



City of Monte Sereno

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(ENDORSED)
FILED
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Clerk of the Court
Superior Court of CA County of Santa Clara
BY *Barney Hurdley* DEPUTY

December 6, 2022

Via E-mail CGJ@scscourt.org and First-Class Mail

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

RE: Response to the 2022 Santa Clara County Civil Grand Jury Final Report titled, "If You Only Read the Ballot, You're Being Duped"

Dear Judge McGowen:

The City of Monte Sereno is providing its response to the to Santa Clara County Civil Grand Jury Final Report titled, "If You Only Read the Ballot, You're Being Duped". Based on the City's review of the report, and in accordance with Penal Code section 933 et seq., the City Council of the City of Monte Sereno is required to respond to Findings 1 and to Recommendations 1b, 1c, and 1e.

As directed by the Civil Grand Jury, responses are being provided in accordance with Section 933.05(a) and (b) of the California Penal Code. The responses are as follows:

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: The City of Monte Sereno disagrees partially with the finding. Ballot questions are subject to requirements in the Elections Code sections 13119 and 13120, which regulate the form of ballot question and require that the ballot questions be a true and impartial synopsis of the measure to be voted on. Ballot questions have often been subject to pre-election litigation to in the event that they are misleading or inaccurate, which serves as a potential check on abuse.

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: Recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

The County Counsel does not have jurisdiction to review ballot measures for incorporated cities, and also does not serve as legal counsel to incorporated cities. This recommendation contravenes applicable law regarding the placement of election materials on the ballots, including the state Elections Code, and would require City local ballot measures to be submitted to an officer of another political subdivision for prior review and approval, would potentially require the County Counsel to provide legal advice to an entity that is not the County Counsel's client, and would contravene constitutional principles set forth in Article XI of the California Constitution allowing local cities to exercise general police powers within their own territorial jurisdictions subject to the provisions of state general law, including the Elections Code.

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: This recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

The County Counsel does not have jurisdiction to review ballot measures for incorporated cities, and also does not serve as legal counsel to incorporated cities. This recommendation contravenes applicable law regarding the placement of election materials on the ballots, including the state Elections Code, and would require City local ballot measures to be submitted to an officer of another political subdivision for prior review and approval, would potentially require the County Counsel to provide legal advice to an entity that is not the County Counsel's client, and would contravene constitutional principles set forth in Article XI of the California Constitution allowing local cities to exercise general police powers within their own territorial jurisdictions subject to the provisions of state general law, including the Elections Code.

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: This recommendation will not be implemented because it is not warranted or reasonable, with an explanation.

The County does not have jurisdiction to review ballot measures for incorporated cities, and thus an oversight commission created by the County would not be an appropriate location to submit ballot questions. This recommendation contravenes applicable law, including the state Elections Code, regarding the placement of election materials on the ballots, and would require City local ballot measures to be submitted to another political subdivision for prior review and approval, contravening constitutional principles set forth in Article XI of the California Constitution allowing local cities to exercise general police powers within their own territorial jurisdictions, subject to the provisions of state general law, including the Elections Code.

This concludes the City's responses to the findings and recommendations in the Final Report. Please contact me at (408) 498-5285 if you have any questions or need any additional information related to this response.

Sincerely,

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Mayor