

Office of the City Attorney  
RICHARD DOYLE, CITY ATTORNEY

September 26, 2012

**FILED**

OCT 05 2012

DAVID H. YAMASAKI  
Chief Executive Officer  
Superior Court of CA County of Santa Clara  
BY D. ALDYCKI

**HAND DELIVERED**

The Honorable Richard J. Loftus, Jr.  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Re: Grand Jury Report

Dear Judge Loftus:

Pursuant to California Penal Code section 933, et seq., please accept the City's response to the 2011-2012 Santa Clara County Civil Grand Jury Report, "San Jose's City Hall – A Promise Kept or a Promise Broken?" The City's response approved by the Mayor and the City Council and the Grand Jury's Report are enclosed for your review.

Please feel free to contact me if you have any questions. Thank you for your consideration.

Very truly yours,

  
RICHARD DOYLE  
City Attorney

RD:bu  
Enclosures

cc: Mayor Chuck Reed  
Debra Figone, City Manager  
Julia Cooper, Acting Finance Director



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julia H. Cooper

**SUBJECT:** SANTA CLARA COUNTY GRAND  
JURY REPORT – “SAN JOSE’S CITY  
HALL – A PROMISE KEPT OR A  
PROMISE BROKEN?”

**DATE:** August 27, 2012

Approved

Date

8/29/12

## RECOMMENDATION

Approval of the response to the 2011-2012 Santa Clara County Civil Grand Jury report entitled, “*San Jose’s City Hall – A Promise Kept or a Promise Broken?*”

## OUTCOME

Approval of this report will satisfy the requirements of Penal code Section 933(c) which requires the City Council to respond to Civil Grand Jury reports to the presiding judge of the Superior Court.

## BACKGROUND

In order to fully respond to the Santa Clara County Civil Grand Jury (“Grand Jury”) report it is important to provide some historical background for the City Council.

City Hall was relocated from its downtown location at Market and San Antonio Streets to the North First and Mission Streets location in the late 1950s. This relocation was approved by the voters in 1952 and in 1955 the voters approved the issuance of general obligation bonds to finance the construction. Construction of this City Hall was undertaken to replace a 68 year old building that was constructed in 1887 and no longer met the needs of the community. Measure Q, approved by the voters in June 1968 defined the boundaries of the Civic Center area and required certain City offices, including City Hall, to be located within the defined boundary unless relocation to another site was first approved by the voters. Measure Q was enacted into law by Ordinance No. 14224.1 and the Civic Center area designated by Measure Q was bounded by Taylor Street, First Street, Hedding Street and the Guadalupe River, encompassing the site of the former City Hall at First and Mission Streets.

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A decision to relocate City Hall from its location at First and Mission Streets required voter approval and Measure I provided a framework in which the City Council could permit the relocation of City Hall to downtown San Jose by amending an ordinance which was enacted in 1968 after the voters prescribed the geographic boundaries in which City Hall could be located.

The City began exploring the need for additional space to accommodate its growing workforce in the mid 1990s. The City Hall located on North First Street was constructed in the late 1950s with the six floor annex being added to the facility in the late 1960s. Since that time, additional space needs were in large part accommodated in leased space. In 1994, the City Council approved funding for the completion of a Civic Center Operations Plan Study. The Study was based on analysis, which indicated that in the long-term, it made economic sense to own rather than continuing to lease space. At this point work commenced on the Strategic Plan for Civic Center Operations.

In August 1996 the City Council approved the following language for a measure to be placed on the November 1996 ballot.

*Without imposing additional taxes or taking money from other city programs, shall Ordinance No. 14224.1 be amended to permit the relocation and consolidation of civic offices in the downtown so long as the costs are paid by using the proceeds from the sale or lease of the old civic complex and other land, savings from the elimination of leased office space, and consolidation of city facilities and services?*

Measure I was approved by the voters in November 1996. Subsequently, the City Council appointed the Civic Center Relocation Task Force (“Task Force”). The role of the Task Force, among other things was to “Review and recommend the financial strategy and other project features including site requirements, building size and structural characteristics which will abide by the economic restrictions provided for in the language approved by the voters in November 1996.” The preliminary Measure I analysis was prepared and presented to the Task Force and the City Council during calendar year 1998 with the City Council’s certification of Measure I in June 1999. Concurrently, and based on the analysis, the Council approved the relocation of City Hall to its now current site on East Santa Clara Street, and approved an interim financing plan. The Measure I financial analysis was recertified in November 2001 after the completion of an updated analysis as the result of an Appeals Court decision which found the use of Redevelopment Agency funds for the land acquisition costs for the new City Hall was not permitted.

The “Certification of Measure I” and approval of the ordinance to allow for the relocation of City Hall could only have occurred if the City Council was able to make two determinations: (1) relocating downtown will cost less than staying in the current facility and continuing to lease office space on a long-term basis (the “Economic Test”) and (2) it will not be necessary to raise taxes or cut City programs in order to fund the project (the “Budget Test”). The Economic Test addressed the question, “Is it cheaper over time to construct a new City Hall or to stay in the existing City Hall and continue to rent office space as needed?” In preparing the analysis with

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respect to the Economic Test it was necessary to compare the costs of relocating City Hall to the long-term savings from eliminating leased office space and proceeds from lease or sale of City property. The Economic Test made its comparison based on a present value analysis<sup>1</sup>.

The Budget Test was based on the Measure I requirement that no additional taxes or taking money from City programs is permitted to pay for a new City Hall. The Budget Test also required a projection over time and was largely prepared by determining the amount of debt service coupled with the operating and maintenance expenses the City could afford to pay based on projected cost savings as specified in Measure I. This demonstration was necessary to show that there was no need to increase taxes or reduce City programs to pay for the costs associated with the new City Hall.

As explained in the attached memorandum (Attachment B) to the City Council from the City Attorney dated May 25, 1999, a formal determination that Measure I tests were met was necessary in order to approve the City Hall project. However, “once the Council makes that determination and approves the project, the project can proceed irrespective of whether some assumption or other later turns out to have been incorrect.”

## ANALYSIS

### Grand Jury Report

The Grand Jury report (Attachment A) is based on the receipt of a citizen’s complaint which was reportedly initiated in part by the recent transfer of the old San Jose City Hall to the Santa Clara County. The Grand Jury conducted a review and the final report, “*San Jose’s City Hall – A Promise Kept or a Promise Broken?*” was provided to the City including findings and recommendations.

As part of the Administration’s response to the findings and recommendations, it is important to correct several factual errors and misinterpretations of available information.

- Misstatement on Page 2 – “*City voters agreed to move City Hall from downtown to North First and Mission Streets in 1957. In 1968 the voters ... required city hall to remain at that location ...*”
  - Clarification – The City’s records have a slightly different historical perspective. In 1952 the voters approved the relocation of City Hall and in 1955 the voters approved a general obligation bond measure to finance the construction of a City Hall at First and Mission Streets. Further, voter action took place in 1968 when City voters approved Measure Q, which defined the boundaries of the Civic Center area and required certain City offices, including City Hall, to be located

<sup>1</sup> Present Value is the value today of a future payment or stream of payments discounted at a compound interest rate or the “discount rate”. The present value method, also called the *discounted cash flow* method is widely used in corporate finance to measure the return on a capital investment project. It is also called the *time value of money*.

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within the defined boundary unless relocation to another site was first approved by the voters. Measure Q did not require that City Hall remain at the First and Mission Street location, rather defined the boundaries where City Hall could be located.

- Misstatement on Page 3 – *“The Build scenario anticipated that nearly all city employees except the Police and Fire Department would be consolidated under one roof ...”*
  - Correction – A significant number of City employees in addition to police and fire employees provide direct community service and were never expected or projected to occupy space in City Hall and were not included in the Measure I space needs analysis. These direct community services include library, parks and recreation staff in community centers and parks, maintenance workers (street, sewer, and parks) and staff located at the Airport and Treatment Plant.
  
- Misstatement on Page 4 – *“Some of the assumptions used to justify the Build scenario were subsequently abandoned after the project was approved. For instance, the sale or lease of old city hall was part of the Measure I argument, with sale proceeds going to help pay for the new city hall.”*
  - Correction – The Measure I analysis never assumed the sale of the old city hall. Measure I did not require the City to use the proceeds from the sale or transfer of City Hall or adjacent property for the pay down of debt issued to construct the existing City Hall. Measure I provided for the use of the sale proceeds as a method to determine the economic feasibility of the project. Additionally, the 2001 updated Measure I analysis removed any assumption of rental income from owned space (former or new City Hall) from the analysis.
  
- Misstatement on Page 5 – *“3,854 non-safety employees”.*
  - Correction -- As noted above, only employees in office space, existing city facilities and leased space were used in the development of the Financial Model to determine future space needs. The 3,854 employees used in the Financial Model included public safety personnel assigned to office space and police officers reporting to Police Administration Building at the beginning of their shifts. Additionally, a significant number of employees are directly deployed in the community to provide services in fire stations, libraries, community centers, parks, and maintenance operations (street, sewers, and parks).
  
- Misstatement on Page 6 – *“The model also assumed the land under both the old and the new city hall would be sold at the end of the review period.”*
  - Correction – In developing a financial model it is very difficult to determine the value of a building 50 years into its useful life, especially one designed to be used as a City Hall. The Financial Model took a conservative approach by assuming only land value as the terminal value of the new and old city halls. This calculation was only performed to determine a final “end value” for the Measure I

analysis. The Measure I analysis never created an expectation or assumption that either site would be sold.

- Misstatement on Page 6 – Table 1: Final Costs of the Civic Center Project
  - Correction -- The final totals for the project are incorrect for the equipment, furniture and relocation costs and the costs to issue bonds. These errors overstate the total cost for the project by \$2,965,196. The errors include adding \$2,962,196 in non-project related costs that were funded from the interest earned on the bond proceeds, but not related to the City Hall project and \$3,000 overstatement of cost to issue bonds. The correct table is presented below.

	<u>Grand Jury</u>	<u>Correction</u>
Land and construction costs	\$310,824,814	\$310,824,814
4th & St. John Streets Garage	37,352,282	37,352,282
Equipment, furniture, relocation costs	39,159,189	36,196,993
Subtotal of direct costs	\$387,336,285	\$384,374,089
Cost to issue bonds for financing	44,656,939	44,653,939
Interest paid during construction	78,199,326	78,199,326
<b>Total</b>	<b>\$510,192,550</b>	<b>\$507,227,354</b>

**Requirements for Response to Grand Jury Report**

The report contains two findings with two corresponding recommendations. The City must respond to each of the findings and recommendations in accordance with California Penal code Section 933.05, which states that the responding person or entity shall indicate one of the following with respect to each finding and recommendation:

*Finding:*

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons thereafter.

*Recommendation:*

1. The recommendation has been implemented, with a summary regarding the implemented action.

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2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters for 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 where 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 therefore.

The Grand Jury report concludes that *“the City has not fulfilled its Measure I promise and in the future City measures should include appropriate safeguards to prevent the City from engaging in the latitude it did with Measure I.”*

### **Grand Jury Findings, Recommendations And City’s Response**

#### **Grand Jury Finding 1**

*The language of the 1996 Measure I seemed clear and simple, a reasonable promise by the City to the voters. However, it failed to provide for long-term accountability to the taxpayers.*

#### **City Response to Finding 1**

The City partially disagrees with Finding 1. The City agrees that the language of the Measure I was clear and simple. As presented to and approved by the voters in 1996, the Measure provided a framework in which the City Council could permit the relocation of City Hall to downtown San Jose by amending an ordinance which was enacted in 1968 after the voters prescribed the geographic boundaries in which City Hall could be located. The City agrees that Measure I did not include a requirement to provide ongoing reporting but disagrees with the premise that the Measure *“failed to provide for long-term accountability to the taxpayers.”* An expectation or requirement was never provided to the residents that an ongoing accounting of the savings from constructing rather than continuing to lease space was to be provided. The analysis undertaken in order to comply with the Measure I requirements was a “point in time analysis”. Development of assumptions and variables was necessary in order to prepare a long-term (50 plus year) economic analysis to determine benefits of relocating/building verses continuing to lease space as required by Measure I. As with any long-term forecasting tool; best case assumptions are developed based on information available at the time. An after the fact analysis of the decision to build is not useful except to inform the next decision to build.

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### Grand Jury Recommendation 1

*The City should ensure that future measures include citizen oversight committees and should require periodic accounting reports to demonstrate compliance with the measure.*

#### City Response to Recommendation 1

The City agrees with Recommendation 1. Periodic accounting reports are valuable in the monitoring of some measures as demonstrated by the provisions in the three General Obligation Bond measures approved by the voters in 2000 and 2002 for libraries, parks and recreation, and public safety project. In these situations, the oversight boards and monitoring to ensure the projects are completed; funds are spent and accounted in accordance with conditions in each general obligation bond measure.

As discussed earlier, the Measure I test and subsequent certification by the City Council was a point in time analysis. Once the City Council made a decision to commence the planning, design, financing and construction of the City Hall project the ability to mitigate any year-to-year variance between the original Measure I Financial Model results from actual results are extremely limited, as are any alternative results. The new building is built; the former building was transferred to the County as part of a tri-party transaction between the City, the Redevelopment Agency and the County.

### Grand Jury Finding 2

*The City can perform a compliance update but has chosen not to certify ongoing compliance of the Civic Center Project to Measure I, meaning taxpayers are not able to determine whether the City met the will of the voters.*

#### City Response to Finding 2

The City disagrees with Finding 2. The will of the voters was met with the certification and recertification of Measure I in 1999 and 2001, respectively. As discussed earlier, the Measure I analysis was a “point in time” analysis similar to when the City Council takes action to approve and certify an Environmental Impact Report (“EIR”). An EIR makes many assumptions about the impact of the development, rate of growth, traffic patterns, and environmental considerations. After a City Council certifies and approves an EIR there is no ongoing requirement to continually update based on changes in conditions.

Ultimate “compliance” with Measure I can only be determined at the end of the term of the original analysis period, which in this case is 2055; fifty years after occupancy of City Hall.



*Grand Jury Recommendation 2*

*The City should commission an independent audit of the project to determine compliance with Measure I.*

City Response to Recommendation 2

The City disagrees with Recommendation 2 and will not implement the recommendation for the reasons discussed below. The City undertook two exhaustive examinations of Measure I and the long-term benefits of owning or continuing to lease necessary space needs in 1999 and 2001. The City Council’s original certification of compliance with Measure I in June 1999 was based upon a detailed financial analysis prepared by PCR Kotin, an independent consulting firm. In order to address the Court of Appeals’ ruling, City staff undertook two updates of the Measure I analysis in November 2001. The first update used the original 1999 financial model assumptions, except that the land acquisition and site delivery costs originally assumed to be funded by the Agency were assumed to be financed with lease revenue bonds. The second update adjusted all of the assumptions and variables in the 1999 financial model with actual 2001 data. Both updated analyses demonstrated that the City would save money building a new City Hall rather than continue to lease office space. The 2001 analysis demonstrated that (i) the City would save taxpayers over \$189 million (net present value) by building a new downtown city hall, and (ii) there would continue to be positive annual cash flow each year over the 50-year useful life of the Project.

However in an effort to review just one of the multitude of variables contained in the Measure I analysis and arguably the variable with the most significant impact on the Measure I analysis, staff contacted a commercial real estate broker, Ritchie Commercial, to conduct a limited survey of rental rates for “Class A” downtown office space. This survey showed a current average annual lease rate of approximately \$31.00 per square foot on an annualized basis. In reviewing the Measure I Model prepared in 2001, based on the assumptions used at that time regarding employee growth and inflation factor, the annualized rental rate for “Class A” downtown office space was projected to be approximately \$56 per square foot in 2013.

While it may appear based on this one variable, one year snapshot it may have been a better decision to continue to lease our space needs this conclusion does not take into account that the decision to continue to lease would have required the City to maintain and/or secure leases for suitable sites and would have likely involved long-term lease negotiations during a period of escalating rents. Additionally, a “snapshot” in time analysis does not take into account other significant changes in the organization and local/national economy since 2001. These significant changes include:

- Significant reduction in number of employees

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- Construction of a Police Substation which will ease the pressures for additional space for police needs once the facility opens
- Outsourcing of custodial services which has reduced the rate of growth in the costs of operating and maintaining the building.
- Lingering recession has reduced lease rates to a level that was completely unpredictable in 2001.

While the severity of the economic recession could not have been predicted the continued low interest rate environment provides an excellent opportunity for the City to refund the bonds issued to finance the construction of City Hall. The Measure I analysis did not model reductions in debt service costs associated with refunding existing debt. Staff is commencing work on refunding the outstanding bonds to provide budgetary relief.

Finally, the updated analysis undertaken in 2001, conducted just two years after the original analysis was completed, was staff intensive, costly and unnecessary. Staff believes given the reduction in both financial and staffing resources undertaking an independent audit to “*determine compliance with Measure I*” is not an efficient use of limited resources, especially since an outcome of “non-compliance” has no viable options to create “compliance”.

#### EVALUATION AND FOLLOW-UP

No additional follow up actions with the Council are expected at this time.

#### PUBLIC OUTREACH/INTEREST

This report does not meet any of the specific criteria outlined below; however by the very nature of the Grand Jury’s report and its release, public outreach requirements have been met.

Additionally, upon approval of this memorandum by the City Council, the City Attorney will submit the memorandum to the presiding judge of the Superior court, as required under Penal code Section 933(c).

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office.

**CEQA**

Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos.

/s/

JULIA H. COOPER  
Acting Director, Finance

Attachments (2)

For questions please contact Julia H. Cooper, Acting Director of Finance at 535-7011



June 13, 2012

Honorable Chuck Reed  
Mayor  
City of San José  
200 East Santa Clara Street  
San Jose, CA 95113

Dear Mayor Reed and Members of the City Council:

Pursuant to Penal Code § 933.05(f), the 2011-2012 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **San Jose's City Hall – A Promise Kept or a Promise Broken?**

**Penal Code § 933.05(f)**

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. **Leg. H.** 1996 ch. 1170, 1997 ch. 443.

This report will be made public and released to the media on **Tuesday, June 19, 2012**, at **1 P.M.** If you have any questions please contact Gloria Alicia Chacón at: 408-882-2721.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn G. Janoff". The signature is fluid and cursive, written over a light background.

KATHRYN G. JANOFF  
Foreperson  
2011-2012 Civil Grand Jury

KGJ:dsa  
Enclosure

cc: Ms. Debra Figone, City Manager, City of San Jose



## 2011-2012 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

### SAN JOSE'S CITY HALL – A PROMISE KEPT OR A PROMISE BROKEN?

#### Summary

The Grand Jury received a citizen's complaint, stimulated in part by the recent transfer of San Jose's old city hall to Santa Clara County, detailing concern about the 1996 Ballot Measure I. The complaint raised concern over whether the new San Jose City Civic Center was constructed with a revenue scheme as prescribed by Measure I. If so, is the project in compliance in 2012?

#### Background

For the purposes of this report, the reference to the new city hall is defined as an 18-story office building, rotunda and council chambers on 4.3-acres of a 32 acre site at 200 E. Santa Clara Street. The old city hall includes a 2 to 6-story office building on 10 acres at 801 N. First Street.

The City of San Jose's (the City) new city hall within the overall Civic Center Project was to have been financed under restrictive conditions and requirements. What began as a practical and affordable upgrade of the old city hall building at Mission and North First Streets turned into a new build project. As the cost grew, so did doubts about the City's ability to meet the Measure I criteria. The 1999-2000 Grand Jury first raised doubts about the City's ability to meet the voters' financial expectations of Measure I, requesting an independent audit at that time. The City's 2000 response was to not implement the Grand Jury's recommendation because it was "not warranted."<sup>1</sup>

By law,<sup>2</sup> there were only two ways to pay for the new city hall:

- Proceeds from leasing or selling city-owned property
- Savings from using city-owned, rather than leased, office space.

The City was prohibited from using new taxes for the project, and from diverting tax revenues from other uses.

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<sup>1</sup> Refer to Appendix A for the 1999 – 2000 Grand Jury Report and the City's response.

<sup>2</sup> Measure I, when approved, became San Jose City Ordinance 25224.

The new city hall complex has been open for business for seven years now. Virtually all the construction bills have been paid, all the departments have settled into their assigned offices, and the final cost of the project is known. Thus the City does not currently need to lease commercial space anymore to accommodate the new building's tenants.

So, is the project being paid for as promised by Measure I? The City of San Jose cannot answer this question. When asked, the City has again dismissed the Grand Jury's concerns about the issue. However, based on our investigation, the Grand Jury believes the new Civic Center Project does not currently comply with the 1996 intent of the voters or the language of Measure I.

City voters agreed to move City Hall from downtown to North First and Mission Streets in 1957. In 1968 the voters passed Measure Q, which required the city hall to remain at that location, unless the voters again approved another move.

In 1994, the City determined it was using too much rented office space. A study was conducted to compare the economies of continuing to rent with those of purchasing office space. After a lengthy study,<sup>3</sup> in June 1996, it was reported to the City Council that city-owned office space would be cheaper over the long run. The City then prepared to proceed with implementing Measure I. One of the first steps was a financial "snapshot" of present and estimated future financial conditions to certify compliance with the intent of Measure I. The City's voluntary compliance reporting was done in 1999 and again in 2001.<sup>4</sup> These compliance studies consisted of preparing a set of assumptions for either expanding on site, the "Remodel" scenario, or relocating downtown to a new building, the "Build" scenario.

Because of this rapid growth and in response to the requirements of Ballot Measure Q, Measure I asked San Jose voters to permit the construction of a new city hall somewhere in the downtown area:

Without imposing additional taxes or taking money from other city programs, shall Ordinance No. 14224.1 be amended to permit the relocation and consolidation of civic offices in the downtown so long as the costs are paid by using the proceeds from the sale or lease of the old civic complex and other land, savings from the elimination of leased office space, and consolidation of city facilities and services?

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<sup>3</sup> "Strategic Planning: Phase One San Jose Civic Operations Master Plan," Simon Martin-Vegue, Winkelstein Moris, Sedway Kotin Mouchly Group and The Steinberg Group, 1996.

<sup>4</sup> City of San Jose, City Council Presentation, Updated Measure I Analysis, November 6, 2001.

The language in this ballot measure seemed clear and easy to accept.<sup>5</sup> There was to be a balance of costs incurred and revenues generated. The measure passed with over sixty percent of the tally. As a result of that vote, the City explored several options, including remodel of existing, purchase existing or build new facilities. The City decided to build a new city hall at 200 East Santa Clara Street. The building opened for business in 2005.

## **Methodology**

The Grand Jury interviewed elected and appointed officials knowledgeable about Measure I regarding the development of the new Civic Center project. Those interviewed included the Mayor of San Jose, the San Jose City Manager, County Fleet and Facilities Manager, a former City Councilmember, the Acting Finance Director, a former General Services Administrator, and the City Attorney.

The Grand Jury reviewed numerous documents related to the Civic Center Project. The bibliography for this report includes these reports as links. The Grand Jury also asked the City to provide documentation on several aspects of the project. Members of the Grand Jury conducted a site survey of the old and new city halls, a real estate parcel near old city hall referred to as "Lot E," and the old City Hall Annex. See Appendix B for a list of documents reviewed.

## **Discussion**

In 1996, Measure I did not ask voters how much could be spent on this project, but they did specify how it would be funded. In November 2001 the City decided that current and forecast economic conditions allowed construction of the planned city hall could be built while complying with the requirements of Measure I. Since then, the City of San Jose has not made any public effort to report on the plain language requirements of the 1996 ballot measure. Since then no sales of real estate have been made explicitly to help pay off the cost of the building.

Both the Remodel and Build scenarios anticipated a growing workforce that would someday fill any new city hall to capacity. The Remodel scenario included updating the existing building at 801 N. First Street and continuing to lease commercial space for 55 years as the workforce grew over time.

The Build scenario anticipated that nearly all city employees except the Police Department and Fire Department would be consolidated under one roof in a new building, along with a separate parking garage at a site somewhere downtown. It also included a remodel of the old city hall. The 2001 analysis confirmed the earlier

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<sup>5</sup> San Jose Mercury News, Scott Herhold, "Bid to Move City Hall Downtown Would Rectify a 1950s Mistake," October 29, 1996, morning final, page 1A.

compliance and the City Council approved a budget figure of \$325M for the project. The City hired an outside consultant experienced in the economic analysis of municipal projects to create a model of the possible outcomes of the project.

From the available data collected in 2000, the consultant created projections that showed owning office space made economic sense. The money saved from not leasing commercial space along with the sale proceeds from Lot E would more than balance the costs of constructing and financing a new building. Using this data, the City Finance Department made a presentation to the Council in support of relocating to downtown<sup>6</sup>.

The Director of Finance at the time assured the City Council, "the Budget Test shows that . . . the City is within a comfortable cash flow margin to meet the Budget Test"<sup>7</sup> and concluded that, all things considered, the City would save an estimated \$189M with the proposed building instead of leasing office space during the same period of 55 years. To its credit, the City Council gave a lot of thought to the requirements of the 1996 Measure I ballot measure. The 2001 projections indicated that, within what then seemed to be a reasonable range, the savings would exceed the costs of construction, justifying the Build scenario.

In hindsight, these projections seem overly optimistic. They were done during a period of sustained local growth and prosperity. Their assumptions did not take into account the possible collapse of the "dot-com boom." The economic conditions for the City and all of "Silicon Valley" turned out to be quite different from any of the projections, but that was all in the future when City Council signed off on the project in 2001. That was the last time the City reported or analyzed its compliance with the language of Measure I and the intent of the voters. From 2002 through 2011, San Jose would suffer total annual General Fund shortfalls of anywhere from \$19.9M to \$118.5M dollars.

### **Old City Hall**

Some of the assumptions used to justify the Build scenario were subsequently abandoned after the project was approved. For instance, the sale or lease of the old city hall was part of the Measure I argument, with sale proceeds going to help pay for the new city hall. According to the Build scenario, this building was to have been refurbished, put back to work as City-owned office space once the new city hall was occupied. The land was planned to be sold in 2006. Instead, the building was padlocked and remained empty and essentially abandoned at a reported annual on-going cost of \$250,000.<sup>8</sup>

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<sup>6</sup> City of San Jose, City Council Presentation, Updated Measure I Analysis, November 6, 2001.

<sup>7</sup> Director of Finance John Guthrie, Letter to City of San Jose City Council, City Hall Relocation Economic Analysis – Update, May 28 1999, p. 3.

<sup>8</sup> According to the County Facilities and Fleet estimate.



In 2011, the City transferred the old city hall to the County of Santa Clara in exchange for a \$10M credit on a Redevelopment Agency debt unrelated to the new civic center project.<sup>9</sup> For members of the public who were expecting this property to make a significant contribution toward payoff of the project, the low selling price and that it was transferred without offsetting any costs of the Build, was a surprise and disappointment that was widely discussed in news media. According to City officials, the property's value had been assessed in 2006 in the range of \$30-40M, close to 10% of the estimated total project cost for new city hall. But in the end, the old city hall contributed nothing directly to paying for the project because the transfer was entirely unrelated to Measure I in any reports or statements by the City, and even the \$10M was offset by \$1.6M in carry costs while the old building was held vacant for the past seven years.

## **2001 Assumptions and Predictions**

### **Project Cost and Financing**

The City wanted to spend over \$500M for the new city hall project. In order to have the City Council certify compliance with Measure I, the City needed to demonstrate the project could generate revenues and savings to cover the costs. This is a review how the City proposed to meet those costs.

The project assumed that all non-public safety city workers would be consolidated into the new City Hall and that after the building became full, space in a refurbished old city hall would be used for the overflow. When the financial model was created the following assumptions existed:

- 298,000 square feet of leased commercial space
- \$42.00 per-square-foot annual lease cost
- 3,854 non-safety city employees
- \$10.73 per square foot for operating and maintenance costs.

To these assumptions the following adjustments would be made through the 55-year life of the project (5 years of construction plus a 50-year life):

- 3.0% yearly inflation
- 1.0% annual growth in non-safety city workers.

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<sup>9</sup> Santa Clara County, Office of the County Counsel, FORM DEED OF TRUST, between the Redevelopment Agency of the City of San Jose and the County of Santa Clara County, March 16, 2011.

Some additional factors were in a way "fixed" in their use:

- 300 square feet of space per employee
- 4.75% discount rate (to bring costs in the future to a value in 2000)
- 4.0% - 4.75% Borrowing Costs
- \$32.1 M sales of lot "E."

The construction assumptions were:

- \$244M City Hall
- \$44M Parking Facility
- \$49.7M Land Acquisition.

The model also assumed the land under both the old and new city hall would be sold at the end of the review period. Since the model is unavailable, some of the financing cost assumptions are not known.

The Grand Jury read numerous reports on the project and asked for clarification from several City departments. The Grand Jury gleaned from these various reports the costs shown in Table 1.

**Table 1: Final Costs of the Civic Center Project**

Land and construction costs	\$310,824,814
4 <sup>th</sup> and St. John Streets Garage	\$37,352,282
Equipment, furniture, relocation costs	\$39,159,189
Subtotal of direct costs	\$387,336,285
Cost to issue bonds for financing	\$44,656,939
Interest paid during construction	\$78,199,326
<b>Total</b>	<b>\$510,192,550</b>

## **Measure I Financial Background**

Construction and related costs were financed by bond issues in 2002 and other borrowings. Initially some of the site acquisition and development costs were financed by \$36M of tax increment Redevelopment Agency funds. However, the Sixth District Court of Appeal later ruled that tax increment dollars could not be used for this purpose and the funds were ordered returned to the agency, with interest. These costs were then rolled into the bond funding. The initial borrowings were refinanced in 2008 at lower rates.

The building was completed and occupied in 2005 at a total cost of \$510M. These costs include the building, an additional parking garage, fixtures, financing and interest during construction.

Since that analysis, the following is known:

- Lot E remains unsold
- The old city hall was transferred to Santa Clara County
- The city workforce has not grown but remained close to the original number of employees
- Lease rates over the period declined.

These factors resulted in a loss of planned revenue that the original analysis counted on. The exact losses are unknown, and unless the City updated its analysis since 2001, the taxpayers are not able to determine whether the City met its commitment to Measure I.

## **City Responses to the Grand Jury's Questions**

After studying the issues regarding Measure I compliance today, and interviewing elected and appointed senior officials, the Grand Jury formally asked the City of San Jose administration four basic questions about the Civic Center project:

- What was the final true construction cost?
- What was the cost of the financing?
- How do the 2001 economic projections compare to the 2011 real-world experience?
- Is the Civic Center project paying for itself with savings as required by Measure I?

The City provided the Grand Jury with a written response on January 20, 2012 and provided a number for the total construction cost and the amount of the project's financing costs. The City did not have an answer to the next two questions and indicated that it would not use City resources to determine the cost effectiveness of the building.

### **A Broken Promise?**

When voters approved Measure I in 1996, the proposal seemed clear and simple, a reasonable promise by the City to the voters. Today, the result is a completed project, paid for in ways that seem disconnected from the clear intent of the 61% of the voters who approved it. However, a reasonable voter who remembers what was originally promised and knows what was actually delivered has to wonder, if this is the way public projects should be built?

The new civic center project was apparently completed legally, and the 2001 certification of compliance was done in good faith. The City was committed to completing the building in spite of obviously changing economic conditions. Once certified as compliant in 2001, the City of San Jose appears to believe it had no further obligation to ever report to the voters again on the issue. The Grand Jury asked for an accounting of revenues from real estate sales and leases specifically connected to the project and none have been provided.

Now that the project is complete, the building itself seems entirely successful as a home for government – just the showpiece the City Council approved in 2001. But the City of San Jose cannot demonstrate that it was constructed in compliance with its promise to the voters who authorized the project only under very limited financial criteria.

It is common for ballot measures involving large expenditures to include provisions for citizen oversight to ensure that the intention of the voters is observed. For example, the 1996 Santa Clara County Measure B Transportation Improvement Program imposed an additional half-percent sales tax that raised \$2B for road, rail, and other transit projects. Built into Measure B was a detailed citizen oversight process that monitored the expenditure of the monies collected. A similar oversight program could have been included in Measure I, but was not.

## Conclusions

The reported total cost to the City to build city hall was \$510M. Measure I required that this cost would be paid by using the proceeds from the sale or lease of the old civic complex and other land, savings from the elimination of leased office space, and consolidation of city facilities and services. The City spent the money but has not provided the taxpayers with the final accounting, or an interim accounting if the financial analysis period runs for 40 more years. The City has stated they do not intend to produce any future report. This determination to not report is important, because if taxpayers are to trust the City with future decisions of a similar matter, there is no credibility for the voters to grant the City that privilege in the future. Voters understand circumstances will change, but to avoid the conversation with taxpayers is disingenuous to the intent of the Measure.

The new Civic Center Project authorized by the 1996 ballot measure is a case study of good intentions. What began as a reasonable upgrade of the old city hall appears to have become a project that was far beyond what the voters intended. At \$178M, as initially estimated in 1997, the new Civic Center Project would probably have been entirely compliant with Measure I and the resources would probably have balanced the costs. But as the project became more ambitious and expensive, and as economic conditions continued to deteriorate, the resources available to cover its costs remained static or declined. Even using the City's model that looked out 55 years, it became apparent before construction began that real-world revenues were not going to match real-world costs.

Measure I was concise and clear. Although the Measure failed to detail safeguards, limits and controls, voters expected that the City would do what was necessary to fulfill the promise of Measure I. This did not happen. Rather, it appears that the City feels it had the latitude to broker the new Civic Center Project, notwithstanding the simple intent of Measure I. The Grand Jury concludes the City has not fulfilled its Measure I promise and in the future City measures should include appropriate safeguards to prevent the City from engaging in the latitude it did with Measure I.

## **Findings and Recommendations**

### **Finding 1**

The language of the 1996 Measure I seemed clear and simple, a reasonable promise by the City to the voters. However, it failed to provide for long-term accountability to the taxpayers.

### **Recommendation 1**

The City should ensure that future measures include citizen oversight committees and should require periodic accounting reports to demonstrate compliance with the measure.

### **Finding 2**

The City can perform a compliance update but has chosen to not certify ongoing compliance of the Civic Center Project to Measure I, meaning taxpayers are not able to determine whether the City met the will of the voters.

### **Recommendation 2**

The City should commission an independent audit of the project to determine compliance to Measure I.

# Appendix A: 1999 - 2000 Santa Clara County Civil Grand Jury Report and the City of San Jose Response

## 1999-2000 SANTA CLARA COUNTY CIVIL GRAND JURY

### INQUIRY INTO ECONOMIC EVALUATION OF THE COST OF RELOCATING SAN JOSE CITY HALL TO THE DOWNTOWN AREA

#### INTRODUCTION

After receiving complaints from the public and based on concerns of the citizens of the City of San Jose regarding the relocation costs of City Hall, the Santa Clara County Civil Grand Jury initiated an inquiry into the requirements San Jose must meet to move City Hall to downtown San Jose.

The voters of San Jose passed Measure I that would permit the relocation of City Hall to downtown San Jose. However, a covenant was included in the measure that said "no additional taxes are imposed; and no money is taken from other city programs for this purpose."

#### DESCRIPTION

Since Measure I was passed, significant study and redesign of the proposed facility has occurred. Also, since that measure was passed, an additional bond request has been made for \$32 million to cover the cost of the additional design and improvements. There is high probability that the costs of the project have escalated. The measure stipulated that the cost of the building and moving City Hall from its present location must be essentially neutral.

#### FINDINGS

The city's use of a 50-year timeline for debt amortization does not conform to general accounting practices or the federal government guidelines. The City has indicated to the public that all conditions on Measure I have been met. Since the original cost estimate, new designs have been advanced for the facility. No evaluation of

costs based on the new design has been published to date.

#### CONCLUSIONS

- The additional costs, including the bond request and the corresponding design changes, lead the Grand Jury to believe that the cost of the proposal is escalating. It is difficult to determine the actual costs of the project until the design element has been completed.

- Based on the facts stated above, the Civil Grand Jury of Santa Clara County has determined that a financial analysis should be conducted of the projected cost and funding sources required to construct the proposed new City Hall for the City of San Jose. A detailed analysis should include the reasonableness of the assumption, the projected impact on operating the proposed new square footage of office space compared with the existing owned and leased space being replaced, and other pertinent issues. It is within the purview of the Grand Jury to request that an independent, detailed and objective economic analysis be performed.

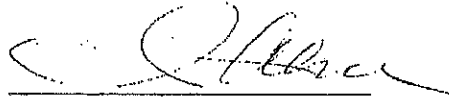
#### RECOMMENDATION

The Santa Clara County Civil Grand Jury recommends that the City Manager of the City of San Jose engage an independent firm to prepare and publish an objective cost analysis of the relocation of the City Hall project. The report should be issued before the elections of November 2000.

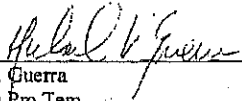
JUL 3 2000

RENE ...AVIS, County Clerk-Recorder  
Santa Clara County  
By \_\_\_\_\_ Deputy

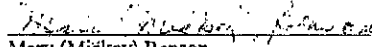
PASSED and ADOPTED by the Santa Clara County Civil Grand Jury this 11<sup>th</sup> day of May, 2000.



I. Alne  
Foreperson



Michael V. Guerra  
Foreperson Pro Tem



Mary (Mickey) Benson  
Secretary





RICHARD DOYLE  
City Attorney

CITY OF SAN JOSÉ, CALIFORNIA  
OFFICE OF THE CITY ATTORNEY

151 WEST MISSION STREET  
SAN JOSE, CALIFORNIA 95110  
Telephone (408) 277-4454  
Facsimile (408) 277-3159  
Direct Line (408) 277-2432

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GRAND JURY

September 20, 2000

Honorable Jack Komar, Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, California 95113

**Re: Response to Grand Jury Report on New City Hall**

Dear Judge Komar:

Pursuant to Penal Code Section 933.05, this letter is in response to the 1999-2000 Santa Clara County Civil Grand Jury report entitled "Inquiry into Economic Evaluation of the Cost of Relocating San Jose City Hall to the Downtown Area", which was received by the City on June 28, 2000. That report recommended that the City Manager "engage an independent firm to prepare and publish an objective cost analysis of the relocation of the City Hall project."

The City has already caused an objective cost analysis prepared by an "independent firm" to be completed. That objective, independent analysis, prepared by the firm of PCR/Kotin, establishes that the City can relocate City Hall downtown consistent with Measure I -- the initiative ordinance approved by San Jose voters in 1996 that authorizes the relocation of City Hall downtown if certain financial parameters are met.

As you may know, the City's cost analysis was challenged in the case of *Albert Ruffo, et. al. v. Redevelopment Agency of the City of San Jose, et. al.*. In the *Ruffo* case, the City submitted extensive evidence regarding the independent, objective cost analysis. Based upon this evidence, the Santa Clara County Superior Court held that the City's relocation plan does not violate Measure I. Plaintiffs' appeal from the judgment is currently pending. We expect the appellate court to decide the case in the next few months and fully expect the Superior Court's judgment to be affirmed.

We are surprised that the Grand Jury would interject itself into a matter that is the subject of a judgment in the above-referenced litigation, let alone a matter in which an appeal is currently pending.

Honorable Jack Komar  
September 20, 2000  
Page 2

In any event, I am compelled to correct some factual errors in the Grand Jury's report. First, the statement that there has been "an additional bond request for \$32 million to cover the cost of the additional design and improvements" is incorrect. As the City Council record establishes, the City has always intended to issue bonds for this Project in two phases. The bond initial issue is to finance design and other costs during the pre-construction period, and a second issue will be sold at the time the construction bids are to be let. Consistent with that plan, the City of San Jose Financing Authority issued Lease Revenue Bonds in the amount of \$31.5 million on June 22, 2000.

Second, the above mentioned bonds have an amortization period of 30 years, as will those proposed to be issued in 2002 for construction of the Project, and not 50 years as the report seems to assume. The Grand Jury has confused the fact that the useful life of a building is 50 years, while the amortization of the debt is 30 years. The analysis of compliance with the financial parameters of Measure I was based upon the 50-year useful life of the building, while also taking into account that the amortization period of the bonds would only be 30 years. As such, the City respectfully disagrees with the finding of the Grand Jury that the "50 year timeline for debt amortization" is inappropriate.

Finally, the City Council is expected to consider, in a public meeting, an evaluation of costs based on the ongoing design process within the next several weeks. The revised estimates are within the Measure I requirements.

Based on the above explanations, the City will not be implementing the Grand Jury's recommendation in this matter because it is not warranted.

Sincerely,



Richard Doyle  
City Attorney

PAD/aks

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## Appendix B: List of Documents Reviewed

- City of San Jose, Ordinance No. 14224.1, Determining The Location Of City Hall, June 4, 1948
- City of San Jose, City Clerk's Office, N SC Ballot Type 056 – Page 040-053 (1996 ballot measure and supplemental text as delivered to voters)
- City of San Jose, Minutes of the City Council, December 3, 1996, "Strategic Planning: Phase One San Jose Civic Operations Master Plan," Simon Martin-Vegue, Winkelstein Moris, Sedway Kotin Mouchly Group and The Steinberg Group, 1996
- City of San Jose, Council Agenda: 6/1/99, Item 11D(1) Memorandum from John Guthrie, Director of Finance, to Mayor and City Council (City Hall Relocation Economic Analysis Update) May 28, 1999
- City of San Jose, Minutes of the City Council, Tuesday, June 8, 1999, Item 15a, Public Hearing On Appeal Of The Certification by the Planning Commission of the EIR
- City of San Jose, City Council Presentation, Updated Measure I Analysis, November 6, 2001.
- City of San Jose, Minutes of the City Council, November 6, 2001.  
[http://www.sanjoseca.gov/clerk/2001\\_CnclMins/11\\_06\\_01min.htm](http://www.sanjoseca.gov/clerk/2001_CnclMins/11_06_01min.htm)
- City of San Jose, Memo and Draft Resolution from Mayor Gonzales et. al., to City Council Regarding the New Civic Center Project, May 14, 2002.  
[http://www.sanjoseca.gov/clerk/agenda/5\\_14\\_02docs/5\\_14\\_02\\_4.2\\_NewCivicCenter.htm](http://www.sanjoseca.gov/clerk/agenda/5_14_02docs/5_14_02_4.2_NewCivicCenter.htm)
- City of San Jose, SJFA Agenda: 10-15-02, Memorandum from Scott P. Johnson and Katy Allen to Mayor and City Council and City of San Jose Financing Authority Board, Civic Center Project Lease Revenue Bonds, October 9, 2002.
- City of San Jose, Office of the City Manager, Manager's Budget Addendum #8, May 17, 2006. <http://www.sanjoseca.gov/budget/fy0607/MBA/MBA08.pdf>
- City of San Jose, New City Hall Fact Sheet, December 11, 2011.
- Walton, M., June 20, 1997, Coming Soon: S. J. City Hall? Fast Action: The Council Has Ok'd A Proposed Site But Some Opposition To The Move Remains, *San Jose Mercury News*.
- Herhold, S., October 29, 1996, "Bid To Move City Hall Downtown Would Rectify A 1950s Mistake," *San Jose Mercury News*.

## Appendix B – continued

Santa Clara County 1999-2000 Civil Grand Jury, Final Report, "Inquiry Into Economic Evaluation of the Cost of Relocating San Jose City Hall to the Downtown Area," July 3, 2000. Also the City of San Jose's Response to this report.

Santa Clara County, Office of the County Counsel, Form Deed Of Trust, between the Redevelopment Agency of the City of San Jose and the County of Santa Clara County, March 16, 2011.

Superior Court of California, County of Santa Clara, Stipulation By All Parties For Judicially-Supervised Settlement And [Proposed] Order, County of Santa Clara vs. City of San Jose, Redevelopment Agency of the City of San Jose, March 9, 2011.

Court of Appeal, Sixth District, California; Albert Ruffo, et al. Plaintiffs and Appellants v. Redevelopment Agency of The City of San Jose, May 1, 2000.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 3<sup>rd</sup> day of May, 2012.

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Kathryn G. Janoff  
Foreperson

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Alfred P. Bicho  
Foreperson pro tem

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James T. Messano  
Secretary

COUNCIL AGENDA: June 1, 1999

Attachment B

ITEM NUMBER: 11 d(2)

**CITY OF SAN JOSÉ - MEMORANDUM**

cd/8/99  
15d

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** JOAN R. GALLO  
City Attorney

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15546

**SUBJECT:** Analysis of Measure I

**DATE:** May 25, 1999

**BACKGROUND**

On June 4, 1968, the voters of San Jose approved an initiative ordinance, referred to as Measure Q, which required that City Hall be located in that area bound by Taylor Street, First Street, Hedding Street and the Guadalupe River, unless another location is approved by the voters. The Measure Q ordinance defined City Hall as the principal meeting place of the City Council, as well as the offices of the Mayor, the City Manager and the principal administrative offices of at least a majority of departments of the City.

On November 5, 1996, the voters of San Jose approved another initiative ordinance, referred to as Measure I, which amended the Measure Q Ordinance to provide that City Hall could be relocated Downtown if certain financial conditions can be met. The Measure I Ordinance defines the area to which City Hall could be relocated as that area bounded by I-280, Tenth Street, Taylor Street, and the Guadalupe River. The text of the actual Measure I Ordinance as well as the ballot analysis and arguments for and against it are attached.

Since January of 1997, City staff has been studying the feasibility of constructing a new City Hall on the southside of Santa Clara Street, between Fourth and Sixth Streets. As part of this analysis, a Financial Model was constructed to determine whether the proposed project meets the financial conditions set forth in Measure I Ordinance. This analysis, including an in-depth explanation of the Financial Model, was presented to the City Council on September 22, 1998, in a report prepared by the City's Finance Department entitled "City Hall Relocation Economic Feasibility Report". The Model demonstrated that City Hall could be relocated Downtown within the financial parameters of the Measure I Ordinance.

The City Council directed staff to continue the planning process related to a proposed new downtown City Hall, including the continuous monitoring of economic and other conditions that could affect the assumptions in the Model, and to bring the proposed project back for Council consideration when the Environmental Impact Report for the Civic Plaza Redevelopment Area, which includes the proposed City Hall site, was completed. The EIR and the Civic Plaza Redevelopment Plan are now before the City

HONORABLE MAYOR AND CITY COUNCIL  
RE: Analysis of Measure I  
May 25, 1999  
PAGE 2

Council for consideration and, therefore, staff is presenting the information necessary to enable the City Council to consider the approval of the new City Hall project.

In order to approve the proposed City Hall relocation, the City Council will need to certify that it meets the conditions set forth in the Measure I Ordinance. The purpose of the Financial Model is to provide the information necessary for the Council to determine whether it can make that certification. The assumptions contained in the Financial Model have been updated to reflect changes in economic and other conditions that have occurred since September 1998, and are discussed in a separate report from the Finance Department.

The purpose of this memorandum is to provide a legal analysis of the parameters of the Measure I Ordinance and to explain how those parameters are reflected in the Financial Model.

## ANALYSIS

### A. Measure I Requirements.

The voters in approving Measure I adopted an ordinance. The actual Measure I Ordinance language provides that City Hall must remain in the current Civic Center area unless it is relocated to the specified downtown area and :

" . . . the costs of the relocated civic center facilities are paid for using the proceeds from the sale or lease of the old civic center complex and/or other land, savings from the elimination of leased facilities, and the consolidation of city facilities and services; and no additional taxes are imposed; and no money is taken from other city programs for this purpose..."

This Ordinance allows the decision to approve the relocation of City Hall to occur only if the Council can make two determinations: (1) relocating downtown will cost less than staying in the current facility and continuing to lease office space on a long-term basis (the Economic Test), and (2) it will not be necessary to raise taxes or cut City programs in order to fund the project (the Budget Test).

#### 1. The Economic Test.

The Economic Test is a shorthand way of referencing the requirement in the Measure I Ordinance that

HONORABLE MAYOR AND CITY COUNCIL

RE: Analysis of Measure I

May 25, 1999

PAGE 3

"the costs of the relocated civic center facilities are paid for using the proceeds from the sale or lease of the old civic center complex and/or other land, savings from the elimination of leased facilities, and the consolidation of city facilities and services;.."

It is intended to address the question, "Is it cheaper over time to construct the proposed new City Hall, or to stay in the existing City Hall and continue to rent office space as needed?" In order to answer that question, the costs of relocating the civic center facilities must be compared with the long-term savings from the elimination of leased office space and proceeds from the lease or sale of City property. Since both the costs of the relocated civic center facilities and the savings from the elimination of leased space are actually fully realized only in the future, it is the present value of aggregate costs compared to the present value of the aggregate savings which must be compared for purposes of the Measure I Ordinance. Therefore, the Economic Test makes its comparison based on a present value analysis.

The financial constraints contained in the Measure I Ordinance apply only to the City's costs, revenues and savings, and do not require an analysis of any other private or public sources of revenue or expenditures. However, in determining the anticipated cost of the proposed Downtown City Hall project, the Model includes the entire public expenditure, including the land assembly and other costs of the Redevelopment Agency, even though the Agency, as a separate legal entity, is not subject to the Measure I Ordinance. Furthermore, since the Agency plans include assembling the site for redevelopment regardless of whether it is used for a new City Hall or a new private office complex, the cost of the site is not actually a cost attributable to the City Hall project. Nevertheless, the total project cost of \$214,443,000 used in the Economic Test reflects the Agency's expenditures to acquire and clear the site and other offsite improvements. The costs associated with the construction of the City Hall, excluding the Agency expenditures, are \$178,500,000. Therefore, by including the Agency costs, the total project costs reflect an amount significantly higher than the amount legally required to be considered in order to meet the Economic Test.

Although the Measure I Ordinance allows the use of proceeds from the sale of any City land to support the relocation cost, the Financial Model presented by staff includes only the proceeds from the sale of the "E" parking lot located near the existing City Hall. The Model does not include any projected proceeds from the sale of any other City land, although such sales are occurring and the funds received could be attributed to the calculation. Of course, the sale of existing City Hall is not included because no such sale is being considered.



The Measure I Ordinance also allows the efficiencies of consolidation to be taken into account on the savings side of the equation. However, because of the difficulty in quantifying these savings, they were also not included in the Model.

The cost of the proposed Downtown City Hall project must be compared to the projected savings from the elimination of leased space, revenues received as a result of the lease and sales of land, and other cost savings attributable to the relocation. From a legal perspective the Model technically has overstated the cost side of the equation and understated the savings side of the equation. Nonetheless, the Model shows even under these circumstances that the present value of the cost to relocate City Hall downtown is significantly less than the present value of the cost to remain in the current facilities and continue leasing. This positive differential meets the Economic Test requirement.

## 2. The Budget Test.

The Budget Test is based on the prohibition in the Measure I Ordinance against imposing additional taxes or taking money from City programs to pay for the new Downtown City Hall. Like the Economic Test, the Budget Test requires a projection over time. The Budget Test analysis basically determines the amount of debt service the City can afford to pay based on the projected cost savings specified by the Measure I Ordinance. In other words, it is necessary to establish that the City can afford to pay the debt service resulting from the relocated civic center facilities from the sources of savings delineated in the Ordinance to demonstrate that there will be no need to increase taxes or reduce City programs to pay for the debt service.

The Model presented by staff shows that the debt service on the cost to relocate City Hall can be paid by the savings from the elimination of leased office space, the sale of the "E" lot and the revenue from the lease of excess City space created by the relocation. Again, this is a somewhat conservative analysis because it does not include all allowable revenues and, therefore, builds in allowance for a larger margin of error.

## 3. Measure I Determination

The Council must make a formal determination that the Measure I Ordinance tests are met in order to approve the City Hall project. Once the Council makes that determination and approves the project, the project can proceed irrespective of whether some assumption or other later turns out to have been incorrect.

B. Other Measure I Issues.

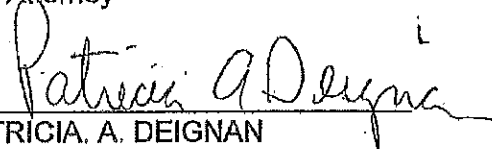
1. The Measure I Ordinance does not require that, if a new City Hall is constructed downtown, all departments must move Downtown. Certainly many functions, such as the Airport; the Water Sewage Treatment Plant and recreational programs will continue to be housed elsewhere. The Ordinance maintains the original Measure Q requirement that the principal meeting place of the City Council, as well as the offices of the Mayor, the City Manager and Department heads of at least a majority of City Departments be housed at City Hall. However, both the motivation for Measure I and the Economic Test envision consolidation to the extent practicable.
2. The Measure I Ordinance does not apply at all if the Council Chambers, Mayors Office, City Managers Office and a majority of Department Heads remain at the current City Hall. In other words, a City-owned office complex could be constructed Downtown, or anywhere else in the City, without obtaining voter approval or meeting any financial feasibility requirements, as long as those delineated "City Hall" functions remained in the current Civic Center area.
3. The Measure I Ordinance does not require that the proposal to relocate City Hall downtown be the least expensive alternative available. It does not require a comparison of the cost of building a new facility in the Civic Center area. However, in the Economic Feasibility Report, such an alternative was studied in order to allow the Council to consider that information in making its decision.
4. The Measure does not require the City to sell or lease the existing City Hall. It merely allows the proceeds of any such a sale or lease to be used in determining the economic feasibility of the project. There is no plan to sell City Hall and, therefore, sale proceeds are not included in the Model. However, the Model does factor in proceeds from leasing a steadily declining portion of the building based on the assumption that when the building is first vacated a portion of it will be leased out, but as employee growth occurs, City staff will gradually reabsorb the space.

HONORABLE MAYOR AND CITY COUNCIL  
RE: Analysis of Measure I  
May 25, 1999  
PAGE 6

**CONCLUSION**

We have carefully reviewed the Financial Model in detail and can advise you that the legal requirements of the Measure I are met.

JOAN R. GALLO  
City Attorney

By:   
PATRICIA A. DEIGNAN  
Sr. Deputy City Attorney

cc: Debra Figone

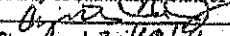
The foregoing instrument is  
a correct copy of the original  
on file in this office.

Attest:

DENNIS HAWKINS

City Clerk  
City of San Jose

County of Santa Clara, State of California

By:  Deputy

Date: 12/18/99