



December 12, 2022

Honorable Beth McGowen
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

RE: City of Palo Alto Response to 2022 Santa Clara County Civil Grand Jury Report: If You Only Read the Ballot, You’re Being Duped

Dear Honorable Judge McGowen,

The following is the City of Palo Alto’s response to the above-mentioned Grand Jury Report pursuant to California Penal Code §§ 933 and 933.05.

Civil Grand Jury 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 of Palo Alto Response: The City of Palo Alto agrees in part and disagrees in part with this Finding.

The City of Palo Alto agrees that the drafting of ballot measure language is an important part of the democratic process, and that local governmental entities that sponsor ballot measures have a responsibility to ensure that ballot measure language is clear, accurate, and useful to voters.

The City of Palo Alto disagrees that the current process is “unregulated at the local level.” Ballot measure language is drafted by the City’s professional staff and approved by the elected City Council, according to requirements of the City Charter and state law. Draft ballot measure language is posted publicly in advance of the City Council meeting, and members of the public have an opportunity to provide written and oral input prior to Council

approval. After Council approval, if residents believe that a ballot measure question does not meet the standards required by law, the recourse in our system is to the courts. The Grand Jury contends this is an ineffective remedy, but in fact, every election year, many pre-election lawsuits are filed in California that challenge ballot measure language. These can result in courts ordering corrections to ballot questions. Because attorney's fees are recoverable by a successful challenger under the private attorney general statute (Code Civ. Proc. § 1021.5), challengers with meritorious arguments are generally able to obtain counsel to represent them.

The City of Palo Alto also disagrees that the example cited from this jurisdiction—Measure L on the November 8, 2022 ballot—was misleading. The statement “until ended by voters,” to which the Grand Jury objects, is true and accurate, and not misleading. California law requires that tax measures on the ballot include a statement on duration. California Elections Code section 13119(b) states: “If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the ... duration of the tax to be levied.” In addition, under California law, the voters can repeal or amend an ordinance that has been adopted by the voters. (Cal. Elections Code section 9217 (“No ordinance that is ... adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.”).) It is therefore a true statement that if a tax ordinance is approved by the voters and does not have a fixed end date, then it will be in effect until it is ended or repealed by the voters. The Grand Jury opines that this is misleading because it implies “that the measure itself provide[s] for repeal or that voters would have an opportunity to repeal the tax when they did not.” While it is true that Palo Alto’s measure itself did not specify a process for voter repeal, that is because voters already have that power under the Elections Code. Under state law voters exercise that power by circulating a petition. For these reasons, “until ended by voters” is a true statement of the law, and therefore is not misleading.

Civil Grand Jury 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 of Palo Alto Response: The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto.

The Grand Jury’s proposal to empower the County Counsel to review ballot questions, and presumably order changes, is not appropriate for charter cities like Palo Alto, which are

separate government entities with independent constitutional authority to control our own elections. Article XI, section 5, subdivision (b) of the California Constitution states that “[i]t shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: ... conduct of city elections.” The California Court of Appeal has recognized that “[t]he ‘conduct of city elections’ is one of the few specifically enumerated core areas of autonomy for home rule cities.” (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 46.) The County Counsel is appointed by and serves at the pleasure of the County Board of Supervisors. Giving authority to the County Counsel to review and edit ballot questions for the City of Palo Alto would impinge on Palo Alto’s constitutional authority over its elections. The effect would be to reduce local control by shifting authority to a government entity that is not accountable to Palo Alto residents.

Civil Grand Jury 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 of Palo Alto Response: For the reasons stated in the response to Recommendation 1b, above, the recommendation is not warranted and will not be implemented by the City of Palo Alto.

Civil Grand Jury 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 of Palo Alto Response: The recommendation is not warranted and accordingly will not be implemented by the City of Palo Alto. A commission appointed by the County Board of Supervisors poses the same problems identified in the response to Recommendation 1b, above.

Sincerely,



Pat Burt, Mayor