



Santa Clara Valley Water District Board Policy and Planning Committee Meeting

HQ Boardroom

REGULAR MEETING AGENDA

**Monday, February 6, 2023
2:00 PM**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

**BOARD POLICY AND PLANNING
COMMITTEE**

Nai Hsueh, Director District 5
Tony Estremera, Director District 6
Rebecca Eisenberg, Director District 7

During the COVID-19 restrictions, all public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body, will be available to the public through the legislative body agenda web page at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to participate in the legislative body's meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

COMMITTEE CLERK

Michele L. King, CMC
Clerk, Board of Directors

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

Santa Clara Valley Water District
Board Policy and Planning Committee
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AGENDA

Monday, February 6, 2023

2:00 PM

HQ Boardroom

*****IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS*****

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as a “hybrid” meetings, conducted in-person as well as by telecommunication, and is compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while still maintaining transparency and public access, members of the public have an option to participate by teleconference/video conference or attend in-person. To observe and participate in the meeting by teleconference/video conference, please see the meeting link located at the top of the agenda. If attending in-person, you are required to comply with Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS located at <https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf>

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee at a video conferenced meeting, during public comment or on any item listed on the agenda, should use the “Raise Hand” tool located in the Zoom meeting link listed on the agenda, at the time the item is called. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

- Members of the Public may test their connection to Zoom Meetings at: <https://zoom.us/test>
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: <https://www.youtube.com/watch?v=TojJpYCxXm0>

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board of Directors/Board Committee meetings to please contact the Clerk of the Board’s office at (408) 630-2711, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water’s bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of

uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:
<https://valleywater.zoom.us/j/81170871803>
Meeting ID: 811 7087 1803
Join by Phone:
1 (669) 900-9128, 81170871803#

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.

Notice to the Public: Members of the public who wish to address the Committee on any item not listed on the agenda should access the "Raise Hand" tool located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in order requests are received and granted speaking access to address the Committee. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Committee action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Committee may take action on any item of business appearing on the posted agenda.

3. APPROVAL OF MINUTES:

3.1. Approval of Minutes.

[23-0138](#)

Recommendation: Approve the January 11, 2023, Minutes.

Manager: Michele King, 408-630-2711.

Attachments: [Attachment 1: January 11, 2023, Minutes.](#)

4. ELECTION OF COMMITTEE OFFICERS:

- 4.1. Election of 2023 Board Policy and Planning Committee Officers. [23-0152](#)

Recommendation: Nominate and elect the 2023 Board Policy and Planning Committee Chairperson and Vice Chairperson.

Manager: Michele King, 408-630-2711

5. REGULAR AGENDA:

- 5.1. Receive Feedback from the Board Advisory Committees' 2022 and/or 2023 Chairpersons and/or Vice Chairpersons on the Committees' Purposes and Accomplishments and Suggest Areas of Improvement. [23-0153](#)

Recommendation: A. Receive feedback from the Board Advisory Committees' 2022 and/or 2023 Chairpersons and/or Vice Chairpersons on the Committees' purposes and accomplishments, and suggest areas of improvement; and
B. Determine if there are any relevant recommendations to make to the full Board for consideration.

Manager: Michele King, 408-630-2711

- 5.2. Analyze Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022, and Provide Recommendations to Full Board by March 31, 2023. [23-0021](#)

Recommendation: A. Review Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022;
B. Analyze and Discuss the Grand Jury Report Findings and Recommendations; and
C. Provide Response Recommendations for full Board of Directors.

Manager: Tina Nguyen Yoke, 408-630-2385

Attachments: [Attachment 1: Letter from James Renalds](#)
[Attachment 2: Civil Grand Jury Report](#)
[Attachment 3: Letter from Superior Court](#)
[Attachment 4: Board Agenda Memorandum](#)
[Attachment 5: Draft Response Letter](#)
[Attachment 6: Grand Jury Report Agency Responses Summary](#)

- 5.3. Review Board-Approved Committee Purpose and 2023 Work Plan and Meeting Schedule.

[23-0139](#)

Recommendation:

- A. Review the Board Policy and Planning Committee's Board-assigned Purpose;
- B. Review the 2023 Board Policy and Planning Committee's Work Plan and incorporate any new tasks; and
- C. Schedule Committee meetings as appropriate.

Manager: Michele King, 408-630-211

Attachments: [Attachment 1: 2023 BPPC Work Plan](#)

6. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.

This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.

7. ADJOURN:

- 7.1. Adjourn to Regular Meeting at 2:00 p.m., on March 6, 2023.



Santa Clara Valley Water District

File No.: 23-0138

Agenda Date: 2/6/2023
Item No.: 3.1.

COMMITTEE AGENDA MEMORANDUM

Board Policy and Planning Committee

SUBJECT:

Approval of Minutes.

RECOMMENDATION:

Approve the January 11, 2023, Minutes.

SUMMARY:

A summary of Committee discussions, and details of all actions taken by the Committee, during all open and public Committee meetings, is transcribed and submitted for review and approval.

Upon Committee approval, minutes transcripts are finalized and entered into the district's historical records archives and serve as historical records of the Committee's meetings.

ATTACHMENTS:

Attachment 1: January 11, 2023, Minutes.

UNCLASSIFIED MANAGER:

Michele King, 408-630-2711.



BOARD POLICY AND PLANNING COMMITTEE MEETING

DRAFT MINUTES

Wednesday, January 11, 2023
12:00 PM

(Paragraph numbers coincide with agenda item numbers)

1. **CALL TO ORDER**

1.1 ROLL CALL

A special meeting of the Santa Clara Valley Water District (Valley Water) Board Policy and Planning Committee (Committee) was called to order at 12:00 p.m. on January 11, 2023.

Board Members in attendance: Director Nai Hsueh-District 5; and Director Barbara Keegan-District 2 constituting a quorum of the Committee.

Staff members in attendance: Yvonne Arroyo, Aaron Baker, Lisa Bankosh, Rechelle Blank, John Bourgeois, Rick Callender, Theresa Chinte, Rachael Gibson, Brian Hopper, Michele King, Brian Mendenhall, Kirsten Struve, Jing Wu, Tina Yoke and Sarah Young.

Arthur Keller, Vice Chair, Environmental and Water Resources Committee, and Jim Beall, Director District 4 were in attendance.

2. **TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT AN AGENDA**

Committee Chair Hsueh declared time open for public comment on any item not on the agenda. There was no one present who requested to speak.

3. **3.1 APPROVAL OF MINUTES – December 5, 2022.**

The Committee considered the draft minutes from the December 5, 2022, meeting. It was moved by Director Keegan, seconded by Director Hsueh, and unanimously carried to approve the minutes as presented.

4. **Information and Action Items**

4.1 Update of the Water Resources Protection Manual.

Lisa Bankosh, Assistant Officer, presented on the update of the Water Resources Protection Manual and outreach efforts related to the Guidelines and Standards for Land Use Near Streams as outlined in the attached agenda memo and presentation.

The Committee provided the following input:

Director Keegan stated that it was always understood that this effort needed to be a dynamic process with resources allocated to keep it going in the future. It should have an adaptive

management approach and may require engagement with other public agencies again, which may require resources. Identified outcomes require decisions on resources. Perhaps creating examples of good design options near streams could be useful. Valley Water has a moral authority to speak out on behalf of the environment. We need to be consistent, clear and send a message that the environment matters to the people in Santa Clara County. By doing this, Valley Water can influence and help people understand that we look at the public's interest and it informs the decisions and actions that are taken.

Director Hsueh stated that changes will be identified as the process evolves and resources will need to be identified by the Board.

Shani Kleinhaus suggested that pumping water from the creeks should be added to the common issues identified, and connectively for wildlife added to the objective criteria. She also suggested that consideration should be given to proactively engaging the community to see if there is knowledge of projects where Valley Water's involvement could be used in protecting the creeks, water quality and riparian corridors. Perhaps Valley Water could consider adding additional best practice guidelines for areas that might require additional setback distances. She would like to see Valley Water taking a stronger position on development in the riparian corridor.

Rani Fischer, Santa Clara Valley Audubon Society, asked about riparian area setback information and a potential model ordinance for cities.

Eileen McLaughlin stated appreciation for the presentation and ability to be educated on the subject. She acknowledged the mention of climate change and suggested that it might be relevant to ask other jurisdictions to include in their action plans whenever water is mentioned. She suggested that it could be beneficial to Valley Water to bring in experts in land use planning in relationship to our streams and reservoirs.

Arthur Keller asked about the function of the collaboration.

4.2 Climate Change Action Plan Implementation Update.

Sarah Young, Senior Project Manager, and Brian Mendenhall, Senior Water Resource Specialist, presented on update on high-priority change mitigation and adaptation actions associated with the Climate Change Action Plan implementation, as outlined in the attached agenda memorandum and presentation.

Director Keegan stated that having metrics in place which allows us to track things overtime helps the Board to live up to its responsibilities to trust but measure.

Director Hsueh expressed appreciation for the flagship metrics.

Rani Fischer asked if the metrics only measure water, or if there are other emissions measured, such as concrete from construction. Sarah Young answered that the other metric measurements are part of Scope 3.

Katja Irvin stated that the Sierra Club Action Team, along with other nonprofit organizations, are interested in reviewing and weren't aware of the plan. Outreach would be beneficial to receive meaningful input, at minimum, input on prioritization of mitigation actions and selection of mitigation metrics. The Sierra Club previously commented on the plan and requested an

implementation plan that includes budget, staff hours and defined timelines required for completion of actions. It's unclear if the Green House Gas Reduction plan includes such details that will help keep the program on track.

Lisa Bankosh provided an update on the development of the Green House Gas Reduction Plan which was one of the high priority actions that came out of the Climate Change Action Plan.

4.3 ITEM REMOVED FROM AGENDA.

4.4 2023 WORK PLAN AND MEETING SCHEDULE AND 2022 ACCOMPLISHMENTS REPORT.

Michele King, Clerk of the Board, reviewed the 2023 work plan and 2022 accomplishments report, stating that an item will be added to the 2023 work plan for review of the Board Governance Policies relating to election of the Board Chair and Vice Chair, and other policies documenting Board Chair Role, as requested by the Board.

Director Keegan suggested that providing some history about the committee and its purpose could be helpful to any new directors assigned to serve on this committee.

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.

There were no formal requests from the Committee.

6. ADJOURNMENT

Chair Director Hsueh adjourned the meeting at approximately 1:30 p.m.

Michele L. King
Clerk of the Board

Approved:



Santa Clara Valley Water District

File No.: 23-0152

Agenda Date: 2/6/2023

Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Planning Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A)

SUBJECT:

Election of 2023 Board Policy and Planning Committee Officers.

RECOMMENDATION:

Nominate and elect the 2023 Board Policy and Planning Committee Chairperson and Vice Chairperson.

SUMMARY:

The Board Policy and Planning Committee (BPPC) was established support to the Board in areas of:

1. Board planning process;
2. Board Committees' principles and structures;
3. Board and organization performance monitoring; and
4. Other tasks as assigned by the Board.

The Committee is comprised of three Board members, and has a Chairperson and Vice Chairperson, who serve as the Committee's primary and secondary facilitators, and Committee representatives. The Committee Chairperson and Vice Chairperson are elected by the Committee annually.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

Michele King, 408-630-2711



Santa Clara Valley Water District

File No.: 23-0153

Agenda Date: 2/6/2023

Item No.: 5.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Planning Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Receive Feedback from the Board Advisory Committees' 2022 and/or 2023 Chairpersons and/or Vice Chairpersons on the Committees' Purposes and Accomplishments and Suggest Areas of Improvement.

RECOMMENDATION:

- A. Receive feedback from the Board Advisory Committees' 2022 and/or 2023 Chairpersons and/or Vice Chairpersons on the Committees' purposes and accomplishments, and suggest areas of improvement; and
- B. Determine if there are any relevant recommendations to make to the full Board for consideration.

SUMMARY:

One of the tasks assigned to the Board Policy and Planning Committee (BPPC) is to review the effectiveness of the Board Advisory Committees. To assist the BPPC in accomplishing this task, they are inviting the Board Advisory Committees' 2022 and/or 2023 Chairpersons and/or Vice Chairpersons to provide feedback on the committees' purposes, accomplishments and suggest areas of improvement. Once the BPPC receives feedback, a determination can be made if there are any relevant recommendations to make to the full Board for consideration.

Board Advisory Committees and Purposes

Below is a list of the Board Advisory Committees and their Board approved purposes.

COMMITTEE	PURPOSE
Agricultural Water Advisory Committee	To assist the Board with policies and issues pertaining to agricultural water supply and use, as well as in the annual review of groundwater production charges.

Environmental and Water Resources Committee	To assist the Board with policies and issues pertaining to water supply, flood protection and environmental stewardship.
Santa Clara Valley Water Commission	To assist the Board with policies and issues pertaining to water supply, flood protection and environmental stewardship.
Santa Clara Valley Water District Youth Commission	Assist the Board with policy review and development, provide comment on activities in the implementation of the District's mission for Board consideration, and to identify Board-related issues pertaining to public policy education, outreach, and all matters impacting the Santa Clara County youth and the District.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

Michele King, 408-630-2711



Santa Clara Valley Water District

File No.: 23-0021

Agenda Date: 2/6/2023

Item No.: 5.2.

COMMITTEE AGENDA MEMORANDUM Board Policy and Planning Committee

Government Code Section 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A)

SUBJECT:

Analyze Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022, and Provide Recommendations to Full Board by March 31, 2023.

RECOMMENDATION:

- A. Review Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022;
- B. Analyze and Discuss the Grand Jury Report Findings and Recommendations; and
- C. Provide Response Recommendations for full Board of Directors.

SUMMARY:

On October 7, 2022, the Santa Clara County Civil Grand Jury (Civil Grand Jury) issued a report that took issue with the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury argues that some local governing entities present ballot questions that are purposefully misleading so they may obtain their desired result. Among other measures, the Civil Grand Jury took issue with the wording of Santa Clara Valley Water District's (Valley Water) 2022 Measure A ballot question.

On October 10, 2022, Valley Water received a letter (Attachment 1) from James Renalds, Foreperson of the 2022 Civil Grand Jury, providing its report (Attachment 2) entitled, If You Only Read the Ballot, You're Being Duped (Report). The Report included Findings and Recommendations. In the letter, Valley Water was asked to comment on the Report's Finding 1 and Recommendations 1b, 1c, and 1e, which are listed below along with other recommendations to be addressed by the County of Santa Clara. The items to which Valley Water must respond are identified in bold font.

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.

Recommendation 1a

The Board of Supervisors should ask the County Counsel to review all ballot questions submitted to it pursuant to Recommendation 1b.

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.

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.

Recommendation 1d

The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of this report. The Commission should be implemented by August 1, 2024.

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.

Recommendation 1f

The County should, by March 31, 2023, take appropriate action to request that the state legislature consider amending current law to require the County Counsel to review and approve local ballot measure questions before they are voted on.

The Presiding Judge of the Superior Court of California in and for Santa Clara County has given Valley Water an extension to respond to the Report until the end of March 2023 (Attachment 3).

Valley Water must state whether it agrees or disagrees with Finding 1. Valley Water could, in theory, either agree with the Finding entirely, agree with it in part and disagree with it in part, or disagree with it entirely. Valley Water must also respond to the recommendations 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 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.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

At the Board of Directors Meeting on December 13, 2022, the Response to Santa Clara County Civil Grand Jury's October 7, 2022 Final Report was reviewed by the Board as a Consent Calendar item. The Board Agenda Memorandum (Attachment 4) provided a draft response to the Grand Jury Report with an attached draft response letter. At the meeting, staff provided the Board with an alternate draft response letter as a hardcopy handout (Attachment 5). The Option 2 draft response letter indicated that Valley Water staff would bring the Grand Jury Report to the Board Policy and Planning Committee (BPPC) to analyze the report and provide recommendations to the full Board of Directors by March 31, 2023.

The Board voted in favor of the Option 2 letter. Therefore, staff recommends that the BPPC analyze and discuss the Grand Jury Report Findings and Recommendations and provide response recommendations for the full Board of Directors to review in accordance with the possible actions (#1 -4 above) under Penal Code section 933.05.

For clarity, based on the Board's decision not to use the Option 1 letter, staff no longer recommends that that be the response from Valley Water. Rather, staff recommends that the Board Policy and Planning Committee analyze and discuss the Report Finding and recommendations and propose a new response for the Board's consideration.

The Grand Jury Report requires responses to the Findings and Recommendations listed below from governing bodies within Santa Clara County.

A summary of other agency responses to the required Findings and Recommendations is provided in Attachment 6.

ATTACHMENTS:

Attachment 1: Letter from James Renalds, Foreperson, 2022 Civil Grand Jury,
October 7, 2022

Attachment 2: 2022 Santa Clara Civil Grand Jury Report, If You Only Read the Ballot, You're Being
Duped, October 7, 2022

Attachment 3: Letter from Presiding Judge Beth McGowan, Superior Court County of Santa Clara,
December 28, 2022

Attachment 4: December 13, 2022, Board Agenda Memorandum

Attachment 5: December 13, 2022, Option 2 Draft Response Letter Handout
Attachment 6: Grand Jury Report Agency Responses Summary

UNCLASSIFIED MANAGER:

Tina Nguyen Yoke, 408-630-2385



October 7, 2022

Santa Clara Valley Water District
c/o Ms. Michele King, Clerk of the Board of Directors
5750 Almaden Expressway
San José, CA 95118

Sent via email: clerkoftheboard@valleywater.org

Dear Ms. King:

The 2022 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **If You Only Read the Ballot, You're Being Duped.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department that has been the subject of a Grand Jury final report shall 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 and is attached to this transmission.

Please note:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code § 933.05(b), attached, you are required to respond with one of four possible actions to each applicable Recommendation: 1b, 1c, 1e.

Your comments are due to the office of the Honorable Beth McGowen, 2023 Presiding Judge, Superior Court of California, County of Santa Clara, 191 North First Street, San José, CA 95113, no later than **January 5, 2023.**

Copies of all responses shall be placed on file with the Clerk of the Court.

If you have any questions, please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at (408) 882-2721 or CGJ@scscourt.org.

Sincerely,

A handwritten signature in black ink, appearing to read "James Renalds".

James Renalds
Foreperson, 2022 Civil Grand Jury

Enclosures

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED



2022 Santa Clara County Civil Grand Jury

October 7, 2022

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GLOSSARY AND ABBREVIATIONS

Attorney General	The chief law officer who represents a state in legal proceedings.
Ballot Card	The printed ballot, usually on high-grade paper, consisting of the ballot questions and names of individuals running for elected office.
Ballot Measure	Ballot measures are proposals, usually at a county or local level, to enact new laws or repeal existing laws, which are placed on the ballot for approval or rejection by the electorate.
Ballot Proposition	Ballot propositions are proposals, usually at the state level, to enact new laws or constitutional amendments or repeal existing laws or constitutional amendments, which are placed on the ballot for approval or rejection by the electorate.
Ballot Question or Ballot Label	For purposes of this report, Ballot Question or Ballot Label means the 75-word or less statement of a measure that precedes “Yes” or “No” on the ballot card.
Boards and Commissions	Boards and Commissions are made up of residents who volunteer their time and expertise to assist and advise governing bodies in the chosen capacity.
Caselaw	Law or legal precedent established by the outcome of court cases.
County Counsel or Office of the County Counsel	The County Counsel is the chief legal advisor and representative for the county, including the county board of supervisors and all county agencies and departments.
Elections Code	A collection of California laws related to public elections.

Governing Entity

A jurisdiction such as a city, county, school district, special district, or political subdivision.

Home Rule

The right of self-government that is granted by state constitution or statute to give autonomy to a local government. Home Rule implies that each level of government has a separate realm of authority.

Public Opinion Pollsters

Opinion polls are designed to represent the opinions of a population by conducting a series of questions and then extrapolating generalities in ratio or within confidence intervals. A person who conducts polls is referred to as a pollster.

Registrar of Voters

The department responsible for the operation, administration, and direction of the elections department, with primary responsibility for the registration of voters, the holding of elections, and all matters pertaining to elections.

Single Subject Rule

Per Article II, Section 8(d) of the California Constitution, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Essentially, the rule stands for the notion that where an initiative embraces more than one subject, it can neither be submitted to, nor enacted by, the voters.

Term Limits

A specified number of terms (in years) that a person in office is allowed to serve.

Writ of Mandate

In California, writs of mandate are used by superior courts, courts of appeal, and the Supreme Court to command lower bodies, including both courts and government agencies, to do or not to do certain things.

SUMMARY

It is not uncommon for the public to be confronted daily with news and information through multiple sources—traditional television programming, 24/7 cable news, satellite radio, social media, and phone alerts. In the context of elections, voters' busy lives can be overwhelmed with many different voices. County and state voter information guides are required by law to be mailed to every registered voter, but voters today do not have a lot of time to read these resources. As a result, the ballot measure question printed on the ballot itself becomes a key factor in the outcome of an election.

There is an expectation in California law that ballot questions be drafted in a manner that is not false, misleading, or partial to one side.¹ But there are ways to work around it. Among the fifty or so jurisdictions in Santa Clara County that are eligible to put forth a ballot measure, the 2022 Santa Clara County Civil Grand Jury (Civil Grand Jury) has seen ballot question language that is confusing, advocacy-oriented, or simply dishonest. Yes, sometimes voters are being deceived. Many voters cannot comprehend the complicated language or the implications of that "yes" or "no" vote. In a perfect world, voters would have the luxury of time to research these issues. In reality, however, voters almost always rely on the language of the ballot measure question itself.

What can be done about this? The Civil Grand Jury proposes an oversight person or body, one who has taken an oath to act with integrity, is well versed in the requirements of the law, and is empowered to review and to reject ballot question wording that is false, misleading, or partial to one side. Santa Clara County should have a climate whereby governing entities in Santa Clara County are discouraged from using dishonest or deceitful wording in a ballot question, especially when they know it will be reviewed and could be rejected. In so doing, due process will be strengthened. With clearer writing, ballot measure questions will be more transparent and straightforward, which will lead to a better perception of government by the voters. It is time to remove impediments to good governance.

¹ California Elections Code section 10403 requires a ballot question to "conform to this code governing the wording of propositions submitted to the voters at a statewide election." The California Elections Code contains Section 9051, which provides that in a statewide election the ballot title and summary of an initiative or referendum must be a "true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (Elec. C. §9051(c); *see also*, *McDonough v. Superior Ct.* (2012) 204 Cal. App. 4th 1169, 1172.)

BACKGROUND

Ballot measures or ballot propositions are proposals to enact new laws or constitutional amendments or to repeal existing laws or constitutional amendments. They are placed on the ballot for approval or rejection by the voting public. The words “ballot *measures*” are often used by county, city, and local governing entities, whereas at the state level, the California State Legislature uses the term “ballot *propositions*” to refer to the same concept. The ballot measure question, which is the subject of this report, refers to the maximum 75-word text that precedes the “Yes” or “No” selection on the ballot card itself. Because most voters never read beyond what is printed on the ballot card, it is of critical importance that ballot measure questions be concise, accurate, and impartial.

Recently, two local newspaper articles highlighted the tactics that governing entities have used to manipulate voters:

- Borenstein, Daniel, *Tricks California Local Officials Use To Trick Voters*, Bay Area News Group, January 21, 2022.
- Mercury News and East Bay Times Editorial Boards, *Stop Deceiving Bay Area Voters on Local Tax Measure Costs*, June 26, 2020, updated September 5, 2020.

As part of its charge, the Civil Grand Jury is responsible for identifying areas within local government that lack good governance or practices. This Civil Grand Jury identified as a problem the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury discovered that some local governing entities presenting measures for a public vote create ballot questions that are purposefully misleading so they may obtain their desired result. In particular, it was noted that the wording of a ballot question from the June 2022 election, although representing a relatively simple issue, created confusion among the public. When voters found out what the text of the measure actually meant, they felt deceived by the wording of the ballot question. Deception in ballot questions is worth the attention of the Civil Grand Jury. This problem must be remediated to reinstate good governance in the election process.

METHODOLOGY

The Civil Grand Jury used the following investigative methods:

- Interviews with ten individuals who are well versed in the intricacies of the election process and experts in political science and local governments
- Three published Civil Grand Jury reports: 2021-22 Alameda County, 2021-22 Santa Cruz County, 2021 Santa Clara County
- Editorials from local and regional newspapers: Mercury News, Los Angeles Times, San Francisco Chronicle
- Close reviews of ballot measures, past and upcoming, from the counties of San Mateo, Santa Clara, Santa Cruz, and the City and County of San Francisco
- Legal research of court challenges involving ballot questions

INVESTIGATION

Throughout this report, the Civil Grand Jury was interested only in the process of ballot measure question drafting, not the substance of the underlying ballot measure itself. In its research and analysis, the Civil Grand Jury does not examine the merits of the measure, but rather whether the question as drafted is truthful, impartial, and fair. Ballot questions must conform to statutory requirements and should provide voters with sufficient information and transparency to make informed decisions.

A straightforward ballot question can be summarized this way: A vote for “Yes” means yes and a vote for “No” means no. Unfortunately, it is common for ballot questions to be presented whereby a vote for “Yes” actually means no, and vice versa. This wording is arguably confusing. Inching farther away from confusing questions, the research performed by the Civil Grand Jury found ballot questions that are even worse—they are misleading.

Santa Clara Valley Water District’s Measure A

During the last election in June 2022, the question for Measure A put forth by the Santa Clara Valley Water District (Water District) employed such a tactic:

Shall the measure amending the Santa Clara Valley Water District Ordinance 11-01 to limit Board members to four successive four-year terms be adopted?

The Water District had term limits already in place for board members to serve three four-year terms, or 12 years at most. Measure A sought to increase term limits to four four-year terms, or 16 years at most. However, the ballot question hid the fact that a term limit was already in place; it

asked voters whether a term limit of four terms should be adopted, thereby couching the question as a measure to *adopt* term limits generally, which one political science expert described to the Civil Grand Jury as a concept widely favorable to the voting public. The ballot question did not reflect what the Water District wanted to do. The Water District wanted to extend term limits, but it wrote the ballot question without using the words “extend,” “change,” or “increase.” Instead, the Water District characterized the ballot measure as setting term limits, which is a mischaracterization of what Measure A was actually about.

Further, it is notable that in November 1998, the County of Santa Clara placed a substantially similar measure on the ballot using the same tactic. Measure E asked:

Shall the County of Santa Clara amend section 202 to limit the number of terms a member of the Board of Supervisors may serve to three terms, consisting of four years each?

Again, the ballot question failed to inform the reader that each member of the County of Santa Clara Board of Supervisors was already limited to two terms and that the ballot measure proposed to *extend* years served, not “*limit*” them. By not being transparent, this tactic of ballot question drafting is tantamount to a lie by omission; it borders on deceiving the public. From Measure E in 1998 to Measure A this year, 24 years later, the climate has not changed.

Regulations that Govern Ballot Questions

Sections 9100-9190 of the California Elections Code specifically address county-level elections. Other sections of the Elections Code, while they do not specifically address county-level elections, have import and therefore apply as well. The County of Santa Clara has not enacted local ordinance code provisions regarding ballot question language.

Under the Elections Code, the wording of a ballot measure must state the ballot question, or what the Elections Code calls the “label,” in 75 words or less (Elec. C. §9051(b), §10403, §13247). The ballot question must state “the nature” of the measure (Elec. C. §13120). The official who drafts the ballot question “shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). In other words, ballot measure questions shall not be false, misleading, or partial to one side.

Who is Responsible for Writing Ballot Questions?

Today, ballot questions are rarely written “from scratch.” Residing in the public domain are hundreds, if not thousands, of boilerplate questions spanning the universe of issues typically faced by government and public agencies. Putting a measure on the ballot usually starts with selecting

an existing template, preferably one that had been used successfully within a reasonable timeframe and geographic proximity to the one at hand. Tweaks are then made to the chosen template to fit the measure being proposed.

Governing entities are ultimately responsible for approving the final text of the ballot question, but the actual selection of words is often the calculated and carefully calibrated work product of hired election experts, consultants, and attorneys. These outside consultants often rely on public opinion pollsters to determine the type of proposal and wording to put before voters that would achieve the desired outcome. Often, this includes using “feel good” wording that is shown to resonate with voters: “reduce crime;” “funds spent locally;” “all money locally controlled;” and “with citizen oversight.” Results from public opinion polls often dictate the structure and selection of words used within the ballot question, which is then voted on and, if successful, adopted by the governing body such as a city council, a county board of supervisors, the board members of a school district, or any governing body of a government entity operating within the county. During the course of this investigation, the Civil Grand Jury learned that local measures on the ballot that governing entities choose wording likely to be most successful at the ballot box over clarity of language to the voter.

For purposes of this investigation, the Civil Grand Jury focused on ballot questions relating to local ballot measures, not state propositions, because according to the California Elections Code, the state attorney general is responsible for providing ballot questions for state propositions. In contrast, there is no similar requirement that a certain officer provide the ballot question for local elections, so it is instead drafted by the proponent of the measure at the local level.

Advocacy and Tactical Wordplay Result in Poorly Drafted Ballot Questions

It has been widely observed today that the 75-word ballot questions are being used as advocacy pieces, at the expense of fairness and impartiality. In an aptly titled [report](#) published in June of last year, the Alameda County Civil Grand Jury advocated for “*The Need for Accuracy and Impartiality of Ballot Measure Questions*.” The jury explained how and why the desire to achieve a certain outcome has tainted the process to produce ballot measure questions that are not accurate and impartial:

In general, we found ballot questions suffer from a “proponent’s bias” that is a natural outgrowth of the typical process through which questions are selected, drafted, and proposed. ... In general, we found that ballot questions too often fall short of what voters have a right to expect in terms of transparency and impartiality, even when satisfying minimum legal standards.

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED

The jury in Alameda reviewed and provided an in-depth analysis of six ballot questions to reach their conclusion. In so doing, they exposed the “tricks of the trade”—wording chosen for the sole purpose of increasing the odds of success at the polls. Adopting the same methodology as the Alameda report, the Civil Grand Jury reviewed past and upcoming ballot measure questions from local jurisdictions within Santa Clara County. The Santa Clara County Civil Grand Jury observed the same tricks and tactics used by governing bodies to deceive voters:

- (1) Using “feel-good” words to garner voter approval. Measure F, November 2020, said “all funds spent locally,” which is meaningless when one pauses to think about it.
- (2) Adding favorable language even where it plainly does not apply. Measure F, November 2020, said “independent audits, citizens’ oversight” where the underlying ordinance implementing the measure makes no mention whatsoever of audit and oversight requirements.
- (3) Adding misleading words to lead voters astray. Measure S, November 2020, said “until ended by voters,” falsely implying that the measure itself provided for repeal or that voters would have an opportunity to repeal the tax when they did not; Measure L, November 2020, conveyed the same with “can be ended by voters.” Measure A, March 2017, said “[funds] cannot be taken away by the State,” falsely implying that the state may access local funds when it may not.
- (4) Manipulating words to divert voters from what is actually at issue. Upcoming Measure N, November 2022, which seeks authorization of \$572 million in school bonds costing approximately 3 cents per \$100 of assessed valuation, states “no increase in tax rates.”
- (5) Omitting relevant information necessary for voters to make informed decisions. Measure AA, November 2016, and Measure H, November 2014, made no mention of the tax increase that would be required to fund the school bonds that were at issue.
- (6) Putting multiple issues on a single measure, ostensibly violating the single subject rule. Measure H, November 2020, sought to increase card room tax and the number of card tables allowed in gambling facilities.

At the writing of this report, the following measures slated for the upcoming November 2022 election also rely on at least one of the tactics described:

E	“all funds spent locally with no money taken by the State and spent elsewhere” - see (1) and (3) above.
G, H, J, L	“until ended by voters” - see (3) above.
I	“Shall the City Charter be amended to add the City's ethics and elections commission (Board of Fair Campaign and Political Practices) to the Charter; remove requirements that members of the Planning, Civil Service, and Salary Setting Commissions be electors and/or citizens; remove gender-specific language; and require the City Council to adopt equity values, standards, and assessments in making certain decisions?” - see (6) above.
O	“all money staying local” - see (1) above.

Along the same lines, it is worth noting that in June 2022, the Santa Cruz County Civil Grand Jury released its [report](#), “*Words Matter: Did Measure G Deceive Voters?*” The question confronting the jury was whether the County of Santa Cruz was honoring the provisions in the ballot measure following its passage. The jury concluded that the ballot question behind the November 2018 Measure G was misleading after its investigation and research revealed no basis whatsoever for including the words “annual audits and independent citizens oversight” within the ballot question. Arguably, these words were used for no purpose other than to elicit good feelings in the voter.

The Elephant in the Room: Big Money

Elections cost money—lots of money. In an [article](#) published June 30, 2002, updated June 22, 2022, CalMatters put it succinctly: “*Ballot measures are big business.*” The Civil Grand Jury learned that cost is a major factor in the decision to get to the ballot. San Jose’s *Mercury News* reported that the Water District’s Measure A from the June 2022 election cost taxpayers \$3.2 million.

Once the decision is made by the government entity to spend the money to go to ballot, a lot of pressure is put on the entity to do whatever it takes to secure a win. For this reason, proponents of ballot measures stay focused on the result, hiring high-priced election consultants, attorneys, and opinion pollsters to carefully frame the ballot question to achieve the desired outcome. Successful elections will reward those that are behind them. It does not take much imagination to understand how this practice has evolved to become “high stakes.” For example, a school district superintendent who has successfully secured funding through school bond measures may parlay these wins to rally support for a more prestigious role or a position at a larger public institution.

On the other hand, if a measure fails, individuals’ livelihoods are at stake because someone will likely have to take the blame for it—usually either someone on staff or the board proponents of the governing body. This is why proponents advocate so strongly, often—as exemplified above—sacrificing context, clarity, truthfulness, and transparency in ballot question wording in favor of pure advocacy. The Civil Grand Jury learned from those in the ballot question business that it is understood that the drafter will make sure the statement is “lawful,” but it is also understood that it will not necessarily provide full disclosure.

Eroding the Public’s Trust

Many voters in Santa Clara County felt that they were tricked by the Water District based on how Measure A was worded. The Civil Grand Jury compiled the following descriptors of Measure A from local news sources and through its interviews: “deceitful,” “deceptive ballot language,” “designed to confuse voters,” “dishonest,” “false,” “hiding the ball,” “lacks integrity,” “lie by omission,” “misleading,” “not ethical,” “not transparent,” “not clear,” “violates the norm,”

“violates standards of good governance,” “board must be held accountable,” “board should resign,” “board violated its fiduciary duty,” “board violated the trust of the people,” “board wasting money,” “failure of character,” “failure to represent its constituents,” “fraudulent misappropriation of public funds,” “misled the public for political gain,” “self-serving hoodwinking of the electorate,” “self-serving dishonesty,” “unacceptable in a democracy.”

Public opinion made it clear that where a ballot question fails to provide voters with sufficient information to make an informed decision, it does so at the expense of public trust. Forming distrust between government and its citizenry hurts. What the Water District did through Measure A has severe ramifications because it creates distrust between the government agency and the people the agency is supposed to serve and protect. Going forward, Santa Clara County residents will likely question the integrity and ethical behavior of the Water District. Once the bonds of trust have been weakened, citizens are less inclined to trust the actions and decisions of this agency and more inclined to ask, “If the Water District cannot be trusted to be truthful on the ballot, how can we know them to be truthful in other matters?”

With the passage of Measure A, many residents lost confidence in the Water District. It may take a long time to regain trust from the community. While the Civil Grand Jury appreciates the desire of a government entity to advocate for itself when putting ballot measures up for a public vote, ballot questions cannot be false, misleading, or partial to one side. Based on Civil Grand Jury research and reports, too many local measures fail to meet this standard in favor of advocacy and “proponent’s bias.”

Lack of Oversight Results in Poorly Drafted Ballot Questions

Despite the number of hands that touch a proposal from inception to ballot card, the Civil Grand Jury was surprised to discover that there is no filter or oversight by an appropriate official prior to the adoption of ballot question wording. At the state level, the “Attorney General gives a true and impartial statement of the purpose of the measure in such language that the ballot title [e.g., the ballot question] and summary shall neither be an argument, nor likely to create prejudice, for or against the proposed measure” (Elec. C. §9051(c)). But the Attorney General does not have jurisdiction over *local* measures and thus does not provide the ballot question. When it comes to local measures, the Civil Grand Jury learned that there is not a similar role performed by an official, like the Attorney General, that can provide the wording for ballot questions. Rather, when the ballot question is submitted to the Santa Clara County Registrar of Voters, their review is narrowly limited to enforcement of the 75-word limit. Staff at the County Registrar of Voters manually count the number of words to ensure that the word cap has not been stretched. They do not monitor the content of the ballot question.

At the local level, the County of Santa Clara Office of the County Counsel performs legal services that are most analogous to the Attorney General's role at the state level with respect to elections. Further, County Counsel has expertise in election law and advises the County of Santa Clara Registrar of Voters. The County Counsel does not, however, have authority over cities and political subdivisions within the boundaries of the county. Therefore, when a city, school district, or special district places a local measure on the ballot, they are permitted under current law to draft the language themselves. They have every incentive to adopt wording proposed by their polling consultants, who will give weight to "feel good" words over simplicity, transparency, and impartiality. Fundamentally, the government entity's self-interest dictates the ballot question wording.

The Current Sole Remedy—Initiating a Court Challenge—Falls Short

Under current legislation, there is no realistically expedient method to challenge problematic ballot questions. When a measure is to be placed on the ballot for an upcoming election, it is subject to a 10-day public examination period during which any voter in the jurisdiction may file a lawsuit to amend the language of the measure. California Elections Code section 9295 sets forth the procedure:

During the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

A peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.

There are several reasons why the 10-calendar-day public examination period to object in a formal court setting does not work well:

- (1) The public tends not to hear about ballot measures until it is too late. This is due in part to a dearth of media coverage of local news, a result of the consolidation of local news outlets by media conglomerates. It is no secret that in today's news environment, local news coverage has been reduced significantly. Furthermore, ten days is a very short window to react, let alone mount a court challenge to remediate.

- (2) Ten days is much too short a time to locate an attorney well versed in the laws and processes of elections to file a lawsuit in this specialized field.
- (3) Even if an attorney can be available within the 10-day window, it is not within the means of the average person to afford the attorney fees necessary to pursue a remedy.
- (4) Voters challenging the wording in a ballot question face an uphill battle because the courts give deference and considerable latitude to the original author. Further, courts uphold the ballot measure question if it substantially complies with the requirement not to be “false, misleading, or partial to one side.” (See Bibliography, *Amador* and *McDonough* decisions.)
- (5) There is practically no recourse to fix non-conforming ballot questions after the 10-calendar day public examination period has passed. (See Bibliography, *Denny* decision.)
- (6) Even the single subject rule—a state constitutional doctrine—has been watered down by case law; hence it is no longer vigorously enforced. (See Bibliography, *Amador* and *Harbor* decisions.)

When confronted with challenges to ballot measures, the courts have stated:

- Relief under a writ of mandate may be granted "only upon clear and convincing evidence" that the challenged election material is "false or misleading or otherwise inconsistent with the provisions." (See Bibliography, *McDonough* decision.)
- The test is not whether the ballot question could be more complete. (See Bibliography, *Martinez* decision.)
- The ballot title need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled wordsmith might imagine. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to change an accurate statement to reflect their interpretation of the common sense understanding of the language. (See Bibliography, *Yes on 25, Citizens for an On-Time Budget* decision.)
- The courts are not free to wordsmith the ballot question and change it just because they believe it could be better. (See Bibliography, *Martinez* decision.)
- The courts must give deference to the official who drafts the ballot question; “all legitimate presumptions should be indulged in favor of the propriety” of the drafter’s actions. (See Bibliography, *Becerra* decision.)

Solutions

The Civil Grand Jury has learned that the sole legal remedy currently available to right a wrong when it comes to ballot measure questions is insurmountable for the average citizen. Nonetheless, the Civil Grand Jury notes that there could be two potential mechanisms to improve the current process.

1. Task an appropriate official to review ballot measure questions

Current law requires that the individual who drafts the ballot question do so in a way that is not false, misleading, or partial to one side. In order to meet this requirement, an objective, neutral third party is needed to speak on behalf of the voting public, ideally 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 Civil Grand Jury recommends that County Counsel perform this task. Further, the Civil Grand Jury recommends that the County of Santa Clara Board of Supervisors should endorse the County Counsel to act in a role, like that of the Attorney General, to provide for ballot question wording for all local measures.

What this might look like: After the governing entity ratifies the concept behind the proposed measure, as is the practice today, the entity's lawyer, whether a city attorney, school district attorney, or special district attorney, would draft a ballot question that is impartial, unbiased, and non-argumentative. The proposed ballot question would then be submitted to the County Counsel, who would be charged with overseeing the narrow task of ensuring that the wording of the question is not false, misleading, or biased in favor of one view. Most importantly, County Counsel would also be authorized to reject non-conforming or deficient wording and to compel revisions. Only when the ballot question at issue conforms to statutory requirements would County Counsel approve it for use.

2. Create an independent oversight commission to review ballot questions

It is not unusual for jurisdictions to convene independent advisory commissions to assist in county governance. The County of Santa Clara alone boasts over 75 boards and commissions, ranging from an Advisory Commission on Consumer Affairs to a Youth Task Force.

For purposes of overseeing conformity of ballot measure questions, the Civil Grand Jury recommends that the County form a Good Governance in Ballots Commission (Good Governance Commission). This advisory commission should act quickly to review and comment on ballot questions or provide recommendations to remediate questions that are false, misleading, or partial to one side. The composition of the Good Governance Commission should, at a minimum, include an attorney member of the California State Bar, either to participate as a full member or act as an ex officio member without voting privileges. Because County Counsel is the attorney to most Santa Clara County advisory boards and commissions, it could therefore be tasked to help members of this commission navigate the intricacies of California's statutory requirements.

Apart from the obvious benefits—non-partisanship and public representation—another advantage of having a single commission perform the task of reviewing ballot questions would be to maintain consistency across all governing entities. Regardless of whether a city, county, school district, or

other jurisdiction puts forth the measure, the output from a neutral, uninterested third party would probably help eliminate the rhetoric and advocacy inherent in the current practice.

To be successful, the Good Governance Commission should ideally have the ability to review and to reject language that is biased and partial. The power of rejection is crucial because it would also likely have the effect of encouraging the governing entity to self-police. It must not be merely optional for governing entities to submit their ballot questions for review. If the commission were granted mere advisory powers, then it would have very limited impact; it is reasonable to surmise that most, if not all, governing entities would choose to decline to submit their ballot questions for consideration in the interest of the time required to add a layer of review.

Unfortunately, adoption of a Good Governance Commission that has the power to reject language would require passage of a state law that would enable the County of Santa Clara to have an express grant of power to impose a requirement on other entities. This is because “[t]he board of supervisors has no inherent powers; the counties are legal subdivisions of the state, and the county board of supervisors can exercise only those powers expressly granted it by Constitution or statutes and those necessarily implied therefrom” (*Hicks v. Board of Supervisors* (1977) 69 Cal. App. 3d 228, 242). In general, absent other express authorization, one governmental entity cannot regulate another.

Put another way, charter cities operate under home rule, which means that they do not answer to the county the city is located in. For example, the County of Santa Clara Board of Supervisors does not have jurisdiction to compel the City of Gilroy, a charter city, to abide by a county ordinance. Absent some legislative authorization, the County of Santa Clara cannot impose a mandatory review process for ballot questions on other entities. For this reason, the Civil Grand Jury urges the County to pursue legislative solutions to facilitate a process by which the County Counsel would be required to review and approve local measure ballot questions before they are voted on.

Formation of a Good Governance in Ballots Commission

The Civil Grand Jury believes that having an independent oversight commission with advisory powers will improve the local electoral process. It puts pressure on governing bodies, sending the message that their ballot questions are being monitored for clarity, truthfulness, fairness, and impartiality.

The Alameda Civil Grand Jury report provides detailed instructions around the formation, structure, and operation of an oversight committee. This can be found in Appendix B of their June 2021 report. Last, but not least, another possibility is to lean on an existing Santa Clara County advisory body, the [Citizens' Advisory Commission on Elections](#), to create a subcommittee focused

on ballot question integrity and good governance. Because time is of the essence when it comes to the elections process, the subcommittee must act within the short turnaround timeframe established by state statutes and county ordinances.

There do not appear to be any advocates for transparent and neutral language. Action must be taken. Having the Office of the County Counsel review and approve ballot questions to ensure conformity to statutory requirements would be a good start. Convening a citizen-led, independent oversight Good Governance Commission is another solution.

CONCLUSION

Civil Grand Juries are charged to help government develop practical solutions to improve government operations. Poorly worded ballot questions may not be illegal, but if they withhold information to shield what is really at issue, they are unethical. There are insufficient workable checks and balances to prevent this ongoing issue from being curtailed. Not doing anything about this only adds to the distrust of government. The Civil Grand Jury recommends that elected officials be held accountable—ballot questions must be transparent and clear in order to enable today's voters to make informed decisions. The Civil Grand Jury wants governing entities to know that the public is paying attention and will not tolerate questions that are anything less than truthful, impartial, and fair. Further, ballot measure questions need to be straightforward, understandable, transparent, and honest.

FINDINGS AND RECOMMENDATIONS

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.

Recommendation 1a

The Board of Supervisors should ask the County Counsel to review all ballot questions submitted to it pursuant to Recommendation 1b.

Recommendation 1b

Governing entities² 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.

Recommendation 1c

Governing entities³ 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.

Recommendation 1d

The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of this report. The Commission should be implemented by August 1, 2024.

² There are approximately 50 governing entities within Santa Clara County. The Civil Grand Jury has elected to address these recommendations to the County, cities, and a select number of special districts and school districts that have historically the most measures on the ballot for response. The Civil Grand Jury encourages all governing entities to adopt these recommendations.

³ *Id.*

Recommendation 1e

Governing entities⁴ within Santa Clara County should submit their ballot questions for review by the Good Governance in Ballots Commission pursuant to Recommendation 1d.

Recommendation 1f

The County should, by March 31, 2023, take appropriate action to request that the state legislature consider amending current law to require the County Counsel to review and approve local ballot measure questions before they are voted on.

⁴ *Id.*

REQUIRED RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the County of Santa Clara 2022 Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
County of Santa Clara Board of Supervisors	1	1a, 1b, 1d, 1f
City of Campbell	1	1b, 1c, 1e
City of Cupertino	1	1b, 1c, 1e
City of Gilroy	1	1b, 1c, 1e
City of Los Altos	1	1b, 1c, 1e
Town of Los Altos Hills	1	1b, 1c, 1e
Town of Los Gatos	1	1b, 1c, 1e
City of Milpitas	1	1b, 1c, 1e
City of Monte Sereno	1	1b, 1c, 1e
City of Morgan Hill	1	1b, 1c, 1e
City of Mountain View	1	1b, 1c, 1e
City of Palo Alto	1	1b, 1c, 1e

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED

Responding Agency	Findings	Recommendations
City of San Jose	1	1b, 1c, 1e
City of Santa Clara	1	1b, 1c, 1e
City of Saratoga	1	1b, 1c, 1e
City Sunnyvale	1	1b, 1c, 1e
Santa Clara Valley Water District	1	1b, 1c, 1e
Valley Transportation Authority	1	1b, 1c, 1e
El Camino Healthcare	1	1b, 1c, 1e
Foothill-DeAnza Community College District	1	1b, 1c, 1e
San Jose Unified School District	1	1b, 1c, 1e
East Side Union High School District	1	1b, 1c, 1e
Cupertino Union School District	1	1b, 1c, 1e

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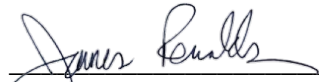
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Interviews:

The Civil Grand Jury conducted interviews with ten individuals between June 28, 2022, and August 22, 2022.

IF YOU ONLY READ THE BALLOT, YOU'RE BEING DUPED

This report was **ADOPTED** by the Santa Clara County 2022 Civil Grand Jury on
this 7th day of October, 2022.

A handwritten signature in black ink, appearing to read "James Renalds", written over a horizontal line.

Mr. James Renalds
Foreperson

Superior Court of California
County of Santa Clara

191 North First Street
San José, California 95113
(408) 882-2700

Chambers of
HON. BETH MCGOWEN, Assistant Presiding Judge

Received 12/29/22
M. King, COB



December 28, 2022

Santa Clara Valley Water District
c/o Mr. John Varela, Chair Pro Tem, Board of Directors
5750 Almaden Expressway
San José, CA 95118

Sent via email: clerkoftheboard@valleywater.org


Dear Mr. Varela,

Thank you for your letter dated December 15, 2022, regarding the Santa Clara Valley Water District's request for an extension to submit its response to the Santa Clara County Civil Grand Jury report, **If You Only Read the Ballot, You're Being Duped.**

After considering the information you have provided, your request to submit the responses required under California Penal Code § 933(c) on or before March 31, 2023, is granted. Please note that March 31, 2023, is a Court holiday and our offices will be closed that day.

If you have further questions, please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at (408) 882-2721 or cgj@scscourt.org.

Sincerely,


Beth McGowen
2023 Presiding Judge

cc: Michele King, Clerk of the Board of Directors

BOARD AGENDA MEMORANDUM

SUBJECT:

Response to Santa Clara County Civil Grand Jury's October 7, 2022, Final Report.

RECOMMENDATION:

- A. Review proposed response to Santa Clara County Civil Grand Jury October 7, 2022, Final Report Finding 1 and Recommendations 1b, 1c, and 1e; and
- B. Approve the response or provide additional direction and feedback as necessary.

SUMMARY:

Background

On October 7, 2022, the Santa Clara County Civil Grand Jury (Civil Grand Jury) issued a report that took issue with the choice of wording used in local ballot measure questions. Specifically, the Civil Grand Jury argues that some local governing entities present ballot questions that are purposefully misleading so they may obtain their desired result. Among other measures, the Civil Grand Jury took issue with the wording of Santa Clara Valley Water District's (Valley Water) 2022 Measure A ballot question.

On October 10, 2022, Valley Water received a letter from James Renalds, Foreperson of the 2022 Civil Grand Jury, providing its report entitled, If You Only Read the Ballot, You're Being Duped (Report) (Attachment 1). The Report included Findings and Recommendations. In the letter, Valley Water was asked to comment on the Report's Finding 1 and Recommendations 1b, 1c, and 1e. The following is the staff's recommended response. The draft response is also included in the District's Draft Response Letter (Attachment 2).

Under Penal Code section 933.05, Valley Water must respond to the Report by January 5, 2023. Specifically, Valley Water must state whether it agrees or disagrees with Finding 1 and to respond 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 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.

- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

District Response

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.

Proposed Response:

Valley Water disagrees with the finding that local ballot measure questions are unregulated and may be easily written in a way that is confusing or misleading to voters.

Local ballot measures are regulated by legal standards set forth in the California Elections Code and oversight by California's courts. The California Elections Code already requires, with respect to the ballot question for a measure placed on the ballot by a local governing body, that the statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

The Elections Code further mandates that there be an impartial analysis of the measure prepared by counsel for the agency or by the County Counsel of the County in which the agency sits. Even when counsel for the local agency prepares the impartial analysis, the County Counsel may amend or substitute its own analysis. The impartial analysis, regardless of whether it is prepared by counsel for the agency or County Counsel, is included in the voter information guide that accompanies the ballot. This serves as an additional "check and balance" against potentially misleading language in the ballot measure.

Further still, the Elections Code requires either that the entire text of the measure be included in the ballot or the voter information guide or that the impartial analysis state that the text is available to voters upon request.

Neither of these requirements is even mentioned in the Report. Thus, the Civil Grand Jury's premise that if one only reads "the ballot" one is being duped ignores the reality that "the ballot" is accompanied by not only the text of the ballot question but also the impartial analysis of a lawfully appointed attorney and the text of the measure itself.

Beyond the requirements for what must be included in “the ballot,” the California Elections Code also establishes a process to modify ballot questions that are determined to be false, misleading, or “partial.” Any person who feels that a ballot question is deficient may file a court action seeking a writ of mandate to have the ballot language changed.

Courts recognize that ballot titles need not be perfectly worded to comply with election statutes and will defer to the language drafted by the agency. As the Report acknowledges, to comply with the election statutes, the ballot title need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled wordsmith might imagine. Report at p.13.

With respect to Valley Water’s 2022 Measure A, as directed by the Board in its resolution approving the measure, District Counsel prepared a thorough and impartial analysis of the Measure A ballot measure language. The impartial analysis was submitted to Santa Clara County Counsel as required by the Elections Code. The County Counsel, as is its right under the Elections Code, revised the District Counsel’s analysis and issued the final analysis in its own name. Further, the ballot measure question was accompanied by the full ballot measure text in the voter information guide to provide voters with a comprehensive, clear understanding of the ballot measure beyond the ballot measure question itself. In every respect, Valley Water’s 2022 Measure A complied with the law as the Legislature deemed appropriate for ballot measures.

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.

Proposed Response:

The recommendation will not be implemented because it is not warranted. The California Legislature has already determined, via the Elections Code, that local agencies are properly vested with the power to write their own ballot questions. As checks and balances against that power, the Legislature requires that (1) local agency ballot measures be subject to an impartial analysis by the agency’s counsel which is then submitted to County Counsel for review; and (2) the entire text of the measure itself be included in the ballot or election guide or be made available upon request.

Valley Water will continue to comply with these Elections Code requirements for any future ballot measures initiated by the agency.

Furthermore, the Report does not indicate whether the County Counsel's Office has the budget, staffing, or desire to accept this additional burden on its workload.

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.

Proposed Response:

The recommendation will not be implemented because the adoption of a resolution or ordinance requiring submission of Valley Water-initiated ballot measure questions to County Counsel is not warranted. For further details, see response to Recommendation 1b, which is incorporated into this response as though fully set forth herein.

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.

Proposed Response:

Recommendation 1d of the Grand Jury Report states: The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the "Solutions" section of this report. The Commission should be implemented by August 1, 2024.

Recommendation 1e, which depends on the implementation of Recommendation 1d, will not be implemented because the establishment of an independent oversight commission (Good Governance in Ballots Commission) to review ballot questions is not warranted as a "solution" to ensure ballot questions are being monitored for clarity, truthfulness, fairness, and impartiality. There are checks and balances in the existing statutes that establish standards for both the language and the impartial review of local ballot measure questions. For further details, see response to Recommendation 1b, which is incorporated into this response as though fully set forth herein.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Civil Grand Jury Report

Attachment 2: Draft Response Letter

*Handout 4.1-A: Draft 2 Letter

UNCLASSIFIED MANAGER:

Tina Yoke, 408-630-2385



DRAFT RESPONSE OPTION 2

November 30, 2022

The Honorable Beth McGowen
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Subject: Santa Clara County Civil Grand Jury Final Report: *If You Only Read the Ballot, You're Being Duped*, October 7, 2022
Santa Clara Valley Water District Response

Dear Judge McGowen:

Santa Clara Valley Water District (Valley Water or District) received the above-referenced Civil Grand Jury Report (Report) on October 7, 2022. Under California Penal Code section 993.05(a), Valley Water is required to "Agree" or "Disagree" with each applicable Finding. However, due to the recent reconfiguration of Valley Water's Board of Directors resulting from the 2022 election on November 8, 2022, Valley Water staff plans to bring the Report to the District's Board Policy and Planning Committee to analyze the report and provide its recommendations to the Board of Directors by March 31, 2023.

Thank you for your consideration. If you have any questions or concerns, please contact me at (408) 265-2600.

Sincerely,

John L. Varela
Chair Pro Tem, Board of Directors

cc: Board of Directors (7)

BOARD OF DIRECTORS

John L. Varela / Chair Pro Tem (District 1)
Barbara F. Keegan (District 2)
Richard P. Santos (District 3)
Linda J. LeZotte (District 4)
Nai Hsueh (District 5)
Tony Estremera (District 6)
Gary Kremen (District 7)

CHIEF EXECUTIVE OFFICER

Rick L. Callender, Esq.

CLERK OF THE BOARD

Michele L. King, CMC



ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
County of Santa Clara Board of Supervisors	1	1a, 1b, 1d, 1f	<p><i>County Board of Supervisors reviewed item at 12/13/22 meeting with recommendation to adopt response from the Office of the County Counsel to Grand Jury Report and authorize the Board President and the Clerk of the Board to forward the response to the Superior Court.</i></p> <p>Finding 1: The County agrees with this recommendation and will prepare a resolution for Board of Supervisors approval to implement the recommendation prior to statewide elections in calendar year 2024. While implementation may require additional resources, the County agrees that tasking County Counsel with reviewing ballot measures questions voluntarily submitted to it, for accuracy and impartiality concerning the measure's underlying purpose, would provide a beneficial review of legal conformance to applicable Elections Code provisions.</p> <p>Recommendation 1b: Except in cases where the County of Santa Clara is the relevant entity, this recommendation does not apply to the County. The County agrees and has implemented the recommendation through its current practice of County Counsel reviewing, prior to submission to the Registrar of Voters, County-authored ballot measure questions.</p> <p>Recommendation 1c: Except in cases where the Count of Santa Clara is the governing entity, this recommendation does not apply to the County.</p> <p>Recommendation 1d: The County disagrees with this recommendation because it is not warranted or reasonable to implement.</p> <p>Recommendation 1d: See response to 1d.</p> <p>Recommendation 1f: The County agrees with this recommendation, recognizing this issue of statewide concern raised by the Grand Jury. The resolution referenced in the response to Recommendation 1a will include a request for such legislation.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Campbell	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: Partially Agree.</p> <p>Recommendation 1b: The recommendation will not be implemented because it is not warranted.</p> <p>Recommendation 1c: The recommendation will not be implemented because it is not warranted.</p> <p>Recommendation 1e: The recommendation will not be implemented because it is not warranted.</p>
City of Cupertino	1	1b, 1c, 1e	<p><i>City Council reviewed item at 12/20/22 meeting with recommendation to approve response to Grand Jury report.</i></p> <p>Finding 1: No written response provided</p> <p>Recommendation 1b: Disagree.</p> <p>Recommendation 1c: Disagree.</p> <p>Recommendation 1e: Not Applicable.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Gilroy	1	1b, 1c, 1e	<p><i>City Council reviewed item at 12/5/22 meeting with request to provide staff direction.</i></p> <p>Finding 1: The City of Gilroy disagrees with the finding that the writing of ballot measures at the local level is unregulated.</p> <p>Recommendation 1b: The City of Gilroy does not believe this recommendation is necessary and it will not be implemented by the City.</p> <p>Recommendation 1c: The City of Gilroy finds this recommendation unwarranted and it will not be implemented by the City.</p> <p>Recommendation 1e: The City of Gilroy finds this recommendation unwarranted and it will not be implemented by the City.</p>
City of Los Altos	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: Respondent, City of Los Altos, disagrees with the finding that the writing of ballot measures at the local level is unregulated.</p> <p>Recommendation 1b: Respondent, City of Los Altos, finds the recommendation is not warranted and therefore it will not be implemented by the City.</p> <p>Recommendation 1c: Respondent, City of Los Altos, finds the recommendation is not warranted and therefore it will not be implemented by the City.</p> <p>Recommendation 1e: Respondent, City of Los Altos, finds the recommendation is not warranted and therefore it will not be implemented by the City.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
Town of Los Altos Hills	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: The Town of Los Altos Hills agrees with this finding.</p> <p>Recommendation 1b: The recommendation has not been yet been implemented, but will be implemented in the future should the County implement Recommendation 1d to create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of the Final Report.</p> <p>Recommendation 1c: The recommendation has not been implemented, but will be placed on a future City Council meeting agenda so long as Recommendation 1d is implemented by the County</p> <p>Recommendation 1e: Recommendation has not been implanted, but will be implemented in the future should the County implement Recommendation 1d</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
Town of Los Gatos	1	1b, 1c, 1e	<p><i>Town Council reviewed item at 12/20/22 meeting with recommendation to review and approve Town's response to Grand Jury Report.</i></p> <p>Finding 1: The Town partially agrees with this Finding. The Town agrees with the portion of the Finding stating that ballot measure questions can be confusing or misleading. The Grand Jury Report itself provides two examples of this Finding. However, with regard to local ballot measures, the Town disagrees with the finding that ballot measures are unregulated.</p> <p>Recommendation 1b: The recommendation will not be implemented, because it is not warranted or reasonable.</p> <p>Recommendation 1c: The recommendation will not be implemented, because it is not reasonable.</p> <p>Recommendation 1e: The recommendation will not be implemented, because it is not reasonable.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Milpitas	1	1b, 1c, 1e	<p><i>City Council reviewed item at 12/6/22 meeting with recommendation to authorize City Manager's response letter to Grand Jury Report.</i></p> <p>Finding 1: The City of Milpitas disagrees with the entirety of the Civil Grand Jury's finding that the writing of ballot measures is unregulated at the local level or that authors mislead voters within the City of Milpitas.</p> <p>Recommendation 1b: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted.</p> <p>Recommendation 1c: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted.</p> <p>Recommendation 1e: The City of Milpitas will not implement the recommendation because it is neither reasonable nor warranted.</p>
City of Monte Sereno	1	1b, 1c, 1e	<p><i>City Council reviewed item at 12/6/22 meeting with recommendation to approve response letter to Grand Jury Report.</i></p> <p>Finding 1: The City of Monte Sereno disagrees partially with the finding.</p> <p>Recommendation 1b: Recommendation will not be implemented because it is not warranted or reasonable, with an explanation.</p> <p>Recommendation 1c: This recommendation will not be implemented because it is not warranted or reasonable, with an explanation.</p> <p>Recommendation 1e: This recommendation will not be implemented because it is not warranted or reasonable, with an explanation.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Morgan Hill	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: Partially Agree.</p> <p>Recommendation 1b: The recommendation will not be implemented because it is not warranted or reasonable, and would require a change to California law.</p> <p>Recommendation 1c: The recommendation will not be implemented because it is not warranted or is not reasonable.</p> <p>Recommendation 1e: The recommendation has not been implemented, but will be implemented if state law is amended to allow the creation of a commission as described in the Grand Jury report.</p>
City of Mountain View	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: The City of Mountain View disagrees in whole with this finding.</p> <p>Recommendation 1b: This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.</p> <p>Recommendation 1c: This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.</p> <p>Recommendation 1e: This recommendation is not warranted and, therefore, will not be implemented by the City of Mountain View.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Palo Alto	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: The City of Palo Alto agrees in part and disagrees in part with this Finding.</p> <p>Recommendation 1b: The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto.</p> <p>Recommendation 1c: The recommendation is not warranted and will not be implemented by the City of Palo Alto.</p> <p>Recommendation 1e: The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto.</p>
City of San Jose	1	1b, 1c, 1e	<p><i>City Council reviewed item at 12/8/22 meeting with recommendation to approve response to Grand Jury Report.</i></p> <p>Finding 1: The City disagrees with the finding that ballot measure questions are unregulated at the local level.</p> <p>Recommendation 1b: The City does not believe this recommendation is necessary and it will not be implemented by the City.</p> <p>Recommendation 1c: The City finds this recommendation unwarranted and it will not be implemented by the City.</p> <p>Recommendation 1e: The City finds this recommendation unwarranted and it will not be implemented by the City.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City of Santa Clara	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: The City of Santa Clara disagrees with the finding that the drafting of ballot measures at the local level is unregulated.</p> <p>Recommendation 1b: This recommendation will not be implemented because it is not warranted and not reasonable.</p> <p>Recommendation 1c: This recommendation will not be implemented because it is not warranted and is not reasonable.</p> <p>Recommendation 1e: This recommendation will not be implemented because it is not warranted and not reasonable.</p>
City of Saratoga	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: Partially Agree.</p> <p>Recommendation 1b: The recommendation will not be implemented because it is not warranted or is not reasonable.</p> <p>Recommendation 1c: The recommendation will not be implemented because it is not warranted or is not reasonable.</p> <p>Recommendation 1e: The recommendation will not be implemented because it is not warranted or is not reasonable.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
City Sunnyvale	1	1b, 1c, 1e	<p><i>Response letter posted on The Superior Court of California County of Santa Clara Civil Grand Jury webpage.</i></p> <p>Finding 1: The City of Sunnyvale disagrees with the assertion that ballot measure questions are unregulated at the local level.</p> <p>Recommendation 1b: The recommendation will not be implemented.</p> <p>Recommendation 1c: The recommendation will not be implemented.</p> <p>Recommendation 1e: The recommendation will not be implemented.</p>
Valley Transportation Authority	1	1b, 1c, 1e	<p>MTA Board of Directors met on 11/3/22 and 12/1/22. Item was not on agendas. Next Board meeting scheduled for 1/12/23; agenda not published yet. Janice Lum spoke with Board Secretary line (408) 321-5680 on 1/4/23 who recommended an email request for information be submitted to board.secretary@vta.org. Janice emailed request on 1/4/23 and has not received a response as of 1/23/23.</p>
El Camino Healthcare	1	1b, 1c, 1e	<p>El Camino Healthcare District Board of Directors met on 10/18/22 and 12/5/22. Item was not on agendas. Janice Lum emailed Michael Walsh, Public Records Coordinator, for El Camino Hospital District to request information on response to report on 1/3/23 and has not received a response as of 1/23/23.</p>
Foothill-DeAnza Community College District	1	1b, 1c, 1e	<p>Foothill-DeAnza Community College District Board of Trustees met on 11/7/22 and 12/12/22. Item was not on agendas. Next regular Board meeting scheduled for 2/28/23; agenda not published yet. Janice Lum left voicemail at Board of Trustees line (650) 949-6100; spoke with Carla Maitland on 1/3/23. They received a different version of the letter from the Grand Jury. Carla emailed it on 1/3/23. The letter does not include a deadline for comments.</p>

ATTACHMENT 6: Grand Jury Report Agency Responses Summary

Responding Agency	Finding Requiring Response	Recommendations Requiring Response	Response
San Jose Unified School District	1	1b, 1c, 1e	San Jose Unified School District Board met on 11/3/22, 11/17/22, and 12/15/22. Item was not on agendas. Next Board meeting scheduled for 1/19/23; agenda not published yet. Janice Lum called San Jose Unified School District at (408) 278-6923 and left voicemail on 1/4/23 and has not received a response as of 1/23/23.
East Side Union High School District	1	1b, 1c, 1e	East Side Union High School District Board met on 11/3/22, 11/17/22, and 12/13/22. Item was not on agendas. Next regular Board meeting scheduled for 1/12/23; agenda not published yet. Janice Lum called Superintendent's Office at (408) 347-5010 and left voicemail on 1/3/23 and has not received a response as of 1/23/23.
Cupertino Union School District	1	1b, 1c, 1e	<p><i>Board reviewed item at 12/15/22 meeting with recommendation for approval of response to Grand Jury Report.</i></p> <p>Finding 1: The District disagrees with this finding.</p> <p>Recommendation 1b: Recommendation 1b will not be implemented because it is not warranted and is not reasonable.</p> <p>Recommendation 1c: Recommendation 1c will not be implemented because it is not warranted and is not reasonable.</p> <p>Recommendation 1e: Recommendation 1e will not be implemented because it is not warranted and is not reasonable.</p>



Santa Clara Valley Water District

File No.: 23-0139

Agenda Date: 2/6/2023
Item No.: 5.3.

COMMITTEE AGENDA MEMORANDUM

Board Policy and Planning Committee

SUBJECT:

Review Board-Approved Committee Purpose and 2023 Work Plan and Meeting Schedule.

RECOMMENDATION:

- A. Review the Board Policy and Planning Committee's Board-assigned Purpose;
- B. Review the 2023 Board Policy and Planning Committee's Work Plan and incorporate any new tasks; and
- C. Schedule Committee meetings as appropriate.

SUMMARY:

Board Policy and Planning Committee (BPPC) Purpose

The Board Policy and Planning Committee's Board-assigned purpose is to support to the Board in areas of:

- 1. Board planning process;
- 2. Board Committees' principles and structures;
- 3. Board and organization performance monitoring &
- 4. Other tasks as assigned by the Board.

2023 BPPC's Work Plan and Meeting Schedule

This allows the Committee to review its 2023 Work Plan and meeting schedule (Attachment 1) and identify additional tasks and schedule meetings as appropriate.

ATTACHMENTS:

Attachment 1: 2023 BPPC Work Plan

UNCLASSIFIED MANAGER:

Michele King, 408-630-211

2023 Board Policy and Planning Committee Work Plan and Schedule

Subject	Task	1/11/23	2/6/23	3/6/23	4/3/23	5/1/23	6/5/23	7/3/23	8/7/23	9/4/23	10/2/2023	11/6/2023	12/4/2023
Board Planning Process	A. Provide Support for Board Planning Activities												
	1. Discuss FY23-24 Board Budget Message & Board Work Plan												
	2. Planning for Board's FY23-24 Strategic Planning Workshop												
	B. Provide Support for Board Policy Review												
	1. Expansion of the Water Resources Protection Manual	X											
	2. Fuel Management Policy and Wildfire Resilience Plan												
	3. One Water Watershed Plans												
	4. Climate Change Action Plan Implementation Update.	X											
	5. Develop a Board Code of Conduct Board's Governance Policy for Board Approval.												
	6. Review Board Governance Policies related to the Election of the Board Chairperson/Vice Chairperson and the Chairperson's role.												
Board Committees Principles and Structures	C. Align Board Committees' Work Plans with Board Planning Calendar												
	1. Review Effectiveness of Board Advisory Committees (External) - Meet with BPPC prior to presenting Accomplishment Reports to Board.		X										
Other Assignments Requested by Board	D. Other Assignments as Requested by the Board												
	1. Analyze Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022, and Provide Recommendations to Full Board by March 31, 2023.		X										

2023 Board Policy and Planning Committee Accomplishments Report

Subject	Task		Action Taken
Board Planning Process	A.	Provide ongoing support for Board Planning Activities	
	1.	Discuss FY23-24 Board Budget Message & Board Work Plan	
	2.	Planning for Board's FY23-24 Strategic Planning Workshop	
	B.	Provide Support for Board Policy Review	
	1.	Expansion of the Water Resources Protection Manual	1/11/23 - Received an update and provided input on the WRPM and outreach efforts related to the guidelines and standards for land use near streams.
	2.	Fuel Management Policy and Wildfire Resilience Plan	
	3.	One Water Watershed Plans	
	4.	Climate Change Action Plan Implementation Update.	1/11/23 - Received an update and provided input on high-priority climate change mitigation and adaption actions.
	5.	Develop a Board Code of Conduct Board's Governance Policy for Board Approval.	
	6.	Review Board Governance Policies related to the Election of the Board Chairperson/Vice Chairperson and the Chairperson's role.	
Board Committees Principles and Structures	C.	Align Board Committees' Work Plans with Board Planning Calendar	
	1.	Review Effectiveness of Board Advisory Committees (External) - Meet with BPPC prior to presenting Accomplishment Reports to Board.	
Board & Organization Performance Monitoring	D.	Assignments as Requested by the Board	
	1.	Analyze Santa Clara County Civil Grand Jury Final Report: If You Only Read the Ballot, You're Being Duped, October 7, 2022, and Provide Recommendations to Full Board by March 31, 2023.	