

REPORT TO COUNCIL

SUBJECT

Action on the Council/Board's Comment to the October 10, 2022 Santa Clara County Civil Grand Jury Report: "Unsportsmanlike Conduct: Santa Clara City Council."

BACKGROUND

On October 10, 2022, the Santa Clara County Civil Grand Jury ("Grand Jury") transmitted a letter to the City of Santa Clara along with a report ("Report") entitled "Unsportsmanlike Conduct: Santa Clara City Council" (Attachment 1). As noted below, it is not clear whether the Grand Jury intended to transmit the Report to the Santa Clara Stadium Authority Board ("Board"), which is a separate legal entity.

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 and/or the Santa Clara Stadium Authority is required to "Agree," or "Disagree" in whole or in part, with each applicable Finding. Further, as stated in Penal Code § 933.05(b), the City of Santa Clara's governing body and/or the Santa Clara Stadium Authority 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 of no more than 6 months from October 10, 2022, 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.
4. **The recommendation will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

The City and/or Stadium Authority's Comment to the Civil Grand Jury's Findings and Recommendations is due to the Office of the Presiding Judge, Santa Clara Superior Court, no later than January 9, 2023. Approval of this report satisfies the requirements of Penal Code § 933(c), which requires the City Council/Stadium Authority Board 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

Below are proposed responses to the Grand Jury's Findings and Recommendations. The proposed responses for Findings and Recommendations in Groups 1, 2, 4, 5 (in part), 6, and 7, which are more appropriate for Council/Board comment, are based on Council/Board discussion, statements, and representations at the November 16, 2022, Council and Authorities Concurrent Meeting. Therefore, the proposed responses for these Groups attempted to capture the various comments by individual Council/Board Members on each Finding and Recommendation at the November 16, 2022 meeting, and are written to conform as reasonably necessary to the response requested under the Penal Code within the scope of the Findings and Recommendations in the Report. Additionally, as directed by the Council/Board, staff recommendations on the Council/Board's responses to Findings and Recommendations in Group 3, and 5 (in part) are incorporated into these proposed responses.

RESPONSES TO FINDINGS AND RECOMMENDATIONS [Penal Code § 933(c)]

GENERAL STATEMENT

The Grand Jury addressed the Report to the City of Santa Clara, requesting that the City of Santa Clara comment on the Report as required under the Penal Code. Given the content of the Report and nature of the Findings and Recommendations, it is unclear whether the Grand Jury intended to address the Report to the Santa Clara Stadium Authority Board. For example, the title of the Report refers to the "Santa Clara City Council" rather than the Stadium Authority Board, which are two separate legal entities even though they are comprised of the same individuals. Because of the plain language of the Grand Jury's October 10, 2022 letter, addressed to the City of Santa Clara and requesting that the City of Santa Clara respond to the Report, the City of Santa Clara will respond to the Report, but notes this distinction as a preface to its comment and where possible throughout in response to the phrasing of a given Finding or Recommendation. As a precaution, however, and pursuant to Penal Code § 933(c), which provides that the agency which has been the subject of the grand jury report comment on the Report, both the City Council and Board will take action to approve this comment.

GROUP 1

Finding 1a:

The City Council Voting Bloc meets regularly, and as often as weekly, with lobbyists for the 49ers. While these councilmembers report the date, some of the attendees, and a topic of the meeting, there is no requirement to disclose the substance of those discussions, and the councilmembers do not disclose the content of these meetings.

Response:

The Council/Board disagrees, wholly, with Finding 1a. The Council/Board specifically objects to the term "Voting Bloc" as an inaccurate account of the full voting record of the Council/Board. The Council/Board does not agree that there is a "Voting Bloc," and

believes that the Report did not substantiate this claim based on a full record. The term suggests that a group of Council/Board Members always votes the same way, which is incorrect. Council/Board Members often disagree on issues, even those pertaining to the 49ers (e.g., on November 16, 2021, the change to the Stadium curfew passed by a simple 4-3 majority).

In addition, all Council Members comply with the City's calendaring ordinance, Ordinance No. 1950. Per the ordinance, "The Mayor, City Council Members, City Manager, City Clerk, Chief of Police and City Attorney shall publish their calendars to the City's website on the tenth business day of each month and shall reflect the schedules of the previous month." The Council Members must disclose all meetings with constituents, including citizens, developers, union representatives, consultants, and lobbyists, among other City-related public engagements. The calendars must include the name(s), title(s) and affiliated organization(s) of the people in attendance, as well as a general statement of the issues discussed.

Contrary to Finding 1a, the Council Members comply with this ordinance as it relates to meetings with all lobbyists, developers, and stakeholders, including the 49ers. The number and frequency of meetings with 49ers lobbyists reflects the complicated issues that need to be addressed. Moreover, the subject matter of Finding 1a was a topic of discussion at the City's June 7, 2021 Governance and Ethics Committee meeting. The Committee recommended that topics should be listed, as required under the existing ordinance, but that the substance of discussions with lobbyists was not required. Because Finding 1a is based on an inaccurate premise that there is a "City Council Voting Bloc," the Council/Board wholly disagrees with it.

Finding 1b

The meetings are typically held serially, with three councilmembers in one meeting and two in the next.

Response:

The Council/Board disagrees, wholly, with Finding 1b. The Council/Board maintains that its Council/Board Members have, at all times, complied with the requirements of the Brown Act in carrying out their official duties. The Council/Board specifically objects to use of the term "serially" as an unfair and inaccurate legal assertion, suggesting violation of the Brown Act, even though the accused Council/Board Members have consistently acted in accordance with the law and principles of good governance.

The Council/Board Members meet with the 49ers to work toward the best policy outcomes for the residents of Santa Clara with respect to use of the Stadium. These meetings often occur consecutively. At these meetings, groups of two or three Council/Board Members are in attendance. The process is similar to Council/Board Member briefings, which staff provide to groups of Council/Board Members to ensure compliance with the Brown Act. However, in the meetings with the 49ers, the Council/Board Members are not provided information or materials from previous

discussions, nor do they disclose any information or materials to others attending subsequent meetings. Accordingly, the Council/Board wholly disagrees with Finding 1b.

Finding 1c:

The frequency of meetings of the City Council Voting Bloc with the 49ers lobbyists has created concern about the City Council's governance and leaves the impression that the City Council Voting Bloc is meeting in a manner to subvert the Brown Act's open meeting requirements. This has led to distrust amongst councilmembers as well as between the councilmembers and their constituents.

Response:

The Council/Board disagrees, wholly, with Finding 1c. Again, the Council/Board specifically objects to the term "Voting Bloc" as inaccurate.

In addition, the Council/Board has been plagued by political distrust for some time, but these issues predate member meetings with 49ers. For several years, the relationship with the 49ers was so fractured that there were no meetings between the Council/Board and 49ers at all. It is incumbent on Council/Board Members to effectively communicate with representatives of the 49ers and foster a better working relationship with the City's major business partner. The Council/Board Members willingly accept this responsibility and make decisions to secure better policy outcomes for the City of Santa Clara. The frequency of these meetings reflects the significance and complexity of the issues presented. There are no designs to subvert open meeting laws—the Council/Board Members have consistently complied with the requirements of the Brown Act and principles of good governance. Because of these inaccurate assumptions, which build upon Findings 1a and 1b, the Council/Board wholly disagrees with Finding 1c.

Recommendation 1a:

Prior to voting on any 49ers-related matters and to prevent violations of the Brown Act, the City councilmembers should publicly disclose on the record if they have met with a 49ers lobbyist regarding a topic on the meeting agenda, the name of the lobbyist(s), the date of the meeting, all individuals present, and any information provided by the lobbyist(s). This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 1a because it is not warranted.

In an effort to foster greater transparency, the City already instituted Ordinance No. 1950 in 2016. Per the ordinance, "The Mayor, City Council Members, City Manager, City Clerk, Chief of Police and City Attorney shall publish their calendars to the City's website on the tenth business day of each month and shall reflect the schedules of the previous month." The Council Members must disclose all meetings with citizens, developers, union representatives, consultants, and lobbyists, among other City-related public engagements. The calendars must include the name(s), title(s) and affiliated organization(s) of the people in attendance, as well as a general statement of the issues discussed. Council Members diligently adhere to this ordinance. Accordingly, the

desired information is already accessible via the Council Members' calendars and notes online.

The Council/Board will nevertheless continue discussions regarding the public disclosure suggested in this Recommendation. Council/Board Members have several concerns about the viability of this suggested practice. If such a practice is adopted, it should apply to all, including the 49ers. But how, then, could Council/Board Members ensure they are relating details for each meeting with each special interest group as required for a current agenda item? How far back in time would Council/Board Members be expected to go to review records until their contents are no longer considered relevant to a current agenda item? Where staff members are already overloaded with work, what additional burden would such a requirement entail for them? These questions represent just a few of the basic logistical issues which would need to be resolved prior to implementation of such a Recommendation. Thus, the Council/Board will not implement Recommendation 1a.

Recommendation 1b:

The City should expand its existing calendar ordinance, City of Santa Clara Ordinance No. 1950, to require minutes of all meetings, including the attendees, agenda, duration, and a detailed summary of matters discussed, to be posted online with the calendar. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 1b because it is not reasonable.

The Council/Board is dedicated to meeting with members of the public and various interest groups. This means Council/Board Members attend many different types of meeting as part of their duties. Yet, the Council/Board is comprised of part-time Councilmembers. As a result, Council/Board Members face numerous time constraints. This translates to attending meetings virtually and while in transit, or arriving in person late, and otherwise being unable to take detailed notes as required for meeting minutes. And, staffing is limited, which further constrains the City's capacity to require laborious minutes. Taken together, the Council/Board believes that this Recommendation underestimates the practical burden of detailed notetaking, tracking all meetings attended, posting minutes to a specified location, and related coordination efforts, which would afflict an already reduced staff with limited resources.

Despite these doubts as to feasibility, the Council/Board is interested to learn whether other public entities have implemented similar ordinances. The Council/Board wishes to continue this discussion as it considers less onerous alternatives to the scope and parameters of recording information on Councilmember calendars. At this time, though, it is not feasible to implement this Recommendation, or to do so in the stated timeframe.

Recommendation 1c:

To restore public trust, the City should require that meetings with 49ers lobbyists be recorded so the public can be assured that these closed-door, frequent, and proximal meetings to the City Council meetings do not violate the Brown Act. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 1c because it is not reasonable.

The Council/Board does not believe it is appropriate to single out 49ers' employees or agents in this manner, as there are numerous organizations and interests that seek to meet with Council/Board and City/Stadium Authority employees. If the Council/Board were to adopt a recording ordinance, it would need to apply equally to all lobbyists. Members of the public also actively engage the City/Stadium Authority from time to time and would balk at meeting with a Councilmember/Board Member if the meeting was recorded.

The Council/Board recognizes its obligations to meet and work with the City's stakeholders, varied, and divided as they may be. Council/Board Members take this responsibility seriously. Council/Board Members must do their homework by meeting with different stakeholders, communicating about important issues, and understanding the context of these issues. They must learn every side of an issue. Without this research, the Council/Board cannot make informed decisions.

The situation is no different as applied to meetings with the 49ers. The Council/Board recognizes that the Stadium is an asset of the people of Santa Clara, and decision-making authority is vested in the Stadium Authority Board. The interplay of interests and issues affecting Stadium operations is complex and involved. Without listening to the other side, in this case the 49ers, the Council/Board would lack the appropriate background to make informed decisions—decisions which each Council/Board Member seeks to make for the City's benefit. The Council/Board is committed to transparency. A recording ordinance, which raises concerns about singling-out one unpopular person or entity over another, as well as the ability to have candid discourse and informed discussion, is not necessary or appropriate. Consequently, the Council/Board will not implement this Recommendation.

Recommendation 1d:

The City should establish an open governance commission to evaluate the City's current open government practices and make recommendations for improvement. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 1d because it is not warranted.

The City Council has a dedicated Governance and Ethics Committee, and the Council does not believe it is necessary to establish an additional commission to accomplish the

same end. Vice Mayor Jain serves as Chair of the Committee, Mayor Gillmor and Councilmember Chahal serve as Committee Members, and Councilmember Park acts as an alternate. The Committee focuses on the refinement or establishment of policies and procedures regarding City Council operations and general good government practices, as well as the further implementation of the City's Code of Ethics & Values program. The Committee meetings are open, recorded, and provide members of the public an opportunity to give input. At its meeting on June 7, 2021, the Committee conveyed numerous recommendations for the City Council to consider and implement.

The Committee had not been able to meet since then due to lack of staffing resources. Thus, the City Council cannot justify creating an overlapping commission when the City does not have the resources to support its existing committees. Instead, the City Council is committed to addressing such concerns through the existing Governance and Ethics Committee. The City already held a Committee meeting on December 5, 2022 at 3 p.m. Accordingly, the City will not implement this Recommendation.

GROUP 2

Finding 2:

There is concern that the City Council Voting Bloc is getting real-time influence from 49ers lobbyists during City Council meetings.

Response:

The Council/Board disagrees, wholly, with Finding 2.

First, the Council/Board again disputes use of the term "Voting Bloc" as an inaccurate account of the full voting record of the Council/Board. Second, this Finding unfairly uses the word "concern" as a substitute for proof or substantiation. The Finding neither defines "real-time influence," nor explains the basis for this suspicion. Third, Council/Board meetings are a public forum in which all constituents may listen in, share their opinions, or try to convince or persuade the governing body. The Council/Board wholly disagrees with the unsupported conclusion drawn in Finding 2.

Recommendation 2:

The City should require councilmembers to be visible at all meetings either in person or on camera.

Response:

The Council/Board will not implement Recommendation 2 because it is not reasonable.

The Recommendation assumes, without any citation to research or any best practices, that a requirement for Council/Board Members to be visible would resolve the asserted claim of "real-time influence." In any case, there are legitimate reasons a Council/Board Member may not be able to appear on camera, including bandwidth or connectivity problems, rendering this rule unenforceable. Finally, while remote meetings proved useful during the COVID-19 pandemic, virtual attendance at Council/Board meetings is

dwindling and will likely be a moot point soon. It bears mention that the City is not aware that this requirement has been imposed by other public entities. Thus, the Council/Board will not implement Recommendation 2.

GROUP 3

Finding 3a:

ManCo has not provided sufficient financial accounting to the City/Stadium Authority as required.

Response:

The Council/Board disagrees, in part, with Finding 3a. This issue is a work in progress. The Stadium Authority worked with ManCo to procure and implement a Financial Management System to increase transparency with financial transactions on a more timely basis. The Financial Management System went live April 2022. The Stadium Authority continues to work with ManCo on the use and uploading of financial information into the system. Stadium Authority staff has a monthly review procedure in place to review Shared Expenses and Non-NFL Event records. Some financial documents that are confidential in nature are also reviewed separately at the end of the fiscal year. Separately, KPMG, serving as the Stadium Authority's financial auditor, reviews and opines on the reasonableness of the Stadium Authority's financial statements.

Finding 3b:

The City has identified several fire and safety violations that ManCo has not remediated.

Response:

The City of Santa Clara wholly disagrees with Finding 3b.

Levi's Stadium is one of the most highly regulated facilities in the City, primarily due to the number of significant events held at the facility. The Fire Department's code enforcement program is designed to ensure compliance with applicable building, fire, life safety, and environmental protection regulations and the goals and objectives of the community. Code enforcement is accomplished by performing fire, life safety, and hazardous material inspections. While the Fire Department has identified building, fire, life safety, and hazardous materials violations during its inspections, many are corrected and/or addressed voluntarily. In addition to conducting fire inspections, our Fire Department is also a Certified Unified Program Agency (CUPA). Our Unified Program is authorized by the California Environmental Protection Agency (Cal/EPA) to implement six environmental-based code enforcement programs that ensure compliance with hazardous materials use, storage, and waste generation.

The inspection goals for the Stadium are a comprehensive fire-life safety inspection on a 12-month cycle, inspections of the onsite detection facility on a 24-month cycle, and Unified Program inspections on a 36-month cycle. Inspection frequencies have been established to ensure compliance with applicable state regulations and our community

risk assessment. The inspection frequency can vary based on identified risks and staffing. In addition to the inspections outlined above, a pre-event safety inspection before Stadium events with an expected attendance of more than 20,000 is conducted by the Fire Department as required by the Stadium Life Safety Evaluation.

As noted above, the goal of our code enforcement program is to gain voluntary compliance. Voluntary compliance is the most efficient, effective, and long-term method for ensuring code compliance. The Fire Department works with ManCo staff, consultants, and vendors to address violations consistently through education, empowerment, enforcement, and economic incentives. ManCo has remediated all code violations for the identified period between January 22, 2020, to October 23, 2020, as referenced in the Grand Jury Report. “Enforcing the California Code of Regulations in existing occupancies necessitates granting sufficient time to effect the necessary changes. Therefore, the inspection authority must exercise good judgment in authorizing sufficient time to complete the required changes, considering the degree of danger to life in the event of a fire while rectification is being carried out. The inspection authority may require immediate compliance with any or all of the regulations or grant reasonable time to conform.” (California Code of Regulations, Title 19, 1, §1.11, Enforcement of Regulations)

Finding 3c:

The agreement with ManCo is designed to result in Performance Rents payable to the Stadium Authority for non-NFL events; however, expenses from those events result in no income payable to the Stadium Authority.

Response:

The Council/Board disagrees, in part, with Finding 3c, as explained below. While the agreements allow for the payment of Performance Rents, and pre-development presentations included the projected payments of Performance Rents, there is no specific clause that guarantees these payments. Performance Rents are payable annually; they are comprised of both ticketed and non-ticketed events and the net profit that is generated from these activities. Performance Rents payable to the Stadium have been impacted more recently, primarily due to the pandemic, when there were significant health restrictions limiting any use of the Stadium. ManCo last paid Performance Rent in Fiscal Year 2017/18.

Finding 3d:

Despite ManCo’s lack of financial transparency, failure to schedule non-NFL events in a fashion that yields a financial benefit to the City/Stadium Authority, and repeated unabated fire and safety violations, the City recently agreed to keep ManCo as the operator of the Stadium.

Response:

The Council/Board disagrees, in part, with Finding 3d, as stated in its Responses to Finding 3a, Finding 3b, and Finding 3c. The Council/Board agrees that ManCo continues to operate the Stadium. Regardless of the operator of the Stadium, the Fire

and Life Safety inspection will continue to be conducted and any code violations identified will need to be corrected by the operator of the Stadium.

Recommendation 3a:

The City/Stadium Authority should hire a certified public accounting firm to conduct a comprehensive audit of Stadium Authority finances and the financial documents submitted by ManCo, to begin no later than February 1, 2023 and annually thereafter.

Response:

The Council/Board will not implement Recommendation 3a because it is not warranted.

In addition to our annual review of financial documents, the following audits/outside financial reviews were conducted or are underway:

1. Annual Financial Statements for SCSA (KPMG) – This review is conducted annually, and findings are reviewed with the Audit Committee. This was completed last month for Fiscal Year 2021/22.
2. Shared Expenses Agreed Upon Procedures (KPMG) – KPMG conducts a random sampling of Shared Expenses records each year after the completion of the financial statements review. This audit is currently in progress for Fiscal Year 2021/22.
3. Non-NFL Events (JS Held) – A forensic accounting firm was hired to review Non-NFL Event information in the first three years of operations. This review was completed and reported to the Board in late 2020. The Board directed an additional three years of review and analysis on trends. This report is close to final and will be brought forward to the Audit Committee before the end of the 2022 calendar year.
4. Construction Fund/Public Safety Costs (JS Held) – In response to a Harvey Rose finding, the Stadium Authority engaged JS Held to review Public Safety costs in the initial Construction Fund when the Stadium first opened. This work is nearly complete and a report to the Audit Committee is anticipated before the end of the calendar year.

Given the ongoing and regular reviews of financial documents, a comprehensive audit is not warranted. Thus, the Council/Board will not implement Recommendation 3a.

Recommendation 3b:

The City/Stadium Authority should advocate for a third-party referee to oversee all of ManCo's management activities. This third party should report on a quarterly basis at City Council meetings the status of fire and safety remediation efforts, to begin no later than February 1, 2023.

Response:

The Council/Board will not implement Recommendation 3b because it is not reasonable.

It is unclear to the Stadium Authority what the function of a third-party referee would be or how this function would be performed. Stadium Authority staff are responsible for the oversight of Stadium activities, including ManCo's management activities. For Fiscal

Year 2022/23, the Stadium Authority has 6.70 FTEs (Full-Time Equivalent Employees) budgeted, who are responsible for the programmatic oversight of Stadium activities. For additional reasons, please see the response to Recommendation 3c. Thus, the Council/Board will not implement Recommendation 3b.

Recommendation 3c:

The City/Stadium Authority should allocate staff to oversee Stadium operations. This should include finances, management policy development, and regular website updates of the City's financial reporting documents. This will facilitate a better awareness of ManCo's day-to-day operations. This recommendation should be implemented by February 1, 2023.

Response:

The Board has implemented Recommendation 3c since the 2014/15 fiscal year.

Stadium Authority already has staff assigned for this function. These staff members are responsible for the programmatic oversight and audit of Stadium activities. Since the opening of the Stadium in 2014, the oversight of Stadium activities is allocated primarily to the Executive Director, Stadium Authority Counsel, Auditor, Treasurer and various supporting professional staff. In total, there are 6.70 full-time equivalent (FTE) staff budgeted in the Stadium Authority Fiscal Year 2022/23 Operating Budget. These staff members work on a variety of efforts, including but not limited to, finances, policy, and operations, to administer the necessary requirements for owning and operating Levi's Stadium. Thus, the Board does not intend to modify its current approach to further Recommendation 3c at this time.

GROUP 4

Finding 4:

FIFA and the 49ers have announced that 2026 FIFA World Cup matches will be held at the Stadium. The former City Manager raised concerns about the lack of information and potential risks the event could pose to the City/Stadium Authority.

Response:

The Council/Board disagrees, in part, with Finding 4. The Council/Board agrees that the Stadium will host 2026 FIFA World Cup matches and that the former City Manager raised concerns about lack of information and potential risks posed by this event.

However, the Council/Board otherwise disagrees with this Finding because it lacks context. The former City Manager had concerns about lack of information. However, some Councilmembers believe that the lack of information was a result of ongoing disputes or lack of trust between the City/Authority and the 49ers. Therefore, the Council/Board believes that a better working relationship with the 49ers can help address any concerns about the lack of information and empower the Council/Board to exercise proper oversight over 2026 FIFA World Cup events where public resources are implicated.

Recommendation 4a:

The City/Stadium Authority should request that the 49ers provide a report on the status of the commitments made to the FIFA event. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 4a because the implementation date of February 1, 2023 is not reasonable.

North America is the host of the 2026 FIFA World Cup, which is slated for three and a half years from now, in summer 2026. However, the Council/Board has every intention of gathering information about the Stadium's commitments for the 2026 FIFA World Cup at the time and manner its Council/Board and staff deem appropriate and will request regular status reports of the commitments made. To the extent that Recommendation 4a and 4b overlap, therefore, please see the response to Recommendation 4b.

Recommendation 4b:

The City/Stadium Authority should evaluate if the FIFA event poses risks to the City/Stadium Authority, including specifically the risks outlined by the former City Manager regarding security costs and the nature of declarations required of the host city.

Response:

The Council/Board will implement Recommendation 4b by December 31, 2023. The Council/Board agrees it should be kept apprised as to the details of its hosting obligations. The Council/Board will start by requesting a review of the bid proposal by February 1, 2023, and will seek information regarding security costs and any other aspect of the event that implicate the use of public resources. The Council/Board will then evaluate and address risks posed to the City/Authority under the terms of any FIFA hosting obligations.

Recommendation 4c:

The City and Stadium Authority should take no further action regarding FIFA until the information in 4a and 4b is made public.

Response:

The Council/Board will not implement Recommendation 4c because it is not reasonable. This Recommendation is also overbroad. Without any other explanation, this Recommendation, as worded, appears to call on the Council/Board to abdicate its oversight authority and fiduciary responsibilities by agreeing without exception to "take no further action regarding FIFA." The Council/Board must take action to evaluate and address risks posed to the City and the Stadium by any FIFA hosting obligations.

GROUP 5

Finding 5:

The City/Stadium Authority has a protocol for initiating and completing operational tours of Levi's Stadium. Several councilmembers have not used this protocol and have conducted operational tours on game days, which has raised concerns about whether these councilmembers have accepted gifts in violation of the Political Reform Act and City policy. These actions have also created the appearance of a lack of transparency, which has fostered distrust between City councilmembers, toward the City staff, and most importantly, with the residents of the City.

Response:

The Council/Board disagrees, wholly, with Finding 5. This Finding states that the City/Stadium Authority has an operations tour protocol, when no such protocol exists. The Finding is contradicted by Recommendation 5a, which recommends adoption of policies and procedures related to operational tours. The City/Stadium Authority does not have a current standard protocol for initiating and completing operational tours of Levi's Stadium.

There was a general protocol in place when the Stadium first opened by which Council/Board members would initiate an operational tour by making a request to the City Manager, who would then coordinate with the Police Department and/or the Stadium Manager to schedule and complete the tour. One of these prior operational tours was publicly noticed on May 17, 2017 as a Special Council Meeting and Closed Session for a briefing regarding public safety. While the described protocol of making requests through the City Manager's office is still generally used by staff, the steps for Council/Board Members and staff to initiate and complete operational tours has not been consistent, nor consistently communicated, in the last couple of years due to the transition of staff and the COVID-19 pandemic. Staff can prepare a policy to address operational tours for Council/Board Members for Council/Board review and approval. A companion Administrative policy (City Manager Directive) can be prepared to provide direction to staff seeking access to the Stadium for administrative/operational purposes.

The Council/Board further disagrees that these tours have contributed to a sense of distrust. The Finding implies conducting operational tours of the Stadium on game days creates the appearance of impropriety. But, observing the Stadium when in operation is consistent with a Council/Board Member's duties. As public servants who need to understand the Stadium's functionality, including its operational strengths and weaknesses, observations of the Stadium operations give valuable insight to Councilmembers (Stadium Authority Board members), who should make reasoned and informed policy decisions regarding Stadium management. But as discussed above, there were no protocols in place for conducting operational tours of the Stadium. Thus, the Finding as a whole is unfair and inaccurate.

Recommendation 5a:

The City/Stadium Authority should adopt a policy and outline procedures for elected and appointed officials to conduct operational tours of the Stadium. This document should be published on the City's website to properly inform the public. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will implement Recommendation 5a because, contrary to Finding 5, no such protocol exists. The Council/Board finds it would benefit from a straightforward policy outlining the appropriate procedures for elected officials to conduct operational tours of all City or Authority assets, including the Stadium. The policy will be widely distributed so that all elected officials are aware of its terms, including any consequence for any violation of the policy. A defined and accessible policy of this nature would serve to reduce the possibility of unfounded accusations and the risk of unequal enforcement.

However, the City/Stadium Authority is unable to implement the Recommendation in the proposed timeframe. The City/Stadium Authority will first consider and review a policy for adoption by July 31, 2023.

Recommendation 5b:

The consequence for not adhering to the proper protocols for operational tours should result in an evaluation whether the City of Santa Clara Council Policy Manual, Admonition and Censure Policy should be invoked.

Response:

The Council/Board will not implement Recommendation 5b because it is not warranted.

The Council/Board has already agreed, in response to Recommendation 5a, to implement a policy outlining the appropriate procedures for elected officials to conduct operational tours of all City or Authority assets. Included in drafting the policy will be consideration of violations and their attendant consequences, if any. Because the Council/Board believes Recommendation 5b overlaps with Recommendation 5a, and given the response to Recommendation 5a, the Council/Board finds that Recommendation 5b is unwarranted.

Recommendation 5c:

The City should hire an independent consultant to evaluate and publicly report on whether councilmembers have violated City Policy No. 050, "Gifts to Appointed and Elected Officials." This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 5c because it is not reasonable.

The Council/Board does not agree that taxpayer funds should be spent on an evaluation of an alleged violation of City Policy No. 050, which overlaps with regulations of the Fair

Political Practices Commission (“FPPC”) and is currently being investigated through that state entity, and especially where the Council/Board and the Report acknowledge that no protocols existed for operational tours of the Stadium.

GROUP 6

Finding 6:

The relationships between the City, Stadium Authority, StadCo, and ManCo are creating ethical dilemmas and governance challenges. The governing body for the City now consists of the City Council Voting Bloc, which (1) has received significant campaign contributions from 49ers lobbyists, (2) meets regularly with 49ers lobbyists behind closed doors, and (3) has engaged in actions that suggest loyalty to the 49ers above the City.

Response:

The Council/Board disagrees, wholly, with Finding 6. The Council/Board maintains that the Report presents no evidence of the characterizations underpinning Finding 6. The Council/Board again objects to the term “Voting Bloc” as an inaccurate account of the more complete voting record of the Council/Board. The Report cites to Appendix F, Late Contribution Report Form 497s, to unfairly characterize a “Voting Bloc” swayed by 49ers lobbyists through illicit campaign contributions. The referenced contributions were made to interest groups supporting three of the Councilmembers’ campaigns for reelection. These independent expenditures by a corporation are not coordinated by the Councilmembers and Councilmembers otherwise have no control over such contributions.

At all times, the Council/Board Members have complied with applicable law and City policy. As previously stated, Council/Board Members report all necessary information regarding constituent meetings in accordance with the City’s calendaring ordinance. The Council/Board Members are driven by their loyalty to the residents of the City of Santa Clara. Each Council/Board Member takes an oath of office and shoulders the responsibility of engaging with constituents—residents, special interest groups, lobbyists, and developers—to address the issues confronting the City. Meeting with the 49ers is no different. Council/Board Members are committed to ensuring the best policy outcomes for the oversight, management, and use of the Stadium, for the benefit of the people of Santa Clara. The Council/Board believes that working with the 49ers is essential to achieving that goal. Thus, the Council/Board believes that this Report made unfair and inaccurate assertions in Finding 6.

Recommendation 6a:

The City should hire a qualified legal and ethical consultant to evaluate the challenges presented by the unique relationship between the City and 49ers and prepare a public report on the findings and recommendations. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 6a because it is not reasonable. Although the Council/Board believes that it must confront its political turmoil, including mending strained relationships among Council/Board Members and between the City/Stadium Authority and the 49ers, this Recommendation will not be helpful. While the City's budget deficit persists, the Council is averse to spending more tax dollars on a legal and ethical consultant. Nevertheless, the Council/Board will explore alternative methods to managing these complex challenges.

Recommendation 6b:

The consultant should be tasked with looking at the unique challenges presented by the likely chance that the 49ers lobbyists will continue to influence elected officials and City governance. The consultant should specifically be tasked with evaluating the benefits of mechanisms like an oversight body or commission, auditors, and changes to the ordinance code and other governing documents that better ensure accountability and transparency in the relationship with the 49ers.

Response:

The Council/Board will not implement Recommendation 6b because it is not warranted. The Council/Board disputes the assumptions that led to this Recommendation, as stated throughout this formal comment to the Report. Because the Council/Board rejects this premise, it will not implement this Recommendation. Additionally, this Recommendation contemplates an overbroad scope of review, which would inevitably create more work for the City/Stadium Authority's overburdened staff and incur significant expenses the City/Stadium Authority cannot afford. As discussed in response to Recommendation 5a, the Council/Board will consider alternative methods to address any perceived influence of the 49ers over this governing body and work to form a responsive plan.

GROUP 7**Finding 7:**

Although the City consulted with Markkula Center for Applied Ethics and boasts of having model ethics rules, those rules were developed before the complexities created by the passage of Measure J. The City's current policies, like the Admonition and Censure Policy, do not work where the challenges are presented by a minority of the City Council membership.

Response:

The Council/Board disagrees, in part, with Finding 7. The Council did consult with the Markkula Center for Applied Ethics, resulting in the institution of model rules of ethics. The Council also acknowledges the challenges of ensuring that all voices are heard, even when expressed in a minority vote of any Council/Board action.

However, the Council/Board disagrees with this Finding's conclusion that the City's rules of ethics are not working. The Council/Board is concerned that this Finding

dismisses the significance of majority rule on the Council, as ultimately determined by the voters of the City in any given Council election. A majority on the Council/Board changes in any given Council/Board meeting depending on policy differences among its members on any given issue. The Council/Board again objects to the term “Voting Bloc” as an inaccurate account of the more complete voting record of the Council/Board. In addition, laws such as the Brown Act foster transparency and afford constituents a platform to criticize any Council/Board Members in a public meeting for any reason, including perceived unethical conduct. The Council/Board Members embrace these principles. Thus, the Council/Board disagrees with this Finding.

Recommendation 7a:

The City should add to the City Code of Ethics & Values and the Admonition and Censure Policy a procedure to enable the public to file a complaint and testify at a public hearing to help remediate ethics violations. This should include a procedure for public admonishment, revocation of special privileges, or censure. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 7a because it is not warranted. This recommendation ignores the City’s existing Policy 030, which provides,

“Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the City Council to be heard under the ‘Written Petition’ section of the City Council’s regular agenda within two (2) Council meetings after received. After the initial Written Petition is placed on the agenda, a majority vote of the City Council may add the item to a future Council meeting for action. Any member of the public may address the City Council under the “Public Presentations” section of the agenda. If the presentation includes a request of the Council, a majority vote of the City Council may refer the item to the City Manager to be properly added to a future meeting, in compliance with the Brown Act.”

According to this policy, constituents may address the Council/Board regarding any concerns or complaints in a public forum. Indeed, this policy has been used very frequently by Santa Clara residents. Constituents have several other forms of recourse—they may file an FPPC complaint, provide information to news media outlets, or pursue a recall of unsatisfactory elected officials. Moreover, the City’s Governance and Ethics Committee, reconvened on December 5, 2022, and can take up these issues. The Council/Board is open to considering whether additional mechanisms of public oversight are necessary and financially feasible, but no such measure could be adopted in the stated timeframe.

Recommendation 7b:

The City should establish an independent Public Ethics Commission, with guidance from the Markkula Center for Applied Ethics, to help ensure that all public officials conduct government decision-making processes in an ethical, transparent and unbiased manner without favor. This recommendation should be implemented by February 1, 2023.

Response:

The Council/Board will not implement Recommendation 7b because it is not warranted. As previously mentioned, the Council already has a Governance and Ethics Committee. Between June 2021 and December 2022, the Committee was unable to meet as a result of reduced staffing and budgetary deficits. Thus, the Council cannot commit to creating and staffing a separate commission with an overlapping purpose. The Council already held a Governance and Ethics Committee meeting on December 5, 2022, and intends to prioritize reconvening the Committee on a regular basis to address concerns of this nature. In addition, the Council/Board welcomes possible guidance from and consultation with the Markkula Center or other sources, with due consideration for cost and related factors.

Recommendation 7c:

The City should require councilmembers to attend additional training in good governance provided by a third party such as the Markkula Center for Applied Ethics no later than February 1, 2023, and once a year thereafter. The training should include the Brown Act with emphasis on issues such as serial meetings, closed sessions, the fiduciary duty of government officials, filing Form 700s, and other issues related to good governance.

Response:

The Council/Board will not implement Recommendation 7c because it is not warranted. As it stands, the Council/Board should already, or plans to, receive regular and ongoing trainings in good governance and will have the added benefit of guidance and support from staff. Again, the Council/Board is cognizant of limited funding and resources. The Council/Board will contemplate whether there are gaps to be filled in the Council/Board current training structure and offerings.

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 or training contemplated may result in increased expense, which will be addressed by budget action, if necessary.

COORDINATION

This report was prepared by the City Attorney's Office in coordination with 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 or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

It is recommended that the City Council/Stadium Authority Board:

1. Consider the draft comment to the Report, including a date to implement Recommendation 4b, and propose any other revisions to the draft comment.
2. Approve the final version of the draft comment ("Comment to the Civil Grand Jury Report").
3. Authorize Mayor/Board Chair to submit the Council/Board's Comment to the Civil Grand Jury Report subject only to technical, conforming, non-substantive modifications prepared by the City Attorney's Office, to the Honorable Beth McGowan, Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, California 95113, no later than Monday, January 9, 2023.

Reviewed and approved by: Rajeev Batra, City Manager/Executive Director and Steve Ngo, Interim City Attorney/Stadium Authority Counsel

ATTACHMENTS

1. 2022 Santa Clara County Civil Grand Jury Report "Unsportsmanlike Conduct: Santa Clara City Council" dated October 10, 2022
2. Draft Cover Letter for Comment to the Civil Grand Jury Report