



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
SEPTEMBER 03, 2019
110 EAST MAIN STREET
LOS GATOS, CA**

Steve Leonardis, Mayor
Marcia Jensen, Vice Mayor
Rob Rennie, Council Member
Marico Sayoc, Council Member
Barbara Spector, Council Member

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please complete a “speaker’s card” located on the back of the chamber benches and return it to the Clerk Administrator. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
Live & Archived Council Meetings can be viewed by going to:
www.losgatosca.gov/Councilvideos***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
SEPTEMBER 03, 2019
7:00 PM**

MEETING CALLED TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

- i. Community Pledge Leader - Kamron Emami, Los Gatos High School

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine and may be approved by one motion. Any member of the Council or public may request to have an item removed from the Consent Items for comment and action. If an item is pulled, the Mayor has the sole discretion to determine when the item will be heard. Unless there are separate discussions and/or actions requested by Council, staff, or a member of the public, it is requested that items under the Consent Items be acted on simultaneously.)*

- 1. Approve the Town Council meeting minutes of August 20, 2019.
- 2. Approve the Town Investment Policy to Include Socially Responsible Investment Guidelines as recommended by the Council Finance Committee.
- 3. Approve the Town's Response to the Santa Clara County Civil Grand Jury Report on "Inquiry into the Governance of the Valley Transportation Authority" Dated June 18, 2019.
- 4. Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with CSG Consultants, Inc. to Provide for an Additional \$100,000, for a Total Agreement Not to Exceed \$600,000.
- 5. Adopt the Council Policy Committee's Recommendation to Amend Council Policy 2-11 to Allow Applicants to Apply for More than One Board, Commission, or Committee Per Recruitment Cycle.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

PUBLIC HEARINGS *(Applicants/Appellants and their representatives may be allotted up to a total of ten minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

- 6. Introduction of an Ordinance of the Town of Los Gatos Amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice-Mayor.

OTHER BUSINESS (*Up to three minutes may be allotted to each speaker on any of the following items.*)

7. Adopt an Ordinance between the Board of Administration California Public Employees' Retirement System and the Town Council to add Government Code Section 20516, Employees Sharing Additional Cost, for Classic Local Police Members in the Los Gatos Police Officers' Association.
8. Receive the Private Sector Arts Contribution Program Report and Direct the Preparation of an Ordinance Designating One Percent of Building Valuation Costs of New Development for Funding Public Arts.
9. Provide Direction Regarding the Town's Priorities for its Annual Community Grants Program.

COUNCIL / MANAGER MATTERS

ADJOURNMENT (*Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time*)

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for public inspection at the front desk of the Los Gatos Town Library, located at 100 Villa Avenue, and are also available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 1

**DRAFT
Minutes of the Town Council Meeting
August 20, 2019**

The Town Council of the Town of Los Gatos conducted a Regular Meeting on Tuesday, August 20, 2019, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:01 P.M.

ROLL CALL

Present: Mayor Steven Leonardis, Vice Mayor Marcia Jensen (arrived at 7:03 p.m.), Council Member Rob Rennie, Council Member Marico Sayoc, Council Member Barbara Spector.

Absent: None

PLEDGE OF ALLEGIANCE

Jack Noymer led the Pledge of Allegiance. The audience was invited to participate.

PRESENTATIONS

Mayor Leonardis presented a Small Business, Big Applause commendation to Oak and Rye. Ross and Bree Hanson thanked the Town for their support.

Mayor Leonardis announced certificates of appreciation to the 2019 Music in the Park Sponsors: Blue Jay Bicycles, The Alarm Company, Classic Car Wash, City of Monte Sereno, Compass Real Estate, Good Samaritan Hospital, and Silicon Valley Clean Energy Authority (SVCEA). SVCEA was present to accept its certificate.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Council Study Session Meeting Minutes of August 6, 2019.
2. Approve Council meeting minutes of August 6, 2019.
3. Receive the Fourth Quarter Investment Report (April through June 2019) for Fiscal Year 2018/19.
4. Adopt a Resolution Establishing the FY 2019/20 Gann Appropriations Limit for The Town of Los Gatos and Rescinding Resolution 2019-031. **RESOLUTION 2019-045**
5. Planned Development Application PD-17-002 and Negative Declaration ND-19-002. Project Location: 16212 Los Gatos Boulevard. **ORDINANCE 2288**
Property Owner/ Applicant: 16212 Los Gatos Blvd. LLC.
Requesting approval of a Planned Development to re-zone two properties zoned CH to CH:PD to allow for construction of a new commercial building. APN 523-06-010 and -011

Consent Items – continued

6. Adopt a Resolution approving the Town's Green Stormwater Infrastructure Plan to Demonstrate a Long-term Commitment to the Implementation of Green Stormwater Infrastructure Facilities in the Town, as Required by the Town's Municipal Regional Stormwater Permit (MRP). **RESOLUTION 2019-046**
7. Adopt a resolution establishing the Complete Streets and Transportation Commission and rescinding resolutions 2016-052 and 2016-058 effective December 31, 2019. **RESOLUTION 2019-047**
8. Authorize a FY 2019/20 Expenditure Budget Adjustment in the Amount of \$300,707 for the Vegetation Management – Town Wide Project.
9. Authorize the Town Manager to Negotiate and Execute an Agreement with the County of Santa Clara for Road Maintenance Reimbursement in Annexed County Pockets.
10. Approve the Policy Committee's Recommendations to Amend Council Policy 2-01 Entitled Town Council Agenda Format and Rules and Policy 2-05 Entitled Planning Commission Policies and Procedures Relating to Public Hearing Time Limits. **POLICIES 2-01 and 2-05**
11. Adopt a Resolution Regarding Regulatory Management of Building Materials that Potentially Contain Polychlorinated Biphenyls (PCBs). **RESOLUTION 2019-048**
12. Authorize the Town Manager to Execute a First Amendment to the Agreement for Services with Brightview Tree Care Services, Inc. to provide for an additional \$100,000 for FY 2019/20.
13. Authorize the Town Manager to Purchase Vehicles:
 - a. Two Police Patrol Vehicles from Folsom Lake Ford in an Amount not to Exceed \$83,263
 - b. One Maintenance Vehicle from Monarch Rentals in an Amount not to Exceed \$75,891
 - c. One Maintenance Vehicle from National Auto Fleet Group in an Amount not to Exceed \$95,650.
14. Provide direction on a Town position with respect to the Valley Transportation Authority study of the State Route 85 Corridor.

Item #10 pulled by Council Member Rennie and will be heard after Item #17.

MOTION: Motion by **Mayor Leonardis** to approve Consent Items 1 through 9 and 11 through 14 inclusive of the Addendum for Item 7. **Seconded** by **Council Member Spector**.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Mary Mackey, Los Gatos Vegan Community

- Requested Council include animal agriculture reduction in the Sustainability Plan in the General Plan update.

Verbal Communications – continued

Karen Rubio, Los Gatos Vegan Community

- Requested Council include animal agriculture reduction in the Sustainability Plan in the General Plan update.

Dashiell Leeds, Sierra Club Loma Prieta Chapter

- Requested the Town adopt the Construction Reach Codes with the current Building Code cycle.

Carla Albright, Together We Will (TWW)/Indivisible Los Gatos

- Requested the Town adopt the Construction Reach Codes with the current Building Code cycle.

Council Members Rennie, Sayoc, and Spector requested a discussion on a future agenda of whether to adopt Reach Codes as a priority.

OTHER BUSINESS

15. Provide Input to the Comprehensive Downtown Parking Study.

Matt Morley, Parks and Public Works Director and Julie Dixon, Consultant, presented the staff report.

Opened Public Comment.

Marily Rimmer

- Commented on the Olive Zone restrictions in front of the Forbes Mill condominiums and requested the time limits be removed or parking permits be provided for the residents of 35 Church Street.

Kevin Youkilis, Loma Brewing Company

- Inquired what the plans are for additional parking as the Town grows and attracts more visitors.

Closed Public Comment.

Council discussed the matter and provided the following direction:

- Identify a place for employee parking
- Determine how to realistically get employees to park more than a block away
- Examine comprehensive neighborhood parking: do residential parking permits make sense and do they make sense at the price that is currently being charged?
- Look at high school parking and the spillover effect

Other Business Item #15 – continued

- Explain the economic model of the Free Ride Everywhere Downtown (FRED) shuttle model from San Diego
- Explore public/private shared parking
- Determine, if possible, the theoretical number of parking spaces the Town needs
- Describe any rules that say 5 minutes/3 minutes is an unreasonable amount of time to find parking
- Explain if valet parking is a viable option
- Describe the options for public/private partnership(s) for employee parking permits or a shuttle
- Consider timed parking and consistent signage
- Determine if it is possible to take parking off Santa Cruz Avenue
- Consider digital signage with locations of businesses, parking, and parks
- Survey the businesses for the type of business, square footage, the number of employees, and the shifts they work to determine the number of employees during any given time.
- Provide benchmarking information with other communities. What cities/downtowns have more parking places? What cities/downtowns have more square footage? What cities/downtowns have more restaurants? Are they overparked or underparked?
- Explain the correlation between parking and traffic

PUBLIC HEARINGS

16. Introduction of an Ordinance of the Town of Los Gatos Amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice-Mayor.

Rob Schultz, Town Attorney, presented the staff report.

Opened and closed Public Comment.

Council discussed the matter.

MOTION: Motion by Council Member Sayoc to direct staff to bring back a revised Ordinance specifying that the election of Mayor and Vice Mayor occur at a special meeting in December between the first and second regularly scheduled meetings after the certification of the election has been received; the Ordinance to be effective January 1, 2020; and the special meeting date to be included on the Council meeting calendar. **Seconded by Mayor Leonardis.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

17. Approve the Draft General Plan Vision Statement and Guiding Principles.

Jennifer Armer, Senior Planner, presented the staff report.

Other Business Item #17 – continued

Opened Public Comment.

Lee Quintana, General Plan Advisory Committee member

- Commented that the guiding principles seem to narrow the vision statement and she would like a guiding principle that states the Town will look at ways to reduce greenhouse gas emissions.

Closed Public Comment.

Council discussed the matter.

MOTION: Motion by Vice Mayor Jensen to approve the Vision Statement language from the Planning Commission on page 2 of the staff report. **Seconded by Council Member Spector.**

VOTE: Motion passed unanimously.

MOTION: Motion by Council Member Spector to adopt the Guiding Principles on page 3 of the staff report with the exception that the Community Vitality section end at the word “future.” **AMENDMENT:** Change the Inclusivity section to read “Recognize the importance of and promote ethnic, cultural, and socio-economic diversity and equity to enhance the quality of life in Los Gatos.” **Seconded by Vice Mayor Jensen.**

VOTE: Motion passed unanimously.

Pulled Consent Item #10

10. Approve the Policy Committee’s Recommendations to Amend Council Policy 2-01 Entitled Town Council Agenda Format and Rules and Policy 2-05 Entitled Planning Commission Policies and Procedures Relating to Public Hearing Time Limits. **POLICIES 2-01 and 2-05**

Rob Schultz, Town Attorney, presented the staff report.

Opened and closed Public Comment.

Pulled Consent Item #10 – continued

Council discussed the matter.

MOTION: Motion by Mayor Leonardis to approve the recommendation contained in the staff report. **Seconded by Council Member Spector.**

VOTE: Motion passed 4/1. Council Member Rennie voting no.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Sayoc stated she attended the Cities Association meeting, and she and Mayor Leonardis chaperoned the Youth Commission's trip to Sacramento to attend the Legislative Action Day with Assembly Member Evan Low.
- Council Member Spector stated she attended the General Plan Advisory Committee (GPAC), the Council Finance Committee, and the Conceptual Development Advisory Committee (CDAC) meetings.
- Mayor Leonardis stated he attended the Council Finance Committee meeting, the Legislative Action Day with Council Member Sayoc, the West Valley Sanitation District Board of Directors meeting, and the Safe Routes to School event on the first day of school at Van Meter Elementary.
- Vice Mayor Jensen stated she attended the CDAC and GPAC meetings, the Safe Routes to School event on the first day of school at Fisher Middle School, and she met with representatives of the proposed Business Improvement District (BID).
- Council Member Rennie stated he attended the Silicon Valley Clean Energy Authority (SVCEA) Finance and Administration Committee meeting, and he participated via teleconference for the Valley Transportation Authority (VTA) Board emergency meetings.

Manager Matters

- Leadership Los Gatos applications are being accepted through September 6, 2019.

ADJOURNMENT

The meeting adjourned at 9:05 p.m.

Attest:

Shelley Neis, Town Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 2

DATE: August 21, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Town Investment Policy to Include Socially Responsible Investment Guidelines as recommended by the Council Finance Committee

RECOMMENDATION:

Approve the Town Investment Policy to include Socially Responsible Investment Guidelines as recommended by the Council Finance Committee.

BACKGROUND:

At its May 16, 2019 Town Council meeting, Council Members requested that the Council Finance Committee discuss and consider revisions to the Town Investment Policy to address socially responsible investments. On August 12, 2019, the Council Finance Committee discussed and recommended that the Town Council approve the proposed revision to the Investment Policy for consideration of socially responsible investments when appropriate.

DISCUSSION:

The Principles for Responsible Investment (PRI) is the world's leading advocate for responsible investments. The PRI is an independent organization, funded and managed by its signatories, and backed by the United Nations Environment Programme Finance Initiative and United Nations Global Compact.

Responsible investment is defined by the PRI as an approach to investing that aims to incorporate Environmental, Social and Governance (ESG) factors into investment decisions, to better manage risk and generate sustainable, long-term returns. The proposed Policy revision is intended to provide guidelines for consideration of socially responsible investments when appropriate (see Attachment 1).

PREPARED BY: Stephen Conway
Finance Director

Reviewed by: Town Manager, Assistant Town Manager, and Town Attorney

PAGE 2 OF 2

SUBJECT: Adopt a Resolution Establishing the FY 2019/20 Gann Appropriations Limit for
The Town of Los Gatos and Rescinding Resolution 2019-031

DATE: August 21, 2019

FISCAL IMPACT:

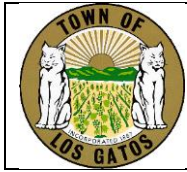
This action has no known fiscal impact. The Town's current investment manager considers PRI in its work for other clients and it is not expected to affect the Town's returns on investment.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Town of Los Gatos Investment Policy (redlined)



TOWN OF
LOS GATOS
CALIFORNIA

COUNCIL POLICY MANUAL

Small Town Service

Community Stewardship

Future Focus

TITLE: Investment Policy

POLICY NUMBER: 4-02

EFFECTIVE DATE: 11/1/16

PAGES: 8

ENABLING ACTIONS: 2016-063

REVISED DATES: 5/16/17;5/15/2019

APPROVED:

PURPOSE

The Town of Los Gatos (the "Town"), incorporated in 1887, is located approximately 60 miles south of San Francisco, in the southwestern portion of Santa Clara County. The Town operates under the Council/Manager form of government. The Town Council is the legislative body for the Town. It has five members elected to serve staggered four year terms. The Town Manager is appointed by the Town Council.

The Town Council has adopted this Investment Policy in order to establish the investment scope, objectives, delegation of authority, standards of prudence, reporting requirements, internal controls, eligible investments and transactions, diversification requirements, risk tolerance, and safekeeping and custodial procedures for the investment of the funds of the Town. All Town funds will be invested in accordance with this Investment Policy and with applicable sections of the California Government Code.

This Investment Policy was originally adopted by the Town Council of the Town of Los Gatos November 1, 2016. Town Council adopted revisions replace any previous investment policy or investment procedures of the Town.

SCOPE

This Investment Policy applies to all of the Town's short-term operating funds. These funds are described in the Town's annual financial report and include, but are not limited to:

General Fund

Special Revenue Funds

Capital Project Funds

Debt Service Funds

Enterprise Fund

Internal Service Funds

Fiduciary Funds

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Specifically excluded from this Investment Policy are amounts which are held by a trustee or fiscal agent and pledged as payment or security for bonds or other indebtedness, obligations under a lease, or obligations under certificates of participation. Such funds are invested in accordance with statutory provisions, ordinance, resolution, or indenture governing the issuance of the obligations. In addition, this Investment Policy is not applicable to the Town's Deferred Compensation Plan. These investments are directed by each employee participant in accordance with the rules of the Deferred Compensation Plan.

POLICY

OBJECTIVES

The Town's funds shall be invested in accordance with all applicable Town policies and codes, State statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

1. Preservation of capital and protection of investment principal.
2. Maintenance of sufficient liquidity to meet anticipated cash flows.
3. Attainment of a market value rate of return.
4. Diversification to avoid incurring unreasonable market risks.

DELEGATION OF AUTHORITY

Management responsibility for the Town's investment program is delegated annually by the Town Manager to the Town Treasurer/Finance Director (the "Treasurer") pursuant to California Government Code Section 36510. The Treasurer may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. The Treasurer shall maintain a list of persons authorized to transact securities business for the Town. No person may engage in an investment transaction except as expressly provided under the terms of this Investment Policy.

The Treasurer shall develop written administrative procedures and internal controls, consistent with this Investment Policy, for the operation of the Town's investment program. Such procedures shall be designed to prevent losses arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees.

The Town may engage the support services of outside investment advisors in regard to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the Town's financial resources.

PRUDENCE

The standard of prudence to be used for managing the Town's investments shall be California Government Code Section 53600.3, the prudent investor standard which states, "When

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investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.”

The Town's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The Town recognizes that no investment is totally without risk and that the investment activities of the Town are a matter of public record. Accordingly, the Town recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the Town.

The Treasurer and authorized investment personnel acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the deviations from expectations are reported in a timely fashion to the Town Council and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

Elected officials and Town employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Elected officials and Town employees shall disclose to the Town Council any business interests they have in financial institutions that conduct business with the Town and they shall subordinate their personal investment transactions to those of the Town. In addition, the Town Manager and the Treasurer shall file a Statement of Economic Interests each year pursuant to California Government Code Section 87203 and regulations of the Fair Political Practices Commission.

SOCIALLY RESPONSIBLE INVESTING

In addition to and subordinate to the objectives set forth above, investment of funds should be guided by the following socially responsible investment goals when investing in corporate securities and depository institutions. Investments shall be made in compliance with the responsible investment goals to the extent that such investments achieve substantially equivalent safety, liquidity and yield compared to other investments permitted by state law.

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(1) Environmental, Social Responsibility and Governance Concerns

Investments are encouraged in entities that support community well-being through safe and environmentally sound practices and fair labor practices. Investments are encouraged in entities that support equality of rights regardless of sex, race, age, disability or sexual orientation. All corporate securities within the portfolio will be monitored by an independent third-party who will provide the Town with an ESG (Environmental, Social Responsibility, and Governance) rating. The Town will prefer companies when appropriate that maintain a higher ESG rating as opposed to those companies that have a lower ESG Rating.

(2) Community Investments

Investments are encouraged in entities that promote community economic development, and investments are discouraged in entities that finance high-cost check-cashing and deferred deposit (payday-lending) businesses. Investments are encouraged in entities that have a demonstrated involvement in the development or rehabilitation of low income affordable housing, and have a demonstrated commitment to reducing predatory mortgage lending and increasing the responsible servicing of mortgage loans. Securities investments are encouraged in financial institutions that have a Community Reinvestment Act (CRA) rating of either Satisfactory or Outstanding, as well as financial institutions that are designated as a Community Development Financial Institution (CDFI) by the United States Treasury Department, or otherwise demonstrate commitment to community economic development.

AUTHORIZED SECURITIES AND TRANSACTIONS

All investments and deposits of the Town shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686, except that pursuant to California Government Code Section 5903(e), proceeds of bonds and any moneys set aside or pledged to secure payment of the bonds may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds. Any revisions or extensions of these code sections will be assumed to be part of this Investment Policy immediately upon being enacted. However, in the event that amendments to these sections conflict with this Investment Policy and past Town investment practices, the Town may delay adherence to the new requirements when it is deemed in the best interest of the Town to do so. In such instances, after consultation with the Town's attorney, the Treasurer will present a recommended course of action to the Town Council for approval. All investment limits specified in the Policy are calculated at the time of investment.

The Town has further restricted the eligible types of securities and transactions as follows:

1. United States Treasury bills, notes, bonds, or certificates with a final maturity not exceeding five years from the date of trade settlement.
2. Federal Agency Obligations for which the faith and credit of the United States are pledged for the payment of principal and interest and which have a final maturity not exceeding five years from the date of trade settlement. There is no limit on the percentage of the

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portfolio that can be invested in this category, however, no more than 20% of the town's total portfolio shall be invested in the combination of Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) mortgage-backed securities.

3. Federal Instrumentality (government sponsored enterprise) debentures, discount notes, callable securities, step-up securities, and mortgage-backed securities (including FNMA and FHLMC) with a final maturity not exceeding five years from the date of trade settlement. There is no limit on the percentage of the portfolio that can be invested in this category, however, no more than 20% of the town's total portfolio shall be invested in the combination of GNMA, FNMA, and FHLMC mortgage-backed securities.
4. Prime Commercial Paper with a maturity not exceeding 270 days from the date of trade settlement with the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either sub-paragraph A. or sub-paragraph B. below:

A. The entity shall (1) be organized and operating in the United States as a general corporation, (2) have total assets in excess of five hundred million dollars (\$500,000,000) and (3) Have debt other than commercial paper, if any, that is rated "A" or higher by a NRSRO.

B. The entity shall (1) be organized within the United States as a special purpose corporation, trust, or limited liability company, (2) have program wide credit enhancements, including, but not limited to, over collateralization, letters of credit or surety bond and (3) have commercial paper that is rated "A-1" or higher, or the equivalent, by a NRSRO.

Purchases of eligible commercial paper shall not exceed:

- 10% of the outstanding commercial paper of any single corporate issuer,
- 5% of the Town's total portfolio in the commercial paper of any one issuer, and
- 25% of the Town's total portfolio.

5. Eligible Bankers Acceptances with a maturity not exceeding 180 days from the date of trade settlement, issued by a state or national bank with combined capital and surplus of at least \$250 million, whose deposits are insured by the FDIC, and whose senior long-term debt is rated at least A or the equivalent by a NRSRO at the time of purchase. No more than 5% of the Town's total portfolio shall be invested in banker's acceptances of any one issuer, and the aggregate investment in banker's acceptances shall not exceed 30% of the Town's total portfolio.

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6. Medium Term Notes (Corporate Notes) issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States, with a final maturity not exceeding five years from the date of trade settlement, and rated at least “A” or the equivalent by a NRSRO. No more than 5% of the Town’s total portfolio shall be invested in the medium-term notes of any one issuer and the aggregate investment in medium term notes shall not exceed 30% of the Town’s total portfolio.

7. Municipal & State Obligations:

- A. Municipal bonds including registered notes or bonds of any of the 50 states, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the 50 states.
- B. In addition, bonds, notes, warrants, or other evidences of indebtedness of any local agency in California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, operated by the local agency, or by a department, board, agency, or authority of the local agency.

Municipal bonds must be rated at least “A” or the equivalent by a NRSRO with maturities not exceeding five years from the date of the trade settlement. No more than 5% of the Town’s total portfolio shall be invested in “A” rated bonds or in the bonds of any one municipality. In addition, the aggregate investment in municipal bonds may not exceed 30% of the total portfolio.

8. Certificates of Deposit with a final maturity not exceeding five years from the date of trade settlement. The aggregate investment in certificates of deposit shall not exceed 30% of the Town’s portfolio, and no more than 5% of the portfolio shall be held in any one deposit or allocated to any one issuer. Certificates of Deposit shall be issued by a nationally or state-chartered bank or a state or federal savings and loan association or by a state-licensed branch of a foreign bank or by a federally licensed branch of a foreign bank provided that the senior debt obligations of the issuing institution are rated at least “A” or the equivalent by a NRSRO.

Negotiable certificates of deposit issued by a nationally or state-chartered bank, or by a federally licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposits are subject to the limitations of Section 53601(i), shall be fully insured by the FDIC with a corresponding FDIC certification number, and shall be delivered through the Depository Trust Company.

Non-Negotiable certificates of deposit issued by a nationally or state-chartered bank, or by a federally licensed or state-licensed branch of a foreign bank. Purchases of non-negotiable certificates of deposit are subject to the limitations of Sections 53601(n) and 53638 and shall be fully insured by the FDIC with a corresponding FDIC certification number.

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Private sector entities may be used to place certificates of deposit subject to the limitations of Section 53601.8.

9. State of California's Local Agency Investment Fund (LAIF), pursuant to California Government Code Section 16429.1. The aggregate amount invested in LAIF shall not exceed the maximum allowed by the fund.
10. Money Market Funds registered under the Investment Company Act of 1940 that (1) are "no-load" (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant net asset value per share of \$1.00; (3) invest only in government securities, and (4) have a rating of at least AAA or the equivalent by at least two NRSROs. No more than 10% of the Town's total portfolio shall be invested in money market funds of any one issuer, and the aggregate investment in money market funds shall not exceed 20% of the Town's total portfolio.

Securities that have been downgraded to a level that is below the minimum ratings described herein may be sold or held at the Town's discretion. The portfolio will be brought back into compliance with Investment Policy guidelines as soon as is practical.

The foregoing list of authorized securities and transactions shall be strictly interpreted. Any deviation from it must be preapproved by resolution of the Town Council.

PORTFOLIO MATURITIES AND LIQUIDITY

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The Town will not invest in securities maturing more than five years from the date of trade settlement, unless the Town Council has by resolution granted authority to make such an investment at least three months prior to the date of investment.

SELECTION OF BROKER/DEALERS

The Treasurer shall maintain a list of broker/dealers approved for investment purposes, and it shall be the policy of the Town to purchase securities only from those authorized firms. To be eligible, a firm must meet at least one of the following criteria:

- Be recognized as a Primary Dealer by the Federal Reserve Bank of New York or have a primary dealer within their holding company structure; or
- Report voluntarily to the Federal Reserve Bank of New York; or
- Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

In addition, authorized broker/dealers must be licensed by the State of California as a broker/dealer as defined in Section 25004 of the California Corporations Code.

The Town may engage the services of investment advisory firms to assist in the management of the portfolio and investment advisors may utilize their own list of approved broker/dealers.

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Such broker/dealers will comply with the selection criteria above and the list of approved firms shall be provided to the Town on an annual basis or upon request.

In the event that an external investment advisor is not used in the process of recommending a particular transaction in the Town's portfolio, authorized broker/dealers shall attest in writing that they have received and reviewed a copy of the this Investment Policy and shall be required to submit and annually update a Town approved Broker/Dealer Information request form, which includes the firm's most recent financial statements.

The Town may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in Item 4 of the Authorized Securities and Transactions section of this Investment Policy.

COMPETITIVE TRANSACTIONS

Each investment transaction shall be competitively transacted with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid and offering prices shall be recorded.

If the Town is offered a security for which there is no other readily available competitive offering, the Treasurer will document quotations for comparable or alternative securities.

SELECTION OF BANKS

The Treasurer shall maintain a list of banks and savings banks approved to provide banking services for the Town. To be eligible, a bank must be a member of the Federal Deposit Insurance Corporation, must qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5 and shall secure deposits in excess of FDIC coverage in accordance with California Government Code Section 53652.

Authorized banks that accept deposits from the Town shall meet high standards with regard to liquidity, asset quality, profitability and capital adequacy. The Treasurer shall utilize a commercial bank rating service to perform credit analysis on banks seeking authorization. Banks that in the judgment of the Treasurer no longer offer adequate safety to the Town shall be removed from the Town's list of authorized banks.

SAFEKEEPING AND CUSTODY

The Treasurer shall select one or more financial institutions to provide safekeeping and custodial services for the Town. A Safekeeping Agreement shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

Custodian banks will be selected on the basis of their ability to provide services for the Town's account and the competitive pricing of their safekeeping related services.

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The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the Town. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, purchased by the Town, will be delivered by book entry and will be held in third-party safekeeping by a Town approved custodian bank or its Depository Trust Company (DTC) participant account.

All Fed wireable book entry securities owned by the Town shall be held in the Federal Reserve System in a customer account for the custodian bank which will name the Town as "customer."

All DTC eligible securities shall be held in the custodian bank's DTC participant account and the custodian bank shall provide evidence that the securities are held for the Town as "customer."

PORTFOLIO PERFORMANCE

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the Town's investments shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the portfolio's weighted average effective maturity. When comparing the performance of the Town's portfolio, its rate of return will be computed net of all fees and expenses.

REPORTING

No less than quarterly, the Treasurer shall prepare a report of the investment earnings and performance results of the Town's investment portfolio. The report shall be submitted to the Town Clerk within 45 days after the end of each quarter for inclusion as an agenda item at the next scheduled Town Council meeting. The report shall include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the Town;
2. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
3. Realized and unrealized gains or losses calculated by amortized cost and by fair value.
4. The weighted average maturity of the portfolio and a percentage breakdown of the total portfolio by maturity.
5. A description of the funds, investments and programs that are under the management of contracted parties;
6. A statement of compliance with this Investment Policy or an explanation for non-compliance; and

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7. A statement of the ability to meet expenditure requirements for the next six months, and an explanation of why money will not be available if that is the case.

PROCEDURES

This Investment Policy shall be adopted by resolution of the Town Council. Annually the Town Manger shall present this Investment Policy to the Town Council for review to ensure its consistency with the Town's investment objectives, current law and economic trends. Any amendments to this Investment Policy shall be approved by the Town Council.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 3

DATE: August 20, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve the Town's Response to the Santa Clara County Civil Grand Jury Report on "Inquiry into the Governance of the Valley Transportation Authority" Dated June 18, 2019.

RECOMMENDATION:

Approve the Town's response to the Santa Clara County Civil Grand Jury Report on "Inquiry into the Governance of the Valley Transportation Authority" dated June 18, 2019.

BACKGROUND:

On June 18, 2019, the Santa Clara County Civil Grand Jury issued a report pursuant to its investigation into the governance structure of the Valley Transportation Authority (VTA). This is the third Grand Jury investigation in the last twenty years on this topic. In summary, the Grand Jury found that the VTA Board is "in need of structural change to enable it to better protect the interests of the County's taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents" (see Attachment 1).

The Civil Grand Jury Report directed jurisdictions in Santa Clara County to respond to specific findings and recommendations. Attachment 2 contains the draft Town responses to the Civil Grand Jury Report.

DISCUSSION:

The Town of Los Gatos is included in the Santa Clara County Civil Grand Jury Report on VTA governance because it is a jurisdiction within the County of Santa Clara that has representation on the VTA Board. The West Valley cities of Campbell, Cupertino, Los Gatos, Monte Sereno, and Saratoga have a single representative, appointed by the Mayors of these cities every two years. Currently, Los Gatos Council Member Rob Rennie represents the five West Valley cities.

Reviewed by: Assistant Town Manager, Town Attorney, and Parks and Public Works Director

DISCUSSION (Continued):

As a result of its inclusion in the report, the Town is required to respond by letter or electronic transmission to the Civil Grand Jury's Findings and Recommendations within 90 days, pursuant to California Penal Code. The Town may respond to the Report's Findings in one of the following ways:

- *Agree*
- *Partially Agree*
- *Partially Disagree*
- *Disagree*

The Town may respond to the Report's Recommendations in one of the following ways:

- *Has been implemented*
- *Has not been implemented, but will be implemented in the future*
- *Requires further analysis*
- *Will not be implemented*

The Civil Grand Jury Report included one Finding and three Recommendations that require a response from the Town (see Attachment 2). In summary, the response states that the Town partially agrees with Finding 1 and that the Recommendations require further analysis.

CONCLUSION:

Staff recommends approval of the letter with the detailed response as contained in Attachment 2. Once approved by the Town Council, the letter will be transmitted to the Santa Clara County Civil Grand Jury, the Presiding Judge, and to the Clerk of the VTA Board pursuant to its request.

COORDINATION:

The City Managers of the West Valley cities of Campbell, Cupertino, Los Gatos, Monte Sereno, and Saratoga coordinated on the draft response. Internal coordination included the Town Manager's Office, Parks and Public Works Department, and Town Attorney's Office.

FISCAL IMPACT:

There is no fiscal impact for approving the response to the Civil Grand Jury on the matter of VTA governance.

PAGE 3 OF 3

SUBJECT: Santa Clara County Civil Grand Jury Report on "VTA Governance"

DATE: August 20, 2019

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Santa Clara County Civil Grand Jury Report dated June 18, 2019
2. Proposed response to the Santa Clara County Civil Grand Jury

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



2018-2019 Civil Grand Jury
of Santa Clara County

June 18, 2019

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GLOSSARY AND ABBREVIATIONS

AC Transit	Alameda County Transit. A peer transit agency to VTA.
APTA	American Public Transit Association. A national association of which VTA is a member.
BART	Bay Area Rapid Transit. A peer transit agency.
County	County of Santa Clara
CPC	Capital Program Committee. A standing committee of the VTA Board of Directors.
DOT	US Department of Transportation. A national transportation agency.
EBRC	Eastridge-BART Regional Connector. Current nomenclature for the Eastridge light rail extension (Phase 2).
Farebox recovery ratio	Fares collected from passengers divided by operating expenses.
FTA	Federal Transit Administration. A federal agency providing transit data (see NTD) and services.
HMTA	Houston Metro Transit Agency
HOV	High Occupancy Vehicle
LRT	Light rail transit [system]
MTC	Metropolitan Transportation Commission. A Bay Area regional transportation coordination and planning agency.
Next Network	VTA's Next Network is a redesign of the transit network and is one component of an agency-wide effort to make public transit faster, more frequent and more useful for Santa Clara County travelers.
NTD	National Transportation Database. Database of statistics and metrics maintained by FTA.
PUC	California Public Utilities Code
SCCTD	Santa Clara County Transit District
SCVWD	Santa Clara Valley Water District

VTa Santa Clara Valley Transportation Authority

VRH Vehicle Revenue Hours

SUMMARY

The Santa Clara Valley Transportation Authority (VTA) is an independent special district created by the California legislature in 1972. Initially, the Santa Clara County (County) Board of Supervisors provided direct oversight of VTA and acted as its Board of Directors. Effective January 1, 1995, pursuant to further legislation, VTA began operating under a separate Board of Directors (VTA Board) composed of elected officials from throughout the County appointed to serve by the County Board of Supervisors and the governing authorities of VTA's constituent municipalities, with the allocation of VTA Board representation generally based on population.

For many years, VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses (referred to as structural financial deficits) – notwithstanding significant population growth and, in recent years, increased employment levels throughout much of Silicon Valley.

The 2003-2004 Santa Clara County Civil Grand Jury conducted an “Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority”¹ which found, among other things, that:

- The operating performance of VTA compared unfavorably to its peer organizations;
- The VTA Board had not effectively managed the finances of VTA, resulting in a substantial structural financial deficit that was projected to increase in the following year; and
- A root cause of VTA's poor performance was the governance structure of the VTA Board, which was “too large, too political, too dependent on staff, too inexperienced in some cases, and too removed from the financial and operational performance of VTA.”

To address these issues and attempt to make the VTA Board more responsive, the 2003-2004 Grand Jury proposed various changes to the Board's structure. Although responses filed by seven of VTA's constituent municipalities were supportive of some or all the recommended changes, VTA's response defended the status quo, and most of the other municipalities adopted VTA's position. Accordingly, the recommended changes were not made.

The 2008-2009 Grand Jury again examined the governance of VTA and reiterated some of the same concerns noted in the earlier report, although the focus of the 2008-2009 report was primarily on the role and functioning of the VTA Board's appointed advisory committees.

¹ http://www.scsccourt.org/court_divisions/civil/cgj/2004/BoardStructureFinancialMgmtVTA.pdf

The 2018-2019 Civil Grand Jury (Grand Jury) revisited the subject of VTA's governance and the work of the earlier grand juries and found that:

- VTA's operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics;
- The VTA Board has consistently failed to adequately monitor VTA's financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises; and
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based on their costs and projected ridership.

The Grand Jury concluded that today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County's taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents. The Grand Jury recommends several changes to the governance structure and operations of the VTA Board which will improve the Board's ability to effectively perform its important oversight and strategic decision-making functions. The Grand Jury further recommends that the VTA Board consider deferral of Phase 2 of the Eastridge light rail extension project pending a full review of the future role of light rail in VTA's transit system. Such a review should study alternative ways to meet the needs of the residents of East San Jose for modern, efficient public transportation without extending a costly and outdated light rail system and worsening VTA's already precarious financial condition.

In January 2019, the incoming Chairperson of the VTA Board issued a summary of her "2019 Perspectives and Priorities"² for VTA (see Board of Director's Meeting, January 7, 2019, section 8.2). Among the goals articulated by the Chairperson was improved board governance. The Chairperson announced that she would "convene a board working group to look at a range of board governance practices," with a view to improving "board engagement and effectiveness." The Grand Jury commends the Chairperson for focusing on the important subject of governance. This report may aid the Chairperson and the rest of the Board in that endeavor.

² <http://santalaravta.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True>

METHODOLOGY

The 2018-2019 Civil Grand Jury began this investigation of VTA on August 15, 2018 and concluded its work on May 29, 2019. The investigation primarily followed from issues highlighted in the report of the 2003-2004 Grand Jury and focused on the structure of the VTA Board of Directors, the effectiveness of its oversight of VTA's operating and financial performance, its handling of the agency's persistent structural financial deficit and its ability to address the many complex challenges facing VTA as it confronts the future of transportation in Silicon Valley. The Grand Jury employed a broad range of data gathering and investigative methods, including:

- **Site visits** were made to VTA headquarters, one of the VTA bus yards, VTA's downtown customer service center, and bus and light rail stops and stations.
- **The transit system** was used, including the purchase of Clipper Cards, riding buses and light rail trains during peak and off-peak hours, stops at and transit through Diridon Station, Eastridge, downtown and North County rail and bus facilities, and assessing access to transit stops by walking to stations and stops and using VTA parking sites.
- **Interviews** were conducted with 37 individuals (some more than once) over more than 50 hours. Interviewees included a substantial number of individuals who served as members of the VTA Board and its committees during 2018 and 2019, senior and mid-level VTA staff personnel, city and county government officials, and representatives of various community stakeholder groups.
- **Governing documents** were reviewed, including: (i) provisions of the California Public Utilities Code (PUC), which established VTA, particularly PUC Sections 100060 through 100063, which set forth the governance structure of the VTA Board; (ii) provisions of the VTA Administrative Code, adopted by the VTA Board to supplement the provisions of the PUC; and (iii) agreements among members of city groups who share representation on the VTA Board regarding the process for rotating their representation on the Board and collectively choosing their appointees. In addition, data regarding attendance records for VTA Board and committee meetings, directors' terms in office and voting records were examined.
- **Reports specific to VTA** were reviewed, including: (i) the 2003-2004 and 2008-2009 Civil Grand Jury reports and the responses thereto; (ii) a 2007 report entitled "Santa Clara Valley Transportation Authority Organizational and Financial Assessment," by the Hay Group (Hay Report); (iii) a 2008 report on VTA by the California State Auditor; (iv) a 2010 thesis entitled "Assessing Transit Performance: Recommended Performance Standards for the

Santa Clara Valley Transit Authority,” authored by a San Jose State University master degree candidate; (v) a 2016 report entitled “Transit Choices Report,” prepared for VTA by the consulting firm Jarrett Walker +Associates; and (vi) numerous public documents published by VTA and/or available on its website. These and other documents referred to in this report are listed in the Reference Section.

- **Comparisons** were made of VTA’s performance in various operating and financial categories to the performance of other transit organizations utilizing data compiled by the American Public Transportation Association (APTA), the United States Department of Transportation (DOT), The Business Insider, the Federal Transit Administration (FTA) published in the National Transit Database (NTD), the Public Transit Factbook and other federal and industry indices and metrics. Industry and “think tank” reports and articles discussing and comparing transit agency performance, including, among others, the Cato Institute, the Heritage Foundation and the Hudson Institute, were also reviewed. For purposes of comparison, operating data from peer agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco, Sacramento and San Diego were reviewed. In connection with a comparison of governance structures, other agencies, including those serving Los Angeles, Seattle, Vancouver B.C., Austin, Chicago, New York, the District of Columbia and Phoenix, were considered.
- **Attendance** at regularly scheduled meetings of the VTA Board and its committees, including the Administration and Finance Committee, Capital Program Committee (CPC), Governance and Audit Committee, and Ad Hoc Financial Stability Committee between October 2018 and May 2019, as well as Board workshops on the Future of Transportation in Silicon Valley and the proposed biennial budget for fiscal years 2020 and 2021. Audio and video recordings of some of the meetings noted above, as well as other meetings of the VTA Board and certain committees conducted from January 2018 forward were reviewed.

DISCUSSION

A Brief History of the VTA

Santa Clara County Transit District (SCCTD) was created by the County's voters in June 1972 and took over operations of three financially strapped private bus companies. SCCTD was initially managed by the County's Department of Public Works, but in 1974 became a separate agency governed directly by the County Board of Supervisors.

SCCTD initially focused on upgrading and replacing its inherited fleet of buses. Assisted by federal funding and a voter approved half-cent sales tax in 1976, SCCTD began to acquire diesel buses and build repair facilities.

In the 1980s, SCCTD embarked upon the construction of its light rail transit system, utilizing funding received from the federal government and the proceeds of additional voter-approved sales taxes. The first segment of the light rail system opened for service in late 1987, and the entire initial 21-mile system was completed in 1991. Four extensions of the system were completed by 2005, and additional extensions are currently in the planning stages.

SCCTD completed a two-part reorganization, in early 1995. SCCTD was designated the Congestion Management Agency for the County under a joint powers agreement among the County and its 15 cities. At the same time, legislation reconstituting the Board of Directors from five directors, all of whom were County Supervisors, to 12 consisting of two County Supervisors, five San José City Council members and five city council members representing the remaining 14 cities, selected on a rotating basis by the governing authorities of those cities. The name of the agency was changed to the Santa Clara Valley Transportation Authority in 1996, from which the acronym VTA was adopted.

Today, VTA is a complex, multi-billion-dollar enterprise that provides bus, light rail and paratransit services within Santa Clara County. In addition, VTA participates in funding other agencies that provide regional rail service, including Caltrain, the commuter rail line serving the San Francisco Peninsula, the Capitol Corridor operating between Silicon Valley and the Sacramento area, and the Altamont Corridor Express, connecting Stockton and San José. VTA also is responsible for county-wide transportation planning, including congestion management, the design and construction of highway, pedestrian and bicycle improvement projects, and the promotion of transit-oriented development.

Structure of the VTA Board

The present structure of the VTA Board was authorized by legislation effective January 1, 1995. In the legislation proposed by the County Board of Supervisors, the VTA Board was to have been composed of five directly elected members (corresponding to the five county supervisorial districts) and 11 appointed members of various elected bodies in the county. As ultimately adopted, the enabling legislation eliminated the directly elected directors. Instead, PUC Section 100060 provided for a Board consisting of 12 voting members and alternates, all of whom are elected public officials, with the allocation of Board representation generally based on population.

Under the formula outlined in PUC Section 100060, and further spelled out in Section 2-13 of the VTA Administrative Code, the VTA Board is composed of:

- Two voting members and one alternate who are members of the Santa Clara County Board of Supervisors;
- Five voting members and one alternate representing the City of San José;
- One voting member and one alternate representing the cities of Los Altos, Los Altos Hills, Mountain View and Palo Alto;
- One voting member and one alternate representing the cities of Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga;
- One voting member and one alternate representing the cities of Gilroy and Morgan Hill; and
- Two voting members and one alternate representing the cities of Milpitas, Santa Clara and Sunnyvale.

All the voting members and alternates, other than the County supervisors, must be currently serving as mayors or city council members of the city they represent. Each of the four groups of smaller cities may collectively determine their representative, and each group has adopted an agreement specifying, in varying degrees of detail, the manner in which the group's appointed representatives will rotate among the member cities and how individual representatives are to be selected.

PUC Section 100060(c) provides, importantly, that “[t]o the extent possible, the appointing powers shall appoint individuals to the VTA Board who have expertise, experience, or knowledge relative to transportation issues.” The VTA Administrative Code and the inter-city agreements contain similar directives.

In 2015, the Governance and Audit Committee of the VTA Board adopted a set of Guidelines for Member Agency Appointments to the VTA Board of Directors (Guidelines). The Guidelines

contain several recommendations emphasizing, among other things, the value of a candidate's expertise and prior experience on the VTA Board or its Policy Advisory Committee. The Guidelines also express the expectation that VTA Board members "[h]ave a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction," and "should be able to attend Board and standing committee meetings regularly." A full copy of the Guidelines is attached as Appendix A.

In addition to the voting members and alternates, the VTA Administrative Code provides that members of the Metropolitan Transportation Commission (MTC) who reside in Santa Clara County, and who are not voting members or alternates, shall be invited to serve as ex-officio, non-voting members of the Board³. The VTA Board currently has one such ex-officio member.

VTA Board members serve for a term of two years⁴. The VTA Administrative Code "strongly encourages" appointing authorities to reappoint representatives to successive terms, and some members do serve multiple terms⁵. One director who recently left the VTA Board had served as a director or alternate representing San José and the County for a total of 13 years, but missed eight Board meetings in his last two years of service. The two voting directors currently representing the County have served as directors or alternates for a total of 14.5 and 12.5 years. The current Mayor of San José has served as a director for 11.5 years. However, many directors who serve on a rotating basis as representatives of the smaller city groups do not serve successive terms, and directors' two-year terms are frequently cut short when they are not re-elected, term out or otherwise cease to serve in their elected position.

PUC Section 100061 requires the VTA Board to elect its Chairperson and Vice Chairperson annually. Both officers serve for terms of one calendar year, straddling two fiscal years of the VTA (July 1 to June 30). By informal convention, the Vice Chairperson one year becomes Chairperson the following year.

³ VTA Administrative Code Section 2-15

⁴ PUC Section 100060.2

⁵ VTA Administrative Code Section 2-14

The VTA Board in Action

As noted above, the VTA Board consists of a rotating group of elected public officials appointed by the County Board of Supervisors, the City of San José and the four groups of smaller cities. Although the PUC, the VTA Administrative Code and the Guidelines all admonish the appointing authorities to appoint VTA Board members who have appropriate expertise, experience and knowledge, as a practical matter, appointments are often made based more on political considerations than on the candidate's qualifications. From the candidate's point of view, appointment to the VTA Board, one of the largest agencies in the County, is generally considered a plus for his or her political advancement. Candidates often express an interest in serving on the VTA Board largely because they see service on the Board as a "resume builder." As a result, appointees to the VTA Board often have no previous experience with transportation, finance or leadership of a commercial enterprise, let alone one with annual revenues of over a half billion dollars and assets of \$5 billion. New directors often know little about VTA's operations or finances, or the organization and functioning of the Board. In our interviews, the Grand Jury learned that one director was unclear about how directors were chosen or even how many directors there are. Another, representing one of the smaller city groups, was unfamiliar with the provisions of the inter-city agreement governing appointments to the Board and considers appointments as simply the political prerogative of the mayor of the city whose turn it is to make the appointment.

Because new directors often have little or no experience with transportation agency operations or transit policy, they face a steep learning curve to even begin to become effective Board members. There is no "boot camp" for new directors. The orientation program provided by the VTA staff is brief and presents only a high-level overview of VTA and basic information regarding Board procedures. When speaking with the Grand Jury, some directors couldn't recall going through any orientation at all.

Workshops are conducted by the VTA staff, generally about twice a year, to provide background information to the directors, often focusing on a specific issue. These workshops are relatively short, sometimes poorly attended and often cancelled. For example, both director workshops scheduled to be held in 2018 were cancelled. A workshop held on February 22, 2019, ambitiously addressed the important and complex topic of "The Future of Transportation in Silicon Valley." The workshop was attended by eight of the 12 voting members of the VTA Board, three of the six alternates and the ex officio member and lasted a little over three hours. Needless to say, the workshop merely scratched the surface of the topic. A few Board members have attended transportation-related, third party-sponsored programs and seminars on their own initiative to enhance their knowledge on issues of transportation management and policy. There is no formal policy requiring or encouraging attendance at external training programs or conferences or other forms of continuing education.

Influence on the VTA Board

The City of San José dominates the VTA Board with the ability to appoint five of the 12 directors, which should not be unexpected given San José's share of the County's population. Although the San José directors technically are appointed by the San José City Council, the Mayor recommends those appointments. Thus, the Mayor effectively controls the initial selection of the San José directors as well as their tenure on the Board and, therefore, has the ability to exercise considerable influence over a substantial portion of the VTA Board. Since some members of the County Board of Supervisors who have served on the VTA Board previously served on the San José City Council or represented supervisorial districts within San José, these relationships may further enhance San José's dominance on the VTA Board.

Given that representatives of the City of San José and the County Board of Supervisors are often able to serve multiple terms on the VTA Board, they gain experience and the ability to add value. However, representatives of the smaller city groups are subject to the rotational provisions of their inter-city agreements, limiting their ability to serve consecutive terms. Accordingly, the San José and County representatives often dominate the Board in terms of experience and influence as well as numbers. Current voting members of the VTA Board representing San José and the County have served an average of 4.3 years and 10.5 years, respectively, including non-concurrent terms but excluding service by some of them as alternates. However, the current voting members representing the smaller cities have served an average of only 1.9 years.

Board Member Preparation

All of the members of the VTA Board are primarily focused on their other duties as local elected officials; their position on the VTA Board is clearly of secondary importance to most, if not all, directors and, as noted above, viewed by some principally as a "resume builder" and a one day a month job. Directors confront their other duties as elected officials and, in the case of smaller city directors, private employment or business interests, which themselves may be demanding and time-consuming.

Directors often find it difficult to digest the massive amounts of information provided to them by the VTA staff to help them fulfill their responsibilities and prepare for meaningful participation in Board meetings. For example, meeting materials for VTA Board meetings typically run more than 300 pages, and committee meeting packages can be as voluminous. Here too the representatives of the smaller city groups are at a disadvantage. While members of the County Board of Supervisors and the San José City Council have dedicated staffs that can help them review and distill VTA-supplied materials and analyze issues, the representatives of the smaller city groups have little or no staff support. Although members of the VTA staff make themselves available to

meet with directors to discuss VTA business, particularly in advance of monthly meetings, the Grand Jury learned that some directors take little or no advantage of these opportunities.

VTA Committees

Like many complex organizations — both governmental and private — the VTA Board maintains a system of standing committees. These include the Administration and Finance Committee, the CPC, and the Governance and Audit Committee, among others. The Board also has a number of advisory committees and occasionally appoints ad hoc committees to deal with specific matters. For example, the Ad Hoc Financial Stability Committee (which will be discussed further in this report) was formed in January 2018 and was active throughout 2018.

The Board's committee structure is both a benefit and a detriment. Because Board members have other public and private commitments, it is challenging to deal with all the complex issues affecting VTA; thus, delegation of certain responsibilities is necessary.

On the other hand, the committee structure tends to create a certain level of disengagement. Board members are assigned by the Chairperson to serve on standing committees. Several interviewees expressed the opinion that committee assignments are often made with little or no input from the affected Board members, and some committee members only learn of their appointment when they see their name on a list. Because of their various time commitments, Board members often are unfamiliar with or just defer to and trust the staff and their fellow directors regarding issues passed upon initially by committees of which they are not members. When those issues come before the full Board, often by way of its consent calendar, there is little or no discussion or debate. In some cases, matters of some significance are also placed on the consent calendar at the committee level, with the result that only the staff conducts any significant review of the matter. This system works well for some topics, like the approval of construction contracts, but can leave many directors uninformed about important topics to which the full Board should be attentive. Topics like monitoring VTA's financial affairs and structural financial deficit (which is principally left to the Administration and Finance Committee) and major ongoing capital programs, which are monitored by the CPC demand full engagement by all directors. At the October 2018 Board meeting, in reference to a report on the consent calendar, one of the directors stated, "Instead of going to committee, this type of report should go to the full Board...We should have [Board] workshops on several of these reports."

Alternate VTA Board Members

Like the use of committees, the system of alternate Board members has both advantages and disadvantages. Alternate members cannot vote at meetings except when they are attending in place of a voting member. Accordingly, alternate members often do not attend Board or committee meetings. If they attend meetings at all, they typically sit in the audience and do not participate. The existence of alternate Board members is useful in securing a quorum at Board and committee meetings when a voting member is absent. However, the availability of an alternate can serve as justification for voting members to make meetings a lower priority. Additionally, because alternate members frequently are called upon at the last minute, they may be even less prepared than voting members with the agenda and meeting materials. The alternate faces the decision to vote on matters in accordance with his or her own beliefs and opinions, or to vote the way he or she believes the voting member being replaced would have voted. This type of voting “by proxy” is inconsistent with good governance practices and would not be permitted by members of a corporate board of directors.

VTA Board Meetings

The VTA Board meets once a month in the evening. Board committees meet between three and 11 times a year. Attendance at Board and committee meetings varies greatly. Data compiled by the Grand Jury show that during 2017, 2018 and the first four months of 2019, attendance by voting members at Board meetings and workshops averaged approximately 87%. Individual attendance ranged from 61 to 92%. During the same period, attendance by voting members at committee meetings averaged approximately 86%. Often, directors arrive at meetings late, step away from the meeting, or leave early, but their partial participation is not always reflected in the attendance records. The conduct of Board meetings observed by the Grand Jury is characterized by limited debate and discussion, typically with active participation by only a few directors and some directors not participating at all.

The Board does very little on an ongoing basis to monitor and assess directors’ performance. The Grand Jury learned from our interviews that guidelines were developed to aid the Board in measuring its effectiveness, but no action has been taken to implement these guidelines. Board members receive a self-assessment questionnaire at the end of the year, but, according to several interviewees, many are not completed or returned, and no action is taken to follow up or seek feedback.

VTA Board Effectiveness

In short, the VTA Board suffers from:

- a lack of experience and continuity by many directors;
- dominance, in terms of numbers, seniority and influence, by representatives of San José and the County;
- inadequate time for the directors to devote to the Board's oversight and policy-making functions;
- a lack of engagement by some of the directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization; and
- conflicts of interest, which are often irresolvable, between the directors' fiduciary duty to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

In assessing the effectiveness of VTA, several preliminary observations are in order.

First, nothing in this report is meant to suggest that the members of the VTA Board are not honorable and hard-working public servants who are doing their best to perform the duties of a very difficult position under extremely difficult circumstances.

Similarly, the Grand Jury has found that the VTA senior management staff is a competent team of professionals doing their best to run a very complex organization within the policy guidance provided by the VTA Board. As one member of the Board stated at the February directors' workshop, "the staff is like a racehorse that we are keeping in the starting gate." For their part, members of the senior staff are sometimes reluctant to draw the Board's attention to matters of concern where they realize there is political resistance on the part of some directors and feel that raising an issue would be a waste of time. Some senior staff members are frustrated by what they perceive as an unwillingness of the Board to support needed action or make important changes at the policy level. Several staff members pointed to other transit districts, such as those in Portland, Austin and San Diego, as agencies whose policymakers are prepared to make tough decisions and take risks to improve public transit. According to some staff members and directors, this frustration, in part, has resulted in a general decline in morale at the senior staff level. The process used in the recent reorganization of senior staff responsibilities has contributed to additional morale problems. Some key members of senior management have recently announced that they will be leaving VTA.

The Grand Jury also recognizes that many of the problems facing VTA are not unique to it as a transit organization or to the specific geographic or demographic characteristics of the Silicon Valley. Like many other transit organizations, VTA must deal with nationwide transportation trends, including increasing congestion and competition from ride-hailing companies and corporate-run employee bus services, as well as looming challenges posed by autonomous, driverless vehicles. Moreover, operating a transit system in a largely suburban region presents greater challenges than are typically faced in more densely populated urban areas, having concentrated downtown business centers. It is because of the complex and evolving nature of the problems facing VTA that active and enlightened Board oversight and strategic vision are more essential than ever to the organization's future success.

Having those observations in mind, the Grand Jury has noted that VTA and the VTA Board have been subject to criticism over the years from various quarters. As described above, the 2003-2004 and 2008-2009 Grand Juries were critical of the Board and its governance structure. However, criticism of the management and Board of VTA has not been limited to the Civil Grand Jury. A number of investigations, studies and articles, including the Hay Report which was commissioned by VTA itself, have criticized VTA's operational and financial performance and the effectiveness of VTA governance. In 2007, one writer referred to VTA as possibly "the nation's worst managed transit agency, at least among those serving big cities."⁶ Even members of the VTA Board have questioned the Board's effectiveness. For example, at a meeting of the VTA Board in October 2018, one director made the comment, "we have to break the mold of 'same ole, same ole'...Board, we have to step up and change things." Upon assuming her position in January 2019, the current Chairperson of the VTA Board announced that she would "convene a board working group [later designated the Ad Hoc Board Enhancement Committee] to look at a range of board governance practices" with a view to improving "board engagement and effectiveness."⁷ At the Board workshop in February 2019, the participating directors, by a unanimous show of hands, agreed that VTA needs to make "radical changes" to address its many challenges. As one director put it, "We just had a workshop where we had a long conversation and we pretty much had a consensus where we have to do things differently and think outside the box." The Ad Hoc Board Enhancement Committee held its first meeting on May 29, 2019.

A complete review and assessment of the operations and management of VTA is far beyond the means of the Grand Jury or the scope of this report. Accordingly, the Grand Jury has chosen to focus its attention on the consideration of the effectiveness of the VTA Board's oversight and policymaking, as exemplified by three areas of concern:

- VTA's poor and continually deteriorating operating performance;

⁶ "The Nation's Worst Transit Agency", The Antiplanner, March 26, 2007

⁷ <http://santaclaravta.ig2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True> . See section 8.2 of Minutes for the January 9, 2019 Board of Directors meeting.

- the VTA Board's inadequate oversight of the agency's financial performance and its structural financial deficit; and
- the VTA Board's unwillingness, to date, to reconsider the merits of significant pending capital projects that may be indicative of its general ability to guide the organization strategically.

VTA's Operating Performance

VTA Operating Trends

The 2003-2004 Grand Jury reviewed VTA's operations and found that its operating performance compared unfavorably to its own benchmarks as well as the performance of peer agencies. Among other things, its report noted that:

- VTA's operating costs had risen substantially faster than the rate of inflation; and
- Fares collected from VTA's passengers divided by VTA's operating expenses (referred to as the farebox recovery ratio) for the previous two years had been 11.6% and 12%, compared to the national average of more than 20%, meaning that the taxpayers of Santa Clara County were providing a much greater than average subsidy of transit operations.

The 2018-2019 Grand Jury again examined VTA's operating statistics and found that VTA's performance has continued to deteriorate over the past 10 years, relative to both its historical performance and the performance of its peers, across a wide variety of metrics, including continuing increases in operating costs and further reductions in farebox recovery.

Since the 2008-2009 recession, the population of Santa Clara County has increased by approximately 10.6%. During that 10-year period, bus and light rail vehicle revenue hours (VRH), which measures the amount of service VTA offers, increased by 6.4% while operations employee headcount (i.e., operators and maintenance personnel) grew by 8.9%. Total operations expense rose by 63.2% between 2009 and 2018, including a one-year increase of 17.1% between 2017 and 2018 alone. As operations expense increased, overall farebox recovery declined from 13.5% in 2009 to 9.3% in 2017 – substantially worse than the ratios that the 2003-2004 Grand Jury cited as unacceptably low back in 2004.

Meanwhile, despite increases in employment and income levels in Silicon Valley, the public's actual *use* of VTA's services (as measured by passenger trips on buses and light rail) dropped by 19.2% between 2009 and 2018 and by 14.8% in the last two years alone. According to U.S. Census Bureau data, in 2017 (the last year for which such data is available), public transit was used as a means of transportation to work by only 4.8% of Santa Clara County's commuters, little more than the combined percentage of those who walked or biked to work and fewer than the 5.3% who worked at home. Despite the declining use of transit during the last ten years, VTA continued to increase its employee headcount (both operations employees and administrative staff) and add to its fleet of buses and train cars, further increasing operating expense.

As a result of the dramatic increases in operations expense and the concurrent decline in ridership, VTA's cost per passenger trip for buses and light rail combined increased from \$5.61 in 2009 to \$9.30 in 2017, 90.5% of which was covered by taxpayer subsidies.

Detailed data regarding VTA's operations are shown in Appendix B, and the trends discussed above are depicted in Figure 1 below.

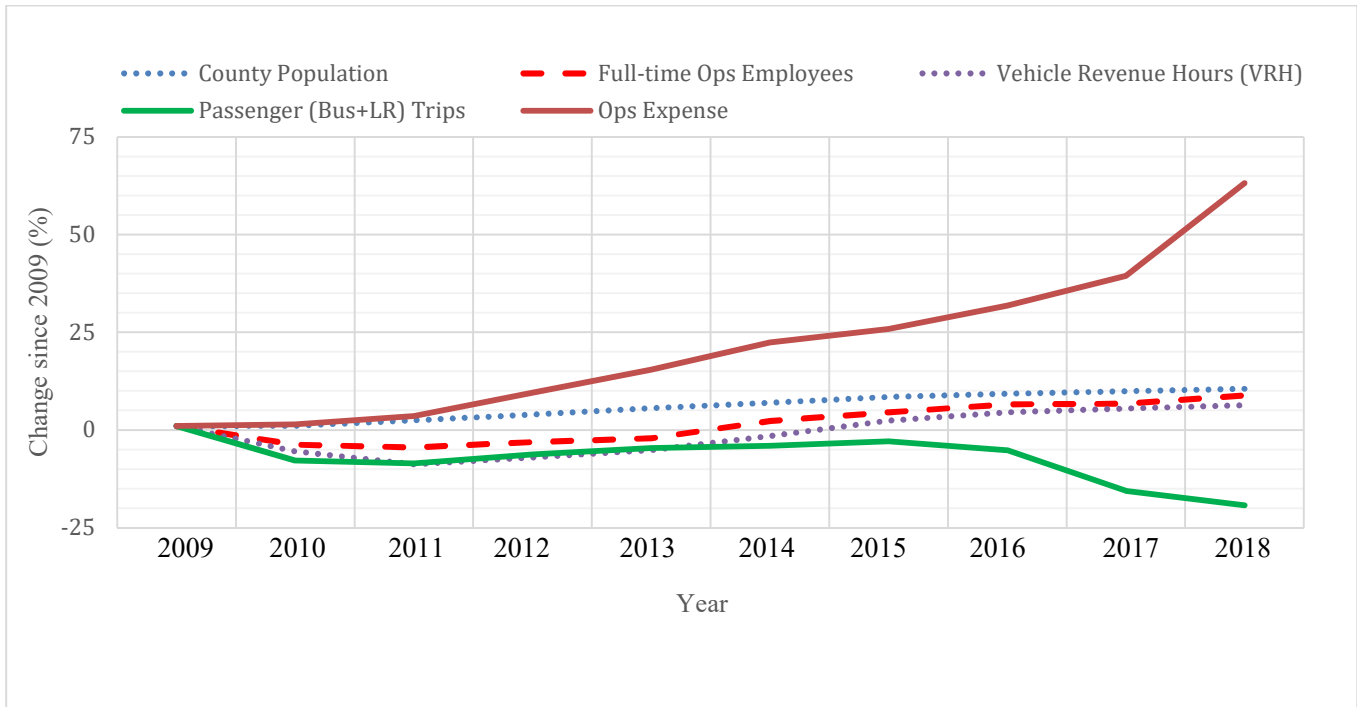


Figure 1 - VTA Operations Trends since 2009

Peer Agency Comparison

The FTA issues an annual NTD report summarizing nationwide data and trends for transit agencies throughout the United States. In its most recent survey, for 2017, the FTA reported that for transit agencies serving populations of more than one million people:

- Operating cost per passenger trip for buses and light rail ranged from a low of \$3.27 to a high of \$9.31 with VTA's cost per trip of \$9.28 nearly the highest in the nation;
- Operating expense per revenue hour ranged from a low of \$84.82 to a median of \$123.20 and a high of \$249.83 with VTA's operating expense per revenue hour of \$199.79 at about the top 10th percentile in the nation; and

- Farebox recovery for light rail systems (combined bus and light rail data was not available) ranged from 7.6% to 47.2% with VTA's light rail system farebox recovery of 7.6%, the lowest in the nation, requiring taxpayers to subsidize 92.4% of the cost of light rail service.

Since the FTA surveys contain data for more than 800 transit agencies, including many with operating environments that differ significantly from VTA's, the Grand Jury selected a cohort of ten peer agencies for further review using the following guidelines:

- Only agencies operating both buses and light rail systems were included;
- Only agencies serving urbanized communities with population and service areas generally comparable to VTA's were included; and
- Agencies identified as VTA's peers by interviewees or transit experts were also considered for inclusion.

Based on these guidelines, public transit agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco (SF), Sacramento and San Diego were chosen for comparison.

Comparisons of FTA operating data for the 10 peer agencies from 2009 through 2017 are shown in Appendix C. In summary, comparative data for three key metrics show the following:

- **Operating Cost per Trip:** VTA's operating cost per trip was the highest of all 10 peer agencies in each of the nine years. In addition, VTA's cost per trip increased by 65% over the period, second only to Sacramento's increase of 86%.
- **Passenger Trips per Revenue Hour:** The effectiveness of VTA's service, as measured by the number of passenger trips per revenue hour, was consistently among the lowest of the peer group, and second lowest in 2017 and 2018. San Diego, with a lower population density than VTA's, achieved almost twice the ridership per hour as VTA in the last five years. Not surprisingly, San Francisco, with its significantly greater population density, consistently recorded the highest number of trips per hour.
- **Farebox Recovery:** VTA had the lowest farebox recovery in the peer group for its total operations since 2012.

Table 1 below summarizes VTA's operating performance in 2017 relative to the peer group.

Table 1 - VTA Operating Performance Versus Peer Group in 2017

Performance Measure		10-Peer Average	Best	Worst	VTA Rating
Service Effectiveness	Passenger Trips per Revenue Hour	34.0	63.8 (SF Muni)	23.4 (Dallas)	24.3 (2nd to last)
Service Efficiency	Operating Cost per Passenger Trip	\$5.30	\$3.00 (San Diego)	\$9.30 (VTA)	\$9.30 (Last)
	Farebox Recovery Ratio	21.5%	34.7% (San Diego)	9.3% (VTA)	9.3% (Last)

In short, while all VTA's peer agencies suffered declines in ridership over the last decade, all but one of the other agencies were more successful than VTA at controlling increases in costs.

It is important to note that, despite the continuing decline in key operating metrics, between 2016 and 2019, VTA's operations management has successfully improved performance in a number of significant areas, including: a 20% improvement in miles between major mechanical schedule loss; a 24% reduction in passenger concerns (complaints); a 3% improvement in light rail miles between chargeable accidents; and a 7% improvement in light rail on-time performance. In addition, the Grand Jury had direct experience utilizing VTA transportation services during our investigation and observed vehicles that were clean, performance that was generally on-time, and operators who were friendly and resourceful.

VTA's Financial Management

VTA is highly dependent on sales tax for its operating revenue. Currently, sales tax receipts provide approximately 80% of VTA's revenue, while farebox revenue provides about 7%. Remarkably, in an environment of robust population and economic growth, VTA's farebox receipts have decreased from \$36.2 million in 2009 to \$34.5 million in 2018, a decline of 5%. Over that same period, operating expenses have increased by a staggering 51%. Adding further pressure to VTA's revenue stream is the steadily decreasing contribution of federal operating grants, which peaked at \$59 million in 2010 and fell to \$3.8 million in 2018.

To address its revenue shortfall, VTA has begun to tap Measure A and Measure B sales tax receipts, originally earmarked for capital improvements, to help fund transit operations. For 2018 and 2019, the VTA Board approved the transfer of \$44 million and \$14 million, respectively, of these funds to supplement VTA's operating revenue. To further address the shortfall, VTA has drawn down its reserves to help fund operating deficits.

Given its history of low fare collections, declining ridership and uncertain governmental assistance, the answer would seem to be increased attention to cost management, with an emphasis on labor costs, by far the largest component of VTA's operating expense. However, VTA's combined operations and administrative headcount continues to rise each year despite the decline in ridership. The Grand Jury found the VTA Board has not vigorously addressed these issues through its budget process by embracing the type of comprehensive cost management strategy that is called for by the environment of limited resources in which VTA is currently operating.

The 2018-2019 Budget Process

VTA operates on a biennial budget cycle with a budget for the following two fiscal years adopted in June of each odd-numbered year. The proposed budget is reviewed by the Administration and Finance Committee and forwarded to the full VTA Board with the Committee's recommendation.

The proposed 2018-2019 budget, as recommended by a three-to-one vote of the Administration and Finance Committee in May 2017, showed projected operating deficits of \$20 million and \$26 million for fiscal years 2018 and 2019, respectively, and similar deficits for subsequent years. Taking into account the annual need for local funds on the order of \$30 million to support VTA's capital programs, the total gap between projected revenues and expenses (referred to as a structural financial deficit) contemplated by the budget was between \$50 and \$60 million. Compounding the widening budget gap was the fact that, over the preceding six years, operating expenses had grown twice as fast as revenues, and VTA had consistently failed to meet its ridership and farebox recovery projections. For example, in fiscal years 2016 and 2017, VTA's farebox recovery had fallen short of budget projections by 7.3% and 18.9%, respectively.

Nevertheless, rather than undertaking a thorough review of the proposed budget and making hard decisions regarding meaningful reductions in operating and capital expenses, or even sending the budget back to the Committee for further study, the VTA Board adopted the budget on June 1, 2017, by a vote of eleven to one, thereby assuring operating deficits for the following two years.

To no one's surprise, the projected operating deficits materialized and were largely funded by drawing down VTA's reserves. Capital reserves, which had stood at \$49.5 million at June 30, 2017, had been depleted to \$5 million by the middle of the following year.

Ad Hoc Financial Stability Committee

In January 2018, the incoming Chairperson of the VTA Board recognized that some action had to be taken to address the structural deficit problem, which had become critical. Rather than engaging the full Board, for example by convening an all-day workshop, to address the problem that the Board and the Administration and Finance Committee should have been actively monitoring all along, the Chairperson chose to create an Ad Hoc Financial Stability Committee. The Committee was chaired by an ex officio member of the Board and included only two actual voting directors. The Committee then invited a group of approximately 12 "stakeholders" to participate. Stakeholders included employees, representatives of organized labor and several individuals from community organizations – each with their own agenda, but none with the fiduciary duty to make tough policy decisions solely in the best interests of VTA and County taxpayers. As the 2003-2004 Grand Jury report noted, "[i]t is the fiduciary responsibility of the Board, not a committee, a business lobbying group, or business community leaders, to provide oversight and direction" regarding VTA's operations and financial management.

The use of an ad hoc committee was hardly a new concept for the VTA Board. The Board had historically followed a pattern of waiting for a financial crisis to arise and then appointing an ad hoc committee. That committee would attempt to deal with the crisis and come up with a fix. In most cases, the fix would last a few years, relying primarily on new sources of revenue that would hopefully emerge. However, in any event, the composition of the Board — and responsibility for dealing with the problem — would have changed. The Board would then realize that another financial crisis was taking place, and the process would be repeated. Most recently, Ad Hoc Financial Stability Committees had been formed to deal with financial crises in 2001 and 2010.

The Ad Hoc Financial Stability Committee met sporadically between March and December 2018 to discuss the structural deficit, its implications and potential cost-saving measures. Three of the nine scheduled meetings were cancelled. At a meeting of the Committee in August 2018, in response to a question, VTA's Chief Financial Officer underscored the urgency of VTA's financial situation by stating that VTA could continue its operations for no more than 18 to 24 months before

going “off a cliff.” On June 20, 2018, the Committee held a three-hour workshop to discuss strategies and solutions to address the budget and structural deficit. During the workshop, the stakeholders broke out into working groups to consider possible solutions. Although no consensus was reached, a wide variety of suggestions were made, which were reviewed by the VTA staff and discussed at subsequent meetings. These recommendations included, among other things, substantial fare increases, implementation of wage cuts, a hiring freeze, a reduction of fleet size, and a delay of further capital expenditures on light rail expansion.

At its final meeting in December 2018, the Ad Hoc Financial Stability Committee concluded that the defeat in November of a ballot measure to repeal fuel taxes and vehicle fees (California Proposition 6) and the collection of sales tax on out-of-state sales beginning at some unspecified point in the future (later determined to be April 2019) would infuse additional revenues into the budget. The fuel and vehicle monies would result in an additional \$23 to \$27 million per year in annual revenues. The sales tax would, when implemented, increase revenues by \$5.5 million per year. After these painless fixes, the Committee then addressed the annual structural deficit of approximately \$25 million that still remained by proposing three initiatives:

- reducing the proposed increase in bus and rail service hours – not from their actual fiscal 2018 levels, but from the even higher levels originally budgeted for fiscal year 2019 as a part of VTA’s Next Network program – saving approximately \$15 million annually;
- a fare increase indexed to inflation, saving approximately \$2 million annually (which was subsequently deferred until 2021); and
- a voluntary early-retirement program projected to save another \$1 million annually.

After six meetings over a nine-month period (including the three-hour workshop) involving three directors and a dozen stakeholders, as well as untold hours of VTA staff support time, the Ad Hoc Financial Stability Committee recommended a total of only \$18 million in projected cost savings to address the remaining \$25 million deficit target, leaving a \$7 million gap unaddressed. Several serious cost-cutting measures brought forward at the workshop were not actively considered. At its meeting, on December 6, 2018, the VTA Board unanimously accepted the recommendations of the Committee, and the Committee stood down.

By any measure, the VTA Board’s oversight of the agency’s financial affairs, as exemplified by its adoption of the 2018-2019 budget and the handling of the built-in structural financial deficit, has been weak and ineffective. The inability of the VTA Board to meaningfully address the deficit can be attributed, in part, to the lack of financial expertise on the Board, a lack of preparation and engagement on the part of some directors — exacerbated by the delegation of the problem to the Ad Hoc Financial Stability Committee — and the VTA Board’s inability or unwillingness to deal

with controversial and politically-charged topics such as labor costs and expensive capital programs.

The 2020-2021 Budget Process

The VTA Board will consider VTA's proposed biennial budget for fiscal years 2020 and 2021 at its meeting on June 6, 2019. The proposed budget shows net surpluses of approximately \$2 million in 2020 and \$4 million in 2021. However, the proposed budget does not take into account the outcome of pending labor negotiations with the Amalgamated Transit Union (ATU) that have been ongoing since August 2018. VTA has reported that its current proposal to the ATU, if accepted, would result in a total additional cost of \$30.9 million over the next three years. Since the VTA's proposal is the best possible outcome of the negotiations, the budget understates expenses and virtually assures continuing deficits. Other risks acknowledged in the budget could further increase these deficits.

The Extension of Light Rail Service to Eastridge

Light Rail in the United States

Light rail transports people using electric motive power and light-weight rails (hence the name). Light rail transit (LRT) systems, originally called trams or trolleys, evolved in the early 1900s to move employees to businesses and industries located in downtown or central business districts. They were less expensive to build than traditional heavy railway systems, and the cars were likewise less expensive to build and operate.

In the late 1960s, private transportation companies, including those that operated LRT systems, began to struggle financially and subsequently were transitioned to public ownership with the expectation that better public transport could be achieved using a mix of city, state and federal funding.

LRT systems in the United States have not met the original expectations of transit planners or the public. Coupled with the downward trend of public transit ridership and expanding infrastructure regulations, LRT systems have experienced ever-increasing installation and operations costs. Due in part to its high costs and fixed routes, light rail is now viewed by many industry experts as a technology whose time has passed. In October 2017, Randal O'Toole, a senior fellow with the Cato Institute and a recognized expert in light rail policy analysis, recommended the following:⁸

“First, transit agencies should stop building rail transit. Buses made most rail transit obsolete nearly 90 years ago. Buses can move more people faster, more safely, and for far less money than light rail, meaning light rail was obsolete even before San Diego built the nation’s first modern light-rail line in 1981.” ...

“Second, as existing rail lines wear out, transit agencies should replace them with buses. The costs of rehabilitating lines that have suffered from years of deferred maintenance is nearly as great as (if not greater than) the cost of building them in the first place.”

Cities whose densities and post-automobile development sprawl aren’t particularly suitable for efficient light rail service have begun to reexamine the viability of constructing, operating and maintaining expensive light rail systems. For example, in March of this year, the Phoenix City Council voted to delay and likely kill an ambitious expansion of its existing light rail system. Calling it a “train to nowhere,” city leaders determined that the reallocation of capital funds from light rail to an expansion of a flexible bus system and the repair of a deteriorating road system would be a better use of the taxpayers’ money and have a more positive impact on transit

⁸ “The Coming Transit Apocalypse”, Randal O’Toole, Cato Institute, October 2017

effectiveness.⁹ A Phoenix Arizona initiative measure that will be on the ballot in August 2019 proposes to halt six additional light rail extension projects that were previously approved by the Phoenix voters in 2015 and forbid the city from funding any other future light rail extensions.¹⁰

VTA's Light Rail System

Santa Clara County's LRT system, first proposed in the early 1980s, was conceived as a loop connecting to a future integration of Bay Area Rapid Transit (BART) and the San José Airport with transfer points throughout the County with feeder lines to support access to and from the loop to business and residential areas. The intent was to transport large numbers of residents quickly — at upwards of 55 mph — and cost-efficiently to and from jobs, entertainment and shopping, and to link San José and Santa Clara County with the entire BART system. As funding issues arose and interest group views emerged, the loop concept was abandoned in favor of direct spoke-like connections between downtown centers (e.g., San José) and various residential and business areas.

VTA's LRT began service in December 1987 with a 6.8-mile corridor between Santa Clara and downtown San José. An additional 14.3 miles were added by 1991 in 5 separate extensions (under the auspices of the SCCTD). VTA then followed with 4 more extensions: into Mountain View (1999), Milpitas (2001), East San José (2004) and the last corridor, Diridon to Winchester, completed in October 2005. The ultimate construction cost of this system was almost \$2 billion. Today, VTA operates a 3-line LRT system consisting of 42 route miles, 61 stations and 21 park-n-ride lots. Due to unprecedented declines in revenues beginning in 2008, the implementation plan for further light rail expansion was modified to provide for construction of additional extensions in phases. Two significant extensions, to Eastridge and Vasona Junction, remain under consideration by VTA.

Overly optimistic ridership projections justified the construction of the \$2 billion light rail system in an environment that did not have the trip densities necessary to support this mode of transit. The federal government had its own doubts and initially did not approve funding, thereby creating the necessity of funding the project, in part, with local tax measures.

As suggested above, the design and layout of the VTA LRT system deviated from the initial concepts, largely driven by political and financial considerations rather than strategic decisions. Despite the high capital costs of the system, the airport remains inaccessible directly via light rail, there is uneven access to jobs, entertainment and shopping, and operating speeds are far below

⁹ "Phoenix Votes to Delay, Likely Kill, West Phoenix Light-Rail Line", Jessica Boehm, Arizona Republic, March 21, 2019

¹⁰ "Phoenix Voters Could Kill Light Rail to These 6 Neighborhoods", Jessica Boehm, Arizona Republic, April 15, 2019

those expected or technically feasible. VTA LRT has been in operation for over 30 years but continues to underperform in effectiveness and ridership.

VTA LRT Operational and Financial Challenges

Since its inception, VTA's light rail system has struggled with operational and financial inefficiencies caused by low ridership and high operating costs. Despite a vibrant local economy with burgeoning job growth and population expansion, the public's interest in and utilization of light rail has deteriorated. Over the past ten years, light rail ridership has declined by 21% and, currently, fewer than 1% of Santa Clara County residents regularly utilize light rail. During the same period, the farebox recovery ratio for light rail has declined 36%. In just the past *five* years, light rail ridership has declined 15% while operating expenses have increased 54%. Meanwhile, VTA has continued to increase capacity without a corresponding demand for its product, resulting in higher operating costs of which less than 8% is covered by fare revenue. Put more bluntly, the taxpayers pay for more than 92% of the LRT system's operating costs. VTA has failed to accurately estimate the ongoing operating and capital costs of maintaining the light rail system, a fact that has led, in part, to its recurring financial deficits.

Table 2 below outlines metrics comparing operations of VTA's light rail system versus its peers (using 2017 NTD data) that reveal its poor performance, including:

- Cost per Passenger: Highest among peers (\$11.61)
- Subsidy per Passenger Trip: Highest among peers (\$10.73)
- Operating Cost per Hour: Highest among peers (\$487.58)
- Farebox Recovery Ratio: Lowest among peers (7.6%)
- Passenger Trips: Lowest among peers (9.1 million miles)
- Passengers Boarded per Hour: Second lowest among peers (42)

Table 2 - VTA Light Rail Peer Statistics (2017)

Peer Agency Name	Service Area Population	Route Miles	Fare Revenue Earned (\$Ms)	Total Operating Costs (\$Ms)	Farebox Recovery Ratio	Operating Cost per Hour	Boardings per Hour	Passenger Trips (Ms)	Cost per Passenger	Revenue per Passenger	Subsidy per Passenger
Santa Clara VTA	1,664,496	42.2	\$8.06	\$106.0	7.6%	\$487.58	42	9.1	\$11.61	\$0.88	\$10.73
Sacramento Regional Transit District	1,723,634	42.9	\$14.80	\$67.8	21.8%	\$272.55	46	11.4	\$5.93	\$1.29	\$3.64
Dallas Area Rapid Transit	5,121,892	93	\$27.71	\$175.2	15.8%	\$356.20	61	29.9	\$5.84	\$0.92	\$4.92
Denver Regional Transportation District	2,374,203	58.5	\$38.16	\$115.2	33.1%	\$145.09	31	24.6	\$4.67	\$1.55	\$3.12
San Francisco Municipal Railway	3,281,212	36.8	\$39.22	\$213.8	18.4%	\$368.95	88	50.9	\$4.19	\$0.77	\$3.42
Houston Metropolitan Transit Authority	4,944,332	22.7	\$5.97	\$65.2	9.2%	\$227.04	63	18.3	\$3.56	\$0.33	\$3.23
Portland Tri-County Metropolitan Transportation District	1,849,898	60	\$49.38	\$138.8	35.6%	\$222.51	63	39.7	\$3.49	\$1.24	\$2.25
Salt Lake City Utah Transit Authority	1,021,243	44.8	\$17.97	\$64.7	27.8%	\$180.35	52	18.8	\$3.44	\$0.95	\$2.49
Minneapolis Metro Transit	2,650,890	23	\$24.14	\$70.9	34.0%	\$166.23	55	23.8	\$2.98	\$1.01	\$1.97
San Diego Metropolitan Transit System	2,956,746	53.5	\$38.97	\$82.5	47.3%	\$168.24	76	37.6	\$2.19	\$1.04	\$1.15

Legend: Ms = value in millions

Worst in peer group

2nd worst in peer group

In light of the VTA LRT system's intrinsic design issues, unacceptably slow speeds in portions of its routes, extremely high operating costs and the lack of ridership and revenue to support those costs, a case can be made for dismantling or phasing out the light rail system altogether. At a meeting of the CPC on March 28, 2019, a member of the VTA staff responded to a question from a Board member by confirming that operating costs could be cut in half and farebox recovery doubled if a bus-only system were deployed. In fact, light rail operating expenses are closer to three times the cost of bus operations, but the point remains that a large reduction in the taxpayer subsidy of VTA operations could be achieved by focusing future investment in transit solutions other than light rail, as Phoenix has decided to do. One director noted at the March 28, 2019 CPC

meeting, “We have to really broaden our thought process with regard to light rail. The worst position that VTA can get into is being the last transit agency to be deploying an old technology.”

The Eastridge LRT Extension

Although operating statistics demonstrate the high cost and inefficiency of light rail as a mode of transportation, the VTA Board has continued to consider construction of two additional light rail extensions that would require additional capital outlays in the hundreds of millions of dollars.

These two extension projects, to Vasona Junction and the Eastridge Transit Center, have been in the planning stage for years, have been the subject of countless VTA staff studies and reports and have been considered by the Board and its committees, particularly the CPC, at numerous meetings. Finally, at its meeting on March 28, 2019, the CPC approved placing the Vasona project on an indefinite hold, based on its capital costs, high operating costs and projected ridership that failed to meet VTA’s minimum criteria for a new project. However, the Eastridge project remains alive.

The proposed Eastridge light rail extension is part of a two-phase project. Phase 1 of the project, which included conceptual design, pedestrian and bus improvements, and improvements of the Eastridge Transit Center, has been completed. Phase 2, which is now referred to as the Eastridge-BART Regional Connection, or EBRC, would add a 2.4-mile rail line and related infrastructure connecting the Alum Rock Station and the Eastridge Transit Center. In the original design, most of the rail extension was to have been constructed at street level on Capitol Expressway. The design was subsequently changed to an elevated track above the roadway for the entire 2.4 miles at an estimated additional cost of \$75 million, which would enable the trains to run at higher speeds. The total cost of the project, which was originally estimated at \$377 million, is now projected to be \$599 million, of which \$146 million has been spent on Phase 1, and \$453 million would be spent on Phase 2 (\$13 million has been spent to date on design and other preparatory work). If Phase 2 is continued, work is currently estimated to be completed in 2025.

Table 3 below outlines the cost and status of the Eastridge project*:

Table 3 - Eastridge (EBRC) Phases, Costs and Status

Project	Cost	Sub-total Cost	Status	Notes
Concept	\$11M		Completed	
Original Construction	\$56M		Completed	
Phase 1 – pedestrian improvements	\$19M		Completed	
Phase 1 – bus improvements	\$60M		Completed	Eastridge Transit Center
Phase 1 sub-total	-	\$146M		
Phase 2 – EBRC various studies/design	\$13M		Initial design work completed	
Phase 2 – EBRC completion (2023-25)	\$440M		Under review	Does not meet minimum operations criteria until well after 2025
Phase 2 sub-total	-	\$453M		Plus \$2-3M per year in new operational costs
Project total	-	\$599M		Costs almost \$250 million/mile

*Data from VTA CPC Agenda Packet item #7, pages 36 and 37, dated March 28, 2019 and updates presented in the Board of Directors meeting on April 4, 2019.

The VTA Board has considered various aspects of the Eastridge project more than 20 times since 2000. Each time, the Board has made a decision that allowed work on the project to continue, often kicking the ultimate decision on the fate of the project down the road by noting that its current decision was not the final word on the project and that there would be opportunity for further consideration of the project and final approval at a future date.

For example, at its meeting on May 3, 2018, the Board considered the viability of the light rail extension to Eastridge. After a lengthy discussion, the Board approved a funding strategy for proceeding with the project, but the Chairperson noted that there would be still more decision points at which the project could again be considered by both the CPC and the full Board. At the same time, the Board approved a resolution authorizing a staff study of alternatives to light rail for the Eastridge extension. VTA staff has confirmed that, a year later, this study still has not been completed.

At the March 28, 2019 meeting of the CPC (at which the Committee agreed that the Vasona Junction extension should be put on hold), Phase 2 of the Eastridge project was again considered. At the meeting, the Mayor of San José, serving as Chairperson of the Committee, asked the following question, “Is the current light rail system one we want to continue to invest in? Our ridership is challenged. Our cost-effectiveness system-wide is 10% on farebox return [it is actually less than 10%]. That 10% is already among the very lowest in the nation in terms of farebox

return, and light rail actually hurts us. The question is: what does the process look like for us to be re-evaluating the entire system to see if we want to start thinking differently about the entire light rail system? *I hate to think we are doubling down on a failed system.*” Another committee member echoed that sentiment, noting, “We have to choose our transportation modes in a cost-effective and efficient manner. *I support to do additional evaluation of what is needed for that corridor. The train has not left the station on Eastridge.*” Yet, after a lengthy discussion about an overall re-evaluation of light rail before proceeding with the Eastridge extension, no concrete action was taken in that direction, and both of these directors joined with a third to support a motion to move forward with the project and kick the ultimate decision down the road yet again. The vote was three to two in favor of the motion, but it failed for lack of the required four aye votes needed to pass.

The fate of the Eastridge extension project is now once again in the hands of the VTA Board, and its final resolution will be a test of the Board’s leadership. The issue will be considered by the Board again at its meeting on June 6, 2019. Although the subject of the extension was not on the agenda at the Board’s May meeting, the Mayor of San José signaled his intentions. Despite the comments he made at the March CPC meeting, the Mayor stated, “I will vote to proceed immediately with the construction of the Eastridge transit project when it comes before the VTA Board in June. I expect we will move forward without delay.” The investigation of the Grand Jury report was completed on May 29, 2019, and this report does not reflect any actions taken at the June 6, 2019 meeting.

As pointed out above, the remaining capital cost to complete the 2.4-mile extension is currently estimated at \$453 million, or almost \$189 million per mile. According to most recent staff projections included in the May 2019 EBRC Supplemental Environmental Impact Report (SEIR), the new light rail extension would attract approximately 611¹¹ new riders (net of a reduction in bus ridership on the existing bus lines that run parallel to the proposed rail extension) by 2025. Therefore, the additional capital cost would be equal to approximately \$720,000 for each new rider in the first year of service. Once completed, the Eastridge extension would become part of an outmoded light rail system that is one of the most expensive and heavily subsidized LRT systems in the country, with declining ridership and operating costs more than double the cost of bus operations. The extension, upon completion, is projected to have a miniscule impact on transit usage in the East San José/Milpitas corridor over the next 24 years (i.e., an increase of only 0.07% by 2043 and just over half that when service begins).¹² Moreover, the current design permanently *removes* two existing high occupancy vehicle (HOV) lanes from the Capitol Expressway, without any foreseeable commensurate reduction in automobile traffic, a fact that may not be widely

¹¹ EBRC SEIR, May 2019, page 71, Table 5.1-11. [http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20\(1\).pdf](http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20(1).pdf)

¹² EBRC SEIR, May 2019, page 72

understood in the East San José community. As noted in the SEIR, “[t]he proposed removal of the HOV lanes would result in higher average automobile delays and higher automobile travel times on Capitol Expressway.”¹³ Further, despite claims that the Eastridge Transit Center is among the busiest in the VTA system, there is an average of only seven riders per bus trip into and out of that center.

Based on our interviews, the Grand Jury has found virtually no support for the project among the VTA staff, although they continue to move the project forward in compliance with incremental policy decisions made by the VTA Board.

The argument supporting the Eastridge extension is essentially political. The extension was one of 13 transportation improvement projects envisioned by Measure A and passed by the voters in 2000. For various reasons, most related to budget challenges brought about by the dot com “bubble” in the early 2000s and the later economic recession, the implementation of the Eastridge project has been delayed, along with some of the other Measure A projects. In the interim, the once-promising LRT system has become technically outmoded and increasingly expensive.

Yet, proponents of the extension, including powerful political forces, contend that the periodic, incremental approvals of the project by the VTA Board that have kept the project alive over the years have reinforced a “promise” to complete it, even though the VTA Board has both the right and the duty to re-evaluate capital projects when they are no longer viable. Proponents also contend that completion of the project is a matter of “economic equity,” balancing the needs of a relatively low-income, transit-dependent area of Santa Clara County with the type of transit services provided elsewhere in the County (although, as noted above, the Vasona Junction project that was to have served the Los Gatos area was recently put on hold).

The challenge to the VTA Board, in the exercise of its fiduciary duties to the taxpayers and transit users of the County, is to address such questions as:

- Can *any* further investment in VTA’s present LRT system be justified, much less one that will cost \$720,000 for each prospective new rider?
- Does the proposed Eastridge extension meet VTA’s standards for new transit projects, including minimum projected ridership criteria?
- Before proceeding with the project, should the Board undertake a thorough review of the light rail system and its future as a mode of transportation in Silicon Valley, as suggested by members of the CPC?

¹³ Ibid, page 72

- Can the recognized needs of the residents of East San José for modern, efficient public transportation be better served by an alternative to the proposed Eastridge light rail extension?

VTA should aspire to take an industry-leading role in the future of public transportation, commensurate with the role of Silicon Valley as a worldwide leader in technology and innovation. Whether the VTA Board is able to put aside local political considerations and answer these questions based on the interests of all the taxpayers and residents of Silicon Valley will say much about its effectiveness as a policy-making body and whether VTA will be able to achieve such leadership aspirations.

Designing a More Effective Structure for the VTA

There are countless variations in models for governing a regional transit agency, and there is no perfect structure that fits all situations. Even when transit agencies set out to reorganize their own governance structure in response to acknowledged defects, they realize they must choose among alternative structures having both advantages and disadvantages.

Virtually all the individuals interviewed by the Grand Jury, including directors and senior staff, agreed that VTA could benefit from a more knowledgeable and engaged Board of Directors that is more sharply focused on VTA's role as a regional transit agency and less on local political interests. However, there is less consensus on how best to achieve that goal. Nevertheless, it is useful to examine some of the variable features of alternative governance structures, how they have been implemented by other transit agencies and how changes to the structure of VTA's governance might result in a more effective Board.

Number of Directors

The VTA Board has 12 voting members. As pointed out in the 2003-2004 Grand Jury's report, the VTA Board is larger than the boards of many regional transit agencies. Alameda County Transit (AC Transit) and BART, for example, have boards of seven and nine members, respectively, while two other transit agencies in California have five-person boards. However, transit agency boards across the country range widely in size, from as few as five to more than 20. The agency serving Dallas/Fort Worth, for example, has a 15-person board, while the Phoenix and Salt Lake City transit agencies each has a 16-member board. The 2003-2004 Grand Jury Report concluded that a smaller Board, of five to seven members, "would be more involved in and accountable for the financial and operational management of VTA." Some current members of the VTA Board agree that a smaller Board would be preferable, although others disagree. While the current Grand Jury agrees that reducing the size of the Board might result in more focused decision-making, a reduction in Board size, in and of itself, would not address fundamental issues of lack of experience, inadequate continuity, competing time commitments and conflicts of interest between VTA and local priorities. Accordingly, a reduction in the size of the VTA Board should only be considered in conjunction with other structural changes that directly address these key issues.

Term of Service

VTA directors serve for terms of two years. Although some directors serve more than one term (often consecutive), directors whose positions rotate among groups of smaller cities generally do not serve consecutive terms. Furthermore, a director's term can be cut short if the director ceases to serve in his or her elected position.

The term of service for directors of regional transit agencies in California and other larger metropolitan areas generally ranges between two and four years, with three and four-year terms being common. In California, for example, directors of BART, AC Transit and transit agencies serving Santa Barbara, Stockton and Bakersfield serve four-year terms. Directors of agencies serving Austin and Vancouver, B.C. serve for three years. In an independent review of the agency serving Vancouver, a Governance Review Panel concluded that “longer-term decision-making requires a minimum of three-year terms,” although the panel also recommended that members not be allowed to serve more than six consecutive years in order to vary the “mix of management, finance, legal and other skills to match [the agency’s] changing needs over time.”¹⁴

Among the individuals interviewed, there was substantial support for longer terms to provide additional time for directors to become knowledgeable about VTA’s operations and transit issues, to participate in more than one budget cycle and to participate more effectively in the Board’s long-term planning function. In addition, lengthening the term of service would mitigate the advantage currently enjoyed by representatives of San José and Santa Clara County, who typically serve substantially longer terms than the representatives of the smaller city groups and dominate the Board, in part, as a result of their greater experience. Not all interviewees agreed, however. One made the point that, if a director is unqualified in the first place, a four-year term would just mean that the Board would be burdened with an unqualified member for twice as long. Additionally, since under the current structure a director’s term ends when he or she leaves elected office, a four-year term is more likely than a two-year term to be cut short, lessening to some degree the impact of a change to a longer term. Nevertheless, extending the term of VTA directors to four years would increase the average term of Board service and, accordingly, would provide some valuable experience and continuity to the Board and enhance the influence of the smaller cities. Likewise, establishing term limits or limits on total years of service would mitigate the dominance of San José and the County and allow the Board to evolve over time to meet its changing needs.

As described above, the PUC specifies the annual election of the Board’s Chairperson and Vice Chairperson. The VTA Administrative Code provides that the election of the two officers shall be conducted at the last meeting of the calendar year, when practical, and that they shall serve for the ensuing calendar year.¹⁵ The Administrative Code also specifies that the two positions shall be rotated annually, according to a fixed schedule, among representatives of San José, Santa Clara County and the smaller city groups¹⁶.

There was considerable support among the persons interviewed for extending the Chairperson’s term from one to two years. As pointed out above, because VTA operates on a June 30 fiscal year,

¹⁴ “TransLink Governance Review”, TransLink Governance Review Panel, January 26, 2007, page 22

¹⁵ VTA Administrative Code Section 2-26

¹⁶ Ibid

the Chairperson's calendar year term of service straddles two fiscal years, disconnecting the Chairperson from the budget process and accountability for operating and financial results. He or she inherits one annual budget in mid-stream and serves only halfway through another. Lengthening the Chairperson's term would help address this problem by allowing the Chairperson to oversee VTA's financial performance for at least one full fiscal year. Coordinating the term of the Chairperson with the agency's June 30 fiscal year would further connect the Chairperson with VTA's budget process and the oversight of its financial performance. Similarly, reviewing the VTA General Manager's performance on a fiscal year rather than a calendar year basis would also improve direct accountability for the organization's performance to budget.

Direct Election of Directors

Under the current governance structure, members of the VTA Board are appointed to serve by the jurisdictions they represent, either through direct appointment by a mayor or city council or, in the case of the groups of smaller cities, by arrangement among the cities. As pointed out above, as originally proposed by the County Board of Supervisors, the VTA Board would have been composed of a combination of five directly elected members and 11 appointed members.

Although the direct election of directors of transit agencies is not common in California, there are exceptions, including BART and AC Transit, both of which have directly elected directors serving four-year terms. Other regional public bodies use a direct election model for some or all their directors. The Santa Clara Valley Water District (SCVWD), for example, has a board of seven directors, directly elected by supervisorial district.

Benefits of an elected board include direct accountability to the public and the directors' increased focus on the affairs of the agency as their primary, rather than secondary, public service responsibility. Direct election would also eliminate the possibility of directors' terms being shortened when they cease to serve in their elected position. In theory at least, candidates who serve on an elected board also would be more likely to have an interest in and commitment to public transportation issues than would appointed directors. On the other hand, directly elected VTA Board members, like other elected officials, may tend to have a parochial view if they are elected to represent specific districts or municipalities, so the goal of encouraging a regional view of strategic planning responsibilities might not be fully realized.

Some interviewees supported changing to a direct election model for the VTA Board, based on the potential benefits noted above. Others, however, did not favor such a change. Several pointed out what they perceived to be a lack of effectiveness of the BART Board of Directors as evidence that the change would not be worthwhile. Others noted that moving to a direct election model would be complicated, politically difficult and costly – again, not justifying the change. One interviewee observed that, at the end of the day, voters pay very little attention to the direct election of directors

of governmental agencies, noting that many voters do not even know that an agency like SCVWD, for example, even exists, much less who its directors are.

Appointed Directors Who Are Not Elected Officials

Like VTA, many regional transit districts have boards consisting exclusively of elected officials representing the constituent communities making up the district. In at least three California transit agencies (those serving Santa Barbara, San Francisco and Stockton), the appointed boards of directors include interested citizens who are not currently serving as elected officials, and the enabling legislation of another transit district, serving the Bakersfield area, specifically provides that elected officials are *not* eligible for appointment as members of the Board. Transit agencies whose directors are not current elected officials are not uncommon in other parts of the country. Examples of transit agencies with appointed boards that do not include elected public officials are those serving Houston, Austin, Vancouver, B.C. and Toronto.

The flexibility to appoint non-politicians to serve on the board of a transit agency allows the appointing authority to select directors having a wide range of business, financial and transportation-related experience with a mandate to serve non-politically and make evidence-driven policy decisions based on demonstrated need and financial feasibility. The Houston Metropolitan Transit Authority (HMTA), for example, has a board of nine members, five of whom are appointed by the Mayor of Houston, two by the Harris County Commissioners Court and two by the mayors of other cities in its service area. The Board of the HMTA currently includes a retired lawyer, a certified public accountant, a banker, executives of large companies and experts on infrastructure, construction and budget management.

Partially offsetting the benefits of removing elected public officials from a transit agency's governance structure are concerns of accountability. The level of commitment of non-elected directors to their local communities' views on transit policy and priorities, including land use and development, is uncertain. However, some senior VTA staff and directors feel that the staff gets little support from VTA Board members in connection with VTA's dealings with city governments on these issues.

Some transit districts have chosen to balance the benefits of a predominantly non-political governing board with some participation by elected officials. For example, the board structure of the transit agency serving the Austin area was revised in 2011 from 100% elected officials to a mix of two elected officials and five non-politicians, with the City of Austin, the largest participant and underwriter of the system, having a predominant say in the appointments. The enabling legislation went a step further and specified that one appointed member of the board must have at least 10 years of experience as a financial or accounting professional and another must have at

least 10 years of experience in an executive-level position in a public or private organization.¹⁷ As one commentator noted at the time the legislation was proposed, “What the board would lose in elected officials, it would presumably gain in knowledge.”¹⁸

In 2011, the Legislative Auditor of the State of Minnesota issued an evaluation report that analyzed various governance structures for the agency principally responsible for the Twin Cities’ transit system, as potential alternatives to the existing structure under which all members of the governing council are appointed by the governor. After analyzing and comparing various structures, including the existing appointment system and the direct election of council members, the Auditor concluded that the optimal model would be a combination of appointed and elected officials that “would provide the Council with an effective mix of regional and local perspectives.”¹⁹

Silicon Valley offers an unparalleled pool of talented individuals, including entrepreneurs who have introduced cutting-edge technologies, products and services, as well as countless experts with leadership experience in finance and executive management of large organizations. Current and retired leaders of Silicon Valley companies and organizations have made numerous contributions in support of a wide range of community activities, including the arts, healthcare, education and other civic and charitable endeavors. Surely, appointing authorities could identify qualified public sector leaders who would be willing to serve on the VTA Board, and VTA would benefit from their knowledge and experience.

¹⁷ Texas Transportation Code Section 451.5021(b)

¹⁸ "What's Wrong With Cap Metro...and What's Right", Lee Nichols, Austin Chronicle, April 24, 2009

¹⁹ "Governance of Transit in the Twin Cities Region", Office of the Legislative Auditor, January 2011, page 44

CONCLUSIONS

VTA is a complex, multi-billion-dollar enterprise. In addition to operating a large transit system, VTA has responsibility for county-wide transportation planning, including congestion management, the design and development of highway, pedestrian and bicycle improvement projects and the promotion of transit-oriented development.

VTA is governed by a part-time Board of Directors composed solely of elected public officials, each of whom is burdened by the obligations of his or her office and subject to local political interests. A few of the directors have served for many years, but others have served for less than two. Appointees to the VTA Board often have little or no previous experience with transportation, finance or leadership of a large organization, let alone one the size of VTA.

Today, VTA faces a series of challenges which, taken together, can be fairly characterized as a crisis. The following challenges, among others, must be addressed by the VTA Board:

- Year after year, VTA operates one of the most expensive and least efficient transit systems in the country. Empty or near-empty buses and light rail trains clog the County's streets but are used regularly by fewer than 5% of the County's commuters. Operating costs increase continuously, and taxpayers subsidize 90% of these costs, to the tune of about \$5.50 per rider for each bus trip and \$10.75 per rider for each light rail trip.
- VTA veers from one financial crisis to another. In June 2017, the VTA Board adopted the 2018-2019 biennial budget and consciously approved a built-in structural financial deficit of \$50 to \$60 million per year. In January 2018, an ad hoc committee of the VTA Board was formed to deal with the crisis caused by the budget deficit. In August 2018, VTA's Chief Financial Officer advised the committee that the agency was 18 to 24 months away from going "off a cliff." At the end of 2018, the ad hoc committee made weak and only partially effective recommendations to address VTA's structural financial deficit and didn't seriously consider such important but politically sensitive topics as reductions in employee headcount or the scrapping or deferral of large capital projects.
- Light rail ridership is declining steadily throughout the country. Experts have pronounced the early twentieth century concept of light rail transit obsolete, and other regional transit agencies are contemplating abandoning light rail system extensions. VTA, however, continues to move forward with an extension of its light rail system — one that currently has among the highest operating costs and lowest ridership in the country. The remaining capital cost of the proposed 2.4-mile Eastridge extension project is currently estimated at \$440 million, representing approximately *\$720,000 for each new rider* that the staff estimates will actually use the extension during the first year of its operation. The project

makes no financial sense and survives only because powerful political forces continue to support it. VTA needs to carefully consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be met without “doubling down on a failed system,” as one director put it, and worsening VTA’s precarious financial condition.

- Although a detailed review of the long-pending BART to Silicon Valley project was beyond the scope of the Grand Jury’s inquiry, a number of our interviewees, including senior VTA staff and members of the VTA Board, noted its importance to the future of VTA. VTA’s proposed fiscal years 2020-2021 capital budget calls for a staggering \$713.5 million in Measure A and Measure B tax funds for the BART Phase 2 project. The operating agreement between VTA and BART remains in negotiation, and several of our interviewees expressed concern that important issues regarding the sharing of system-wide capital and operating costs remain unresolved and that such costs could fall disproportionately on VTA. One director expressed the opinion that BART-related cost control issues are more significant for VTA than those related to the Eastridge light rail extension. A senior staff member stated unequivocally that “BART is going to bankrupt VTA.” An interested stakeholder similarly predicted that BART “will be the demise of VTA.” Whether or not these assessments are accurate, it is clear that the financial health of VTA is dependent on the success of BART in the South Bay Area. That success is dependent, in turn, on VTA effectively implementing BART Phase 2 and meeting its ridership and revenue goals.

VTA’s operating territory is the Silicon Valley – the world’s leading center of innovation and cutting-edge technology. Several of VTA’s key staff members have noted that they had joined VTA in the hope that VTA would take an industry-leading role in the future of transportation, commensurate with the role that companies and other institutions in the Silicon Valley have taken in the introduction of all manner of new products, technologies and services. Yet, little such innovation has been evident at VTA in recent years. In fact, as noted above, VTA seems to be “doubling down” on old technology. At the Board’s recent workshop on “The Future of Transportation in Silicon Valley,” the directors present (two-thirds of the voting members and half of the alternates) seemed to recognize this problem and unanimously agreed that VTA needs to make “radical changes” in the way it provides its services.

If VTA is going to meet the many challenges it faces, the VTA Board will have to make good on its commitment to radical change. So, the question becomes, is the Board capable of making the policy decisions and providing the strategic oversight necessary to accomplish such change? The Grand Jury has concluded that, as presently structured and operated, that level of capability does not appear to be present. Accordingly, the Grand Jury recommends a number of changes in the structure of the VTA Board and in the way directors are selected, trained and evaluated that it

believes will assist VTA in addressing its many challenges and achieving its aspiration of becoming a leader in the transportation industry.

FINDINGS AND RECOMMENDATIONS

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 the directors to devote to 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.

Recommendation 1a

VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Recommendation 1b

As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

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 appointed 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.

Recommendation 1f

Prior to December 31, 2019 and pending changes contemplated by Recommendation 1e, VTA should adopt a policy of routinely reappointing an incumbent Chairperson for a second one-year term at the end of his or her initial term, absent unusual circumstances.

Recommendation 1g

In order to better connect the Chairperson with the budget process and accountability for operating and financial results, prior to December 31, 2019, VTA should amend Section 2-26 of the VTA Administrative Code to provide that the Chairperson and Vice Chairperson shall serve terms coinciding with VTA's fiscal year ending June 30, rather than the calendar year.

Finding 2

The California Public Utilities Code, the VTA Administrative Code and the Guidelines for Member Agency Appointments to the VTA Board of Directors adopted by the Governance and Audit Committee of the Board (Guidelines) all contain provisions requiring that, to the extent possible, the appointing agencies shall appoint individuals to the VTA Board who have expertise, experience or knowledge relative to transportation issues. Nevertheless, appointees to the VTA Board often lack a basic understanding of VTA's operations and transportation issues, generally.

Recommendation 2

In order to help assure that individuals appointed to serve on the VTA Board have the appropriate qualifications, prior to December 31, 2019, VTA should take vigorous action to enforce compliance by appointing agencies with the qualification and suitability requirements of: (i) Section 100060(c) of the California Public Utilities Code; (ii) Section 2-14 of the VTA Administrative Code; and (iii) the Guidelines.

Finding 3

The VTA Board lacks effective policies designed to assure productive participation by members of the VTA Board.

Recommendation 3a

In order to help make directors become and remain productive members of the VTA Board, prior to December 31, 2019, VTA should: (i) implement and enforce attendance at an intensive, multi-session onboarding bootcamp for incoming directors that would provide detailed information regarding VTA's operations, financial affairs and currently pending large-scale projects as well as the organization and operations of the Board and directors' duties and obligations; (ii) prepare and provide to each director a detailed handbook of directors' duties, similar to the "Transit Board Member Handbook" published by the American Public Transportation Association; (iii) enforce attendance at Board and committee meetings by providing Board attendance records to appointing agencies and removing directors from committees for repeated non-attendance; and (iv) implement a robust director evaluation process, with the participation of an experienced board consultant, that would include mandatory completion by each director of an annual self-evaluation questionnaire and Board review of a composite report summarizing the questionnaire responses.

Recommendation 3b

In order to further enhance the effectiveness of the directors, prior to December 31, 2019, VTA should develop a program to encourage continuing education of the Board members by: (i) scheduling and enforcing attendance at more frequent and intensive Board workshops on important issues regarding transit policy, developments in transportation technology, major capital projects and VTA's financial management; and (ii) requiring directors to attend, at VTA's expense, third-party sponsored industry conferences and educational seminars.

Finding 4

The Grand Jury commends the Chairperson of the VTA Board for recognizing the need to improve Board engagement and effectiveness by convening the Ad Hoc Board Enhancement Committee to review the Board's governance structure and practices.

Recommendation 4

None.

Finding 5

VTA continues to consider an extension of VTA's light rail system to the Eastridge Transit Center, at an additional capital cost of over \$450 million, although VTA's light rail system is one of the most expensive, heavily subsidized and least used light rail systems in the country, many transit experts consider light rail obsolete, and VTA is suffering from chronic structural deficits that would be exacerbated by the continuation of the project as currently defined.

Recommendation 5a

VTA should consider following recommendations made by several directors that it undertake a thorough review of VTA's light rail system and its future role as a mode of transportation in Silicon Valley before proceeding with the Eastridge extension project. This review, as it pertains specifically to the analysis of the viability of the Eastridge extension, should be undertaken with the participation of an independent consultant and should consider such issues as projected ridership estimates, project cost estimates including future operating and capital costs, and the projected impact on traffic congestion on Capitol Expressway with the removal of two HOV lanes.

Recommendation 5b

VTA should consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be better served by an alternative to the proposed light rail extension.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
Santa Clara Valley Transportation Authority	1, 2, 3, 4 and 5	1a, 1f, 1g, 2, 3a, 3b, 5a and 5b
County of Santa Clara	1	1b, 1d and 1e
City of Campbell	1	1c, 1d and 1e
City of Cupertino	1	1c, 1d and 1e
City of Gilroy	1	1c, 1d and 1e
City of Los Altos	1	1c, 1d and 1e
City of Milpitas	1	1c, 1d and 1e
City of Monte Sereno	1	1c, 1d and 1e
City of Morgan Hill	1	1c, 1d and 1e
City of Mountain View	1	1c, 1d and 1e
City of Palo Alto	1	1c, 1d and 1e
City of Santa Clara	1	1c, 1d and 1e
City of San José	1	1c, 1d and 1e
City of Saratoga	1	1c, 1d and 1e
City of Sunnyvale	1	1c, 1d and 1e
Town of Los Altos Hills	1	1c, 1d and 1e
Town of Los Gatos	1	1c, 1d and 1e

APPENDIX A – The Guidelines for Member Agency Appointments to the VTA Board of Directors



7.a

Santa Clara Valley Transportation Authority (VTA)

Guidelines for Member Agency Appointments to the VTA Board of Directors

The following information and suggestions are provided to assist local jurisdictions with appointing qualified, engaged and capable representatives to the VTA Board of Directors.

Overview of VTA

VTA is an independent special district responsible for bus, light rail and paratransit operations; congestion management; specific highway improvement projects; countywide transportation planning; and voter-approved local sales tax programs, including the 2000 Measure A Transit Improvement Program. As such, VTA is both an accessible transit provider and multi-modal transportation planning and implementing organization involved with transit, highways and roadways, bikeways, and pedestrian facilities.

VTA is governed by its own Board of Directors representing all jurisdictions within Santa Clara County. Eligible Board members are elected city councilmembers or county supervisors who may serve during their term of office.

The VTA Board of Directors consists of 12 voting members, 6 alternates, and 3 ex-officio members, and membership attempts to balance regional representation and population. Board members are appointed as follows:

- **GROUP 1: (San José)** – 5 voting members and 1 alternate
City of San José
- **GROUP 2: (Northwest)** – 1 voting member and 1 alternate
City of Los Altos; Town of Los Altos Hills; City of Mountain View; City of Palo Alto
- **GROUP 3: (West Valley)** – 1 voting member and 1 alternate
City of Campbell; City of Cupertino; Town of Los Gatos; City of Monte Sereno; City of Saratoga
- **GROUP 4 (South County)** – 1 voting member and 1 alternate
City of Gilroy; City of Morgan Hill
- **GROUP 5 (Northeast)** – 2 voting members and 1 alternate
City of Milpitas; City of Santa Clara ; City of Sunnyvale
- **GROUP 6 (County of Santa Clara)** – 2 voting members and 1 alternate
County of Santa Clara
- **Ex-Officio** - Santa Clara County's three Metropolitan Transportation Commission members

It is important to note that other than the Ex-Officio members, the above groups are responsible to appoint their representative(s) in a manner they themselves determine.

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Key information about the Board of Directors

- Generally meets the first Thursday of each month (July meeting is normally cancelled) at the County of Santa Clara Government Center (70 W. Hedding Street, San Jose)
- Meetings begin at 5:30 PM and normally last one to three hours, depending on the agenda.
- A small number of Board workshops or study sessions are typically held during the year. These are normally scheduled for a time other than the regular Board meeting.
- Directors serve on one or more Board standing committees. Most standing committees meet monthly, while others meet bi-monthly or quarterly. Standing committees meet at varying times during the normal work day, and most standing committee meetings are conducted at VTA's River Oaks Administrative Complex.
- Appointments are for two years, commencing on January 1 and ending on December 31 of the following year. Members and alternates may be appointed to successive terms.
- Members of the VTA Board of Directors are not eligible to concurrently serve on VTA's Policy Advisory Committee (PAC), although Board alternates may be appointed to the PAC.
- It is the responsibility of each member jurisdiction to seek agreement with the other members on any proposed appointment of an individual to represent that city/county group on the VTA Board of Directors.

Expectations

Board members:

- Should be able to devote, on average, 5 - 10 hours per month, which includes Board and standing committee meetings as well as time to review agenda materials.
- Represent the interests of their city/county group while endeavoring to achieve regional consensus.
- Have a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction.
- Should be able to work cooperatively in a multi-jurisdictional setting.
- Should be able to attend Board and standing committee meetings consistently.
- Are responsible for keeping their respective jurisdictions informed of key issues, facilitating communication between those entities and VTA, and helping build consensus.

Suggested Guidelines for Board of Director Appointments

The following is offered for Member Agency consideration when appointing representatives to the VTA Board of Directors. They are suggestions only, not requirements. It is each appointing jurisdiction's prerogative to appoint its representative of choice, provided that individual meets VTA's pre-established membership requirements for the position.

When evaluating prospective appointees to the Board of Directors, you are strongly encouraged to give consideration to the following factors and attributes in determining your appointee:

- Consideration should be given to appointing a member based on the value and expertise they can provide to improving transportation and mobility within the county.
- Individual should have experience or interest in transportation.
- Consideration should be given to appointing a member who has sufficient remaining time in their term to allow full completion of their term on the VTA Board of Directors.
- Consideration should be given to reappointing members to consecutive terms.
- Prior service on the VTA Board of Directors or Policy Advisory Committee is advantageous.
- Previous service on a planning or land use commission is beneficial.
- Due to the institutional learning curve and the complexity and long-term regional effects of the policy decisions, consideration should be given to appointing members who demonstrate strength in these areas.
- It is important that appointees have sufficient available time to appropriately discharge their VTA Board of Directors duties and responsibilities.
- Individuals should be able to facilitate communication by appropriately representing the positions and concerns of their governing body while keeping that same body apprised of key VTA initiatives and issues.

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APPENDIX B – VTA Operating Statistics and 2017 National Trends

This appendix presents operational metrics comparing VTA against national trends using an FTA annual summary.

Table B1 VTA Operating Statistics 2009 - 2018

Year	County Population ¹ (millions)	Bus Ridership ¹	Light Rail Ridership ¹	VTA Operations Full-Time Employees ¹	Fleet Size ^{1& 2}	VTA Operations Expense (\$) ¹	Vehicle Revenue Hours ^{3&4}	Total Unlinked Passenger Trips ^{3&4}
2009	1.77	34,510,273	10,754,161	1649	547	254,285,943	1,487,469	45,264,434
2010	1.79	31,983,494	9,749,882	1588	523	257,953,581	1,406,463	41,733,376
2011	1.814	31,395,126	10,014,504	1576	593	263,322,297	1,357,169	41,409,630
2012	1.841	32,053,755	10,373,042	1599	544	278,532,013	1,383,007	42,426,797
2013	1.87	32,432,354	10,742,292	1614	542	293,447,169	1,411,180	43,174,646
2014	1.894	32,475,527	10,952,965	1687	542	311,287,342	1,464,798	43,428,492
2015	1.92	32,623,599	11,320,497	1724	639	319,978,046	1,524,011	43,944,096
2016	1.934	32,195,504	10,722,932	1758	599	335,140,300	1,555,226	42,918,436
2017	1.946	29,057,047	9,132,084	1761	559	354,494,193	1,569,744	38,189,131
2018	1.957	28,048,405	8,507,095	1795	571	414,975,000	1,582,146	36,555,500

Notes:

1. From VTA report "Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018" listed in References, item number 15, and State Department of Finance

<http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/documents/PressReleaseJul2018.pdf>

2. Fleet size includes the total number of buses and light rail cars

3. Vehicle Revenue Hours (VHR) and Unlinked Passenger Trips (UPT) data from FTA NTD

<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

4. Operating expense, UPTs and VHRs include only directly operated bus and light rail vehicles

For the charts below, the Grand Jury used data from the 'National Transit Summaries & Trends 2017'²⁰, “Santa Clara Valley Transit Authority Annual Agency Profile 2017”²¹, and “Service Data and Operating Expenses Time-Series by System”²² to examine VTA’s operations and performance in the national arena.



²⁰ 2017 National Transit Summaries and Trends

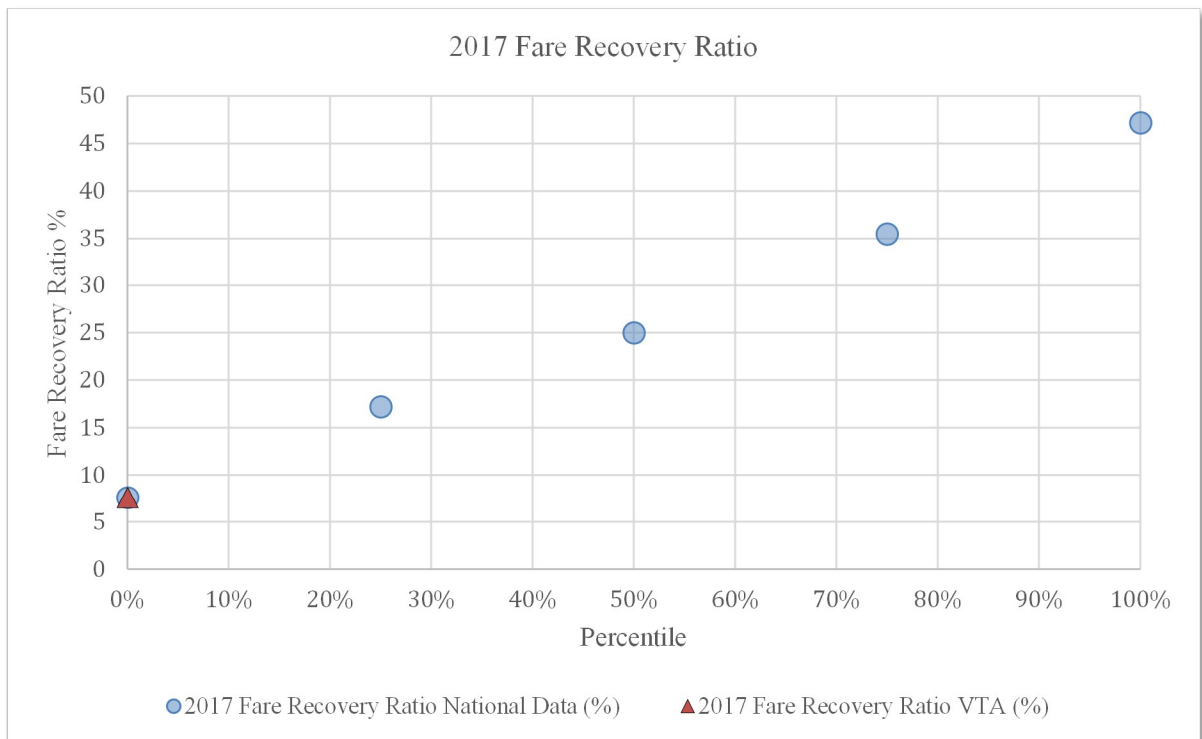
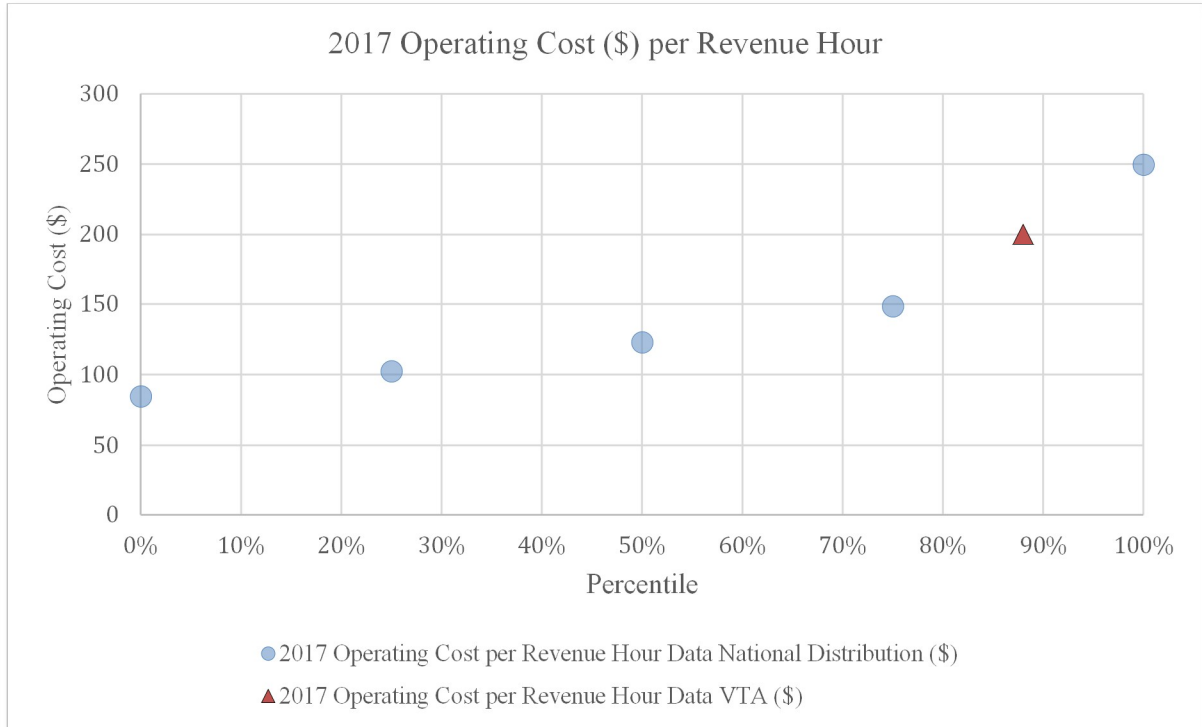
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/ntd/130636/2017-national-transit-summaries-and-trends.pdf>

²¹ Santa Clara Valley Transit Authority Annual Agency Profile 2017

<https://www.transit.dot.gov/ntd/transit-agency-profiles/santa-clara-valley-transportation-authority>

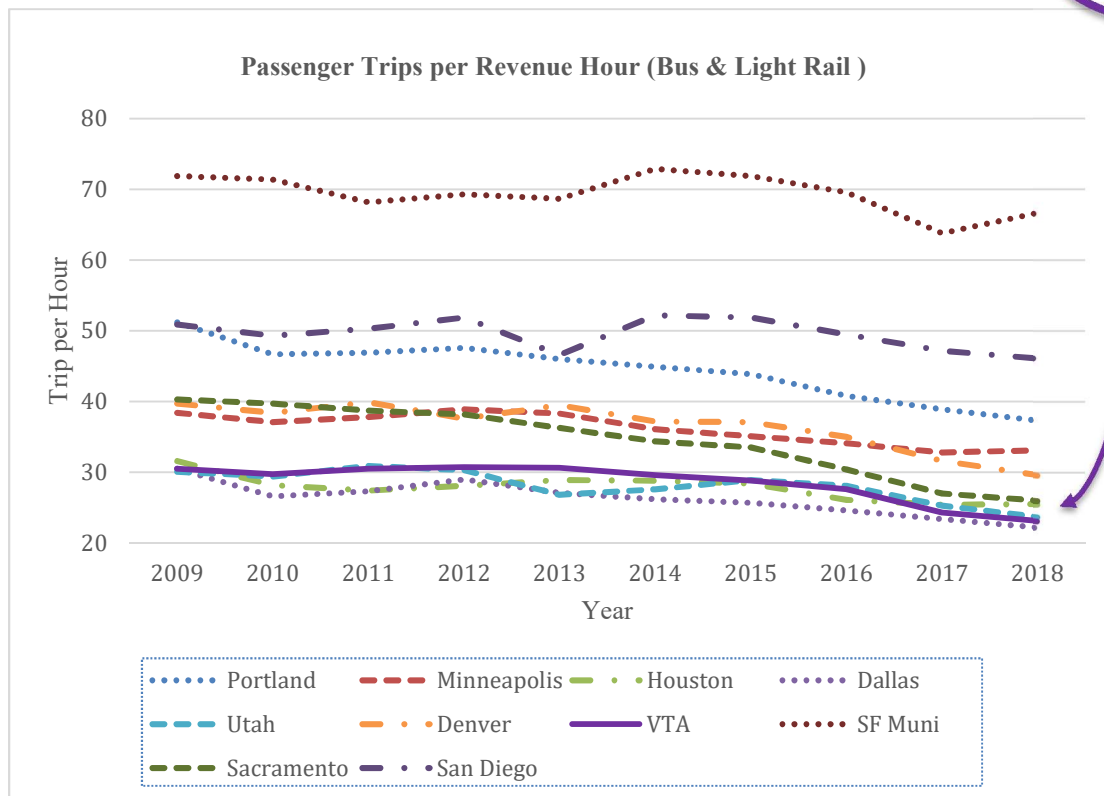
²² Service Data and Operating Expenses Time-Series by System

<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

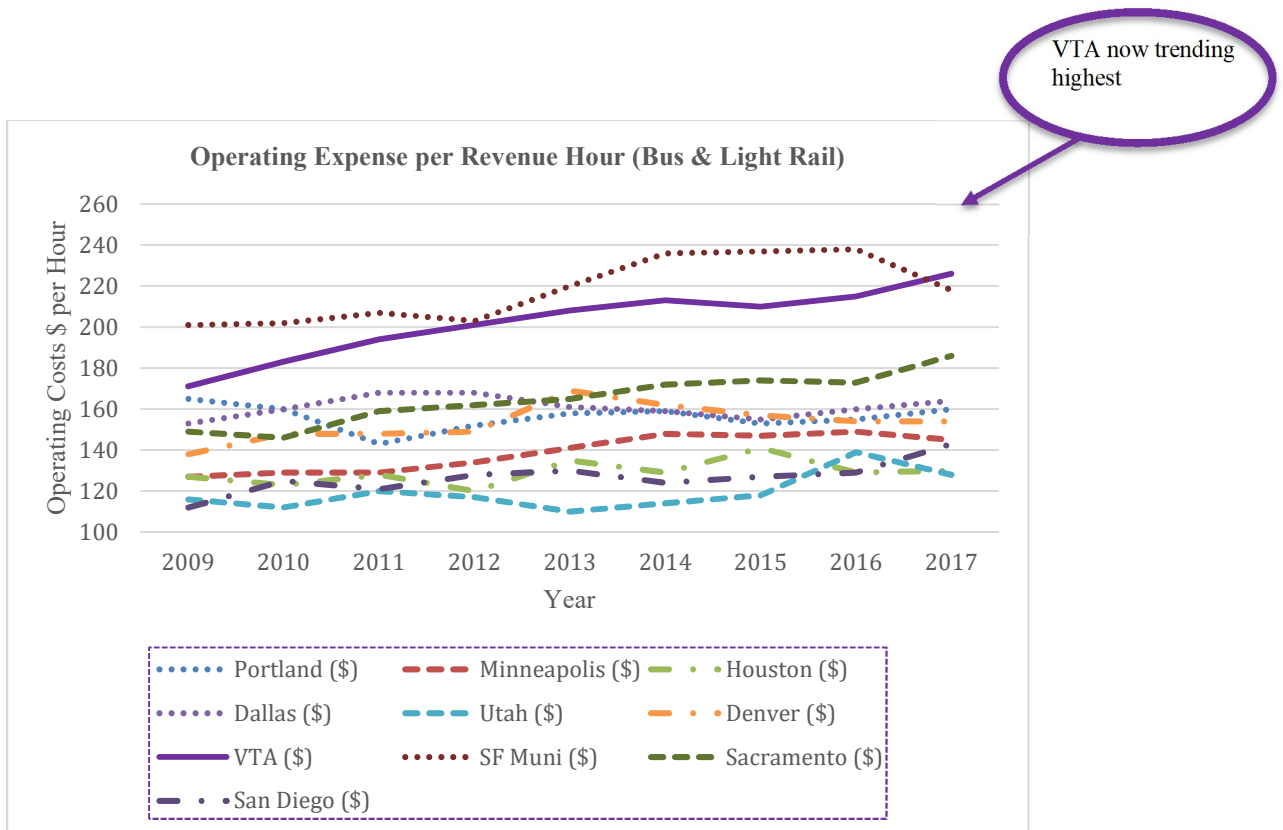


APPENDIX C – Peer Agency Comparisons

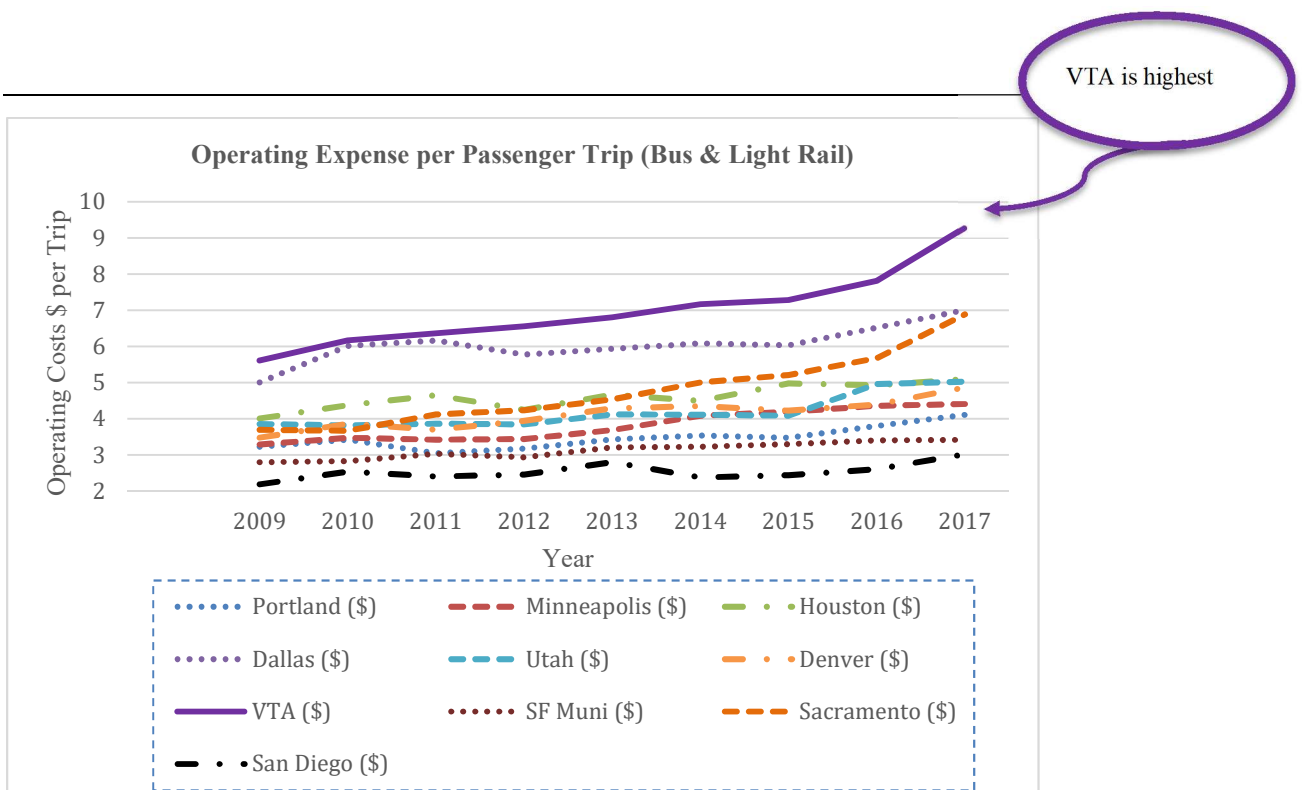
This appendix presents various operational metrics for VTA and nine peer agencies. Generally, VTA under-performs all or most of these agencies as noted.



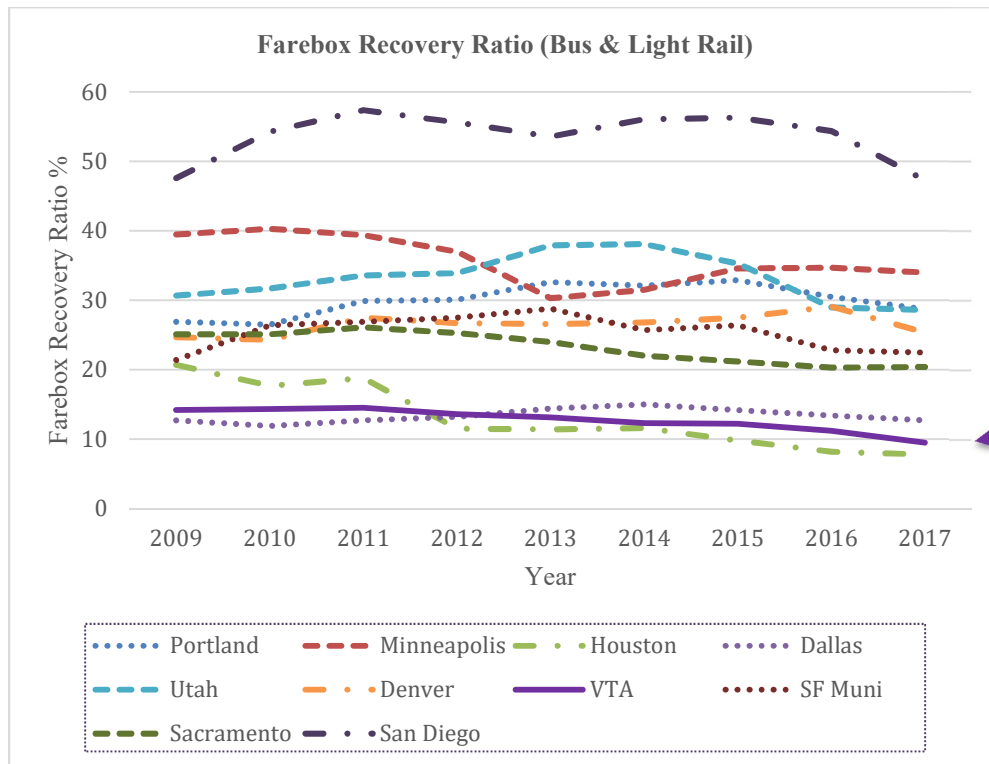
Source of data: <https://www.transit.dot.gov/sites/fta.dot.gov/files/February%202019%20Adjusted%20Database.xlsx>



Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

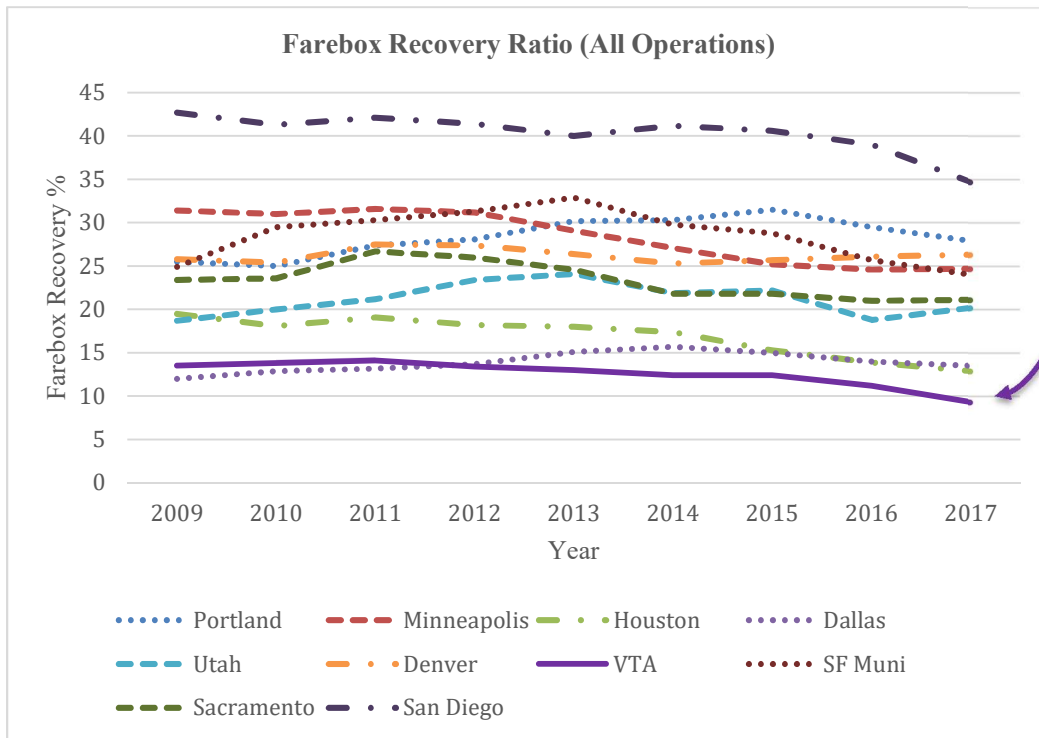


Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>



VTA competes for lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>



VTA is lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>


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Note: All links verified June 9, 2019

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 18th day of June 2019.

A handwritten signature in black ink, appearing to read 'John Pedersen', written over a horizontal line.

John Pedersen

Foreperson

OFFICE OF THE TOWN MANAGER

(408) 354-6832

Manager@LosGatosCA.gov

August 20, 2019

Mr. John Pedersen, Foreperson
Santa Clara County Civil Grand Jury
Superior Court Building
191 North First Street
San Jose, CA 95113

RE: Response to the Santa Clara Civil Grand Jury Report on “Inquiry into the Governance of the Valley Transportation Authority” Dated June 18, 2019

Dear Mr. Pedersen,

The Town would like to thank you and the other jurors for your work on this important topic. Attached, please find the Town’s response to the Santa Clara Civil Grand Jury Report on “Inquiry into the Governance of the Valley Transportation Authority.”

The response was reviewed and approved by the Los Gatos Town Council on September 3, 2019. The Town is required to respond to one Finding and three Recommendations. The attached document contains the Town’s responses to the Finding and Recommendations. In summary, the Town partially agrees with Finding 1 and the Recommendations require further analysis as noted.

If you have any questions, please contact me at Manager@LosGatosCA.gov or (408) 354-6832.

Sincerely,

LAUREL PREVETTI

Town Manager

Attachment

LP/jj

cc: Robert Schultz, Town Attorney
Presiding Judge, Santa Clara County Superior Court
Clerk of the Santa Clara County Superior Court
Clerk of the Valley Transportation Authority Board

ATTACHMENT 2

Town of Los Gatos Response to Grand Jury Report on VTA Governance

Finding 1

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

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to 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 Jose; and
- Frequent tension between the director's (sic) fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Response: Partially Agree.

While the finding correctly identifies many of the factors influencing effective leadership of the VTA Board, some of the broad generalizations are not applicable to every director. Specifically, some directors do have transportation experience having served on other VTA committees and/or being engaged in local transportation issues. In addition, some directors create the necessary time to prepare for meetings.

Recommendation 1c

As constituent agencies of VTA, each of the cities in the County should prepare and deliver to the 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.

Response: Requires further analysis.

Recommendation 1a requests that "VTA commission a study of governance structures of successful large city transportation agencies." The Town of Los Gatos respectfully requests that such a study explore successful transportation agencies that serve a major metropolitan area consisting of multiple municipalities, such as Portland, Oregon. Governance models of individual large cities may not be as applicable to the unique and diverse communities within Santa Clara County.

The recommendation for individual constituent cities to perform a similar analysis and explain their views on governance issues requires further analysis and resources to implement thoroughly. The Town of Los Gatos appreciates the Grand Jury's interest to engage the constituent cities in these important governance questions; however, small jurisdictions cannot undertake such an analysis alone. As an alternative, the analysis might be best performed by a representative body of the cities, such as the Cities Association of Santa Clara County with financial support from VTA. This approach would enable the more efficient use of available resources and an existing institutional framework for collaboration. Once funding is committed, it is estimated that the analysis and compilation of the cities' input would require at least 120 days. After completion, a report would be submitted to the VTA Board and County Board of Supervisors. The Town would participate in such a multi-agency approach.

Town of Los Gatos Response to Grand Jury Report on VTA Governance

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 appointed directors who are not currently serving elected officials).

*Response: **Requires further analysis.***

Assuming that the analysis and engagement of the constituent agencies occurs pursuant to the response to Recommendation 1c, the Town of Los Gatos is open to participating in the development of legislation regarding VTA governance. Any legislation should address the root concerns regarding underrepresentation of the smaller jurisdictions.

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 (sic) to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

*Response: **Requires further analysis.***

It is premature to commit to a specific legislative action pending the outcome of the requested studies and reports. Specifically, while continuity in leadership is typically effective for any governing body, the continuity is only effective if it is fairly distributed among the constituent agencies. Otherwise, a longer term of the Chairperson would exacerbate the issues identified in the Grand Jury Report.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 4

DATE: August 22, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with CSG Consultants, Inc. to Provide for an Additional \$100,000, for a Total Agreement Not to Exceed \$600,000

RECOMMENDATION:

Authorize the Town Manager to execute a First Amendment to the Agreement for Consultant Services with CSG Consultants, Inc. to provide for an additional \$100,000, for a total agreement not to exceed \$600,000 (Attachment 1).

BACKGROUND:

The Town of Los Gatos utilizes contractual services with CSG Consultants, Inc. to assist with and augment staff work for plan review of the engineering drawings and subsequent construction inspection services on the North 40 project. On April 17, 2018, Town Council authorized the Town Manager to execute an Agreement for Consultant Services for engineering, inspection, and project management services with CSG Consultants, Inc., in an amount not to exceed \$500,000.

DISCUSSION:

On March 19, 2019 Town Council authorized a budget adjustment in the amount of \$600,000 from developer fees collected in Fiscal Year 2017/18 for the North 40 Project to allow for project review and inspection costs. To utilize the full amount of the Council authorized budget adjustment, staff is requesting that the Council authorize the Town Manager to execute a first amendment to the Agreement for Services with CSG Consultants to align the contract amount with the budgeted funds.

PREPARED BY: Lisa Petersen
Town Engineer/Assistant Public Works Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

PAGE 2 OF 2

SUBJECT: Authorize the Town Manager to Execute a First Amendment to the Agreement for Consultant Services with CSG Consultants, Inc. to Provide for an Additional \$100,000, for a Total Agreement Not to Exceed \$600,000

DATE: August 22, 2019

CONCLUSION:

This action will allow CSG Consultants, Inc. to continue to provide inspection services and plan review for the North 40 project. The quantity of work required to manage a project of this magnitude is beyond the resources available through Town staffing.

FISCAL IMPACT:

The Town Council authorized a budget adjustment in the amount of \$600,000 on March 19, 2019 from developer fees collected in Fiscal Year 2017/18 for the North 40 Project to allow for project review and inspection costs. This action will have no additional fiscal impact. The funds originate as fees paid by the developer.

ENVIRONMENTAL ASSESSMENT:

The fiscal action and associated amendment of the agreement are not a project defined under CEQA, and no further action is required.

Attachments:

1. First Amendment to Agreement for Consultant Services
2. Agreement for Consultant Services

FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 3rd day of September 2019 and amends that certain agreement for Agreement for Services dated April 17, 2018, made by and between the Town of Los Gatos, ("Town,") and the CSG Consultants, Inc. ("Consultant").

RECITALS

- A. Town and Consultant entered into an Agreement for Services on April 17, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement for Services to increase compensation for the Scope of Services.

AMENDMENT

- 1. 2.6 Compensation: Is amended to read:

Compensation for Consultant's professional services shall not exceed \$600,000, inclusive of all costs. Payment shall be based upon Town approval of each task.

- 2. All other terms and conditions of the Agreement remain in full force and effect.

ATTACHMENT 1

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos

Consultant by:

By: _____
Laurel Prevetti, Town Manager

Department Approval:

Name/Title

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:

Robert Schultz, Town Attorney

Shelley Neis, CMC, Town Clerk

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on April 17, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and CSG CONSULTANTS, INC., ("Consultant"), whose address is 3150 Almaden Expressway #255, San Jose, CA 95118. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to provide professional services for engineering, inspection, and project management based on time and materials (T&M) to assist the Parks and Public Works Department and Building Division for the Town's North Forty Phase 1 project.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Statement of Qualifications sent to the Town on April 9, 2018, which is hereby incorporated by reference and attached as Exhibit A. The services include:
 - Project oversight and management of engineering and infrastructure improvements
 - Project inspection of both on-site and off-site improvements
 - Engineering assistance
 - Review and management of traffic control
 - Project schedule coordination
 - Building construction inspection
- 2.2 Term and Time of Performance. This contract will remain in effect from April 17, 2018 to June 30, 2023.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.

ATTACHMENT 2

- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.
- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$500,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.
- Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:
- Invoices:
Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655
- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and

not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to

an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

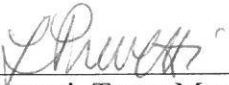
CSG Consultants, Inc.
3150 Almaden Expressway #255
San Jose, CA 95118

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:



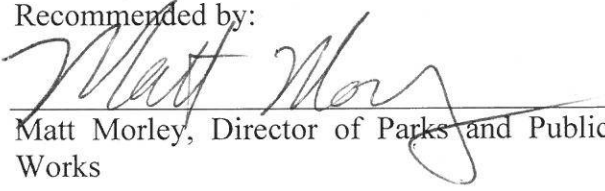
Laurel Prevetti, Town Manager

Consultant, by:



Nourdin Khayata, PE

Recommended by:




Matt Morley, Director of Parks and Public Works

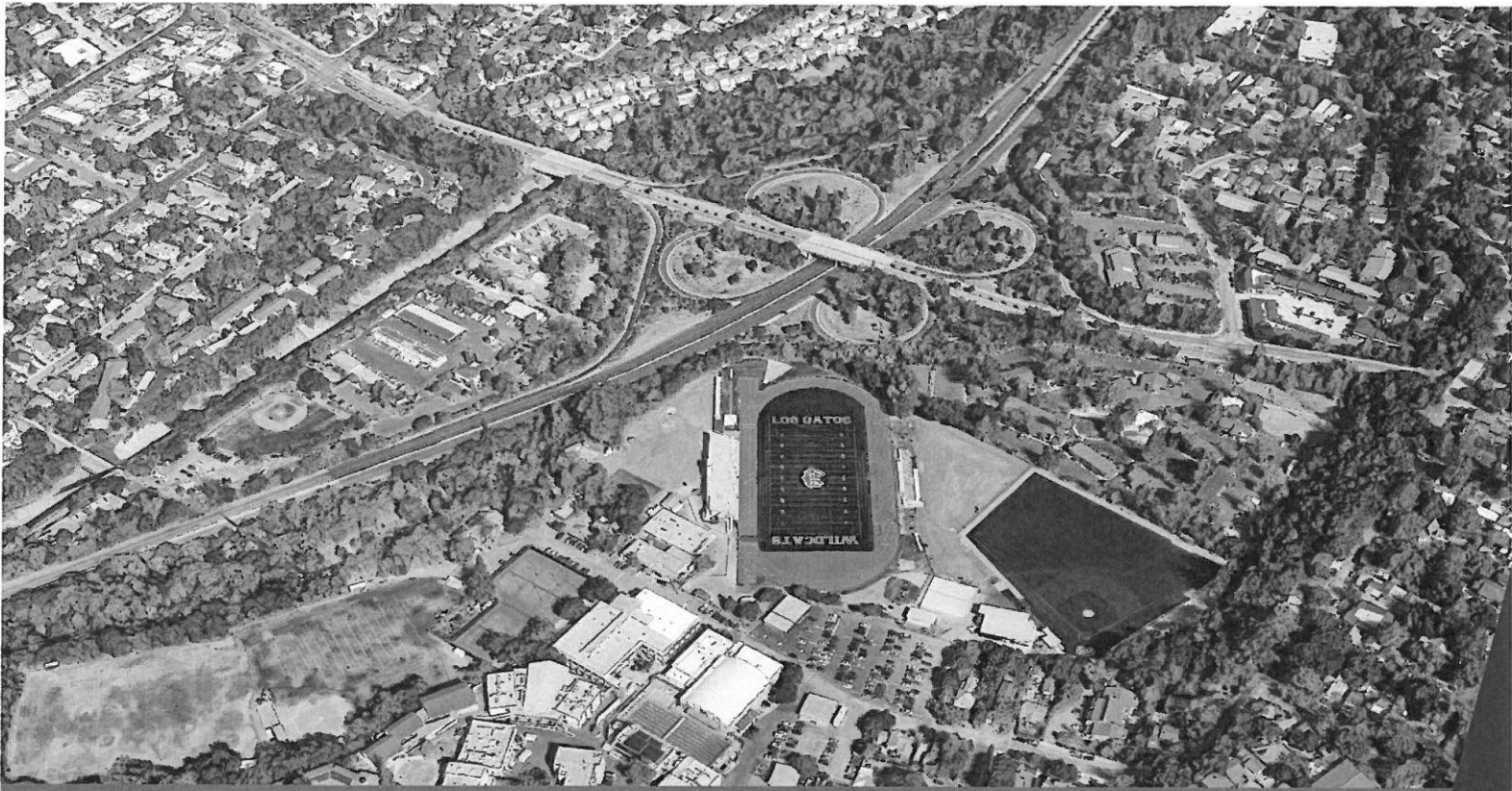
VICE PRESIDENT

Title

Approved as to Form:



Robert Schultz, Town Attorney



STATEMENT OF QUALIFICATIONS TO THE

Town of Los Gatos

Professional Services

APRIL 9, 2018



3150 Almaden Expressway #255
San Jose, CA 95118
408.618.8300 phone
408.618.8310 fax
www.csengr.com

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SECTION 6 **Professional Fees**

Cover Letter

SECTION

1

April 9, 2018

Lisa Petersen
Assistant Director / Town Engineer
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

RE: Statement of Qualifications for Professional Services

Thank you for the opportunity for CSG Consultants, Inc. (CSG) to present its Statement of Qualifications to the Town of Los Gatos for various public works and building inspection services.

For over 27 years, CSG has been providing a host of professional municipal services to the public sector. Our staff currently serves over 160 California communities providing engineering design, construction management and inspection, development review, grant administration, staff augmentation, building inspection, and project management services. Based on our knowledge, experience, and broad selection of services we are well suited to fulfill the requested services.

Hatem Ahmed, PE, PMP, will serve as the primary contact for this project. His contact information is as follows:

Hatem Ahmed, PE, PMP | Contract Manager
phone (650) 522-2511 | hatem@csgengr.com

We are confident that our team is best suited to deliver civil engineering services for the Town. Below is a summary of specific reasons why the Town should choose CSG as their on-call consultant.

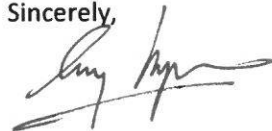
The Right Experience – CSG has extensive experience in providing civil engineering design, development review, construction management and inspection, and building department services for public agencies throughout the San Francisco Bay Area.

Experienced Project Managers – CSG's project managers have a proven track record of delivering projects on time and within budget. Many of our staff bring direct public sector experience providing the Town with a unique perspective toward approaching projects.

Commitment to Quality Assurance / Quality Control (QA / QC) – CSG is dedicated in utilizing a peer review process with multi-level internal quality checking of the deliverables for each service line. The dedicated QA / QC personnel each have over 30 years of civil engineering and municipal experience.

We are confident that our team is best suited to deliver public works and building inspection services for the Town. If you have any questions, please contact Mr. Ahmed at the information provided above.

Sincerely,



Cyrus Kianpour
President, CSG Consultants, Inc.



This proposal is printed double-sided on 50% post-consumer content recycled paper to minimize paper consumption.

CSG Consultants, Inc. is a Certified Green Business through the Bay Area Green Business Program. With this certification, CSG is recognized as an environmental leader—meeting higher standards of environmental performance in conserving natural resources, reducing waste, preventing pollution, and using energy and water efficiently.



CIP PROJECT MANAGEMENT

CAPITAL IMPROVEMENT PROJECT MANAGEMENT & STAFF AUGMENTATION | CITY OF SAN CARLOS, CA

CSG assisted the City of San Carlos with the delivery of their Capital Improvement Program, as well as provided design and construction management support for several projects including the Main Library and City Hall improvements. The scope of work consisted of developing an implementation plan through a tracking log to capturing the scope, schedule and budget for each project. CSG then monitored the completion of work for each project through periodic progress meetings and provided project management for the delivery of several facilities related projects.

CAPITAL IMPROVEMENT PROJECT MANAGEMENT & STAFF AUGMENTATION | CITY OF ALBANY, CA

CSG is currently assisting the City of Albany with the delivery of their Capital Improvement Program, as well as provide design and construction inspection support for several projects including the following projects:

- *Albany Community Center HVAC Replacement Project: This project involved the replacement of existing HVAC units with more energy efficient units*
- *Memorial Park Site Improvements: This project involved renovation of the park toddler play area and child care patio area*
- *Albany Senior Center Renovation Project: This project involves the renovation of the kitchen and kitchenette*
- *Evelyn Avenue Pavement Rehabilitation Project: This project involves the rehabilitation of the street pavement and drainage systems.*

CAPITAL IMPROVEMENT PROJECT MANAGEMENT & STAFF AUGMENTATION | CITY OF GILROY, CA

CSG has been providing engineering and staff augmentation services for the City of Gilroy since 2013. CSG assists the City with their CIP project deliver including water mains, sewer rehabilitation, trail improvements, wayfinding signage, and pavement rehabilitation projects.

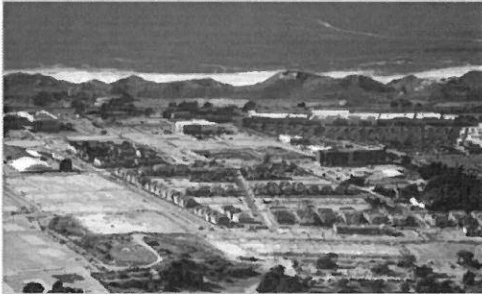
CAPITAL IMPROVEMENT PROJECT MANAGEMENT & STAFF AUGMENTATION | TOWN OF COLMA, CA

CSG has been providing full engineering and staff augmentation services for the Town of Colma since 1991. We provide the Town with engineering staff augmentation, construction management and inspection, grant management, building inspection, building plan review, engineering services, recycling program coordination, geographic Information system (GIS) management, and public works maintenance services. Our staff has also assisted the Town's Planning Division staff and reviewed documents for CEQA compliance relating to land development and capital improvement programs.



ENGINEERING PLAN REVIEW

FORD ORD DEVELOPMENT REVIEW AND INSPECTION | CITY OF MARINA, CA



CSG is currently providing comprehensive development review and inspection for the development of 420 acres of former Fort Ord property that lies within the boundaries of the City of Marina. The project, for which a Specific Plan was developed, consists of mixed use (retail, entertainment, commercial, and live/work), regional retail, low-income housing, office/research/light industrial, and residential areas. The development also includes numerous public parks and a multi-modal corridor.

- **The Promontory** - 174 unit student house adjacent to CSUMB Campus
- **Imjin Office Park** – 5 acre LEED certified civic center office site for Marina Coast Water District, Fort Ord Reuse Authority offices, Carpenters Union Local 605, and Bureau of Land Management
- **Veterans Affairs Clinic** – three story, 150,000 sq ft located on 14.3 acres.
- **University Village Apartments** – 108 unit apartment complex
- **The Dunes** - New 332 SFH subdivision; including infrastructure and two new city parks

DEVELOPMENT REVIEW AND INSPECTION SERVICES | CITY OF DUBLIN, CA

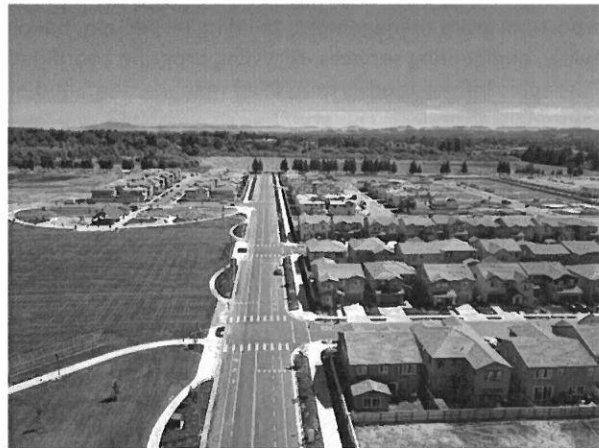
CSG currently provides as-needed development inspection, Final/Parcel Maps and Engineering Plan review services to the City of Dublin. Notable projects are described below.

- **Dublin Crossing** - 189 acre mixed use site that will connect the east and west sides of Dublin currently separated by Camp Parks. It is a transit oriented development that will eventually contain nearly 2,000 residential homes, 35 acres of park, 75,000 to 200,000 square feet of retail and commercial space and a new elementary school. CSG provided development review services during the entitlement phase.
- **Dublin Ranch Subarea 3 (Phase 2)** - CSG staff provided development review services for six new neighborhoods within the master planned community of Dublin Ranch. The approximately 64 acre project will include 437 single family residential units.
- **Moller Ranch** - CSG staff provided review of improvement plans, rough grading, traffic signals, and parcel and final maps.

DEVELOPMENT REVIEW | CITY OF ROHNERT PARK, CA

CSG has provided on-call development review and staff augmentation services for the City of Rohnert Park since March 2013. Work performed to date includes the following:

- **Southeast Specific Plan** - Review of grading and improvement plans for a 450 lot residential development; assisted staff in reviewing requested modifications to development agreement by developer.
- **Cotati-Rohnert Park Unified School District Surplus Property** - Assisted staff with ongoing discussions with District staff and developer concerning infrastructure needs for development of surplus District property.
- **University District Specific Plan** - Review of Tentative Map, Specific Plan, Hydrology and Hydraulic Study, and associated documents for 1,454 lot residential development.



CONSTRUCTION MANAGEMENT

FULL DEPTH RECLAMATION PROJECT | CITY OF CONCORD, CA

CSG provided construction management and inspection for a \$2.5 million roadway rehabilitation project involving the reconstruction of two neighborhood collector streets over a distance of approximately 1.0 miles. The project scope utilized a full depth reclamation (FDR) process which included milling the top surface of asphalt, pulverizing, mixing and cement treating the remaining asphalt and base rock, shaping and compacting the street section to proper grades and then placing rubberized hot-mix asphalt as a top lift for the new street section. Work scope also included sidewalk repair, curb ramp installations, adjustment of existing utility covers, striping, signage and a section of fiber optics conduit with pull boxes.

The project was started late in the season, with temperature-sensitive rubberized asphalt specified in the work scope. Tracking and maintaining the schedule as well as timely resolution of unforeseen issues was critical to the project's success. Challenges during the project included adjusting the means of construction to deal with a thicker than anticipated existing section of asphalt, researching existing conditions to resolve curb ramp constructability issues at a BART undercrossing and keeping adjacent community members notified with signs and notification flyers. The project was completed on time, within the working days allowed, and within the construction budget.

CRYSTAL SPRINGS TRUNK SEWER IMPROVEMENTS | TOWN OF HILLSBOROUGH, CA

CSG provided resident engineer and inspection services for the installation of over two miles of new 26"-28" fusible high density polyethylene (HDPE) gravity sewer main to replace the existing, undersized vitrified clay pipe (VCP) along El Cerrito Avenue and Crystal Springs Road. The large pipe upsize increase requires the main installation to be completed with open trench construction. The project included the installation of over 60 new sewer manholes, 75 service lateral re-connections, system bypassing through portions of the existing pipeline, and four drilled concrete stitch pier walls to stabilize the adjacent San Mateo Creek embankment and support the utility work.

Critical project elements included traffic control, communications/public relations, and utility coordination. Traffic control required daily monitoring and Town updates due to the project streets being important thoroughfares. Public relations efforts were ongoing for the project duration to ensure coordination with adjacent property owners on landscaping restorations, property access, and sewer service bypass notifications.



ON-CALL PUBLIC WORKS AND DEVELOPMENT INSPECTION | CITY OF FOSTER CITY, CA

CSG has provided construction inspection services to the City of Foster City for various development projects. CSG has provided these services since June 2014. Projects include:

- **Foster Square** – Construction inspection for this development which will include affordable housing, assisted living, commercial space, and open space
- **The Waverly** – Construction inspection for a mixed-use 6.3 acre development which will include 730 residential units and over 290,000 square feet of commercial/industrial office use.
- **Pilgrim Drive Sewer Line** – Construction Inspection for a sewer line replacement
- **Mariners Island Blvd 24" Transmission Project** – Construction Inspection for Phase A and Phase B
- **1299 Chess Drive** – Construction Inspection for a five-story wood framed hotel



HILLSIDE BOULEVARD REHABILITATION AND BEAUTIFICATION | TOWN OF COLMA, CA

Winner of the 2015 APWA Project of the Year Award for Small Cities/Rural Communities

Hillside Boulevard, a principal north-south arterial through the Town of Colma, spans approximately 1.5 miles. CSG was involved in the master planning, final design and construction of this beautification project. During the master planning stage of the project, CSG conducted traffic studies, presented our conceptual design to the community at two public meetings and effectively coordinated with project stakeholders, City staff and City Council to review and approve an aesthetically pleasing design concept. CSG worked closely with the Planning Department to deliver a conceptual design that incorporated all elements of “complete streets”, including sidewalks, lighting, and bike lanes. Design elements incorporated sheltered left turns to act as traffic calming measures, additional street parking, continuous bike lanes, a continuous sidewalk where none exist before, curb ramps, and bio-retention areas or “rain gardens”. Two traffic signal modifications were completed to match the new layout and bring those signals up to current standards. The design incorporated a retrofit to all intersections and pedestrian access points throughout the corridor in order to meet ADA requirements. In addition, the entire length of roadway was rehabilitated by full-depth reconstruction.



2016 PAVEMENT REHABILITATION PROGRAM | CITY OF SAN RAMON, CA

CSG was selected as the design consultant for the City's 2016 pavement project. The scope involved the rehabilitation of more than 60 street segments, totaling over 7.5 centerline miles, in various locations throughout the city. After performing a deflection analysis on the most severely distressed pavements, three remediation methods were chosen, consisting of Overlays, Thin Maintenance Overlays, and Micro-surfacing. CSG staff conducted site visits to assess location of digout repairs, an inventory of existing iron (manholes, valves, etc.), evaluation of curb, gutter and sidewalk in need of repair, and evaluation of curb ramps for ADA conformance. CSG was also tasked with evaluation of several areas of existing brick pavers and determining a repair methodology. All findings were documented through field notes and photographs.

FAIR OAKS BIKEWAY and STREETScape IMPROVEMENTS | CITY OF SUNNYVALE, CA

The City of Sunnyvale proposed to construct safety improvements along Fair Oaks Avenue between Old San Francisco Road and Evelyn Avenue, and between Kifer Road and Ahwanee Avenue. Project scope included three public meetings and the development of several class I, II, and III bike lane alternatives along Fair Oaks Avenue. Design work included the installation of class III bikeways with shared-lane markings, or “sharrows” and appropriate signage, bicycle loop detectors and pull boxes, camera systems at intersections on existing signal mast arms with new conduits, and pedestrian push buttons post, and foundation. Additional scope of work included upgrades existing non-ADA compliant ramps to ADA compliance, concrete improvements, including sidewalk, curb and gutter, and valley gutter replacement, drainage inlet modifications, monument adjustment, and electrical pull boxes adjustments to finished grade.

Related Project Experience

SECTION

5

The following is a small sampling of recent projects for which CSG similar services. Additional example projects and references may be provided upon request.

ENGINEERING DESIGN

JUNIPERO SERRA BLVD. at KING DRIVE INTERSECTION IMPROVEMENTS | CITY OF SOUTH SAN FRANCISCO, CA

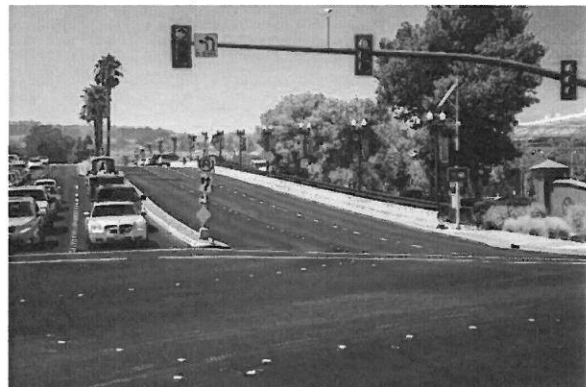
CSG was selected by the City of South San Francisco to redesign the intersection of Junipero Serra Boulevard and King Drive. Junipero Serra Boulevard is a four-lane divided highway and King Drive is a two-lane arterial with median separations at its intersection with Junipero Serra Boulevard. The project goal was to improve mobility for all modes and brings the intersection up to current standards for bicyclists, pedestrians, and ADA access. CSG's team developed the project from preliminary design, lead the community outreach process with multiple public meetings, multiple agency coordination including Caltrans, City of Daly City, and the South San Francisco Bicycle and Pedestrian Advisory Committee, and completed final design while managing the federal funding process.



The project scope included redesign of the existing medians and right-turn islands to improve intersection geometry and provide ADA compliance. Replacement of the existing traffic signals located in the median with mast arm signals to improve visibility; upgrade of the existing traffic signals to provide protected left-turn phasing for King Drive; addition of a speed feedback sign on southbound Junipero Serra Boulevard to increase driver awareness of the posted speed limit; installation of standard ADA curb ramps throughout the intersection to improve pedestrian accessibility; addition of pedestrian signal heads and countdown timers at all crosswalks to improve pedestrian safety; and extension of existing bike lanes along Junipero Serra Boulevard through the King Drive intersection to improve bicycle safety.

VARIOUS STREETS AND ROADS PAVEMENT PROJECT | CITY OF MILLBRAE, CA

CSG was selected by the City to perform the design of pavement rehabilitation for a major City arterial, Millbrae Avenue, and a residential street, Magnolia Avenue. The project included pavement coring sample testing, surveying, pavement recommendations report, traffic handling plans, ADA curb ramp upgrades, traffic signal repair and traffic detours. Stakeholder coordination was required with Caltrans Local Assistance for compliance with Federal funding guidelines (an E-76 was obtained for this project), as well as Caltrans Encroachment Permit Department for coordination with Caltrans design review staff regarding Caltrans owned facilities.



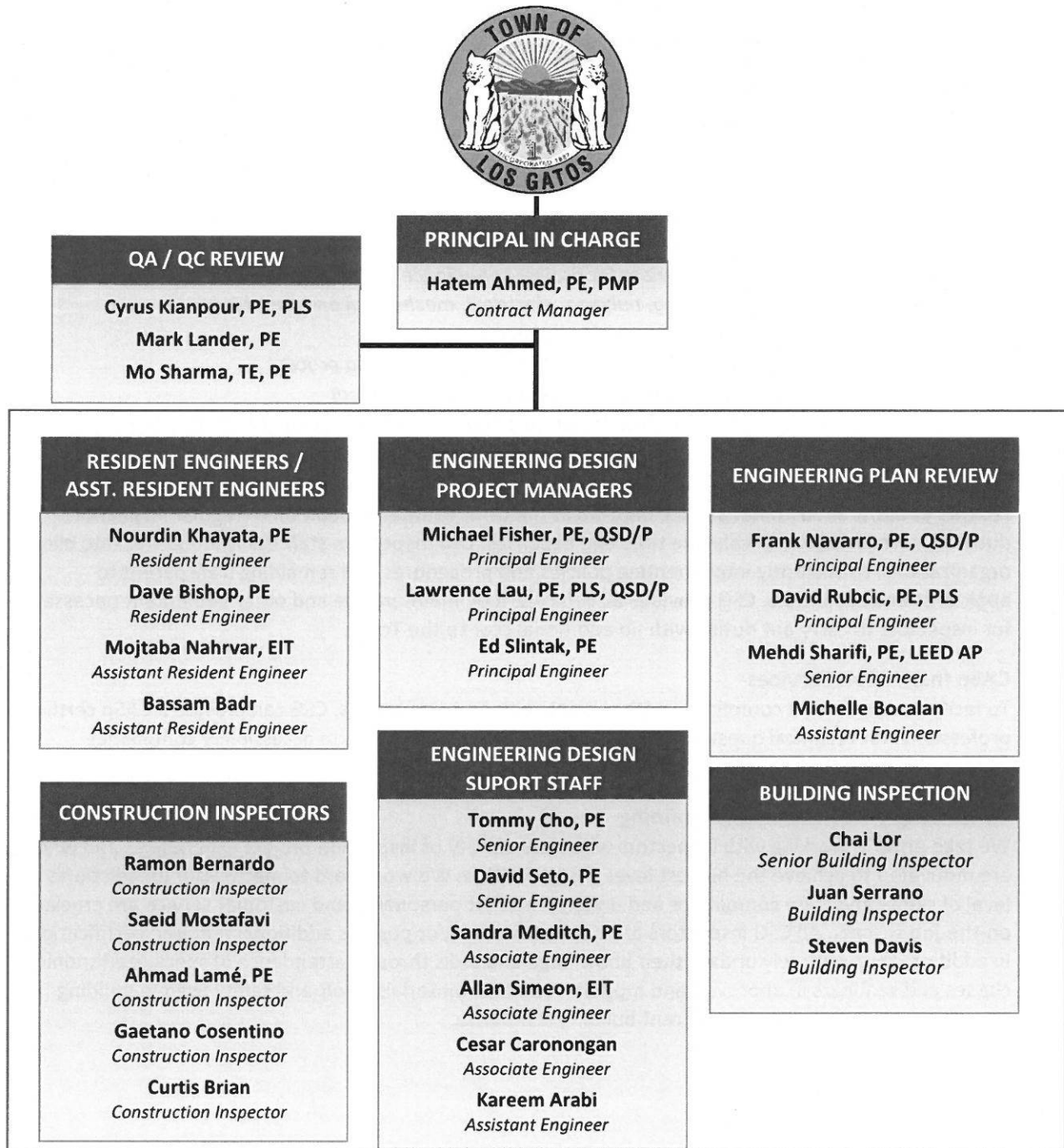
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Key Personnel

SECTION

4

As elaborated on in the organizational chart below and on the following pages, CSG's team will be led by **Hatem Ahmed, PE**, serving as the overall contract manager. Our team includes highly qualified staff who have experience working for government agencies throughout the California and many have provided the requested services as extension of the agencies' staff on projects and tasks of similar scope and size.



BUILDING INSPECTION SERVICES

Standards and Responsibilities



CSG provides fully integrated, multi-disciplined building inspection services for residential, commercial, and industrial projects, and are experienced in all construction types. We provide experienced, ICC/CSFM-certified (and/or with other appropriate entities in accordance with AB717) inspectors.

Our inspectors ensure compliance with applicable codes and requirements by identifying code violations, offering solutions to developers, property owners and tenants on potential risks and safety hazards, and by working as a team to correct violations. Our inspection staff easily integrates into client organizations, consistently implementing policies and procedures and remaining transparent to applicants and customers.

Specific responsibilities include but are not limited to the following:

- *Providing inspection services for project compliance with relevant codes including accessibility, fire, grading, building, electrical, mechanical and plumbing*
- *Addressing inquiries and resolving complaints*
- *Assisting with the construction and demolition permitting process*
- *Providing code administration, inspection and enforcement*
- *Maintaining records and files concerning construction permits and building code administration, documents for storage and/or imaging*

In addition, we can utilize inspection personnel whenever possible to perform over-the-counter plan reviews or assist as customer service back-up at the front counter in addition to regular inspection duties to save jurisdictions valuable time and expenses. Our inspection staff easily integrates into client organizations, consistently implementing policies and procedures and remaining transparent to applicants and customers. CSG provides all vehicles, fuel, maintenance and other equipment necessary for inspectors to carry out duties with no additional cost to the Town.

CASp Inspection Services

To facilitate the Town's compliance with current rules and regulations, CSG can provide a CASp certified professional for technical questions and interpretations, and to perform accessibility compliance inspections and CASp inspection report development.

Continuing Certification and Training

We take pride in working with inspectors who have variety of inspection project experiences and who are motivated to achieve the highest level of certification. We work hard to match your jurisdiction's level of safety and code compliance and understand that personality and customer service are crucial to on-the-job success. All CSG inspectors are ICC certified and/or possess additional required certifications. In addition, they routinely update their knowledge and skills through attendance of specialized training classes and seminars in approved and modern methods, materials, tools and safety used in building inspection, as well as the most current building standards.

CONSTRUCTION MANAGEMENT & INSPECTION

CSG's experienced construction managers and inspectors provide construction administration for all types of public works infrastructure projects including transportation, underground utilities, parks and public facilities. All of our personnel are familiar with Caltrans Standard Plans and Specifications, and use the provisions along with agency standards, project plans, specifications and other applicable reference documents to enforce contract provisions. Most CSG construction managers have served as Resident Engineers on projects involving Caltrans oversight and are accustomed to incorporating the higher standard of project documentation required of a project subject to a federal audit. We employ a web-based, integrated project control system closely following the Caltrans standards, monitoring all project documentation including correspondence, submittals, RFIs, diaries, schedules, material testing, contract change orders and progress payments. We also furnish photo and video documentation.



Construction Management

CSG acts as jurisdictional agent during the construction of CIP projects and is responsible for the successful completion of construction by overseeing contractors' activities. CSG staff is responsible for ensuring that all work is built to the standards defined by the contract documents and typical duties include:

- *Communicating and coordinating with project participants including the jurisdiction, contractor, testing forces and regulatory/permitting agencies*
- *Monitoring and assessing project budgets and providing cost control*
- *Tracking project progress against the schedule and contract duration*
- *Resolving, as necessary, project issues that may cause project scope, cost or duration to vary*
- *Completing contract administration paperwork including, but not limited to, processing and reviewing RFI's, submittals, potential change orders, progress payments, and potential claims*
- *Supervising construction inspection efforts*
- *Coordinating and participating in weekly progress meetings to discuss and resolve project issues*
- *Reviewing and ensuring the accuracy of the contractors' red-lined record drawings, preparing the final punch list and overseeing punch list item resolution*

Construction Inspection

Our inspectors are responsible for observing, measuring, and documenting contractors' operations.

Typical duties performed by our inspectors include:

- *Fully understanding requirements in plans and specifications, and maintaining an open dialog with construction managers for clarifications as necessary*
- *Monitoring and coordinating operations with contractors to ensure that critical operations are observed*
- *Bringing unacceptable work or material to the attention of the contractor and, if not resolved promptly, bringing the matter to the attention of the construction manager for resolution*
- *Maintaining complete, up-to-date and accurate diaries and photo logs reflecting equipment utilized; compliance with contract documents; work completed including the location, quantity and methods; testing results; communications with the contractor including instructions, suggestions and requests; instructions from the engineer; and communications with the public or other agencies*
- *Reviewing construction staking*
- *Reviewing, measuring and calculating quantities for progress payments*

stormwater treatment measure and landscape maintenance agreements), and staff reports.

- Meet with developers, consultants, and other agencies on behalf of staff, as requested.

Staffing

- All plan reviews will be conducted by a State of California licensed civil engineer or under the supervision of a licensed civil engineer.
- Each plan review is assigned to a plan reviewer with oversight of the project manager. The assigned design plan reviewer will be committed to the project and will furnish all subsequent reviews for the project. It is the goal of CSG Consultants to provide, where practical, a cradle-to-grave approach for project review, where a review team is assigned to the project from entitlement through plan review and construction to closeout and acceptance.
- Provide specialized qualified licensed engineers to assist in any structural, soil and geotechnical reviews, for any of the assigned projects.
- Map checking will be overseen by licensed professional land surveyors or by professional engineers licensed to practice land surveying in the State of California.
- The review team will be available for applicant inquiries or conferences during normal business hours, Monday through Friday, from 8:00 AM through 5:00 PM. Web conferences, fax, and conference calls are optional forms of communications between CSG and Town staff.

Online Plan Check Status

- CSG shall make available online services to enable Town and authorized applicants to determine the status of plan checks. There is no additional cost for this service.

Typical Plan Review Schedule

Development of hard-and-fast schedules for completion of development review and plan review work is difficult as timing and scope of projects is not always known. Examples of time frames for completing certain tasks are provided below.

REVIEW TYPE / TASK	TIME FRAME
Pre-application entitlement review, PRC review	Review application material in advance of requested meetings; complete formal comments and submit to Planning within one week of meeting
Review Tentative Map Application or Other Entitlement Package	Fifteen (15) working days of notice of submittal by Town
Prepare Conditions of Approval	Prepare within one week of request by Planning, or within reasonable shorter time frame if needed to meet hearing date
Complete Improvement Plan or Map Review (1 st Check)	Fifteen (15) working days of notice of submittal by Town
Prepare fee estimate, review bond estimate, or prepare permit	Ten (10) working days of request
Review request for right-of-way vacation	Ten (10) working days of notice of submittal by Town
Review Lot Line Adjustment/ Lot Merger	Ten (10) working days of notice of submittal by Town
Miscellaneous Assignments	Dependent on scope, typically within five (5) working days

Turnaround times include pickup, QA/QC, and delivery to Town.

CSG will attempt to reduce the need for formal resubmittals to the Town by reviewing electronic submittals of revisions provided directly to CSG. Turnaround times would vary based on the scope of the review but would typically be returned within one to two working days.

ENGINEERING PLAN CHECK / DEVELOPMENT REVIEW

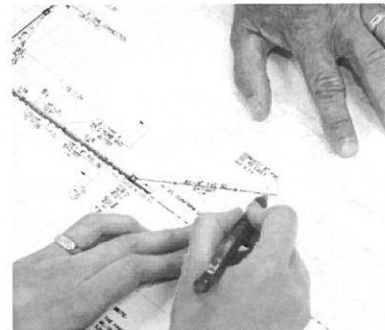
Drawing on the combined experience and talent of our staff, we have found the following practices helpful in approaching development review, and plan review. The exact Scope of Work will be determined based on our discussion with the Town and the type of project.

New Development Entitlements

- Review tentative maps, tentative parcel maps, architectural review, and other entitlement applications. Coordinate review with other Town staff and/or outside agencies as needed.
- Attend follow-up meetings with Planning staff, the applicant, or others as needed to resolve issues regarding the proposal. Review subsequent submittals of the proposal.
- Assist the Town with development of conditions of approval, development agreements, and other requirements associated with development applications. Assist Town in negotiating with developers regarding terms of agreements or conditions (Additional tasks associated with the entitlement process are described above).

Plan Review and Map Review

- Review final maps, improvement, and landscape plans. Review includes evaluation of required records, studies, grading and improvement plan, and additional materials submitted by the design professional. Confirm that plans conform to Town standard design criteria, conditions of approval, and infrastructure or other master plans.
- Each plan review will be accompanied with a letter summarizing the red-line comments addressed to the applicant's engineer or landscape architect, with a copy to Town staff and the applicant. A complete red-lined set of drawings and any reports will be returned to the design professionals for use in their corrections. At the applicant's discretion, the comment summary letter and red-lined plan sheets can be scanned and submitted electronically to the design consultant to expedite the review process.
- CSG will meet with the applicant/representative and Town staff to review comments or to delineate the standards which are not being met, in order to facilitate timely completion of the review and meeting the maximum goal of two plan checks. CSG will accept and review subsequent submittals electronically, when feasible, in order to expedite the review process.
- Soils reports will be evaluated, and confirmation of recommendations will be included on the plans. Boundary conditions will be evaluated to maintain continuity with surrounding properties and maintain existing drainage patterns.
- Construction erosion control and post-construction water quality control will be evaluated for compliance with the storm water quality management permit in effect for the Town.
- Assist the Town with development of conditions of approval, development agreements, and other requirements associated with development applications. Assist Town in negotiating with developers regarding terms of agreements or conditions (Additional tasks associated with the entitlement process are described above).
- Confirm that the developer has obtained necessary permits or approvals from other public agencies as needed, and that plans conform to the Town's NPDES Municipal Regional Permit requirements for storm water treatment and retention.
- Review and recommend approval of engineering bond estimates and subdivision guarantees. Assist the staff in preparing subdivision improvement agreements, other agreements (including

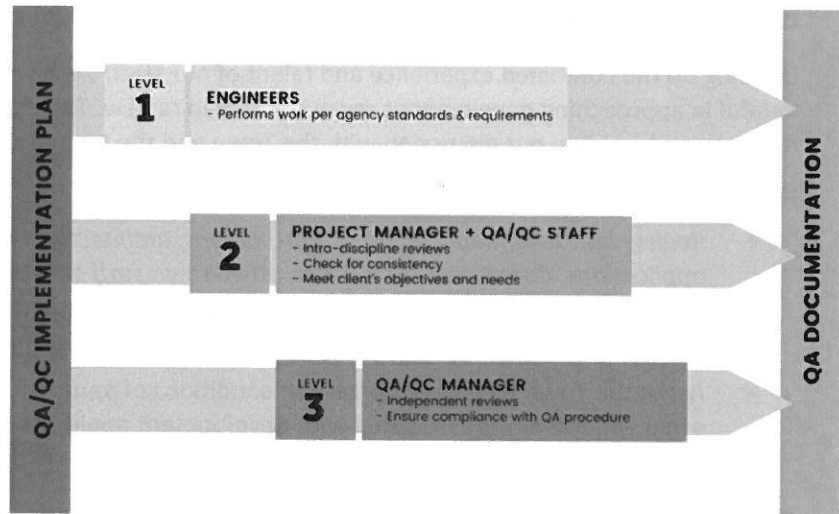


Project Manager and QA / QC staff routinely perform their inter-discipline coordination and constructability reviews on all deliverables at draft and pre-final submittal stages in order to adhere to project's goals and agencies' expectations. The QA / QC Manager conducts periodic audits of the QA / QC process to ensure that all reviews are being properly conducted and documented by all team members.

Deliverables will be reviewed for:

- *Compliance with approved formats, criteria, specifications, and professional standards of practice.*
- *Adequacy, clarity, ease of interpretation*
- *Consistency*
- *Constructability*
- *Compatibility of design discipline interfaces*
- *Errors and discrepancies*
- *Coordination with related designs and project elements*
- *Integration of design disciplines*
- *Incorporation of design changes*
- *Conformance to required environmental mitigation and governmental regulations*

Review comments made by QA / QC staff will be noted on the deliverables being reviewed. All comments and the corresponding action items needed will be transcribed onto the comment forms. Design Engineers will document their responses on the comment forms. A log of all QA / QC measures taken during the course of the project, including any corrective actions taken, will be maintained by the Project Manager.



- *Identify permits required and prepare documentation*
- *Right of way research and mapping*
- *Coordination with affected property owners*
- *Utility and other stakeholder coordination, mailing letters of intent, and determination and coordination of any required relocations or conflict resolutions*
- *AutoCAD base map development, using AutoCAD Civil 3D 2013*
- *Field assessments of existing features (with potential field meetings with the Town)*
 - *Striping and pavement marking identification*
 - *Concrete curb ramp condition survey*
 - *Traffic signal detection locating and identification*
 - *Pedestrian & Bicycle safety and MUTCD compliance needs*
- *Identification of applicable Town/County/Caltrans Standard Plan details or development of customized construction details*
- *Prepare reports and recommendations*
- *Develop plans, specifications & estimates for construction*
 - *PS&E submittal review meetings with the Town*
 - *Finalize design concept*
- *Attend the Town's Design group to Construction group "Hand-off" meeting*
- *Bid phase support*
- *Construction phase support*
- *Conduct a "Lessons Learned" meeting*

QUALITY ASSURANCE / QUALITY CONTROL (QA/QC)



CSG's in-house QA / QC Implementation Plan utilizes a peer review process with multi-level internal project checking. CSG will assign a staff member who will be dedicated to the QA / QC Implementation Plan and will be responsible for the followings:

- *Establishing guidelines & assigning accountable personnel and responsibilities for each task.*
- *Assuring that all deliverables are reviewed, including products from subconsultants.*
- *Monitoring the process to assure that the schedule and budget are followed.*
- *Participating in the internal and external reviews.*
- *Reviewing and signing off on deliverables before submittal to the clients.*

The Implementation Plan highlights that quality control is the responsibility of every team member of our staff at every level and at every milestone of the project development processes. All deliverables, including technical engineering reports, studies, design notes, maps, drawings, engineering cost estimates and specifications are subject to a multi-tiered approach for review to ensure that all products are checked for accuracy, correctness, completeness and conformity with standards. Design Engineers are accountable for making sure that their engineering design works are in conformance with local agencies' design guidelines, standards and specifications as well as the generally accepted industry standard practices.

various trenchless pipeline replacement methods into sanitary sewer replacement projects for the City of Los Altos, City of Millbrae and Towns of Los Altos Hills and Hillsborough.

In addition to sanitary sewer pipeline replacement, CSG also has substantial experience in the rehabilitation of existing manholes and sanitary sewer structures. Utilizing epoxy coating and liners, CSG provides cost effective design alternatives to full replacement of existing structures.

Having prepared complete plans and specifications for sanitary sewer pipeline replacement both within street right-of-way and within backyard easements, CSG staff is very familiar with controlling cost while incorporating the least disruptive methods of pipeline replacement for a variety of site constraints.



Stormwater Improvements

CSG performs hydrologic and hydraulic analysis for an existing system, prepare drainage reports, and proposed drainage improvements using the latest versions of computer software's such as HEC-HMS, HEC-RAS, and HydraFlow, following the Town's design standards. CSG also perform stormwater quality and hydromodification analysis of the permanent treatment measures using Stormwater Quality Manual and Handbook and Bay Area Hydrology Model (BAHM), provide runoff calculations, and prepare stormwater quality management as well as site exhibit showing best management practices (BMP), treatment devices and locations.

CSG is knowledgeable in the hydrologic investigation of storm drains systems to evaluate drainage capacity, and condition assessment of existing storm drains using surface examination, internal inspection using video cameras, and confined space entry. Using the results of these basic investigations, CSG has evaluated the storm drains for rehabilitation and/or replacement using cut and cover and trenchless methods. CSG is also experienced in the design of repairs for slopes damaged by inadequate storm drainage outlets.

Storm drain replacements within street right of way generally do not present too many issues once appropriate traffic control measures are implemented. Replacements of damaged storm pipes using open cut or trenchless methods such as pipe bursting on the drainage easements on backyard, especially on steep slopes, however, are challenging. In many communities, residents have constructed improvements within their backyard that might interfere with the access to the damaged section of the drainage system. In this case, gaining access to the work location over non-easement areas may be a preferred option with the approval of the property owner. CSG staff is sensitive to this type of issues and will take all necessary precautions to minimize any disturbance to the property owners and avoid any damage to the existing improvements.

Design Checklist

CSG's general design approach checklist is shown below. We make sure to address all of these items with the agencies we work with to ensure a well-managed and designed project.

- *Design kick off meeting with the Town, and record and distribute minutes*

Green Infrastructure

CSG's team of experienced designers can assist the Town in selection and design of permanent green infrastructure features, including the following:

- Permeable pavers
- Bioinfiltration/bioretentions/biotreatments/buffer strips
- Flow-through planters/rain gardens
- Detention basins / subsurface detention

CSG has assisted multiple jurisdictions in applying low impact development in accordance with the Municipal Regional Permit on new development projects, and has reviewed and inspected permanent green infrastructure features, including bioretentions, detention basins.

CSG understands that in today's limited water resource environment, we must focus on protecting the functionality of our streets during storm events, while maximizing the rainfall infiltrating into the soils, and maintaining a natural flow in our existing streams.

Some of the traditional LID features we commonly use are:

Permeable Pavers

Permeable pavers and other permeable pavement types allow water to get below the top layer of a sidewalk or street, in order make use of a vast amount of public space for either infiltration, or detention depending on a wide array of subsurface improvements.

A Low Impact Development (LID) infiltration measure designed to detain stormwater runoff through biotreatment soil media and plant roots, and infiltrate stormwater runoff to underlying soils as allowed by site conditions.

Bioretention

A type of LID treatment measure designed to detain stormwater runoff, filter stormwater runoff through biotreatment soil media and plant roots, and either infiltrate stormwater runoff to underlying soils, as allowed by site conditions, or release treated stormwater runoff to the storm drain system, or both. The difference between a bioinfiltration area and bioretention area is that the bioinfiltration area is never lined with an impermeable layer, whereas a bioretention area may be lined or unlined.

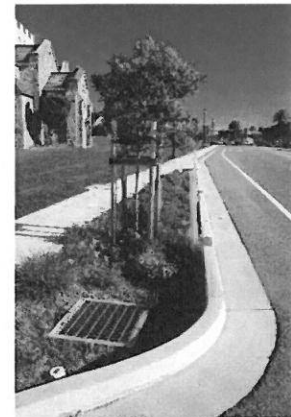
Detention Basins

A type of LID treatment measure designed to detain stormwater runoff, ideally combined with a method to filter stormwater runoff through biotreatment soil media and plant roots, and release the treated storm water runoff to the storm drain system.

Sewer System Improvements

CSG has extensive experience in the design of sanitary sewer systems. Our firm has completed variety of improvement projects and some of our recent projects include the design of sewer system improvements for the City of Los Altos, sanitary sewer improvement projects for the City of Millbrae, as well as smoke testing and point repairs for the Town of Colma.

In addition to traditional open cut installations and replacements, CSG staff is well versed in the application, as well as the limitations, of various techniques for trenchless construction such as pipe bursting, horizontal drilling, pipe reaming and lining with Cured-In-Place-Pipe. CSG will work closely with the Town to determine the most cost effective and practical method of replacement for existing sewer lines. While most sanitary sewer projects are located in streets and roadways, many are located within backyard easements. To minimize disruption to existing landscaping and hardscapes, CSG implemented

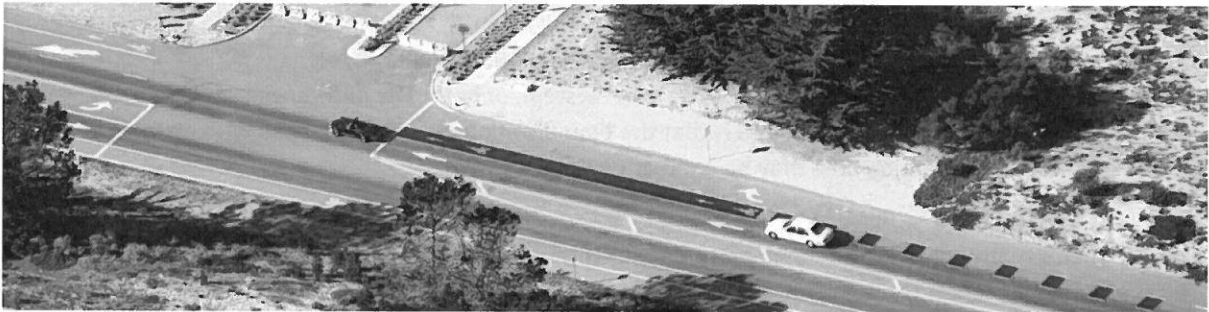




Sidewalks / Pedestrian Improvements

CSG has completed many pedestrian accessibility projects throughout the state of California. CSG staff includes CAsp certified personnel, in addition to ADA designers and construction inspectors. Key project components to consider include:

- *ADA compliance*
- *Right of way*
- *Funding (federal vs. local)*
- *Materials*
- *Bulb outs (and effect on drainage)*
- *Shared use facilities*
- *Traffic Signal Integration*
- *Signage*
- *Crossing locations with vehicles*
- *Right of way*
- *Funding (federal vs. local)*
- *Materials*
- *Shared use facilities*
- *Traffic Signal Integration*
- *Signage and channelization*
- *Separation (buffer) from vehicles (both high speed vehicles, and parked vehicles can present hazards)*
- *Crossing locations with vehicles*



Bicycle Improvements

CSG has completed many bicycle and trail projects throughout the state of California. CSG staff includes complete Streets and ATP designers with extensive experience on class 1, 2, 3, and even the new class 4 bicycle facilities.

CSG recently assisted the City of San Mateo and Town of Hillsborough on a Safe Routes to School effort that includes pedestrian improvements, signing and striping, curb ramp/ADA improvements, bulb outs, signal equipment upgrades, and bicycle facility improvements. CSG engineers are familiar with all the current bicycle standards, Caltrans standards, ADA and pedestrian standards and MUTCD ASHTO; Guide for the Development of Bicycle Facilities, NATCO's Urban Bikeway Design Guide and ITE's Recommended Design Guideline to Accommodate Pedestrian and Bicycles at Interchange.

pedestrian push button relocations. Being cognizant of these items during design will limit changes in the field during construction and prevent potential change orders.

Bulb Outs

Bulb outs not only effectively channelize vehicles and reduce high speed vehicle turning movements, but they also create a safer environment for pedestrians by shortening the “at-risk” crossing distance. They also provide a refuge area that gives pedestrians a greater sight distance of oncoming vehicles without having to encroach into the street. Bulb outs should be designed so as to allow for proper truck turning movements without blocking or restricting bicycle travel and should contain gradual curves that still allow for street sweeping. Another factor to be considered is the effect on the ease of use of the driveway and how it affects the motorist’s ability to pull in or back out, and the required coordination between the CSG Team and the Town to determine the best solution that provides the needed improvements. CSG propose bulb outs and the associated pedestrian and bicyclist safety measures with consideration of National Association of City Transportation Officials’ Urban Street Design Guide, Caltrans Standard and Specifications, and Town’s Standards.



Signing and Striping

Consideration should be given to include crosswalk markings, yield lines, and appropriate signage at key intersections, particularly adjacent to schools to enhance visibility and increase pedestrian safety. On a typical roadway improvement project, the stop bar, stop legend, stop sign, and crosswalk marking may require addition and relocation, depending on the pedestrian path of travel alignment between curb ramps. The proposed striping and markings should be in compliance with California Manual on Uniform Traffic Control Devices and Town’s Standard and Specifications. Beyond the typical striping and signage, the use of pedestrian awareness equipment, such as in-road-warning-lights, round and/or rectangular rapid flashing beacons, LED enhanced flashing signage, pedestrian countdown signals, street lighting, and even speed radar feedback signs, should be considered to increase the visibility, safety, and awareness of pedestrians. Coordination with PG&E to establish service connections is a key task to power this equipment.

will also be readily available to meet in-person during the bidding and construction phases of the project.

Public Outreach

CSG will work with the Town to provide outreach to project all stakeholders. All CSG project managers have experience conducting community / public outreach for capital improvement projects they have managed. Outreach can be provided in both the English and Spanish languages. The efforts will consist of the following:

- Preparation of meeting exhibits
- Assisting in public and stakeholder meetings to discuss proposed improvements
- Presentations to various Committees and Town Council Meetings
- Notifications prior to construction
- Providing access during construction, with disruption minimized

For largescale projects, CSG can provide and host a public outreach website to keep all interested parties informed and updated about the Project. The website will be designed, hosted, and updated by our CSG project staff to ensure information presented is both relevant and up to date. Professional web development staff will tailor the site design to be complementary to the Town's own website. Town stakeholders will be given the opportunity to provide input during site development

CIVIL DESIGN APPROACH



Roadway / Complete Streets

CSG have been involved in roadway and complete street improvements for numerous public agencies. Each of these improvement projects has its own set of challenges, which include but not limited to existing physical constraints, jurisdictional restrictions, community opposition, and budgetary limitations. CSG will understand these challenges based on discussions with the Town, project stakeholders, and the community, and will propose design concepts which consist of right of way and lane widths, horizontal and vertical alignment layouts, and intersection and roundabout configurations in compliance with the latest Caltrans Highway Design Manual, California Highway Capacity Manual, AASHTO's Policy on Geometric Design of Highways and Streets (Green Book), National Association of City Transportation Officials' Urban Street Design Guide, FHWA Transportation Research Board's National Cooperative Highway Research Program (NCHRP): Roundabouts: An Informational Guide, and Town's design guidelines and standards.

Curb Ramps

Providing accessibility to sidewalks and curb ramps is critical for roadway projects in order to meet ADA requirements per Caltrans Standards and Specifications and Town Standards. Depending on the physical constraints, there are limitations to the type of curb ramps that can be constructed. During the selection process, CSG's staff would evaluate the existing grades, right-of-way limitations, drainage patterns and proximity to drain inlets, sign relocations, stop bars and striping, signal foundations, pull boxes, and

Capabilities & Approach to Work

SECTION

3

CIP MANAGEMENT & COORDINATION

CSG can assist the Town in delivering CIP projects by providing on-call civil engineering services. CSG will also work with all stakeholders, utility companies, and permitting agencies including Caltrans, and FHWA as needed. Below is CSG's typical approach in managing projects once CSG is authorized to perform requested on-call tasks.

Project Management Plan	CSG will implement a project management plan including all project elements establishing the project scope of work, budget, schedule, and design standards to allow for solid traceability and accountability for any changes or variances from the project baseline components. In addition, our team will identify any potential variances early in the project phase to allow for the development of an alternative approach to prevent potential schedule or cost slippages. We intend to do this by offering real-time data to the Town through our daily contact with the Town Project Manager and weekly project meetings.
Scope/Control Management	Scope control occurs with the development of a well written scope of work as defined by the Town. As changes are identified, a change request process will be followed encompassing the cost and schedule impact of each potential change, as well as the additional scope description. Potential changes will be included in a Monthly Report that will be discussed weekly with the Town. As changes are approved or rejected, the appropriate revisions will be made to the Scope of Work and the schedule/cost baseline will be revised and resubmitted for approval by the Town.
Schedule Management	A baseline schedule will be developed and submitted for approval by the Town for the selected projects. CSG will use the built-in Microsoft Project tools to ensure that only contractually required dates are constrained and out-of-sequence activities are not present. Once changes are approved, the schedule will be updated and finalized.
Quality Management	A Project Quality Management Plan will be drafted and submitted as part of the QA/QC Implementation Plan that will include the review requirements for design work and the QA/QC process during construction. This will be inclusive of all process and testing requirements and the contractor's ability to follow its process and ensure successful testing of installed work.
Budget/Cost Management	As project estimates become finalized, they will be included in the project budget and loaded into the project costs. Once a project change is approved, it will be tied to a change order and the schedule and budget will be revised accordingly. All baseline revisions and change orders will be tracked and documented.

Effective Communication and Project Understanding

CSG prides itself on its ability to effectively communicate, build relationships, and partner with its clients. To effectively communicate throughout the project, CSG staff will actively participate in meetings, provide progress updates, and provide clear lines of communication for the Town to reach us via email, office phone, cell phone, and even cell phone text messaging. Effective communication is an essential key to project success.

As needed throughout the entire project, CSG's Project Manager will act as the single point of contact to coordinate the project with the Town. Coordination efforts will consist of conference calls, emails, and any necessary in-person meetings. For the discussion of project issues, a conference call and/or emails should suffice to share feedback from the Town.

In addition to on-going coordination, CSG will meet in-person with Town staff at the kick off meeting and the design review meetings. During these in-person meetings, CSG review the progress of the project, discuss any review comments provided by the Town and stakeholders, review the project schedule and budget, discuss any project issues with design, and identify action items for all parties. CSG

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Introduction

FIRM PROFILE

CSG Consultants, Inc. (CSG) is a California company with our corporate office located in Foster City. Additional support is available from our other offices in San Jose, Pleasanton, Sacramento, Newman, Orange, and Redlands.

We furnish a wide range of municipal services including comprehensive development review, program management, capital improvement design, construction management and inspection, building plan review, fire-life safety, inspection, code enforcement and planning services.

The majority of the 300+ individuals within our firm have provided public agency services throughout their careers. Our talented personnel bring a wealth of ideas and experiences having provided similar services with agencies dealing with the same challenges as the Town of Los Gatos.

Firm Summary

NAME OF FIRM: CSG Consultants, Inc.
POINT OF CONTACT: Hatem Ahmed, PE, PMP | Vice President
CORPORATE OFFICE: 550 Pilgrim Drive, Foster City, CA 94404
(650) 522-2500 phone, (650) 522-2599 fax
www.csngenr.com | info@csngenr.com
REGIONAL OFFICES: 3150 Almaden Expressway, #255, San Jose, CA 95118
6200 Stoneridge Mall Road, Suite 300, Pleasanton, CA 94588
1022 G Street, Sacramento, CA 95814
930 Fresno Street, Newman, CA 95360
3707 West Garden Grove Blvd., Orange, CA 92868
1177 Idaho Street, Suite 102, Redlands, CA 92374
YEARS IN BUSINESS: 27 • Founded in 1991
NUMBER OF EMPLOYEES: 300+
TYPE OF BUSINESS: California Corporation • Incorporated June 15, 2000 • Federal ID: 91-2053749

STAFF COMPOSITION

Our professional municipal services staff consists of:

- Civil Engineers
- Structural Engineers
- Plan and Map Review Engineers
- Program & Project Managers
- Land Development Review Engineers
- C.3 Review Engineering & Specialized Inspectors
- Planning Professionals
- Building Inspectors
- Project Managers
- Construction Managers & Inspectors
- CAsp Professionals
- Building Officials
- Building Plan Reviewers
- Fire Plan Reviewers & Inspectors
- Sustainability Professionals
- Information Technology Professionals

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BUILDING INSPECTION

1440 MULTIVERSITY CENTER | CITY OF SCOTTS VALLEY, CA

CSG performed building inspection for this project which involved reconditioning, repurposing, rebuilding of seven old structures that previously comprised a private college campus. In addition to the reconditioned buildings, there are also four new buildings to replace previously lost buildings, or to add additional program capabilities. Structures range in uses from the administrative lodge building, to dormitories, meeting rooms, a large commercial kitchen and dining hall, fitness center, healing center, and outdoor auditorium. All structures have been updated to the current building and fire codes and as a result, have been retrofitted with fire sprinkler systems and fire alarm systems.



CARMAX | TOWN OF COLMA, CA

CSG performed building plan review, building inspection and land development review for the construction of a Carmax dealership in the Town of Colma. The 20,213 sq. ft. structure includes over 11,000 sq. ft. of sales area, 6,000 sq. ft. of service area, 1,900 sq. ft. of presentation area, and a 936-sq. ft. car wash. The 8.8-acre project site also includes a large bioretention area at the southwest side of the property designed to function as 4 separate bioretention units to treat the stormwater runoff from the impervious areas onsite.

GENENTECH DEVELOPMENT | CITY OF SOUTH SAN FRANCISCO, CA

CSG has been providing building plan review and inspection services for all of the Genentech corporate headquarters campus buildings since 1991. This campus-wide project consists of over 3.6 million sq. ft. of office, research & development and manufacturer operations space spread across over 44 buildings. CSG has coordinated pre-construction meetings to clarify and resolve all matters prior to plan submittal; provided building plan review services and 24/7 on-call building inspection services; and coordinated and resolved construction issues between the City, project engineer, Genentech project manager and special inspector(s). Notable recent projects include:



- *Campus wide refrigeration water and hydrocarbon upgrade*
- *Building 34 – New four story employee center totaling 71,672 sq.ft.*
- *Building 35 – New seven story office building, totaling 255,000 sq.ft.*

Professional Fees

SECTION

6

Engineering and public works services are billed on a time-and-materials basis according to our standard rates, shown below.

Professional Services	Hourly Rate
Administrative Assistant	\$70
Building Inspector	\$105
Analyst	\$120
Engineering Designer	\$130
Construction Inspector	\$135
Senior Analyst	\$145
Assistant Resident Engineer	\$160
Assistant Engineer	\$140
Associate Engineer	\$160
Senior Construction Inspector	\$150
Senior Engineer	\$185
Resident Engineer	\$190
Structure Representative	\$190
Senior Structural Engineer	\$200
Senior Project Manager	\$200
Principal Engineer	\$210
Senior Principal Engineer	\$230
Two-Person Survey Crew	\$310

Rates reflect and include administrative costs and routine expenses such as local mileage, copying, fax, telephone, mail, in-house printing, software, and computer usage. Reproduction and subconsultants are billed at cost plus 15%. Rates will remain effective through December 31, 2018. Rates are subject to an annual increase based on CPI.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 5

DATE: August 28, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt the Council Policy Committee's Recommendation to Amend Council Policy 2-11 to Allow Applicants to Apply for More than One Board, Commission, or Committee Per Recruitment Cycle

RECOMMENDATION:

Adopt the Council Policy Committee's recommendation to amend Council Policy 2-11 to allow applicants to apply for more than one Board, Commission, or Committee per recruitment cycle.

DISCUSSION:

At its August 27, 2019 meeting, the Council Policy Committee considered proposed modifications to the Commission Appointment Policy, which included streamlining the application process to allow applicants to apply to more than one Commission, rank their choices, and complete a single application for all Commissions. After discussion, the Committee directed staff to forward the recommendation to the full Council to amend the Policy to allow applicants to submit applications for more than one Commission and rank their preferences during a recruitment cycle.

CONCLUSION:

The recommended modification to Council Policy 2-11 is shown on Attachment 2.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

PREPARED BY: Michelle Radcliffe
Deputy Clerk

Reviewed by: Town Manager and Town Attorney

PAGE 2 OF 2

SUBJECT: Amend Council Policy 2-11 Entitled Commission Appointments

DATE: August 28, 2019

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

ATTACHMENTS:

1. August 27, 2019 Council Policy Committee Staff Report
2. Red-lined Council Policy 2-11



TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE REPORT

MEETING DATE: 08/27/2019

ITEM NO: 2

DATE: August 20, 2019
TO: Council Policy Committee
FROM: Laurel Prevetti, Town Manager
SUBJECT: Review and Provide Direction on Proposed Modifications to the Commission Appointment Policy

RECOMMENDATION:

Review and provide direction on proposed modifications to the Commission Appointment Policy.

BACKGROUND:

The Town accepts applications for Commissions throughout the year and holds its annual recruitment and appointment process in the fall, with mid-year recruitments held in early spring if necessary. In accordance with State Law, the Town Clerk posts a list of current vacancies on the Town website and on the front door of Town Hall throughout the year. During the recruitment cycle, the Town Clerk advertises the current vacancies in various mediums (Leadership Los Gatos, Chamber of Commerce, Los Gatos Weekly ads, Town website, social media, Town events, etc.) to inform residents and encourage participation. During the recruitment cycle, the Town Clerk notifies applicants from the last 12 months who were not interviewed by Council of the vacancy and determines if they are still interested in volunteering. If the applicant is interested, they are placed in the applicant pool for the next scheduled interviews by Council.

Per Town Policy 2-11, the Town Clerk prepares and maintains applications for appointment to Commissions. There are separate applications for each of its Commissions. Currently an applicant can only apply for one Commission and can only serve on one Commission at a time.

ATTACHMENT 1

PREPARED BY: Shelley Neis
Town Clerk

Reviewed by: Town Manager and Assistant Town Manager

DISCUSSION:

The Town Clerk receives applications to Commissions throughout the year and in recent years, there has been a decline in applications submitted. In some cases, certain Commissions receive many applications while other Commissions do not have any applicants.

In order to encourage and utilize applicants who are not appointed to their choice of Commission, staff is recommending that the application process be streamlined to allow one application for all Commissions and allowing the applicant to rank their choices. This allows applicants who were not chosen for their first choice to be selected for their second (or third, etc.) Commission of choice. This prevents the Town from turning away potential volunteers by giving them an option to volunteer for another Commission during the current recruitment process.

Staff is recommending that the timeframe for keeping applications on file be changed from 12 months to 24 months for applicants that were interviewed and not appointed by Council and remain at 12 months for applicants that were not interviewed by Council. Staff is also recommending that if a mid-term vacancy arises, staff will bring recommended appointments for Council consideration at the next available Council meeting.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum		POLICY NUMBER: 2-11
EFFECTIVE DATE: 2/28/1990		PAGES: 7
ENABLING ACTIONS:		REVISED DATES: 6/13/1994; 6/16/2014; 4/7/2015; 10/18/2016; 2/21/2017; 2/6/2018; 3/19/19
APPROVED:		

PURPOSE

To establish a policy to encourage participation by the Town's residents on Town Boards, Commissions and Committees (hereinafter referred to as "Commissions"). The Town will encourage residents to participate on Commissions by advertising vacancies on Commissions for at least 30 days, preparing easily understood applications, maintaining clear descriptions of the role of each Board, Commission, and Committee and its respective members, providing current meeting schedules, and conducting public interviews of all Commission applicants, except as provided by this Policy.

SCOPE

This Policy applies to all applicants to Town Boards, Commissions and Committees.

POLICY

The Town Council encourages public participation in all decision-making and to be successful residents must be assured both that the participation is meaningful and that their input will be valued. The widest representation from the community can only be achieved if vacancies are well advertised so that anyone interested will have the opportunity to apply. Interviews of the applicants conducted in public by the Town Council demonstrates that it values these appointments and that all have an equal opportunity to be appointed. Applicants may apply to only more than one Commission and shall rank their choices in their preferred order, during each recruitment cycle.

To ensure the greatest possible participation by the public, it is the Town's policy that no person shall be appointed to more than one Commission except in those cases where they are ex-officio members of other Boards, Commissions and Committees. This Policy does not apply to Commission members serving as representatives of their Commission who have been appointed by the Town Council. (Revised on 4/07/15)

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 2 of 7	POLICY NUMBER: 2-11
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RESIDENCY REQUIREMENTS

Residency within the incorporated municipal limits of the Town of Los Gatos, California is required for appointment and continued membership on all Town of Los Gatos Boards, Commissions, and Committees, with the exception of the Youth Commission.

Youth Commission:

The members shall be students who are entering grades 8 through 12. Membership for the students requires either residency in the incorporated limits of the Town of Los Gatos or residency in the unincorporated areas of the County of Santa Clara, which have a Los Gatos mailing address.

ATTENDANCE REQUIREMENTS

1. All members of all appointive Town Advisory Bodies should attend all regular and special meetings of said Advisory Bodies.
2. Any member not in attendance at a regular meeting of said Advisory Body for at least 70% of the meeting shall be considered absent.
3. Any member of an appointive Town Advisory Body who is absent from the number of regular meetings listed below appropriate to his or her Advisory Body shall, as a result, surrender his or her office on the Advisory Body and the office shall be considered vacant.
 - a. For an Advisory Body which holds six (6) or more regular meetings per a consecutive twelve (12) month period: three (3) regular meetings.
 - b. For an Advisory Body which holds five (5) or fewer regular meetings per a consecutive twelve (12) month period: two (2) regular meetings.
 - c. For an Advisory Body which holds sixteen (16) or more regular meetings per a consecutive twelve (12) month period: eight (8) regular meetings.
4. The vacant position shall be filled by appointment by a majority vote of the Town Council, for a term equal to the unexpired portion of the office vacated. Any member removed from office due to non-attendance may re-apply to serve on a Town Advisory Body, but will not be treated as an incumbent in any subsequent application to the same Advisory Body.
5. If a Youth Commissioner liaison misses three meetings of a liaison Commission during a *consecutive twelve (12) month period, the Youth Commission shall appoint a different Youth Commissioner as liaison.

*Consecutive twelve (12) month period is defined as any consecutive twelve-month period beginning with the first absence. A regular meeting shall not be cancelled and replaced with a special meeting in order to alleviate an absence by an advisory body member.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 3 of 7	POLICY NUMBER: 2-11
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QUORUM REQUIREMENTS

The number of members needed to constitute a quorum on any Town Advisory Body shall be a majority of the total number of filled seats.

PROCEDURES

The following procedures will be followed by the applicant, the Town Clerk and the Town Council for the appointment of applicants to Town Commissions:

Responsibility and Actions: Town Clerk

A. Annual Recruitments

Adult Commission members' terms begin on January 1st and end December 31st, Youth Commissioners' terms follow the academic year and begin on August 1 and end on June 30. The Town Clerk shall perform the following duties in conducting an annual recruitment for Commission members:

1. Notify Town Council of vacancies on Commissions by indicating the names of the Commissions, the number of terms expiring or being vacated, names of individual(s) with expiring terms or vacating seats, advertising periods (at least 30 days) and the date of interview.
2. Advertise the vacancies, including the application deadline and the interview date, which shall be set for no later than the second Town Council meeting in December for Adult Commissioners, and by the fourth Wednesday in May, no earlier than 4:00 p.m., for Youth Commissioners.
3. Prepare and maintain easily understood applications for appointment to Commissions. Applications shall include the following policy information:
 - a. Prior to initial appointment to any Commission, non-incumbent applicants must be interviewed by the Town Council. The applications of those not appearing will be held for the next recruitment.
 - b. If an incumbent Commissioner is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
 - c. Submissions deadlines are mandatory; no exceptions are permitted.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 4 of 7	POLICY NUMBER: 2-11
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4. Applications:
 - a. *For adult applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council prior to the interviews for appointment.
 - b. *For student applicants* — Accept applications, verify eligibility, and distribute copies of the applications of eligible applicants to the Town Council Selection Committee prior to the interviews for appointment.
5. Notify the applicant by letter or email as to the date and time of the interview.
6. Facilitate the Council voting process set forth below by informing Council as to how many votes are possible on each Commission, calling out applicants' names, and identifying the applicants receiving sufficient votes for appointment. This process does not apply to student applicants.
7. Applicants:
 - a. *For adult applicants* — After the interviews and Council vote are completed, notify all applicants of the Council's action, and explain Town policy of keeping application active for one year with notification of subsequent openings on that Commission to the interested applicants.
 - b. *For student applicants* — After the interviews are completed, notify all applicants of the Council Committee's action, and prepare a staff report for the Town Council to ratify the Committee's appointment at the first Town Council meeting in June.

Balloting Process

Unless determined otherwise, the Council shall conduct a ballot vote for the appointment of individuals to fill the vacancies for each Commission. Such ballot vote may be conducted at either a regular, adjourned or special meeting of the Town Council. The ballot vote process shall be conducted as follows:

1. The Town Clerk shall provide a ballot to each Town Council member listing the names of all applicants and “None of the above” for each respective Commission. Prior to the vote, the Town Clerk shall publicly announce the position vacancy and all applicant names that are listed on the ballot;
2. Each Council member may vote for the same number of applicants as there are current vacancies on the respective Commission. In no case, can a Council Member cast more votes than there are vacancies; or vote for the same candidate more than once on each

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 5 of 7	POLICY NUMBER: 2-11
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ballot (i.e. cumulative voting -- e.g. where there are three vacancies, a Council member may not give all three votes to the same candidate). A Council Member is not required to vote for any of the candidates or for the total number of vacancies available.

3. The Town Clerk shall collect all ballots and shall publicly announce the name of each Town Council member and how that Council member cast his or her vote. In the case of a tie vote, the Town Clerk will announce that there is a tie and that a run-off vote shall be conducted but will not announce the names of the applicants in the run-off. Once all voting is concluded and a decision made, the votes will be made public. The run-off ballot will also include a "None of the above" option.
4. Applicants receiving a majority number of votes shall be deemed appointed to the Commission. In the event of a tie, a run-off vote shall be conducted among the applicants receiving the highest number of votes from the previous round. This shall continue until a majority consensus on an applicant(s) is reached for the number of vacancies to be filled. In the event of an unbreakable tie, the Council may determine an alternative method for selecting the appointee(s) or direct the Town Clerk to re-advertise the vacancy.
5. If an applicant(s) is appointed to an Advisory Body which has vacancies for both full and partial, unexpired terms, the length of the appointee's term will be determined by the Mayor.

B. Mid-Term Recruitments

During the year, Commissions may experience vacancies that drop the number of filled seats to a number of members that is not sufficient to conduct Commission business. The Commission may request the Council to conduct a mid-term recruitment to fill seats. To the extent possible, the Town Clerk will consolidate mid-term recruitments to minimize the number of recruitments occurring throughout the year. In the event of a vacancy on the Planning Commission, the Town will automatically conduct a mid-term recruitment. Mid-term recruitments will not be conducted for student commissioners. The Town Clerk shall advertise mid-term vacancies on Commissions for at least 15 days.

Responsibility and Action: Applicant

1. Read the Commission Appointments, Residency and Attendance Requirements, and Establishing a Quorum Policy, complete and submit to the Town Clerk the application for appointment to a Town Commission by the advertised deadline date and time.
2. *For adult applicants:* Attend the Council meeting to be interviewed for Commission appointment.
For student applicants: Attend the Council Selection Committee interview session.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 6 of 7	POLICY NUMBER: 2-11
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3. If an incumbent Commission member is requesting reappointment to the same Commission, the incumbent may submit a request to be interviewed by telephone, with their application, instead of attending the interview or must submit a letter prior to the interviews, describing the reason why the applicant cannot be present telephonically or in person for the interview, and why the applicant should be reappointed to the Commission.
4. If appointed, prior to starting the Commission term, appointees are required to attend a Commissioner Orientation and take the "Oath of Office."
5. Attend Advisory Body meetings once term begins.
6. Read the Commissioners' Handbook. The Handbook is to be returned to the Town Clerk when the term is complete.

Responsibility and Action: Town Council

1. Review applications.
2. *For adult applicants* – Interview applicants individually by Commission at a public meeting with all applicants present.
For youth applicants – Town Council Selection Committee interviews applicants.
3. Determine if the incumbents not in attendance and having submitted a letter pursuant to this Policy should be considered for reappointment.
4. If there are limited applications for any vacancy to a Commission, the Mayor, on behalf of the Council, may request that the Town Clerk re-advertise the vacancy, reschedule the interviews, and notify all applicants of the new interview date.

COMPLIANCE - GROUNDS FOR DISMISSAL

A member may be removed from the Advisory Body prior to the end of his or her term by a three-fifths (3/5) vote of the Town Council and may not be reappointed for the following reasons:

1. Failure to attend Advisory Body meetings.
2. Failure to file the following documents required by the Fair Political Practices Commission (Adult Commissioners):
 - a. Form 700 – Assuming Office, Annual, and Leaving Office when term is complete.
 - b. Planning Commissioners are also required to complete AB 1234 Ethics Training and file the original certificate with the Town Clerk every two years.

TITLE: Commission Appointments, Residency and Attendance Requirements, and Establishing A Quorum	PAGE: 7 of 7	POLICY NUMBER: 2-11
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3. Failure to comply with all Town Policies, Guidelines, and Handbooks.

CONFLICT OF INTEREST

Under the Fair Political Practice Act, an advisory board member has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Fair Political Practice Act does not prohibit an advisory board member from participating in a decision simply by virtue of holding a position as a board member, director, officer or employment with a nonprofit corporation. However, the Town strongly encourages that in the event that a decision concerns a nonprofit corporation for which an advisory board member is a board member, director, officer or employed with that nonprofit corporation, the person should recuse him or herself and at a minimum shall disclose the potential conflict of interest before any discussion and decision.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 6

DATE: August 27, 2019
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Introduction of an Ordinance of the Town of Los Gatos Amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice-Mayor

RECOMMENDATION:

Accept public comment and then move for the introduction and first reading of an Ordinance, by title only, amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice-Mayor.

BACKGROUND:

Each year, at the second meeting in November, the Town Council elects a Mayor and Vice Mayor pursuant to Town Code Section Sec. 2.20.035.

DISCUSSION:

Government Code Section 36801 states that during election years, the Town Council shall choose one of its members as Mayor and Vice Mayor following the declaration of election results and the installation of elected officials.

On August 20, 2019, the Council considered amendments to Town Code Section Sec. 2.20.035 in order to comply with Government Code Section 36801, and directed Staff to return with the following amendment to the Town Code:

Sec. 2.20.035. - Election of Mayor and Vice-Mayor.

The Town Council shall elect a Mayor and Vice Mayor annually ~~on the second~~ at a special meeting in ~~November~~ December of each year after receipt of election results from the Registrar of Voters. The special meeting shall occur prior to the second regular meeting in December to enable the newly elected Mayor the

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: Ordinance Amending Chapter 2, Article II, Section 2.20.035, Election of Mayor
and Vice-Mayor

DATE: August 27, 2019

opportunity to recommend appointments of Council Members to various Boards
and Committees at the second regular meeting in December.

CONCLUSION:

Staff recommends that Council accept public comment and then move for the introduction and first reading of an Ordinance, by title only, amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice-Mayor.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There are no fiscal impacts associated with the approval of these amendments.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft Ordinance Amending Chapter 2, Article II, Section 2.20.035, Election of Mayor and Vice Mayor

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 2, ARTICLE II, SECTION 2.20.035, ELECTION OF MAYOR AND VICE-MAYOR

WHEREAS, the Town Council for the Town of Los Gatos has historically elected a Mayor and Vice Mayor pursuant to Town Code Section Sec. 2.20.035; and

WHEREAS, Government Code Section 36801 states that during election years, the Town Council shall choose one of its members as Mayor and Vice Mayor following the declaration of election results and the installation of elected officials; and

WHEREAS, to comply with Government Code Section 36801, certain amendments are necessary to the Town Code.

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:

SECTION I

Town Code Section 2.20.025 is amended to read as follows:

Sec. 2.20.035. - Election of Mayor and Vice-Mayor.

The Town Council shall elect a Mayor and Vice Mayor annually at a special meeting in December of each year after receipt of election results from the Registrar of Voters. The special meeting shall occur prior to the second regular meeting in December to enable the newly elected Mayor the opportunity to recommend appointments of Council Members to various Boards and Committees at the second regular meeting in December.

SECTION II

The Town Council finds and determines that the adoption of this ordinance is not a project pursuant to CEQA Guidelines Section 15378(b)(2) and Section 15378(b)(5). In the alternative, if the Town Council finds that if the adoption of the Ordinance is a project, it is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

SECTION III

Except as expressly modified in this Ordinance, all other Sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

ATTACHMENT 1

SECTION IV

If any provision of this ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the ____ day of _____ 20 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the ____ day of _____ 20 . This ordinance takes effect on January 1, 2020. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 7

DATE: August 22, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt an Ordinance between the Board of Administration California Public Employees' Retirement System and the Town Council to add Government Code Section 20516, Employees Sharing Additional Cost, for Classic Local Police Members in the Los Gatos Police Officers' Association

RECOMMENDATION:

Adopt an Ordinance (Attachment 1) between the Board of Administration California Public Employees' Retirement System and the Town Council to add Government Code Section 20516, Employees Sharing Additional Cost, for Classic Local Police Members in the Los Gatos Police Officers' Association.

BACKGROUND:

At the August 6, 2019 meeting, the Town Council adopted a Resolution of Intention and introduced an Ordinance to add Employees Sharing Additional Cost to the California Public Employees' Retirement System (CalPERS) contract. The purpose of the amendment to the CalPERS contract is to implement the cost-sharing provision contained in the existing Memorandum of Understanding (MOU) between the Town of Los Gatos and the Police Officers' Association (POA).

DISCUSSION:

A formal amendment to the retirement contract between the Town of Los Gatos and CalPERS is required to implement Section 20516 (Employees Sharing Additional Cost). The previously completed steps of the amendment process included Town Council adoption of a Resolution of Intention, a first reading to introduce an Ordinance, and a secret ballot election of the employees impacted by the change. The last step remaining in the process is the recommendation to Council to adopt the Ordinance. If Council approves the recommendation,

PREPARED BY: Lisa Velasco
Human Resources Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: Adopt an Ordinance between the Board of Administration California Public Employees' Retirement System and the Town Council to add Government Code Section 20516, Employees Sharing Additional Cost, for Classic Local Police Members in the Los Gatos Police Officers' Association

DATE: August 22, 2019

DISCUSSION (continued):

the effective date of the amendment and the commencement of the additional three percent (3%) contribution for a total of 12% will be October 6, 2019.

CONCLUSION:

Staff recommends that Council adopt an Ordinance to add Government Code Section 20516, Employees Sharing Additional Cost, for Classic Local Police Members as the last step in the CalPERS contract amendment process to comply with the provisions of the current POA MOU.

FISCAL IMPACT:

There is no fiscal impact related to the recommended actions because the Town is complying with the provisions of the existing POA MOU and the related CalPERS procedures necessary to implement the pension contract amendment. The overall fiscal impact related to the approval of the POA MOU was outlined in the staff report presented at the October 16, 2018 Town Council meeting and is expected to be cost neutral.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Ordinance Between the Town Council and the Board of Administration of the California Public Employees' Retirement System

ORDINANCE _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:

SECTION I

That an amendment to the contract between the Town Council of the Town of Los Gatos and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION II

The Mayor of the Town Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION III

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6th day of August 2019, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 3rd day of September 2019. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



EXHIBIT A

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
Town Council
Town of Los Gatos

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective April 1, 1972, and witnessed March 1, 1972, and as amended effective August 2, 1972, June 1, 1976, July 1, 1976, October 1, 1976, January 4, 1990, December 16, 1992, August 6, 1997, June 24, 2001, June 29, 2008 and September 15, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective September 15, 2012, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:
 1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members entering membership in the miscellaneous classification on or prior to September 15, 2012, age 60 for classic local miscellaneous members entering membership for the first time in the miscellaneous classification after September 15, 2012, age 62 for new local miscellaneous members, age 50 for classic local safety members and 57 for new local safety members.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after April 1, 1972 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Police Officers (herein referred to as local safety members);
 - b. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

- a. **ALL PERSONS EMPLOYED ON OR PRIOR TO SEPTEMBER 15, 2012 WHO WERE MEMBERS OF THE LOCAL SYSTEM EXCEPT THOSE IN EMPLOYMENT ON SEPTEMBER 15, 2012 WHO WAIVED THEIR RIGHTS UNDER THE LOCAL SYSTEM AND THOSE PERSONS WHO WAIVED THEIR RIGHTS BETWEEN MARCH 18 AND MARCH 26, 1976.**
6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. Assets heretofore accumulated with respect to members under the local retirement system who waived their rights under that system have been transferred to the Public Employees' Retirement System on April 1, 1972 or between March 18, and March 26, 1976 and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
8. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after June 29, 2008 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to June 30, 1976, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
9. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after June 29, 2008 and not entering membership for the first time in the miscellaneous classification after September 15, 2012, shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to June 30, 1976, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
10. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time in the miscellaneous classification after September 15, 2012 shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21536 (Local System Service Credit Included in Basic Death Benefit).
 - b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance).
 - c. Section 21574 (Fourth Level of 1959 Survivor Benefits).
 - d. Section 20042 (One-Year Final Compensation) for those classic local miscellaneous members entering membership on or prior to September 15, 2012 and for local safety members.
 - e. Section 21024 (Military Service Credit as Public Service).
 - f. Section 20475 (Different Level of Benefits): Section 21353 (2% at age 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after September 15, 2012.
 - g. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 3% for classic local police members in the Los Gatos Police Officer's Association.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1976. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
17. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

TOWN COUNCIL
TOWN OF LOS GATOS

BY _____
ARNITA PAIGE, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest: _____

Clerk

AMENDMENT CalPERS ID #4589482285
PERS-CON-702A



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 8

DATE: September 3, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive the Private Sector Arts Contribution Program Report and Direct the Preparation of an Ordinance Designating One Percent of Building Valuation Costs of New Development for Funding Public Arts

RECOMMENDATION:

Receive the Private Sector Arts Contribution Program Report and direct the preparation of an ordinance designating one percent of building valuation costs of new development for funding public arts.

BACKGROUND:

A private and/or public sector arts contribution program can be designed as a requirement on development projects to encourage the construction of on-site public art or fund public arts through in-lieu contributions. Typically referred to as a "Percent for the Arts" program, it is a common and increasingly popular requirement in California cities.

In January of 2016, Town Council approved the Arts and Culture Commission's strategic plan which identified public art, funding, and community engagement as its three major goals. At the April 18, 2017 Town Council meeting, the Commission presented the possibility of investigating a development contribution requirement for arts funding in alignment with the strategic plan. The Commission returned to Town Council on June 19, 2018 with a report produced by the Commission and a recommendation to pursue an ordinance designating one-half-of-one percent of building valuation for all private development projects to fund public arts programs. At that meeting, Council directed staff to obtain further information including clarifying any legal concerns, required nexus studies, and financial analysis. Council also directed that single family residential projects, accessory dwelling units, and affordable housing be excluded from consideration in such an ordinance.

PREPARED BY: Ryan Baker
Library Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

SUBJECT: Receive Arts Contribution Report and Direct the Preparation of an Ordinance for Public Arts

DATE: September 3, 2019

DISCUSSION:

Subsequent to this direction, staff released a request for proposals for an independent consultant to investigate arts funding and provide recommendations. Staff retained Keyser Marston Associates to produce the requested Private Sector Arts Contribution Program report (Attachment 1).

Key findings and recommendations of the consultant's report include:

- An arts requirement on development, as supported by legal precedent, is not an impact fee and does not require nexus analysis support.
- The Arts and Culture Commission's June 18, 2018 original recommendation to establish a one-half-of-one percent requirement on development projects would not be fiscally viable. The consultant analysis found viability with a one percent requirement with no threshold or cap.
- An arts requirement in Los Gatos would generate little revenue on an annual basis due to the built-out nature of the Town but would allow the Town to benefit if significant projects occurred at any point in the future.
- The requirement could allow applicants to choose either providing on-site public art or making an in-lieu payment to a Town fund to be used for public arts.
- The report recommends enacting an arts contribution requirement for public projects along with private developments, excluding street overlays or infrastructure.

The Arts and Culture Commission reviewed the consultant's report at a special meeting on August 8, 2019 and offered the following for consideration: The Arts and Culture Commission wishes to express their appreciation to the Council for pursuing the independent consultant's report and recommends that Council move to prepare an ordinance based on the findings of the report given with one exception. The Commission asks that Council consider setting the amount of building valuation at one and one-half percent for both on-site and in-lieu contributions rather than the consultant's recommendation of one percent.

The Commission also wishes to express that even with adoption of an ordinance establishing a Development Arts Requirement Program, additional means of funding will be needed to create a robust arts program in Los Gatos. The Arts Commission will be working to identify additional funding streams to compliment this ordinance and will return to Council with their suggestions at a future date.

DISCUSSION (Continued):

Staff has carefully considered the value of adopting an ordinance in light of the low projections contained in the financial illustration section of the consultant's report. Despite these assumptions, staff recommends moving forward with the preparation of an ordinance noting that having the ordinance in place would capture any large projects that might surface in the future and that the model for sustainable funding for arts in Los Gatos will likely be the sum of multiple small revenue vehicles.

Specifically, staff recommends adopting the consultant's recommendations as the framework, noting the following clarifications for the purpose of the ordinance: multi-family residential be defined as three or more units, and exemptions for single family residential, two-unit projects, accessory dwelling units, and affordable housing projects.

Staff defers to Council on the Arts and Cultures Commission's suggestion to consider a higher percentage of building valuation be applied.

CONCLUSION AND NEXT STEPS:

If Town Council directs the preparation of an ordinance, it will be placed on a future Council agenda. Should the ordinance be adopted, staff will then work with the Arts and Culture Commission to develop guidelines addressing criteria for expenditure of in-lieu funds, qualifying public art expenses, and other program issues as mentioned in the consultant's report.

FISCAL IMPACT:

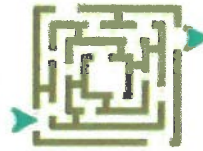
Administrative costs required to establish the program may exceed contributions at the outset. However, once established, staff is confident that even at low levels contributions would outpace costs.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Private Sector Arts Contribution Program Report



KEYSER MARSTON ASSOCIATES

PRIVATE SECTOR ARTS CONTRIBUTION PROGRAM

Prepared for
Town of Los Gatos

Prepared by:
Keyser Marston Associates, Inc.

August 23, 2019

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A. Introduction

Many municipalities in California and elsewhere have adopted programs requiring private sector development projects to contribute to local art installations and programs. The requirement is most common on commercial projects; but some cities also require residential and/or industrial projects to contribute as well. The standard approach is to require a percent of building permit valuation, most commonly one percent (1%), to either be spent on constructing on-site art or contributed as an in-lieu payment to be deposited into a trust fund. This approach has been accepted by the California Courts and is widely used.

The Town of Los Gatos is considering adopting a policy to require private sector commercial and multi-family¹ residential projects to contribute to local art installments and programs. Such a policy would be consistent with the Town's General Plan and the Art Commission's "Strategic Plan," which was accepted by the Town Council on April 10, 2017. The adopted relevant policies include the following:

General Plan

- Policy HS-14.1 Encourage public art in all new commercial development
- Policy HS 14.2 Encourage art-related uses in new and remodeled retail development
- Policy HS-14.5 Encourage private/public funding, development, and operation of cultural amenities, activities, and centers consistent with the small town character of Los Gatos

Art Commission's Strategic Plan

- Investigate developing a Commercial or Residential Development Percent for Art Funding Policy

The Town has retained Keyser Marston Associates, Inc. (KMA) to assist the Town in establishing the parameters of an arts program and to evaluate the magnitude of revenues that could potentially be generated by the program. This report provides the necessary information to serve as the legal foundation for the Town's arts program, should the Town elect to proceed with adopting an ordinance.

B. Legal Context

In the case of *Ehrlich v. the City of Culver City*, the California Supreme Court found in 1993 that a requirement for art, and an accompanying in-lieu "fee" payment, was a legitimate use of a government's land use powers. In this context, a requirement for art or a monetary contribution in-lieu of providing on-site art is not an impact fee and therefore is not in need of nexus analysis support. A municipality may simply adopt an ordinance establishing the requirement.

¹ Projects consisting of two or more units

The *Ehrlich* case has been widely regarded in California as settled law and is commonly quoted by city attorneys in ordinance adoption packets. It was recently challenged, however, in a lawsuit brought by the Building Industry Association, Bay Area, against the City of Oakland (Case No. 15-cv-03392-VC). The lawsuit was ultimately dismissed in 2018 by the United States District Court, Northern District of California, which further reinforces the legal standing of arts requirements.

C. Building Permit Trends in Los Gatos

Incorporated in 1887, Los Gatos is largely a built-out community with very little vacant land for new development. This condition is evidenced by the history of building permit valuations. Over the last three (3) years, the Town processed a total of seven (7) new non-residential building permits and zero multifamily residential permits. The average building permit valuation was \$317,200 and the average project size was 1,870 square feet. The largest project was 5,100 square feet with a building permit valuation of \$1.0 million. This 3-year record translates into 2.3 permits per year, 4,365 square feet of new non-residential development per year, and \$740,200 of building permit valuations per year. The Town's building permit history is provided in Table 1.

As this indicates, there is very little new commercial building activity in Los Gatos. Based on the level of activity over the last three years, if the Town were to adopt an arts contribution requirement, it would not support any on-site art construction and would generate very little in-lieu revenue. If the in-lieu contribution requirement was one percent (1%) and all seven projects made an in-lieu contribution, the projects would have generated \$22,205 of revenue for arts. This translates into \$7,400 per year. And given that many municipalities have a reduced rate for small projects, the annual revenue yielded by a Los Gatos program could be less than \$3,500 per year, which might be less than the annual cost to administer the fund.

If the Town desires to go forward with adopting a program, it will likely generate a negligible amount of revenue on an annual basis. However, if a significant development does occur at any point, having a program in place would enable the Town to either benefit from a new arts installation or collect a meaningful arts contribution.

D. Adoption Materials

For good practice, it is advisable that the Town of Los Gatos set out criteria and establish procedures when instituting an arts requirement. KMA offers the following outline of the basic elements of a private sector arts requirement and recommendations for Los Gatos.

It is noted that most municipalities that adopt a private contribution to art program already have in place, or adopt simultaneously, a public projects art program. These programs typically commit the municipality to spending one percent (1%) of the construction budget of select public

works capital projects on public art. We recommend that Los Gatos enact a public program along with a private requirement.

One aspect of an on-site arts requirement on private development that differs from most other kinds of fees and requirements is that the artwork is owned by the project and is privately maintained. Good art, done well can add value to a project, which enables the cost to be recouped upon the sale of the project. This distinction may also influence how the program is structured with respect to providing for the option to make a payment in-lieu of providing on-site art (which pays for public art somewhere else).

The following are six topics that are, in our view, the advisable basic elements for a Private Sector Development Arts Requirement Program (Program). We offer some recommendations as a starting point and we offer models from other cities for the Town's consideration. A summary of the arts programs of other jurisdictions in Santa Clara County and other select communities is provided in Table 2.

The following topics are addressed below:

1. The requirement and how it is applied
2. Suggested thresholds for in-lieu contribution versus the on-site requirement
3. Process aspects
4. Criteria and definitions: acceptable on-site art, art placement, budget rules
5. Longer term issues
6. Expenditure of art trust fund monies

1. *The Requirement and How Is It Applied*

- a. If the Town elects to proceed with an arts contribution requirement on non-residential development and multi-family residential development, we recommend that the requirement be equal to one percent (1%) of Building Permit Valuation, which is the most commonly used requirement throughout the State. A reduced percentage is sometimes used below certain threshold levels; which could also be incorporated in Los Gatos' program. Some jurisdictions also place an overall cap on the arts contribution, regardless of the size of the project. For example, Los Altos' program has a cap of \$200,000 and San Luis Obispo has a cap of \$50,000.
- b. Apply the requirement to all new non-residential projects, which in Los Gatos means principally office, retail, restaurant, and hotel developments.
- c. Apply the requirement to multi-family residential projects with two or more residential units.
- d. Provide applicants with the discretion of either providing on-site art or making an in-lieu contribution, but incentivize fee payment for smaller projects or projects where public exposure is minimal or where art may be viewed as inappropriate for some reason.

- e. Include additions and alterations to non-residential buildings in the program.
- f. Exempt affordable housing, churches, seismic retrofit projects, and the reconstruction of structures due to natural disasters.

2. Suggested Thresholds – On-site Art or In-Lieu Contribution

- a. Exemption threshold – Many municipalities exempt small projects, such as projects with less than 2,000 square feet. For example, Palo Alto has a two-component threshold of 10,000 square feet of GBA and a valuation of \$200,000. Los Altos has a minimum valuation threshold of \$1 million. As noted above, over the past three years, Los Gatos has only processed seven (7) new non-residential building permits and, of those, only one permit was valued over \$1 million and none were over 6,000 square feet. Given this history, we recommend that an arts contribution equal to one percent (1%) of valuation be established.
- b. For the next tier, it is common for these programs to set a threshold below which the City prefers an in-lieu fee contribution. Palo Alto's program requires an art selection process if the art contribution exceeds \$60,000. At one percent (1%) of building permit valuation, a \$60,000 art contribution translates back to a \$6 million building permit valuation threshold for requiring or strongly encouraging on-site art. (For illustrative purposes, this would be a commercial building in the size range of 25,000 to 35,000 square feet.). Sunnyvale is considering raising the value of the art to one and a half percent (1.5%) of construction costs for on-site art and retaining a one and one tenth percent (1.1%) requirement for in-lieu contributions.

A justification for preferring in-lieu contributions for smaller valuation projects may be based on the administrative costs associated with the process leading to approval of on-site art. Some jurisdictions further justify the threshold in light of the size and quality of the art that the program is aiming to achieve. Given the low level of building activity, we do not believe that this is an issue for a private arts requirement program in Los Gatos.

3. Process Aspects

- a. For on-site art, the Town needs to establish a process for approving the art that the developer/applicant wishes to install in the project. Typically, the initial proposal is part of the early entitlement process.
- b. Town staff with the oversight of the Town Council and advice from a commission reviews the art proposal through the major steps of entitlement through construction and final placement. Usually the art must be in place prior to issuance of the first certificate of occupancy unless there is a written agreement for later installation.

- c. The process includes approval of the budget and ultimate expenditures (see below).
- d. The process includes application of the criteria for acceptable art and also criteria for placement of art (see sections below).
- e. There is significant variation in the process aspects from one jurisdiction to another. Some are time consuming and contentious, encouraging in-lieu contributions whenever possible; others make the selection and placement of on-site art easy and fast. Depending on one's perspective, the quality of art produced is heavily influenced by the process, commission, and staff.

4. Criteria for Art, Placement, and Qualifying Costs

- a. The Town will need to articulate what art is and is not to be considered as Public Art. It is our understanding that Los Gatos would like to permit the in-lieu revenue to be used to support a broad range of art forms including visual arts and performing arts programs.
- b. The Program should include criteria regarding the acceptable placement of art for public enjoyment. These criteria often refer to visibility from sidewalks, etc. Inside lobby spaces are generally acceptable assuming public access to the lobby during normal business hours.
- c. Extra architectural and landscaping features may qualify, but are subject to evaluation.
- d. The Program needs to articulate what costs qualify as expenditure toward the one percent (1%) building permit valuation "fee." Typically costs of consultants, installation, transportation, and other costs do qualify, but some limitations are set.
- e. Similarly, the Program will need to define "construction" costs or "building valuation," which is the basis for the art requirement. For ease of administration, it is preferable that the contribution be applied to the same definition of costs or valuation on which other building fees are applied.

5. Long Term Issues

- a. In order to insure the long term placement of art, typically the project and the city enter into a written agreement addressing longer term issues – what happens upon sale, destruction by natural disaster, conditions under which the art may be removed or replaced.
- b. Key longer term issues concern responsibility for maintenance. Typically, on-site art is maintained by the private property owner. Some municipalities, such as Sunnyvale, dedicate a portion of the in-lieu contribution toward a maintenance fund for public art.
- c. Maintenance of insurance and liability issues are also long term concerns.

6. Arts Trust Fund

- a. With the collection of in-lieu contributions, the municipality must establish a dedicated trust fund for art installations and programs. An Arts Master Plan for expenditures and priorities is advisable, but probably need not be fully prepared at initial adoption.
- b. A few California cities broadly define art to also include cultural and performing arts. To be consistent, on-site art may be other than visual art and trust fund monies may be utilized for other art forms². The Culver City program that was referenced in the *Ehrlich* Court ruling did include use of funds for other art forms and the Court did not comment on this aspect). Also, many cities expend arts money integrating art into landscaping and streetscape type projects.
- c. As with the Program overall, the Town needs to establish a process with Council oversight to expend the collected in-lieu revenues. Procedures for grants of various kinds are often outlined in the adoption materials.
- d. Regular reporting, typically annual, to the Town Council on the trust fund is usually established in the adoption materials. Revenues collected, art projects achieved through the program, and trust fund expenditures are minimal reporting requirements.
- e. There is not a legal time limit for the expenditure of collected in-lieu fee revenues.

In summary, the above six topic areas should be addressed before the Town proceeds to adopt an Arts Requirement on Private Sector Development Program. For the most part, the Town needs to decide the basic components of the Program and establish the processes involved.

E. Other Local Area Programs

KMA researched the arts programs of jurisdictions within Santa Clara County. Five municipalities have an arts requirement on private sector development, including: Los Altos, Cupertino, Sunnyvale, Palo Alto, and Milpitas. Four of these municipalities apply the art requirement to both commercial and residential development. Sunnyvale is the only community in which the program is restricted to non-residential development. Four of the communities require a one percent (1%) contribution, with Milpitas being the exception with a requirement of one half of a percent (0.5%) of building development costs. Two other communities (San Jose and Mountain View) have arts requirements on public projects, but not on private development.

² Culver City's program was expanded to include performing arts programs in 1994, after the Supreme Court ruling on the *Ehrlich* case 1993. We are not aware of any court challenges to the appropriateness of using arts in-lieu fee revenues to fund performing arts.

F. Models from Other Cities

A number of Bay Area cities have recently adopted or are currently in the process of adopting one percent (1%) type arts programs. These adoptions offer the advantage of accessible staff reports and draft ordinances available on line. Some examples and references are:

- City of Los Altos, adopted July 10, 2018. Ordinance No. 2018-446.
- City of Cupertino. Municipal code chapter 19.148.
- City of Palo Alto, established in 2013. Ordinance No. 5226.
- City of Sunnyvale. Municipal code chapter 19.52.
- City of Milpitas, adopted May 19, 2015. Ordinance No. 38.821. Municipal code Section 14.
- City of Berkeley – Staff report for June 3, 2015 meeting of the Planning Commission provides extensive attachments including materials from Pasadena and Palo Alto. Also a recent opinion from legal counsel (4/2015) at the back.

G. Recommendations Summary

If the Town of Los Gatos wishes to adopt a Private Development Arts Requirement, we recommend the following basic parameters for the Program. These recommendations are based on our understanding of the Town's objectives, the market strength of Los Gatos, the limited amount of new development in Los Gatos, and programs in neighboring jurisdictions.

- Given the strength of the real estate in Los Gatos, we suggest a one percent (1%) requirement.
- New construction projects and additions of new space should be similarly subject to the program.
- Provide owners a choice as to whether to build on-site art or make an in-lieu contribution.
- A process for approving on-site art installations should be established. The processes of other jurisdictions, such as Palo Alto, Sunnyvale, and Cupertino could be used as models.
- The Town should establish priorities and guidelines for the expenditure of the arts revenues.
- The Town should simultaneously adopt a similar requirement on Town funded building projects, excluding street overlays.

Table 1**Los Gatos New Non-Residential Building Permit Activity over the past three years**

Building Permit #	Address	Sq. Ft.	Valuation	Assumed Arts Contribution @ 1% of Valuation*
B18-0279	300 Marchmont Dr	2,980	\$501,921	\$5,019
B17-0803	14595 Clearview Dr	1,260	\$250,513	\$2,505
B16-0824	233 Blossom Hill Rd	240	\$15,696	\$157
B16-0316	15445 Los Gatos Blvd	2,151	\$157,690	\$1,577
B18-0280	300 Marchmont Dr	812	\$136,765	\$1,368
B16-0837	354 N. Santa Cruz Ave.	5,100	\$1,013,982	\$10,140
B16-0656	17445 Zena	<u>546</u>	<u>\$143,964</u>	<u>\$1,440</u>
Totals, over 3 years		13,089	\$2,220,531	\$22,205
Average annual		4,363	\$740,177	\$7,402

** Assumed 1% contribution is for illustrative purposes. Town has not adopted an arts requirement.*

of Art Requirements
 ara County Municipalities and Select Other Communities with Private Development Art Requirements ¹

	Los Altos 31,000	Cupertino 60,000	Sunnyvale 154,000	Palo Alto 69,000	San Luis Obispo 47,000	Milpitas 75,000
Population						
Projects Subject to Requirement	Private residential and non-residential developments and Public Projects.	Public and private development.	Public and private non-residential development. Non-residential must either be at major intersection or on 2+ acre lot.	Public and private development.	Public and private non-residential development.	Private residential and non-residential development.
Project Size Thresholds	Residential within R-3-4.5, R3-5, R3-3, R3-1.8, R3-1 - 4 or more units; Non-residential - minimum construction cost of \$1 million.	10,000 square feet of new or expansion space.	At major street intersection - additions must be at least 10,000 sf; 2+ acre lots - additions must be at least 30,000 sf New public projects over \$1 million or public renovation projects over \$100,000.	Commercial - GBA of 10,000 square feet and valuation of \$200,000; Residential - 5 or more units Municipal - cost of \$200,000.	Private non-residential - Minimum construction costs of \$100,000; Public - All eligible CIP projects.	Private non-residential - 2,000 square feet; Private residential - 20 or more dwelling units.
Exemptions	Single family developments within the R1-10, R1-H, R1-20 and R1-40 districts; Affordable housing units; Projects not subject to design review.		Residential development. Public projects excluding utility projects, streets, sidewalks, landscaping or traffic improvements.	Affordable housing, churches, historic renovations, seismic retrofit projects, repair of structures damaged by natural disasters.	Public - utility and underground projects. Private commercial - seismic improvements, fire lateral replacements.	Affordable housing developments with a minimum of 20 percent affordable units.
On-site or In-lieu contribution	Projects in residentially zoned districts make in-lieu contribution. Projects in non-residential zones have option of either on-site construction or in-lieu contribution.	On-site strongly encouraged. Developer may apply to Fine Arts Commission for approval of in-lieu contribution.	Discretion of applicant.	Discretion of applicant.	Discretion of applicant.	Discretion of applicant.
Value of Requirement	1% of construction costs as calculated based on the City's building valuation fee schedule. Art contribution is capped at \$200,000. Costs associated with affordable housing is excluded. For public projects, contribution is 2%.	1% of first \$100 million of construction valuation. 0.9% of valuation in excess of \$100 million. In-lieu payment is 1.25% of construction valuation.	1% of construction cost for public projects; 1% of valuation for on-site private projects. In-lieu contribution is 1.1%.	1% of construction valuation.	Public - 1% of construction costs, excluding land, design Private - .5% of construction cost in excess of \$100,000. Contribution not to exceed \$50,000.	.5 of 1% of building development costs declared on building permit applications.
Schedule for In-Lieu Contribution	Prior to issuance of building permit.		Prior to issuance of building permit.	Prior to issuance of building permit.	Prior to issuance of building permit.	Contribution must be paid at the time of filing the building permit application.
Notes			On-site installations are subject to approval by Arts Commission and City Council. Draft 2019 Master Plan for Public Art recommends increasing on-site requirement to 1.5% and a reduced in-lieu contribution of 1.1% to encourage in-lieu contributions.	Developments with valuation of less than \$6 million are encouraged to provide in-lieu contribution. On-site installations are subject to approval by the Public Art Commission.	Approvals by Cultural Heritage Committee, Planning Commission, and/or Park and Recreation Commission or Mass Transportation Committee; Architectural Review Commission and City Council.	On-site required to be installed prior to issuance of certificate of occupancy.

¹ San Jose, Mountain View, and Santa Cruz have art requirements that apply only to public projects.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/03/2019

ITEM NO: 9

DATE: August 27, 2019
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction Regarding the Town's Priorities for its Annual Community Grants Program

RECOMMENDATION:

Provide direction regarding the Town's Priorities for its annual Community Grants Program.

BACKGROUND:

The Town of Los Gatos has been awarding community grants for almost twenty-five years, creating a resolution in 1992, revised in 1993 (Resolution 1993-173), to support community groups working towards the benefit of Los Gatos residents with grant funding. Until FY2011/12, community grants were administered by the Town of Los Gatos Community Services Department. This Department administered an approximate average of \$100,000 of General Fund money for grants as well as an approximate average of \$36,000 of federal Community Development Block Grants (CDBG) funds to local non-profit agencies each year.

In FY2011/2012, the Community Services Department was dissolved. At that time, administration of the community grant program was moved to the Town Manager's Office and CDBG funds were diverted to the County of Santa Clara's Housing and Community Development Advisory Committee for distribution. In December of 2015, Town Council directed staff to evaluate and revise the grant application process and subsequent reporting requirements, which continued to use a cumbersome federal framework that had originally been necessary for CDBG funds but had since become obsolete.

In 2018, the Arts and Culture Commission (ACC), with support from the Community and Senior Services Commission (CSSC), reworked the application process to streamline workload for both Town staff and grant applicants. This new application format was utilized for the first time for the FY19/20 grant cycle and has received positive feedback from applicants. Staff is currently in

PREPARED BY: Ryan Baker
Library Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

BACKGROUND (continued):

the process of amending the reporting requirements to reduce additional unnecessary workload for local organizations.

Currently, applications are reviewed by the CSSC for grants pertaining to Human Services, and the ACC for grants pertaining to Arts and grants pertaining to Education. These comprise the only three categories for which community grants are currently considered. The ACC generally appoints a subcommittee to initially review each application and provide a funding recommendation to the full Commission at a public hearing in which community groups may speak on the merits of their applications and answer questions prior to the Commission making a final funding recommendation for Council consideration.

The CSSC will also generally appoint a subcommittee to perform an initial review of grant requests and provide funding requests to the full Commission. However due to Commission vacancies the past two years, the Commission held a public hearing as a special meeting, allowing community groups to speak regarding their applications, followed by deliberation and final funding recommendation at the Commission's next regular meeting. In both cases, the final recommendations of the Commissions are brought before Council during or immediately before the adoption of the Town's General Operating Budget. Council has the discretion to accept, modify, or decline the recommendations of the Commissions with the adoption of the Budget.

The 25-year timeframe of community grant giving in the Town combined with the transfer of the administrating agency, changes of funding sources, the inevitable changing of lead staff persons, and the bulk of review and recommendation being done through appointed volunteer Commissions has led to some confusion and changing priorities over time. During the Fiscal Year 2019/20 budget process, Town Council requested a review of the Town's grant program and opportunities to align it with the Town's current priorities. Staff will prepare a new community grant model based on given direction and return to Council for final approval. This report was prepared with input from the CSSC, the ACC, and a selection of past and current grant applicants.

DISCUSSION:

This section walks point by point through areas in which staff is requesting direction or clarification. It is noted here that staff does not refer to these questions/issues as problems per se, as they are all legitimate depending on how the priorities or context is defined.

- *Should the priority for community grants be one-time allocations for new projects and programs in the community, or should they cover ongoing operational costs of long-term programs, or a combination thereof?*

DISCUSSION (continued):

The existing grant guidelines (Attachment 1) list four funding categories: One-time seed funding for a new program, one-time project funding generally not exceeding a year to complete, one-time emergency funding, and undefined duration funding for programs and services. In practice, the majority of grant funds are used for ongoing operational costs of running specific long-term programs. As examples, the Art Docents program and Live Oak Nutrition program have received grant funding for twenty years, while LGS Recreation's 55+ program has received funding for seven years.

Argument: The majority of funding is utilized by the same applicants for the same programs making it difficult for a new applicant to compete and prioritizing established programs over new ideas. Conversely, established programs have a proven track record of performance and many of the programs that have come to rely on the annual funding would be in danger of severe cutbacks if the grant funding were awarded to other projects.

The CSSC felt strongly that ongoing program funding should receive priority as the requested amounts for ongoing programs were already more than the funding available. They also noted the extreme difficulty in remaining objective when considering a new program idea or community group with the knowledge that dividing funds from existing programs would greatly upset the stability of those existing programs that have become vital to the community. The ACC was largely in favor of supporting new program ideas with one-time funding, encouraging past grant recipients to try different projects, and increasing outreach to community groups that were currently not applying. However, they also noted that some established programs would likely fall apart without the continued funding and suggested that additional grant funding be allocated specifically for new projects and programs.

Staff notes an additional alternative of moving some long-established programs out of the grant process entirely and instead contracting the respective agency for the program service as a line item in the regular budget; this does have its own implications and staff would need to investigate further if it is in Council's interest.

- *Do the current grant program categories (consisting of Art, Education, and Human Services) reflect the priorities of the Council? Should additional program categories be added to reflect priorities?*

Currently the Commissions deny grant applications that fall outside of the scope of these three program categories. Other program categories that may benefit the community might include Community Vitality projects or Community Events. Alternatively, Council could establish no program categories, instead having all grant applications being judged on their individual merit.

DISCUSSION (continued):

Argument: The bulk of community groups approaching Council directly for funding during the past two years have proposed projects or events that would not qualify under the three identified project categories. Additional identified categories would allow both staff and Council to direct community groups through a single competitive grant process rather than circumventing that process. Conversely, additional program categories would likely be competing with existing categories thereby diluting current funding toward those categories.

The CSSC and the ACC both strongly felt that their current respective categories should not be altered or combined. They noted that additional program categories could be beneficial to the community but felt that additional funding should accompany any new grant categories.

- *Should organizations be allowed to apply for more than one grant in a single year (either in the same or different categories)?*

Currently there is no limit on the number of grant applications a single community group can submit either in the same or different categories. In this past grant cycle, five organizations submitted more than one application with four being awarded in the same or in a different category.

Argument: Larger or established organizations are more than capable of successfully administering multiple different programs simultaneously. Conversely, multiple applications from a single organization may adversely affect the ability of smaller or new community groups to compete and may sometimes result in some duplication of similar grants listed in different categories.

The CSSC largely felt that multiple applications were acceptable and that the existing organizations that were recipients of more than one grant had proven to be good custodians of the funds and delivered excellent results in the multiple awarded grants. The ACC was starkly divided, with some feeling that so long as the organizations were eligible to apply it did not create any conflict, while others felt that it tied too much of limited funding to single community groups, did not create a fair planning field for all applicants, and resulted in what could appear to be “double dipping” for similar programs.

- *Should it be the practice of the Commissions to award smaller amounts to applicants than requested in order to distribute limited funding to a greater number of organizations?*

The current practice of the ACC and CSSC is to allocate funds broadly, generally awarding less than applicants requested to facilitate more awards.

DISCUSSION (continued):

Argument: The amount of funding available is not sufficient to fill all requests, spreading funds in as wide a net as possible to qualified applicants allows for opportunity that would otherwise be denied. Conversely, awarding fewer and denying more grants would assist with the success of those that do receive awards. Community groups specify a dollar amount on the application needed in order to make a project or program successful. A reduced amount commits an organization to the full project described in their grant but with insufficient funding.

The CSSC was somewhat split with most Commissioners believing the benefit of broad but reduced distribution and fewer flat denials of applicants that had beneficial programs. This was compounded by the number of applicants requesting on-going funding, to which many of the Commissioners felt some degree of commitment. One Commissioner stood opposed feeling that the small award amount had no real affect to the organization but committed them to a workload obligation to the Town. After receiving some direct feedback from grant recipients, the majority of the ACC reversed their position from dividing funds broadly during the past several grant cycles to believing that the reduced awards placed the grant recipients' programs at a disadvantage. Staff notes that several of the community groups that received some, but not full, funding ultimately approached Council directly to ask for the difference stating that their proposal was not viable on the reduced award.

- *Is the current practice of community group representatives presenting their applications at a public hearing necessary and to what extent should verbal comment influence a grant competition?*

Currently, both the CSSC and the ACC hold a public hearing in which grant applicants, though not required, are encouraged to add additional information or answer questions regarding their proposed program or project.

Argument: Commissioners sometimes get additional information or clarification of issues in the written grant that should be taken into consideration in the award recommendations. Conversely, the written application should be thorough and complete in that it clearly stands on its own, and in a sense, forms a contract of what service will be delivered in return for grant funds received.

The CSSC was somewhat divided, in general they felt it beneficial to place a face to each application and found that the ability to ask questions was helpful in making award recommendations. Some noted, however, that it made the process feel unfair for grant applicants that did not attend in person. The ACC strongly wishes to do away with the practice, noting that it is awkward at best for both applicants and Commissioners. They reported receiving feedback from grant applicants that, although presenting is technically optional, some community groups felt it was obligatory, and certain community members found the process

DISCUSSION (continued):

insulting. Staff is not currently aware of any competitive grant program that requires a public hearing as part of the evaluation process and notes that any regular or special Commission meeting is open to the public and any member of the public may speak during verbal communication.

- *What funding amount should be prioritized for community grants?*

Over the past five years, the CSSC has recommended total grant amounts ranging from \$90,000 to \$113,000 in a given year in the category of Human Services, and the ACC has recommended total grant amounts from \$18,000 to \$20,000 in a given year in the categories of Arts and Education. Additionally, in each of the past three years, Council has added an additional \$5,000 to \$10,000 of award amounts to specific grant applicants beyond the amounts recommended by the Commissions. The total awarded by the Town represents only approximately one-third to one-half of the total requested by applicants in any given year. This does not include allocations that went straight to Council and did not go through the formal grant process but in most respects function similar or identical to what would be considered grant funding. In this last fiscal year, these included two allocations for the Chamber of Commerce in the amounts of \$22,000 and \$15,000, as well as one allocation to the RYDE program in the amount of \$17,000.

Both the CSSC and the ACC ask Council to consider additional funding.

Under our current system, grant awards are added into the budget late into the budget adoption process for a dollar amount that varies annually. Staff recommends specifying a set annual dollar amount for community grants that can be programmed into the budget consistently ahead of time to simplify this step of Town budget preparation.

CONCLUSION:

Based on the direction Council gives for these questions, staff will prepare guidelines and a framework for a revised community grant program that will be presented to Council for approval at a date prior to the FY 20/21 grant cycle.

FISCAL IMPACT:

No direct fiscal impact at this time. Any suggested budgetary changes would come back to Council for approval in the FY 20/21 budget.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

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SUBJECT: Community Grants Program Priorities

DATE: September 3, 2019

Attachment:

1. Community Grant Program Guidelines

Community Grant Programs

The Town provides grants of Town General Fund monies to local nonprofit agencies that provide human service, art, cultural, and educational programming. Funding priority is given to agencies serving the largest number of low and moderate-income clientele and whose funding request directly benefits Los Gatos residents. The grant applicant must be incorporated as a tax-exempt nonprofit corporation (IRS 501-C 3) and/or exist as another governmental entity.

Grant applications must be submitted online. See applications below for additional details and deadlines.

Link: [Applications for Community Arts and Education Grants](#)

Link: [Applications for Community Human Services Grants](#)

General Guidelines

Eligibility: To be eligible for Community Grant funding, agencies must:

1. Submit a separate, completed on-line application form for each project;
2. Be incorporated as a tax-exempt nonprofit corporation (IRS 501-C.3.) and/or exist as another governmental entity;
3. Demonstrate the managerial and financial capability to receive and expend grant funds;
4. Assure compliance with all applicable local, state, and federal laws including the non- discrimination requirement; and
5. Demonstrate good faith efforts to secure funding for programs and services from other sources.

Funding Categories: Programs for which funding is requested must qualify under one of the categories below. Proposals not fitting into one of these categories will not be considered for funding. Applicant services must directly benefit residents within the incorporated limits of the Town of Los Gatos.

1. **Seed Program:** Funding for start-up of new programs designed to meet a significant community need or problem. Proposers must demonstrate a high probability that funding can be sustained beyond the commitment of Town funds.
2. **Project:** Funding for one-time projects designed to address a significant community need or problem. Town funding shall be limited to a specific time-frame, usually not more than one year.
3. **Emergency:** Funding for operational programs in the community which meet an existing need. Applicants must demonstrate that: 1) current programs meet stated goals and objectives; 2) financial constraints will significantly curtail services to Town residents; and 3) future funding to continue the program can be obtained from other sources. Funding for programs shall be limited to one year.
4. **Community Programs:** Funding for programs and services to address identified community needs or problems (as stated in the Town's General Plan, action plans, or other policies).

Evaluation Criteria:

- Community need for the program
- Uniqueness of program, lack of duplications in service
- Qualifications and experience of the agency and its staff
- Past performance in providing established services and meeting Town requirements
- Effectiveness in serving an identified audience
- Community involvement in program, including volunteers
- Number of Los Gatos clients served vs. total clients served (unduplicated clients)
- Cost per Los Gatos resident vs. cost per non-Los Gatos resident
- Target audience for program (e.g., youth, seniors, students)
- Number of low and very low-income clients served
- Percent of total program budget requested from Town
- Reasonable cost
- Clarity, completeness, and accuracy of grant proposal

This application does not commit the Town to award a contract, pay any costs incurred in preparing the application, or procure or contract for services or supplies. The Town reserves the right to accept or reject any or all applications received, to negotiate with all qualified applicants, or to cancel in part or in its entirety the application if it is in the best interest of the Town. The Town may also negotiate with qualified agencies to meet community need.

Funding Availability: The Town Council will decide the amount of available funding for FY 19/20 during the budget process. Based on the recent past, total funding allocations range from \$100,000-\$120,000 with Human Service programs ranging from \$80,000-\$100,000 and Arts, Cultural, and Educational programs ranging from \$10,000-\$20,000.

For additional information, please contact:

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Via Email: lseastrom@losgatosca.gov

In Person: Town of Los Gatos

Town Manager's Office

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