated effort between with the City Attorney's Office and the Police Department. The Police Department reclassified one Staff Aide position to a Records Specialist for Fiscal Year 2019/20. The process to review one shooting case may take approximately 30 days. Given the research needed and specialty in this area, two audio/video companies have been contacted and identified to conduct the redaction function. (Timeframe: September 2018 - present)

- 8) **Assess Department CPRA Response Processes & Establish New Practices** - In order for the City to understand the needed improvements and City practices, the Public Records Manager met with Department Directors to learn about processes and areas of opportunity for improvement beginning in February. She developed a process that began establishing a less decentralized model and log system to track the City's many requests, on March 12, 2019 she joined the Assistant City Clerk in a workshop providing educational training on the agenda management process and public records process to agenda coordinators and public records liaisons for each department. (Timeframe February - April 2019)
- 9) **CPRA Training Development and User Training** - In March 2019, upon completion of #7, City staff provided an educational training workshop and provided basic training related to the CPRA that was tailored based on learning the needs of the organization.
- 10) **Basic Public Records Management Training & Pre-NextRequest Training** -- In preparation for the NextRequest launch, staff also provided basic public records management training as well as NextRequest user trainings for all public records liaisons from all departments on August 5, 7 and 13, 2019.
(Timeframe January- August 2019)
- 11) **LaserFiche Department Director Workplan Prep** - On April 8, 2019, the City Manager's Office and IT Director presented a PowerPoint presentation that contained key information about the planned implementation of Laserfiche software with key milestones outlined. The purpose of this meeting was to review the organizational needs to prepare for the implementation of this software and to hold a discussion about preparedness and workload, to anticipate how to advance this effort. This PowerPoint presentation was provided to the Grand Jury on April 5, 2019, in advance of presenting it to the Department Directors (Attachment 10), which the Grand Jury failed to mention. Absent acknowledgement of our workplan for LaserFiche implementation, with target dates, misleads the public about our efforts.
- 12) **Laserfiche Soft Launch**-- At the above referenced meeting, it was suggested that the timeline be adjusted and that Laserfiche be prioritized. A soft launch of Laserfiche has been implemented with the City Attorney's Office to assist with work process and anticipate any implementation changes in the workplan created. It is anticipated for a broader implementation in fall 2019, which will largely begin with scanning documents, establishing user rules, and other organizational preparations that will go past December 31, 2019 (an arbitrary deadline set by the Grand Jury). Once completed, Laserfiche will allow City Departments to scan vital records to a "central repository" for enterprise records management of vital records.
(Timeframe = April 2019 - Present).
- 13) **Records Query Improvement** - Given the volume of public record requests, staff has worked to provide focused and relevant search terms to the Department of Information Technology (IT) to yield more focused responsive records and to create a more efficient search of records. IT staff collaborated with the Microsoft exchange engineers to review opportunities to streamline the search results. As a result of this, the search now eliminates duplicate emails and can be provided to staff in a pdf format upon request. Prior to this effort, it was not uncommon for any

email sweep to produce a large volume of duplicative records for review by staff.

The former City Clerk procured both Granicus and Laserfiche through a combined RFP process in FY 2016/17 and an informal process for the NextRequest software. While the Grand Jury's recommendation is solely focused on just implementing the software systems, the Grand Jury failed to recognize the resignations of key staff that occurred during that same time and its impact to implementation, coupled with the organizational needs required to be "digitized" ready (as outlined above). It is worth noting that during the past 18 months:

- Former Assistant City Clerk resigned in December 2017 (interim staff backfilled this position)
- Elected-City Clerk resigned in February 2018 (interim staff backfilled this position)
- Current Assistant City Clerk started in September 2018
- Deputy City Clerk was appointed in December 2018
- Public Records Manager began in January 2019 and departed the City in August 2019
- As-needed employee began in June 2019 to support response to public records requests
- Funding for a Police Records staff position to comply with new laws

Based on the significant staff transitions, the Administration needed to assess and ensure that the software systems were best matched for the goals of the organization while stabilizing staff resources and responding to the growing number of requests. The Administration quickly identified the need to implement the Agenda Management System (Granicus), which enhanced transparency and made it easier for the public to access public records. It also allowed for video streaming of Council meetings and provided the closed caption feature along with the visual display of the live vote during a meeting. Following implementation of Granicus, NextRequest was temporarily put on hold to focus on the smooth transition to Granicus, which enables greater levels of transparency with City records and data and strengthen staff resources. NextRequest preparation and implementation was re-instituted in Spring 2019 and is scheduled to launch in Fall 2019. Now, the City is working towards milestones for achieving the implementation of Laserfiche which will eventually modernize document repository and production processes along with records management, work flow processes, and transparency. As with Granicus, the Administration must prepare for the system implementation with training and all the change management to completely implement citywide.

The above detailed outline shows that the City has not wasted the past 18 months, rather completed significant baseline processes that needed to complete to prepare the organization for increased "digitized" system implementation. It appears that the Grand Jury members based their Findings and Recommendations on a series of actions related to their three CPRAs (ignoring the 100+ records requests that we compliantly address at once), including appropriately providing a volume of contracts in storage boxes in response to the first public records request. As a reminder, for example, the Grand Jury's first CPRA requests were voluminous and likely a "needle in the haystack" request, and were as follows:

- 1) All "General Services" Bids, RFP's, RFQ's for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of 40,000.00 or more;
- 2) All "General Services" contracts (excluding utility contracts) for the City of Santa Clara and Santa Clara Stadium Authority awarded within the last five years;
- 3) All invoices for "General Services" contract (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

While a computerized system would provide a quicker and faster response and would have the ability to drill down to search for a specific type of contract, the production of said storage boxes was entirely responsive and compliant with the law. As mentioned, the City coordinated this response based on the City Attorney's recommendation to provide expedited documents to the Grand Jury for their inspection.

Like other municipalities that do not have a computerized system or digitized records, the process is more staff resource intensive and manual. At the time, staff attempted to work with the Grand Jury to narrow the request in order to provide the exact documents sought. Because the City does not index or file contracts based upon contract amount it did not have records responsive to the Grand Jury's request, so it produced all contracts from the relevant time period for the Grand Jurors to examine. This is completely responsive and compliant with the law; however, recognizing the magnitude of produced documents, staff continued to offer assistance to the Grand Jury and seek clarification about their request.

Last, the Grand Jury's Finding does not recognize that the organization cannot just implement two software systems on top of an inefficient business process and without first improving them. For software systems to be successfully implemented in a large organization, with staff distributed in various locations throughout the City, it is important to establish workplans and sequencing of milestones to advance the overall goal. Had the Grand Jury inquired about how the past 18 months were utilized, they would have been able to acknowledge the above required milestones that were needed to launch the NextRequest system this Fall 2019, and the steps being implemented for Laserfiche.

The City disagrees in whole because as explained in the "Exit Interview," the context of their investigation matters and, by the above information, it is easily to observe that the City compares equally to other cities and that the required work to implement these new systems has been well underway.

Recommendation 3a

The City of Santa Clara should implement its records management and CPRA management systems by December 31, 2019.

Response to Recommendation 3a: The **recommendation has not been implemented**; but is anticipated to be implemented by mid to late-October 2019. The CPRA management system, NextRequest, will be a public portal where requestors can make online records requests. Requests will either be received directly from the system or entered by staff and each request will be assigned a tracking number and will be facilitated electronically. Any and all responsive records will be uploaded, and the system will notify the requestor that their records are ready for review.

Additionally, the City is in the process of implementing Laserfiche, which is a full records management program, and far more complex than NextRequest. The recommended timeline of implementation by the Civil Grand Jury for the Laserfiche records management system by December 31, 2019 is not reasonable and that was explained to them during the close out interview. This recommendation does not consider the other city reforms, daily workload of staff to remain compliant with the CPRA, and the other 33 software system upgrades and/or replacements that are

concurrently being implemented.

Recommendation 3b

In the absence of an operational CPRA and records management system, the City of Santa Clara should create and immediately implement interim procedures to comply with the CPRA.

Response to Recommendation 3b: The recommendation has been implemented. The City is currently using a manual logging system to keep track of its incoming public record requests and is transitioning to NextRequest by mid to late-October 2019.

Finding 4

The City's Public Records Manager is the only staff member trained to respond to CPRA requests, yet the records are decentralized requiring the Records Manager to rely on other staff within multiple departments to search for and obtain the documents responsive to the CPRA requests.

Response to Finding 4: The City of Santa Clara **"Disagrees in Whole."** While the Public Records Manager is a sole job classification, each department has one or more departmental staff assigned to coordinate the City's responses to CPRA requests. Staff relies on subject matter experts to respond accurately to requests. As shared with the Grand Jury members, the City has several staff members who are trained, equipped and have the professional experience and ability to assist and support the City's public records response process. To serve in the best way possible, the City recognizes that having staff in various areas and expertise levels, who are involved in the process for public records, increases its ability to fully respond to public records requests.

The position of Public Records Manager cannot serve as a subject matter expert in every department to identify all responsive records to a request and, accordingly, as a long-standing practice, the City has had multiple staff within its departments trained on responding to CPRA's. The Public Records Manager's work is to ensure consistency with response methodologies, support the system development, prepare for the various required trainings with this change management of the entire organization, and track requests that do not fall into one department or are more complex in nature.

Recommendation 4

The City should identify and train necessary staff on compliance with the CPRA by October 31, 2019.

Response to Recommendation 4: The recommendation has been implemented. The City of Santa Clara has trained staff. The Assistant City Clerk and the Deputy Clerk as well as key staff people in the City Manager's Office are fully trained on the CPRA and provide guidance and assist in fulfilling public records requests. In addition, the City Attorney's office provides legal support when necessary in responding to public records requests. In 2019, trainings with front-line staff have been held on March 12, August 5, August 7, and August 13. Additional discussions about these efforts have been held with executive staff throughout the year. Trainings are going to also be scheduled on a quarterly basis moving forward.

DISCUSSION

SECTION 2: Contextual Background, Benchmarking, and Commentary of the Grand Jury's Report and Method

The following section provides more contextual information regarding the public records management process and the engagement with the Grand Jury from December - June 2019 which led to the Grand Jury Report. This section is organized as follows:

1. Context of Driving Overall City and Public Records Reforms
2. Benchmarking Data that the Grand Jury Failed to Provide
3. Characterizations and City's Response

1. Context of Driving Overall City and Public Records Reforms

During the period of January through June 2018, against the backdrop of a looming \$46M+ three fiscal year deficit (for the period underway to plan for a two-year budget process), the City Manager and City Council agreed that the highest order of priority was to stabilize the City's unfavorable fiscal outlook, preserve service levels and avoid hundreds of lay-offs, and develop a revenue strategy to raise funds needed for critical high risk administrative processes. The City Council agreed with this strategy and embarked on a period of reforms. It should be noted that many Councilmembers at the January 2018 Goal and Priority Setting session made comments about how this was the first time that they had heard these details about the state of the organization and high-risk administrative practices. It is unknown why past City Managers failed to make public these high-risk conditions or work to mitigate/resolve the projected deficit, as they pose significant adverse impacts to the City's functioning and financial future.

The Grand Jury's observations of public records management are not new, nor has this topic been ignored by the City. In fact, within her first 90 days on the job, City Manager Deanna Santana presented at the City Council Priority Setting Session in January 2018, her assessment of the state of the organization and reported publicly to the City Council on her findings of the high-risk administrative processes that require attention. Unfortunately, because other high-risk administrative processes existed, staff was strategic in its ability to drive change in many high-risk areas of service.

Within many high-risk areas of service, three relevant areas were: procurement practices, contracts management, and public records management. One of the City Manager's recommendations was that the City needed to improve its management of the City's public records process, as well as the need to add resources to this decentralized system that was found to be inefficient. In fact, as reported earlier in this report, the City began to implement reforms immediately related to the public records process. As previously noted, Attachment 9 is a visual of the many efforts taken over the last 18-months related to public records and transparency measures, specifically.

Additionally, at that January 2018 meeting, the City Manager commented that the Administration was making significant advancements with implementing Granicus, the City's agenda management solution, which would catapult the City's records management and improve transparency at once. Use of the Granicus software was strategically selected as the first milestone for advancing public records management because it would immediately modernize the extremely manual process used

to produce all legislative documents related to a City Council agenda (along with Boards and Commissions). Indeed, the Administration was successful with moving on the implementation of Granicus during the first half of 2018.

Concurrently, staff began aggressively reviewing each fund and line item expenditures of the City budget. By June 2018, City staff was able to balance the budget, reducing the deficit from \$8.6 million to \$1 million, and propose the addition of three key positions relevant to the Grand Jury's investigation: Procurement Manager, Contracts Manager, and Public Records Manager. For Fiscal Year 2018-19, the City Council added a Public Records Manager position to assist with improving our public records management and improve coordination in a decentralized model. The position was filled in January 2019. Had staff not prioritized this effort, there would have been layoffs and no possibility of bringing in the required resources to support the reforms required to correct high-risk administrative processes. This action cannot be ignored in the context of the City's ability to implement new software and other accomplishments.

In January 2019, at the annual Goal and Priority Setting Session, the City Manager expressed that Granicus was now the new norm, while also providing data on the growing number of public records requests and how the lack of resources made it difficult to concurrently respond to public records requests while leading the effort to implement vital software to modernize the practices, such as NextRequest and Laserfiche.

Thus, the context for understanding the state of public records management within the City of Santa Clara must be factored into the City's response to the Civil Grand Jury report. These include:

- Significant projected deficits (est. \$46+ million) that, under this scenario, must focus on is financial security;
- Plagued with several high-risk administrative processes due to failure to correct or modernize in the past;
- Workload overwhelmingly exceeds the staffing resources and where new initiatives continue due to need or opportunity;
- Staff resignations or recent hires within this service area that cause for disruption in stabilizing workplans;
- Failure to modernize its informational technology systems and is now faced with needing to implement 34 systems to continue service delivery and modernize systems; and,
- Like all Silicon Valley cities where unemployment is 1.9%, that is challenged with recruitment and retainment due to competing with private sector compensation and the high cost of living, rendering cities to commonly recruit from other cities and delayed recruitment processes due to the precedent setting low unemployment rate.

In summary, the City has continuously acknowledged that the manual, inefficient, decentralized state of the City's records management presents some challenges. However, a decentralized and inefficient manual system does not render it out of compliance with the law, as concluded in the Grand Jury report. Indeed, the facts and context in this report demonstrate that the City has been well-aware of administrative processes that past Administrations failed to address: unfortunately, resources do not exist sufficiently to address all of them at once and, as a result, the City continues to deliver high quality service, take on strategic efforts, and drive reforms within our very limited set of resources.

2. Benchmarking Data on Public Records

At the January 2019 session mentioned above, the City Manager also provided, for the first time, data that revealed the volume and quantity of CPRA requests during the 2018 calendar year which estimated approximately 1300+ public records requests received (including public safety request for information). As with many California municipalities, the City also experienced a significant increase in CPRA requests.

This trend did not stop in early 2019. In the first 90 days of 2019, the City received CPRA requests at the rate of more than 25 per month (this does not include the sub-record requests, nor does it include some departments that are still handling their own requests such as Police and Fire). The majority of these public record requests are not just a single record request, rather multiple records requested and complex in nature, which requires a large workload to assemble and review (100s - 1,000s of documents to review prior to releasing).

The professional observations of staff are that the City of Santa Clara receives more records requests than other surrounding cities were validated by the City efforts to benchmark this activity. It is worth noting that the City of Santa Clara has multiple professional staff in this field of professional work that have served these cities and, in some cases, as City Clerks with extensive public records training. For example, the Assistant City Manager charged with oversight facilitated records requests in San Jose and served as Fremont's City Clerk. The Assistant City Clerk served as Deputy City Clerk in San Jose, and East Palo Alto and as City Clerk in Tracy, and Saratoga (which were not benchmarked). The City Manager served as Interim City Clerk in San Jose and has participated in development of Public Records Request policy development for bay area cities (both small and large).

Lastly, despite the City staff's request to the Grand Jury to benchmark Santa Clara against other cities and its failure to include this informative data, the City took the time to conduct that work so that the City could understand how Santa Clara compares to our regional neighbors. Table 2 provides a summary of the results.

Table 3: Benchmarking of Public Records Requests

CITY	POPULATION	RECORDS DIGITIZED	# of MONTHLY REQUESTS	# of ANNUAL REQUESTS
Cupertino	58,302	Many records but not all are digitized	10-12	Over 100
Fremont	234,962	Some records, not all are digitized	25-30	300 +
Milpitas	78,106	No records are digitized	+/-5	+/-55-60
Mountain View	76,260	Some records, not all records are digitized	Varies, average of 34	Approx. 407
Sunnyvale	153,655	Some records, not all; Implementation of an Electronic Management System in 2020 planned	5	Approx. 60
Santa Clara	127,134	Some records, but not all are digitized	~100/month	1300 (2018 numbers including public safety)

Note: During the course of the writing this report, the City was responding to 282 unique records requests. Within four days, the City brought down the open unique records requests to 168. The data demonstrate how quickly the City responds to its high volume of records requests.

This benchmarking data shows that Santa Clara is:

- An outlier with respect to its high volume of public records requests, when compared to like-regional cities, and not by a small amount; and,
- We are very much like other cities in that some records are digitized, but not all records are digitized.

3. City's Engagement with the Grand Jury

Table 4: Characterizations and City's Response

#	Characterization	Report Page #	Response
1	"However, the 1018-2019 Santa Clara County Civil Grand Jury found the City's recordkeeping to be disorganized and its staffing levels inadequate to process CPRA requests in compliance with the requirements of the law."	3	Staff has acknowledged that the public records system is manual, inefficient and requires less decentralization, but this does not render it disorganized. As noted throughout this report, the manual (and in some cases digitized) records management does not impair the City's ability to be compliant with the CPRA, but it does require more staff intensive processes. The Benchmark data shows that Santa Clara is no different from surrounding cities.
2	"The Grand Jury found that obtaining public records from the City is a time-consuming and difficult chore."	3	The response time to provide responsive public records is compliant with the CPRA, as is noted in the above report. The time it takes to respond is often dependent on the manner in which files are stored and the magnitude of the request received. The City has not denied that the process is manual (with only some digitized documents), decentralized, and inefficient, but it is compliant with the law. Additionally, the City's practice is similar to surrounding cities, except for the higher volume, and there are opportunities to improve. It is worth noting that the City did ask the Requestor to narrow the request to better serve the Requestor. In fact, when presented with all of the responsive boxes full of documents for CPRA #1, the Assistant City Clerk offered again if she was looking for a specific set of records. City staff is in practice of working with Requestors to assist them with identifying records, when the CPRA is overly broad of the inquiry is unclear.
3	"The Grand Jury encountered non-compliance by the City in response to its CPRA requests. Noncompliance with CPRA included non-responsive replies to the requests, invalid excuses for extensions of time, and incomplete document production."	3	The Grand Jury made three records requests: one on December 3, one on February 6, and one on April 3. Regarding all three requests, the City provided responsive records in compliance with the CPRA. The City may not have provided records all at the same time, but they were always in communication with the Grand Jury and provided records on a "rolling" basis-which is entirely compliant with the law. This is a common practice to provide responsive records when handling a complex and voluminous records needed to be gathered, reviewed/assembled that is compliant to Government Code section 6253 (c).

4	"The City acknowledged its recordkeeping system was disorganized and in need of improvement, but the City did not have an interim solution. The City's progress towards implementation of an existing recordkeeping software has been without a sense of urgency."	3	This City specifically stated that the system was manual, inefficient, and resource intensive. The report outlines in detail how City staff has used the past 18 months. The City Manager also released to a Grand Jury member, a PowerPoint that was presented to the Executive Team on April 8, 2019 the detailed timelines for both NextRequest and Laserfiche (see Attachment 10). It is unknown why the Grand Jury did not acknowledge the PowerPoint workplan in its report, which provides supporting information that the City does have a plan.
5	"Closure of city offices other than for recognized holidays does not extend or excuse compliance with the time for response under the CPRA."	6	Government Code section 6253(a) of the CPRA makes it clear that inspection of records is available during the office hours of the state or local agency. Staff advised the Grand Jury of City Hall's closure because the 14-day deadline fell within that time (December 28, 2018), but provided the Grand Jury with a response well before the 14-day extension deadline. The Grand Jury visited City Hall on December 24 to inspect responsive records.
6	"After searching through the boxes for two hours, the Grand Jury was unable to find the documents it was seeking. This was surprising since the Grand Jury had previously obtained copies of several of the requested documents from other sources."	7	If the Grand Jury is referring to the Banner and Singer Contract, those two contracts were in fact in the boxes that were provided to the Grand Jury for inspection (as well as available on the City's website). At that time, the Grand Jury did not specifically ask for these two contracts or narrow the request to them when asked to if the voluminous request could be narrowed. Had the Grand Jury narrowed down their request for a specific contract, rather than for all contracts over many years, City staff could have easily and timely responded. The Grand Jury's broad request played a role in the way the City responded.
7	"City staff was unresponsive to multiple requests to meet, forcing the Grand Jury to seek legal assistance to facilitate the interviews."	7	This is misleading and in fact the attached emails serve as proof that the City Manager was responsive to meeting requests of the Grand Jury. As noted in the attached emails (Attachment 11), there were other large-scale priorities that had to be balanced on her calendar. Scheduling was completed accordingly to the workload requirements and their characterization is subjective and does not consider another City priorities. Their statement that they were "forced" to seek legal assistance is their own prerogative and improperly characterizes the City's efforts to properly schedule a meeting as if we were reluctant or resistant to meeting. That is absolutely not the case, as evidenced by the supporting emails. The Grand Jury also met individually with the Public Records Manager on March 26, 2019 and on May 28, 2019 met with the following staff: City Attorney Doyle, City Manager Deanna Santana, Purchasing Manager Giovannetti, Assistant City Manager Nader, and Public Records Manager Davis. In short, the City was very responsive to the Grand Jury's meeting requests.

8	"Due to the City's non-responsiveness to its CPRA requests after three months, the Grand Jury concluded that its investigation had become futile. Accordingly, the Grand Jury changed the focus of its investigation to the City's compliance with the CPRA."	8	As noted previously in this report, the City was responsive and provided all responsive records to the three different CPRA requests. It should also be noted, as it was quoted in the Mercury News published on October 3, 2018 "The Grand Jury indicates that people shouldn't file citizen complaints unless they have exhausted other attempts to resolve any issues. But Becker said he had been unable to get the city to review his concerns." (Attachment 1). Neither the City Manager nor the City Attorney were contacted by the Complainant.
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9	"The Grand Jury learned that the City had been trying for over 18 months to implement a records management system and had procured two software systems: Laserfiche, a records management system to track records; and NextRequest, a software system used to trace records requests. To date, these systems are not operational, and the City could not estimate when they would be."	9	Once again, as noted in the report, the City has advanced many efforts over the past 18-months (see Attachment 9). The City Manager also released to a Grand Jury member, an advanced PowerPoint that was presented to the Executive Team on April 8, 2019 that noted the goals and the timelines for the implementation of Laserfiche and NextRequest (see Attachment 10). Unfortunately, the Grand Jury chose to suppress acknowledgement of this information and workplan in its report that would have provided a more balanced conclusion.
10	"The Grand Jury learned that the City currently has no city-wide process or written procedures in place for complying with CPRA requests and that the Public Records Manager is the only CPRA trained City Employee."	9	As noted in the report, the Grand Jury report fails to acknowledge <i>CMD #13, dated July 23, 2003, and entitled "PUBLIC RECORDS REQUESTS"</i> which specifically provides instructions to the organization on how to respond to public records act requests and <i>City Council Policy #046 entitled "Mayor and Council Public Records Policy, effective since May 16, 2017 (see Attachment 7 and 8). As noted in the report, the City Attorney often provides Attorney communication to the Council on new and updated legal requirements regarding public record act requests and other pertinent laws.</i>
11	"The City knew that the requestor was the Grand Jury. Given the Grand Jury's statutory ability to investigate and report on the City, it can be assumed that the City gave the Grand Jury heightened attention. The Grand Jury is concerned because it has greater access to public records than a private citizen does, yet it had significant trouble obtaining documents despite multiple requests."	11	Government Code Section 6253 states that "Any person" may make a CPRA request." Government Code Section 6253 states that "Any person" may make a CPRA request. No person has greater privilege to request records than any another person. The Grand Jury did not receive heightened attention, rather the City provided the Grand Jury with the same level of courtesy and customer service when responding to CPRA requests as it does with any other requestor.

FISCAL IMPACT

There is no fiscal impact associated with this report.

COORDINATION

This reported was coordinated with the City Attorney's Office, the City Clerk's Office and The City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

It is recommended the City Council approve this response and authorize Mayor Gillmor to submit the City's Response to the Civil Grand Jury Report to the Honorable Deborah A. Ryan, Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, California 95113, no later than **Monday, September 16, 2019.**

Reviewed by: Nora Pimentel, Assistant City Clerk

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Mercury news Article Published on October 3, 2018
2. Santa Clara County Civil Grand Jury Citizen Complaint Form
3. June 18, 2019 Santa Clara County Civil Grand Jury Report
("City of Santa Clara Public Records Access: The Paper Chase.")
4. The League of California's Cities: California Public Records Act publication entitled The People's Business, A Guide to the California Public Records Act [Revised April 2017]
- 5a. December 3, 2018 Grand Jury CPRA Request
- 5b. February 6, 2019 Grand Jury CPRA Request
- 5c. April 3, 2019 Grand Jury CPRA Request
6. Example of City Response Invoking a 14-day Extension
7. Mayor and Council Policy #046
8. City Manager Directive Procedure #13
9. City Stacked workload Diagram
10. PowerPoint for ELT - re: Laserfiche and Public Records
11. Email Exchanges between City Managers Santana's Office and Grand Jury Member