



October 10, 2022

District Attorney Jeff Rosen
County Government Center
San Jose, CA

Dear District Attorney Rosen,

I've reviewed the Santa Clara County Civil Grand Jury Report, "Unsportsmanlike Conduct."

First, I would like to commend the Civil Grand Jury for the countless hours they put into a comprehensive analysis of the relationship between the City of Santa Clara and the 49ers. The report was substantive and well-documented. It raises serious questions about unethical conduct, state and city law violations, and potential corruption. The public should be grateful to the Civil Grand Jury members for their voluntary and selfless public service.

I've read unwarranted personal attacks about the Grand Jury members from a 49er representative. It's the same negative behavior we have witnessed in Santa Clara for some time. When the team is questioned about their actions, they immediately attack individuals and challenge their motives and integrity. Their targets have included the City Staff, auditors, and many others. The team's response should not be dismissed lightly. The 49ers are sending a disturbing message: if anyone challenges the team, they will be publicly attacked, including the Grand Jury. These actions can discourage good people from speaking out against the 49ers or participating in our civic institutions.

Therefore, it's especially important for those of us who are in independent positions of authority to ignore the 49er's public pressure and do our civic duty. This may prove difficult if not impossible as the Grand Jury suggests:

This report points to serious concerns about the City Council Voting Bloc. The Civil Grand Jury recognizes that the "City"— which currently has a governing board that consists of this majority will be required to vote to determine if it agrees with these findings and whether it will accept the recommendations. (Cal. Pen. Code § 933.05.) It is the Civil Grand Jury's charge to investigate government operations, and this report seeks to do that despite the obvious limitation posed by the City Council Voting Bloc. (page 29)

With this challenge in mind, I respectfully request that the office of the District Attorney investigate some of the Civil Grand Jury's most critical report findings. I believe the following are most appropriate for your office:

Findings 1a, 1b, 1c – Potential Violations of the Public Meeting Laws

The Civil Grand Jury has documented potential Brown Act violations documented in the numerous serial meetings between the City Council Voting Bloc and the 49ers. To determine if there are actual violations, it will require the investigative powers of your office.

Findings 3a, 3b, 3c, 3d – Potential Misappropriation of Public Funds

The Civil Grand Jury documents how the 49ers have been routinely uncooperative and at times belligerent with City staff, the City fire department, and auditors. There's no reason to believe this behavior will substantially change if another financial audit is conducted without your assistance. It will require the investigative powers of your office to obtain financial information to determine if public funds have been misappropriated in any way as the report suggests.

Finding 5 – Potential Violation of City's Prohibition on Accepting Lobbyist Gifts

Currently, the California Fair Political Practices Commission is investigating City Council Members for potentially violating state gift policies when they attended 49ers football games. As the Civil Grand Jury points out, the City Council Voting Bloc fired our City Attorney. Our interim City Attorney believes he has a conflict. Therefore, no one is investigating the potential violations of our stricter City policy that prohibits lobbyist gifts. Although it's not mentioned in the report, a recent request at a City Council meeting to have your office investigate this issue was rejected by the City Council Voting Bloc. This is clearly a role for your office as your independence will be critical to discovering if our City gift ordinance was violated.

Finding 8a – Termination of City Management

The Civil Grand Jury reports how the City Council Voting Bloc fired the former City Manager and former City Attorney at the urging of the 49ers. Without independent city management in place, your office will need to investigate the following incidents identified in the grand jury report:

- Two days after the former City Manager publicly raised issues about a top 49er executive having a conflict of interest as the head of the FIFA World Cup host committee and possibly making commitments of City resources, she was fired (page 22).
- The City Council Voting Bloc may have participated in meetings regarding 49ers issues and legal decisions remotely with video cameras turned off raising suspicions that they may be communicating in real-time with 49ers lobbyists. I know from City staff discussions that this was a real concern that was documented over the last year and may have violated rules governing closed sessions (page 25).
- The City Council Voting Bloc terminated an independent investigation into possible violations of Section 807 of our City Charter which prohibits them from giving orders to City staff. Inappropriately directing City staff is considered a misdemeanor according to our City Charter and results in removal from office. Stopping the investigation appears to be a cover-up as they stopped an investigation into their own actions. (page 26).

Recently, a respected ethicist who worked with the City of Santa Clara for decades wrote in the Mercury News that he sees "the most egregious collapse of ethics of any institution I've worked with in three decades." Further, he highlighted similarities between actions taking place today in Santa Clara to those that happened a decade ago in the City of Bell, the biggest local government corruption scandal in California's recent history.

The Civil Grand Jury report has a similar warning for us. Therefore, I believe your office must provide the investigative power that we currently don't have in our City. I offer to work with you and provide any police department resources that might be appropriate.