



TRAINING | ANALYTICS | PERFORMANCE
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November 18, 2018

City of Santa Clara
City Manager Deanna Santana
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Santana:

Thank you for allowing TAP International to respond to the Santa Clara Chamber of Commerce's (SC Chamber of Commerce) public comments regarding the September 2018 issued performance audit report, SANTA CLARA CONVENTION CENTER AND CONVENTION-VISITORS BUREAU: RESTRUCTURING OPERATIONS CAN STRENGTHEN ACCOUNTABILITY, PERFORMANCE AND REVENUE.

The SC Chamber of Commerce's latest set of comments (not dated) represents the SC Chamber of Commerce's third response opportunity to the audit findings. The SC Chamber of Commerce's first opportunity for comment was in late August 2018 when TAP International met and discussed the audit findings with the SC Chamber of Commerce President/CEO. Their second opportunity was in early September 2018, when TAP International submitted a draft audit report for the SC Chamber of Commerce to review and comment. In each opportunity, the SC Chamber of Commerce provided comment and TAP International addressed their comments in accordance with generally accepted government auditing standards for performance audits.

Our review of the SC Chamber of Commerce's third opportunity to comment on the performance audit report found the following:

- Seven of 25 SC Chamber of Commerce's comments were made without evidence.
- Seven comments were false.
- One comment was misleading.
- The remaining 10 comments are not related to TAP International, Inc.

The attached analysis summarizes the results of our review.

Sincerely,

Denise Callahan
President and Principal Consultant

TAP International, Inc.
Review of Santa Clara (SC) Chamber of Commerce Public Comments on the Draft Report

Comments Made Without Evidence by the SC Chamber of Commerce

SC Chamber of Commerce Comment: "City staff overruled Council action and postponed the Santa Clara Chamber of Commerce's presentation until November 13th, over a month past the original agreed upon date and coincidentally after the election."

Auditor Response: Without Evidence. The SC Chamber of Commerce is omitting relevant facts in its statement of events regarding a postponed presentation.

Analysis:

- City staff did not overrule council. The hearing schedule was not delayed due to the election date, but due to the availability of TAP International's Project Manager. When contacted by the City Manager's Office to discuss the availability to respond to the Chamber's public comments about the performance audit report, TAP International was not available to attend the October 16th City Council meeting. TAP International conveyed to the City that if the TAP Project Manager was required to be in attendance, the TAP Project Manager would be available for the November City Council meeting.

SC Chamber of Commerce Comment: "The Santa Clara Chamber of Commerce is concerned with the independence of this audit and the procedure with which the audit was conducted, including releasing preliminary information to the public before properly vetting or discussing this information with the Chamber's Board or President/CEO."

Auditor Response: Without Evidence. The SC Chamber of Commerce's statement does not account for the Generally Accepted Government Auditing Standards (GAGAS) published in the U.S. Government Accountability Office (US GAO) Yellow Book.

Analysis:

- Contrary to the SC Chamber of Commerce's statement, TAP International did not release preliminary information to the public. TAP International provided preliminary information only to officials of the City of Santa Clara. The information provided to the City was based on factual information provided by SC Chamber of Commerce employees and analyzed by TAP International.
- Section 6.78 of GAGAS calls for early communication of deficiencies in internal control, fraud, non-compliance with laws and regulation, contracts, or abuse. TAP International, the auditor, as required by GAGAS, notified the City that the SC Chamber of Commerce allowed the use of a public facility at full facility discounts to SC Chamber of Commerce members and employees for weddings, birthday parties, and other events. The SC Chamber of Commerce activities were not in compliance with their own membership policies and represented a misuse of public facilities, which led to the auditor's early reporting to the City.
- The President/CEO of the SC Chamber of Commerce wrongly believes information collected during the audit required approval or vetting of the audited information; there is no requirement

for this to occur. GAGAS requires the Auditor to provide a draft report to the SC Chamber of Commerce for comment, which was done by TAP International.

- The SC Chamber of Commerce's concern about the independence of the audit was made without facts. Under Section 3 of GAGAS, TAP International ensured the performance auditors assigned to the audit were free of personal impairments to independence in both fact and appearance. There were no potential or actual personal impairments to independence identified prior to or during the audit. Further, our auditors did not have:
 - Immediate or a close family member who have or are working in the Auditee's offices;
 - Financial interest direct, or indirect, in the Auditee's operations;
 - Preconceived ideas toward individuals, groups, organizations, or objectives of a program that could bias the audit;
 - Any political, ideological, or social convictions that result from membership in, employment in, or loyalty to either a policy, group, organization, or a level of government.
 - Book, attend, or visit the SC Chamber of Commerce, Convention and Visitor's Bureau, or the Santa Clara Convention Center prior to the initiation of the audit;
 - Own property in the City of Santa Clara;
 - Own stock in any corporate hotels located in the City of Santa Clara;
 - Seek employment with any audited entity throughout the term of the audit contract.

SC Chamber of Commerce Comment: "Santa Clara Commerce found blatant omissions, misleading content, and incomplete content."

Auditor Response: Without Evidence. The SC Chamber of Commerce's statement does not account for GAGAS published in the US GAO Yellow Book.

Analysis:

- Under Section 7.33 of GAGAS, the auditor is required to provide a copy of the draft report for review and comment by responsible officials to ensure the fairness, completeness, and accuracy of the report. TAP International first discussed the audit findings with the SC Chamber of Commerce prior to drafting of the report and secondly, provided a copy of the draft report for formal review and comment. TAP International followed GAGAS in incorporating nearly all of the SC Chamber of Commerce's comments in the draft report. There was no information included in the SC Chamber of Commerce's prior review of the draft report that stated that the audit report contained omissions, was incomplete, or contained misleading content.

SC Chamber of Commerce Comment: "TAP International never discussed this with the Board Member in question but made assumptions that led to an error in the Audit."

Auditor Response: Without evidence. The SC Chamber of Commerce's statement does not account for GAGAS published in the US GAO Yellow Book.

Analysis:

- The SC Chamber of Commerce is referring to its Board member who self-disclosed a conflict of interest. TAP International did not need to meet with the Board member in question because the SC Chamber of Commerce provided the signed conflict of interest form that was submitted by the respective Board member. The conflict of interest form is an attested to statement, in writing, by a person disclosing and verifying any conflict of interest. No other verification was needed. TAP International further incorporated SC Chamber of Commerce's comments in the draft report about the conflict of interest status, stating on page 37 of the performance audit report that "SCCC General Manager/CEO further reported the (SC Chamber of Commerce) Board member is currently in the process of purchasing the contract from the current vendor."

SC Chamber of Commerce Comment: "Failed to state the FPPS Statue of Limitations for investigations is 5 years."

Auditor Response: Without evidence. The SC Chamber of Commerce's statement does not reflect principles of auditing.

Analysis:

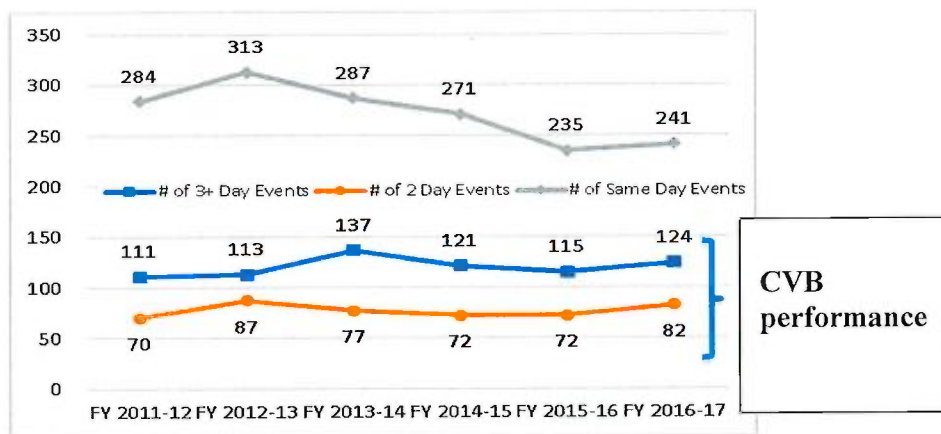
- The California Fair Political Practices Commission through its enforcement activities has the responsibility to determine, upon receiving reports, that issues/concerns either exceed or fall within the statute of limitations. The SC Chamber of Commerce is not an investigating agency with the authority to make a determination on applicable statute of limitations. The determination belongs to the investigating agency, the California Fair Political Practices Commission.

SC Chamber of Commerce Comment: "TAP International did not mention the City's directive for the CVB and Convention Center to stop booking for seven months due to the RDA issue. This information was provided but was omitted."

Auditor Response: Without evidence. The SC Chamber of Commerce's statement does not account for GAGAS published in the US GAO Yellow Book.

Analysis:

- Under Section 6.56 of GAGAS, auditors must obtain sufficient and appropriate evidence to provide a reasonable basis for the audit findings and conclusions. TAP International found that that SC Chamber of Commerce's explanation that the RDA dissolution adversely affected its performance was not supported by evidence.
- Specifically, the Santa Clara Redevelopment Agency was dissolved in 2012 pursuant to California state legislation. As illustrated in the chart below, the SCCC is generally responsible for booking single day events (gray line) and the CVB is generally responsible for booking multi-day events (see the orange and blue lines). In FY 2011-2012 through FY 2013-14, performance actually increased and then remained generally steady through FY 2016-17. There is no evidence to support the SC Chamber of Commerce's assertion regarding the RDA dissolution adversely affecting their performance. Thus it was not included in the report.



SC Chamber of Commerce Comment: "TAP International was provided information detailing the circumstances surrounding the management fee; however, the audit incorrectly reported the information to the Chamber as the responsible party. The audit misstates this information declaring the Chamber was to also draft a letter which was clearly not the case."

Auditor Response: Without evidence. The SC Chamber of Commerce statement does not account for and ignores the direction for drafting documentation about the management fee modification.

Analysis:

- The SC Chamber of Commerce is incorrect in its statements regarding their fee modification to manage the Santa Clara Convention Center. The audit report does not state that the SC Chamber of Commerce was the responsible party for processing a contract amendment to increase its management fee.
- The audit report actually states that: "Contractor documents show that in March 2017, the City provided instructions to the Contractor to use the budgeting process to change its management fees". However, in April 2017, the City met with the Contractor (i.e. SC Chamber of Commerce) in budget meetings and a decision was reached that a formal amendment was needed. The Contractor's Board of Directors was to draft an amendment/letter regarding the management fee and that the City would prepare a letter establishing the new payment term of two percent of gross sales. There was no information provided that either the Contractor or the City followed through on these tasks. Having a contract amendment would have allowed for proper discussion and deliberation by the City Council on the merit of the fee increase."

False Statements Made by the SC Chamber of Commerce

SC Chamber of Chamber comment: "The auditor reported the CVB conducted the fundraiser and collected the donations. The distinction between the CVB and Chamber is very important because the Chamber is not subsidized by City funding. The auditor also reported the Chamber donated to the Santa Clara Chamber PAC using public funds which was not the case. The Chamber informed the auditor on several occasions, but the auditor would not make this change in the report. The City used this misinformation to publicly reprimand the Chamber for using City funds to make political donations painting the Chamber in a negative light."

Auditor Response: Not factually correct. The SC Chamber of Commerce comment regarding PAC donation by the City funded Convention and Visitor's Bureau does not state the facts as stated in the audit report.

Analysis:

- The audit report does not state that the CVB conducted the fundraiser and collected the donations. The audit report states that the Contractor (i.e. Chamber of Commerce) sponsored a web-based fundraising event for a political action committee. The audit report also states that the Contractor (i.e. Chamber of Commerce) received the checks that totaled \$8,000. The checks in question were made payable to the CVB.
- The current SC Chamber of Commerce President/CEO's response does not recognize the impropriety of accepting political contributions through checks made payable to the CVB, a City funded program operated by the SC Chamber of Commerce.
- The SC Chamber of Commerce's comments note that the President/CEO made multiple claims to TAP International that the SC Chamber of Commerce's activities to accept the donor checks that were payable to the CVB were appropriate. However, repeatedly asserting the SC Chamber of Commerce's action was proper in using the City funded CVB to send a political donation to a political action committee does not make it so. Also, the SC Chamber of Commerce's repeated assertion that its actions were proper does not account for the actual public law that prohibits such donation.
- The SC Chamber of Commerce incorrectly reported that it is not subsidized by City funding. The SC Chamber of Commerce regularly supports its operations through City funds. For example, as stated in page 6 of the performance audit report, the SC Chamber of Commerce received \$45,000 to \$50,000 annually under the terms of the 1984 Management Agreement for management of the Santa Clara Convention Center. In addition, page 20 of the audit report describes that the SC Chamber of Commerce receives revenues from activities implemented by the CVB that it operates on behalf of the City of Santa Clara. The SC Chamber regularly received revenues from the publicly funded CVB for other expenses. For example, the SC Chamber of Commerce received \$91,232 in rent annually between FY 2008-09 and FY 2016-17 for office space used by Chamber employees to operate the CVB.

SC Chamber of Commerce comment: "...the Audit omits the fact the CVB received leads from local corporations who said they saw the advertising and were interested in bring their corporate event to Santa Clara."

Auditor Response: False and Misleading. The Audit report directly references the outcomes resulting from the advertising.

Analysis:

- The SC Chamber of Commerce reported that one lead was obtained from the advertising in the SC Weekly. In addition to conducting a trend analysis, the one lead, which we could not verify that it translated to an actual event, provided support for the page 54 audit statement, “unchanged performance in lead generation suggests that changes are needed in marketing and advertising strategies”.

SC Chamber of Commerce Comment: “In two separate conversations with TAP International, the President/CEO of the Chamber, and the Vice President of Sales, the auditor stated she was unhappy with the City’s decision to combine the preliminary observation made by the auditor and the City’s observations as it misrepresented the audit information. In a later conversation with TAP International, the auditor retracted this statement and stated she knew this information was going to be sent out and she was fine with it.”

Auditor Response: Falsehood. The President/CEO of SC Chamber of Commerce made up the statements.

Analysis:

- The TAP International Project Manager did not inform the Chamber President/CEO that she was unhappy about the City’s presentation.
- The Chamber President/CEO in conversations with other Chamber employees continued to falsely represent the statements of TAP International. At two different meetings with Chamber employees, TAP International’s Project Manager has had to correctly restate the facts of the conversation of June 27, 2018 between the SC Chamber of Commerce’s CEO and TAP International’s project manager.

SC Chamber of Commerce Comment: “Prior to the release of the Final Audit, the lease was not transferred to the Board Member. The Audit states there was the Appearance of Self-Dealing with more research needed because the lease was transferred to a Board Member which was not the case. The Auditor was presented this information, but it was misstated in the report to the detriment of the Chamber and the proposed UPS Store Franchisee.”

Auditor Response: False. The SC Chamber of Commerce did not state the facts correctly.

Analysis:

- The comments refer to contracted shipping and mailing services for the SCCC. The performance audit reports states on page 37,” that the SCCC General Manager/CEO further reported the (SC

Chamber of Commerce) Board member is currently in the process of purchasing the contract from the current vendor.

- The audit report does not state that more research is needed, but rather further review of the findings contained in the audit report by the City.

SC Chamber of Commerce Comment: "...the audit misrepresents the CVB's intention which was to grow their largest customer based."

Auditor Response: False. The SC Chamber of Comments misstates information contained in the performance audit report.

Analysis:

- The information contained in the performance audit report accurately represents CVB intention. Page 54 of the report states "the CVB management explained that it had two goals for advertising and marketing activities: (1) to make the CVB known as a local resource for area businesses to handle its event needs, and (2) to promote the area as a destination for local businesses."

SC Chamber of Commerce comment: "misstates information declaring the Chamber was to also draft a letter which was clearly not the case. This misstatement is a concern of the Chamber because it puts unnecessary blame on the Chamber when the Chamber followed the City directed procedure."

Auditor Response: False and misleading. The SC Chamber of Commerce does not acknowledge the timeline of events that clearly shows it was to prepare and provide documentation regarding the management fee to the City.

Analysis:

- The performance audit report states "Contractor documents show that in March 2017, the City provided instructions to the Contractor to use the budgeting process to change its management fees. However, in April 2017, the City met with the Contractor in budget meetings and a decision was reached that a formal amendment [between the City and Chamber] was needed. The Contractor's (i.e. SC Chamber of Commerce) Board of Directors was to draft an amendment/letter regarding the management fee and that the City would prepare a letter establishing the new payment term of two percent of gross sales. There was no information provided that either the Contractor or the City followed through on these tasks. Having a contract amendment would have allowed for proper discussion and deliberation by the City Council on the merit of the fee increase".

SC Chamber of Commerce Comment: "The Audit omits the clear business reasons for deciding to contract the Santa Clara Weekly to run 6 full page advertisements. The audit also omits the Staff members Direct Supervisor, President/CEO, and Board Chair all separate reviewed and approved the expense."

Auditor Response: False. Business reasons and improper approval do not excuse economic conflicts of interest.

Analysis:

- In a meeting held on July 7, 2018 between TAP International and the CVB's national marketing sales director, the CVB Director reported that it was her decision to run the ad without the influence of the Board Chair or the Chamber of Commerce and believed that it was a better business decision to advertise in a more cost-effective media outlet that targets Santa Clara corporations. There is no evidence offered that the business decision was made in compliance with public law or evidence available of oversight by the SC Chamber of Commerce to approve the Director's decision.
- Because the newspaper publisher served on the SC Chamber of Commerce Board at the time of the purchase, the ads should have been cancelled by Chamber staff as well as by the Board member in question.
- The SC Chamber of Commerce provided cost information to TAP International in its review of the draft report on area advertising to run the same ad but omitted information that advertising costs are influenced by readership, advertising volume, and subscription costs. As a result, advertising costs vary by publication. In addition, TAP International examined the actual invoice submitted by the local newspaper for payment for the ads. The invoice does not show that a discount was provided. Generally, sound accounting practices would show the full price of the purchases followed by the amount of the discount.

Misleading Statement by the SC Chamber of Commerce

SC Chamber of Commerce Comment: "The fee adjustment was clearly identified and marked in RED to provide City Staff notice of a significant change. The new budget, with the increased management fee, was approved in an open City Council meeting by the Mayor and Council members. TAP International's final audit was submitted citing the Chamber for not disclosing the increased administrative fee."

Auditor Response: Misleading. The SC Chamber of Commerce's statement suggests that the Chamber may not understand government budgeting processes and ignores the City and Chamber staff agreement to prepare documentation to initiate a contract amendment.

Analysis:

- The SC Chamber of Commerce is referring to preliminary budget worksheets provided by the Chamber's Santa Clara Convention Center staff to City staff during the budget process. Preliminary budget worksheets are not included in the final budget presented to the City Council for review and approval.

SC Chamber of Commerce Statements Not Applicable to TAP International

SC Chamber of Commerce Comment: "concerned with the City's actions surrounding this audit."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.
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SC Chamber of Commerce Comment: "City staff misstated the circumstances and misrepresented the Chamber leading the public and Council to believe the Chamber was not compliant with City directives."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.
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Chamber of Commerce Comment: "The letter also stated 'board members engaged in self-dealing, using City assets for their own financial gain...' This statement was not in the audit. The City reported actual self-dealing instead of the appearance of self-dealing with more research needed."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.
 - Under Section 7.21 of GAGAS, auditors can report that either fraud has occurred or is likely to occur as a finding. Whether an act is in fact fraud or other wrong doing, can be determined by others with appropriate expertise.
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SC Chamber of Commerce comment: "City has interfered with a contract between the TID Advisory Board and Santa Clara Chamber by urging the TID to stop doing business with the Chamber."

Auditor Response: Not applicable to TAP International, Inc

Analysis:

- The SC Chamber of Commerce comment is directed at the City.

SC Chamber of Commerce Comment: "The City of Santa Clara sent two letters via direct mail to every business license holder..."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.

SC Chamber of Commerce Comment: "The City of Santa Clara's second letter, ... included many insertions (sic) and observations made by the City ..."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.

SC Chamber of Commerce Comment: "The letter sent by the City stated, 'the auditor found that the City of Santa Clara lost \$20.5 million in revenue and City subsidies over the past 10 years.' This was not stated in the audit but was an abnormal calculation conducted by the City of Santa Clara and inserted as Audit Findings."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.

SC Chamber of Commerce Comment: "The letter stated the Chamber's mismanagement resulted in \$37 million in lost funds to the City of Santa Clara. This, again, was not stated in the audit but was an insertion (sic) made by the City of Santa Clara."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.
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Chamber of Commerce Comment: "The City used unusual accounting practices to draw their desired conclusion."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.

SC Chamber of Commerce Comment: "City interfered with a contract between the TID Advisory Board and the Santa Clara Chamber..."

Auditor Response: Not applicable to TAP International, Inc.

Analysis:

- The SC Chamber of Commerce comment is directed at the City.