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December 7, 2022

Honorable Beth McGowen
Presiding Judge
Office of the Civil Grand Jury
Superior Court of Santa Clara County
191 N. First Street
San Jose, CA 95113

Re: City of Morgan Hill’s Response to the 2022 Santa Clara County Civil Grand Jury Report
“If You Only Read the Ballot Title, You’re Being Duped”

Dear Judge McGowen,

Thank you for the opportunity to review and respond to the 2022 Grand Jury Report, “If You Only Read the Ballot Title, You’re Being Duped.” We appreciate the Grand Jury’s thoughtful work on this issue. Our responses to the specific findings and recommendations, which were approved by the City Council at its December 7, 2022 meeting are below:

FINDING 1:

The Civil Grand Jury finds that in the current environment, which is unregulated at the local level, it is easy for the author of a ballot measure question to write the question in a way that is confusing or misleading to voters.

CITY RESPONSE TO FINDING 1: Partially Agree

Elections Code section 13119 provides the form of question for a local ballot measure: “Shall the measure (stating the nature thereof) be adopted?” The code further provides that the “statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” Where a measure is placed on the ballot by a city council, the council has some discretion in preparing the synopsis of the measure and the statement of purpose. But the ballot language must be true and impartial, and must use neutral language that is unlikely to create prejudice for or against the measure.^a In Morgan

^a Where the author of a ballot measure in a city election places the measure on the ballot through a citizens’ initiative, the city attorney is required to prepare a ballot title that includes the purpose of the measure prior to circulation of the

Hill, while the ballot question is ultimately the responsibility of the City Council, under Municipal Code section 2.09.020(F) the City Attorney is responsible for drafting the resolution placing the measure on the ballot, and for advising the City Council on the law regarding ballot language.

RECOMMENDATION 1B:

Governing entities within Santa Clara County should voluntarily submit their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendation 1d is implemented.

CITY RESPONSE TO RECOMMENDATION 1B:

The recommendation will not be implemented because it is not warranted or reasonable, and would require a change to California law. The Elections Code currently provides a process to challenge a ballot question when a legislative body abuses its discretion by adopting a question that is misleading or is likely to create prejudice for or against the measure. The Grand Jury has identified significant impediments to utilizing that process, which is set forth in Elections Code section 9295. Those impediments should be addressed by the legislature.

Until the legislature enacts Election Code reforms, the City of Morgan Hill will consider consulting with County Counsel's office when there is a question regarding whether a ballot title is appropriate, and there is no potential conflict. However, because state law vests authority for the ballot question in the local legislative body, the opinion of the County Counsel would be advisory only.

RECOMMENDATION 1C:

Governing entities within Santa Clara County should, by March 31, 2023, adopt their own resolution or ordinance to require submission of their ballot questions to the County Counsel for review prior to submission to the Registrar of Voters, unless and until Recommendations 1d and 1e are implemented.

CITY RESPONSE TO RECOMMENDATION 1C:

The recommendation will not be implemented because it is not warranted or is not reasonable. Placing a measure on the ballot is already costly and complicated. Adding an additional step to the already cumbersome process is not warranted. However, the City of Morgan Hill will consider consulting with County Counsel's office when there is a question regarding whether a ballot title is appropriate, and there

measure. While the ballot question is still subject to approval by the city council, the council has less ability to define the purpose of the measure.

is no potential conflict. Further, the City of Morgan Hill would support a legislative solution to prevent the rare circumstances in which an agency abuses its discretion in adopting ballot language.

RECOMMENDATION 1E:

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

CITY RESPONSE TO RECOMMENDATION 1E:

The recommendation has not been implemented, but will be implemented if state law is amended to allow the creation of a commission as described in the Grand Jury report, and 1) cities are required to submit ballot language to such a commission, or 2) a commission is formed that both protects the ability of the City to fairly define the purpose of any ballot measures it submits to the voters and is required to solicit input from and be responsive to the Morgan Hill community.

Sincerely,

A handwritten signature in blue ink that reads "Richard Constantine". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rich Constantine
Mayor

