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September 19, 2018

Mr. Peter Hertan, Foreperson
Santa Clara County Civil Grand Jury
Superior Court Building
191 North First Street
San Jose, CA 95113

(ENDORSED)
FILED
SEP 24 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Janice Jones DEPUTY

Re: Response to the Santa Clara Civil Grand Jury Report on "Affordable Housing Crisis: *Density is our Destiny*"

Dear Mr. Hertan,

Please find the City's response to the Santa Clara Civil Grand Jury Report on "Affordable Housing Crisis: *Density is our Destiny*". This response has been approved by the Cupertino City Council on August 21, 2018. Cupertino is required to respond to ten Findings and nine Recommendations. The attached enclosure contains a table with the City's responses to the Findings and Recommendations. In summary, the City agrees with seven Findings and partially agrees with three Findings. In addition, responses to the Recommendations have been included. If it requires future implementation, a specific timeframe has been given.

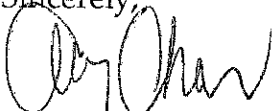
Additionally, at its August 21, 2018 meeting, the City Council wished to express the following concerns regarding the report:

- Report Title: Sub-titling the report "Density is our Destiny" gives the perception that adding density throughout the County is the one-size-fits-all solution to the affordable housing crisis.
- NIMBY vs YIMBY: Identifying a topic in this manner may inadvertently and unfairly label individuals and set groups within a community against each other. The City Council recommends rephrasing this topic to reflect the intent.
- Model for Public Entities: Identifying VTA as the model for a good regional transportation agency may limit discussion and creation of other transportation models. Additionally, not all cities in the county are currently well represented or serviced by VTA.

- Apple Campus: The report states that Apple's new campus houses 12,000 employees and that it "largely will be used to accommodate work force expansion." This provides the impression that most of the employees are new employees when in fact, 1) the campus replaced several buildings on the site with an existing capacity of 9,800 employees. The new development was approved for 14,200 employees, which results in only 4,400 new employees; and 2) Apple has relocated employees from other undesirable locations both, within and outside of Cupertino into this campus in order to maximize efficiency, security and consolidate transportation demand management (TDM) opportunities.

The City of Cupertino continues to strive for effective ways to address the issue of affordable housing.

Sincerely,



Amy Chan

Interim City Manager

Enclosure – Table with responses to Findings and Recommendations

cc: Aarti Shrivastava, Assistant City Manager
Rocio Fierro, Acting City Attorney

Finding/Recommendation	Response
<p>Finding 1a:</p> <p>Lack of housing near employment centers worsens traffic congestion in the County and increases the urgency to add such housing.</p>	<p><u>Partially Agree</u></p> <p>Traffic congestion is influenced by many factors, including but not limited to the lack of availability of inadequate public transportation options and the relatively inexpensive cost to commute by private vehicle</p>
<p>Recommendation 1a:</p> <p>To improve jobs-to-housing imbalances, the cities of Palo Alto, Santa Clara, Milpitas, Mountain View and Sunnyvale should identify, by June 30, 2019, parcels where housing densities will be increased. The identification should include when projects are expected to be permitted and the number of BMR units anticipated for each parcel.</p>	<p><u>Requires further analysis.</u></p> <p>The cities of Palo Alto, Santa Clara, Milpitas, Mountain View and Sunnyvale should review and consider this recommendation.</p> <p><i>Note: Cupertino has planned for and made progress in implementing its Regional Housing Needs Allocation (RHNA) and goals of its Housing Element including the placement of housing closer to transportation corridors. There are fewer transportation options available in the West Valley and Cupertino continues to actively advocate for enhanced transit. It should also be noted that the Grand Jury Report shows that Cupertino has a jobs to employed residents ratio of 1.08. This data is from the Local Agency Formation Commission (LAFCO) of Santa Clara County conducted a service review for all the county and all the cities within Santa Clara in 2015. The LAFCO reports states "The jobs/employed-residents ratio measures the balance between where people work and where people live. A balance closer to parity (i.e., 1.0) suggests there is sufficient housing in the community relative to the number of people who work in the community. This does not necessarily mean that the people who live in a city work there, but aggregated for several cities, the jobs/employed-resident ratio begins to paint a picture of where imbalances exist. It shows which communities "export" workers to other places (a ratio below 1.0) and which communities must import workers from other places (more than 1.0)." Cupertino at a ratio of 1.08 is an importer of a nominal number of workers from other places, when compared to a county wide high of 3.02.</i></p>
<p>Finding 2a:</p> <p>Employers in the County have created a vibrant economy resulting in an inflated housing market displacing many residents.</p>	<p><u>Partially Agree</u></p> <p>There are several factors that displace residents including but not limited to the existing vibrant economy. For e.g. redevelopment of older properties, the excellent school districts and the excellent weather and services. In addition, investors from out of the area place added pressure on the available housing stock and inflating prices.</p>

Finding/Recommendation	Response
<p>Recommendation 2a:</p> <p>The County should form a task force with the cities to establish housing impact fees for employers to subsidize BMR housing, by June 30, 2019.</p>	<p><u>Requires further analysis.</u></p> <p>Cupertino has one of the highest Below Market Rate housing impact and linkage fee requirements in Santa Clara County. The City is working to update this in FY 2018-2019. However, if a county led task force is established, the City will participate. Cupertino has established high impact and linkage fees, therefore it might not be feasible to establish a separate employer impact fee. Also, as previously mentioned, the Grand Jury Report identifies Cupertino as having a housing to employed residents ratio of 1.08.</p>
<p>Finding 2b:</p> <p>Contributions to BMR housing from employers in the County are not mandated nor evenly shared.</p>	<p><u>Agree</u></p> <p>Conceivably, each city in the County has developed tools to help implement their housing elements. One component of Cupertino's Affordable Housing programs is the establishment of a commercial linkage fee (called a Housing Mitigation Fee), which is collected on net new non-residential development. This fee was updated in 2015 to be one of the highest in the County. These locally generated funds are used to fund affordable housing projects and programs within Cupertino.</p>
<p>Recommendation 2b:</p> <p>Every city in the County should enact housing impact fees for employers to create a fund that subsidizes BMR housing, by June 30, 2019.</p>	<p><u>Requires further analysis.</u></p> <p>Cupertino has one of the highest Below Market Rate housing impact and linkage fee requirements in Santa Clara County. The City is working to update this in FY 2018-2019. However, if a county led task force is established, the City will participate. Cupertino was able to recently contribute \$4.672 towards an 18-unit senior affordable project being developed by Charities Housing within the City. The project broke ground in April 2018. However, it is unlikely, that a separate employer impact fee will be imposed in addition to the City's non-residential linkage fee.</p>

Finding/Recommendation	Response
<p>Finding 3a:</p> <p>RHNA sub-regions formed by several San Francisco Bay Area counties enable their cities to develop promising means to meet their collective BMR requirements. Such sub-regions can serve as instructive examples for cities in the County.</p>	<p><u>Partially Agree</u></p> <p>In principle, a RHNA sub-region may service this purpose. However, this is being already considered by the Santa Clara County Cities Association and resolution of the formation of RNHA sub-regions should be addressed by the Association.</p>
<p>Recommendation 3a:</p> <p>Every city in the County should identify at least one potential RHNA sub-region they would be willing to help form and join, and report how the sub-region(s) will increase BMR housing, by the end of 2019.</p>	<p><u>Requires further analysis.</u></p> <p>The Cities Association of Santa Clara County is already considering the formation of a RHNA subregion for Santa Clara County. This is being considered by member cities prior to the Cities Association Board initiating formal proceedings to form a subregion.</p>
<p>Recommendation 3b:</p> <p>A RHNA sub-region should be formed including one or more low-cost cities with one or more high-cost cities, by the end of 2021.</p>	<p><u>Requires further analysis.</u></p> <p>The Cities Association of Santa Clara County is already considering the formation of a RHNA subregion for Santa Clara County. Santa Clara County has both low-cost and high-cost cities. This is being considered by member cities prior to the Cities Association Board initiating formal proceedings to form a subregion.</p>
<p>Finding 3c:</p> <p>More BMR units could be developed if cities with lower housing costs form RHNA sub-regions with adjacent cities with higher housing costs.</p>	<p><u>Partially Agree</u></p> <p>While land value clearly influences the cost of development, Cupertino does not have the data. In addition, unit rental rates and sale prices also influence return on investment, which is anticipated to be lower in low-cost cities. However, encouraging this will further segregate the availability of lower-cost housing in high-cost cities.</p>

Finding/Recommendation	Response
<p>Recommendation 3c:</p> <p>High-cost cities and the County should provide compensation to low-cost cities for increased public services required for taking on more BMR units in any high-rent/low-rent RHNA sub-region, by the end of 2021.</p>	<p><u>Requires further analysis.</u></p> <p>Should a subregion is formed, cities may consider, within statutory limitations, the best way to partner with low-cost cities on the production of more BMR units while ensuring that each community continues to have a healthy and diverse mix of housing. However, encouraging this would further reduce the availability of affordable housing in high-cost cities.</p>
<p>Finding 3e:</p> <p>High-cost/low-cost RHNA sub-regions could be attractive to high-cost cities because they could meet their BMR requirements without providing units in their cities.</p>	<p><u>Agree</u></p> <p>See response to Recommendation 3c.</p>
<p>Finding 5a:</p> <p>Uneven BMR achievements among cities is caused in part by varying inclusionary BMR unit percentage requirements.</p>	<p><u>Agree</u></p> <p>While there may be varying requirements within the County, this could be due to the cost of development, the cost of land or simply because that jurisdiction found their inclusionary housing requirement fit for their jurisdiction and adequate to meet the goals in their housing element.</p>

Finding/Recommendation	Response
<p>Recommendation 6:</p> <p>In-lieu fees, when offered as an option, are too low to produce the needed number of BMR units and delay their creation.</p>	<p><u>Agree</u></p> <p>The City adopted one of the highest housing mitigation fees in Santa Clara County in May 2015. The City is conducting an Economic Feasibility Study, to be completed in 2019, which will evaluate existing fees. While the City's objective is to obtain on-site affordable units, the BMR Ordinance permits developers to meet the requirement by providing off-site units, land donation, or payment of Housing Mitigation Fees equivalent to the project's BMR responsibility. Small residential projects with less than seven units have the option of paying the Housing Mitigation Fee or provide one BMR unit. The payment of in-lieu fees as an alternative is required by law; however, Cupertino's high BMR in-lieu fee has increased the amount of affordable housing now included in development projects. Several projects approved within the City now include affordable housing where earlier the developer may have proposed the payment of an in-lieu fee as an alternative.</p>
<p>Recommendation 6:</p> <p>Cities with an in-lieu option should raise the fee to at least 30% higher than the inclusionary BMR equivalent where supported by fee studies, by the end of 2019.</p>	<p><u>Requires further analysis.</u></p> <p>See response to Finding 6 above.</p>
<p>Finding 7:</p> <p>NIMBY (Not in My Backyard) opposition adversely affects the supply of BMR housing units.</p>	<p><u>Partially Disagree</u></p> <p>Opposition to development projects is generally not limited to BMR housing projects. Concerns regarding housing projects in general have also been related to traffic, construction related impacts, school impacts and concerns about property values.</p>

Finding/Recommendation	Response
<p>Recommendation 7:</p> <p>A task force to communicate the value and importance of each city meeting its RHNA objectives for BMR housing should be created and funded by the County and all 15 cities, by June 30, 2019.</p>	<p><u>Will not be implemented.</u></p> <p>Residents continue to have valid concerns about traffic congestion and the lack of meaningful transit in the West Valley. In addition, the City has identified and is working on collaboration on ways to address regional transportation solutions that cannot be solved by any one city with other cities, businesses and the VTA. The addition of a task force will not increase the City's participation in regional cooperation.</p>
<p>Finding 8:</p> <p>It is unnecessarily difficult to confirm how many BMR units are constructed in a particular year or RHNA cycle because cities and the County only report permitted units.</p>	<p><u>Partially Agree</u></p> <p>While there continue to be opportunities to improve access to information and enhance transparency, Cupertino annually reports the number of housing units generated each year to the CA Department of Housing and Community Development in compliance with mandated requirements and makes these reports available on its Housing webpages. However, these are for building permits issued and not for how many units obtain occupancy.</p>
<p>Recommendation 8:</p> <p>All 15 cities and the County should annually publish the number of constructed BMR units, starting in April 2019.</p>	<p><u>Has not been implemented but will be implemented in the future.</u></p> <p>This information will be provided on the City's website, starting in April 2019.</p>