



## 2013-2014 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

# THE CITY OF PALO ALTO'S ACTIONS REDUCED TRANSPARENCY AND INHIBITED PUBLIC INPUT AND SCRUTINY ON IMPORTANT LAND ISSUES

### Summary

The 2013-2014 Santa Clara County Civil Grand Jury (Grand Jury) received complaints questioning the transparency of the City of Palo Alto (City) and claiming there was inconsistent compliance by the City with open government statutes from June 2011 – December 2013. The Grand Jury investigated those complaints as they specifically related to three important land use examples.

The Grand Jury found:

- The City disregarded its own written Policy and Procedures (P&P) and deed restrictions on 7.7 acres of land next to Foothills Park gifted to the City by the Lee Family (“Lee Gift Deed Property”) when it leased the property to an adjacent landowner who used the land in a manner inconsistent with the provisions of the deed;
- The City disregarded its own written P&P by considering the sale of the same city-owned Lee Gift Deed Property to the same landowner prior to declaring it to be surplus;
- The City held a closed session meeting<sup>1</sup> to discuss the price and terms of an offer to purchase the Lee Gift Deed Property. At the time of the closed session, the property—could not be legally sold because of the deed restrictions and failure to declare it surplus;
- Initial discussions between the same landowner, who is also a developer, and the City about a controversial development of 27 University Avenue was done in a manner that was permissible but undertaken in a way to avoid public scrutiny unlike other similar large-scale projects;
- The City allocated city money toward design review of the 27 University Avenue proposal to address existing transit and traffic issues at that site

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<sup>1</sup> Closed session meetings are meetings to which the public and the press do not have access.

and in the surrounding area before obtaining substantial public input on the 27 University Avenue proposal; and

- The public's efforts to obtain information about the above matters through California Public Records Act (CPRA) requests were sometimes ignored by the City. Further deficiencies in City's CPRA practices were discovered by the Grand Jury.

## **Background**

The Ralph M. Brown Act (Brown Act)<sup>2</sup> was passed in 1953. Among other things, it serves to encourage transparency and public participation in government. It guarantees the public's right to attend and participate in meetings of local legislative bodies. It also requires proper notification of public meetings and establishes rules for members of local legislative bodies. It is the intent of the Brown Act that deliberations of local legislative bodies be conducted openly and that their actions be carried out in public, with very limited exceptions.

The California Public Records Act (CPRA)<sup>3</sup> was signed into law in 1968. The essence of the CPRA is to provide public access to information. The fundamental principle of the CPRA is that any document that is a public record must be provided to the public upon request, unless there is a specific statutory exemption.

Complainants, elected officials, and City management staff told the Grand Jury that residents of the City have high expectations regarding the transparency of their City government and its compliance with open governance laws. Residents expect that staff and elected officials will consistently follow state statutes, local ordinances, and the City's written P&P that have been enacted to provide for the notification and participation of the citizenry.

However, in recent complaints to the Grand Jury, several Palo Alto residents allege that compliance with the Brown Act and the CPRA has been inconsistent, if not violated. The complainants further assert that the City has not consistently followed its adopted P&P in dealing with City owned real estate. The actions of City staff and public officials have raised questions regarding the processes used when considering the lease and potential sale of City owned land and the process employed in guiding proposals to develop private property in the City.

Complainants have also charged the City staff with not responding in a timely manner, and sometimes not at all, to numerous requests for public documents regarding a proposed major development of private property.

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<sup>2</sup> California Government Code §54950 *et seq.*, The California open meeting law.

<sup>3</sup> California Government Code §6250 *et seq.*

The Grand Jury's investigation revealed that the City views itself as a model of transparency and governmental process. The public's concern regarding the City's lack of transparency and failure to adhere to its processes are exemplified by the matters discussed below, which the Grand Jury finds to be significant exceptions to the City's overall claims of transparency.

## **Methodology**

During its investigation, the Grand Jury interviewed thirteen individuals (the complainants, other private individuals, elected officials, and City management staff) and researched or reviewed many documents as provided in Appendix A.

## **Discussion**

### The Lee Gift Deed Property Leases:

The Lee family donated a 7.7 acre parcel of land adjacent to Foothills Park to the City by gift deed, recorded August 3, 1981. The gift deed required that the "property shall be used for conservation, including park and recreation purposes." In 1983, an adjacent landowner began using the Lee Gift Deed Property for stonemasonry work and as a construction staging area during the construction of a residence on the adjacent parcel. Due to a reservation<sup>4</sup> in the deed by the Lee family, the City did not become the title owner of that parcel until March 17, 1996.

Effective April 1994, the City had adopted P&P 1-11/ASD pertaining to leasing of City owned property. The purpose of the policy "is to ensure that decisions regarding use of City property are made in the best interests of the citizens and taxpayers of Palo Alto." One of the criteria for leasing City owned property is that it must be compatible with or supportive of the primary public use of the City owned property. The policy sets forth criteria to be considered in awarding the lease (i.e., the extent it satisfies a public need, consistency with city goals, degree of public access, and other matters). The policy also requires public notification.

The City first leased the Lee Gift Deed Property to the adjoining landowner in a document dated April 5, 1996, but it stated that the lease term began on March 17, 1996. The lease was for twelve months, to be used "for TENANT'S continued use of the PREMISES as a staging area for construction of a residence on the adjacent parcel owned by TENANT." The lease rate was \$1,100.00 per year plus a \$1,500.00 security deposit.

A May 16, 1996, letter from the City Real Property Manager (RPM) to the lessee asked if the lessee wanted to extend the lease or buy the property. The letter also stated: "Whatever the case, both scenarios need to be presented to the City

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<sup>4</sup> See Lee Gift Deed Appendix A

Council for action.” The City provided no documentation to the Grand Jury that either scenario (lease or purchase) was ever presented to the City Council for action.<sup>5</sup>

On September 5, 1996, the RPM wrote to the lessee acknowledging the lessee’s verbal offer to purchase the Lee Gift Deed Property at one-and-one-half times its appraised value. The appraised value at that time was between \$100,000.00 and \$115,000.00.<sup>6</sup>

A subsequent letter from the lessee to a City Real Property Analyst, dated January 20, 1997, contained an offer to buy the Lee Gift Deed Property for \$300,000.00, with a rapid close of escrow. No documentation was provided to the Grand Jury indicating that this written offer to purchase the Lee Gift Deed Property was ever brought to the attention of the City Council or the public. However, the City did provide information to the Grand Jury that the lessee held over<sup>7</sup> for one year and forty-five days after the expiration of the first lease.

The City also provided the Grand Jury with a letter dated April 10, 1998, from the RPM to the lessee, indicating that City staff concluded “that it would be in the public’s best interest to keep the land as park/open space as required under the Gift Deed.” [Emphasis added.] This letter is the first instance in any of the records provided to the Grand Jury that City staff acknowledged the use restriction set forth in the Lee Gift Deed.

Despite the acknowledgement by City staff that the deed restriction on the Lee Gift Deed Property required the land to be used as “park/open space,” the City entered into a second one-year lease with the same individual from May 1, 1998 to April 30, 1999. The lease rate was \$1,125.00 per year and the \$1,500.00 security deposit from the prior lease was transferred over to this new lease. This new lease expanded the allowable use of the property as a construction staging area to any “additional services and uses which are ancillary to and compatible with...” the use as a construction staging area.

Once again, the Grand Jury was not provided with any documentation that this new lease was brought to the attention of the City Council or the public.

According to records provided by the City, the lessee held over five years and ten months after the second lease expired. The City did not provide the Grand Jury with any information regarding whether either the City Council or the public was ever made aware of this lengthy holdover.

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<sup>5</sup> The City Manager drafted an information report to the City Council dated February 15, 1996, advising that the adjacent landowner was using the property for construction staging and indicating that there might be a forthcoming proposal to buy, lease, or exchange the property. The memorandum indicated that no action was required.

<sup>6</sup> Independent written appraisal dated March 11, 1995

<sup>7</sup> The first lease provided that if the lessee did not vacate the property at the end of the lease term, he would be considered a month to month tenant. This is called a “holdover.”

The Grand Jury was told that the City Manager had authority to execute a lease of City land for up to three years without City Council approval. However, the Grand Jury was provided no justification for two holdovers totaling six years and ten months with no notice to either the City Council or the public.

Efforts by the Grand Jury to obtain detailed information and documents regarding these leases of the Lee Gift Deed Property to the adjacent landowner were unsuccessful. This lack of a complete paper trail regarding the leases and the lengthy holdovers (six years and five months) of the Lee Gift Deed Property is troubling to the Grand Jury.

What is clear is that the lease history of the Lee Gift Deed Property proceeded without the City following its own P&P regarding the leases. There are no indications that any of the lease negotiations, the uses of the Lee Gift Deed Property by the lessee (contrary to the deed's use limitations), or the lengthy holdovers by the lessee were done within the parameters of the City's P&P governing leases.

Ultimately, during the course of this Grand Jury's inquiry into the matter, the City Council took action to annex the parcel to the adjacent Foothills Park in spring 2014.

#### Proposed Purchase of the Lee Gift Deed Property:

The same adjacent landowner who had previously leased and offered to purchase the Lee Gift Deed Property presented a Real Estate Purchase Contract and Receipt for Deposit to the Deputy City Manager, dated September 14, 2012 to purchase the property. The landowner offered \$175,000.00 to purchase the Lee Gift Deed Property.

During its investigation, the Grand Jury was told that the September 2012 offer to buy the Lee Gift Deed Property was unsolicited and came as a surprise to the City. Upon further investigation, however, the Grand Jury learned that in the spring of 2012, the City had commissioned a formal independent appraisal of the property.<sup>8</sup> The appraisal stated, "The intended user/use for which this appraisal assignment was contracted is for the use of the City of Palo Alto, for decision making purposes related to the possible sale or exchange of the property." The appraised value was \$175,000.00, which was exactly the same amount the landowner offered to pay.

The same adjacent landowner who offered to purchase the Lee Gift Deed Property on September 14, 2012, sent a letter, also dated September 14, 2012, to the then mayor. In that letter, the adjacent landowner (who is also a developer [hereafter landowner/developer]) offered to build three athletic fields with natural

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<sup>8</sup> Written appraisal dated May 2012

grass and related irrigation improvements as part of the renovation of the Palo Alto Municipal Golf Course.

Given the history of interest in the Lee Gift Deed Property by the landowner/developer and the fact that his offer matched the City's appraisal exactly, the Grand Jury believes the offer was not a surprise to the City.

Further, the fact that a Special Meeting of the City Council was quickly agendized, noticed, and held on September 18, 2012, to discuss the \$175,000.00 offer to purchase the Lee Gift Deed Property in closed session raises further questions about how long the City knew about the matter in advance.

Under the Brown Act, a legislative body may convene a closed session to discuss the price and terms of the sale of city owned land (real estate negotiation exception). Members of the public were aware that the property was being considered for sale only because the proposed purchase was listed on the City Council's agenda as a closed session item, with the property identified only by assessor's parcel number. This closed session discussion lasted almost two hours.

The minutes prepared for the September 18, 2012, City Council Special Meeting state that the Council took no reportable action in closed session. Following the closed session, staff sent emails to council members to arrange for council members and staff to visit the Lee Gift Deed Property. The Grand Jury was not able to ascertain exactly how many of council members actually visited the site; however, emails reflect that staff arranged for the council members to meet at the site in a manner that avoided reaching a quorum, which would have created problems with the Brown Act.

As discussed above, the Lee Gift Deed Property had specific deed restrictions requiring that the property be used for conservation purposes, including park and recreation use. Even if the City was not hindered by the deed restrictions and assuming it could sell the property, the City would then have to comply with state law and the City's own P&P regarding the sale of surplus property.

The City has a detailed P&P for the sale of surplus city-owned real property (P&P 1-48/ASD). It requires the City Real Property Manager (RPM) to identify "potential surplus city real property," to notify appropriate city departments and other public agencies<sup>9</sup> and to forward a report with a staff recommendation to the City Council.

If the City Council decides to declare the property surplus and to sell it by "an open and competitive bid process," the RPM needs to obtain an independent appraisal and prepare a Bid Proposal Package for the City Council's consent

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<sup>9</sup> As defined in California Government Code §54221(a) and Palo Alto P&P 1-48/ASD

calendar.<sup>10</sup> If the bid package is approved by the City Council, the RPM must advertise and market the property, schedule and evaluate bids, and forward a report with a staff recommendation to the City Council. Notably, under the law pertaining to surplus property,<sup>11</sup> the City was required to give first priority to an offer by a local agency seeking to use the property for certain uses benefitting the public, including park or recreational purposes.

Prior to the September 18, 2012, City Council closed-session meeting to discuss the price and terms of the sale of the Lee Gift Deed Property, none of the aforementioned procedures involving the Lee Gift Deed Property had ever been initiated by City staff. The deed restrictions remained and the property had not been identified as surplus. No evidence was presented to the Grand Jury that any City departments or appropriate public agencies had been notified of the property's availability. The RPM had not recommended the sale and the City Council had not determined the property to be surplus.

No reason was ever articulated to the Grand Jury why an allegedly unsolicited offer to buy the Lee Gift Deed Property dated September 14, 2012, merited or required a rapidly called Special Meeting of the City Council in closed session on September 18, 2012; especially, since the deed restrictions remained and the land had never been formally declared to be surplus pursuant to the Government Code and the City's own P&P, and therefore could not be legally sold.

Members of the public were aware that the property was being considered for sale only because the proposed purchase was listed on a City Council agenda as a closed session item, with the property identified only by assessors parcel number.

The Brown Act requires that all items be discussed in a public meeting unless there is a specific statutory exception which allows discussion in closed session. A property cannot be legally sold by the City until after it has been declared surplus. Therefore, it would have been more appropriate and transparent for the City Council to first discuss whether property could or should be declared surplus in a public meeting before convening a closed session to discuss price and terms. A closed session on price and terms should occur only after the City Council has properly declared the property to be surplus pursuant to the City's policy.

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<sup>10</sup> Consent calendars are part of the City Council meeting agendas. They consist of those items which are considered routine, non-controversial, easily explained, for which a staff recommendation has been prepared, for items the City Council has previously discussed, and for which no further discussion is required. Items on consent calendars are not discussed individually during a regular Council meeting but are approved as a group by one vote. An item may be removed from the consent calendar at the request of the Mayor or any City Council member.

<sup>11</sup> Government Code §54227.

The Grand Jury determined that the Lee Gift Deed Property had not been declared to be surplus land pursuant to Government Code §54220 *et seq.* and Palo Alto P&P 1-48/ASD. Therefore, it was inappropriate and non-productive to discuss, in a closed session, the price and terms of the sale of land that could not be legally sold at that time.

In 2005–2006, the City appropriately followed the City’s P&Ps with respect to a parcel at 2460 High Street, near the Oregon Expressway, when it determined the property to be surplus. Thus, the Grand Jury concludes that the City is aware of the proper procedure for declaring property to be surplus.

Public Notification of the City Council’s Business Regarding the 27 University Avenue Proposal:

Historically, the City has demonstrated its ability to engage the public about significant City projects in an open and transparent manner. For instance, in April 2008 a well-publicized meeting was held to elicit public comment about the proposed Oregon Expressway Improvement Project. The City demonstrated its ability to convey information about community projects in an open and transparent manner by publicizing community meetings, eliciting public comment, scheduling a community workshop, establishing an e-mail address and phone number for public comment, and creating a questionnaire for residents’ input.

The Grand Jury investigated complaints about a significant reduction in the transparency of City government over the last few years. In particular, the Grand Jury inquired into concerns about whether the actions of City staff and public officials avoided public vetting and skirted the intent of the Brown Act in responding to proposals to develop privately owned property known as 27 University Avenue.

On June 11, 2011, the Palo Alto City Council entered into a historic development agreement with the Stanford University Medical Center (SUMC).<sup>12</sup> The agreement provided approximately \$40,000,000.00 to the City, in consideration for which the City would allow the SUMC to replace, retrofit, and enhance its facilities located in the City of Palo Alto. The agreement also allows the SUMC to expand its hospital, clinic, and medical office facilities to meet patient demand. Pursuant to the agreement, the SUMC is required to provide the City with certain community benefits and mitigation measures.

Shortly after the SUMC Development Agreement was signed, the same landowner/developer involved in the Lee Gift Deed Property approached City staff and proposed a major development on land owned by Stanford University. The land is located at the corner of University Avenue and El Camino Real,

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<sup>12</sup> SUMC, also known in the agreement as the SUMC parties, is collectively Stanford Hospital and Clinics, Lucile Salter Packard Children’s Hospital at Stanford, and the Board of Trustees of the Leland Stanford Junior University.

adjacent to the Palo Alto Caltrain Station and a Valley Transit Authority bus transit station. It became known as the 27 University Avenue proposal. The site is currently occupied by the MacArthur Park restaurant.

In its investigation the Grand Jury learned that in late September 2011, three-dimensional images had been prepared by the landowner/developer's staff and provided to City staff for review and comment. The initial proposal submitted to City staff contained building designs that conflicted with existing City development standards (e.g. height) and were unacceptable to City staff. A revised proposal included a complex of four office towers, two of which significantly exceeded Palo Alto's long-standing fifty-foot height limit. The revised proposal also included an offer to build the shell of a new performing arts theater and improved utilization of the nearby transit center.

Further, the revised 27 University Avenue proposal included an expanded pedestrian and bike connection between downtown Palo Alto and the Stanford Shopping Center, to address major pedestrian and bicycle safety problems. The developer's proposals represented an unprecedented opportunity to address major traffic problems at an intersection where little change had taken place for many years, despite decades of planning attempts.

On September 27, 2011, the City Manager emailed the entire City Council informing them that the developer would probably be contacting each of them to set up meetings to explain his proposal to them. What followed were numerous meetings between members of the City Council, City staff, and representatives of the developer regarding his proposal. There were no public notices of these meetings.

During interviews of City officials, the Grand Jury was told that these meetings were deliberately kept to no more than three council members at a time, in order not to constitute a quorum of the City Council, which would have violated the Brown Act. No minutes or notes were kept. Staff and council members reviewed detailed design drawings, but the public remained uninformed of the proposals or the designs for five more months.

It was not until March 5, 2012, nine months after the landowner/developer first approached the City staff, that the first public meeting of the City Council was held regarding this developing proposal. At that meeting, the City Council authorized \$250,000.00 from the SUMC Development Agreement "to be used to develop pedestrian, bicycle and transit connections, as well as, public space design and preliminary design review and initial environmental review of 27 University Avenue and surrounding areas."<sup>13</sup> According to a staff report, this was consistent with the community benefits and mitigation measures outlined in the SUMC Development Agreement. On September 24, 2012, the City Council

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<sup>13</sup> March 05, 2012 - Action Minutes

authorized an additional \$286,000.00 from the SUMC Development Agreement funds to be spent on this proposal.

Meanwhile, significant public opposition to the 27 University Avenue proposals had arisen. Several emailed Public Records Requests (PRRs) that had been sent to the City regarding these proposals remained unanswered for several more months. However, the City did respond promptly to a PRR by the Palo Alto Weekly (Weekly) regarding these proposals. Articles and editorials in the Weekly highlighted the lack of transparency regarding these significant proposals. According to the City's own records, other PRRs regarding these proposals remained unanswered as of November 5, 2013.

Public opposition was focused on the controversial nature of these proposals – the scale, the proposed building heights, potential traffic impacts, et cetera. Residents felt frustrated by the inability to get sufficient information or good explanations regarding what discussions had taken place among the developer, city staff, and City Council members between September 2011 and March 2012.

Although staff reports dated March 5, 2012, and thereafter provided explanations of what had been proposed, the City did not always respond in a timely manner to PRRs from the public regarding the proposals. Interactions between City council members and the developer were conducted without public knowledge until March 2012.

The opposition to the proposal to develop 27 University Avenue became so intense that the City Council effectively dropped it from consideration in December 2013.

The Grand Jury notes that at the time the City Council allocated the SUMC funds, no formal land use application by the developer had been filed. Such a large expenditure of public funds and staff time for a design study linked to development of 27 University Avenue, for which no land use application had been filed, raises questions about the wisdom of spending the SUMC funds in this manner. Given that the money was allocated toward the design and study of 27 University Avenue and surrounding areas, it is unknown if the results are useful if the 27 University Avenue proposal never goes forward.

#### Public Records Requests (PRRs)

As discussed above, the CPRA provides public access to any document that is a public record. Upon request, the government agency must respond to the request for a public record unless there is a specific statutory exemption. There is no time limit *per se* in which the documents must be delivered to the requester but a response is required within 10 days. An additional 14 days may be requested if the request meets certain criteria.

Palo Alto's P&P 1-43/CLK supplements the CPRA. According to the P&P, it is the City's policy to "facilitate an efficient and timely response to all requests for access to, or copies of, public information within reasonable limitations imposed by workload and pursuant to the Public Records Act..."

However, the Grand Jury learned through its investigation that the city staff's compliance with the CPRA and the City's written procedures is not consistent.

In Palo Alto, PRRs are made in at least three ways: by telephone, by going to City Hall to request the records verbally or in writing at "the counter," or by letter or email. The Grand Jury limited its investigation to PRRs made by letter or email in evaluating the city's compliance with the CPRA and the City's P&P. Currently, the majority of written requests are made via email.

The City's procedure for providing public records allows employees to fulfill routine requests (i.e., easily accessible documents.) The Department head is responsible with ensuring that routine requests are fulfilled within the required time frame. The P&P also allows his/her discretion in determining whether to keep a copy of the routine request and response.

Under the policy, if a request is for non-routine records, or involves more than one department, a Request Form should be filled out and delivered to the City Manager, who copies the City Clerk, assigns a lead department and determines whether the City Attorney should be contacted. The request will be forwarded to the Department Director for follow-up and the City Manager will insure compliance. The City Clerk is responsible for notifying the respective department regarding the ten-day response requirement.

The Grand Jury reviewed numerous copies of PRRs sent to several City officials, including members of the City Council. Responses, even after repeated requests, remained unanswered for several months, or were not responded to at all. In one case, in a follow up request, a response to the PRR was received only after the City was cited sections of the CPRA. The City could not explain why it failed to respond to these multiple PRRs.

The Grand Jury requested a log of all PRRs for the years 2011-2013. In response, the City created a log from its documents reflecting the name of the requestor; date of the PRR; and the completion date of the City's response for the Grand Jury.<sup>14</sup> The Grand Jury's review of the newly created log clearly showed that many PRRs had no response date at all. Thus, the Grand Jury is unable to ascertain from the log if the City responded timely or at all. With respect to some entries on the log, the Grand Jury's own investigation was able to confirm that no response was ever given.

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<sup>14</sup> Currently, the City's P & P only requires that a master file be kept of non-routine requests.

The completeness of the newly created log was also questioned. The Grand Jury reviewed copies of multiple PRRs that were not on the log nor responded to.

The Grand Jury conducted its own test of the City's compliance with the CPRA. It submitted two requests for documents to the City Clerk (Clerk). One request was sent via email and the other by US mail. Both requests were submitted on September 11, 2013. The US mail request for documents did not identify the requester as a Grand Jury member and requested the City's P&P regarding the sale of City owned surplus land. This was a routine request, to which the City responded within the statutory ten-day limit.

The other request identified the requester as a Grand Juror, cited the CPRA, and also sought a copy of the City's P&P addressing the City process for declaring City owned land to be surplus. The Grand Jury believes this document was a routine request. The City did not respond to the email request in ten days. On September 29, 2013, the requester sent a follow up request. Finally, the Grand Jury received the response on October 1, 2013, a full nineteen days after the initial request.

The Grand Jury learned that it is the Clerk's practice to remind departments if a PRR was not responded to in a timely manner, but that the Clerk has no authority to enforce compliance by other departments. On some occasions, despite follow up reminders by the Clerk, the responsible department(s) never did respond to PRRs. Further, the Grand Jury was provided no evidence that the Clerk sends follow up reminders on outstanding PRRs unless the requester kept following up with the Clerk.

## **Conclusions**

The State of California has specific provisions in the Government Code and the City has developed its own P&P designed to provide the public a sense of assurance of governmental transparency and consistency. In fact, the City has prided itself, publicly and repeatedly, on the transparency of its government operations as evidenced in the Mayor's Monthly Newsletter that begins with the statement "Open government means transparency and accountability to citizens."

Nevertheless, the Grand Jury has found that the City has failed to meet expectations of transparency with respect to the following:

- The lease and use of the Lee Gift Deed Property that had been given to the City to be used for "conservation, including park and recreation purposes." Despite this restriction, the City leased the property to an adjacent landowner for approximately nine years, including holdovers, and allowed the lessee to use the property for construction staging;

- The City held a closed session meeting to discuss the adjacent landowner/developer's offer to buy the Lee Gift Deed Property. At that time, the Lee Gift Deed Property had not been determined to be surplus and therefore could not be legally sold;
- The City's failure to engage the public in initial discussions pertaining to the 27 University Avenue proposal and the allocation of SUMC funds; and
- The City's failure to consistently respond to requests for public records in a timely manner and operational deficiencies for tracking PRRs and responses.

## **Findings and Recommendations**

### **Finding 1**

From 1996 to 2005, the City of Palo Alto leased the Lee Gift Deed Property to an adjacent landowner for construction staging even though the property was required to be used for conservation, including parks and recreation.

### **Recommendation 1**

The City of Palo Alto should adhere to use restrictions of all property donated to the City.

### **Finding 2**

The City of Palo Alto leased the Lee Gift Deed Property without following its P&P 1-11/ASD regarding the Procedure for Leasing of City-Owned Real Property.

### **Recommendation 2**

The City of Palo Alto should follow its P&P 1-11/ASD regarding the Procedure for Leasing of City-Owned Real Property when leasing City-Owned Real Property.

### **Finding 3**

On September 18, 2012, the City of Palo Alto held a closed session meeting, under the real-estate negotiation exception to the Brown Act, to discuss price and terms of the sale of the Lee Gift Deed Property. Prior to the meeting, the public was not aware that the City was considering the sale of the Lee Gift Deed Property and had no opportunity for public debate on the future use or sale of the property.

### **Recommendation 3**

The City of Palo Alto should seek public input about the disposition of surplus City-owned land before the City Council meets to discuss that property.

### **Finding 4a**

The City of Palo Alto had not complied with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned property when it discussed, in closed session, the price and terms of an offer to purchase the Lee Gift Deed Property.

### **Finding 4b**

At the time of the closed session the Lee Gift Deed Property could not be sold because of the deed restriction and because it had not yet been declared surplus.

### **Recommendation 4**

The City of Palo Alto should always comply with its own Policy and Procedure 1-48/ASD regarding the Sale/Transfer of Surplus City-Owned Real Property.

### **Finding 5a**

The March 5, 2012, City Council meeting was the first time the public was made aware of a proposal to develop 27 University Avenue.

### **Finding 5b**

The City of Palo Alto approved expenditure of Stanford University Medical Center funds for the 27 University Avenue proposal before the public had the opportunity for public debate on the proposal.

### **Recommendation 5**

The City of Palo Alto should obtain early input from its constituency about significant development proposals before allocating City funds to the proposals.

### **Finding 6**

The City of Palo Alto does not consistently respond to requests for public records in a timely manner.

**Recommendation 6**

The City of Palo Alto should consistently respond to requests for public records in a timely manner.

**Finding 7**

The City of Palo Alto's current system for tracking and documenting non-routine PRR and the City's response to the request fails to capture all requests or responses.

**Recommendation 7**

The City of Palo Alto should re-examine its system for handling non-routine PRR to ensure that it has a mechanism to evaluate compliance with the CPRA and its own P&P.

## **APPENDIX**

### **Documents Reviewed**

Assessor's Parcel Maps of APN 182-46-006 (7.7 acres of land adjacent to Foothills Park) and APN 120-31-010 (27 University Avenue)

California Government Code §54222 *et seq.*<sup>15</sup>

The California Public Records Act, California Government Code §6250 *et seq.*

The City of Palo Alto City Council Procedures and Protocols Handbook

The City of Palo Alto's Policy and Procedures 1-11/ASD regarding the Procedure for Leasing of City-Owned Real Property

The City of Palo Alto's Policy and Procedures 1-43/CLK, effective September 2004, regarding Public Records Requests

The City of Palo Alto's Policy and Procedures 1-48/ASD regarding Sale/Transfer of Surplus City-Owned Real Property

The City of Palo Alto's response to a Grand Jury request for a log of all public records requests from 2011-2013

Documents from the City of Palo Alto website, including agendas, minutes, and staff reports, associated with the 7.7 acres near Foothills Park

Documents from the City of Palo Alto website, including agendas, minutes, and staff reports associated with the proposed development of 27 University Avenue

The Gift Deed of 7.7 acres near Foothills Park from the Lee Family to the City of Palo Alto

In excess of 300 pages of emails, newspaper clippings, letters, and staff reports submitted by two of the complainants

The lease agreements of the 7.7 acres near Foothills Park

Photos of the 7.7 acres near Foothills Park

Portions of the Palo Alto City Charter

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<sup>15</sup> California law relating to the sale of public land

Portions of the Palo Alto Municipal Code

The Ralph M. Brown Act, California Government Code. §54950 *et seq.*

The responses from the City of Palo Alto to Public Records Act requests from Grand Jury members

The Stanford University Medical Center (SUMC) Development Agreement with the City of Palo Alto

Several architectural plans and renderings of 27 University Avenue proposal(s)

Written responses by City of Palo Alto staff to written questions proposed by the Grand Jury

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 16<sup>th</sup> day of June, 2014.



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Bob E. Johnson  
Foreperson



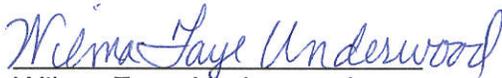
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Michael M. López  
Foreperson pro tem



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Anita A. Robles  
Secretary



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Wilma Faye Underwood  
Secretary