



## 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) <<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)