

December 7, 2022

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



RE: Santa Clara County Civil Grand Jury Report Response

Honorable Judge McGowen:

The Sunnyvale City Council received the 2022 Santa Clara County Civil Grand Jury's Final Report, *If you Only Read the Ballot, You're Being Duped*. The following is the City Council's response to the Finding and Recommendations applicable to the City of Sunnyvale, as required by section 933.05(a) of the California Penal Code.

Larry Klein
Mayor

Alysa Cisneros
Vice Mayor

Gustav Larsson
Councilmember

Glenn Hendricks
Councilmember

Russ Melton
Councilmember

Omar Din
Councilmember

Anthony Spitaleri
Councilmember

Response to Findings and Recommendations

• **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.

Response to Finding 1 –DISAGREE

The City of Sunnyvale disagrees with the assertion that ballot measure questions are unregulated at the local level. Two processes exist that help guard against confusing or misleading ballot questions.

First, local agencies hold public hearings before placing measures on the ballot. Resolutions with the proposed ballot question are made public as required by the Brown Act, the public has the opportunity to comment prior to the City adopting that resolution. When the City of Sunnyvale considers a potential ballot measure, the process also typically includes community engagement, which can include surveying residents, polling likely voters, holding City Council study sessions and public hearings, and tabling at community events. Sunnyvale's practice for ballot measures that amend the City Charter has included forming Charter Review Commissions of registered voters. This strong community engagement helps ensure ballot measure questions submitted to voters by the elected Sunnyvale City Council are clear and understandable for voters.

Second, as mentioned in the Civil Grand Jury's Report, the California Elections Code (sections 9200 et seq.) addresses local ballot measures. Sunnyvale City Charter Article XIV requires the City to follow the provisions of the Elections Code or the Charter. Elections Code section 9203 regulates the ballot language aspect of municipal elections by requiring that "ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." Ballot measure questions are subject to a writ of mandate which may be filed by any eligible elector of the jurisdiction should a question arise where particular ballot measure language is, "in a way that is confusing or misleading to voters." Thus, ballot measure language is regulated and the requirements enforceable at the local level.

- **Recommendation 1a**

The Board of Supervisors should ask the County Counsel to review all ballot questions submitted to it pursuant to Recommendation 1b.

No response from the City of Sunnyvale is requested by the Civil Grand Jury for Recommendation 1a

- **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.

Response to Recommendation 1b –THE RECOMMENDATION WILL NOT BE IMPLEMENTED

The City of Sunnyvale is a Charter City as defined by the California Constitution (Article XI, Section 5), which sets forth four "core" categories that are, by definition, "municipal affairs" over which those cities have control. One of the core categories is the "conduct of city elections." The elected City Council consults its counsel (City Attorney) as it deems appropriate when drafting ballot measure questions and does not require additional consultation or review from County Counsel.

- **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.

Response to Recommendation 1c –THE RECOMMENDATION WILL NOT BE IMPLEMENTED

As noted in response to Recommendation 1b, the City disagrees with the recommendation to require additional consultation or review of ballot measure questions from County Counsel and does not plan to consider implementing a resolution or ordinance to require submission of ballot measure questions to County Counsel.

- **Recommendation 1d**

The County should create an independent, citizen-led oversight commission like the recommended Good Governance in Ballots Commission as described in the “Solutions” section of this report. The Commission should be implemented by August 1, 2024.

No response from the City of Sunnyvale is requested by the Civil Grand Jury for Recommendation 1d

- **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.

Response to Recommendation 1e - THE RECOMMENDATION WILL NOT BE IMPLEMENTED

As discussed in the response to Recommendation 1b above, the City’s Charter provides for local control over elections and the City Council relies on its City Attorney when preparing ballot measure questions and does not require additional consultation or review from a Good Governance in Ballots Commission. Outside review and approval by the appointed County Counsel or a Good Governance in Ballots Commission would interfere with Sunnyvale’s right to self-govern as a Charter City provided for by the California Constitution, including the authority to conduct its municipal elections.

- **Recommendation 1f**

The County should, by March 31, 2023, take appropriate action to request that the state legislature consider amending current law to require the County Counsel to review and approve local ballot measure questions before they are voted on.

No response from the City of Sunnyvale is requested by the Civil Grand Jury for Recommendation 1f

The City has carefully reviewed and considered the concerns raised in the report. The Sunnyvale City Council supports clear, accurate and non-biased ballot measure questions and is mindful of the issues raised. We thank the Civil Grand Jury for their interest in this important issue.

Sincerely,



Larry Klein, Mayor

cc: City Council
Santa Clara County Board of Supervisors
Kent Steffens, City Manager