

**MEMORANDUM**

City Manager's Office

**DATE:** December 13, 2022

**TO:** The Honorable Beth McGowen, Presiding Judge,  
Santa Clara County Superior Court

**FROM:** Kimbra McCarthy, City Manager

**SUBJECT:** **Response to 2022 Santa Clara County Civil Grand Jury Report, "If You Only Read The Ballot, You're Being Duped"**

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The City of Mountain View hereby respectfully submits its response to the 2022 Santa Clara County Civil Grand Jury Report, entitled "If You Only Read the Ballot, You're Being Duped," pursuant to California Penal Code Sections 933 and 933.05.

**Civil Grand Jury Finding 1**

**The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.**

**City of Mountain View Response to Finding 1**

The City of Mountain View disagrees in whole with this finding.

California Elections Code Section 13119 governs the form and content of ballot measure questions and is applicable to cities (including charter cities), counties (including charter counties), and districts (including school districts). (See California Election Code Sections 13100 and 13119.) All City of Mountain View ballot measure questions are reviewed by the City Attorney's Office to ensure compliance with the California Elections Code and presented to the City Council at a duly noticed public meeting for review and approval. Proposed ballot measure materials, including the ballot question, are publicly posted in advance of the City Council meeting, and members of the public may provide written and oral comments to Council prior to Council approval. In the event a member of the public believes that the ballot measure question approved by Council does not comply with the requirements of the California Elections Code, they may bring a preelection challenge in a court of competent jurisdiction to obtain a writ of mandate or injunction requiring that the question be amended.

### **Civil Grand Jury Recommendation 1b**

**Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.**

### **City of Mountain View Response to Recommendation 1b**

This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.

Empowering County Counsel to review City of Mountain View ballot questions prior to submission to the Registrar of Voters would improperly infringe on Mountain View's constitutional right as a charter city to provide for the conduct of City elections and would delegate control over a quintessentially municipal affair to an official that is not accountable to the Mountain View City Council or its electorate. The conduct of City elections is one of the few specifically enumerated core areas of autonomy for home-rule cities. (See *Cobb v. O'Connell*, 134 Cal. App. 4th 91 (2005).) In addition, the City Attorney for the City of Mountain View reviews Mountain View ballot questions to ensure compliance with State law requirements, and there is no evidence that County Counsel is more qualified or better suited to do so.

The Civil Grand Jury states, "an objective, neutral third party is needed to speak on behalf of the voting public," and, ideally, it would be someone who is "well versed in the law, has a fiduciary duty to uphold the law, and has taken an oath to act with integrity." The Mountain View City Charter provides for the appointment of a City Attorney and empowers the City Attorney to, among other things, "...advise the council and all city officers in all matters of law..." A City Attorney, like County Counsel, is generally well-versed in the law, and all California barred attorneys take the same oath of office which requires them to faithfully discharge the duties of an attorney and always conduct themselves with integrity. Therefore, empowering County Counsel to perform a duty that is already performed by Mountain View's City Attorney is unwarranted.

### **Civil Grand Jury Recommendation 1c**

**Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.**

**City of Mountain View Response to Recommendation 1c**

This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.

For all the reasons stated in response to Recommendation 1b, empowering County Counsel to perform a duty that is already performed by Mountain View's City Attorney is unwarranted.

**Civil Grand Jury Recommendation 1e**

**Governing entities within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.**

**City of Mountain View Response to Recommendation 1e**

This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.

As noted above, the conduct of City elections is one of the few specifically enumerated core areas of autonomy for home-rule cities, and the Mountain View City Charter provides for the appointment of a well-qualified City Attorney to advise Council and City officers in all matters of law. Relinquishment of Mountain View's constitutionally protected right to provide for the conduct of its elections is unwarranted when there is no evidence that Mountain View itself has violated State law governing the form and content of ballot questions. All local governmental entities should not be subjected to oversight because of the errors of a few, especially when State law provides a legal process for the voting public to challenge misleading, false, or partial ballot questions.

KMC/6/MGR  
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