



## City of Palo Alto City Council Staff Report

(ID # 5102)

**Report Type: Action Items****Meeting Date: 9/15/2014****Summary Title: Response to SCC Grand Jury Report**

**Title: Refer Real Property Procedures and Related Matters to Policy & Services; Approve Response to Santa Clara County Civil Grand Jury Report “Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Use Issues” (Continued from September 8, 2014)**

**From: City Manager****Lead Department: City Manager**

On September 8, 2014, Council reviewed a draft response to the Santa Clara County Civil Grand Jury Report “Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Use Issues.” (Attachment A). The Council discussed potential revisions to the draft, as well as related policy matters that Council may wish to consider at a later date or refer to the Policy & Services Committee. The Council determined that the Mayor should designate an ad hoc subcommittee to consider Council Members’ revisions to the Grand Jury response and related concerns and return to Council on September 15<sup>th</sup>. The Mayor designated Council Members Burt and Schmid to work with staff to revise the response and propose further policy-level considerations at a later date.

The ad hoc committee, which is not subject to the Brown Act’s open meeting requirements, met on September 9<sup>th</sup> and 10<sup>th</sup> and makes the following recommendations to the full Council:

1. Refer the following policy matters to the Policy & Services Committee for further discussion and recommendations to the full Council:
  - a. Receive and review an inventory of lands donated to the City
  - b. Consider potential revisions to Policy & Procedure 1-48 (Procedure for Sale/Transfer of Surplus City-Owned Real Property), including to add additional guidance and clarity regarding unsolicited offers to lease or purchase City land and the timing of real property closed sessions
  - c. Public prescreening with Council of projects requiring zone changes
  - d. Receive a report on software solutions supporting responses to requests for documents under the Public Records Act, to be provided to City Council by April 1, 2015

2. Approve the revised “Response to the Civil Grand Jury Report on Reduced Transparency and Inhibited Public Input on Important Land Issues” and authorize the Mayor to send a letter to the Grand Jury with the City’s response by the deadline of September 18, 2014 (Attachment B).

The draft Grand Jury response incorporates the referrals to Policy & Services and action steps the City will take to implement the Grand Jury recommendations. If the Council does not approve the referrals to Policy & Services, the Council should direct staff to modify the Grand Jury response to remove those references.

**Attachments:**

- Attachment A: Original Council Report September 8, 2014 (PDF)
- Attachment B: REDLINE Grand Jury Response (DOCX)
- Attachment C: Sept 2014 Grand Jury Response-Clean Copy (DOCX)



# City of Palo Alto

## City Council Staff Report

(ID # 5073)

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**Report Type: Action Items**

**Meeting Date: 9/8/2014**

**Summary Title: Response to SCC Grand Jury Report**

**Title: Response to SCC Grand Jury Report on Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Issues**

**From: City Manager**

**Lead Department: City Manager**

### **Recommendation**

Staff recommends that Council approve the following response to the 2013-2014 Santa Clara County Civil Grand Jury Report, "The City of Palo Alto's Actions Reduced Transparency and Inhibited Public Input and Scrutiny on Important Land Issues." Staff further recommends that the Mayor be authorized to send a letter to the Grand Jury with the City's response by the deadline of September 18, 2014.

### **Background**

From the Santa Clara County Civil Grand Jury website:

"The Civil Grand Jury is an investigatory body. . . CIVIL WATCHDOG RESPONSIBILITIES

This is the major function of present day grand jurors, and considerable effort is devoted to these responsibilities. The Grand Jury may examine all aspects of county and city government and special districts to ensure that the best interests of Santa Clara county citizens are being served. The Grand Jury reviews and evaluates procedures, methods and systems utilized by county/city government to determine whether more efficient and economical programs may be employed. . . Most Grand Jury "watchdog" findings are contained in reports describing problems encountered and making recommendations for solutions."

The Santa Clara Civil Grand Jury typically produces eight to ten reports a year. In recent years, the City of Palo Alto, along with other Santa Clara cities, have participated in Grand Jury interviews that informed subsequent reports on topics related to "Unsustainable Employee Costs", "Rethinking Fire Department Response Protocol and Consolidation", "Emergency Dispatch in Santa Clara County", "Rehiring Pensioners", "Pension and Other Post-Employment Benefits", "Law Enforcement Public Complaint Procedures", and "Public Disability Retirement Rates".

On June 19, 2014, the Civil Grand Jury of Santa Clara County issued a report that discussed the City's compliance and response with the Brown Act and the California Public Records Act, and the level of transparency associated with the Lee Gift Deed Property and the 27 University Avenue development proposal. A copy of the Grand Jury Report is included as Attachment A.

### **Discussion**

State law requires the City to respond separately to each Finding and each Recommendation. To Findings, the City has to "agree or disagree." To Recommendations, the City has to state that it has implemented, will implement or will not implement the recommendation. Staff has made this the first sentence in the Response section to each Finding and Recommendation.

The City's detailed response to the findings and recommendations are included in Attachment B. The City agrees with Recommendations 1, 2, and 7 but has provided further explanation and additional clarifying details in response to the Findings and Recommendations of 3 through 7.

The City's response to the Grand Jury meets the requirements set out in law.

Further staff commentary related to the events focused on in this Grand Jury report are provided for Council in this cover letter.

### **27 University**

This project got off to a bad start, and certainly off on the wrong foot. The initial action requested of Council on March 5, 2012 to allocate funding to allow for the City to actively shape some of the potential design features in response to initial suggestions by John Arrillaga did not establish enough detail for public review and commentary. The fact that Council members had received individual briefings by staff (permissible) on Mr. Arrillaga's interest in a project of significant scale at that location compounded eventual community criticism for the project and process.

And although the purpose for that funding was to inform a potential future project, by the time the specifics of the project design parameters came forward (September 24, 2012) too much time had passed. More importantly, the scale of the potential project, particularly building heights, far overshadowed potential public benefits related to a new regional theater, significant parking, and improvements to the intermodal transit center and surrounding road network.

Given the dramatic change the concept presented for the area, it is natural that many folks would take the concept as a surprise and for many, out of character for the City. From that point on, however, the Council directed that numerous public sessions take place, including Planning and Transportation Commission, Architectural Review Board, Historic Resources Board, and Parks and Recreation Commission meetings to review and comment on the proceedings, including several other Council Action items in late 2012 and into 2013.

The Council ultimately directed that an essential start-over on the public process be designed with numerous new public outreach meetings. But as heightened interested in the Comprehensive Plan review and revision unfolded through 2013, it made sense that any consideration of 27 University take place only in the context of the Comprehensive Plan.

Conclusion: There was a lack of clarity of objective and transparency at the start of the consideration of 27 University. Council changed that mid-course but much damage had been done to the project's possibilities and to confidence in the process.

### **Closed Sessions Related to Potential Lease or Sale of 7.7 Acres**

Closed sessions are appropriate and permissible for real property negotiations. Council could have conducted these discussions in public. Staff had scheduled these as closed sessions. But even though permitted by law and serving good purposes, closed sessions can contribute to uncertainty or suspicion. The facts are that the Council never did authorize a sale or initiate the process necessary to sell the property. Some can criticize that the City should never have even discussed Mr. Arrillaga's proposal. There was a silver lining to this request coming forward, though, in that the current Council and staff discovered the history of this parcel and the long overdue and delayed dedication as parkland, which this Council did accomplish this summer.

### **Public Record Requests**

The City receives numerous public records requests, some formal, most informal. The vast majority are responded to very quickly. There are challenges at times as requests come in at different entry points into the organization and response can be both time consuming and involve numerous departments, requiring coordination and oversight. The response to the Grand Jury Report speaks well to the current changes the City has made, and is investigating, including coordinated software to monitor intake and response.

#### **Attachments:**

- Attachment A: Santa Clara County Grand Jury Report (PDF)
- Attachment B: City of Palo Alto Grand Jury Response (DOCX)
- Attachment C: Palo Alto Municipal Code Section 2.30.210 (h) (DOCX)
- Attachment D: Policy and Procedures 1-11/ASD (PDF)
- Attachment E: Policy and Procedure 1-48/ASD (PDF)



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

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

### Summary

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

The Grand Jury found:

The City disregarded its own written Policy and Procedures (P&P) and deed restrictions on 7.7 acres of land next to Foothills Park gifted to the City by the Lee Family (“Lee Gift Deed Property”) when it leased the property to an adjacent landowner who used the land in a manner inconsistent with the provisions of the deed;

The City disregarded its own written P&P by considering the sale of the same city-owned Lee Gift Deed Property to the same landowner prior to declaring it to be surplus;

The City held a closed session meeting<sup>1</sup> to discuss the price and terms of an offer to purchase the Lee Gift Deed Property. At the time of the closed session, the property—could not be legally sold because of the deed restrictions and failure to declare it surplus;

Initial discussions between the same landowner, who is also a developer, and the City about a controversial development of 27 University Avenue was done in a manner that was permissible but undertaken in a way to avoid public scrutiny unlike other similar large-scale projects;

The City allocated city money toward design review of the 27 University Avenue proposal to address existing transit and traffic issues at that site

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

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

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

## **Background**

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

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

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

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

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

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

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

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

## **Methodology**

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

## **Discussion**

### The Lee Gift Deed Property Leases:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>11</sup> Government Code §54227.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Public Records Requests (PRRs)

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

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

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

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

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

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

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

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

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



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

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

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

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

## **Conclusions**

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

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

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

The City held a closed session meeting to discuss the adjacent landowner/developer's offer to buy the Lee Gift Deed Property. At that time, the Lee Gift Deed Property had not been determined to be surplus and therefore could not be legally sold;

The City's failure to engage the public in initial discussions pertaining to the 27 University Avenue proposal and the allocation of SUMC funds; and

The City's failure to consistently respond to requests for public records in a timely manner and operational deficiencies for tracking PRRs and responses.

## **Findings and Recommendations**

### **Finding 1**

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

### **Recommendation 1**

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

### **Finding 2**

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

### **Recommendation 2**

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

### **Finding 3**

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

### **Recommendation 3**

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

### **Finding 4a**

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

### **Finding 4b**

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

### **Recommendation 4**

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

### **Finding 5a**

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

### **Finding 5b**

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

### **Recommendation 5**

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

### **Finding 6**

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

**Recommendation 6**

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

**Finding 7**

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

**Recommendation 7**

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

## **APPENDIX Documents Reviewed**

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

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

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

The City of Palo Alto City Council Procedures and Protocols Handbook

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

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

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

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

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

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

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

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

The lease agreements of the 7.7 acres near Foothills Park

Photos of the 7.7 acres near Foothills Park

Portions of the Palo Alto City Charter

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

Portions of the Palo Alto Municipal Code

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

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

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

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

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

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



Bob E. Johnson  
Foreperson

Michael M. L  
Foreperson pro tem



Anita A. Robles  
Secretary



Wilma Faye Underwood  
Secretary

**City of Palo Alto's Response to the Civil Grand Jury Report on Reduced Transparency and Inhibited Public Input on Important Land Issues**

**Finding 1**

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

**RESPONSE:**

The City agrees with the finding. The City notes that the officials and employees who took these actions have long since left the City's service.

**Recommendation 1**

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

**RESPONSE:**

The City has implemented the recommendation. The City's Real Estate Division has reviewed use restrictions on donated property for consistency with current uses.

**Finding 2**

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

**RESPONSE:**

The City agrees in part with the finding. This pertains to decisions made many years ago. Local law allows the City Manager to enter into leases up to three years. (Palo Alto Municipal Code Section 2.30.210(h). Consistent with the Municipal Code, Policy & Procedure 1-11/ASD states that it does not apply to short term leases.

The initial lease of the Lee Gift Deed Property – which was signed by a prior City Manager nearly 15 years ago – was a short-term lease. While it is true that the lease did not comply with P&P 1-11/ASD, it is also true that under the Municipal Code and P&P 1-11/ASD, it was not required to do so. The lease, however, was allowed to hold over beyond the authority of the prior City Manager. At that point, both the Municipal Code and P&P 1-11/ASD required additional process, which did not occur.

**Recommendation 2**

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



**RESPONSE:**

The City has implemented the recommendation. The City's Real Estate Division has reviewed short-term leases to ensure consistency with the City Manager's authority and the Municipal Code and P&P 1-11. Long-term leases are entered into in a manner that is consistent with P&P 1-11/ASD.

**Finding 3**

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

**RESPONSE:**

The City agrees in part with the finding.

Real property in Palo Alto is a valuable asset. It is not often that the City sells or even seriously contemplates selling any of its real property assets. On the occasions when it does so, property may be designated for sale after a survey that identifies the property as appropriate for sale through the process described in P&P 1-48. But this is not the exclusive way in which a property may initially be brought to City staff's attention for potential sale. From time to time, a third party (which may be a private individual, company, non-profit, educational institution or other governmental entity) may approach the City to initiate discussions about a real property transaction. In those situations, the City may preliminarily consider a specific offer as part of determining whether to formally initiate the sale process as described in P&P 1-48.

When credible unsolicited offers are made for the purchase of City-owned property, City staff has an obligation and a responsibility to bring those forward to Council for consideration. City staff initiated the closed session on September 18, 2012, to inform and receive direction from the Council regarding an unsolicited proposal by Mr. Arrillaga to purchase the Lee Gift Deed Property for a specific price.

When Mr. Arrillaga made this proposal, it was not the first time that he had proposed to acquire the Lee Gift Deed Property. Although the parcel is in a remote location and in the 2011-2012 timeframe was not familiar to current City staff or Council Members, Mr. Arrillaga in fact had a long history of attempting to acquire the parcel. He was the neighboring landowner, and between 1983 and 1996 had exclusive use and access to the parcel as the owner of the estate initially reserved by the Lee family and then sold to Arrillaga. As noted above, Mr. Arrillaga continued to lease the property for almost 9 years from the City. Throughout the years, the City of Palo Alto had responded to Mr. Arrillaga's periodic questions about acquiring the parcel.

Beginning in late 2011, Mr. Arrillaga again began asking City staff about acquiring long-term access to the parcel, either through a long-term lease or purchase. Staff intermittently answered his questions about the procedures that would be required for long-term lease or purchase, including Council action, an open public process, surplus property designation, significant consideration and the ongoing need to comply with the deed restriction. Anticipating the need to provide

information to the Council, staff ordered an appraisal of the property, which was completed in May 2012 and came in at \$175,000. The City conducted an initial closed session on June 4, 2012. The staff informed Mr. Arrillaga that it was not conceivable that the Council would consider selling the parcel at that price, and that additional/offsetting parkland may need to be a factor to even be considered and that possibility uncertain. The City later received a general proposal for funding and construction of playing fields at the Baylands. The City also received a proposal to purchase the Lee Gift Deed Property for \$175,000. City staff had a responsibility to bring the purchase offer to the Council for preliminary direction and did so on September 18, 2012.

Following the Closed Session and Council tours of the property, neither City staff nor the Council elected to move forward to consider the sale of the property by placing an item on the Council's open session agenda.

### **Recommendation 3**

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

#### **RESPONSE:**

The City has implemented the recommendation as described here. The City has implemented procedures to ensure public debate about disposition of real property well before transactions are finalized, and also understands that greater attention must be paid to open public process early in any potential transaction. At the same time, a recommendation to *always* seek public input before meeting lawfully in private to discuss a parcel of City-owned real property exceeds the requirements of local and state law and should not be implemented in a manner that may injure the public interest.

City law and policy do not dictate a uniform order of steps for initial consideration of complex real property transactions. State law provides some flexibility as well. Consistent with City law and policy and state law, the City's staff should retain leeway to use their professional judgment as to the order and timing of the various steps in order to best meet the public interest. While the City should and will place increased emphasis on transparency, it must remain free to balance that interest and the public interest in effective negotiations. Accordingly, Recommendation 3 will be implemented in a manner that it is consistent with the public interest.

### **Finding 4a**

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

#### **RESPONSE:**

The City agrees with this finding. As of September 18, 2012, the City had not implemented the procedures in P&P 1-48/ASD with respect to the Lee Gift Deed Property. In addition, the prior history related to the Lee Gift Deed, dating back many years before but never implemented, only became clear as part of research into the property by current staff, in response to Mr. Arrillaga's more recent interest. City staff have always been clear to all parties, including Mr. Arrillaga and the Council, that to pursue a sale of the property, the City would have had to comply with the procedures set forth in P&P 1-48.

**Finding 4b**

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

**RESPONSE:**

The City agrees in part and disagrees in part with this finding.

Properties that are subject to deed restrictions are bought and sold with frequency. The deed restriction on the Lee Gift Deed Property did not require that the property remain in City ownership. It required only that the property be used for conservation purposes, including parks and recreation. A private party, non-profit entity or other governmental entity could comply with this deed restriction. There are many such parcels of land throughout the Bay Area and the state. Thus the deed restriction did not prevent the City from selling the property. The new owner would have been obligated to meet the deed restriction.

If the City had decided to sell the property, it would have followed the procedures to declare the property surplus. Because there was no interest in selling the property, these procedures were not pursued.

**Recommendation 4**

The City of Palo Alto should always comply with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned real property.

**RESPONSE:**

The City has implemented this recommendation. The City has not sold any properties without following its procedures regarding the sale of surplus properties. The City has not sold any of its interest in the Lee Gift Deed Property. In fact, on August 18, 2014, the City Council approved an ordinance dedicating the Lee Gift Deed Property as parkland, and declaring it a part of Foothills Park. The Parks and Recreation Commission is considering best uses for the property, consistent with its status as parkland and the deed restriction.

**Finding 5a**

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

**RESPONSE:**

The City agrees with this finding.

The property at 27 University Avenue is an important parcel that serves a gateway to the City's downtown, as well as a transition to El Camino Real and Stanford University. The parcel is the site of complex transit connections. It has been the subject of numerous attempts over many years to develop comprehensive planning solutions, including the work of the Dream Team beginning in the 1990's.

Developer John Arrillaga renewed those efforts beginning in 2011 and 2012. The City has already acknowledged that the public process around this round of planning for 27 University Ave could have been better, with the early start to this project flawed, despite good intentions. The City's intention was always to try to guide the preliminary concept in a better direction. While the concept as initially described by Mr. Arrillaga was focused on new office buildings, the city saw the opportunity to begin a master plan and redesign of the transit center and road network at this gateway entrance to the City. There was also the potential to explore the addition of a major public benefit through a regional community theater. The Grand Jury report acknowledges the unique nature of this project: "the developer's proposals represented an unprecedented opportunity to address major traffic problems at an intersection where little change has taken place for many years, despite decades of planning attempts." The City's efforts were directed toward shaping the proposed concept into an improved design in order for the public to have a concrete concept on which to comment.

#### **Finding 5b**

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

#### **RESPONSE:**

The City agrees in part with this finding and disagrees in part. The Stanford University Medical Center funds were specifically designated to be used to develop pedestrian and bicycle connectivity projects between the intermodal transit center and the existing intersection at El Camino Real and Quarry Road. The City agrees that the first allocation of these funds occurred with only general details about a proposal from John Arrillaga, for which these funds were intended to be used to allow the City to steer a potential design into alignment with urban design goals for any potential project. (March 5, 2012). The City disagrees in that the second allocation of funding (which included funding from the Intermodal Transit Funds and from the Stanford Infrastructure Funds, with Stanford concurrence) took place on September 24, 2012, following Council discussion and action on the massing concepts for 27 University, letter of intent with TheatreWorks, and preparation of potential advisory ballot measure for Council consideration.

#### **Recommendation 5**

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

#### **RESPONSE:**

The City has implemented this recommendation, as described here.

Early input from constituents is critically important. City staff is placing an increased emphasis on early and effective public engagement in planning efforts. At the same time, it is sometimes true that complex concepts require preparation in order for the public to have significant substantive material to react to and provide input on. This may require staff and consultant time for preparation.

#### **Finding 6**

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

**RESPONSE:**

If the finding intends to state that the City's public records practices are not perfect in every case and could be improved, the City agrees.

If the finding intends to state that the City's practices fall outside reasonable, customary and even best practices in this arena, the City disagrees. The City receives many requests for routine information every single day and does a good job of responding promptly to the public. Formal requests under the Public Records Act come from many different points across the City organization. For formal Public Records Requests, we recently have added an FAQ and a request form to the Public Records Request webpage that can be submitted online to better track requests. The City also receives Public Records Requests via email, traditional mail and orally, which often need to be coordinated internally to ensure appropriate departments are responding. The City strives to provide an initial response to Public Records Requests within ten days and generally meets this standard.

**Recommendation 6**

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

**RESPONSE:**

The City has implemented this recommendation. In addition to the FAQ and online form that have been implemented to increase coordination and accountability, the City is exploring additional software solutions to automate tracking and responses to Public Records Requests. Additional training for City staff is also being planned.

**Finding 7**

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

**RESPONSE:**

The City agrees with this finding. While the City's system does a reasonably good job of capturing most requests and responses, the City agrees that its current system does not capture all requests and responses and could be improved. The City is evaluating additional software solutions in this area.

**Recommendation 7**

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

**RESPONSE:**

The City is implementing this recommendation. The City is in the process of evaluating software systems to better track requests, assist in streamlining and coordinating responses, prompt timely responses, and support the efforts of City staff to comply with the Public Records Act.

Palo Alto Municipal Code Section 2.30.21.0

2.30.210 City manager contract award authority.

The city manager may award and sign the following contracts:

**(h) Contracts to rent, lease, or license city property to other parties. The authority granted under this section is distinct from the authority of the director of community services to grant individuals and groups permits for the exclusive use of buildings, facilities and areas of city parks and open spaces described in Title 22 of this code. The city manager may award and sign contracts to rent, lease or license city property to other parties regardless of the price for a term not exceeding three years. Notwithstanding the preceding sentence, the city manager may enter into and sign contracts to rent, lease or license property at the Cubberley site for terms up to five years.**

(Ord. 4827 § 1 (part), 2004)

## **LEASED USE OF CITY LAND/FACILITIES**

### **POLICY STATEMENT**

The purpose of this policy is to ensure that decisions regarding use of City real property are made in the best interests of the citizens and taxpayers of Palo Alto.

The development and operation of facilities by others (profit and/or non-profit entities) on City-owned property is appropriate only when such development and operation will further public use or provide a public benefit. Such facilities and operations must be consistent with existing City policies, plans, services and/or procedures. Open competitive and/or bid processes will be used to solicit proposals or provide opportunities to others prior to awarding an Option to Lease. This policy shall not apply to short-term interim leases where no significant change in use is proposed

### **PROCEDURE**

#### **A. Criteria for Permitting Leased Use of City Property by Others**

The proposed leased use must be compatible with, incidental to, and/or supportive of, the primary public use of the City-owned property, e.g. a snack stand in a district park, or the pro shop and coffee shop at the Golf Course.

In the event of park dedicated land, the proposed use shall be consistent with the provisions set forth in the Charter of the City of Palo Alto, Article VIII, and the Palo Alto Municipal Code (PAMC), Sections 22.04 and 22.08 et. seq., which require that uses of park dedicated land be park, playground, recreation or conservation related uses.

#### **B. Option to Lease**

In all cases where there are significant approval requirements (significant tenant construction and/or rehabilitation), financing requirements (fundraising drives, obtaining financing from lending institutions, etc.), or other tenant pre-operation conditions, the Council shall award an Option to Lease setting forth all pre-construction/operation conditions as conditions to the tenant's obtaining the lease. The option term shall be for a reasonable period of time consistent with the nature of the conditions of the option.

Prior to awarding an Option to Lease for a specific use, consideration shall be given to particular information. (Specific application and the relative importance of each of the following considerations will vary from site to site and by specific uses proposed.) Applications for leased use shall provide the following information:

1. The extent to which the proposed leased use satisfies a public need (e.g., by a significant number of Palo Alto residents and taxpayers) for the proposed services and/or uses.

2. Consistency of the proposed use with existing City goals and objectives (set forth in the Comprehensive Plan, Zoning Ordinance, Municipal Code, and general municipal services objectives).
3. Consistency of the proposed use with existing plans for the property or facility (e.g., an approved Master Plan).
4. The impact of the proposed use (compatible services and uses, traffic impacts, noise impacts, energy conservation, etc.) upon:
  - a. the immediate neighborhood;
  - b. the community generally; and
  - c. the environment (The proposed tenant shall, during the Option period, satisfy the City's environmental review process.)
5. The degree of public access, including City shared use of the facility or co-sponsorship of programs and/or services, i.e. the numbers of people, especially Palo Alto residents and taxpayers, that will be served by the proposed use and/or service. (It is the general intent of the City to maximize public access to its facilities and services, especially if park land is involved.)
6. The fees that will be charged to Palo Alto citizens. (It is the intent of the City to provide public access to its facilities at prices and/or fees that are fair and reasonable to the public. In the case of parklands, any fees and charges should be minimum and consistent with the fees and charges of comparable City-provided services.)
7. The monetary consideration to be provided to the City.
8. The history and assessment of the proposed group's ability to carry out the construction, if any, and operation of the facility and services as proposed.
9. A five-year pro-forma financial analysis of the proposed use, setting forth the project revenues and expenses for this period of time.



### **C. Public Notification**

1. Prior to awarding an Option to Lease (or Lease if there are no pre-construction or pre-operation conditions), the City shall provide a reasonable and appropriate opportunity to other groups or entities to respond to possible use of City facilities. Such reasonable and appropriate opportunities shall take one of the following forms:
  - a. A Notice of Intent to Award an Option to Lease (or Lease if there are no pre-construction or pre-operation conditions) generally outlining the conditions of the Option and Lease, shall be published twice in a local newspaper of general circulation. The Notice shall provide at least 30 days notice to the public prior to a public hearing for Council action to award the Option to Lease. In addition, copies of the notice shall be mailed to property owners and tenants within 300 feet of the subject property in accordance with Section 18.77.080(d) of the Palo Alto Municipal Code (PAMC).
  - b. A Request for Proposals will be sent to groups or entities likely to have an interest in submitting a proposal, subsequent to a public hearing and Notice of Intent to Request Proposals being published in the appropriate media. At a minimum, the Notice of Request for Proposals shall be announced in a local newspaper of general circulation and copies of the notice mailed to property owners and tenants within 300 feet of the subject property in accordance with PAMC Section 18.77.080(d). The Notice shall provide at least 30 days notice to the public prior to the public hearing.
2. The City's Real Estate Division shall be responsible for the public notification by mail and newspaper in accordance with either C(1)(a) or (b) above.

### **D. Tenant Improvements**

1. Construction of tenant improvements shall take place only after Council approval (as well as Planning Commission and Architectural Review Board approval when otherwise required by City procedures) of plans for such tenant proposed construction is obtained. In the event of park dedicated lands, Council approval shall be obtained by ordinance subject to referendum (PAMC Sections 22.08.005 and 22.08.006).
2. Generally, improvements to the real property shall become the property of the City upon termination of the Lease. Tenant-provided fixtures shall remain the property of the tenant.

**E. Terms of the Lease**

1. Tenant shall be required to provide the City with adequate compensation for the rights granted by the City to the Tenant. Determination of appropriate consideration shall begin with the estimated fair market rental value of the lease premises for the use proposed. Consideration shall, however, be given to non-monetary benefits to be provided by the tenant. These proposed non-monetary public benefits must be clearly articulated and must provide an actual benefit to a significant portion of the citizens and taxpayers of Palo Alto.
2. The lease term shall be the minimum period of the time required to:
  - a. amortize tenant's investment in any permitted and approved tenant construction; and
  - b. be consistent with the nature of the proposed tenant operation.

*NOTE: Questions and/or clarification of this policy should be directed to the Administrative Services Department*

**PROCEDURE FOR SALE/TRANSFER OF SURPLUS CITY-OWNED  
REAL PROPERTY**

**POLICY STATEMENT**

It is the policy of the City of Palo Alto that the disposal of City real property be accomplished through a public bid process. The process involves notification of City departments and public agencies prior to the City Council declaring any property to be surplus. To assure the highest return for sale of its assets, the process involves an appraisal of fair market value and an open and competitive bid process. The City Council may reject any or all bids and accept that bid which will, in its opinion, best serve the public interest.

**PROCEDURE**

- A. The Real Property Manager shall identify potential surplus City real property by:
  - 1) Conducting periodic reviews of the Real Property Inventory; and/or
  - 2) Notification from City departments which no longer have use for a particular property.
  
- B. Upon identifying a potential surplus real property, the Real Property Manager shall:
  - 1. Notify City departments that the property may be available for their use, subject to Council approval as outlined below.
  - 2. In accordance with Government Code Section 54222, notify public agencies of the property's availability for sale.
  
- C. The Real Property Manager shall forward information about the property together with the responses from other departments and the public agencies referred to in #B2 above to the Council with a staff recommendation to:
  - 1. Formally declare the real property surplus and instruct the Real Estate Division to dispose of the property using open bid procedures; or
  - 2. Transfer control of the property to one or more other City departments; or
  - 3. Negotiate an agreement with one of the public agencies referred to in #B2 above.

D. Should the decision be to declare the property surplus and sell it by bid:

1. The Real Estate Division shall appraise (or have appraised) the property to determine a minimum bid.
2. The Real Estate Division shall prepare a “Bid Proposal Package” to be placed on the Council Consent Calendar for approval.
3. Upon approval by the Council, the Real Estate Division shall:
  - a. Place an ad in the Real Estate Section of the local newspapers.
  - b. Send flyers advising of the offering to all interested parties and persons on the Real Estate Division “Surplus Property Mailing List.”
  - c. Send the Proposal Package to persons expressing further interest in the offering.
4. The bid opening shall be scheduled by the Real Property Manager and the Manager, Purchasing and Contract Administration. At the bid opening the Purchasing Division shall:
  - b. Open Sealed Bids
  - c. Accept oral bidding beginning at 5% above the highest written bid.
5. The Real Estate Division shall forward the results of the bidding to the Council with staff recommendation regarding an award of deed.
6. The City Council may reject any or all bids and accept that bid which will, in its opinion, best serve the public interest.

*Note: Questions and/or clarifications of this policy should be directed to the Administrative Services Department.*

## City of Palo Alto's Response to the Civil Grand Jury Report on Reduced Transparency and Inhibited Public Input on Important Land Issues

### Finding 1

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

#### **RESPONSE to Finding 1:**

The City agrees with the finding. The City ~~notes that~~ should not have leased the parcel except for "conservation purposes, including parks and recreation."

The lease agreements were executed and administered under two prior administrations. The officials and employees who took these actions have long since left the City's service.

### Recommendation 1

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

#### **RESPONSE to Recommendation 1:**

The City has implemented the recommendation. The City's Real Estate Division has reviewed use restrictions on donated property for consistency with current uses. The Council has directed staff to publish a list of land donated to the City, in a format that is easily accessible to the public.

### Finding 2

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

#### **RESPONSE to Finding 2:**

The City agrees in part with the finding. This pertains to decisions made many years ago. Local law allows the City Manager to enter into leases up to three years. (Palo Alto Municipal Code Section 2.30.210(h-).) Consistent with the Municipal Code, Policy & Procedure 1-11/ASD states that it does not apply to short term leases.

The initial lease of the Lee Gift Deed Property – which was signed by a prior ~~City Manager~~ city manager nearly 15 years ago – was a short-term lease. ~~While it is true that the lease did was not required to comply with P&P 1-11/ASD, it is also true that under the Municipal Code and P&P 1-11/ASD, it was not required to do so. The lease, however, was. A prior administration allowed the lease to hold over beyond the authority of the prior City Manager granted to the city manager in the Municipal Code.~~ At that point, both the Municipal Code and P&P 1-11/ASD required additional process, which did not occur.

### Recommendation 2

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

#### **RESPONSE to Recommendation 2:**

The City has implemented the recommendation. Current City administration interprets existing City law and policy to require that Council approve leases that hold-over past the City Manager's authority, and has adhered to this requirement. The City's Real Estate Division has reviewed short-term leases to ensure consistency with the City Manager's authority and the Municipal Code and P&P 1-11. Long-term leases are entered into in a manner that is consistent with P&P 1-11/ASD.

### Finding 3

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

debate on the future use or sale of the property.

**RESPONSE to Finding 3:**

The City agrees in part with the finding.

Real property in Palo Alto is a valuable asset. It is not often that the City sells or even seriously contemplates selling any of its real property assets. On the occasions when it does so, property may be designated for sale after a survey that identifies the property as appropriate for sale through the process described in P&P 1-48. ~~But this is not the exclusive way in which a property may initially be brought to City staff's attention for potential sale. From~~In addition, from time to time, a third party (which may be a private individual, company, non-profit, educational institution or other governmental entity) may approach the City to initiate discussions about a real property transaction. ~~In those situations, the City may preliminarily consider a specific offer as part of determining whether to formally initiate the sale process as described in P&P 1-48.~~

~~When credible unsolicited offers are made for the purchase of City-owned property, City staff has an obligation and a responsibility to bring those forward to Council for consideration.~~ City staff initiated the closed session on September 18, 2012, to inform and receive direction from the Council regarding an unsolicited proposal by Mr. Arrillaga to purchase the Lee Gift Deed Property for a specific price. For the closed session on September 18, 2012, (and one on June 4, 2012), staff listed the property by the assessor's parcel number, because the property does not have a street address. After the September 18th agenda was published but before the meeting occurred, the staff realized that more information would be helpful. On September 18<sup>th</sup>, before the closed session, the Mayor orally listed properties adjacent to the Lee Gift Deed Property.

When Mr. Arrillaga ~~made~~approached the staff in late 2011 about acquiring the Lee Gift Deed Property, staff research revealed that this ~~proposal, it~~ was not the first time that ~~he~~Mr. Arrillaga had proposed to acquire the Lee Gift Deed Property land. Although the parcel is in a remote location and ~~in the prior to late 2011-2012 timeframe~~ was not familiar to current City staff or Council Members, Mr. Arrillaga in fact had a long history of attempting to acquire the parcel. He was the neighboring landowner, and between 1983 and 1996 had ~~exclusive use and access to the parcel as the owner control~~ of the property because the Lees had sold him the estate initially that they had reserved by on the Lee family parcel, including the exclusive right of access and then sold to Arrillaga. As use. After 1996, as noted above, Mr. Arrillaga ~~continued~~continued to lease the property for almost 9 years from the City. Throughout the years, the City of Palo Alto had responded to Mr. Arrillaga's periodic questions about the process for acquiring the parcel.-

Beginning in late 2011, Mr. Arrillaga again began asking City staff about acquiring long-term access to the parcel, either through a long-term lease or purchase. Staff intermittently answered his questions about the procedures that would be required for long-term lease or purchase, including Council action, an open public process, surplus property designation, significant consideration and the ongoing need to comply with the deed restriction. Anticipating the need to provide information to the Council, staff ordered an appraisal of the property, which was completed in May 2012 and came in at \$175,000. The City conducted an initial closed session on June 4, 2012. The staff informed Mr. Arrillaga that it was not conceivable that the Council would consider selling the parcel at that price, and that additional/offsetting parkland may need to be a factor to even be considered and that possibility uncertain. The City later received a general proposal for funding and construction of playing fields at the Baylands. The City also received a proposal to purchase the Lee Gift Deed Property for \$175,000. City staff had a responsibility to bring the purchase offer to the Council for preliminary direction and did so on September 18, 2012. (As described below, the Council has referred to its Policy & Services Committee a review of Policy & Procedure 1-48, which may include guidance regarding whether future such meetings should occur in open or closed session.)

Following the Closed Session and Council tours of the property, neither City staff nor the Council elected to move forward to consider the sale of the property by placing an item on the Council's open session agenda. On August 18, 2014, the City Council approved an ordinance dedicating the Lee Gift Deed Property as parkland, and declaring it a part of Foothills Park. The Parks and Recreation Commission is considering best uses for the property, consistent with its status as parkland and the deed restriction.

**Recommendation 3**

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

**RESPONSE to Recommendation 3:**

The City has implemented the recommendation ~~as described here. The City.~~

~~First, the Council has implemented/directed that all real property closed session agendas include sufficient user-friendly descriptions of the subject property so that the public can identify and locate the property, and provide input to the Council before any closed session.~~

~~Second, the City's existing procedures to ensure public debate about disposition of real property well before transactions are finalized, and also understands that greater attention must be paid to open public process early in any potential transaction. At the same time, a recommendation to always seek public input notice and involvement before meeting lawfully in private to discuss a parcel of City-owned real property exceeds the requirements of local and state law and is sold. In addition, the Council has determined that City policy should not be implemented in a manner that may injure the public interest be reviewed and revised to provide additional clarity on how staff should handle unsolicited purchase offers and when closed sessions should be scheduled.~~

~~City law and policy do not dictate a uniform order of steps for initial consideration of complex real property transactions. State law provides some flexibility as well. Consistent with City law and policy and state law, the City's staff should retain leeway to use their professional judgment as to the order and timing of the various steps in order to best meet the public interest. While the City should and will place increased emphasis on transparency, it must remain free to balance that interest and the public interest in effective negotiations. Accordingly, Recommendation 3 will be implemented in a manner that it is consistent with the public interest.~~

#### **Finding 4a**

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

##### **RESPONSE to Finding 4a:**

The City agrees with this finding. As of September 18, 2012, the City had not ~~implemented~~yet initiated the procedures in P&P 1-48/ASD with respect to the Lee Gift Deed Property. ~~In addition, the prior history related to the Lee Gift Deed, dating back many years before but never implemented, only became clear as part of research into the property by current staff, in response to Mr. Arrillaga's more recent interest.~~ City staff have always been clear to all parties, including Mr. Arrillaga and the Council, that to pursue a sale of the property, the City would have had to comply with the procedures set forth in P&P 1-48.

#### **Finding 4b**

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

##### **RESPONSE to Finding 4b:**

The City agrees in part and disagrees in part with this finding.

Properties that are subject to deed restrictions are bought and sold with frequency. The deed restriction on the Lee Gift Deed Property did not require that the property remain in City ownership. It required only that the property be used for conservation purposes, including parks and recreation. A private party, non-profit entity or other governmental entity could comply with this deed restriction. There are many such parcels of land throughout the Bay Area and the state. Thus the deed restriction did not prevent the City from selling the property. The new owner would have been obligated to meet the deed restriction.

If the City had decided to sell the property, it would have followed the procedures to declare the property surplus. Because there was no interest in selling the property, these procedures were not pursued.

#### **Recommendation 4**

The City of Palo Alto should always comply with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned real property.

##### **RESPONSE to Recommendation 4:**

~~The City has implemented this recommendation. The City has not sold any properties without following its procedures regarding the sale of surplus properties. The City has not sold any of its interest in the Lee Gift Deed Property. In fact, on August 18, 2014, the City Council approved an ordinance dedicating the Lee Gift Deed Property as parkland, and declaring it a part of Foothills Park. The Parks and Recreation Commission is considering best uses for the property, consistent with its status as parkland and the deed restriction.~~

The City will implement this recommendation. The Council has tasked its Policy & Services Committee with reviewing city policies on sale of real property and revising the policies to provide additional guidance and clarity regarding unsolicited offers and the use and timing of closed sessions.

### Finding 5a

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

#### **RESPONSE to Finding 5a:**

The City agrees- with this finding.

The property at 27 University Avenue is an important parcel that serves a gateway to the City's downtown, as well as a transition to El Camino Real and Stanford University. The parcel is the site of complex transit connections. It has been the subject of numerous attempts over many years to develop comprehensive planning solutions, including the work of the Dream Team beginning in the 1990's.

Developer John Arrillaga renewed those efforts beginning in 2011 and 2012. The City has already acknowledged that the public process around this round of planning for 27 University Ave ~~could~~should have been better, with the early start to this project flawed, despite good intentions. The City's intention was always to try to guide the preliminary concept in a better direction. While the concept as initially described by Mr. Arrillaga was focused on new office buildings, the city saw the opportunity to begin a master plan and redesign of the transit center and road network at this gateway entrance to the City. There was also the potential to explore the addition of a major public benefit through a regional community theater. The Grand Jury report acknowledges the unique nature of this project: "the developer's proposals represented an unprecedented opportunity to address major traffic problems at an intersection where little change has taken place for many years, despite decades of planning attempts." The City's efforts were directed toward shaping the proposed concept into an improved design in order for the public to have a concrete concept on which to comment.

### Finding 5b

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

#### **RESPONSE to Finding 5b:**

The City agrees in part with this finding and disagrees in part. The Stanford University Medical Center funds were specifically designated to be used to develop pedestrian and bicycle connectivity projects between the intermodal transit center and the existing intersection at El Camino Real and Quarry Road. The City agrees that the first allocation of these funds at a Council meeting on March 5, 2012, occurred with only general details about a proposal from John Arrillaga, ~~for which these. The funds~~ that were allocated on March 5<sup>th</sup> were intended to be used to allow the City to steer a potential design into alignment with urban design goals for any potential project. ~~(March 5, 2012).~~ The City disagrees in that the second allocation of funding ~~(which included funding from the Intermodal Transit Funds and from the Stanford Infrastructure Funds, with Stanford concurrence)~~ took place at a Council meeting on September 24, 2012, following Council discussion and action on the massing concepts for 27 University, a letter of intent with TheatreWorks, and preparation of a potential advisory ballot measure for Council consideration. The funds that were allocated on September 24<sup>th</sup> were drawn from the Intermodal Transit Funds and from the Stanford Infrastructure Funds, with Stanford concurrence.

### Recommendation 5

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

#### **RESPONSE to Recommendation 5:**

The City has implemented this recommendation, ~~as described here.~~

Early input from constituents is critically important. ~~City staff is placing an increased emphasis on early and effective public engagement in planning efforts. At the same time, it is sometimes true that complex concepts~~ While complex planning concepts sometimes require preparation in order for the public to have significant substantive material to react to and provide input on. This (which may require staff and consultant time for preparation), over the past year, Council and City staff have made substantial efforts to involve the public earlier and in a more vigorous way in planning matters.



The Council has referred to its Policy & Services Committee a proposed policy that any major zone change must come to Council for a public pre-screening.

## Finding 6

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

### RESPONSE to Finding 6:

~~If the finding intends to state~~

The City agrees that the City's it has not satisfied every public records record request in the optimal timeframe, though its practices are not perfect in every case and could be improved, the City agrees.

~~If the finding intends to state that the City's practices fall outside within reasonable, and customary and even best practices standards for similar cities in this arena, the City disagrees. region.~~

-

The City receives many requests for routine information every single day and does a good job of responding promptly to the public. Formal requests under the Public Records Act come into the City from many different points across the City organization. For formal Public Records Requests, we recently have added an FAQ and a request form to the Public Records Request webpage that can be submitted online to better track requests. The City also receives Public Records Requests via email, traditional mail and orally, which often need to be coordinated internally to ensure appropriate departments are responding. The City strives to provide an initial response to Public Records Requests within ten days and generally meets this standard.

## Recommendation 6

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

### RESPONSE to Recommendation 6:

The City ~~has implemented~~ is implementing this recommendation. In addition to the FAQ and online form that have been implemented to increase coordination and accountability, the City ~~is exploring~~ will provide additional software solutions to automate tracking and responses to Public Records Requests. Additional training for City staff is also being planned.

## Finding 7

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

~~City's response to the request fails to capture all requests or responses.~~

### RESPONSE to Finding 7:

The City agrees with this finding. While the City's system does a reasonably good job of capturing most requests and responses, the City agrees that its current system does not capture all requests and responses, and that the system could be improved. The City ~~is evaluating additional~~ will provide software solutions in this area and increase staff training.

## Recommendation 7

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

### RESPONSE to Recommendation 7:

The City is implementing this recommendation. The City is ~~in the process of~~ evaluating options and will provide software ~~systems~~ to better track requests, assist in streamlining and coordinating responses, prompt timely responses, and support the efforts of City staff to comply with the Public Records Act. The City will provide additional training for staff who work on Public Records requests. The Council has directed staff to update the Council on software solutions by April 1, 2015.

**City of Palo Alto's Response to the Civil Grand Jury Report on Reduced Transparency and Inhibited Public Input on Important Land Issues**

**Finding 1**

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

**RESPONSE to Finding 1:**

The City agrees with the finding. The City should not have leased the parcel except for "conservation purposes, including parks and recreation."

The lease agreements were executed and administered under two prior administrations. The officials and employees who took these actions have long since left the City's service.

**Recommendation 1**

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

**RESPONSE to Recommendation 1:**

The City has implemented the recommendation. The City's Real Estate Division has reviewed use restrictions on donated property for consistency with current uses. The Council has directed staff to publish a list of land donated to the City, in a format that is easily accessible to the public.

**Finding 2**

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

**RESPONSE to Finding 2:**

The City agrees in part with the finding. This pertains to decisions made many years ago. Local law allows the City Manager to enter into leases up to three years. (Palo Alto Municipal Code Section 2.30.210(h).) Consistent with the Municipal Code, Policy & Procedure 1-11/ASD states that it does not apply to short term leases.

The initial lease of the Lee Gift Deed Property – which was signed by a prior city manager nearly 15 years ago – was a short-term lease that was not required to comply with P&P 1-11/ASD. A prior administration allowed the lease to hold over beyond the authority granted to the city manager in the Municipal Code. At that point, both the Municipal Code and P&P 1-11/ASD required additional process, which did not occur.

**Recommendation 2**

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

**RESPONSE to Recommendation 2:**

The City has implemented the recommendation. Current City administration interprets existing City law and policy to require that Council approve leases that hold-over past the City Manager's authority, and has adhered to this requirement. The City's Real Estate Division has reviewed short-term leases to ensure consistency with the City Manager's authority and the Municipal Code and P&P 1-11. Long-term leases are entered into in a manner that is consistent with P&P 1-11/ASD.

**Finding 3**

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

**RESPONSE to Finding 3:**

The City agrees in part with the finding.

Real property in Palo Alto is a valuable asset. It is not often that the City sells or even seriously contemplates selling any of its real property assets. On the occasions when it does so, property may be designated for sale after a survey that identifies the property as appropriate for sale through the process described in P&P 1-48. In

addition, from time to time, a third party (which may be a private individual, company, non-profit, educational institution or other governmental entity) may approach the City to initiate discussions about a real property transaction.

City staff initiated the closed session on September 18, 2012, to inform and receive direction from the Council regarding an unsolicited proposal by Mr. Arrillaga to purchase the Lee Gift Deed Property for a specific price. For the closed session on September 18, 2012, (and one on June 4, 2012), staff listed the property by the assessor's parcel number, because the property does not have a street address. After the September 18th agenda was published but before the meeting occurred, the staff realized that more information would be helpful. On September 18<sup>th</sup>, before the closed session, the Mayor orally listed properties adjacent to the Lee Gift Deed Property.

When Mr. Arrillaga approached the staff in late 2011 about acquiring the Lee Gift Deed Property, staff research revealed that this was not the first time that Mr. Arrillaga had proposed to acquire the land. Although the parcel is in a remote location and prior to late 2011 was not familiar to current City staff or Council Members, Mr. Arrillaga in fact had a long history of attempting to acquire the parcel. He was the neighboring landowner, and between 1983 and 1996 had control of the property because the Lees had sold him the estate that they had reserved on the parcel, including the exclusive right of access and use. After 1996, as noted above, Mr. Arrillaga continued to lease the property for almost 9 years from the City. Throughout the years, the City of Palo Alto had responded to Mr. Arrillaga's periodic questions about the process for acquiring the parcel.

Beginning in late 2011, Mr. Arrillaga again began asking City staff about acquiring long-term access to the parcel, either through a long-term lease or purchase. Staff intermittently answered his questions about the procedures that would be required for long-term lease or purchase, including Council action, an open public process, surplus property designation, significant consideration and the ongoing need to comply with the deed restriction. Anticipating the need to provide information to the Council, staff ordered an appraisal of the property, which was completed in May 2012 and came in at \$175,000. The City conducted an initial closed session on June 4, 2012. The staff informed Mr. Arrillaga that it was not conceivable that the Council would consider selling the parcel at that price, and that additional/offsetting parkland may need to be a factor to even be considered and that possibility uncertain. The City later received a general proposal for funding and construction of playing fields at the Baylands. The City also received a proposal to purchase the Lee Gift Deed Property for \$175,000. City staff had a responsibility to bring the purchase offer to the Council for preliminary direction and did so on September 18, 2012. (As described below, the Council has referred to its Policy & Services Committee a review of Policy & Procedure 1-48, which may include guidance regarding whether future such meetings should occur in open or closed session.)

Following the Closed Session and Council tours of the property, neither City staff nor the Council elected to move forward to consider the sale of the property by placing an item on the Council's open session agenda. On August 18, 2014, the City Council approved an ordinance dedicating the Lee Gift Deed Property as parkland, and declaring it a part of Foothills Park. The Parks and Recreation Commission is considering best uses for the property, consistent with its status as parkland and the deed restriction.

### **Recommendation 3**

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

#### **RESPONSE to Recommendation 3:**

The City has implemented the recommendation.

First, the Council has directed that all real property closed session agendas include sufficient user-friendly descriptions of the subject property so that the public can identify and locate the property, and provide input to the Council before any closed session.

Second, the City's existing procedures ensure public notice and involvement before real property is sold. In addition, the Council has determined that City policy should be reviewed and revised to provide additional clarity on how staff should handle unsolicited purchase offers and when closed sessions should be scheduled.

### **Finding 4a**

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

**RESPONSE to Finding 4a:**

The City agrees with this finding. As of September 18, 2012, the City had not yet initiated the procedures in P&P 1-48/ASD with respect to the Lee Gift Deed Property. City staff have always been clear to all parties, including Mr. Arrillaga and the Council, that to pursue a sale of the property, the City would have had to comply with the procedures set forth in P&P 1-48.

**Finding 4b**

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

**RESPONSE to Finding 4b:**

The City agrees in part and disagrees in part with this finding.

Properties that are subject to deed restrictions are bought and sold with frequency. The deed restriction on the Lee Gift Deed Property did not require that the property remain in City ownership. It required only that the property be used for conservation purposes, including parks and recreation. A private party, non-profit entity or other governmental entity could comply with this deed restriction. There are many such parcels of land throughout the Bay Area and the state. Thus the deed restriction did not prevent the City from selling the property. The new owner would have been obligated to meet the deed restriction.

If the City had decided to sell the property, it would have followed the procedures to declare the property surplus. Because there was no interest in selling the property, these procedures were not pursued.

**Recommendation 4**

The City of Palo Alto should always comply with its own Policy and Procedure 1-48/ASD regarding the sale/transfer of surplus City-owned real property.

**RESPONSE to Recommendation 4:**

The City will implement this recommendation. The Council has tasked its Policy & Services Committee with reviewing city policies on sale of real property and revising the policies to provide additional guidance and clarity regarding unsolicited offers and the use and timing of closed sessions.

**Finding 5a**

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

**RESPONSE to Finding 5a:**

The City agrees with this finding.

The property at 27 University Avenue is an important parcel that serves a gateway to the City's downtown, as well as a transition to El Camino Real and Stanford University. The parcel is the site of complex transit connections. It has been the subject of numerous attempts over many years to develop comprehensive planning solutions, including the work of the Dream Team beginning in the 1990's.

Developer John Arrillaga renewed those efforts beginning in 2011 and 2012. The City has already acknowledged that the public process around this round of planning for 27 University Ave should have been better, with the early start to this project flawed, despite good intentions. The City's intention was always to try to guide the preliminary concept in a better direction. While the concept as initially described by Mr. Arrillaga was focused on new office buildings, the city saw the opportunity to begin a master plan and redesign of the transit center and road network at this gateway entrance to the City. There was also the potential to explore the addition of a major public benefit through a regional community theater. The Grand Jury report acknowledges the unique nature of this project: "the developer's proposals represented an unprecedented opportunity to address major traffic problems at an intersection where little change has taken place for many years, despite decades of planning attempts." The City's efforts were directed toward shaping the proposed concept into an improved design in order for the public to have a concrete concept on which to comment.

**Finding 5b**

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

**RESPONSE to Finding 5b:**

The City agrees in part with this finding and disagrees in part. The Stanford University Medical Center funds were specifically designated to be used to develop pedestrian and bicycle connectivity projects between the intermodal transit center and the existing intersection at El Camino Real and Quarry Road. The City agrees that the first allocation of these funds at a Council meeting on March 5, 2012, occurred with only general details about a proposal from John Arrillaga. The funds that were allocated on March 5<sup>th</sup> were intended to be used to allow the City to steer a potential design into alignment with urban design goals for any potential project. The City disagrees in that the second allocation of funding took place at a Council meeting on September 24, 2012, following Council discussion and action on the massing concepts for 27 University, a letter of intent with TheatreWorks, and preparation of a potential advisory ballot measure for Council consideration. The funds that were allocated on September 24<sup>th</sup> were drawn from the Intermodal Transit Funds and from the Stanford Infrastructure Funds, with Stanford concurrence.

**Recommendation 5**

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

**RESPONSE to Recommendation 5:**

The City has implemented this recommendation.

Early input from constituents is critically important. While complex planning concepts sometimes require preparation in order for the public to have significant substantive material to react to and provide input on (which may require staff and consultant time for preparation), over the past year, Council and City staff have made substantial efforts to involve the public earlier and in a more vigorous way in planning matters.

The Council has referred to its Policy & Services Committee a proposed policy that any major zone change must come to Council for a public pre-screening.

**Finding 6**

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

**RESPONSE to Finding 6:**

The City agrees that it has not satisfied every public record request in the optimal timeframe, though its practices are within reasonable and customary standards for similar cities in the region.

The City receives many requests for routine information every single day and does a good job of responding promptly to the public. Formal requests under the Public Records Act come into the City from many different points across the City organization. For formal Public Records Requests, we recently have added an FAQ and a request form to the Public Records Request webpage that can be submitted online to better track requests. The City also receives Public Records Requests via email, traditional mail and orally, which often need to be coordinated internally to ensure appropriate departments are responding. The City strives to provide an initial response to Public Records Requests within ten days and generally meets this standard.

**Recommendation 6**

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

**RESPONSE to Recommendation 6:**

The City is implementing this recommendation. In addition to the FAQ and online form that have been implemented to increase coordination and accountability, the City will provide additional software solutions to automate tracking and responses to Public Records Requests. Additional training for City staff is also being planned.

**Finding 7**

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

**RESPONSE to Finding 7:**

The City agrees with this finding. While the City's system does a reasonably good job of capturing most requests and responses, the City agrees that its current system does not capture all requests and responses, and that the system could be improved. The City will provide software solutions in this area and increase staff training.

**Recommendation 7**

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

**RESPONSE to Recommendation 7:**

The City is implementing this recommendation. The City is evaluating options and will provide software to better track requests, assist in streamlining and coordinating responses, prompt timely responses, and support the efforts of City staff to comply with the Public Records Act. The City will provide additional training for staff who work on Public Records requests. The Council has directed staff to update the Council on software solutions by April 1, 2015.