



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Ristow

SUBJECT: SEE BELOW

DATE: August 30, 2019

Approved

D. D. Syl

Date

8/30/19

**SUBJECT: RESPONSE TO THE SANTA CLARA COUNTY GRAND JURY REPORT
ENTITLED "INQUIRY INTO GOVERNANCE OF THE VALLEY
TRANSPORTATION AUTHORITY"**

RECOMMENDATION

Accept staff's response to the June 18, 2019 Santa Clara County Civil Grand Jury Report entitled, "Inquiry into Governance of the Valley Transportation Authority."

OUTCOME

Approval of this report will satisfy the requirements of Penal Code Section 933(c), which requires the City Council to respond to the Civil Grand Jury (CGJ) report and the City's response to the presiding judge no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court. The Grand Jury passed and adopted its report on June 18, 2019. Assuming that the report was filed with the presiding judge the same day it was adopted by the Civil Grand Jury, the City's response is due by September 16, 2019. Approval of this report will satisfy the Penal Code requirement. After approval of the report by the City Council, the City Attorney will transmit the report to the presiding judge.

BACKGROUND

The Santa Clara County Valley Transportation Authority (VTA) is a special district responsible for public transit services, congestion management, specific highway improvement projects, and countywide transportation planning. VTA provides bus, light rail, and paratransit services, and participates in regional rail service including Caltrain, Capital Corridor, and the Altamont Corridor Express.

HONORABLE MAYOR AND CITY COUNCIL

August 30, 2019

Subject: CSJ Response to the Civil Grand Jury Report VTA Finding & Recommendations

Page 2

VTA was created in 1972 by the Santa Clara County Transit District Act. In 1995, state legislation created a Board of Directors at VTA, composed of County and city representatives. Currently the board is governed by 12 members, comprised of the following grouping¹:

<u>Group</u>	<u>Grouping</u>	<u>Representatives</u>
1	San José	5 Directors 1 Alternate
2	Los Altos Los Altos Hills Mountain View Palo Alto	1 Director 1 Alternate
3	Campbell Cupertino Los Gatos Monte Sereno Saratoga	1 Director 1 Alternate
4	Gilroy Morgan Hill	1 Director 1 Alternate
5	Milpitas Santa Clara Sunnyvale	2 Directors 1 Alternate
6	County of Santa Clara	2 Directors 1 Alternate

On June 18, 2019, the Santa Clara Civil Grand Jury released a report entitled “Inquiry into Governance of the Santa Clara Valley Transportation Authority”. The report highlights challenges and perceived shortcomings of VTA, and is critical of VTA’s transit performance, fiduciary oversight, capital expenditures, and governance. The report included several findings and recommendations for every City represented on the VTA Board (Attachment A) and requested their response.

¹ Santa Clara Valley Transportation Authority Administrative Code- June 7, 2018

ANALYSIS

The CGJ report contained one (1) finding and three (3) associated recommendations. California Penal Code Section 933.05 states that the responding person or entity shall provide certain basic information in the response to each finding and recommendation. With regard to the findings, the respondent(s) must indicate whether they agree, disagree partially, or disagree wholly. When disagreeing, the respondent(s) must state which portion is disputed and why. With regard to the recommendations, the respondent(s) must state whether it has been implemented, will be implemented (with a time frame), requires further analysis (with an explanation), or will not be implemented (with an explanation). What follows are the CGJ's finding and recommendations and the associated City Manager responses.

FINDING 1

The VTA Board, currently made up exclusively of elected officials from the Santa Clara County Board of Supervisors, the City of San José and the other smaller cities in the County, suffers from:

- *A lack of experience, continuity and leadership;*
- *Inadequate time for directors to devote their duties to the VTA Board due to their primary focus on the demands of their elected positions;*
- *A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;*
- *Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and*
- *Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.*

DISAGREE

The City disagrees with this finding's assertion that the current board structure at VTA is inadequate, and its members are ill-suited to provide adequate leadership needed for the agency. As the report notes, the current organizational structure provides a critical nexus between land use decisions and transportation planning. As council members or county supervisors, each board member is intimately familiar with the land utilizations within their own jurisdictions, and the transportation network which it influences.

VTA's role includes, but also extends beyond transit operations. Functioning as an independent special district, VTA is charged with overseeing several funding sources, including county-wide sales tax measures, and obligating those funds to local agencies. As the county's congestion management agency,

VTA is responsible for countywide transportation planning, influencing land-use decisions, design, traffic mitigation, highway construction, pedestrian, and bicycle improvements to reduce traffic congestion and improve air quality. The agency also serves as the lead long-

August 30, 2019

Subject: CSJ Response to the Civil Grand Jury Report VTA Finding & Recommendations

Page 4

range planning organization for the county, working closely with regional organizations to develop a comprehensive transportation vision. Focusing on transit service and project delivery is a narrow view of the immense roles and responsibilities VTA has, and the stewardship required by board members.

Planning, designing, funding, constructing, operating, and maintaining transportation services and projects is an incredibly complex and nuanced process. The nature of public transit requires some form of public subsidy. VTA has been diligent in ensuring that the agency is a responsible steward of these dollars, and the board has taken several steps to maintain that trust. In 2018, the chairman of the VTA Board convened the Ad Hoc Financial Stability Committee, which was charged with thoroughly examining the structural deficit at VTA. That committee delivered several difficult, but necessary recommendations that were adopted by the VTA Board. Additionally, VTA is commissioning a study to determine the technologies that are best suited to supplement or replace its current transit services. This could improve service and reduce capital costs associated with maintenance and construction for needed projects, including a grade separated transit connection from Alum Rock Light Rail Station to the Eastridge Transit Center, which has been a priority for voters and residents in San José.

This board and staff relationship are analogous to the current governance structure in San José. City departments respond to direction from elected members who serve on a larger governing body, as well as on smaller policy-focused committees. Given the range and complexity of policy issues it oversees, committees are intended to advise the VTA Board of Directors on policy matters and to provide in-depth review of specific proposals before the board takes final action. Many of these committees include community members and subject matter experts who already can provide additional guidance to the board.

We disagree with the assertion that the board is dominated by representatives from the City of San José. It is important for a government body to reflect the geographic distribution of its residents. As the largest city in the county, it is natural that a plurality of seats at VTA are elected officials whose jurisdictions include San José. With approximately 53 percent of the county's population living within our borders, the majority of transit service, road infrastructure, and project planning will directly affect our residents. Therefore, any adjustments to governance at VTA should not reduce the number, nor the ratio members appointed from the City of San José.

Four out of five county supervisorial districts incorporate portions of San José within their jurisdiction, which speaks to the size and population of the City. With two representatives from the county, one or more supervisors will automatically include at least a portion of San José within their district. However, their jurisdictional boundaries also include other cities and unincorporated areas. Each board member understands their responsibilities to not just their own constituents, but to every resident in the county who is affected by their decisions.

August 30, 2019

Subject: CSJ Response to the Civil Grand Jury Report VTA Finding & Recommendations

Page 5

RECOMMENDATION 1C

As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

RECOMMENDATION REQUIRES FURTHER ANALYSIS

Since its inception in 1972, VTA has undergone several changes in its oversight and management authority. As such, VTA and its board, is best suited to analyze its own governance and implement any changes. As VTA moves forward with the recently formed Ad Hoc Board Enhancement Committee, we anticipate that the agency will thoroughly examine potential improvements to empower board members and foster meaningful engagement. That committee recently tasked the independent VTA Auditor General with commissioning a study to evaluate how the board's current governance structure and practices affect the delivery of the agency's mission, goals, and objectives. That study, due to be completed by the end of 2019, will also identify leading practices and potential enhancements for consideration by the board. We look forward to those recommendations and will look to respond accordingly within that process.

RECOMMENDATION 1D

Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of approved directors who are not currently serving elected officials).

RECOMMENDATION REQUIRES FURTHER ANALYSIS

While several recommendations made within the Grand Jury's report have the potential to improve the effectiveness of the VTA Board of Directors, the City of San José is not the agency best suited to make policy recommendations nor move proposals forward through the state legislative process. VTA already has the authority to propose and sponsor legislation on its own and understands the effects and nuance of any proposed governance changes.

HONORABLE MAYOR AND CITY COUNCIL

August 30, 2019

Subject: CSJ Response to the Civil Grand Jury Report VTA Finding & Recommendations

Page 6

RECOMMENDATION 1E

In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

RECOMMENDATION REQUIRES FURTHER ANALYSIS

Similar to our response to recommendation 1d, we believe that VTA is the most appropriate agency to propose and sponsor enabling legislation that would amend its own governance structure. While these changes may be worthwhile, making any governance changes through state legislation can be incredibly complex, and requires a thorough understanding of a governing body like VTA. They are best equipped to move this kind of legislation forward.

EVALUATION AND FOLLOW-UP

Upon the City Council's approval of the Response to the Grand Jury, staff will develop and submit the required letter to the Presiding Judge of the Superior Court on or before September 16, 2019.

PUBLIC OUTREACH

This response will be posted on the City's web site for the September 10, 2019 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

This item does not have any input from any board or commission.

HONORABLE MAYOR AND CITY COUNCIL

August 30, 2019

Subject: CSJ Response to the Civil Grand Jury Report VTA Finding & Recommendations

Page 7

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

JOHN RISTOW

Director of Transportation

For questions, please contact Kevin Hefner, Associate Transportation Specialist, (408) 535-8270.

Attachment

**2018-2019 SANTA CLARA COUNTY CIVIL GRAND JURY INQUIRY INTO
GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY (VTA)**

FINDINGS AND RECOMMENDATIONS RELEVANT TO THE CITY OF SAN JOSÉ

Findings

Finding 1: The VTA Board of Directors (which is currently comprised of five standing members and one alternate from the San José City Council) suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for directors to devote their duties to the VTA Board due to their primary focus on the demands of their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and
- Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Recommendations

Recommendation 1c: As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Recommendation 1d: Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of approved directors who are not currently serving elected officials).

Recommendation 1e: In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.