

City of Palo Alto
Office of the Mayor and City Council

September 18, 2014

FILED

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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY BRITNEY HUEBIG DEPUTY

Honorable Brian C. Walsh
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA, 95113

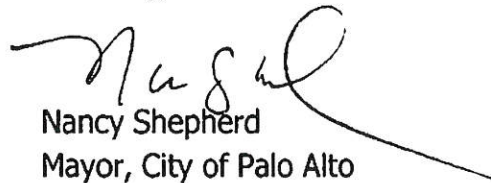
Re: Civil Grand Jury Report- "The City of Palo Alto's Actions Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Issues" (June 16, 2014)

Presiding Judge,

Attached please find the City of Palo Alto's response to the Santa Clara County Civil Grand Jury's Report entitled: "The City of Palo Alto's Actions Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Issues" (dated June 16, 2014) as required by California Penal Code Section 933(c) & 933.05 (a) & (b).

Should you have any questions or concerns regarding the enclosed document, please feel free to contact James Keene, City Manager, at (650) 329-2563.

Sincerely,


Nancy Shepherd
Mayor, City of Palo Alto

Enclosure

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**City of Palo Alto's Response to the Civil Grand Jury Report on Reduced Transparency and
Inhibited Public Input on Important Land Issues**

Finding 1

From 1996 to 2005, the City of Palo Alto leased the Lee Gift Deed Property to an adjacent landowner for construction staging even though the property was required to be used for conservation, including parks and recreation.

RESPONSE to Finding 1:

The City agrees with the finding. The City should not have leased the parcel except for "conservation purposes, including parks and recreation."

The lease agreements were executed and administered under two prior administrations. The officials and employees who took these actions have long since left the City's service.

Recommendation 1

The City of Palo Alto should adhere to use restrictions of all property donated to the City.

RESPONSE to Recommendation 1:

The City has implemented the recommendation. The City's Real Estate Division has reviewed use restrictions on donated property for consistency with current uses. The Council has directed staff to publish a list of land donated to the City, in a format that is easily accessible to the public.

Finding 2

The City of Palo Alto leased the Lee Gift Deed Property without following its P&P 1-11/ASD regarding the Procedure for Leasing of City-Owned Real Property.

RESPONSE to Finding 2:

The City agrees in part with the finding. This pertains to decisions made many years ago. Local law allows the City Manager to enter into leases up to three years. (Palo Alto Municipal Code Section 2.30.210(h).) Consistent with the Municipal Code, Policy & Procedure 1-11/ASD states that it does not apply to short term leases.

The initial lease of the Lee Gift Deed Property – which was signed by a prior city manager nearly 15 years ago – was a short-term lease that was not required to comply with P&P 1-11/ASD. A prior administration allowed the lease to hold over beyond the authority granted to the city manager in the Municipal Code. At that point, both the Municipal Code and P&P 1-11/ASD required additional process, which did not occur.

Recommendation 2

The City of Palo Alto should follow its P&P 1-11/ASD regarding the Procedure for Leasing of City-Owned Real Property when leasing City-owned Real Property.

RESPONSE to Recommendation 2:

The City has implemented the recommendation. Current City administration interprets existing City law and policy to require that Council approve leases that hold-over past the City Manager's authority, and has adhered to this requirement. The City's Real Estate Division has reviewed short-term leases to ensure consistency with the City Manager's authority and the Municipal Code and P&P 1-11. Long-term leases are entered into in a manner that is consistent with P&P 1-11/ASD.

Finding 3

On September 18, 2012, the City of Palo Alto held a closed session meeting, under the real-estate negotiation exception to the Brown Act, to discuss price and terms of the sale of the Lee Gift Deed Property. Prior to the meeting, the public was not aware that the City was considering the sale of the Lee Gift Deed Property and had no opportunity for public debate on the future use or sale of the property.

RESPONSE to Finding 3:

The City agrees in part with the finding.

Real property in Palo Alto is a valuable asset. It is not often that the City sells or even seriously contemplates selling any of its real property assets. On the occasions when it does so, property may be designated for sale after a survey that identifies the property as appropriate for sale through the process described in P&P 1-48. In addition, from time to time, a third party (which may be a private individual, company, non-profit, educational institution or other governmental entity) may approach the City to initiate discussions about a real property transaction.

City staff initiated the closed session on September 18, 2012, to inform and receive direction from the Council regarding an unsolicited proposal by Mr. Arrillaga to purchase the Lee Gift Deed Property for a specific price. For the closed session on September 18, 2012, (and one on June 4, 2012), staff listed the property by the assessor's parcel number, because the property does not have a street address. After the September 18th agenda was published but before the meeting occurred, the staff realized that more information would be helpful. On September 18th, before the closed session, the Mayor orally listed properties adjacent to the Lee Gift Deed Property.

When Mr. Arrillaga approached the staff in late 2011 about acquiring the Lee Gift Deed Property, staff research revealed that this was not the first time that Mr. Arrillaga had proposed to acquire the land. Although the parcel is in a remote location and prior to late 2011 was not familiar to current City staff or Council Members, Mr. Arrillaga in fact had a long history of attempting to acquire the parcel. He was the neighboring landowner, and between 1983 and 1996 had control of the property because the Lees had sold him the estate that they had reserved on the parcel, including the exclusive right of access and use. After 1996, as noted above, Mr. Arrillaga continued to lease the property for almost 9 years from the City. Throughout the years, the City of Palo Alto had responded to Mr. Arrillaga's periodic questions about the process for acquiring the parcel.

Beginning in late 2011, Mr. Arrillaga again began asking City staff about acquiring long-term access to the parcel, either through a long-term lease or purchase. Staff intermittently answered his questions about the procedures that would be required for long-term lease or purchase, including Council action, an open public process, surplus property designation, significant consideration and the ongoing need to comply with the deed restriction. Anticipating the need to provide information to the Council, staff ordered an appraisal of the property, which was completed in May 2012 and came in at \$175,000. The City conducted an initial closed session on June 4, 2012. The staff informed Mr. Arrillaga that it was not conceivable that the Council would consider selling the parcel at that price, and that additional/offsetting parkland may need to be a factor to even be considered and that possibility uncertain. The City later received a general proposal for funding and construction of playing fields at the Baylands. The City also received a proposal to purchase the Lee Gift Deed Property for \$175,000. City staff had a responsibility to bring the purchase offer to the Council for preliminary direction and did so on September 18, 2012. (As described below, the Council has referred to its Policy & Services Committee a review of Policy & Procedure 1-48, which may include guidance regarding whether future such meetings should occur in open or closed session.)

Following the Closed Session and Council tours of the property, neither City staff nor the Council elected to move forward to consider the sale of the property by placing an item on the Council's open session agenda. On August 18, 2014, the City Council approved an ordinance dedicating the Lee Gift Deed Property as parkland, and declaring it a part of Foothills Park. The Parks and Recreation Commission is considering best uses for the property, consistent with its status as parkland and the deed restriction.

Recommendation 3

The City of Palo Alto should seek public input about the disposition of surplus City-owned land before the City Council meets to discuss that property.

RESPONSE to Recommendation 3:

The City has implemented the recommendation.

First, the Council has directed that all real property closed session agendas include sufficient user-friendly descriptions of the subject property so that the public can identify and locate the property, and provide input to the Council before any closed session.

Second, the City's existing procedures ensure public notice and involvement before real property is sold. In addition, the Council has determined that City policy should be reviewed and revised to provide additional clarity on how staff should handle unsolicited purchase offers and when closed sessions should be scheduled.

Finding 4a

The City of Palo Alto had not complied with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned property when it discussed, in closed session, the price and terms of an offer to purchase the Lee Gift Deed Property.

RESPONSE to Finding 4a:

The City agrees with this finding. As of September 18, 2012, the City had not yet initiated the procedures in P&P 1-48/ASD with respect to the Lee Gift Deed Property. City staff have always been clear to all parties, including Mr. Arrillaga and the Council, that to pursue a sale of the property, the City would have had to comply with the procedures set forth in P&P 1-48.

Finding 4b

At the time of the closed session the Lee Gift Deed Property could not be sold because of the deed restriction and because it had not yet been declared surplus.

RESPONSE to Finding 4b:

The City agrees in part and disagrees in part with this finding.

Properties that are subject to deed restrictions are bought and sold with frequency. The deed restriction on the Lee Gift Deed Property did not require that the property remain in City ownership. It required only that the property be used for conservation purposes, including parks and recreation. A private party, non-profit entity or other governmental entity could comply with this deed restriction. There are many such parcels of land throughout the Bay Area and the state. Thus the deed restriction did not prevent the City from selling the property. The new owner would have been obligated to meet the deed restriction.

If the City had decided to sell the property, it would have followed the procedures to declare the property surplus. Because there was no interest in selling the property, these procedures were not pursued.

Recommendation 4

The City of Palo Alto should always comply with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned real property.

RESPONSE to Recommendation 4:

The City will implement this recommendation. The Council has tasked its Policy & Services Committee with reviewing city policies on sale of real property and revising the policies to provide additional guidance and clarity regarding unsolicited offers and the use and timing of closed sessions.

Finding 5a

The March 5, 2012, City Council meeting was the first time the public was made aware of a proposal to develop 27 University Ave.

RESPONSE to Finding 5a:

The City agrees with this finding.

The property at 27 University Avenue is an important parcel that serves a gateway to the City's downtown, as well as a transition to El Camino Real and Stanford University. The parcel is the site of complex transit connections. It has been the subject of numerous attempts over many years to develop comprehensive planning solutions, including the work of the Dream Team beginning in the 1990's.

Developer John Arrillaga renewed those efforts beginning in 2011 and 2012. The City has already acknowledged that the public process around this round of planning for 27 University Ave should have been better, with the early start to this project flawed, despite good intentions. The City's intention was always to try to guide the

preliminary concept in a better direction. While the concept as initially described by Mr. Arrillaga was focused on new office buildings, the city saw the opportunity to begin a master plan and redesign of the transit center and road network at this gateway entrance to the City. There was also the potential to explore the addition of a major public benefit through a regional community theater. The Grand Jury report acknowledges the unique nature of this project: "the developer's proposals represented an unprecedented opportunity to address major traffic problems at an intersection where little change has taken place for many years, despite decades of planning attempts." The City's efforts were directed toward shaping the proposed concept into an improved design in order for the public to have a concrete concept on which to comment. Nevertheless, public meetings should have occurred earlier in the process.

Finding 5b

The City of Palo Alto approved expenditure of Stanford University Medical Center funds for the 27 University Avenue proposal before the public had the opportunity for public debate on the proposal.

RESPONSE to Finding 5b:

The City agrees in part with this finding and disagrees in part. The Stanford University Medical Center funds were specifically designated to be used to develop pedestrian and bicycle connectivity projects between the intermodal transit center and the existing intersection at El Camino Real and Quarry Road. The City agrees that the first allocation of these funds at a Council meeting on March 5, 2012, occurred with only general details about a proposal from John Arrillaga. The funds that were allocated on March 5th were intended to be used to allow the City to steer a potential design into alignment with urban design goals for any potential project. The City disagrees in that the second allocation of funding took place at a Council meeting on September 24, 2012, following Council discussion and action on the massing concepts for 27 University, a letter of intent with TheatreWorks, and preparation of a potential advisory ballot measure for Council consideration. The funds that were allocated on September 24th were drawn from the Intermodal Transit Funds and from the Stanford Infrastructure Funds, with Stanford concurrence.

Recommendation 5

The City of Palo Alto should obtain early input from its constituency about significant development proposals before allocating City funds to the proposals.

RESPONSE to Recommendation 5:

The City has implemented this recommendation.

Early input from constituents is critically important. While complex planning concepts sometimes require preparation in order for the public to have informed material to react to and provide input on (which may require staff and consultant time for preparation), over the past year, Council and City staff have made substantial efforts to involve the public earlier and in a more vigorous way in planning matters.

The Council has referred to its Policy & Services Committee a proposed policy that any major zone change and any major comprehensive plan amendment must come to Council for a public pre-screening.

Finding 6

The City of Palo Alto does not consistently respond to requests for public records in a timely manner.

RESPONSE to Finding 6:

The City agrees that it has not satisfied every public record request in the optimal timeframe, though its practices are within reasonable and customary standards for similar cities in the region.

The City receives many requests for routine information every single day and does a good job of responding promptly to the public. Formal requests under the Public Records Act come into the City from many different points across the City organization. For formal Public Records Requests, we recently have added an FAQ and a request form to the Public Records Request webpage that can be submitted online to better track requests. The City also receives Public Records Requests via email, traditional mail and orally, which often need to be coordinated internally to ensure appropriate departments are responding. The City strives to provide an initial response to Public Records Requests within ten days and generally meets this standard.

Recommendation 6

The City of Palo Alto should consistently respond to requests for public records in a timely manner.

RESPONSE to Recommendation 6:

The City is implementing this recommendation. In addition to the FAQ and online form that have been implemented to increase coordination and accountability, the City will provide additional software solutions to automate tracking and responses to Public Records Requests. Additional training for City staff is also being planned.

Finding 7

The City of Palo Alto's current system for tracking and documenting non-routine PRR and the City's response to the request fails to capture all requests or responses.

RESPONSE to Finding 7:

The City agrees with this finding. While the City's system does a reasonably good job of capturing most requests and responses, the City agrees that its current system does not capture all requests and responses, and that the system could be improved. The City will provide software solutions in this area and increase staff training.

Recommendation 7

The City of Palo Alto should re-examine its system for handling non-routine PRR to ensure that it has a mechanism to evaluate compliance with the CPRA and its own P&P.

RESPONSE to Recommendation 7:

The City is implementing this recommendation. The City is evaluating options and will provide software to better track requests, assist in streamlining and coordinating responses, prompt timely responses, and support the efforts of City staff to comply with the Public Records Act. The City will provide additional training for staff who work on Public Records requests. The Council has directed staff to update the Council on software solutions by April 1, 2015.