

October 12, 2011

FILED

OCT 13 2011

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 Reports

Dear Judge Loftus:

Pursuant to California Penal Code section 933, et seq., please accept the City's response to the 2010-2011 Santa Clara County Civil Grand Jury Report, "Rehiring of Pensioners: Bad Policy, Good Business or Both." The approved City responses 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

Encl.

cc: Debra Figone, City Manager
Jennifer Schembri



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: August 29, 2011

Approved

Date

8/30/11

SUBJECT: SANTA CLARA COUNTY CIVIL GRAND JURY REPORT – REHIRING OF PENSIONERS: BAD POLICY, GOOD BUSINESS OR BOTH

RECOMMENDATION

It is recommended that the Mayor and City Council approve this response to the 2010-2011 Santa Clara County Civil Grand Jury Report entitled “Rehiring of Pensioners: Bad Policy, Good Business or Both?”

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

Grand Jury Report

The Santa Clara County Civil Grand Jury provided the City with its final report, including findings and recommendations, entitled “Rehiring of Pensioners: Bad Policy, Good Business or Both?” (Please see Attachment A.) According to the report:

The Grand Jury sought to understand how Santa Clara County (SCC) and the fifteen SCC cities approach rehiring retirees, the number of rehired pensioners (RHPs) presently on payroll, and the pros and cons of this practice.

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The report contains three (3) findings with applicable recommendations. The City has responded to each of those 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.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

The summary of the report indicates that "rehiring retirees appears to be a prudent way to secure highly skilled talent for short-term tasks at a relatively low cost to economically strapped municipalities and does not in itself appear to be a barrier to hiring new workers."

GRAND JURY FINDINGS, RECOMMENDATIONS AND CITY'S RESPONSE

Grand Jury Finding 1

In spite of public opinion, there are situations that warrant rehiring pensioners and often it makes good business sense to do so. All managers interviewed follow existing procedures, which allow rehiring of pensioners.

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City Response to Finding 1

The City agrees with this finding. As noted in the report, there are multiple business reasons which support the rehiring of pensioners, and the City currently abides by formal procedures when it comes to rehiring pensioners. Also as noted in the report, the City appears to be the lone SCC agency which has memorialized its procedures in writing in a policy.

Grand Jury Recommendation 1

If the County or the City/Town of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale desire to end the practice of rehiring pensioners, they should make that official by means of a policy decision.

City Response to Recommendation 1

The recommendation requires further analysis. As noted in the report, there are business reasons that make rehiring pensioners a viable alternative to agencies to meet its goal of serving the public, but, as with all things, the City will continue to strive to improve on all aspects of its operation, including reviewing its policies and procedures relating to the rehiring of pensioners.

Grand Jury Finding 2

For over six years, the City of Santa Clara has filled a previously 24/7 type of management job with a part-time employee. Clearly, the job is not a temporary or limited-time-urgent-needs position and six years is more than sufficient time to find a replacement.

City Response to Finding 2

The City takes no position on this finding in that this finding appears to address an issue specific to another agency.

Grand Jury Recommendation 2

The City of Santa Clara should consider consolidating with another agency's fire department for fire services and eliminate the part-time fire chief position or fill the position with a permanent part-time employee.

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City Response to Recommendation 2

The recommendation will not be implemented because it is not warranted or is not reasonable in that this recommendation appears to address an issue specific to another agency.

Grand Jury Finding 3

The fifteen towns and cities—Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale—and the County may be inadvertently creating a demand to rehire pensioners because the public sector retirement age is relatively young at 50 (police and fire) or 55 (administrative positions).

City Response to Finding 3

The City agrees with this finding. It is possible that a "relatively young" retirement age may contribute to an employee's decision to retire. However, while a "relatively young" retirement age may contribute to the decision to retire, further analysis would be needed to determine if an agency's practice of rehiring pensioners is a significant factor in such a decision, especially in light of the corresponding limitations like the availability of positions, restrictions on the number of hours worked, and the absence of fringe benefits. The low percentage of rehired pensioners in the City of San Jose also suggests that the City avails itself of the program sparingly thus it may have a minimal impact on an employee's decision to retire from City service.

Grand Jury Recommendation 3

The fifteen towns and cities—Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale—and the County should continue to pursue a higher retirement age with its public sector unions and associations.

City Response to Recommendation 3

This recommendation has not yet been implemented, but may be implemented in the future. The City is currently in the process of negotiating multiple retirement reform issues with its employee bargaining units, including the retirement age.

HONORABLE MAYOR AND CITY COUNCIL

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PUBLIC OUTREACH/INTEREST

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 Council, the City Attorney will submit the memorandum to the presiding judge of the Superior Court, as required under Penal Code Section 933(c).

COORDINATION

This memorandum was coordinated with the Human Resources Department, the City Manager's Budget Office and the City Attorney's Office.

CEQA

Not a project, File No.PP10-069 (b) Personnel Related Decisions.



Alex Gurza
Deputy City Manager

*For additional information on this report, contact Alex Gurza,
Deputy City Manager, at 535-8150.*