



DATE: September 3, 2019

CATEGORY: New Business

DEPT.: Public Works

TITLE: **Proposed Response to Santa Clara County Civil Grand Jury Report: Inquiry into Governance of the Valley Transportation Authority**

RECOMMENDATION

Approve the draft response to the Santa Clara County Grand Jury Report: Inquiry into Governance of the Valley Transportation Authority (Attachment 1 to the Council report).

BACKGROUND

The Santa Clara County Civil Grand Jury serves as an investigatory body into County and city government and special districts to ensure that the best interests of Santa Clara County citizens are being served. The law governing grand jury formation, authority, powers, and proceedings is found in Part 2, Title 4 of the California Penal Code, Sections 888 to 939.91. In accordance with Section 933 of the California Penal Code, public agency governing bodies are required to comment on grand jury findings and recommendations no later than 90 days after the grand jury submits a final report.

On June 18, 2019, the 2018-19 Santa Clara County Civil Grand Jury (Grand Jury) issued its final report, Inquiry into Governance of the Valley Transportation Authority (VTA) (Attachment 2). The report discusses VTA's operating and financial performance and concluded that the "VTA Board is in need of structural change to enable it to better protect the interests of the County's taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology, and the changing needs of Silicon Valley residents" (Page 5 of the report). The Grand Jury report includes five findings and 12 recommendations. Pursuant to Penal Code Sections 933 and 933.05, the Grand Jury is requiring a response from the City of Mountain View to one of the findings and three of the recommendations by September 16, 2019 (Attachment 3).

As stated in Penal Code Section 933.05, the City is required to agree or disagree (wholly or partially) with findings. If partially or wholly disagree, reasons must be provided. There are four possible responses to recommendations as listed below:

1. The recommendation has been implemented, with a summary of the implemented action;
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation;
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame 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.

ANALYSIS

The Grand Jury is requiring a response from all cities in Santa Clara County to Finding 1 and Recommendations 1c, 1d, and 1e. Attachment 1 provides a proposed cover letter with detailed responses to Finding 1 and Recommendations 1c, 1d, and 1e. The proposed responses are summarized below:

Finding 1: The VTA Board, currently made up exclusively of elected officials from the Santa Clara County Board of Supervisors, the City of San Jose, and the other smaller cities in the County, suffers from:

- *A lack of experience, continuity, and leadership;*
- *Inadequate time for 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 County Board of Supervisors and the City of San Jose; and*

- *Frequent tension between the director's fiduciary duties to VTA and its regional role on the one hand and the political demands of their local elected positions on the other.*

The proposed response is to agree with the finding.

Recommendation 1a: *VTA should commission a study of the governance structure of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.*

Recommendation 1b: *As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.*

Recommendation 1c: *As constituent agencies of VTA, each of the cities in the County should prepare and deliver to the 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.*

The City is only required to respond to Recommendation 1c, but this recommendation is related to both Recommendations 1a and 1b requiring that the response consider all three recommendations.

Some cities are responding with a request that an independent organization, such as the Cities Association, commission the recommended study with funding provided by VTA. The expectation is that the Cities Association's study can help engage and advance a consensus position on this issue for all cities, including the cities that currently do not have designated seats on the VTA Board.

Prior to the Grand Jury releasing its final report on June 18, 2019, the VTA Board Chairperson convened an Ad Hoc Board Enhancement Committee (Committee) to review the Board's governance structure and practices. The Committee is chaired by Councilmember John McAlister. The other Committee members are Glenn Hendricks (Sunnyvale), Jeannie Bruins (Los Altos), Teresa O'Neill (Santa Clara, current VTA Board Chairperson), and Chappie Jones (San Jose). The Committee has met five times since

May 29, 2019 and, at its last meeting on August 23, began reviewing a work plan for the Grand Jury's recommended study.

Staff's proposed response to the Grand Jury is that Recommendation 1c will not be implemented because it is not reasonable. The response notes that Recommendations 1a, 1b, and 1c combined fail to indicate a process by which the results of the VTA and County Board of Supervisors commissioned studies and the 15 city reports will be used to identify and develop consensus for potential changes to the governance structure. In addition, it will be more productive for the cities to provide their views after the comparative research to be performed as part of VTA's study (Recommendation 1a) is concluded and prior to any recommendations being made on changes to VTA's governance structure. The proposed response states that consideration should be given to having an independent organization, such as the Cities Association, commission a study, either in addition to VTA and the Board of Supervisors or instead of one or both of these agencies. This independent organization could lead a process to gather and document the perspectives of all 15 cities as part of its study.

The proposed response also indicates that the study parameters should be broadened to include a review of successful transit agencies whose service area spans multiple municipalities. The study should also analyze Board operations options, such as higher voting thresholds for major expenditures, in addition to Board composition and selection processes.

***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 the 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 the VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations, and the inclusion of appointed directors who are not currently serving elected officials).*

The proposed response states that this recommendation requires further analysis. It is premature to recommend such a proposal prior to the preparation and analysis of the study recommended in Recommendation 1a. Staff recommends that the City not commit to participating in proposing legislation until the changes are identified and the City Council can determine whether to support these changes.

***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 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 amending Section 100061 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.

The proposed response states that this recommendation requires further analysis. It is premature to recommend such a proposal prior to the preparation and analysis of the study recommended in Recommendation 1a. This study should include an analysis of options for how the Chairperson is selected and the Chairperson's length of term.

FISCAL IMPACT

There are no fiscal implications associated with this action. If the City were to do its own report on this issue, outside assistance might be required, and if the Cities Association were to commission the study, Mountain View might be asked to partially fund it, unless it is paid for by VTA.

ALTERNATIVE

Provide direction to revise the responses.

PUBLIC NOTICING

Agenda posting. A copy of the report for this item was sent to Nuria Fernandez, VTA General Manager/CEO.

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DSC/TS/6/CAM
943-09-03-19CR-3
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- Attachments:
1. Proposed Response Letter from Mayor
 2. Report: Inquiry into the Governance of the Valley Transportation Authority
 3. Grand July Letter to Mountain View, June 18, 2019